



city commission agenda

Regular Meeting
November 27, 2017
3:30 PM
Commission Chambers

mayor & commissioners

seat 1
Gregory Seidel

seat 2
Sarah Sprinkel

Mayor
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 the 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. The 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

**times are projected and
subject to change*

1. Meeting Called to Order

2. Invocation

a. Pastor Ed Garvin, Calvary Assembly of God

Pledge of Allegiance

3. Approval of Agenda

4. Mayor's Report

5. City Manager's Report

a. City Manager's Report

5 minutes

6. City Attorney's Report

7. Non-Action Items

8. Citizen Comments and budget comments | 5 p.m. or soon thereafter

9. Consent Agenda

- a. Approve the minutes of November 13, 2017.**
- b. Approve the amendment to CDBG Interlocal Agreement with Orange County for Urban County Programs**
- c. Approve the Construction Manager at-Risk Contract for Library** 5 minutes
- d. Approve the purchases over \$75,000:** 5 minutes
 - 1. Xylem Water Solutions, Inc. - FY18 purchases of Flygt Products for the maintenance of city lift stations; Sole source currently in place; \$75,000
 - 2. Orange County Utilities - Water/Sewer services of unincorporated customers; Interlocal agreement currently in place; \$170,800
 - 3. Landreth, Inc. - Sternberg decorative streetlights for the Denning Drive improvement project and Project G of the citywide undergrounding initiative; Sole source currently in place; Approved for funding by the CRA on 6/27/2016 and 11/13/2017, respectively; Not to exceed \$300,000

10. Action Items Requiring Discussion

- a. Library and Events Center Naming Policy** 10 Minutes

11. Public Hearings

- a. Resolution - Adopting a Procurement Policy** 5 minutes
- b. Ordinance - 540 Interlachen Avenue easement vacate (2)**
- c. Ordinance - Fire Pension (1)** 5 minutes
- d. Ordinance - Request by Donald W. McIntosh Associates to vacate a utility easement at 2010 Mizell Avenue (1)** 5 minutes

- e. **Ordinance - Request of Hope and Help Center of Central Florida, Inc. to vacate the easement at 1935 Woodcrest Drive (1)** 5 minutes

- f. **Ordinance - Advance refunding Water and Sewer Refunding and Improvement Revenue Bonds, Series 2009 (1)** 5 minutes

- g. **Request of Weingarten Nostat, Inc. for conditional use approval to redevelop the portion of the Winter Park Corners Shopping Center at 1903-1999 Aloma Avenue by reconstructing a new 30,348 square foot grocery store and 12,250 square feet of retail space.** 30 minutes

- h. **Ordinances - Requests of the City of Winter Park - Adopt new zoning regulations; and to adopt changes to the Concurrency Management Regulations (1)** 10 minutes

AN ORDINANCE OF THE CITY OF WINTER PARK, FLORIDA, AMENDING CHAPTER 58 "LAND DEVELOPMENT CODE" ARTICLE III, "ZONING" SO AS TO ADOPT NEW ZONING REGULATIONS CHANGING THE PERMITTED, CONDITIONAL PROHIBITED USES AND DEVELOPMENT STANDARDS WITHIN THE ZONING DISTRICTS OF THE CITY; ADOPTING NEW DEVELOPMENT STANDARDS, DENSITIES AND INTENSITIES OF DEVELOPMENT; ADOPTING CHANGES NECESSARY TO IMPLEMENT THE CITY OF WINTER PARK, COMPREHENSIVE PLAN, GOALS, OBJECTIVES AND POLICIES DOCUMENT, DATED APRIL 24, 2017. (1)

AN ORDINANCE OF THE CITY OF WINTER PARK, FLORIDA, AMENDING CHAPTER 58 "LAND DEVELOPMENT CODE" ARTICLE II, "CONCURRENCY MANAGEMENT REGULATIONS" SO AS TO ADOPT CHANGES TO THE CONCURRENCY MANAGEMENT REGULATIONS OF THE CITY NECESSARY TO IMPLEMENT THE CITY OF WINTER PARK, COMPREHENSIVE PLAN, GOALS, OBJECTIVES AND POLICIES DOCUMENT, DATED APRIL 24, 2017. (1)

- i. **Ordinance - Request of the City of Winter Park, amending Chapter 58 "Land Development Code" Article III, "Zoning" so as to adopt new zoning regulations and development standards within the zoning** 15 minutes

districts of the City (1)

12. City Commission Reports

Appeals and 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	City Manager's Report	meeting date	11/27/2017
prepared by	City Clerk	approved by	
board approval	final vote		
strategic objective			

subject

City Manager's Report

motion / recommendation

background

alternatives / other considerations

fiscal impact

ATTACHMENTS:

Description

CM Report

Upload Date

11/21/2017

Type

Cover Memo



city commission city manager's report

item type

City Manager's Report

meeting date

November 27, 2017

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
Quiet zones	(FDOT update October 2017) –The current activities include completing design plans, procurement of materials supply and delivery and wiring of Central Florida Rail Corridor (CFRC) signal houses. Design completion by November 2017, materials procurement by January 2019, and construction completion by August 2019.
Seminole County Ditch Drainage Improvement	The City of Winter Park has contracted services for dredging the drainage ditch behind the homes along the east side of Arbor Park Drive. Dredging will resume the week of November 27.
Electric undergrounding	<p><u>Miles of Undergrounding performed</u></p> <p>Project F: 1.54 miles Complete minus small section scheduled to be wrecked out during Denning Road closure.</p> <p>Grove Terrace: .93 miles Boring complete.</p> <p>Project G: 4.03 miles Boring will begin week after Thanksgiving.</p> <p>TOTAL so far for FY 2018: 0.7 miles</p>
Fairbanks transmission	All information required by Duke has been provided for contractors to begin the Fairbanks conversion. Bid reviews will take place 11/30/17. Expected start date of 3/1/18. There have been additional Duke delays.
Denning Drive	Phase 1 construction (from Orange Avenue to Fairbanks Avenue) began October 9 with demolition. Curb work and grading is underway and will be complete before the end of the year. Phase 2 (Fairbanks Avenue to Webster Avenue) is expected to begin January 2018 and be complete May 2018 during the dry season. Phase 3 (Webster to Solana) will follow directly behind phase 2 with entire project wrapped in early summer 2018.
Scenic Boat Tour ADA ramp	Construction of the new concrete ramp is underway and will substantially be complete by mid-December 2017 to meet the City's obligation.

Library Design	Following the November 1, 2017 unveiling of the Library/Event Center design, and approval of the concept on November 13, 2017, the architects will continue to move towards schematic design and ultimately the construction plans.
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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.



city commission **agenda item**

item type	Consent Agenda	meeting date	11/27/2017
prepared by	City Clerk	approved by	
board approval	final vote		
strategic objective			

subject

Approve the minutes of November 13, 2017.

motion / recommendation

background

alternatives / other considerations

fiscal impact

ATTACHMENTS:

Description

November 13, 2017 minutes

Upload Date

11/20/2017

Type

Cover Memo

REGULAR MEETING OF THE CITY COMMISSION
November 13, 2017

The meeting of the Winter Park City Commission was called to order by Mayor Steve Leary, at 3:35 p.m. in the Commission Chambers, 401 Park Avenue South, Winter Park, Florida. The invocation was provided by Reverend Alison Harry, St. Richard's Episcopal Church followed by the Pledge of Allegiance.

Members present:

Mayor Steve Leary
Commissioner Pete Weldon
Commissioner Greg Seidel
Commissioner Sarah Sprinkel
Commissioner Carolyn Cooper (by phone)

Also Present:

City Manager Randy Knight
City Clerk Cynthia Bonham
City Attorney Kurt Ardaman

Approval of agenda

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

Attorney Ardaman explained the law regarding participating and voting by phone and that the Commission needs to make a determination whether a vote is counted for Commissioners not physically in attendance. After discussion, there was a consensus to record Commissioner Cooper's vote.

Mayor's Report

No report.

City Manager's Report

Commissioner Seidel spoke about an upcoming Duke Energy staff meeting whereby City Manager Knight will provide a report to the Commission as to where Duke is concerning their schedule for Fairbanks Avenue.

Mayor Leary addressed speaking with the FDOT Secretary who is looking into trying to expedite the quiet zones process. He stated the funding is not the issue but is the workload and how it is set up to go through the process.

City Attorney's Report

Attorney Ardaman stated he hoped to have the 1111 W. Fairbanks Avenue sale of the property contract on the next agenda. He stated the Morse/Pennsylvania Avenue property is ready to close.

Non-Action Items

No items.

Consent Agenda

- a. Approve the minutes of October 23, 2017.
- b. Cancel the December 25, 2017 Commission meeting due to the Christmas holiday.
- c. Approve the following piggyback agreements and authorize the Mayor to execute the contracts:
 1. Motorola Solutions, Inc. - Broward County contract #RFP R1422515R1/P1 for a P25 Communications System & Service; \$300,000.
 2. Dana Safety Supply, Inc. - City of Tallahassee contract #1489 for the Provision & Installation of Vehicle Accessories; As-Needed Basis.
- d. Approve the following agreements and authorize the Mayor to execute the contracts:
 1. Argos USA, Inc. - IFB-1-2018 - Purchase of Concrete Materials for various projects & maintenance throughout the city; As-needed basis.
 2. Physio Control, Inc. - Three-year service agreement for comprehensive coverage of the Fire Department's LifePak 15 System; \$15,739.20.
 3. Physio Control, Inc. - Three-year service agreement for comprehensive coverage of the Fire Department's LUCAS System; \$2,631.60.
- e. Approve the following purchases over \$75,000 and authorize all subsequent payments:
 1. Ten-8 Fire Equipment, Inc. - FY18 purchases of fire equipment parts, supplies & service utilizing piggyback agreement of Lake County contract #17-0606L; \$100,000.
 2. Duval Ford, LLC - Replacement vehicles for the Police (12), Fire (1) and Water/Wastewater (2) Departments utilizing Florida Sheriffs Association contract #FSA17-VEL25.0 and State of Florida contract #25100000-16-1; \$415,520.50.
 3. HDD of Florida, LLC - Provision of underground utility services for the citywide undergrounding initiative; \$1,500,000.
 4. Heart Utilities of Jacksonville, Inc. - Provision of underground utility services for the citywide undergrounding initiative; \$1,800,000.
 5. Covanta Energy Marketing, LLC - FY18 bulk power supply, \$5,125,399.
 6. Gainesville Regional Utilities - FY18 bulk power supply; \$5,014,920.
 7. Orlando Utilities Commission - FY18 bulk power supply & power transmission; \$4,547,569.
 8. Florida Power & Light Co. - FY18 bulk power supply & power transmission; \$10,859,193.
 9. Duke Energy - FY18 power transmission pursuant to Duke Energy tariff; \$2,289,338.
 10. ENCO Utility Services - FY18 Utility Call Center services; \$80,000.
 11. The Nidy Sports Construction Co. - Reconstruction of courts 1-8 at the Azalea Park Tennis Center utilizing NCPA contract; \$199,000.

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

Action Items Requiring Discussion

a. Agreement for roadway improvement contributions for Ravaudage

Public Works Director Troy Attaway addressed direction by the Commission to come back with a no risk agreement. He stated they worked with the City Attorney and this agreement is consistent with what they have previously discussed with the Commission regarding the dollar amount and what they mean by no risk. He further explained the content of the agreement. City Manager Knight stated it has a cap of \$1.2 million over the life of the agreement and depending on how fast development takes place would drive the speed in which the City is reimbursed.

Motion made by Commissioner Sprinkel to approve the agreement; seconded by Commissioner Weldon.

Commissioner Seidel stated he disagrees with the agreement because he believed the City is giving Mr. Bellows money back that should be coming to the City that should have been negotiated in the original agreement. He stated he would be comfortable working with Mr. Bellows on things such as the intersection on Lee Road where he has to realign it and solve the signals there. He stated Mr. Bellows bought the property knowing the roads would have to be rebuilt and now he is asking the City to give him a discount on his work.

Commissioner Weldon agreed with the changes made that has satisfied the requirements he placed at the last discussion. He stated he supports this because the City can control the roads.

Commissioner Sprinkel spoke about this deal being approved before any of the current Commissioners were here and since then the Commission has been trying to work out something that would be equitable. She stated it is time to settle this and move forward.

Commissioner Cooper commented that she has not changed her position on this. She spoke about the initial Orange County approvals that made numerous changes and allowed more leasable square footage and less greenspace and that they did not offer to pay for infrastructure as part of the original agreement. She stated it is not necessary and is not fair to other developers that they are allowing a \$1.2 million contribution to a private developer's infrastructure. She stated she is opposed to this and finds the precedence troublesome.

Jennifer Anderson, 1621 Roundelay Lane, spoke against the agreement and the precedent set for future developers.

Mayor Leary stated he is supporting this because the City would be responsible for the roads and still has control over them.

Attorney Ardaman suggested an addition to the agreement (page 3, paragraph 3, subsection c) to add the words "and limited" before "as follows:"

Both Commissioner Sprinkel and Commissioner Weldon agreed with the added language provided by Attorney Ardaman. Upon a roll call vote, Mayor Leary and Commissioners Sprinkel and Weldon voted yes. Commissioners Seidel and Cooper voted no. The motion carried with a 3-2 vote.

b. Conceptual design approval – Library & Events Center

A video was shown regarding the library & events center proposed design and public forum that took place on November 1, 2017.

Jim Russell, Pizzuti Companies, the project's City's Owners Representative, presented the conceptual plan and asked for consideration to advance through the design process. He summarized the budget, the four elements of the conceptual plan presented that fall out of the initial \$30 million budgeted that are desires that they are going to try strategically meet (raked auditorium inside the facility, outdoor amphitheater, connection from the library and events center down to the lakefront, the porte cochere, and the rooftop café on top of the events center). They are looking at how they can afford those and move those projects along so they are designing those elements and include as part of the add/alternates. He summarized the proposed size of the new library and events center and that they are comfortable with the building size and providing new space and new growth for expanded programs into the future. He spoke about exceeding the code for parking and to make the most efficient use of parking that will have minimal impact on the park and on the design of the facility.

He asked that the Commission move the project forward from concept design to schematic design with the architect. Mr. Russell answered questions regarding construction costs rising in the last 12 months.

Commissioner Seidel addressed the original proposed size of the library of 50,000 square feet and sacrificing some space for higher quality and his preference for higher quality. He stated he is happy with the project and for it to move forward but wanted to make sure the architect has a clear direction.

Commissioner Sprinkel explained the mandate from the public to build this building, the fundraising that will be done, they can work together to get more things named after people that want to donate, but did not think they were going about this with the City and the library/events center in a coordinated effort as much as they need to. She wanted to see as a result of this evening to go out with a plan of how they can put all resources together to make sure if they have a \$5 million ask out there that could into the community towards this effort that they do that together. She stated she loves everything about the project and is ready to move forward.

Commissioner Cooper stated the rooftop dining and the lake/water interface are critical to the overall project and wanted to see those two elements as part of moving forward. She stated the residents are anticipating a 50,000 square foot library with a 200 space parking garage. She expressed being happy they are not doing that but that they need to inform the public of those changes. She asked that this be postponed for two weeks to allow time to bring the public up to date. Mayor Leary addressed the information sent to the residents to update them as to where they are with the project.

Motion made by Commissioner Sprinkel to approve the project and to move forward; seconded by Commissioner Weldon.

The following spoke in favor:

Mary Dipboye, 938 Golfside Drive (wanted more solar)
Karolyn Foreman, 1940 Summerland Avenue (wanted more solar)
Daniel McIntosh, 981 Mayfield Avenue
Jeff Byldenburgh, 204 Genius Drive (asked to further review the events center design)
Mary Randall, 1000 S. Kentucky Avenue (but had traffic concerns)

The following spoke in opposition:

Chele Hipp, 457 Seymour Avenue
Michael Perelman, 1010 Greentree Drive
Pat McDonald, 2348 Summerfield Road

Charley Williams, 757 Antonette Avenue, spoke about energy conservation for the building with solar and believed it to be a LEAD certified building but saw nothing about that. He wanted to hear from the design team how they integrate the whole complex with the park and pull the two together for synergy. Mayor Leary and City Manager Knight spoke about the LEAD certification that was never a goal and did not want to pay for the certification.

Maurizio Maso, HuntonBrady Architects, stated they are happy there is interest in sustainability and green design and whether to seek LEAD certification was debated. He stated that was not practical because of what it entails and is a very long payback period. He stated the intent is to be as sustainable as they can be and will be using the LEAD guidelines but are not seeking a certification. He explained Sir David Adjaye's concept to connect the complex to the park. He spoke about solar and that they would run an analysis to see how long it would take to pay back for having solar.

Discussion ensued regarding the comment cards provided at the November 1 public meeting and if any of those comments will be a part of consideration. Mayor Leary stated if there is anything the Commission wants to give direction on and they reach a consensus on to provide further direction, they can consider it.

Commissioner Sprinkel expressed her preference not to have the auditorium. She stated they have done an excellent job with this and that there are more positives than negatives and is excited with moving forward. She stressed the importance that everyone has the same information.

Commissioner Weldon responded to concerns of Ms. Chele Hipp that she submitted to the Commission. He stated he supports the design with the following recommendations: evaluate funding sources for the proposed project, the belvedere deck (already part of the project), events center rooftop café, a lakefront stage, have public review regarding exterior/interior material and color selections prior to Commission approval, have the events center interior space be designed to have partitions for holding events of various sizes and for accommodating multiple simultaneous events, and continue to evaluate parking alternatives and direct that recommendations on parking be subject to extensive public input prior to Commission approval.

Commissioner Cooper stated her request to wait until the next meeting to vote does not reflect her disappointment with the design, color or materials but reflects her disappointment with public outreach.

Motion made by Commissioner Cooper to table this until the next meeting; seconded by Commissioner Seidel. Upon a roll call vote, Mayor Leary and Commissioners Sprinkel and Weldon voted no. Commissioners Cooper and Seidel voted yes. The motion failed with a 3-2 vote.

Mayor Leary commented about the design team and staff still reviewing opportunities for additional parking during regular hours. He asked for consideration to look at shading the back area (belvedere) because of the hot weather months in case it is needed in the future. He also asked for consideration of solar and to work with staff to see if that is possible.

Commissioner Sprinkel as the maker of the motion, agreed that as part of the motion to advance the concept of the design with the add/alternates to be included (raked auditorium inside the facility, outdoor amphitheater, connection from the library and events center down to the lakefront, the porte cochere, and the rooftop café on top of the events center). He stated that would require the City, CRA Agency and the library to move forward to find additional funding to support these. Mr. Russell stated they will be designed and if the dollars are available they would be prioritizing construction. **Commissioner Weldon agreed as the seconder to the motion.**

Motion amended by Commissioner Weldon to direct staff and the architects that exterior and interior materials and color selections be the subject of extensive public review prior to Commission approval. After discussion and comments that the actual materials or final colors have not been selected, the amendment was withdrawn. The next step is going into the design phase. There

was a consensus that the Commission reviews the materials and colors for approval.

Upon a roll call vote for approval, Mayor Leary and Commissioners Seidel, Sprinkel, Cooper and Weldon voted yes. The motion carried unanimously with a 5-0 vote.

Public comments (items not on the agenda)

Judith Barry, 1500 Gay Road, asked for consideration for the City to transform the lots located at 1424 and 1428 Gay Road and 1419 and 1421 Trovillion Avenue into a park. Upon discussion, there was a consensus for staff to investigate this property.

Leif Eriksson, 535 N. Interlachen Avenue, spoke favorably about the new golf course improvements.

Lurline Fletcher, 811 English Court, spoke against the library in MLK Park, asked if property owners could be informed when developing property close by to their homes, shared concerns that the building next door could cause water running into her yard, and asked about the street sweeper cleaning her street. Staff will contact her.

Marlene Muscatello, 531 Darcey Drive, spoke in opposition to the sidewalk project being proposed at Banchory and Darcey Drive that she believed will cause a hazardous situation because they will have to cross the street at Selkirk where the sidewalk ends in order to continue to walk along Banchory south side to Lakemont. City Manager Knight spoke about the missing link of 80' and the sidewalk that ends on her property line in the middle of the block. He stated staff believes it is the greater good to complete the missing link. He stated she is correct that if you continue to the west it stops at a corner and does not go all the way to Lakemont; they try to complete missing links especially in neighborhoods where there are schools and the long term plan includes completion of all areas where there are no sidewalks. She will meet with City staff.

Charley Williams, 757 Antonette Avenue, spoke about MLK Park and wanting to expand the park by not selling the 1111 W. Fairbanks Avenue property.

John Awsumb, 1091 N. Park Avenue, member of the Library Board, spoke favorably about the new library and events center design and the location in MLK Park. He stated he hopes the entry to the library is further analyzed and that the auditorium and the divisible space of the events center is further defined and improved.

Recess

A recess was taken from 5:55 to 6:15 p.m.

Public Hearings:

- a. ORDINANCE NO. 3088-17: AN ORDINANCE OF THE CITY OF WINTER PARK, FLORIDA, AMENDING THE ADOPTED BUDGET AND ACCOMPANYING FIVE YEAR CAPITAL IMPROVEMENT PLAN FOR FISCAL YEAR 2016 – 2017 BY PROVIDING FOR CHANGES IDENTIFIED IN EXHIBIT A; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; AND PROVIDING 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, Cooper and Weldon voted yes. The motion carried unanimously with a 5-0 vote.**

- b. ORDINANCE NO. 3089-17: AN ORDINANCE OF THE CITY OF WINTER PARK, FLORIDA VACATING AN EASEMENT LOCATED AT 841 W. CANTON AVENUE, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN OFFICIAL RECORDS BOOK 1859, PAGE 55, OFFICIAL RECORDS BOOK 1859, PAGE 90 AND OFFICIAL RECORDS BOOK 1859, PAGE 579, OF THE PUBLIC RECORDS OF ORANGE COUNTY, MORE PARTICULARLY DESCRIBED IN PLAT BOOK O, PAGE 140; PROVIDING FOR CONFLICTS, RECORDING 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 Seidel. No public comments were made. **Upon a roll call vote, Mayor Leary and Commissioners Seidel, Sprinkel, Cooper and Weldon voted yes. The motion carried unanimously with a 5-0 vote.**

- c. Request of Condev Land LLC for 650 North New York Avenue:

ORDINANCE NO. 3090-17: AN ORDINANCE OF THE CITY OF WINTER PARK, FLORIDA AMENDING CHAPTER 58, "LAND DEVELOPMENT CODE", ARTICLE I "COMPREHENSIVE PLAN" FUTURE LAND USE MAP SO AS TO CHANGE THE FUTURE LAND USE DESIGNATION OF INSTITUTIONAL TO MEDIUM DENSITY RESIDENTIAL ON A PORTION OF THE PROPERTY AT 650 NORTH NEW YORK AVENUE, MORE PARTICULARLY DESCRIBED HEREIN PROVIDING FOR CONFLICTS, SEVERABILITY 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. Chris Gardner, Condev, spoke in favor of adoption. **Upon a roll call vote, Mayor Leary and Commissioners Seidel, Sprinkel, Cooper and Weldon voted yes. The motion carried unanimously with a 5-0 vote.**

- d. AN ORDINANCE OF THE CITY OF WINTER PARK, FLORIDA, AMENDING CHAPTER 58 "LAND DEVELOPMENT CODE" ARTICLE VI, "SUBDIVISION AND LOT CONSOLIDATION REGULATIONS" SO AS TO ESTABLISH MINIMUM CRITERIA AND STANDARDS FOR THE SUBDIVISION OR SPLIT OF THE LAKEFRONT PORTIONS OF PROPERTIES LOCATED ACROSS THE STREET FROM THE PRINCIPAL RESIDENCE, PROVIDING FOR CODIFICATION, CONFLICTS, SEVERABILITY AND EFFECTIVE DATE. First Reading

This item was withdrawn by staff from the agenda for consideration.

- e. Request of Deborah Crown and Brandon & Jenifer Lenox for subdivision or lot split approve to divide the lakefront portion of 1486 Alabama Drive

Planning Manager Jeff Briggs explained the request where the property owners at 1486 (Lenox) and 1466 Alabama Avenue (Crown) are making a joint application to be able to split a portion of the Lenox property so that each property will be able to have a boathouse. Mr. Briggs answered questions of the Commission.

Stuart Buchanan, Swann Hadley Law Firm, representing the applicants, spoke in favor of the request.

Motion made by Commissioner Sprinkel to approve the subdivision/lot split request; seconded by Commissioner Weldon.

Bunny Simmerson, 383 Sylvan Drive, spoke against the request.

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

- f. AN ORDINANCE OF THE CITY OF WINTER PARK, FLORIDA, AUTHORIZING THE SALE AND CONVEYANCE OF THE CITY OWNED PROPERTY LOCATED AT 1111 WEST FAIRBANKS AVENUE PURSUANT TO THE SALES PROCESS APPROVED BY THE CITY COMMISSION; PROVIDING FOR CONFLICTS AND AN EFFECTIVE DATE First Reading

Attorney Ardaman read the ordinance by title and made a typo correction to the legal description.

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

Planning Manager stated after this evening, they will execute the contract; they will have to apply for a conditional use for the project so they will bring this back for the second reading of the ordinance when the conditional use comes forward.

Commissioner Cooper expressed her preference to wait until they find out the library designs and whether the City has a better use for this property.

Beth Hall, 516 sylvan Drive, spoke in opposition to the sale of the property.

Commissioner Seidel stated they are still negotiating parking on the library and from a perspective of providing parking for the park, he asked again about analyzing Comstock Avenue and if they could obtain additional parking through there. He wanted to investigate that before finalizing this deal. He commented he is not against selling the property but wanted to have more analysis done on the library and parking.

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

- g. Interlocal agreement with Orange County to permit the annexation of the enclaves at 1562 W. Fairbanks Avenue

Planning Manager Jeff Briggs explained this one property is not in the City and that staff has tried over the years to persuade the owner to annex into the City but that they have refused. He stated under the state law Orange County can give us the authority to annex it without the property owner's consent. He stated they understand that Orange County will approve this and that an ordinance will come before the Commission for approval.

Motion made by Commissioner Sprinkel to approve the interlocal agreement; seconded by Commissioner Weldon. No public comments were made. **Upon a roll call vote, Mayor Leary and Commissioners Seidel, Sprinkel, Cooper and Weldon voted yes. The motion carried unanimously with a 5-0 vote.**

- h. Request of Interplan for conditional use approval to build a PDQ drive-through restaurant at 925 S. Orlando Avenue

Planning Manager Jeff Briggs explained the request and the previous discussion about access and traffic in and out to the site that caused this request to be tabled to allow for a more complete traffic study. He stated this has happened and have provided the Commission with the updated traffic study that relates to this site plan. He stated Public Works has reviewed the study who can answer questions.

Public Works Director Troy Attaway addressed reviewing the traffic plan, specifically looking at westbound traffic on Minnesota and addressing the side entrance into the PDQ. He provided verbiage that was not included in the packet regarding their analysis that stated "they have reviewed the applicant's traffic study data provided and have performed field assessments of the existing conditions and do not feel

there will be a significant traffic problem with westbound traffic on Minnesota Avenue.” He continued that “the City controls all movements of Minnesota Avenue traffic and if there becomes a problem in the future, the City can restrict the westbound left turn movement into the PDQ site using signs or even physical control if needed necessary.” Mr. Attaway further elaborated on the movement of concern – westbound left turn into driveway queues. Mayor Leary expressed concerns with vehicles backing up traffic all hours of the day. Mr. Attaway explained that they can look at extending the turn lane so that more stacking can be provided at the intersection which will help with the throughput.

Attorney Jonathan Huels, representing the applicant from the Lowndes Drosdick Doster Kantor & Reed, stated they concur with staff’s recommendation and their findings in reviewing the traffic study submitted. He stated their project team is present for any questions and can provide a presentation if the Commission desires.

Motion made by Commissioner Sprinkel to approve the conditional use request; seconded by Commissioner Weldon. No public comments were made. **Upon a roll call vote, Commissioners Seidel, Sprinkel, Cooper and Weldon voted yes. Mayor Leary voted no. The motion carried with a 4-1 vote.**

- i. AN ORDINANCE OF THE CITY OF WINTER PARK, FLORIDA VACATING A PORTION OF POWER EASEMENT LOCATED AT 540 INTERLACHEN AVENUE, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN OFFICIAL RECORDS BOOK 3187, PAGE 205, AND OFFICIAL RECORDS BOOK 8045, PAGE 4770, OF THE PUBLIC RECORDS OF ORANGE COUNTY, MORE PARTICULARLY DESCRIBED IN PROVIDING FOR CONFLICTS, RECORDING AND AN EFFECTIVE DATE First Reading

Attorney Ardaman read the ordinance by title. Public Works Director Troy Attaway explained the ordinance that is vacating a small triangle of an electric distribution easement that fell under the house. He stated Attorney Frank Hamner is representing the seller and that this came up at closing so they are requesting to vacate that portion of the easement to clear up the title.

Motion made by Commissioner Sprinkel to accept the ordinance on first reading; seconded by Mayor Leary. No public comments were made. **Upon a roll call vote, Mayor Leary and Commissioners Seidel, Sprinkel, Cooper and Weldon voted yes. The motion carried unanimously with a 5-0 vote.**

- j. RESOLUTION NO. 2195-17: A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF WINTER PARK, FLORIDA, DECLARING THE CITY OF WINTER PARK’S INTENT TO USE THE UNIFORM METHOD FOR THE LEVY, COLLECTION AND ENFORCEMENT OF NON-AD VALOREM SPECIAL ASSESSMENTS UNDER SECTION 197.3632, FLORIDA STATUTES, TO FUND THE INSTALLATION OF STREET BRICK AND RELATED ACTIVITIES UPON A PORTION OF PANSY AVENUE GENERALLY DESCRIBED AS BEGINNING AT PENNSYLVANIA AVENUE AND EXTENDING WESTERLY ABOUT 670 FEET; STATING THE NEED FOR THE

LEVY OF SUCH SPECIAL ASSESSMENT; MAKING FINDINGS IN SUPPORT THEREOF; PROVIDING A DESCRIPTION OF THE REAL PROPERTY SUBJECT TO THE SPECIAL ASSESSMENT; PROVIDING FOR NOTICE TO THE PROPERTY APPRAISER, TAX COLLECTOR, AND THE FLORIDA DEPARTMENT OF REVENUE; AND PROVIDING AN EFFECTIVE DATE.

Attorney Ardaman read the resolution by title. It was confirmed that the vote was over 66%.

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

City Commission Reports:

Commissioner Seidel – Commissioner Seidel commented that he has been asked if he would be interested in running for the Mayor's seat in March. He stated that Mayor Leary has done a very good job but there are a few areas that they do not agree on. He stated he tells people that his perfect world would be for the Mayor to agree with him more and help him get the things he wants done and then he would not have to run for Mayor nor would anyone else. He stated he will decide later on in January what he decides. The issues he wanted to see done and worked through are as follows: undergrounding, get more transportation management work done, determine how they do the greenspace corridor plan, and would like to figure out the best way to deal with historic preservation issues.

Commissioner Sprinkel – Spoke about getting ready for the holiday season.

Commissioner Cooper – Spoke that we may lose a Gamble Rogers church that appears to be qualified for either national register recognition. She stated our process needs some work and asked for support that the Historic Preservation Board review our processes and procedures and help us identify the truly important historic assets that we have and try to make sure our process does not allow us to lose those resources.

Mayor Leary commented he is always happy to have the HPB review this but was not sure what specific direction to give them on something like this when the existing property owner does not want to do it. He stated he will be happy to have a larger discussion at the Commission level and possibly give direction to the HPB.

Commissioner Weldon spoke about suggestions he previously provided and that he has no problem with creating its own list of houses that it considers to be historic if the HPB wants to do that, but before it goes on the list the property owner has to acknowledge their agreement with that and understand the consequences that it is on a list of potential historic protected properties. He stated that voluntary

approach is how you build the trust with the property owners so they can follow it and have a much better opportunity to capture their support and get more homes on the register voluntarily. There was a consensus to revisit this.

Commissioner Weldon – No report.

Mayor Leary – Mayor Leary reported he attended the Cows n’ Calves event that had about 2,000 people there and raised a lot of money for charity.

The meeting adjourned at 7:07 p.m.

Mayor Steve Leary

ATTEST:

City Clerk Cynthia S. Bonham, MMC



city commission agenda item

item type	Consent Agenda	meeting date	11/27/2017
prepared by	Planning / CRA	approved by	
board approval	N/A final vote		
strategic objective	Intelligent Growth and Development		

subject

Approve the amendment to CDBG Interlocal Agreement with Orange County for Urban County Programs

motion / recommendation

Recommendation to approve the amendment is requested.

background

In 1994 Orange County and the City of Winter Park entered into an interlocal agreement to authorize Orange County to undertake activities to plan and carry out the Community Development Block Grant ("CDBG"), HOME Investment Partnership ("HOME"), and Emergency Solutions Grant Programs ("ESG"), for the benefit of county residents including Winter Park residents.

An extension of this agreement was approved at the July 10th, 2017 City Commission meeting. Since that time, HUD has requested a minor amendment to the agreement. The amendment provides additional language related to fair housing legislation in specificity. It does not change the responsibilities of the original agreement. Orange County would continue to make application for, receive and administer CDBG funds on behalf of the City of Winter Park. The City will have the opportunity to submit projects for funding consideration.

alternatives / other considerations

Declining the amendment would decline the original agreement

fiscal impact

None

ATTACHMENTS:

Description	Upload Date	Type
Amendment to the Interlocal Cooperation Agreement Between Orange County and Winter Park for Community Development Programs Under the Urban County Program	11/9/2017	Backup Material
July 10th Approved Agreement	11/10/2017	Backup Material

**FIRST AMENDMENT TO THE RESTATED INTERLOCAL COOPERATION
AGREEMENT BETWEEN
ORANGE COUNTY, FLORIDA AND CITY OF WINTER PARK, FLORIDA
FOR COMMUNITY DEVELOPMENT PROGRAMS
UNDER THE URBAN COUNTY PROGRAM**

THIS FIRST AMENDMENT ("First Amendment") is entered into by Orange County, Florida, a charter county and political subdivision of the State of Florida (the "COUNTY") and the City of Winter Park, Florida, a municipal corporation created and existing under the laws of the State of Florida (the "MUNICIPALITY").

RECITALS

WHEREAS, the Housing and Community Development Act of 1974, as amended, makes provisions whereby urban counties may enter into cooperation agreements with certain units of local government to undertake or assist in undertaking essential activities pursuant to Community Development Block Grants; and

WHEREAS, on August 22, 2017, the COUNTY executed the "Restated Interlocal Cooperation Agreement between Orange County, Florida and City of Winter Park, Florida for Community Development Programs under the Urban County Program" (the "Restated Agreement"); and

WHEREAS, the Restated Agreement covered the Community Development Block Grant, HOME Investment Partnership Program, and Emergency Solutions Grant programs; and

WHEREAS, in 1994 the COUNTY and the MUNICIPALITY entered into an interlocal agreement to authorize the COUNTY to undertake activities to plan and carry out the Community Development Block Grant ("CDBG"), HOME Investment Partnership ("HOME"), and Emergency Solutions Grant Programs ("ESG"), for the benefit of residents of Orange County, Florida; and

WHEREAS, the COUNTY and the MUNICIPALITY desired – and still maintain that desire – to continue the relationship established in that 1993 interlocal agreement and has done so, and continues to do so, by restating and amending that agreement; and

WHEREAS, the Restated Agreement was made pursuant to the Department of Housing and Urban Development's mandate that the agreement between the COUNTY and the MUNICIPALITY meets the requirements set forth in the Urban County Qualification Notice for the subsequent qualification period; and

WHEREAS, upon its review, the Department of Housing and Urban Development requested a minor amendment be made to the Restated Agreement.

NOW, THEREFORE, for and in consideration of the mutual premises and covenants contained herein, and for other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

SECTION 1. RECITALS. The above recitals are true and correct and form a material part of this First Amendment upon which the parties have relied.

SECTION 2. INCORPORATION. The Restated Agreement forms a material part of this First Amendment and is therefore incorporated by reference.

Section 3. EFFECTIVE DATE. The effective date of this First Amendment is the date of execution by the COUNTY.

Section 4. AMENDMENT. The text of Restated Agreement, Section 9(a) is to be deleted and replaced with the following:

The MUNICIPALITY and the COUNTY agree to take all actions necessary to assure compliance with the COUNTY'S certification required by Section 104(b) of Title I of the Housing and Community Development Act of 1974, as amended, including but not limited to, Title VI of the Civil Rights Acts of 1964, the Fair Housing Act and affirmatively furthering fair housing, Section 109 of Title I of the Housing and Community Development Act of 1974, which incorporates Section 504 of the Rehabilitation Act of 1973 and the Age Discrimination Act of 1975, and with the Americans with Disabilities Act of 1990, and all other applicable laws, rules, and regulations. The MUNICIPALITY agrees to comply with all auditing requirements imposed by law, rule, regulation, or by the COUNTY.

SECTION 5. EFFECT; CONFLICTS. Except as modified herein, all other terms and provisions of the Restated Agreement are hereby ratified and confirmed and shall remain in full force and effect. In the event of any conflict between the provisions of this First Amendment and the provisions of the Restated Agreement, the provisions of this First Amendment shall control.

SECTION 6. SIGNATURE AUTHORITY. Each of the persons executing this First Amendment represents and warrants to each party that he or she has the authority to execute and enter into this First Amendment for and on behalf of the party for which he or she is executing this First Amendment.

SECTION 7. COUNTERPARTS. This First Amendment may be executed in counterparts each of which shall be deemed an original.

IN WITNESS WHEREOF, the parties hereto have caused this First Amendment to be executed by their duly authorized officials.

ORANGE COUNTY, FLORIDA

By: Orange County Board of County Commissioners

By: _____
Teresa Jacobs
Orange County Mayor

ATTEST: Phil Diamond, CPA, County Comptroller
As Clerk of the Board of County Commissioners

By: _____
Deputy Clerk

Date: _____

CITY OF WINTER PARK, FLORIDA

By: City of Winter Park City Commission

By: _____
Steve Leary, Mayor

ATTEST:

By: _____
Cindy Bonham, City Clerk

Date: _____

BCC Mtg. Date: August 22, 2017

**RESTATED INTERLOCAL COOPERATION AGREEMENT BETWEEN
ORANGE COUNTY, FLORIDA AND CITY OF WINTER PARK, FLORIDA
FOR COMMUNITY DEVELOPMENT PROGRAMS
UNDER THE URBAN COUNTY PROGRAM**

THIS AGREEMENT is entered into by Orange County, Florida, a charter county and political subdivision of the State of Florida ("the County") and the City of Winter Park, Florida, a municipal corporation created and existing under the laws of the State of Florida ("the Municipality").

RECITALS

WHEREAS, the Housing and Community Development Act of 1974, as amended, makes provisions whereby urban counties may enter into cooperation agreements with certain units of local government to undertake or assist in undertaking essential activities pursuant to Community Development Block Grants; and

WHEREAS, this Agreement covers the Community Development Block Grant, HOME Investment Partnership Program, and Emergency Solutions Grant programs; and

WHEREAS, in 1994 the COUNTY and the MUNICIPALITY entered into an interlocal agreement to authorize the COUNTY to undertake activities to plan and carry out the Community Development Block Grant ("CDBG"), HOME Investment Partnership ("HOME"), and Emergency Solutions Grant Programs ("ESG"), for the benefit of residents of Orange County, Florida; and

WHEREAS, the COUNTY and the MUNICIPALITY desire to continue the relationship established in that 1994 interlocal agreement and has done so, and continues to do so, by restating and amending that agreement; and

WHEREAS, there amendments herein are made pursuant to the Department of Housing and Urban Development's mandate that the agreement between the COUNTY and the MUNICIPALITY meets the requirements set forth in the Urban County Qualification Notice for the subsequent qualification period; and

WHEREAS, the COUNTY and the MUNICIPALITY seek requalification for the subsequent, 2018-2020 Urban County Qualification period, and for any successive qualification periods that provide for automatic renewals; and

WHEREAS, interlocal agreements of this type are fully authorized by Part 1, Chapter 163, Florida Statutes, as well as other applicable local law.

NOW, THEREFORE, the parties hereto do mutually agree as follows:

including, but not limited to, the requirement for a written agreement set forth in Title 24, Code of Federal Regulations, Section 570.503.

(b) The MUNICIPALITY may not apply for grants under the Small Cities or State CDBG Programs from appropriations for fiscal years during the period in which it is participating in the Urban County Program.

(c) The MUNICIPALITY may receive a formula allocation under the HOME Program only through the Urban County, but neither is precluded from applying to the State for HOME funds, if the State allows.

(d) The MUNICIPALITY may receive a formula allocation under the ESG Program only through the Urban County Program, but neither is precluded from applying to the State for ESG funds, if the State allows.

(e) The MUNICIPALITY may not participate in a HOME consortium except through the Urban County Program, regardless of whether the Urban County receives a HOME formula allocation.

(f) The MUNICIPALITY may not sell, trade, or otherwise transfer, all or any portion of such funds to a metropolitan city, urban county, unit of local government, Indian tribe, or insular area that directly or indirectly receives CDBG funds in exchange for any other funds, credits, or non-federal considerations, but must use such funds for activities eligible under Title I of the Housing and Community Development Act of 1974, as amended.

SECTION 7. GRANT OF AUTHORITY

(a) This Agreement covers CDBG, HOME and ESG appropriations for fiscal years 2018, 2019, and 2020, beginning October 1, 2018. This Agreement will automatically be renewed for participation in successive three-year qualification periods. This Agreement remains in effect, and neither the COUNTY nor the CITY can terminate or withdraw from it until funds and program income received with respect to activities carried out during the three-year qualification period, and any successive qualification periods, are expended and the funded activities are completed; unless the MUNICIPALITY or COUNTY provides written notice that it elects not to participate in the new qualification period. A copy of the written notice will be sent to the HUD Jacksonville Field Office by the date specified in the Urban County Qualification Schedule.

(b) The COUNTY agrees that it will notify the MUNICIPALITY, in writing, of its right not to participate – pursuant to Section 7(a) above – by the date specified in HUD's Urban County Qualification Notice for the next qualification period.

(c) Failure by either party to adopt an amendment to the Agreement incorporating all changes necessary to meet the requirements for cooperation agreements set forth in the Urban County Qualification Notice applicable for a subsequent three-year urban qualification period, and to submit such amendment to HUD as provided in the Urban County Qualification Notice, will void the automatic renewal of such qualification period.

SECTION 8. PERFORMANCE OF SERVICES/CONTRACTS

(a) As to the use of the CDBG, HOME, and ESG funds received by the COUNTY, the COUNTY may either carry out the CDBG, HOME, and ESG Programs for the MUNICIPALITY or, in the event that the parties jointly determine that it is feasible for the MUNICIPALITY to perform any services in connection with the CDBG, HOME, and ESG Programs, the COUNTY may contract with the MUNICIPALITY for the performance of such services.

(b) Any contracts entered into pursuant to Section 8(a) above shall contain provisions which obligate the MUNICIPALITY to undertake all necessary actions to carry out the CDBG, HOME, and ESG Program and Consolidated Plan, where applicable; within a specified time frame and in accordance with the requirements of Title I of the Housing and Community Development Act of 1974, as amended, and any and all other applicable laws and implementing regulations.

(c) The MUNICIPALITY agrees to undertake and accomplish all necessary actions, as determined by the County, in order to carry out the Community Development Block Grant Program, the HOME Program, the Emergency Solutions Grant, and the Consolidated Plan.

SECTION 9. APPLICABLE LAWS/COMPLIANCE

(a) The MUNICIPALITY and the COUNTY agree to take all actions necessary to assure compliance with the COUNTY'S certification required by Section 104(b) of Title I of the Housing and Community Development Act of 1974, as amended, including but not limited to, Title VI of the Civil Rights Acts of 1964, the Fair Housing Act, Section 109 of Title I of the Housing and Community Development Act of 1974, which incorporates Section 504 of the Rehabilitation Act of 1973 and the Age Discrimination Act of 1975, and with the Americans with Disabilities Act of 1990, and all other applicable laws, rules, and regulations. The MUNICIPALITY agrees to comply with all auditing requirements imposed by law, rule, regulation, or by the COUNTY.

(b) The MUNICIPALITY acknowledges and understands that noncompliance by the MUNICIPALITY with all applicable provisions of laws, rules, or regulations may constitute noncompliance by the entire urban county program, and the COUNTY, as the grantee, and the MUNICIPALITY, assume responsibility therefor.

SECTION 10. FAIR HOUSING

The MUNICIPALITY acknowledges that the COUNTY will prohibit urban county funding for activities in, or in support of, the MUNICIPALITY if the MUNICIPALITY does not affirmatively further fair housing within the MUNICIPALITY'S jurisdiction and/or if the MUNICIPALITY impedes the COUNTY'S actions to comply with its fair housing certification.

SECTION 11. LAW ENFORCEMENT

The MUNICIPALITY has adopted and is enforcing a policy prohibiting the use of excessive force by law enforcement agencies within its jurisdiction against any individuals engaged in non-violent civil rights demonstrations. Furthermore, the MUNICIPALITY has adopted and is enforcing a policy of enforcing applicable state and local laws against physically barring entrance to or exit from a facility or location which is the subject of such non-violent civil rights demonstrations within its jurisdiction. In furtherance of this provision, specifically, and all other provisions of this Agreement, generally, the MUNICIPALITY agrees to indemnify and hold the COUNTY harmless to the fullest extent provided by law.

SECTION 12. STATUS OF MUNICIPALITY

Pursuant to 24 CFR 570.501(b), as well as all other applicable law, the MUNICIPALITY agrees that it is, at a minimum, subject to the same requirements applicable to grantee subrecipients, including the requirement of a written agreement as described in 24 CFR 570.503.

SECTION 13. PROGRAM INCOME

The MUNICIPALITY and the COUNTY agree to the following provisions:

(a) The MUNICIPALITY shall inform the COUNTY of any income generated by expenditure of CDBG, HOME, or ESG funds.

(b) The MUNICIPALITY may retain program income subject to requirements set forth in the Agreement.

(c) Any program income retained by the MUNICIPALITY shall be used for eligible activities in accordance with applicable CDBG, HOME or ESG requirements.

(d) The COUNTY shall have the responsibility to monitor and report to HUD on the use of any such program income, thereby requiring appropriate record keeping and reporting by the MUNICIPALITY as may be needed for this purpose.

(e) In the event of the COUNTY'S failure to qualify as an urban county, or a change in status of the MUNICIPALITY, any program income shall be paid to the COUNTY.

SECTION 14. REAL PROPERTY

The MUNICIPALITY and the COUNTY agree with the following standards regarding real property acquired or improved in whole or in part using the CDBG, HOME, or ESG funds:

(a) The MUNICIPALITY shall notify the COUNTY, in a timely manner, of any modification or change in the use of real property from that intended at the time of acquisition or improvement including disposition thereof.

(b) The MUNICIPALITY shall reimburse the COUNTY in an amount equal to the current fair market value (less any portion thereof attributable to expenditure of non-Community Development Block Grant funds) of property acquired or improved with Community Development funds that is disposed of or transferred for use incongruent with CDBG, HOME, or ESG regulations.

(c) In the event of the COUNTY'S failure to qualify as an urban county, or a change in status of the MUNICIPALITY, any program income generated from the disposition or transfer of property shall be paid to the COUNTY.

SECTION 15. EFFECTIVE DATE

This Agreement shall take effect upon the execution of the Agreement by the parties.

SECTION 16. COUNTERPARTS

This Agreement may be executed in counterparts each of which shall be deemed an original.

[THE REMAINDER OF THIS PAGE WAS LEFT INTENTIONALLY BLANK.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officials.

ORANGE COUNTY, FLORIDA

By: Orange County Board of County Commissioners

By: _____

Teresa Jacobs

Orange County Mayor

ATTEST: Phil Diamond, CPA, County Comptroller
As Clerk of the Board of County Commissioners

By: _____

Deputy Clerk

Date: _____

AUG 22 2017



CITY OF WINTER PARK, FLORIDA

By: City of Winter Park City Commission

By: _____

Steve Leary, Mayor

ATTEST:

By: _____

Cindy Bonham, City Clerk

Date: _____

July 10, 2017



city commission agenda item

item type	Consent Agenda	meeting date	11/27/2017
prepared by	Purchasing	approved by	City Manager, City Attorney
board approval	N/A final vote		
strategic objective	Fiscal Stewardship		

subject

Approve the Construction Manager at-Risk Contract for Library

motion / recommendation

Approved the contract as attached.

background

Attached are the two parts of the official contract for Brasfield and Gorrie. These are industry standard documents that have been modified and agreed upon by both the city's and Brasfield Gorrie's attorneys. These were also crafted with the supervision and guidance of the city's Owner Representative, Pizzuti Companies.

Brasfield and Gorrie was approved to be the project Construction Manager at Risk on July 10, 2017. This was followed by negotiations regarding the contract for construction and the final price.

After placing Brasfield and Gorrie under contract, following the approval of design on November 13, 2017, plans will go into place for the demolition of the existing Civic Center in September of 2018. This schedule accommodates the existing bookings made through June 2018 and to allow time for salvage of the building.

alternatives / other considerations

fiscal impact

The contract language specifies that it is anticipated that at no time will the Guaranteed Maximum Price exceed \$21,448,000. The Library/Events Center project is funded by a voter approved debt referendum totaling \$27.5 million. Additional funds may be raised through fundraising or contributions from the Library.

ATTACHMENTS:

Description

Contract Doc 1

Upload Date

11/13/2017

Type

Cover Memo

Contract Doc 2

11/13/2017

Cover Memo

Exhibit A

11/13/2017

Cover Memo

Exhibit C

11/13/2017

Cover Memo

DRAFT AIA® Document A133™ – 2009

Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price

AGREEMENT made as of the « _____ » day of « _____ » in the year «2017 »

In words, indicate day, month and year.)

BETWEEN the Owner:

(Name, legal status and address)

«City of Winter Park »« »
«401 South Park Avenue
Winter Park, Florida 32789 »

and the Construction Manager:

(Name, legal status and address)

« Brasfield & Gorrie, L.L.C. »« »
«941 West Morse Blvd., Suite 200
Winter Park, Florida 32789

-and-

Lamm & Company Partners
968 Lake Baldwin Lane
Orlando, Florida 32814 »

for the following Project:

(Name and address or location)

«A new Winter Park Public Library, Event Center and Parking Garage to be located at approximately the location of the existing Civic Center located at 1050 West Morse Boulevard, Winter Park, Florida 32789»
« »

The Architect:

(Name, legal status and address)

HuntonBrady Architects
«800 North Magnolia Avenue, Suite 600
Orlando, Florida 32803
Telephone No.: 407-839-0886
Facsimile No.: 407-839-1709»

The Owner's Designated Representative:

(Name, address and other information)

«The Owner has retained the services of an Owner Representative ("OR") for the Project to act on the Owner's behalf as described in the Agreement. OR for the Project is Pizzuti Solutions, LLC.»
«629 North High Street, Suite 500»
«Columbus, Ohio 43215»

ADDITIONS AND DELETIONS: The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

AIA Document A201™-2007, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

ELECTRONIC COPYING of any portion of this AIA® Document to another electronic file is prohibited and constitutes a violation of copyright laws as set forth in the footer of this document.

<< >>
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The Construction Manager's Designated Representative:
(Name, address and other information)

«Jim Ellspermann »
«Sean Sweeney »
« Brasfield & Gorrie, LLC »
« 941 West Morse Blvd., Suite 200 »
« Winter Park, Florida 32789 »
« Telephone No.: (407) 562-4500
Facsimile No.: (407) 562-4501
jellspermann@brasfieldgorrie.com »

The Architect's Designated Representative:
(Name, address and other information)

«Maurizio Mazo, PIC »
«Susan Pendergraft, PM»
«Hunton Brady Architects»
«800 North Magnolia Avenue»
«Orlando, Florida 32803»
«Telephone No.: 407-839-0886
Facsimile No.: 407-839-1709
Email Address: mmaso@huntonbrady.com»

The Owner and Construction Manager agree as follows.

TABLE OF ARTICLES

- 1 GENERAL PROVISIONS
- 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES
- 3 OWNER'S RESPONSIBILITIES
- 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES
- 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES
- 6 COST OF THE WORK FOR CONSTRUCTION PHASE
- 7 PAYMENTS FOR CONSTRUCTION PHASE SERVICES
- 8 INSURANCE AND BONDS
- 9 DISPUTE RESOLUTION
- 10 TERMINATION OR SUSPENSION
- 11 MISCELLANEOUS PROVISIONS
- 12 SCOPE OF THE AGREEMENT

EXHIBIT A GUARANTEED MAXIMUM PRICE AMENDMENT

ARTICLE 1 GENERAL PROVISIONS

§ 1.1 The Contract Documents

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), the Request for Qualifications to the extent not inconsistent with this Agreement, Drawings, Specifications, Addenda issued prior to the execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 2.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Architect and furnished by the Owner as described in Section 2.2.8. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern.

§ 1.2 Relationship of the Parties

The Construction Manager accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Construction Manager's skill and judgment in furthering the interests of the Owner; to furnish efficient construction administration, management services and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish or approve, in a timely manner, information required by the Construction Manager and to make payments to the Construction Manager in accordance with the requirements of the Contract Documents.

§ 1.3 General Conditions

For the Preconstruction Phase, AIA Document A201™– 2007 as modified, General Conditions of the Contract for Construction, shall apply as only as specifically provided in this Agreement. References to AIA Document A201–2007 shall be that document as modified for the Project as agreed by the Owner and Contractor. For the

Construction Phase, the general conditions of the contract shall be as set forth in A201–2007 as modified, which document is incorporated herein by reference. The term “Contractor” as used in A201–2007 as modified shall mean the Construction Manager.

ARTICLE 2 CONSTRUCTION MANAGER’S RESPONSIBILITIES

The Construction Manager’s Preconstruction Phase responsibilities are set forth in Sections 2.1 and 2.2. The Construction Manager’s Construction Phase responsibilities are set forth in Section 2.3. The Owner and Construction Manager may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

§ 2.1 Preconstruction Phase

§ 2.1.1 The Construction Manager shall provide a preliminary evaluation of the Owner’s program, schedule and construction budget requirements, each in terms of the other.

§ 2.1.2 Consultation

The Construction Manager shall schedule and conduct meetings with the Architect and Owner to discuss such matters as procedures, progress, coordination, and scheduling of the Work. The Construction Manager shall advise the Owner and the Architect on proposed site use and improvements, selection of materials, and building systems and equipment. The Construction Manager shall also provide recommendations consistent with the Project requirements to the Owner and Architect on constructability; availability of materials and labor; time requirements for procurement, installation and construction; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions.

§ 2.1.3 When Project requirements in Section 3.1.1 have been sufficiently identified, the Construction Manager shall prepare and periodically update a Project schedule for the Architect’s review and the Owner’s acceptance. The Construction Manager shall obtain the Architect’s approval for the portion of the Project schedule relating to the performance of the Architect’s services. The Project schedule shall coordinate and integrate the Construction Manager’s services, the Architect’s services, other Owner consultants’ services, and the Owner’s responsibilities and identify items that could affect the Project’s timely completion. The updated Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered well in advance of construction; and the occupancy requirements of the Owner.

§ 2.1.4 Phased Construction

The Construction Manager shall provide recommendations with regard to accelerated or fast-track scheduling, procurement, or phased construction. The Construction Manager shall take into consideration cost reductions, cost information, constructability, provisions for temporary facilities and procurement and construction scheduling issues.

§ 2.1.5 Preliminary Cost Estimates

§ 2.1.5.1 Based on the preliminary design and other design criteria prepared by the Architect, the Construction Manager shall prepare preliminary estimates of the Cost of the Work or the cost of program requirements using area, volume or similar conceptual estimating techniques for the Architect’s review and Owner’s approval. If the Architect or Construction Manager suggests alternative materials and systems, the Construction Manager shall provide cost evaluations of those alternative materials and systems.

§ 2.1.5.2 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Architect, estimates of the Cost of the Work of increasing detail and refinement and allowing for the further development of the design until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. Such estimates shall be provided for the Architect’s review and the Owner’s approval. The Construction Manager shall inform the Owner and Architect when estimates of the Cost of the Work exceed the latest approved Project budget and make recommendations for corrective action.

§ 2.1.6 Subcontractors and Suppliers

The Construction Manager shall develop bidders’ interest in the Project.

§ 2.1.7 The Construction Manager shall prepare, for the Architect's review and the Owner's acceptance, a procurement schedule for items that must be ordered well in advance of construction. The Construction Manager shall expedite and coordinate the ordering and delivery of materials that must be ordered well in advance of construction. If the Owner agrees to procure any items prior to the establishment of the Guaranteed Maximum Price, the Owner shall procure the items on terms and conditions acceptable to the Construction Manager. Upon the establishment of the Guaranteed Maximum Price, the Owner shall assign all contracts for these items to the Construction Manager and the Construction Manager shall thereafter accept responsibility for them.

§ 2.1.8 Extent of Responsibility

The Construction Manager shall exercise reasonable care in preparing schedules and estimates. The Construction Manager, however, does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager shall promptly report to the Architect and Owner any nonconformity discovered by or made known to the Construction Manager as a request for information in such form as the Architect may require.

§ 2.1.9 Notices and Compliance with Laws

The Construction Manager shall comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to its performance under this Contract, and with equal employment opportunity programs, and other programs as may be required by governmental and quasi governmental authorities for inclusion in the Contract Documents.

§ 2.2 Guaranteed Maximum Price Proposal and Contract Time

§ 2.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager and in consultation with the Architect, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's review and acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, including contingencies described in Section 2.2.4, and the Construction Manager's Fee.

§ 2.2.2 To the extent that the Drawings and Specifications are anticipated to require further development by the Architect, the Construction Manager shall provide in the Guaranteed Maximum Price for such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.

§ 2.2.3 The Construction Manager shall include with the Guaranteed Maximum Price proposal a written statement of its basis, which shall include the following:

- .1 A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;
- .2 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 2.2.2, to supplement the information provided by the Owner and contained in the Drawings and Specifications;
- .3 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, allowances, contingency, and the Construction Manager's Fee;
- .4 The anticipated dates of Substantial Completion and Final Completion upon which the proposed Guaranteed Maximum Price is based; and
- .5 A date by which the Owner must accept the Guaranteed Maximum Price.

§ 2.2.4 In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include its contingency for the Construction Manager's exclusive use to cover those costs considered reimbursable as the Cost of the Work but not included in a Change Order.

§ 2.2.5 The Construction Manager shall meet with the Owner and Architect to review the Guaranteed Maximum Price proposal. In the event that the Owner and Architect discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both.

§ 2.2.6 If the Owner notifies the Construction Manager that the Owner has accepted the Guaranteed Maximum Price proposal in writing before the date specified in the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price proposal shall be deemed effective without further acceptance from the Construction Manager. Following acceptance of a Guaranteed Maximum Price, the Owner and Construction Manager shall execute the Guaranteed Maximum Price Amendment amending this Agreement, a copy of which the Owner shall provide to the Architect. The Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based.

§ 2.2.7 The Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work prior to the commencement of the Construction Phase, unless the Owner provides prior written authorization for such costs.

§ 2.2.8 The Owner shall authorize the Architect to provide the revisions to the Drawings and Specifications to incorporate the agreed upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. The Owner shall promptly furnish those revised Drawings and Specifications to the Construction Manager as they are revised. The Construction Manager shall notify the Owner and Architect of any inconsistencies between the Guaranteed Maximum Price Amendment and the revised Drawings and Specifications.

§ 2.2.9 The Construction Manager shall include in the Guaranteed Maximum Price all sales, consumer, use and similar taxes for the Work provided by the Construction Manager that are legally enacted, whether or not yet effective, at the time the Guaranteed Maximum Price Amendment is executed.

§ 2.3 Construction Phase

§ 2.3.1 General

§ 2.3.1.1 For purposes of Section 8.1.2 of A201–2007 as modified, the date of commencement of the Work shall mean the date of commencement of the Construction Phase.

§ 2.3.1.2 The Construction Phase shall commence upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Owner's issuance of a Notice to Proceed, and issuance of all permits required for the Work to proceed. Contractor agrees that time is of the essence in all aspects of the Project, and Contractor shall substantially complete the Work not later than June 30, 2020. The Work shall be finally completed and ready for Final Payment within thirty (30) calendar days after the actual date of Substantial Completion.

§ 2.3.2 Administration

§ 2.3.2.1 Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or by other appropriate agreements with the Construction Manager. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids. The Construction Manager shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated especially for the Work and shall deliver such bids to the Architect. The Owner shall then determine, with the advice of the Construction Manager and the Architect, which bids will be accepted. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

§ 2.3.2.2 If the Guaranteed Maximum Price has been established and when a specific bidder (1) is recommended to the Owner by the Construction Manager, (2) is qualified to perform that portion of the Work, and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Construction Manager may require that a Change Order be issued to adjust the Contract Time and the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount and time requirement of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ 2.3.2.3 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner. If the Subcontract is awarded on a cost plus fee basis, the Construction Manager shall provide in the Subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Construction Manager in Section 6.11 below.

§ 2.3.2.4 If the Construction Manager recommends a specific bidder that may be considered a “related party” according to Section 6.10, then the Construction Manager shall promptly notify the Owner in writing of such relationship and notify the Owner of the specific nature of the contemplated transaction, according to Section 6.10.2.

§ 2.3.2.5 The Construction Manager shall schedule and conduct meetings to discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Construction Manager shall prepare and promptly distribute minutes to the Owner and Architect.

§ 2.3.2.6 Upon the execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and submittal schedule in accordance with Section 3.10 of A201–2007 as modified.

§ 2.3.2.7 The Construction Manager shall record the progress of the Project. On a monthly basis, or otherwise as agreed to in advance by the Owner, the Construction Manager shall submit written progress reports to the Owner and Architect, showing percentages of completion and other information required by the Owner. The Construction Manager shall also keep, and make available to the Owner and Architect, a daily log containing a record for each day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect progress of the work, accidents, injuries, and other information required by the Owner.

§ 2.3.2.8 The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Architect and shall provide this information in its monthly reports to the Owner and Architect, in accordance with Section 2.3.2.7 above.

§ 2.4 Professional Services

Section 3.12.10 of A201–2007 as modified shall apply to both the Preconstruction and Construction Phases.

§ 2.5 Hazardous Materials

Section 10.3 of A201–2007 as modified shall apply to both the Preconstruction and Construction Phases.

ARTICLE 3 OWNER'S RESPONSIBILITIES

§ 3.1 Information and Services Required of the Owner

§ 3.1.1 The Owner shall provide information with reasonable promptness, regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, constraints, and criteria, including schedule, space requirements and relationships, flexibility and expandability, special equipment, systems, sustainability and site requirements.

§ 3.1.2 Prior to the execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. Thereafter, the Construction Manager may only request such evidence if (1) the Owner fails to make payments to the Construction Manager as the Contract Documents require, (2) a change in the Work materially changes the Contract Sum, or (3) the Construction Manager identifies in writing a reasonable concern regarding the Owner's ability to make payment when due.

§ 3.1.3 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1.1, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Construction Manager and Architect. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 3.1.4 Structural and Environmental Tests, Surveys and Reports. During the Preconstruction Phase, the Owner shall furnish the following information or services with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services. The Construction Manager shall be entitled to rely on the accuracy of information and services furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 3.1.4.1 The Owner shall furnish tests, inspections and reports required by law and as otherwise agreed to by the parties, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 3.1.4.2 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 3.1.4.3 The Owner, when such services are requested, shall furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 3.1.4.4 During the Construction Phase, the Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services in the Owner's possession and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services.

§ 3.2 Owner's Designated Representative

The Owner shall identify a representative authorized to act on behalf of the Owner with respect to the Project. The Owner's representative shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of A201-2007 as modified, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 3.2.1 Legal Requirements. The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 3.3 Architect

The Owner shall retain an Architect to provide services, duties and responsibilities as described in AIA Document B133™-2014, Standard Form of Agreement Between Owner and Architect, Construction Manager as Constructor Edition. The Owner shall provide the Construction Manager a copy of the executed agreement between the Owner and the Architect, and any further modifications to the agreement.

ARTICLE 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

§ 4.1 Compensation

§ 4.1.1 For the Construction Manager's Preconstruction Phase services, the Owner shall compensate the Construction Manager as follows:

§ 4.1.2 For the Construction Manager's Preconstruction Phase services described in Sections 2.1 and 2.2:
(Insert amount of, or basis for, compensation and include a list of reimbursable cost items, as applicable.)

«Compensation for Preconstruction Phase work and services shall be \$250,000.00 plus a not to exceed amount of \$10,000.00 for reimbursable expenses. Preconstruction Phase work and services shall be paid in monthly installments following acceptance of this Agreement and issuance of a written Notice to Proceed. If the Construction Phase begins before Preconstruction Phase activities are completed, then both this Section and Section 5.1 shall apply until Preconstruction Phase work and services are complete. Owner shall receive a credit against the Preconstruction Phase work and services fees for any amounts paid to Contractor for Preconstruction Phase work and services performed prior to execution of this Agreement. Notwithstanding the preceding, Contractor's compensation for Preconstruction Phase work and services and Construction Phase work and services shall not exceed the amount set forth in section 5.2.1 of this Agreement or any Guaranteed Maximum Price Amendment subsequently agreed to by the parties. Should the Preconstruction Phase, through the fault of the Owner or Architect and through no fault of the Contractor, extend

more than thirty (30) days beyond October 1, 2018, the Contractor shall be entitled to an equitable adjustment to the Preconstruction Phase fee if additional labor hours are needed to perform the Preconstruction Phase work and services. Any such equitable adjustment of the Preconstruction Phase fee will be subject to the prior review and approval of the Owner's Representative and based upon the agreed upon hourly rates set forth in Exhibit "B," the additional labor hours needed to be incurred by Contractor as the result of the extension of the timeframe for the Preconstruction Phase and actual time of the extension of the Preconstruction Phase. »

§ 4.1.3 This subsection is intentionally deleted.

§ 4.1.4 Compensation based on Direct Personnel Expense includes the direct salaries of the Construction Manager's personnel providing Preconstruction Phase services on the Project and the Construction Manager's costs for the mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, employee retirement plans and similar contributions.

§ 4.2 Payments

§ 4.2.1 Payments and disputes concerning requests for payments shall be governed by Florida's Local Government Prompt Payment Act (chapter 218, Florida Statutes, part VII). Unless otherwise agreed or the Owner disputes a requested payment, payments for services shall be made monthly in proportion to the services performed.

§ 4.2.2 Payments are due and payable upon Owner's approval of the Construction Manager's invoice. Uncontested amounts left unpaid 120 days after the invoice date shall bear interest at the rate set forth in Florida's Local Government Prompt Payment Act.

ARTICLE 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

§ 5.1 For the Construction Manager's performance of the Work as described in Section 2.3, the Owner shall pay the Construction Manager the Contract Sum in current funds. The Contract Sum is the Cost of the Work as defined in Section 6.1.1 plus the Construction Manager's Fee.

§ 5.1.1 The Construction Manager's Fee:

« Shall be a fixed fee of 4.65% of the estimated Cost of Work. »

§ 5.1.2 The method of adjustment of the Construction Manager's Fee for changes in the Work:

« Shall be in accordance with Article 7 of AIA Document A201-2007 as amended. »

§ 5.1.3 Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work: Subcontractor mark-up shall be limited to ten percent (10%) overhead and five percent (5%) profit.

« Mark-up for overhead and profit for additive Change Orders for any subcontractor or supplier shall not exceed ten percent (10%) for overhead and five percent (5%) for profit. »

§ 5.1.4 Rental rates for Construction Manager-owned equipment shall not exceed «one hundred » percent («100 » %) of the standard rate paid at the place of the Project.

§ 5.1.5 Unit prices, if any:

(Identify and state the unit price; state the quantity limitations, if any, to which the unit price will be applicable.)

Item	Units and Limitations	Price per Unit (\$0.00)
«None »		

§ 5.2 Guaranteed Maximum Price

§ 5.2.1 The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, as it is amended from time to time. To the extent the Cost of the Work exceeds the Guaranteed Maximum Price, the Construction Manager shall bear such costs in excess of the Guaranteed Maximum Price without reimbursement or additional compensation from the Owner.

(Insert specific provisions if the Construction Manager is to participate in any savings.)

«In the event the Owner and Contractor do not agree upon and execute a Guaranteed Maximum Price Amendment, then the Owner shall have the right to terminate this Agreement and Owner shall be relieved from all further obligations and responsibilities under this Agreement except for payment to Contractor for Preconstruction Phase work and services performed. At the time of execution of this Agreement, the parties anticipate that the Guaranteed Maximum Price shall in no event exceed \$21,448,000.00. »

§ 5.2.2 The Guaranteed Maximum Price is subject to additions and deductions by Change Order as provided in the Contract Documents and the Date of Substantial Completion shall be subject to adjustment as provided in the Contract Documents.

§ 5.3 Changes in the Work

§ 5.3.1 The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Architect may make minor changes in the Work as provided in Section 7.4 of AIA Document A201–2007 as modified, General Conditions of the Contract for Construction. The Construction Manager shall be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work.

§ 5.3.2 Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Guaranteed Maximum Price Amendment may be determined by any of the methods listed in Section 7.3.3 of AIA Document A201–2007 as modified, General Conditions of the Contract for Construction.

§ 5.3.3 In calculating adjustments to subcontracts (except those awarded with the Owner’s prior consent on the basis of cost plus a fee), the terms “cost” and “fee” as used in Section 7.3.3.3 of AIA Document A201–2007 as modified and the term “costs” as used in Section 7.3.7 of AIA Document A201–2007 as modified shall have the meanings assigned to them in AIA Document A201–2007 as modified and shall not be modified by Sections 5.1 and 5.2, Sections 6.1 through 6.7, and Section 6.8 of this Agreement. Adjustments to subcontracts awarded with the Owner’s prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

§ 5.3.4 In calculating adjustments to the Guaranteed Maximum Price, the terms “cost” and “costs” as used in the above-referenced provisions of AIA Document A201–2007 as modified shall mean the Cost of the Work as defined in Sections 6.1 to 6.7 of this Agreement and the term “fee” shall mean the Construction Manager’s Fee as defined in Section 5.1 of this Agreement.

§ 5.3.5 If no specific provision is made in Section 5.1.2 for adjustment of the Construction Manager’s Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 5.1.2 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager’s Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.

ARTICLE 6 COST OF THE WORK FOR CONSTRUCTION PHASE

§ 6.1 Costs to Be Reimbursed

§ 6.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in Sections 6.1 through 6.7.

§ 6.1.2 Where any cost is subject to the Owner’s prior approval, the Construction Manager shall obtain this approval prior to incurring the cost. The parties shall endeavor to identify any such costs prior to executing Guaranteed Maximum Price Amendment.

§ 6.2 Labor Costs

§ 6.2.1 Wages of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or, with the Owner’s prior approval, at off-site workshops.

§ 6.2.2 Wages or salaries of the Construction Manager's supervisory and administrative personnel when stationed at the site with the Owner's prior approval.

(If it is intended that the wages or salaries of certain personnel stationed at the Construction Manager's principal or other offices shall be included in the Cost of the Work, identify in Section 11.5, the personnel to be included, whether for all or only part of their time, and the rates at which their time will be charged to the Work.)

§ 6.2.3 Wages and salaries of the Construction Manager's supervisory or administrative personnel engaged at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

§ 6.2.4 Costs paid or incurred by the Construction Manager for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 6.2.1 through 6.2.3.

§ 6.2.5 Bonuses, profit sharing, incentive compensation and any other discretionary payments paid to anyone hired by the Construction Manager or paid to any Subcontractor or vendor, with the Owner's prior approval.

§ 6.3 Subcontract Costs

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts.

§ 6.4 Costs of Materials and Equipment Incorporated in the Completed Construction

§ 6.4.1 Costs, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction.

§ 6.4.2 Costs of materials described in the preceding Section 6.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Construction Manager. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

§ 6.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items

§ 6.5.1 Costs of transportation, storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment and tools that are not fully consumed shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Construction Manager shall mean fair market value.

§ 6.5.2 Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and costs of transportation, installation, minor repairs, dismantling and removal. The total rental cost of any Construction Manager-owned item may not exceed the purchase price of any comparable item. Rates of Construction Manager-owned equipment and quantities of equipment shall be subject to the Owner's prior approval.

§ 6.5.3 Costs of removal of debris from the site of the Work and its proper and legal disposal.

§ 6.5.4 Costs of document reproductions, facsimile transmissions and long-distance telephone calls, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office.

§ 6.5.5 That portion of the reasonable expenses of the Construction Manager's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work.

§ 6.5.6 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner's prior approval.

§ 6.6 Miscellaneous Costs

§ 6.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract. Self-insurance for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval.

§ 6.6.2 Sales, use or similar taxes imposed by a governmental authority that are related to the Work and for which the Construction Manager is liable.

§ 6.6.3 Fees and assessments for the building permit and for other permits, licenses and inspections for which the Construction Manager is required by the Contract Documents to pay.

§ 6.6.4 Fees of laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Section 13.5.3 of AIA Document A201–2007 as modified or by other provisions of the Contract Documents, and which do not fall within the scope of Section 6.7.3.

§ 6.6.5 Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Contract Documents; and payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims and payments of settlements made with the Owner's consent. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Construction Manager's Fee or subject to the Guaranteed Maximum Price. If such royalties, fees and costs are excluded by the last sentence of Section 3.17 of AIA Document A201–2007 as modified or other provisions of the Contract Documents, then they shall not be included in the Cost of the Work.

§ 6.6.6 Costs for electronic equipment and software, directly related to the Work with the Owner's prior approval.

§ 6.6.7 Deposits lost for causes other than the Construction Manager's negligence or failure to fulfill a specific responsibility in the Contract Documents.

§ 6.6.8 Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Construction Manager, reasonably incurred by the Construction Manager after the execution of this Agreement in the performance of the Work and with the Owner's prior approval, which shall not be unreasonably withheld.

§ 6.6.9 Subject to the Owner's prior approval, expenses incurred in accordance with the Construction Manager's standard written personnel policy for relocation and temporary living allowances of the Construction Manager's personnel required for the Work.

§ 6.7 Other Costs and Emergencies

§ 6.7.1 Other costs incurred in the performance of the Work if, and to the extent, approved in advance in writing by the Owner.

§ 6.7.2 Costs incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in Section 10.4 of AIA Document A201–2007 as modified.

§ 6.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Construction Manager, Subcontractors or suppliers, provided that such damaged or nonconforming Work was not caused by negligence or failure to fulfill a specific responsibility of the Construction Manager and only to the extent that the cost of repair or correction is not recovered by the Construction Manager from insurance, sureties, Subcontractors, suppliers, or others.

§ 6.7.4 The costs described in Sections 6.1 through 6.7 shall be included in the Cost of the Work, notwithstanding any provision of AIA Document A201–2007 as modified or other Conditions of the Contract which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 6.8.

§ 6.8 Costs Not To Be Reimbursed

§ 6.8.1 The Cost of the Work shall not include the items listed below:

- .1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Section 6.2, or as may be provided in Article 11;
- .2 Expenses of the Construction Manager's principal office and offices other than the site office;
- .3 Overhead and general expenses, except as may be expressly included in Sections 6.1 to 6.7;
- .4 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;
- .5 Except as provided in Section 6.7.3 of this Agreement, costs due to the negligence or failure of the Construction Manager, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract;
- .6 Any cost not specifically and expressly described in Sections 6.1 to 6.7;
- .7 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded; and
- .8 Costs for services incurred during the Preconstruction Phase.

§ 6.9 Discounts, Rebates and Refunds

§ 6.9.1 Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner if (1) before making the payment, the Construction Manager included them in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Construction Manager with which to make payments; otherwise, cash discounts shall accrue to the Construction Manager. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be obtained.

§ 6.9.2 Amounts that accrue to the Owner in accordance with the provisions of Section 6.9.1 shall be credited to the Owner as a deduction from the Cost of the Work.

§ 6.10 Related Party Transactions

§ 6.10.1 For purposes of Section 6.10, the term "related party" shall mean a parent, subsidiary, affiliate or other entity having common ownership or management with the Construction Manager; any entity in which any stockholder in, or management employee of, the Construction Manager owns any interest in excess of ten percent in the aggregate; or any person or entity which has the right to control the business or affairs of the Construction Manager. The term "related party" includes any member of the immediate family of any person identified above.

§ 6.10.2 If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, the Construction Manager shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction, then the cost incurred shall be included as a cost to be reimbursed, and the Construction Manager shall procure the Work, equipment, goods or service from the related party, as a Subcontractor, according to the terms of Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3. If the Owner fails to authorize the transaction, the Construction Manager shall procure the Work, equipment, goods or service from some person or entity other than a related party according to the terms of Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3.

§ 6.11 Accounting Records

The Construction Manager shall keep full and detailed records and accounts related to the cost of the Work and exercise such controls as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager's records and accounts, including complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, purchase orders, vouchers, memoranda and other data relating to this Contract. The Construction Manager shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law.

ARTICLE 7 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

§ 7.1 Progress Payments

§ 7.1.1 Based upon Applications for Payment submitted to the Architect by the Construction Manager and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Construction Manager as provided below and elsewhere in the Contract Documents.

§ 7.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

« »

§ 7.1.3 Provided that an Application for Payment is received by the Architect not later than the « 1st » day of a month, the Owner shall make payment of the certified amount to the Construction Manager not later than the 25th business day following therefrom. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than the 25th business day following therefrom.
(Federal, state or local laws may require payment within a certain period of time.)

§ 7.1.4 With each Application for Payment, the Construction Manager shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate that cash disbursements already made by the Construction Manager on account of the Cost of the Work equal or exceed progress payments already received by the Construction Manager, less that portion of those payments attributable to the Construction Manager's Fee, plus payrolls for the period covered by the present Application for Payment.

§ 7.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among the various portions of the Work, except that the Construction Manager's Fee shall be shown as a single separate item. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

§ 7.1.6 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed, or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Construction Manager on account of that portion of the Work for which the Construction Manager has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

§ 7.1.7 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

- .1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of AIA Document A201-2007 as modified;
- .2 Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 Add the Construction Manager's Fee, less retainage of «ten» percent («10 » %) until fifty percent (50%) of the Contract Value is complete, and, thereafter, less five percent (5%) retainage for the remaining Contract Value until such cumulative retainage equals not less than five percent (5%) of the total Contract Value. The Construction Manager's Fee shall be computed upon the Cost of the Work at the rate stated in Section 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;

- .4 Subtract retainage of « ten» percent («10» %) from that portion of the Work that the Construction Manager self-performs until fifty percent (50%) of the Contract Value is complete, and, thereafter, less five percent (5%) retainage for the remaining Contract Value;
- .5 Subtract the aggregate of previous payments made by the Owner;
- .6 Subtract the shortfall, if any, indicated by the Construction Manager in the documentation required by Section 7.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .7 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201–2007 as modified.

§ 7.1.8 The Owner and Construction Manager shall agree upon (1) a mutually acceptable procedure for review and approval of payments to Subcontractors and (2) the percentage of retainage held on Subcontracts, and the Construction Manager shall execute subcontracts in accordance with those agreements.

§ 7.1.9 Except with the Owner's prior approval, the Construction Manager shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

§ 7.1.10 In taking action on the Construction Manager's Applications for Payment, the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager and shall not be deemed to represent that the Architect has made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Section 7.1.4 or other supporting data; that the Architect has made exhaustive or continuous on-site inspections; or that the Architect has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

§ 7.2 Final Payment

§ 7.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Construction Manager when

- .1 the Construction Manager has fully performed the Contract except for the Construction Manager's responsibility to correct Work as provided in Section 12.2.2 of AIA Document A201–2007 as modified, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment; and
- .3 a final Certificate for Payment has been issued by the Architect.

The Owner's final payment to the Construction Manager shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:

« »

§ 7.2.2 The Owner's auditors will review and report in writing on the Construction Manager's final accounting within 30 days after delivery of the final accounting to the Architect by the Construction Manager. Based upon such Cost of the Work as the Owner's auditors report to be substantiated by the Construction Manager's final accounting, and provided the other conditions of Section 7.2.1 have been met, the Architect will, within seven days after receipt of the written report of the Owner's auditors, either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in Section 9.5.1 of the AIA Document A201–2007 as modified. The time periods stated in this Section supersede those stated in Section 9.4.1 of the AIA Document A201–2007 as modified. The Architect is not responsible for verifying the accuracy of the Construction Manager's final accounting.

§ 7.2.3 If the Owner's auditors report the Cost of the Work as substantiated by the Construction Manager's final accounting to be less than claimed by the Construction Manager, the Construction Manager shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Section 15.2 of A201–2007 as modified. A request for mediation shall be made by the Construction Manager within 30 days after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the

Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.

§ 7.2.4 If, subsequent to final payment and at the Owner's request, the Construction Manager incurs costs described in Section 6.1.1 and not excluded by Section 6.8 to correct defective or nonconforming Work, the Owner shall reimburse the Construction Manager such costs and the Construction Manager's Fee applicable thereto on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If the Construction Manager has participated in savings as provided in Section 5.2.1, the amount of such savings shall be recalculated and appropriate credit given to the Owner in determining the net amount to be paid by the Owner to the Construction Manager.

§ 7.2.5 The acceptance by the Construction Manager of Final Payment due upon the termination of this Agreement or completion of the Project, shall constitute a full and complete release of the Owner from any and all claims or demands regarding further compensation for Work or services rendered prior to such Final Payment that the Construction Manager has or may have against the Owner, unless otherwise previously and properly filed pursuant to the provisions of this Agreement or in a court of competent jurisdiction. This subsection does not affect any other portion of this Agreement that extends obligations of the parties beyond Final Payment. The making of the Final Payment shall not constitute a waiver of any claims or causes of action that Owner has or may have against the Construction Manager.

ARTICLE 8 INSURANCE AND BONDS

For all phases of the Project, the Construction Manager and the Owner shall purchase and maintain insurance coverages and amounts consistent with the Certificate of Insurance attached as Exhibit "C."

Additionally, in accordance with the provisions of section 255.05, Florida Statutes, Contractor shall provide to Owner a Performance Bond and Payment Bond for the Project each in an amount not less than the total construction costs for the Project and in a form with terms and conditions acceptable to Owner. The Performance Bond and Payment Bond shall be delivered to Owner prior to the commencement of any work or services under this Agreement and shall not expire until expiration of the Warranty Period for the Project. Contractor shall cause the posting of the Payment Bond in accordance with section 255.05, Florida Statutes, prior to commencement of the Work.

ARTICLE 9 DISPUTE RESOLUTION

§ 9.1 Mediation. As a condition precedent to the filing of any suit or other legal proceeding, the parties shall endeavor to resolve claims, disputes or other matters in question by mediation. Mediation shall be initiated by any party by serving a written request for same on the other party. The parties shall, by mutual agreement, select a mediator within fifteen (15) days of the date of the request for mediation. If the parties cannot agree on the selection of a mediator, then the Owner shall select the mediator who, if selected solely by the Owner, shall be a mediator certified by the Supreme Court of Florida. No suit or other legal proceeding shall be filed until: (i) the mediator declares an impasse, which declaration, in any event, shall be issued by the mediator not later than sixty (60) days after the initial mediation conference; or (ii) sixty (60) days has elapsed since the written mediation request was made in the event the other party refuses to or has not committed to attend mediation. The parties shall share the mediator's fee equally. The mediation shall be held in Orange County, Florida, unless another location is mutually agreed upon by the parties. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 9.2 For any Claim subject to, but not resolved by mediation, the method of binding dispute resolution shall be as follows:

(Check the appropriate box. If the Owner and Construction Manager do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.)

☐ Arbitration pursuant to Section 15.4 of AIA Document A201-2007

☒ Litigation in a court of competent jurisdiction

☐ Other: *(Specify)*

☐

In any such litigation, the parties shall bear their own attorneys' fees and experts' fees and costs, except as maybe otherwise expressly provided herein (e.g. indemnification and hold harmless provisions). The sole and exclusive venue for any litigation arising out of or relating to this Agreement or the services hereunder shall be in Orange County, Florida before the County Court or Circuit Court of the Ninth Judicial Circuit, in and for Orange County, Florida.

§ 9.3 Initial Decision Maker

The Architect will serve as the Initial Decision Maker pursuant to Section 15.2 of AIA Document A201–2007 as modified for Claims arising from or relating to the Construction Manager's Construction Phase services, unless the parties appoint below another individual, not a party to the Agreement, to serve as the Initial Decision Maker.

(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)

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ARTICLE 10 TERMINATION OR SUSPENSION

§ 10.1 Termination Prior to Establishment of the Guaranteed Maximum Price

§ 10.1.1 Prior to the execution of the Guaranteed Maximum Price Amendment, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager for the Owner's convenience and without cause, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner, for the reasons set forth in Section 14.1.1 of A201–2007 as modified.

§ 10.1.2 In the event of termination of this Agreement pursuant to Section 10.1.1, the Construction Manager shall be equitably compensated for Preconstruction Phase services performed prior to receipt of a notice of termination. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 4.1.

§ 10.1.3 If the Owner terminates the Contract pursuant to Section 10.1.1 after the commencement of the Construction Phase but prior to the execution of the Guaranteed Maximum Price Amendment, the Owner shall pay to the Construction Manager an amount calculated as follows, which amount shall be in addition to any compensation paid to the Construction Manager under Section 10.1.2:

- .1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;
- .2 Add the Construction Manager's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and
- .3 Subtract the aggregate of previous payments made by the Owner for Construction Phase services.

The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager which the Owner elects to retain and which is not otherwise included in the Cost of the Work under Section 10.1.3.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 10, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders. All Subcontracts, purchase orders and rental agreements entered into by the Construction Manager will contain provisions allowing for assignment to the Owner as described above.

If the Owner accepts assignment of subcontracts, purchase orders or rental agreements as described above, the Owner will reimburse or indemnify the Construction Manager for all costs arising under the subcontract, purchase order or rental agreement, if those costs would have been reimbursable as Cost of the Work if the contract had not been terminated. If the Owner chooses not to accept assignment of any subcontract, purchase order or rental agreement that would have constituted a Cost of the Work had this agreement not been terminated, the Construction Manager will

terminate the subcontract, purchase order or rental agreement and the Owner will pay the Construction Manager the costs necessarily incurred by the Construction Manager because of such termination.

§ 10.2 Termination Subsequent to Establishing Guaranteed Maximum Price

Following execution of the Guaranteed Maximum Price Amendment and subject to the provisions of Section 10.2.1 and 10.2.2 below, the Contract may be terminated as provided in Article 14 of AIA Document A201–2007 as modified.

§ 10.2.1 If the Owner terminates the Contract after execution of the Guaranteed Maximum Price Amendment, the amount payable to the Construction Manager pursuant to Sections 14.2 and 14.4 of A201–2007 as modified shall not exceed the amount the Construction Manager would otherwise have received pursuant to Sections 10.1.2 and 10.1.3 of this Agreement.

§ 10.2.2 If the Construction Manager terminates the Contract after execution of the Guaranteed Maximum Price Amendment, the amount payable to the Construction Manager under Section 14.1.3 of A201–2007 as modified shall not exceed the amount the Construction Manager would otherwise have received under Sections 10.1.2 and 10.1.3 above, except that the Construction Manager's Fee shall be calculated as if the Work had been fully completed by the Construction Manager, utilizing as necessary a reasonable estimate of the Cost of the Work for Work not actually completed.

§ 10.3 Suspension

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2007 as modified. In such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Section 14.3.2 of AIA Document A201–2007 as modified, except that the term "profit" shall be understood to mean the Construction Manager's Fee as described in Sections 5.1 and 5.3.5 of this Agreement.

ARTICLE 11 MISCELLANEOUS PROVISIONS

§ 11.1 Terms in this Agreement shall have the same meaning as those in A201–2007 as modified.

§ 11.2 Ownership and Use of Documents

Section 1.5 of A201–2007 as modified shall apply to both the Preconstruction and Construction Phases.

§ 11.3 Governing Law

This Agreement shall be governed by the laws of the state of Florida.

§ 11.4 Assignment

The Owner and Construction Manager, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Construction Manager shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement. Except as provided in Section 13.2.2 of A201–2007 as modified, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 11.5 Public Records Laws.

The Owner is a Florida municipal corporation subject to chapter 119, Florida Statutes, the Florida Public Records Act. While in the possession and control of the Construction Manager, at Construction Manager's expense, all public records shall be secured, maintained, preserved, and retained in the manner specified and pursuant to the Public Records Act. Construction Manager affirmatively agrees to comply with all "Contractor" provisions of section 119.0701(2), Florida Statutes. Construction Manager shall allow inspection and copying of such records in accordance with the Public Records Act. Construction Manager shall provide public records in its possession and control to the Owner upon completion of the services or Work as required by the Public Records Law. **IF**

CONSTRUCTION MANAGER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO CONSTRUCTION MANAGER'S DUTY TO PROVIDE PUBLIC RECORDS

RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT: Cindy Bonham, City Clerk, City of Winter Park, 401 Park Avenue South, Winter Park, Florida 32789; Email CBonham@cityofwinterpark.org; Telephone: (407) 599-3447. This provision shall survive expiration and termination of this Agreement.

§ 11.6 Ethics Law.

(a) Construction Manager shall not engage in any action that would create a conflict of interest in the performance of the actions of any Owner's officials, officers, employees or other person during the course of performance of, or otherwise related to, this Agreement or which would violate or cause others to violate the provisions of Part III, Chapter 112, Florida Statutes, relating to ethics in government. Construction Manager hereby certifies that no officer, agent, or employee of the Owner has any material interest (as defined in Section 112.312 (15), Florida Statutes), as over 5% either directly or indirectly, in the business of the to be conducted here, and that no such person shall have any such interest at any time during the term of this Agreement.

(b) Construction Manager warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for Construction Manager to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for Construction Manager, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. For the breach or violation of this provision, the Owner shall have the right to terminate this Agreement without liability.

(c) Any Person or affiliate, as defined in section 287.133 of the Florida Statutes, shall not be allowed to contract with the Owner, nor be allowed to enter into a subcontract for work on this Agreement, if such a person or affiliate has been convicted of a public entity crime within three (3) years of the date this Agreement was advertised for proposals, or if such person or affiliate was listed on the State's convicted vendor list within three (3) years of the date this Agreement was advertised, whichever time period is greater. A public entity crime means a violation of any state or federal law with respect to and directly related to the transaction of business with any public entity or agency (federal, state or local), involving antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy, forgery, falsification of records, receiving stolen property or material misrepresentation. Any Agreement with the Owner obtained in violation of this Section shall be subject to termination for cause. A subconsultant or subcontractor who obtains a subcontract in violation of this Section shall be removed from the Project and promptly replaced by a subconsultant or subcontractor acceptable to the Owner.

§ 11.7 False Claims.

If Construction Manager is unable to support any part of its claim and it is determined that such inability is attributable to misrepresentations of fact or fraud on the part of the Construction Manager, Construction Manager shall be liable to the Owner for an amount equal to such unsupported part of the claim in addition to all costs to the Owner attributable to the cost of reviewing said part of Construction Manager's claim. The Owner and Construction Manager acknowledge that the "Florida False Claims Act" provides civil penalties not more than \$10,000.00 plus remedies for obtaining treble damages against contractors or persons causing or assisting in causing Florida Governments to pay claims that are false when money or property is obtained from a Florida government by reason of a false claim. Construction Manager agrees to be bound by the provisions of the Florida False Claims Act for purposes of this Agreement and the services performed hereunder.

§ 11.8 No Waiver of Sovereign Immunity.

Nothing contained in this Agreement shall be considered or deemed a waiver of the Owner's sovereign immunity protections or of any other immunity, defense, or privilege afforded to the Owner or its officials, officers, employees and agents under law, including without limitation, Section 768.28, Florida Statutes.

§ 11.9 Discrimination.

Construction Manager, for itself, its delegates, successors and assigns, and as a part of the consideration hereof, does hereby covenant and agree that, 1) in the furnishing of services to the Owner hereunder, no person shall be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination in regard to this Agreement on the grounds of such person's race, color, creed, national origin, disability, marital status, religion or sex; and 2) the

Construction Manager shall comply with all existing requirements concerning discrimination imposed by any and all applicable local, state, and federal rules, regulations, or guidelines, and as such rules, regulations, or guidelines may be from time to time amended. In the event of a breach of any of the nondiscrimination covenants described in this subsection, the Owner shall have the right to terminate this Agreement.

§ 11.10 Compliance with Law.

The Construction Manager and its employees shall promptly observe, comply with, and execute the provision of any and all present and future federal, state, and local laws, rules, regulations, requirements, ordinances, and orders which may pertain or apply to the services that may be rendered hereto, or to the wages paid by the Construction Manager to its employees. The Construction Manager shall also require, by contract, that all subconsultants and subcontractors shall comply with the provisions of this subsection. Construction Manager's employment of unauthorized aliens in violation of federal law shall constitute a material breach of this Agreement. Construction Manager shall indemnify and hold harmless the Owner against any claims or liability arising from, or based on, Construction Manager's or its employee's violation of any such laws, ordinances, rules, codes, regulations, or orders.

§ 11.11 Licenses.

Construction Manager shall, during the life of this Agreement and project Final Completion, procure and keep in full force, effect, and good standing all necessary licenses, registrations, certificates, permits, and other authorizations as are required by local, state, or federal law, in order for Construction Manager to render its services as described herein. Construction Manager shall also require all subconsultants and subcontractors to comply by contract with the provisions of this subsection.

§ 11.12 IN NO EVENT SHALL THE OWNER BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING LOSS OF PROFITS, LOSS OF REVENUE, OR LOSS OF USE, OR COST OF COVER INCURRED BY CONSTRUCTION MANAGER OR ANY THIRD PARTIES ARISING OUT OF THIS AGREEMENT AND/OR CONCERNING THE PERFORMANCE BY THE CONSTRUCTION MANAGER OR BY THE OWNER UNDER THIS AGREEMENT.

§ 11.13 Scope Reduction.

Owner shall have the sole right to reduce (or eliminate, in whole or in part) the Work at any time and for any reason, upon written notice to the Construction Manager specifying the nature and extent of the reduction. In such event the Construction Manager shall be fully compensated for the portion of the Work or services already performed, including payment of all specific fee amounts due and payable prior to the effective date stated in the Owner's notification of the reduction. Construction Manager shall also be compensated for the Work or services remaining to be done and not reduced or eliminated on the Project. However, Construction Manager will not be compensated for Work or services not performed or that are eliminated from this Agreement by Owner.

§ 11.14 No Liens/Bonds.

Construction Manager acknowledges and agrees that the real property for which the project is being constructed and the project itself is owned by a municipality, and therefore is not subject to construction liens pursuant to Chapter 713, Florida Statutes or any other liens pursuant to the Owner's sovereign immunity protections. Construction Manager and its subconsultants and all others claiming by and through Construction Manager shall not record or file any claims of lien concerning any project, services, material, supply, labor, work, or any portion thereof. Construction Manager shall indemnify and hold Owner harmless from any and all claims of lien arising out of or concerning this Agreement. Construction Manager shall ensure that Section 255.05, Florida Statutes payment bond and performance bonds with the Owner as the beneficiary are obtained and delivered as required by law in an amount no less than 100% of the construction costs of the Project and in a form acceptable to the Owner.

§ 11.15 No Tax Pledge.

The Owner and Construction Manager agree that this Agreement does not constitute a general indebtedness of Owner within the meaning of any constitutional, statutory, or charter provision of limitation and it is expressly agreed by the parties that Construction Manager shall not have the right to require or compel the exercise of ad valorem taxing power of Owner, or taxation of any real or personal property therein for payment of any monetary obligations due or any other obligations under the terms of this Agreement.

§ 11.16 No Damages Against Owner for Delay.

Notwithstanding any other provisions of this Agreement, Construction Manager's exclusive remedy for delays, impacts, mobilization, demobilization, disruption, acceleration, resequencing, and interruptions in performance of the services caused by events beyond Construction Manager's and its employees', subconsultants' and agents' control, including delays, impacts, disruption, acceleration, resequencing and interruptions claimed to be caused by or attributable to the Owner or its officials, officers, employees and agents (or any combination thereof), shall be a claim for and be limited to an equitable extension of time under this Agreement. Without limiting the foregoing, Construction Manager shall not be entitled to costs for remobilization after a delay, impact, disruption, acceleration, resequencing or interruption in the performance of the services has occurred. In no event shall the Owner's liability under this Agreement exceed the compensation that the Owner is required to pay to Construction Manager for services under this Agreement.

§ 11.17 Procurement.

The terms and conditions of the Owner's procurement documents (RFQ-21-2017) for which this Agreement was awarded to Construction Manager are incorporated herein by this reference and made a part hereof as material provisions; however the terms of this Agreement shall control in the event of a conflict between such. Construction Manager represents and warrants that all representations and statements made or submitted in response to Owner's procurement process resulting in the award of this Agreement remain true, correct and accurate.

§ 11.18 Independent Contractor.

Construction Manager is not authorized to act as the Owner's agent hereunder and shall have no authority, expressed or implied, to act for or bind the Owner hereunder, either in Construction Manager's relations with third parties contractors, consultants or subcontractor, or in any other manner whatsoever. Construction Manager shall perform its services as an independent contractor and shall have responsibility for and control over the details of and means for performing the services assigned and shall be subject to the directions of the only with respect to the scope of services and the general results required.

§ 11.19. Indemnification.

Construction Manager agrees to indemnify and hold harmless the Owner, its employees and elected and appointed officials and officers, from all claims, judgments, damages, losses, and expense (including reasonable attorneys' fees, experts' fees and litigation costs incurred at all trial and appellate levels with attorneys and experts to be selected by the Owner) arising out of or resulting from the performance or nonperformance of the Work or services provided within the scope of this Agreement or relating to this Agreement in any manner to the extent same is caused in whole or in part by any negligence, recklessness, or intentional wrongful misconduct of the Construction Manager or persons employed or utilized by the Construction Manager in the performances of any services or Work rendered under this Agreement. If the type of service or Work being performed under this Agreement requires a maximum monetary limit of indemnification under general law, then the maximum limit under this section and other indemnifications contained within this Agreement shall be two million dollars (\$2,000,000.00) per occurrence, which the Owner and the Construction Manager agree bears a commercially reasonable relationship to this Agreement; otherwise, there is no maximum limit of indemnification. The indemnification obligation set forth herein 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 contractor or any subcontractor under any Worker's Compensation Act, Disability Benefit Act, or other Employee Benefit Act. In the event these indemnification provisions or any other indemnification provision of this Agreement is deemed inconsistent with any statutory provision or common law principle, such indemnification provisions shall be severable and survive to the greatest extent possible to protect the Owner and the Owner's employees and elected and appointed officials and officers. The provisions of this section shall survive termination, cancellation, or expiration of this Agreement, and shall not be limited by reason of any insurance coverage.

§ 11.20 Severability.

If any word, sentence, phrase, clause, section, or subsection of this Agreement is fully and finally determined by a court of competent jurisdiction to be invalid or unconstitutional, then such portion shall be deemed separate and independent provision and such holding shall not affect the validity or enforceability of the remaining provisions of this Agreement.

§ 11.21 Liquidated Damages.

Owner and Contractor recognize that **TIME IS OF THE ESSENCE** in this Agreement and that Owner will suffer financial loss if the Work is not substantially complete in the time specified in Section 2.3.1.2. The parties also recognize the delays, expense and difficulties involved in proving in a legal proceeding the actual loss suffered by the

Owner if the Work is not substantially complete on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty) Contractor shall pay Owner **\$2,800.00** (Two Thousand Eight-Hundred Dollars) for each day that expires after the time specified in Section 2.3.1.2 for Substantial Completion until the Work is substantially complete, and that the liquidated damages set forth herein bear a reasonable relationship to the estimated actual damages that the Owner would suffer. Such liquidated damages shall be in addition to and not in preclusion of the recovery of actual damages resulting from other defects in Contractor's performance hereunder for matters other than delays in Substantial Completion.

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ARTICLE 12 SCOPE OF THE AGREEMENT

§ 12.1 This Agreement represents the entire and integrated agreement between the Owner and the Construction Manager and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Construction Manager.

§ 12.2 The following documents comprise the Agreement:

- .1 AIA Document A133–2009, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price
- .2 AIA Document A201–2007 as modified, General Conditions of the Contract for Construction
- .3 AIA Document E201™–2007, Digital Data Protocol Exhibit, if completed, or the following:

« »

- .4 AIA Document E202™–2008, Building Information Modeling Protocol Exhibit, if completed, or the following:

« AIA Document E203 – 2013, Building Information Modeling and Digital Data Exhibit »

- .5 Other documents:
(List other documents, if any, forming part of the Agreement.)

«Exhibit "A" – Form Guaranteed Maximum Price Amendment
Exhibit "B" – Preconstruction Phase Hourly Rates Exhibit
Exhibit "C" – Certificate of Insurance»

This Agreement is entered into as of the day and year first written above.

« »

OWNER (Signature)

« »« »

(Printed name and title)

« »

CONSTRUCTION MANAGER (Signature)

« »« »

(Printed name and title)

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DRAFT AIA® Document A201™ – 2007

General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)

«A new Winter Park Public Library, Event Center and Parking Garage to be located at approximately the location of the existing Civic Center located at 1050 West Morse Boulevard, Winter Park, Florida 32789 »

« »

THE OWNER:

(Name, legal status and address)

«City of Winter Park
401 South Park Avenue
Winter Park, Florida 32789 «» »

« »

THE ARCHITECT:

(Name, legal status and address)

«HuntonBrady Architects
800 North Magnolia Avenue, Suite 600
Orlando, Florida 32803
Telephone No.: 407-839-0886
Facsimile No.: 407-839-1709 «» »

« »

ADDITIONS AND DELETIONS: The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 BASIC DEFINITIONS

§ 1.1.1 THE CONTRACT DOCUMENTS

The Contract Documents are enumerated in the Agreement between the Owner and the Construction Manager as Contractor as set forth in AIA Document A133-2009 as amended by the Owner (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding requirements. To the extent this AIA Document A201-2007 conflicts with any other portion or provision of the other Contract Documents, then those portions of the Contract Documents shall control.

§ 1.1.2 THE CONTRACT

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

§ 1.1.3 THE WORK

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

§ 1.1.4 THE PROJECT

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by separate contractors.

§ 1.1.5 THE DRAWINGS

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.

§ 1.1.6 THE SPECIFICATIONS

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

§ 1.1.7 INSTRUMENTS OF SERVICE

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

§ 1.1.8 INITIAL DECISION MAKER

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2 and certify termination of the Agreement under Section 14.2.2.

§ 1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

§ 1.2.1.1 If any provision of the Contract Documents or their application to any person or circumstance shall be finally held by a court of competent jurisdiction to be invalid or enforceable, it shall not affect the remainder of the Contract Documents or their application. Each remaining provision of the Contract Documents shall be valid and enforceable to the fullest extent permissible by law.

§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade. Additionally, references or titles of divisions, sections, and articles are for organizational purposes only and shall not be construed as an interpretative aide of this Agreement.

§ 1.2.3 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

§ 1.3 CAPITALIZATION

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles or (3) the titles of other documents published by the American Institute of Architects.

§ 1.4 INTERPRETATION

In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

§ 1.5 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE

§ 1.5.1 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and will retain all common law, statutory and other reserved rights, including copyrights. Notwithstanding the preceding, such referenced materials may, in accordance with Florida law, be subject to public examination and inspection in accordance with chapter 119, Florida Statutes. Authorship or ownership as referenced herein shall not excuse or otherwise constitute inherent trade secret or other protections pursuant to federal or Florida law. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized to use and reproduce the Instruments of Service provided to them solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers may not use the Instruments of Service on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Architect and the Architect's consultants.

§ 1.6 TRANSMISSION OF DATA IN DIGITAL FORM AND BUILDING INFORMATION MODELING

§ 1.6.1 DEFINITIONS.

§ 1.6.1.1 Building Information Model. A Building Information Model is a digital representation of the Project, or a portion of the Project, and is referred to in this Agreement as the "Model," which term may be used herein to describe a Model Element or a single model or multiple models used in the aggregate.

§ 1.6.1.2 Building Information Modeling. Building Information Modeling or Modeling means the process used to create the Model.

§ 1.6.1.3 Authorized Uses. The term "Authorized Uses" refers to the permitted uses of Digital Data authorized in the Digital Data and/or Building Information Modeling protocols established pursuant to the terms of this Agreement.

§ 1.6.1.4 Digital Data. Digital Data is information, including communications, drawings, specifications and designs, created or stored for the Project in digital form. Unless otherwise stated, the term Digital Data includes the Model. The format of Digital Data must be in accordance and compatible with existing Owner programs and formats unless agreed otherwise in writing by the Owner.

§1.6.1.5 Project Participant. A Project Participant is an entity (or individual) providing services, work, equipment or materials on the Project and includes the Parties.

§1.6.2.1 By transmitting Digital Data, the transmitting Party does not convey any ownership right in the Digital Data or in the software used to generate the Digital Data. Unless otherwise granted in a separate license, the receiving Party's right to use, modify, or further transmit Digital Data is specifically limited to designing, constructing, using, maintaining, altering and adding to the Project consistent with the terms of this Agreement, and nothing contained in this Agreement conveys any other right to use the Digital Data. Notwithstanding the preceding, such Digital Data may, in accordance with Florida law, be subject to public examination and inspection in accordance with chapter 119, Florida Statutes. Authorship or ownership as referenced herein shall not excuse or otherwise constitute inherent trade secret or other protections of Digital Data pursuant to federal or Florida law.

§1.6.2.2 As soon as practical following execution of the Agreement, the Parties may further describe the uses of Digital Data, and establish necessary protocols governing the transmission and Authorized Uses of Digital Data, in consultation with the other Project Participants that are expected to utilize Digital Data on the Project.

§1.6.2.3 The Parties do not intend to use a centralized electronic document management system on the Project.

§1.6.3 Building Information Modeling. The Parties may utilize Building Information Modeling on the Project for the sole purpose of fulfilling the obligations set forth in the Agreement without an expectation that the Model will be relied upon by the other Project Participants. Unless otherwise agreed in writing, any use of, transmission of, or reliance on the Model is at the receiving Party's sole risk. All Parties to this Agreement shall include such a similar disclaimer in any agreement with any other Project Participant.

ARTICLE 2 OWNER

§ 2.1 GENERAL

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

§ 2.2.1 The Owner shall, at the written request of the Contractor, prior to commencement of the Work furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. The Owner shall furnish such evidence as a condition precedent to commencement of the Work. Thereafter, following commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract only if (1) the Owner fails to make payments to the Contractor as the Contract Documents require in accordance with Florida's Local Government Prompt Payment Act (chapter 218, Florida Statutes, part VII); (2) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due; or (3) a change in the Work materially changes the Contract Sum.

§ 2.2.2 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

§ 2.2.3 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work, which proper precautions include but are not limited to, site inspections, examinations, and testing.

§ 2.2.4 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.

§ 2.2.5 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

§ 2.3 OWNER'S RIGHT TO STOP THE WORK

If the Contractor fails to promptly correct Work to Owner's reasonable satisfaction that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3. Additionally, Owner may request Contractor immediately stop work for any reason upon giving fifteen (15) days written notice to the Contractor.

§ 2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect or failure. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

ARTICLE 3 CONTRACTOR

§ 3.1 GENERAL

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents.

§ 3.1.3 The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

§ 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall

promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require.

If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Section 3.2.2 or 3.2.3, the Contractor shall make Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies, or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

§ 3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Architect and shall not proceed with that portion of the Work without further written instructions from the Architect. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Owner shall be solely responsible for any loss or damage arising solely from those Owner-required means, methods, techniques, sequences or procedures.

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

§ 3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

§ 3.4 LABOR AND MATERIALS

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ 3.4.2 Except in the case of minor changes in the Work authorized by the Architect in accordance with Sections 3.12.8 or 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

§ 3.5 WARRANTY

The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.6 TAXES

The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted during the Project, including any increases in such taxes that may be assessed after execution of this Agreement, whether or not yet effective or merely scheduled to go into effect.

§ 3.7 PERMITS, FEES, NOTICES, AND COMPLIANCE WITH LAWS

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.

§ 3.7.3 If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction, including payment of the Owner's attorneys' fees and expert's fees and costs incurred in any lawsuit, claim, cause, or demand relating to same.

§ 3.7.4 **Concealed or Unknown Conditions.** If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of work or services beyond or in addition to the original Work or Scope of Services of this Agreement, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor in writing, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may proceed as provided in Article 15. Notwithstanding the preceding, nothing contained in this subsection shall be construed or interpreted as authorizing, allowing, or acting as a waiver of any no damages for delay provisions provided herein or in the Contract Documents.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and/or Contract Time arising from the existence of such remains or features may be made as provided in Article 15 to the extent such adjustments require work or services beyond or in addition to the original Work or Scope of Services of this Agreement. Notwithstanding the preceding, nothing contained in this subsection shall be construed or interpreted as authorizing, allowing, or acting as a waiver of any no damages for delay provisions provided herein or in the Contract Documents.

§ 3.8 ALLOWANCES

§ 3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

§ 3.8.2 Unless otherwise provided in the Contract Documents,

- .1 allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;

- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- .3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

§ 3.9 SUPERINTENDENT

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the name and qualifications of a proposed superintendent. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to the proposed superintendent or (2) that the Architect requires additional time to review. Failure of the Architect to reply within the 14 day period shall constitute notice of no reasonable objection.

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

§ 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

§ 3.10.2 The Contractor shall prepare a submittal schedule, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, and shall submit the schedule(s) for the Architect's approval. The Architect's approval shall not unreasonably be delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect.

§ 3.11 DOCUMENTS AND SAMPLES AT THE SITE

The Contractor shall maintain at the site for the Owner one copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Architect and shall be delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

§ 3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

§ 3.12.1 Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

§ 3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

§ 3.12.3 Samples are physical examples that illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

§ 3.12.4 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. Their purpose is to demonstrate the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve and submit to the Architect Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the Architect.

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Architect in writing of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Architect's approval thereof.

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such written notice, the Architect's approval of a resubmission shall not apply to such revisions.

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall not be required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents.

§ 3.13 USE OF SITE

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

§ 3.14 CUTTING AND PATCHING

§ 3.14.1 The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting and patching shall be restored to the condition existing prior to the cutting, fitting and patching, unless otherwise required by the Contract Documents.

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the Owner or a separate contractor the Contractor's consent to cutting or otherwise altering the Work.

§ 3.15 CLEANING UP

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials from and about the Project.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and Owner shall be entitled to reimbursement from the Contractor, including payment of the Owner's attorneys' fees and expert's fees and costs incurred in any lawsuit, claim, cause, or demand relating to same..

§ 3.16 ACCESS TO WORK

The Contractor shall provide the Owner and Architect access to the Work in preparation and progress wherever located.

§ 3.17 ROYALTIES, PATENTS AND COPYRIGHTS

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner or Architect. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Architect.

ARTICLE 4 ARCHITECT

§ 4.1 GENERAL

§ 4.1.1 The Owner shall retain an architect lawfully licensed to practice architecture or an entity lawfully practicing architecture in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

§ 4.1.2 Duties, responsibilities and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified or extended without written consent of the Owner, Contractor and Architect. Consent shall not be unreasonably withheld.

§ 4.1.3 If the employment of the Architect is terminated, the Owner shall employ a successor architect as to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.

§ 4.2 ADMINISTRATION OF THE CONTRACT

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Architect issues the final Certificate for Payment. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Section 3.3.1.

§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 4.2.4 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION

Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate with each other through the Architect about matters arising out of or relating to the Contract. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner.

§ 4.2.5 Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

§ 4.2.6 The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5 and 3.12. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may authorize minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and

assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more project representatives to assist in carrying out the Architect's responsibilities at the site. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents.

§ 4.2.11 The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 4.2.12 Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either and will not be liable for results of interpretations or decisions rendered in good faith.

§ 4.2.13 The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

ARTICLE 5 SUBCONTRACTORS

§ 5.1 DEFINITIONS

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

§ 5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

§ 5.2.1 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to any such proposed person or entity or (2) that the Architect requires additional time for review. Failure of the Owner or Architect to reply within the 14 day period shall constitute notice of no reasonable objection.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person or entity previously selected if the Owner or Architect makes reasonable objection to such substitution.

§ 5.3 SUBCONTRACTUAL RELATIONS

By appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by these Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§ 5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

§ 5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

- .1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor in writing; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

§ 5.4.2 Upon such assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

§ 6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Article 15. All separate contractors, prior to commencing work at the Project, shall provide Contractor with a current certificate of insurance showing coverages in at least the same amounts as required by this Agreement and naming Contractor as an additional insured. Additionally, all separate contractors shall abide by the terms of Contractor's Project safety requirements.

§ 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, separate contractors and the Owner until subsequently revised.

§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces, the Owner shall be deemed to be subject to the same obligations and to have the same rights that apply to the Contractor under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6 and Articles 10, 11 and 12.

§ 6.2 MUTUAL RESPONSIBILITY

§ 6.2.1 The Contractor shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Architect apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a separate contractor because of the Contractor's delays, improperly timed activities or defective construction.

§ 6.2.4 The Contractor shall promptly remedy damage the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or separate contractors as provided in Section 10.2.5.

§ 6.2.5 The Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

§ 6.3 OWNER'S RIGHT TO CLEAN UP

If a dispute arises among the Contractor, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Architect will allocate the cost among those responsible.

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 GENERAL

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor and Architect; a Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor; an order for a minor change in the Work may be issued by the Architect alone.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive or order for a minor change in the Work.

§ 7.2 CHANGE ORDERS

§ 7.2.1 A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor and Architect stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum; and
- .3 The extent of the adjustment, if any, in the Contract Time.

§ 7.3 CONSTRUCTION CHANGE DIRECTIVES

§ 7.3.1 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

§ 7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 7.3.7.

§ 7.3.4 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Construction Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

§ 7.3.5 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

§ 7.3.6 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 7.3.7 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.7 shall be limited to the following:

- .1 Costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
- .2 Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and
- .5 Additional costs of supervision and field office personnel directly attributable to the change.

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The

Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

§ 7.3.10 When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

§ 7.4 MINOR CHANGES IN THE WORK

The Architect has authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes will be effected by written order signed by the Architect and shall be binding on the Owner and Contractor.

ARTICLE 8 TIME

§ 8.1 DEFINITIONS

§ 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

§ 8.1.2 The date of commencement of the Work is the date established in the Agreement.

§ 8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.

§ 8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

§ 8.2 PROGRESS AND COMPLETION

§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

§ 8.3 DELAYS AND EXTENSIONS OF TIME

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or Architect, or of an employee of either of them, or of a separate contractor employed by the Owner; or by changes ordered in the Work; or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions, or other causes beyond the Contractor's control; or by delay authorized by the Owner pending mediation; or by other causes that the Architect determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine. If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that the weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction. In the event of a "Force Majeure Event" or an Owner or Architect active interference in the Work and after fourteen (14) calendar days of such delay, the Contract Sum shall be increased to the extent of Contractor's general conditions costs actually incurred (less any insurance reimbursements related to such delay received by Contractor) for each additional day that Contractor is delayed after fourteen (14) calendar days of delay as the Architect may determine. Such general conditions cost shall not exceed the General Conditions Per Diem defined in the GMP (which amount is expected to be approximately \$2,800 per day). For the purposes of this Section, a "Force Majeure Event" shall mean: (i) an act of God (such as, but not limited to, hurricane, tornado, explosions, sinkhole, earthquakes, tidal waves and floods); (ii) war, hostilities (whether war be declared or not), invasion, or act of foreign enemies; or (iii) acts or threats of terrorism.

Except for the right of the Contractor to recover additional general conditions costs as set forth in this Section, the Contractor expressly agrees not to make, and hereby waives (and shall cause its Subcontractors to similarly agree not to make, and to waive), any claim for costs, losses, damages or expenses on account of any delay, obstruction, impact or hindrance for any cause whatsoever, including, without limitation, consequential damages, lost opportunity costs, actual or alleged loss of efficiency or productivity, home office overhead, extended overhead, impact damages, cumulative impact, ripple effect or other similar remuneration. The Owner's exercise of any of its rights under the Contract Documents (including, without limitation, ordering changes in the Work, or directing suspension, rescheduling, or correction of the Work), regardless of the extent or frequency of the Owner's exercise of such rights or remedies, shall not be construed as active interference, hindrance, or obstruction with the Contractor's performance of the Work. Contractor shall not be entitled to add overhead and profit to any additional general conditions costs recoverable under this section.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15.

§ 8.3.3 No Damages Against Owner for Delay. Notwithstanding any other provisions of this Agreement, Contractor's exclusive remedy for delays, impacts, mobilization, demobilization, disruption, acceleration, resequencing, and interruptions in performance of the services caused by events beyond Contractor's and its employees', subconsultants' and agents' control, including delays, impacts, disruption, acceleration, resequencing and interruptions claimed to be caused by or attributable to the Owner or its officials, officers, employees and agents (or any combination thereof), shall be a claim for and be limited to an equitable extension of time under this Agreement. Without limiting the foregoing, Contractor shall not be entitled to costs for remobilization after a delay, impact, disruption, acceleration, resequencing or interruption in the performance of the services has occurred. In no event shall the Owner's liability under this Agreement exceed the compensation that the Owner is required to pay to Contractor for services under this Agreement.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 CONTRACT SUM

The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

§ 9.2 SCHEDULE OF VALUES

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit to the Architect, before the first Application for Payment, a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 9.3 APPLICATIONS FOR PAYMENT

§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as the Owner or Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and shall reflect retainage if provided for in the Contract Documents.

§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or material supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location

agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

§ 9.4 CERTIFICATES FOR PAYMENT

§ 9.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect determines is properly due, or notify the Contractor and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Section 9.5.1.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data comprising the Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Architect. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 9.5 DECISIONS TO WITHHOLD CERTIFICATION

§ 9.5.1 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a separate contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Contract Documents.

§ 9.5.2 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

§ 9.5.3 If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or material or equipment suppliers to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Architect will reflect such payment on the next Certificate for Payment.

§ 9.6 PROGRESS PAYMENTS

§ 9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect. Prior to the Owner making the first payment under this Agreement, the Contractor shall share certain instructions, including wire transfer and bank routing information, with the Owner in order establish a secure system for processing and verifying any payments. Once the Contractor has shared such instructions and the system for processing payments has been established, the Owner agrees to make payments strictly in accordance with those instructions. Any change to such instructions must be mutually agreed upon in writing and confirmed by a telephone conversation with a corporate officer of the Contractor.

§ 9.6.2 The Contractor shall pay each Subcontractor no later than seven days after receipt of payment from the Owner the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

§ 9.6.3 The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor.

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and material and equipment suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay or to see to the payment of money to a Subcontractor, except as may otherwise be required by law.

§ 9.6.5 Contractor payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors and suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, shall create any fiduciary liability or tort liability on the part of the Contractor for breach of trust or shall entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

§ 9.7 FAILURE OF PAYMENT

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents the amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' written notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately as provided for in the Contract Documents.

§ 9.8 SUBSTANTIAL COMPLETION

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 9.8.3 Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate. Upon such acceptance and consent of surety, if any, the Owner shall make payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

§ 9.9 PARTIAL OCCUPANCY OR USE

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Section 11.3.1.5 and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

§ 9.10 FINAL COMPLETION AND FINAL PAYMENT

§ 9.10.1 Upon receipt of the Contractor's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection and, when the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment and (5), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that such payment shall not be construed as or constitute a waiver of claims.

§ 9.10.4 Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 SAFETY PRECAUTIONS AND PROGRAMS

The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.

§ 10.2 SAFETY OF PERSONS AND PROPERTY

§ 10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

§ 10.2.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

§ 10.2.3 The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections

10.2.1.2 and 10.2.1.3, except damage or loss attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

§ 10.2.7 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

§ 10.2.8 INJURY OR DAMAGE TO PERSON OR PROPERTY

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.3 HAZARDOUS MATERIALS

§ 10.3.1 If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including, but not limited to, asbestos or polychlorinated biphenyl (PCB) encountered on the site by the Contractor, or if the Contractor encounters microbial growth, the Contractor shall, upon recognizing the condition, immediately stop Work in the area affected and report the condition to the Owner and Architect in writing.

§ 10.3.2 Upon receipt of the Contractor's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be removed and/or rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately, and the Contract Sum may be increased for additional services or work performed by Contractor outside the original Work or Scope of Services of this Agreement. Notwithstanding the preceding, nothing contained in this subsection shall be construed or interpreted as authorizing, allowing, or acting as a waiver of any no damages for delay provisions provided herein or in the Contract Documents.

§ 10.3.3 The Owner shall not be responsible under Section 10.3 for materials or substance brought to the site by the Contractor.

§ 10.3.4 The Contractor shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 10.4 EMERGENCIES

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 CONTRACTOR'S LIABILITY INSURANCE

§ 11.1.1 The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Contractor from claims set

forth below which may arise out of or result from the Contractor's operations and completed operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- .1 Claims under workers' compensation, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed;
- .2 Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
- .3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
- .4 Claims for damages insured by usual personal injury liability coverage;
- .5 Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- .6 Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
- .7 Claims for bodily injury or property damage arising out of completed operations; and
- .8 Claims involving contractual liability insurance applicable to the Contractor's obligations under Section 3.18.

§ 11.1.2 The insurance required by Section 11.1.1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment, and, with respect to the Contractor's completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Contract Documents.

§ 11.1.3 Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. These certificates and the insurance policies required by this Section 11.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. If any of the foregoing insurance coverages are required to remain in force after final payment and are reasonably available, an additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness.

§ 11.1.4 The Contractor shall cause the commercial liability coverage required by the Contract Documents to include (1) the Owner, the Architect and the Architect's Consultants as additional insureds for claims the extent caused by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims to the extent caused by the Contractor's negligent acts or omissions during the Contractor's completed operations.

§ 11.2 OWNER'S LIABILITY INSURANCE

The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

§ 11.3 PROPERTY INSURANCE

§ 11.3.1 The Contractor shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract Modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until Final Completion of the Work. This insurance shall include interests of the Owner, the Contractor, and all tiers of subcontractors in the Project.

§ 11.3.1.1 Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's and Contractor's services and expenses required as a result of such insured loss.

§ 11.3.1.3 If the property insurance requires deductibles, the Owner shall pay costs not covered because of such deductibles.

§ 11.3.1.4 This property insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit.

§ 11.3.1.5 Partial occupancy or use in accordance with Section 9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

§ 11.3.2 BOILER AND MACHINERY INSURANCE

The Contractor shall purchase and maintain boiler and machinery insurance required by the Contract Documents or by law, which shall specifically cover such insured objects during installation and until Final Completion of the Work; this insurance shall include interests of the Owner, Contractor, Subcontractors and all tiers of subcontractors in the Work.

§ 11.3.3 LOSS OF USE INSURANCE

The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Contractor for loss of use of the Owner's property, including consequential losses due to fire or other hazards however caused.

§ 11.3.4 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Section 11.3.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

§ 11.3.5 Before an exposure to loss may occur, the Contractor shall provide to the Owner the certificate of insurance that includes insurance coverages required by this Section 11.3. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be canceled until at least 30 days' (10 days for cancellation due to non-payment of premium) prior written notice has been given to the Contractor.

§ 11.3.6 WAIVERS OF SUBROGATION

The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Architect, Architect's consultants, separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section 11.3 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Contractor. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, separate contractors described in Article 6, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and

whether or not the person or entity had an insurable interest in the property damaged. All waivers under this article shall survive termination or completion of the Contract.

§ 11.3.7 A loss insured under the Contractor's property insurance shall be adjusted by the Contractor and made payable to the Contractor, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.3.10. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

§ 11.3.8 If required in writing by a party in interest, the Contractor shall, upon occurrence of an insured loss, give bond for proper performance of the Contractor's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Contractor shall deposit in a separate account proceeds so received, which the Contractor shall distribute in accordance with such agreement as the parties in interest may reach, or as determined in accordance with the method of binding dispute resolution selected in the Agreement between the Owner and Contractor. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor after notification of a Change in the Work in accordance with Article 7.

§ 11.3.9 The Contractor shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the Contractor's exercise of this power; if such objection is made, the dispute shall be resolved in the manner selected by the Owner and Contractor as the method of binding dispute resolution in the Agreement. If the Owner and Contractor have selected arbitration as the method of binding dispute resolution, the Contractor shall make settlement with insurers or, in the case of a dispute over distribution of insurance proceeds, in accordance with the directions of the arbitrators.

§ 11.4 PERFORMANCE BOND AND PAYMENT BOND

§ 11.4.1 The Owner shall have the right to require the Contractor to furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in bidding requirements or specifically required in the Contract Documents on the date of execution of the Contract.

§ 11.4.2 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

§ 11.4.3 The Contractor shall have the right to implement a Subcontract Default Protection Program, which shall, at Contractor's sole discretion, be used to procure payment and performance bonds, enroll the subcontractor or vendor in a default insurance program, or self-insure the risk.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 UNCOVERING OF WORK

§ 12.1.1 If a portion of the Work is covered contrary to the Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.

§ 12.1.2 If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, such costs and the cost of correction shall be at the Contractor's expense.

§ 12.2 CORRECTION OF WORK

§ 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION

The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

§ 12.2.2 AFTER SUBSTANTIAL COMPLETION

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor an express written acceptance of the specific condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4.

§ 12.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

§ 12.2.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

§ 12.3 ACCEPTANCE OF NONCONFORMING WORK

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 GOVERNING LAW

The Contract shall be governed by the laws of the state of Florida.

§ 13.2 SUCCESSORS AND ASSIGNS

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate such assignment.

§ 13.3 WRITTEN NOTICE

Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice.

§ 13.4 RIGHTS AND REMEDIES

§ 13.4.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

§ 13.4.2 No action or failure to act by the Owner, Architect or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach there under, except as may be specifically agreed in writing.

§ 13.5 TESTS AND INSPECTIONS

§ 13.5.1 Tests, inspections and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures.

§ 13.5.2 If the Architect, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section 13.5.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs shall be at the Contractor's expense.

§ 13.5.3 If such procedures for testing, inspection or approval under Sections 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure including those of repeated procedures and compensation for the Architect's services and expenses shall be at the Contractor's expense.

§ 13.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.

§ 13.5.5 If the Architect is to observe tests, inspections or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

§ 13.5.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

§ 13.6 INTEREST

Payments due and unpaid under the Contract Documents and in accordance with the provisions of Florida's local government prompt payment act as set forth in chapter 218, Florida Statutes, shall bear interest at the rate of one (1) percent per month.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 TERMINATION BY THE CONTRACTOR

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency that requires all Work to be stopped;
- .3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- .4 The Owner has failed to furnish to the Contractor promptly, upon the Contractor's request, reasonable evidence as required by Section 2.2.1.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Section 14.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed and costs incurred by reason of such termination.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' written notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

§ 14.2 TERMINATION BY THE OWNER FOR CAUSE

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

§ 14.2.2 When any of the above reasons exist, the Owner, upon certification by the Initial Decision Maker that sufficient cause exists to justify such action, may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- .1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 Accept assignment of subcontracts pursuant to Section 5.4; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.

§ 14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

§ 14.3.2 The Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 14.3.1. No adjustment shall be made to the extent

- .1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

§ 14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

§ 14.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§ 14.4.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 CLAIMS

§ 15.1.1 DEFINITION

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim.

§ 15.1.2. TIME LIMITS ON CLAIMS

The Owner and Contractor shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method selected in the Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all Claims and causes of action not commenced in accordance with this Section 15.1.2.

§ 15.1.3 NOTICE OF CLAIMS

Claims by either the Owner or Contractor must be initiated by written notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

§ 15.1.4 CONTINUING CONTRACT PERFORMANCE

Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents. The Architect will prepare Change Orders and issue Certificates for Payment in accordance with the decisions of the Initial Decision Maker.

§ 15.1.5 CLAIMS FOR ADDITIONAL COST

If the Contractor wishes to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 15.1.6 CLAIMS FOR ADDITIONAL TIME

§ 15.1.5.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 15.1.5.2 WEATHER DELAYS If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction.

§ 15.1.5.2.1 The Project Schedule is based on the assumption that Contractor shall be able to perform work on the critical path six (6) days per Work Week. The Work Week shall be defined as Monday through Saturday. The Work Week and the days assumed whereby work can be performed shall be reduced by any Contractor holidays, as defined in the Contractor's Employee Handbook.

§ 15.1.5.2.2 In the event of Contractor cannot perform five days of work on the critical path during a Work Week due to one or more Weather Events, Contractor shall be entitled to an extension of the Contract Time.

§ 15.1.5.2.3 At the end of each month, Contractor may make a claim for Weather Event delays in accordance with this Article 15 of the General Conditions. Any claims for Weather Event delays not made in accordance with Article 15 shall be deemed waived by the Contractor.

§ 15.1.6 WAIVER OF CLAIMS FOR CONSEQUENTIAL DAMAGES

The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

- .1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- .2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.6 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

§ 15.2 INITIAL DECISION

§ 15.2.1 Claims, excluding those arising under Sections 10.3, 10.4, 11.3.9, and 11.3.10, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Initial Decision Maker with no decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

§ 15.2.2 The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

§ 15.2.3 In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of such request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

§ 15.2.5 The Initial Decision Maker will render a non-binding initial decision recommending approval or rejection of the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both.

§ 15.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.

§ 15.2.6.1 Either party may, within 30 days from the date of an initial decision, demand in writing that the other party file for mediation within 60 days of the initial decision..

§ 15.2.7 In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 15.2.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

§ 15.3 MEDIATION

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.6 shall be subject to mediation as a condition precedent to filing suit or legal proceeding.

§ 15.3.2 Mediation shall be initiated by any party by serving a written request for same on the other party. The parties shall, by mutual agreement, select a mediator within fifteen (15) days of the date of the request for mediation. If the parties cannot agree on the selection of a mediator, then the Owner shall select the mediator who, if selected solely by the Owner, shall be a mediator certified by the Supreme Court of Florida. No suit or other legal proceeding shall be filed until: (i) the mediator declares an impasse, which declaration, in any event, shall be issued by the mediator not later than sixty (60) days after the initial mediation conference; or (ii) sixty (60) days has elapsed since the written mediation request was made in the event the other party refuses to or has not committed to attend mediation. The parties shall share the mediator's fee equally. The mediation shall be held in Orange County, Florida, unless another location is mutually agreed upon by the parties. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

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BRAS&GO-01

RDAVIS

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

10/05/2017

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER HRA Risk Services, LLC 3016 7th Avenue South Birmingham, AL 35233		CONTACT NAME: PHONE (A/C, No, Ext): (205) 879-1945 FAX (A/C, No): (205) 879-1946 E-MAIL ADDRESS:		
INSURED Brasfield & Gorrie, L.L.C. P.O. Box 10383 Birmingham, AL 35202		INSURER(S) AFFORDING COVERAGE		NAIC #
		INSURER A : The Travelers Indemnity Company		25658
		INSURER B : Travelers Property Casualty Co of America		25674
		INSURER C : The Travelers Indemnity Company of America		25666
		INSURER D :		
		INSURER E :		
INSURER F :				

COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> Contractual <input checked="" type="checkbox"/> Includes X, C, U GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:			VTC2K-CO-7852B663-IND-17	07/01/2017	07/01/2018	EACH OCCURRENCE \$ 2,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 500,000 MED EXP (Any one person) \$ 50,000 PERSONAL & ADV INJURY \$ 2,000,000 GENERAL AGGREGATE \$ 4,000,000 PRODUCTS - COM/OP AGG \$ 4,000,000
B	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY			VTC2J-CAP-5449B876-TIL-17	07/01/2017	07/01/2018	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
B	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$			VTSMJ-CUP-5800B505-TIL-17	07/01/2017	07/01/2018	EACH OCCURRENCE \$ 10,000,000 AGGREGATE \$ Aggregate \$ 10,000,000
C	<input checked="" type="checkbox"/> WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) <input type="checkbox"/> Y/N If yes, describe under DESCRIPTION OF OPERATIONS below		N/A	VTC2H-UB-3D450508-TIA-17	07/01/2017	07/01/2018	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Project: New Library and Events Center, 1050 W. Morse Blvd., Winter Park, FL 32780

City of Winter Park is named as additional insured as respects general liability and auto liability, as required by written contract.

CERTIFICATE HOLDER

CANCELLATION

City of Winter Park 401 South Park Ave Winter Park, FL 32789	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE

ACORD 25 (2016/03)

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city commission agenda item

item type	Consent Agenda	meeting date	11/27/2017
prepared by	Purchasing	approved by	
board approval	final vote		
strategic objective	Fiscal Stewardship		

subject

Approve the purchases over \$75,000:

1. Xylem Water Solutions, Inc. - FY18 purchases of Flygt Products for the maintenance of city lift stations; Sole source currently in place; \$75,000
2. Orange County Utilities - Water/Sewer services of unincorporated customers; Interlocal agreement currently in place; \$170,800
3. Landreth, Inc. - Sternberg decorative streetlights for the Denning Drive improvement project and Project G of the citywide undergrounding initiative; Sole source currently in place; Approved for funding by the CRA on 6/27/2016 and 11/13/2017, respectively; Not to exceed \$300,000

motion / recommendation

Commission approve items as presented.

background

There are sole sources and an interlocal agreement in place for these purchases.

alternatives / other considerations

N/A

fiscal impact

Total expenditures included in approved FY18 budgets.

ATTACHMENTS:

Description

Purchases over \$75,000

Upload Date

11/21/2017

Type

Cover Memo



city commission agenda item

item type	Purchases over \$75,000	meeting date	November 27, 2017
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	fiscal impact	motion recommendation
1.	Xylem Water Solutions, Inc.	Flygt Products for the maintenance of city lift stations.	Total expenditure included in approved FY18 budget. Amount: \$75,000	Commission approve the FY18 purchases from Xylem Water Solutions, Inc.
A sole source is currently in place for these purchases.				
2.	Orange County Utilities	Water/sewer services of unincorporated customers.	Total expenditure included in approved FY18 budget. Amount: \$170,800	Commission approve payments to Orange County in accordance with the agreement.
An interlocal agreement is currently in place between the City and Orange County.				
3.	Landreth, Inc.	Sternberg decorative streetlights for the Denning Drive improvement project and Project G of the citywide undergrounding initiative.	Total expenditure included in the approved FY18 CRA budget. Not to exceed \$300,000	Commission approve the purchases as presented.
Projects approved for funding by the Community Redevelopment Agency on June 27, 2016 and November 13, 2017, respectively. Total cost reflects estimates provided by the Electric Utility for the decorative lighting portions of the aforementioned projects. A sole source is currently in place for these purchases.				
Reflects estimate of				

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



city commission agenda item

item type	Action Items Requiring Discussion	meeting date	11/27/2017
prepared by	City Manager	approved by	
board approval	final vote		
strategic objective	Investment in Public Assets and Infrastructure		

subject

Library and Events Center Naming Policy

motion / recommendation

Approve the Library and Events Center Naming Policy.

background

The Library and Events Center is primarily funded by the voter approved bonds that have been issued in the amount of \$27,500,000, but the Commission charged the Library Board with the task of raising \$2,500,000 to meet the \$30,000,000 budget for the project.

The design for the project included some features that were not part of the original program requests for the facility. This includes a roof top venue on the Events Center, an outdoor amphitheater, a raked auditorium in the Library and a portico entry feature. These features are moving forward in the next phase of design but will only be built if funds are secured to include them.

The attached naming policy is proposed to set the parameters for using naming opportunities to help raise the \$2.5 million and the funds to cover the additional features.

The City has a current general naming policy but staff believes that one specific to this major project would better serve the situation. The existing policy is also attached.

alternatives / other considerations

Continue to use the existing naming policy.

fiscal impact

This policy will assist the Library and City with funding the full project.

ATTACHMENTS:

Description	Upload Date	Type
-------------	-------------	------

Proposed Naming Policy
Existing Naming Policy

11/21/2017
11/21/2017

Cover Memo
Cover Memo

CITY OF WINTER PARK (CWP) LIBRARY AND EVENTS CENTER NAMING POLICY
FACILITY NAMING POLICY – Library and Events Center and Complex

This policy sets forth the requirements and conditions that must be met by donors in order for their name, or a name they select, to be applied to a CWP Library or Events Center facility or the Complex as a whole. In all cases, final determination of whether any building, exterior or interior space may be named for an individual rests with CWP. Fundraising to accomplish naming of facilities shall be in partnership with the Winter Park Library Association (WPLA) and its board and leadership.

1. **General:** Donors who wish to name a building, addition to an existing building, interior space, or exterior space (herein sometimes collectively referred to as “facility”) of the Library and Events Center Complex (LECC) must agree to the terms of the gift in an irrevocable and enforceable pledge/gift agreement.
2. **Costs for Naming a Facility:** The Total Naming Cost of a facility in whole or in part/interior or exterior shall be determined by the City of Winter Park through the City Manager and Mayor in consultation with Library’s fundraising counsel. For larger items such as the Library Building, the Event Center Building and the Complex as a whole single donor naming rights must be at least 50 percent of the actual cost of the facility. With respect to the Rooftop Venue, the Belvedere and the Amphitheater - if approved at a later date- the cost for naming of these facilities shall be no less than 100 percent of the actual cost.

Final authority for naming a building or exterior space rests exclusively with the City of Winter Park which may choose to delegate this authority for certain portions of the Library and Events Center as needed. The CWP will take into consideration recommendations of the Board of Trustees of the WPLA. Furthermore, the CWP in partnership with the WPLA (through the Board of Trustees) shall create a “pre-approved list of naming opportunities” and the associated costs therefor. Staff of the WPLA and CWP may rely upon said menus and proceed with donors independent of consultation with the Board; however, the Board retains final naming authority of any new or existing building or exterior space at WPLA subject to approval by the City of Winter Park. Generally, naming rights shall not be granted “in perpetuity” but for the useful life of the structure subject to changed circumstances as noted in a written gift agreement.

3. **Approval of Exceptions.** All exceptions to the Naming Costs will be weighed against their future cost, as all exceptions granted weaken this policy, and any exception granted may be viewed by past or prospective donors as a precedent, making it more difficult to deny future requests for exceptions. Exceptions shall be approved by the City Manager for naming of facilities.
4. **Morals Clause.** If at any time the donor commits any act or becomes involved in any situation, or occurrence tending to degrade the donor in the community, or which brings the donor into public contempt or scandal, or which materially and adversely affects the reputation or business of the CWP or the WPLA, whether or not information in regard thereto becomes public, the CWP shall have the right to remove donor’s recognition rights as required pursuant to a previously executed pledge/gift agreement.
5. **Prior Names.** Prior names on existing facilities will not carry over to the new Library and Events Center or the Complex as a whole. All donor pledges and gift agreements shall specifically acknowledge that any naming of all or a portion of the Library, the Events Center, or the Complex as a whole are limited to this project only and will not be carried forward to other, future facilities.
6. **City and Library Partnership.** The City and the Library Board and Leadership will work in tandem on this joint project owned by the City. The City and the Library and the Library Board agree that all donor solicitations shall be conducted so as to preclude multiple parties soliciting contributions from the same potential donor. The City and the Library Board and Leadership acknowledge the Library’s commitment to raise \$2,500,000 towards this project. Funds may be contributed to either the Winter Park Public Library Association or to the Foundation

established by the City provided that in the case of the City Foundation, contributed funds shall count towards the Library's commitment unless a donor specifies otherwise. Funds raised for naming the Amphitheater, Rooftop Venue, Raked Auditorium, Belvedere and Portico will first be applied to the additive cost thereof and any excess above their actual cost shall be credited to the Library's \$2,500,000 commitment.

DRAFT

CITY OF WINTER PARK
NAMING OF CITY OWNED FACILITIES POLICY

Adopted by City Commission 5/9/05

Naming opportunities are generally identified and priced on a project by project basis. However, they commonly follow these guidelines:

1. Monetary Criteria:

- a.) Projects over \$5,000,000 will be considered on a project by project basis.
- b.) Projects totaling between \$3,000,000 - \$5,000,000
 - Minimum donation- whichever is greater.
 - \$1,000,000 minimum
 - Must be 1/3 of the full cost of the construction.
- c.) Projects totaling between \$1,000,000- \$3,000,000
 - Minimum donation- whichever is greater.
 - \$500,000 minimum
 - Must be at least ½ of the full cost of the construction.
- d.) Projects totaling under \$500,000 will require a full 100% donation.

* Should there be more than one donor; consideration will be given to the lead donor.

2. Naming Criteria:

- a.) Should be in honor of an Individual:
 - Should be the name of a person.
 - Should have a significant tie to the City of Winter Park
 - Should have made significant contributions to the history. Progress, development, and/or culture of Winter Park during his/her lifetime.
 - Must be deceased and have been a resident at the time the contributions were made.
 - Should be directly associated with the existing building or site to be (re)named.

3. Room Naming Criteria:

- a.) Should be in honor of individual or of a Civic Organization.
 - Group or person should have a significant tie to the City of Winter Park.

* The donation required for the naming of rooms within a building will be considered on a project by project basis.

The payment period for a major gift varies from immediate full finding to a multi-year pledge period generally not to exceed five years. Multi-year pledges require annual proportional payments. For example, a five year pledge is paid at a minimum of 1/5 of the pledge amount each year.

Ideally pledges are non-revocable and tied to an estate commitment if not paid prior to a donor's death.

Adopted 4/19/2005
Parks and Recreation Commission

Adopted 5/9/2005
City Commission



city commission agenda item

item type	Public Hearings	meeting date	11/27/2017
prepared by	Purchasing	approved by	City Manager, City Attorney
board approval	final vote		
strategic objective	Fiscal Stewardship		

subject

Resolution - Adopting a Procurement Policy

motion / recommendation

Commission approve revised Procurement Policy.

background

The current Purchasing Policy was adopted by the City Commission on October 13, 2014. Since then, additional rules and regulations have been implemented for federal and grant funding, as well as improving our internal procedures. We recognized it would be beneficial to revise our policy and procedures to incorporate those changes.

The proposed policy now incorporates Florida State Statutes Chapter 112, Part III, Code of Ethics for Public Officers and Employees. Minority and Women Owned Businesses are also included which states that minority businesses shall have an equitable opportunity to participate in the city's procurement process. FEMA has revised their requirements for reimbursement eligibility and these changes will keep the city compliant with the new guidelines. Once implemented in the policy and solicitation documents, the city will not be required to perform another formal procurement process during times of emergency in order to be eligible for reimbursement.

In an effort to improve efficiency, this policy would allow the Procurement Manager to have signature authority for purchases which do not exceed one year in term or ten thousand dollars. The City Manager's signature authority will remain the same. Additionally, the small purchase threshold has been revised to the federal requirements. An ordinance to incorporate the signature authority is included with this agenda.

Below is a summary of the modifications for consideration and approval.

Section 3.1 – Procurement Thresholds

- Category 1 – Purchases up to \$3,000 are considered small dollar purchases and may be purchased from any available source without seeking quotes.

- Category 2 - \$3000.01 - \$10,000 – 2 written quotes
- Category 3 - \$10,000.01 - \$50,000 – 3 written quotes
- Category 4 - \$50,000.01 - \$75,000 - require formal solicitation
- Category 5 – Purchases > \$75,000 – require formal solicitation and Commission approval

Section 3.2 – Approval Authority

- City Manager – Approval and signature authority remains the same (Category 4).
- Procurement Manager – approval and signature authority for Category 2 purchases and agreements. (Term of agreement cannot exceed 1 year).
- Planning and Community Development Director – Changed from CRA Manager to Planning & Community Development Director and City Manager approval authority.

Section 5.1 – Ethics and Code of Conduct

Incorporates Florida State Statutes Chapter 112, Part III, Code of Ethics for Public Officers and Employees.

Section 5.3 – Protest and Appeals

Included a non-refundable filing fee of \$250. Protestor is also required to pay 5% of the anticipated contract award dollar amount or \$1,250 if the amount cannot be determined, when filing the protest (not to exceed \$10,000).

Section 7.1 – Minority and Women Owned Businesses

Added the following language:

Minority businesses shall have an equitable opportunity to participate in the city's procurement process. The city reserves the right to set aside a percentage of the total amount of funds allocated for the procurement of personal property and services for the purpose of entering into contracts with minority business enterprises. All contracts shall be competitively solicited.

Section 7.3 – Sustainable Procurement

Added the following language:

It shall be a provision of this Policy to support the purchase of recycled and environmentally preferred products, when practical, in an effort to minimize environmental impacts of the goods and services procured by the city. In the context of this provision, "practical" is defined as goods and services that are sufficient in performance and reasonably available at a reasonably competitive cost.

Nothing in this provision or in the procedure shall be construed as requiring the purchase of products that do not perform adequately and/or are not reasonably available at a reasonable cost.

The City Attorney has reviewed and approved these changes.

alternatives / other considerations

Continue operating under existing policy.

fiscal impact

Procurement policies protect the integrity and process by which government agencies acquire goods and services. No direct change in budgeted dollars is anticipated from this change however there will be efficiency improvements in productivity and workflow streamlining.

ATTACHMENTS:

Description	Upload Date	Type
Procurement Policy resolution	11/21/2017	Cover Memo
Policy	11/21/2017	Cover Memo

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY OF WINTER PARK, FLORIDA,
ADOPTING A PROCUREMENT POLICY; PROVIDING FOR
CONFLICTS AND AN EFFECTIVE DATE.**

WHEREAS, the City Commission is authorized to adopt regulations and policies governing City procurement in accordance with Section 2-188 of the City Code, as well as the City Commission's inherent authority as the governing board of the City; and

WHEREAS, the City Commission desires to adopt a procurement policy, and finds that such will benefit the City and its residents.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF WINTER PARK, FLORIDA:

SECTION 1. Recitals. The foregoing recitals are hereby ratified and confirmed as being true and correct and are hereby made a part of this Resolution.

SECTION 2. Procurement Policy. The City hereby adopts the City of Winter Park Procurement Policy attached to this Resolution (the "Procurement Policy"), which shall govern all matters described therein.

SECTION 3. Conflicts. In the event of a conflict or conflicts between this Resolution or the Procurement Policy and any other resolution or policy, this Resolution and the Procurement Policy control to the extent of the conflict. The Procurement Policy adopted by this Resolution shall supersede and replace the previous version of the Procurement Policy.

SECTION 4. Effective date. This Resolution and the Procurement Policy shall become effective immediately upon adoption of this Resolution by the City Commission of the City of Winter Park, Florida.

ADOPTED this ____ day of _____, 2017, by the City Commission of the City of Winter Park, Florida.

CITY COMMISSION
CITY OF WINTER PARK

Steve Leary, Mayor/Commissioner

ATTEST:

Cynthia Bonham, City Clerk



Procurement POLICY

approval TBD
by City Commission

Purchasing Division

401 S. Park Ave. ■ Winter Park, FL 32789 ■ p 407-643-1627 ■ f 407-599-3448
purchasing@cityofwinterpark.org ■ cityofwinterpark.org/purchasing



MISSION

The Procurement Division is committed to safeguarding the integrity of the procurement process and identifying resources to provide the highest quality of goods and services to better serve the community.

GOVERNING AUTHORITY

The Procurement Division shall be responsible for the implementation and administration of this Policy. Subject to the provisions of this Policy, the Procurement Manager shall serve as the principal office for the procurement of all goods and services required by the city.

All changes to this Policy require the approval of the City Commission. This Policy supersedes all previously adopted purchasing policies.

1.1 PURPOSE

This Policy establishes a centralized procurement system for the City of Winter Park the purpose of which is to:

- Establish the rules governing procurement by the City of Winter Park;

- Promote public confidence in the integrity and transparency of the procedures followed to procure the goods and services required by the city;

- Ensure fair and equitable treatment of all persons who participate in the procurement system;

- Maximize economy in procurement activities and, to the fullest extent possible, the purchasing value of city funds.

1.2 OBJECTIVES/APPLICATION

This Policy applies only to contracts for procurement by the city of goods and services and to amendments, extensions and renewal thereof, solicited or entered into after the effective date of this Policy. Nothing in this Policy shall prevent the city from complying with the terms and conditions of any grant, gift, bequest, or loan, or for any cooperative agreement with any local, state or federal agency, and to the extent this Policy or the Procurement Procedures Manual is inconsistent with any such terms and conditions, such terms and conditions shall take precedence. In the event of a conflict between these enumerated policies and procedures and those statutory bidding requirements expressly applicable to municipalities, such statutory bidding requirements shall control to the extent that such conflict exists.



1.3 CHANGES IN LAWS AND REGULATIONS

In the event an applicable law or regulation is modified or eliminated, or a new law or regulation is adopted, the revised law or regulation shall, to the extent inconsistent with this Policy, automatically supersede this Policy.

1.4 SEVERABILITY

If any section of this Policy, or any application thereof, to any Person or circumstance is held invalid, such invalidity shall not affect other sections or applications of this Policy, which can be given effect without the invalid section or application, and to this end, the sections or applications of this Policy are declared to be severable.

1.5 CONFIDENTIAL INFORMATION

Confidential information shall be administered in accordance with the Public Records Act, Chapter 119, Florida Statutes, as amended.

1.6 GOVERNING RULES/GUIDELINES

The terms and provision of the Procurement Policy shall be deemed by operation of law to be a part of the term and conditions of each procurement, purchase order and contract involving the City of Winter Park as a part, except to the extent that an authorized official has expressly provided for a written exception to one or more of the requirements provided for in the Procurement Policy with respect to a particular procurement, purchase order or contract.

All city departments/division shall be in accordance with this Procurement Policy, unless otherwise governed under a specific policy.

Note: No item or service is to be ordered, received or paid for without a Purchase Order, Emergency Purchase Order or Purchasing Card.

Unless otherwise required by law, or as specifically exempted in paragraph below, city contracts for goods and services shall not exceed an initial term of three years. A renewal clause extending the term for up to two, one year periods may be provided.

Every purchase requisition or contract shall be properly financed and budgeted. Dividing or breaking up procurements into two (2) or more purchases to circumvent the required competition, authorized limits, or approval process, is expressly prohibited.



Wherever used in this Policy or in the Procurement Procedures Manual, the following terms have the meanings indicated which are applicable to both the singular and plural thereof and all genders:

Agency: A state agency, a municipality, a political subdivision, a school district, or a school board.

Best Value: The highest overall value based on factors that include, but are not limited to, price, quality, design, time, and workmanship.

Bid: A formal written price offer from a vendor to the city to furnish goods, products or services.

Consultants' Competitive Negotiations Act (CCNA): Section 287.055 of the Florida Statutes, as may be amended from time to time, governing the procurement of architectural, engineering, landscape architecture, and registered surveying and mapping services.

Contractor: Any person or entity (including officers, directors, executives and shareholders who are active in the management of a person or entity) who bids or applies to bid on any work of the city, or who provides (or solicits to provide) goods or professional services to the city. For purposes of this Policy, Contractor and Vendor may be used interchangeably.

Contractual Services: The rendering by a contractor of its time and effort rather than the furnishing of specific commodities. The term applies only to those services rendered by individuals and firms who are independent contractors, and such services may include, but are not limited to, evaluations, consultations, accounting, security, management systems, management consulting, educational training programs, research and development studies or reports, and technical and social services. Contractual Services does not include any contract for furnishing of services, labor or materials for the construction, renovation, repair, modification, or demolition of any roadway or bridge, building, portion of building, utility, or structure.

Cooperative Purchasing: Procurement conducted by or on behalf of more than one public procurement unit or agency.

Demand Contract: A contract under which a contractor/vendor agrees to provide goods or services on a demand basis.

Emergency: A reasonably unforeseen breakdown in machinery, damage, destruction or obstruction of machinery or roadway or any property owned or operated by the city; a threatened termination of an essential service; the development of a dangerous condition; the development of a circumstance causing the stoppage or slowdown of an essential service; a threat to the public health, welfare or safety; or the opportunity to secure significant financial gain, or avoid significant financial loss, through immediate or timely action.



Exceptional Purchase: Procurement of commodities or contractual services excepted by law or rule from the requirements for competitive solicitation, including, but not limited to, purchase from a single source, purchases upon receipt of less than two responsive bids, proposals, or replies.

Firm: Any individual, firm, partnership, corporation, association, or other legal entity permitted by law to practice architecture, engineering, or surveying and mapping in the state.

Invitation for Bid (IFB): A written or electronically posted solicitation for competitive sealed bids.

Invitation to Negotiate (ITN): A written or electronically posted solicitation for competitive sealed replies to select one or more vendors with which to commence negotiations for the procurement of commodities or contractual services.

Minor Irregularity: A variation from the solicitation procedure that does not affect the price of the contract or does not give an offeror an advantage or benefit not enjoyed by other offerors, or does not adversely impact the interests of the contracting party.

Procurement: Buying, purchasing, renting, leasing or otherwise acquiring any goods or services for public purposes in accordance with the law, rules, regulations and procedures intended to provide for the economic expenditure of public funds. It includes, but is not limited to, all functions which pertain to the obtaining of any supplies, materials, equipment and/or services, including Contractual Service, Design Professional Services, and Professional Services, construction projects and capital improvement projects required by the city regardless of the source of funds.

Professional Services: The value of services which are substantially measured by professional competence of the firm performing them and which are not susceptible to realistic evaluation/assessment by cost of services alone. Professional Services shall include but are not limited to, services customarily rendered by attorney, certified public accountants and insurance, financial, personnel, public relations firms, legislative advisors, systems, planning and management advisors. For purposes of this Policy, Professional Services shall not include services customarily rendered by architect, landscape architects, professional engineers and registered surveyors and mappers.

A/E (Architect or Engineer) Professional Services: Services within the scope of the practice of architecture, professional engineering, landscape architecture, or registered surveying and mapping, as defined by the laws of the state, or those performed by any architect, professional engineer, landscape architect, or registered surveyor and mapper in connection with his or her professional employment or practice

Renewal: Contracting with the same contractor for an additional contract period after the initial contract period, only if pursuant to contract terms specifically providing for such renewal.



Request for Information (RFI): A written or electronically posted request made by an agency to vendors for information concerning commodities or contractual services. Responses to these requests are not offers and may not be accepted by the agency to form a binding contract.

Request for Proposal (RFP): A written or electronically posted solicitation for competitive sealed proposals.

Request for Qualification (RFQ): Used to obtain statements of qualification of potential development teams or consultants.

Request for Quote (RQ): A small order amount procurement method.

Responsive Bid/Proposal/Reply: A bid, or proposal, or reply submitted by a responsive and responsible vendor which conforms in all material respects to the solicitation.

Responsible Vendor: A vendor that has submitted a bid, proposal, or reply that conforms in all material respects to the solicitation.

Sole Source: A procurement in which only one vendor is capable of supplying the goods or services, one is selected for substantial reasons, eliminating the competitive bidding process.

Standardization: The adoption of a single product or group of products to be used by different organizations or all parts of one organization.

Vendor: See "Contractor".



3.1 PROCUREMENT THRESHOLDS

The following procurement thresholds are hereby established. Procurements covered by this Policy shall not be divided into more than one purchase order, project or contract solely for the purpose of avoiding the process required by these levels. Additionally, quotes received that would result in a purchase at a higher Procurement Threshold than originally estimated shall be discarded and the process shall begin again according to the requirements of the higher level. The procurement process for each level is detailed in the Procurement Procedures Manual.

CATEGORY ONE: PURCHASES UP TO \$3,000

Purchases in this category may be procured from any available sources without seeking competitive pricing, although competition shall be used to the maximum extent practical. The user department may secure the necessary pricing on its own or request the assistance of the Procurement Division. The Procurement Manager is authorized to approve all purchases at this level.

CATEGORY TWO: PURCHASES OF \$3,000.01 TO \$10,000

Purchases in this category require two written quotes.

CATEGORY THREE: PURCHASES OF \$10,000.01 TO \$50,000

Purchases in this category require three written quotes.

CATEGORY FOUR: PURCHASES OF \$50,000.01 TO \$75,000

Except in the case of an emergency, purchases in this category shall follow either the competitive sealed bid or competitive sealed proposal process as determined by the Procurement Manager. City Manager approval is required for award of any subsequent contract resulting from the procurement.

CATEGORY FIVE: PURCHASES OF >\$75,000

Except in the case of an emergency, purchases in this category shall follow either the competitive sealed bid or competitive sealed proposal process as determined by the Procurement Manager. City Commission approval for award of any subsequent contract resulting from the procurement is required.

The City Commission, City Manager or his designee may waive formal bidding procedures when it is deemed advantageous to the city.

The responsibility for the administration of procurement activities covered by this Policy is vested in the Procurement Division who shall at all times and in all situations follow the requirements set forth in the Procurement Procedures Manual. Should a procurement issue arise that is not covered by this Policy or the Procedure Manual, the Procurement Manager shall resolve the issue, to the best of his or her ability in a manner that is consistent with the purpose and intent of this Policy and in the best interests of the city.



The Procurement Procedures Manual shall be reviewed annually and revised as necessary to reflect the current business needs of the city.

The City Manager is authorized to approve revisions to the Procedures Manual unless the revisions result in, or require a revision to the Procurement Policy. If such is the case, prior Commission approval of the revisions to the Policy will be required before the revisions to the Procedures Manual can be implemented.

Specific responsibilities and function of the Procurement Division include:

- Developing procurement objectives, policies and procedures to purchase and contract for all materials, supplies, equipment, and services including construction, maintenance, architectural, engineering and other professional and contractual services required by the city;
- Working with other city departments to establish standardization of materials, supplies, equipment and services where practical within a competitive environment;
- Promote and maintain goodwill between the city and its vendors, suppliers and contractors, encouraging full and open competition wherever possible, assuming fair and equitable business dealings with all vendors and contractors, and providing equal opportunity to quote and compete in public bidding;
- Ensuring that all purchases are made in compliance with the applicable statutes, rules, regulations and policies;
- Handling complaints and warranties regarding purchases, and negotiating the return of merchandise and/or other settlements;
- Training city personnel regarding procurement and contracts procedures as needed, and;
- Managing the policy, and operational procedures for the Purchasing Card Program;
- Monitor and maintain Local Preference Policy;
- Monitor and maintain Travel Policy;
- Sell, trade, or otherwise dispose of obsolete materials.



Notwithstanding anything in this Policy to the contrary, in connection with any procurement by the city of services related to a potential capital markets transaction to which the city may be a part, including, without limitation, the issuance of bonds or other debt instruments or the entry by the city into derivative financial arrangements, the City Manager may direct, as he or she deems it to be in the best interests of the city, that the city procure such services in a manner customarily employed by state and other local governmental entities.

The City Manager shall ensure that any such alternate means of procurement is done in a fair and objective manner and in as competitive a manner as is practicable under the circumstances. Services that may be procured by such alternate means include, without limitation, credit enhancement or reserve sureties and other similar services.

3.2 APPROVAL AUTHORITY

3.2.1 CITY COMMISSION

The City Commission has the right to award all Commodities, Services, Construction, Agreements and/or Contracts except as otherwise provided in this policy. Except for emergency purchases, all Commodities, Services, Agreements and/or Contract awards exceeding seventy-five thousand dollars (\$75,000) and/or multi-year initial contract term, shall be approved by the City Commission prior to execution, unless otherwise provided by City Commission action. Said amount shall be established based on the entire compensation amount during the term of the contract. The Mayor (or Vice Mayor in the Mayor's absence) or City Manager shall each have the authority to execute on behalf of the City contracts approved by the City Commission. Once approved by the City Commission, the City Manager shall have authority to execute any amendments and/or renewals which do not increase the annual amount or contract price of the contract as approved by the City Commission.

To the extent not prohibited by general law, the City Commission may, by majority vote, waive the formal procurement procedures contained in the City's procurement policies for the procurement of a particular good, material, equipment or service if the City Commission deems such waiver to be in the best interest of the City. All requests for a waiver of the formal procurement procedures shall go through the Procurement Manager and City Manager before such request is placed on the agenda for City Commission consideration.

3.2.2 CITY MANAGER

The City Manager shall have the authority to award and execute purchases for all Commodities, Services, Construction, Agreements and/or Contracts and/or Amendments that do not exceed seventy-five thousand dollars (\$75,000) with a maximum term of one (1) year. This limitation shall be established based on the entire compensation amount during the term of the contract.



The City Manager shall have the authority to approve all renewals and amendments of previously awarded contracts so long as the compensation amount does not exceed the annual amount of seventy-five thousand dollars (\$75,000) or a maximum term of one (1) year.

The City Manager shall have the authority to execute Task Authorizations for continuing service contracts that do not exceed seventy-five thousand dollars (\$75,000) or a maximum term of one (1) year.

3.2.3 PROCUREMENT MANAGER

The Procurement Manager shall have the authority to award and execute purchases for all Commodities, Services, Construction Agreements and/or Contracts, or Amendments that do not exceed ten thousand dollars (\$10,000). This limitation shall be established based on the entire compensation amount during the term of the contract.

The Procurement Manager shall have the authority to approve all renewals and amendments of previously awarded contracts so long as the compensation amount does not exceed the annual amount of ten thousand dollars (\$10,000).

3.2.4 PLANNING & COMMUNITY DEVELOPMENT DIRECTOR

Purchases through the Community Redevelopment Agency shall be made in accordance with this policy. The CRA Agency will adopt a budget which includes project specific appropriations. The Planning and Community Development Director and City Manager shall have the authority to award and execute purchases that do not exceed seventy-five thousand dollars (\$75,000) with a maximum term of one (1) year, specifically for CRA Funds.

Purchases above the Director's signature authority that have been previously approved by the CRA Agency in their adopted budget, will be approved by the CRA Agency, and shall be executed by the CRA Agency Chairman.

3.3 AUTHORIZATION TO ESTABLISH PROCEDURE

The City Manager shall:

- Have the authority to adopt operational procedures, consistent with this Policy and in accordance with any applicable city code, federal law and/or Florida Statutes as amended, governing the Procurement and management of all goods, services and construction by the city.



- Approve operational procedural changes prior to implementation.



The Procurement Manager shall:

- Oversee the procurement of all goods, services and construction required by the city.
- Administer the procurement functions necessary to procure and account for the Commodities and services to support city activities in accordance with codes, policy, regulations, all applicable Federal laws and State Statutes and approved budgetary funds.

The Procurement Manager shall have the authority to waive minor irregularities in responses to formal solicitations.



4.1 SOURCE SELECTION

The Procurement Division has the authority to determine the source selection, unless otherwise exempt from the competitive procurement process as identified in section 4.9. The procurement of Categories 4 and 5 for goods and services shall be made using the appropriate procurement process as follows. The specifics of each process are included in the Procurement Procedures Manual.

- A. *Competitive Sealed Bids*: An invitation to bid shall be issued which shall include the specifications and appropriate contract terms and conditions applicable to the procurement.
- B. *Competitive Sealed Proposals*: When it is determined by the Procurement Manager that the use of competitive sealed bidding is either not practical or not advantageous to the city due to the technical or specialized nature of the goods or services being procured, the competitive sealed proposal process may be used.
- C. *Selection of Design Professional Services*: Design Professional Services, as governed by F.S. §287.055 (Consultants' Competitive Negotiation Act or "CCNA"), shall be acquired through the Procurement Division in accordance with the procedures detailed in the Procurement Procedures Manual.
- D. *Reverse Auction*: Real-time bids or responses on designated supplies or services, also referred to as e-auction.
- E. *Sole Source*: A procurement in which only one vendor is capable of supplying the goods or services, one is selected for substantial reasons, eliminating the competitive bidding process.
- F. *Financial Auditor*: Financial Auditors, as governed by F.S. §218.391 and the City Charter shall be acquired through the Procurement Division in accordance with the procedures detailed in the Procurement Procedures Manual.

4.2 CONE OF SILENCE / LOBBYING BLACKOUT PERIOD

A Cone of Silence / Lobbying Blackout Period begins upon issuance of a solicitation. For awards requiring City Commission approval, the Cone of Silence/Lobbying Blackout period concludes at the meeting which the City Commission will be presented the award(s) for approval or a request to provide authorization to negotiate a contract. However, if the City Commission refers the item back to the City Manager and/or Procurement Division for further review or otherwise does not take action on the item, the Cone of Silence/Lobbying Blackout Period will be reinstated until such time as the City Commission meets to consider the item for action. The Cone of Silence/Blackout Period for award requiring the City Manager approval concludes upon issuance of a Notice of Intent to Award.



Lobbying of evaluation committee members, city employees, or elected officials regarding any type of formal solicitation or contract, during the selection process, or bid protest, by the bidder/proposer/protester or any member of the bidder's/proposer's staff, an agent of the bidder/proposers/protester, or any person employed by an legal entity affiliated with or representing an organization that has responded to a formal solicitation or contract or has a pending bid protest is strictly prohibited either upon publication of the formal solicitation until either an award is final of the protest is finally resolved by the city. Nothing herein shall prohibit a prospective bidder/proposer from contacting the Procurement Division to address situations such as clarification and/or questions related to the procurement process as outlined in the formal solicitation documents.

For purposes of this provision, lobbying activities include but are not limited to, influencing or attempting to influence action or non-action in connection with any formal solicitations or contract, through direct or indirect oral or written communications, or an attempt to obtain goodwill of persons and/or entities specified in this provision. Such actions may cause any formal solicitation or contract to be rejected.

4.3 ADDITIONAL REQUIRED APPROVALS

The following requests for purchases and service must receive additional approvals prior to an approved purchase:

- A. The Fleet Maintenance Division must approve all vehicles, motorized equipment, roadway equipment, and all other related purchases. Allow for sufficient time for the approval process. The Procurement Division will process all such orders.
- B. The Information Technology Department must approve all requests for computer hardware, software, and all other technology related purchases. Allow sufficient time for the approval process. The Procurement Division will process all such orders.
- C. The Communications Department must review and approve all clothing/uniforms, marketing materials, products, graphics, promotional items, or branding for both internal and external use of the official city seal, logo, or branding prior to production or use.
- D. The Risk Management Division must approve all safety related and hazardous material purchases. Allow for sufficient time for the approval process.
- E. City Management shall review and approve all requests for new wireless device purchases and activations.



4.4 AWARD, CANCELLATION OR REJECTION OF SELECTION

Award – No award shall be final and no contract shall be created or deemed to exist until such time as a written contract has been executed by the selected vendor/contractor and city and, if required, the approval of City Commission has been obtained.

- A. *Cancellation of Solicitations* – At any time prior to final award and contract execution, a solicitation or contract award may be cancelled or rescinded, or any or all responses received by the city may be rejected by the Procurement Manager, in whole or in part, when it is determined by the Procurement Manager and City Manager that such action is in the best interest of the city.
- B. *Notice* – A written notice of delay, cancellation or rejection shall be posted or sent to all persons who submitted a response to a solicitation.
- C. *Public Records* – If all solicitations are rejected or a solicitation is cancelled, all solicitation submittals received may remain confidential, at the discretion of the Procurement Manager, in accordance with Chapter 119, Florida Statutes, as amended.
- D. *Contract* - After the contract award is made, the City and the selected bidder/proposer will enter into a contract incorporating the requirements of the applicable procurement solicitation and with other terms acceptable to the City. The City reserves the right to negotiate the terms and conditions of the contract with the selected bidder/proposer and to incorporate provisions acceptable to the City. The City has the right to rescind the contract award to the selected bidder/proposer if the City and the selected bidder/proposer do not agree upon the contract terms. The City reserves the right to reject a bidder/proposer, even a bidder/proposer awarded the contract, at any time prior to full contract execution.
- E. *Post Award Termination* - Unless otherwise prohibited by law, in the event the bidder/proposer/contractor who is awarded a contract by the City through formal procurement is terminated early or suspended from further work or services by the City for a default in the performance under the contract, or in the event the City rescinds a contract award to the selected bidder/proposer prior to execution of a contract, the City may, without commencing a new competitive procurement process and without waiving any rights or remedies against the defaulting bidder/proposer/contractor (if applicable), contract with the next lowest responsive and responsible proposer or next lowest bidder that is willing and able to complete the work or services if such is determined by the City Commission to be in the City's best interest. In awarding a contract to the next lowest responsive and responsible proposer or next lowest bidder that is willing and able to complete the work or services, the city may accept such bidder's/proposer's original proposal pricing or negotiate a price more consistent with the original pricing submitted by the defaulting bidder/proposer/contractor or the bidder/proposer whose contract award was rescinded.





- F. In accordance with Florida Statute 287.087, a firm certified as having implemented a drug-free workplace program shall have precedence in the award of a tie bid. In the event that both or neither firm certifies that it has implemented a drug-free workplace program, local preference will be invoked and award will be made to the firm closest in proximity, or at the discretion of the City Manager or designee.
- G. If less than two responsive bids, proposals, or replies for commodity or contractual services purchases are received, the city may negotiate on the best terms and conditions. The city shall document the reasons that such action is in the best interest of the city in lieu of resoliciting competitive sealed bid, proposals, or replies.

4.5 OWNER DIRECT PURCHASE (ODP)

Pursuant to Florida Statute 212.08(6), the city may exercise the option to utilize Sales Tax Recovery for construction projects, renovation projects or other purchases as needed to take advantage of the city's Sales Tax exemption status. It may be determined prior to the issuance of a solicitation if the use of Sales Tax Recovery will be utilized, and nothing herein shall prohibit the city from deleting items within the solicitation and procuring said items directly from a supplier in an effort to benefit the city.

When Sales Tax Recovery is utilized, the city will utilize the awarded Vendor's suppliers and shall place Purchase Orders for the purchase of the supplies needed by the awarded Vendor without further competition, who shall take receipt of such supplies, and shall utilize said supplies on the awarded project. The city shall pay all invoices associated with the Purchase Orders and shall deduct the invoice cost plus the sales tax from the Contract amount.

For contracts awarded through the formal solicitations process, owner direct purchases shall be coordinated with the awarded contracts, and the City Manager shall have approval authority.

4.6 EMERGENCY PROCUREMENTS

The City Manager may make or authorize others to make Emergency Procurements of Goods, Services, or Construction, when a threat to public health, welfare, or safety exists, or a situation exists which makes compliance with source selection methods contrary to public interest; provided that such Emergency Procurements shall be made with such competition as is practicable under the circumstances.

In the event an official state of emergency has been declared, the City Manager is expressly authorized to execute contracts with the State of Florida, Federal Emergency Management Agency (FEMA) and/or other applicable emergency relief entities on behalf of the city in order to accomplish all necessary relief efforts, provided that the requirements of this section have been met. The City Manager shall report to the City Commission any emergency procurements exceeding his purchasing authority threshold at the next City Commission Meeting.



4.7 TERMINATION OF CONTRACT

A termination of a contract can either be for convenience or default as described and detailed in the Procurement Process Manual. In a breach of contract where the vendor/contractor has willfully failed or refuses to perform according to the terms of the contract, the city may determine that the breach does not warrant that the contract be terminated. In such cases, the Procurement Manager will advise the vendor/contractor citing the finding of breach as detailed in the Procurement Procedures Manual. At the discretion of the Procurement Manager, with the concurrence of the City Manager, a contractor terminated for default, or a contractor with multiple breach of contract notifications, may be disqualified from bidding or proposing on city contracts.

4.8 BID SECURITY AND CONTRACT PERFORMANCE BONDS

- A. *Bid Security* - The city may require bid security for solicitations for construction, goods or service contracts as the Procurement Manager deems appropriate in the best interest of the city, in such form and content as is satisfactory to the Procurement Manager.
- B. *Contract Performance and Payment Bonds* - Contract performance and payment bonds may be required for construction, goods or service contracts as the Procurement Manager deems appropriate in the best interest of the city.
- C. *Authority to Require Additional Bonds or Accept Other Security* - Nothing in this section shall be construed to limit the authority of the Procurement Manager to require or accept other bonds or other forms of security in lieu of, or in addition to, the bonds specified in this section.

Bonds shall conform to the minimum standards as set forth in Florida Statutes Chapter 255, Section 255.05(1)(a) and be in a form and with terms acceptable to the City.

4.9 EXEMPTIONS FROM COMPETITIVE PROCUREMENT PROCESS

To the extent indicated and unless otherwise required by general law, the following are exempt from the competitive requirements of this Policy:

- A. Agreements approved by the City Commission between the City and non-profit organizations or governmental entities including the procurement, transfer, sale or exchange of goods and/or services;
- B. Dues and memberships in trade or professional organizations;
- C. Subscriptions for periodicals;
- D. Used equipment;



- E. Regulated Services: Telephone, electricity, natural gas and water, or similar services where rates or prices are fixed by legislation or by federal, state, county or municipal regulations.
- F. Abstracts of titles for real property; title insurance for real property; acquisition, sale or disposal of real property or real property interest;
- G. Copyrighted materials; patented materials;
- H. Artistic Services: The rendering by a contractor of its time and effort to create or perform an artistic work in the fields of music, dance, drama, folk are, creative writing, painting, sculpture, photography, graphic arts, craft arts, industrial design, costume design, fashion design, motion pictures, television, radio, or tape and sound recording.
- I. Employment agreements; Collective bargaining agreements;
- J. Medical services;
- K. Job-related travel; seminars; tuition; registration fees and training
- L. Service required by proprietary ownership such as CSX Railroad carrier, original equipment manufacturers (OEM)
- M. Sole Source Purchases;
- N. Emergency Purchases: The Procurement Manager (or higher authority in the absence of the Procurement Manager) is authorized to approve emergency purchases up to the limit for Procurement Category THREE. Emergency Purchases at Procurement Level FOUR require approval by the City Manager (or designee). All Emergency Purchases at Procurement Level FIVE shall be submitted to the Commission for approval at the next scheduled Commission meeting, if possible.
- O. Purchase of construction materials included in the scope of an awarded construction contract in order to realize sales tax savings, in accordance with Section 212.08(6), F.S.;
- P. Cooperative Purchases or "Piggybacking": Purchases for goods or services from State of Florida or Federal GSA Contracts as well as contracts awarded by any state, county or municipal governments (and any other governmental agency or political subdivision), state colleges and universities, or national government agency, cooperative procurement organizations or procurement associations.
- Q. Items purchased for resale to the general public;
- R. Advertisements; Publication of notices;



- S. Postage; Expedited delivery services (e.g. FedEx, UPS, USPS);

The Procurement Manager may authorize the purchases, transactions and expenditures listed above subject to the stated limitations. Certain procurements for the above categories may be obtained via competitive means when it is determined that adequate sources for the goods or services required are available or it is determined to be in the City's best interest. Exemption for the competitive procurement process does not grant exemption from all procurement procedures, i.e.: sole source purchases, and cooperative purchases shall be subject to the approval process for amendments as described above. All amendments to exempt procurements not otherwise specifically addressed shall be reviewed in advance by the Procurement Manager for a determination as to whether Commission approval is required.

4.10 LOWEST, RESPONSIBLE AND RESPONSIVE BIDDER

When procurement involves the determination of the lowest responsible and responsive bidder or proposer, in addition to price, the City shall have the discretionary power to render decisions on and may accept or reject bids or proposals on the basis of any one or more of the following:

1. The ability, capacity, skill and sufficiency of resources of the bidder to perform the contract and provide the requested materials or service.
2. The bidder's ability to perform the contract within the time specified.
3. The character, honesty, integrity, reputation, judgment, experience and efficiency of the bidder.
4. The quality of performance and conduct of the bidder on previous contracts with the City or any other reference or party that the bidder has performed work or services.
5. A bidder's propensity to request change orders based on bidder's conduct under previous contracts with the City.
6. A bidder's previous failure to meet specified substantial completion dates or other milestone dates on previous contracts with the City.
7. A bidder's current workload and projected workload during the performance of the contract.
8. The previous and existing compliance by the bidder with federal, state and local laws, regulations and ordinances applicable, relating or similar to the contract or work to be performed; to include, but not limited to laws, regulations and ordinances



of State of Florida, local governments, FDEP, FDOT, Water Management District, and OSHA.



9. The quality, availability and adaptability of the supplies or professional or contractual services to the particular use required.
10. The ability of the bidder to provide future maintenance and service on the matter procured and the financial impact upon the City to receive future maintenance and services.
11. The bidder's pecuniary ability and financial stability.
12. The ability to meet the City's stated requirements for bonding and insurance in order to fully protect the interests of the City.
13. Whether the bidder is in arrears to the City on a debt, is a defaulter on any bond or to any surety, whether the bidder's taxes or assessments are delinquent, and/or whether bidder has failed to render payments to subcontractors, suppliers, employees or material men.
14. Whether bidder is involved in a recent past (within past three years) or a current dispute with the City involving threatened or pending litigation regarding a previous contract with the City.
15. The proximity of bidder's labor force, equipment and business operation in relation to the City.
16. Proportional amount of the work or services bidder intends to perform with its own organization as compared with the portion it intends to subcontract and the qualifications of subcontractors whom the bidder proposes to use.
17. Whether the bidder submitted a bid or proposal that conforms to the requirements stated in the request for bids or proposal issued by the City.
18. Any other circumstances or factors deemed in the best interest of the City as determined by the City's discretion.

The above factors may be determined by bidder's/proposer's past performance with the City, information obtained from other project owners, information submitted as part of the bid/proposal or in response to an inquiry by the City, and/or information otherwise known or discovered by the City. The City may conduct detailed inquiries and examinations of bidders/proposer, including of bidders'/proposers' personnel, place of business and facilities, compliance with federal, state, and local laws and all relevant licensing and permitting requirements, and other matters of responsibility germane to the procurement process. Failure to respond or to provide adequate information in response to the City's inquiry shall be grounds for disqualification in the sole discretion of the City.



4.11 PIGGYBACKING.

To the extent not prohibited by general law, whenever a state, county, municipality, school district, or other governmental agency has a pre-existing contract, which is in effect concerning goods, materials, equipment or services the city wishes to acquire, the City may, where appropriate, piggyback onto such contract where such contract has been procured and awarded during the last 36-month period pursuant to a competitive procurement process. The City shall obtain documentation evidencing that a competitive procurement process was performed by the government agency to procure the contract proposed to be piggybacked upon and an executed copy of such contract. The contractor/vendor shall execute a separate agreement with or agree to a purchase order from the City which confirms that the same prices, terms and conditions granted to the original contracting governmental agency will be granted to the City along with agreement to City established provisions providing for indemnity, insurance, controlling laws, venue, dispute resolution and other provisions as may be recommended by the Procurement Manager or City Attorney. Piggybacking is not authorized when the action would call for a substitution of goods, materials, equipment and services that were not originally proposed or bid on and not originally evaluated as part of the contract award. Piggybacking is not authorized for the procurement of "professional services" as defined by F.S. § 287.055, the Consultants' Competitive Negotiation Act. The Procurement Manager may establish policies relating to the appropriateness of and criteria for piggybacking onto contracts of other governmental agencies. The piggybacking of contracts concerning amounts beyond the City Manager's purchasing authority shall be approved by the City Commission.

4.12 STATUTORY REQUIREMENTS

The following statutes apply to City's procurement of certain contracts, and it is advised that the City personnel review such statutes in conjunction with this procurement policy manual:

- § 180.24, Fla. Stat., Contracts for [utility] construction; bond; publication of notice [contract, bonding and procurement advertising requirements for utility projects];
- § 255.05, Fla. Stat., Bond of contractor constructing public buildings; form; action by claimants [performance and payment bond requirements for construction projects].
- § 255.0525, Fla. Stat., Advertising for competitive bids or proposals [contains notice requirements concerning the solicitation of competitive bids or proposal for construction projects exceeding certain thresholds.
- § 255.20, Fla. Stat., Local bids and contracts for public construction works; specification of state-procured lumber [requires competitive procurement for public buildings, structures or other public construction projects or electric work exceeding certain thresholds].



- § 287.055, Fla. Stat., [Consultants' Competitive Negotiation Act] Acquisition of professional architectural, engineering, landscape architectural, or surveying and mapping services; definitions; procedures; contingent fees prohibited; penalties.



5.1 ETHICAL STANDARDS

The city is committed to a procurement process governed by the highest ethical standards and integrity to inspire the confidence of the organization and the public being served. To achieve these purposes, the city subscribes to the following code of ethics:

- The city will avoid unfair practices by granting all competitive respondents equal consideration as required by State, Federal, and city regulations.
- The city will conduct business in good faith demanding honesty and ethical practices from all individuals participating in the procurement process.
- The city will promote positive vendor relationships by affording courteous, fair, and ethical treatment.
- The city will avoid involvement in any transactions or activities that could be considered a conflict between personal interest and the interests of the city.
- The Procurement Division adheres and subscribes to the Institute for Public Procurement (NIGP) Code of Ethics and the Florida Association of Public Procurement Officials (FAPPO) as amended.

Employees must not become obligated to any suppliers and shall not participate in any city transaction from which they may personally benefit. Except as may be authorized by applicable State law, no employee or officer shall accept benefits, gifts or gratuities, other than advertising novelties of nominal value, from prospective bidders, vendors, or suppliers. No employee or officer shall bid for, enter into, or be in any manner interested in any contract for city purchase. Employees or officers shall not seek to influence the purchase of a product or service from any supplier or vendor. This restriction shall not be construed to restrict persons from evaluation and appraising the quality and value of the product to be purchased or service(s) to be rendered where the person's scope of employment contemplates advice and counsel with respect to the purchase.

The avoidance of actual or perceived conflicts of interest is a prerequisite to the efficient and sound operation of government and maintenance of the public trust.

All City of Winter Park employees shall adhere to the ethical standards contained in the Florida Statutes Chapter 112, Part III, Code of Ethics for Public Officers and Employees, as well as those contained in the City of Winter Park's personnel policy. No officer or employee of the city shall have any personal, beneficial interest, either directly or indirectly, in any expenditure, purchase, sale (not included items auctioned by the city) or contract for items, equipment, supplies, commodities, or services made by the city. Additionally, they shall not have an interest in any firm, corporation, or association furnishing or bidding on such purchase, sales contract, or services.



Lobbying of evaluation committee members, city employees, or elected officials regarding any type of formal solicitation or contract, during the selection process or bid protest, by the bidder/proposer/protester or any member of the bidder's/proposer's staff, an agent of the bidder/proposer/protester, or any person employed by any legal entity affiliated with or representing an organization that has responded to a formal solicitation or contract or has a pending bid protest is strictly prohibited either upon publication of the formal solicitation until either an award is final or the protest is completely resolved by the city.

Nothing herein shall prohibit a prospective bidder/proposer from contacting the Procurement Division to address situations such as clarification and/or questions related to the procurement process as outlined in the formal solicitation documents. For purposes of this provision, lobbying activities shall include but are not limited to, influencing or attempting to influence action or non-action in connection with any formal solicitation or contract, through direct or indirect oral or written communication, or an attempt to obtain goodwill of persons and/or entities specified in this provision. Such actions may cause any formal solicitation or contract to be rejected.

5.2 DISQUALIFICATION OF CONTRACTORS/DEBARMENT

Contractors who are on the State of Florida Department of Management Services' Suspended Vendors List or Convicted Vendors List are barred from submitted bids for any city solicitations. With regard to Design Professional Services, contractors identified in the Florida Department of Transportation's Design Professional Consultants database as suspended and/or disqualified are barred from submitting proposals for any Design Professional Services projects.

Any vendor who has been convicted of a "Public Entity Crime" (F.S. §287.133), shall not be permitted to transact business with the city to the extent as specified in F.S. §287.133(3)(a).

The disqualification shall be final and conclusive.

5.3 PROTESTS AND APPEALS

5.3.1 FILING A PROTEST

Any actual or prospective bidder, proposer, offeror, respondent, or contractor who is aggrieved in connection with a solicitation or award of a contract may protest to the Procurement Manager (sometimes herein "aggrieved person"). A protest must be filed with the Procurement Manager in writing within the times set forth in this section and must be accompanied by the non-refundable filing fee and protest security set forth in the section below (5.3.2). The written protest should identify the party filing the protest, the solicitation or contract with respect to which the protest is being filed, the legal and factual grounds for the protest, the relief being requested, and contain all necessary information, legal authority, and evidence to support the protest.



5.3.2 NON-REFUNDABLE FILING FEE; PROTEST BOND OR OTHER SECURITY

A protest must be accompanied by the payment of a two hundred fifty and no/100 dollar (\$250.00) non-refundable filing fee. Said filing fee may be paid by bank or certified check, and must be received prior to the expiration of the time for filing a protest. In addition to the filing fee, unless a different amount is specified in the terms of a particular solicitation, at the filing of the written protests, the aggrieved bidder, proposer, offeror, respondent, or contractor shall post with the Procurement Division, a security in the form of a bond payable to the City of Winter Park in an amount equal to five percent (5%) of the contract award amount, or if the amount of the contract award cannot be reasonably determined at that time, then in the amount of One Thousand Two Hundred Fifty Dollars (\$1,250.00). Such bond or other security must be received prior to the expiration of the time for filing a protest. If the protest is successful, the posted security will be refunded in full. If the protest is unsuccessful, the security shall be returned, less all fees, expenses, damages, costs and charges incurred by the city. Failure to comply with these in whole or in part, including the failure to pay the non-refundable filing fee or file a security in the full amount with the applicable deadline for filing of the protest shall be deemed a waiver of the protest and is a jurisdictional deficiency in the protest that will forfeit the right of the bidder to maintain the protest. If the amount of the contract award is not reasonably capable of being quantified at the time the protest is initiated, the city may require a bid bond in a greater amount not to exceed Ten Thousand Dollars (\$10,000.00) if the One Thousand Two Hundred Fifty Dollars (\$1,250.00) is clearly inadequate under the facts presented. If the city increases the required bid bond amount, the protester shall have seven (7) calendar day in which to pay to the City of Winter Park in the form of a cashier's check the difference between One Thousand Two Hundred Fifty Dollars (\$1,250.00) and the new amount of bid bond established by the city. Failure to pay the additional amount of bid bond shall be deemed a waiver of the right to maintain the protest.

5.3.3 COSTS

The protestor shall be liable for all of its own costs and expenses incurred related to a protest, including all appeals.

5.3.4 TIME FOR FILING A PROTEST

A protest must be filed within seven (7) calendar days after such aggrieved person knows or should have known of facts giving rise thereto; provided, however that:

1. No protest of any kind with respect to a solicitation or contract may be filed more than seven (7) calendar days after the city's posting of a Notice of Intended Action to make an award or setting.
2. Notwithstanding any in this Procurement Policy to the contrary, no protest may be filed or heard after the contract award has been approved by City Commission, or the contract has been fully executed if City Commission approval is not necessary.



5.3.5 PROHIBITED CHALLENGES

Notwithstanding anything is this Procurement Policy to the contrary, the following matters may not be protested:

1. If the city elects in its sole discretion to weight solicitation evaluation criteria or adopt a formula for evaluation, a protest may not challenge the relative weight assigned to the solicitation evaluation criteria by the city or the formula adopted for evaluation. If the city elects in its sole discretion not to weight solicitation evaluation criteria or to adopt a formula for evaluation, a protest may not challenge such elections.
2. A protest may not challenge a decision or action of the Procurement Manager under Section 4.4 of this Policy, entitled "Award, Cancellation or Rejection of Solicitations".

5.3.6 PROCUREMENT MANAGER DECISION

The Procurement Manager shall attempt to settle or resolve protests, with or without a meeting or hearing, at the option of the Procurement Manager. The Procurement Manager may request information from, and speak individually or collectively to any person or entities having information relevant to the protest, including but not limited to the protestor and other respondents to a solicitation. Copies of the protest and other records may be provided to any person or entity as deemed appropriate by the Procurement Manager. The protesting party may not provide additional evidence or otherwise amend its protest after timely filing of a written protest without the approval or request of the Procurement Manager granted prior to a written decision being rendered on the protest. The Procurement Manager shall render a written decision on the protest within thirty (30) calendar days following receipt of the protest. The time for rendering a written decision may be extended by the City Manager in the best interest of the city.

5.3.7 APPEAL OF PROCUREMENT MANAGER

Any person aggrieved by the decision of the Procurement Manager may appeal to the City Manager within seven (7) calendar days from the date of the Procurement Manager's written decision. Said appeal shall be in writing and shall state with specificity the grounds therefore and the action requested of the City Manager. Said appeal shall be based solely upon the issues, arguments, information, and evidence available to the Procurement Manager at the time of the written decision on the protest was issued. New issues, arguments, information, or evidence may not be submitted. The City Manager shall attempt to settle or resolve the matter, with or without a meeting or hearing, at the option of the City Manager. The City Manager may request information from, and speak individually or collectively to any person or entity as deemed appropriate by the City Manager. The City Manager shall render a written decision on the appeal within thirty (30) calendar days following receipt of the appeal, or notify the appealing party within said thirty (30) day period that additional time is required before a decision will be rendered.



In making his/her decision on the protest, the City Manager shall have the authority to uphold the award recommendation, cancel the pending procurement process, re-bid the contract, rescind or revise the award recommendation, and take other such actions that are within City's procurement authority. The decision of the City Manager's office shall be final and conclusive as to any contract award not requiring City Commission approval. For contracts requiring City Commission approval, the decision of the City Manager's office may be appealed to the City Commission, if such appeal is timely filed.

5.3.8 APPEAL OF THE CITY MANAGER

For contracts requiring City Commission approval, decisions of the City Manager may be appealed by aggrieved persons to the City Commission by submission of a written request for a hearing within seven (7) calendar days from the date of the City Manager's written decision. The written request shall state with specificity the grounds for the appeal and also the action requested of the City Commission. Said appeal shall be based solely upon the issues and information before the City Manager at the time the written decision on the appeal was issued. New issues, arguments, information, or evidence may not be submitted. An appeal will be scheduled for oral presentation to City Commission at a regularly scheduled bi-weekly public meeting. The appellant, other aggrieved person potentially impacted by the appeal, and city staff shall each be given ten (10) minutes to present the appeal and response. In its discretion, City Commission may extend the time allotted for argument and/or allow other interested persons to speak.

5.3.9 FINALITY

A final decision by the City Commission shall be conclusive and shall represent the position of the City with respect to any contract award requiring City Commission approval. A final decision by the City Manager shall be conclusive and shall represent the position of the City with respect to any contract award not requiring City Commission approval.

There is a compelling City interest in procuring goods and services in a timely manner so as to provide City residents, businesses and visitors with efficient, cost-effective, and operationally effective City infrastructure, facilities, and services in a timely manner. Consequently, procurement disputes must be resolved with minimal delays. Therefore, the procedure set forth herein is the sole means by which a bidder/responder aggrieved by a decision of the City may seek recourse. Refusal or failure by any aggrieved bidder/responder to pursue its right of protest under these procedures shall constitute a waiver of its right to pursue any further remedies or appeals, either administratively or judicially. Any judicial proceedings that may or could be filed against the City by an aggrieved or adversely affected party shall be filed within thirty (30) days after the City's final decision on a procurement matter. Failure to timely file a judicial action in accordance with these procedures shall constitute a waiver and invalidation of any protest to the applicable solicitation, bid, or award.



5.3.10 TIMELINESS; JURISDICTION

Timely filing of the protest and/or appeals, including any and all required fees and bonds, is jurisdictional. Notwithstanding any provision of this Policy to the contrary, in the event the final day for a city employee or official to respond or for a person to file a protest or appeal with the Procurement Manager or City Manager falls on a Saturday, Sunday, or city observed holiday, the date for responding or filing such protest or appeal shall be extended until the next day which is neither a Saturday, Sunday, or city observed holiday. In accordance with the provision of Section 5.3.4 of this Procurement Policy, any notice, filing, or other submission received by the city after the close of the city's business hours at 5:00 p.m. local time, shall be deemed received by the city effective as of the next business day of the city.

5.3.11 STAY PENDING PROTEST AND APPEAL

In the event of a timely protest and/or appeal, the city shall not proceed further with the solicitation or with the award of the contract until a written determination is made by the Procurement Manager, City Manager, or City Commission, or until the City Manager makes a determination to award the contract without delay to protect substantial interests of the city.

5.4 RESERVATION OF RIGHTS

Nothing in this Policy shall be deemed to preclude the city at any time in its discretion from raising and considering any issue related to a solicitation or award, requesting or accepting additional information, or resolving any protest or subsequent appeal on any ground or basis as may be in the best interest of the city.



The city is committed to ensuring that all staff have access to learning, development and training opportunities which enable them to be suitably knowledgeable and skilled to carry out their role within the organization, and to develop their talents in ways to fit the organization's development to meet strategic objectives. Professional development opportunities include:

- On the job learning from staff via job shadowing, mentoring, knowledge sharing, etc.,
- Communicating with other departments and/or organizations,
- Attending internal or external training/workshops
- Attending conferences or forums
- Webinars/ E-Learning
- Self-directed study (books, manuals, etc.)

The Travel Policy shall be adhered to when travel is required.

Graduate, undergraduate, or associate degrees are not governed under this policy, but are covered in the City of Winter Park's Personnel Policy.



7.1 MINORITY AND WOMEN OWNED BUSINESS

Minority businesses shall have an equitable opportunity to participate in the city's procurement process. The city reserves the right to set aside a percentage of the total amount of funds allocated for the procurement of personal property and services for the purpose of entering into contracts with minority business enterprises. All contracts shall be competitively solicited.

7.2 LOCAL PREFERENCE

The city reserves the right to purchase commodities and services from a local business. "Local Business: shall be defined as a person, firm, corporation, or other business entity maintaining a valid Business Certificate (at minimum of one year prior to submitting each formal solicitation response), issued by the City of Winter Park that authorizes the business to provide the commodities or services to be purchased and a physical business address located within the limits of the City of Winter Park. A business which operated through the use of a post office box, mail house or residential/home address shall not be eligible to qualify as a "Local Business".

This Local Preference policy shall not be applied to the following circumstances:

- Purchases of Professional Services which are subject to Section 287.055, F§.
- State or Federal law prohibits the use of local preferences,
- The work is funded in whole or in part by a governmental entity where the laws, rules, regulations or policies prohibit the use of local preferences,
- The business is determined to be unqualified to perform the work as determined by the city,
- Purchases exempt from the provisions of the City of Winter Park Procurement Policy,
- Purchases made utilizing cooperative procurement agreements with other governmental or public entities,
- Purchases from local, State, GSA and/or other federal contracts and public entities,
- Emergency purchases,
- Purchases made for items that have been deemed a sole source.



7.3 SUSTAINABLE PROCUREMENT

It shall be a provision of this Policy to support the purchase of recycled and environmentally preferred products, when practical, in an effort to minimize environmental impacts of the goods and services procured by the city. In the context of this provision, "practical" is defined as goods and services that are sufficient in performance and reasonably available at a reasonably competitive cost.

Nothing in this provision or in the procedure shall be construed as requiring the purchase of products that do not perform adequately and/or are not reasonably available at a reasonable cost.

7.4 JOINT COOPERATIVE PROCUREMENT

The city may participate in, sponsor, conduct or administer a cooperative procurement agreement with one or more public bodies or agencies for the purpose of combining requirements to achieve economies of scale, increase efficiency or reduce administrative expenses. This method of procurement may apply to the acquisition and/or disposition of all tangible personal property by pooling common requirements; preparing common specifications and procuring supplies from contracts awarded by/available to other governmental entities.

7.5 SURPLUS PROPERTY

All tangible and intangible city property determined to be surplus or obsolete material, must be reported to the Procurement Division. The Procurement Division is responsible for the disposition of surplus items that have been declared surplus, and shall have the authority to sell by auction or advertised bid, trade, donate, or sell to another government entity, destroy, scrap, classify as waste, or dispose of excess surplus and obsolete supplies or personal property, regardless of the dollar amount. Records of such disposition shall be maintained in the Procurement Division.

7.6 PURCHASING CARD PROGRAM

A Purchasing Card Program is hereby established to provide authorized city employees with the ability to make purchases on behalf of the city utilizing a City of Winter Park Pcard. The Procurement Manager is authorized to administer procedures, with approval from the City Manager, relating to the Purchasing Card Program. The program shall include the establishment, communication, and maintenance of procedures for the control and use of such cards.



All goods and services purchased under this Program shall be in accordance with the requirements of the Procurement Procedures Manual and Purchasing Card Manual. The Procurement Division shall be responsible for managing the Purchasing Card Program and ensuring compliance with the Procurement Procedures Manual and Purchasing Card Manual.

7.7 ELECTRONIC SIGNATURES

In accordance with §§ 668.001 through 668.06, Fla. Stat., the City will accept electronically filed and signed documents in regards to procurement solicitations and responses thereto and execution of contracts meeting the requirements of this policy.

7.7.1 The following terms, when utilized in this policy, shall have the meanings shown below:

- (a). "Public Key Infrastructure" shall mean a set of hardware, software, people, policies, and procedures needed to create, manage, store, distribute and revoke digital certificates.
- (b). "Certificate of Authority (CA)" shall mean a third party who issues electronic credentials to engage in transactions utilizing an Electronic Digital Signature through the use of a Certificate.
- (c). "Certificate" shall mean an electronic document, using the Public Key Infrastructure, that uses a digital signature to bind together a public key with an identity that identifies the CA, identifies the subscriber, contains the subscriber's public key, and is digitally signed by the CA.
- (d). "Digital Signature" shall mean a type of Electronic Signature that transforms a message using an asymmetric cryptosystem such that a recipient of the initial message and the signer's public key can determine accurately whether the initial message or the document has been altered since their creation, and whether they were created using the private key which corresponds to the signer's public key.
- (e). "Electronic Signature" shall mean any letters, characters, or symbols, manifested by electronic or similar means, executed or adopted by a party, with intent to authenticate a writing. A writing is electronically signed if an electronic signature is logically associated with such writing.
- (f). "Electronic Notarization" is a unique digital signature used in conjunction with the requirements of § 117.021, Fla. Stat. and rules promulgated under the authority of the statute, used by a Notary Public to authenticate an electronic notarial act.

7.7.2 Any person or entity submitting electronic documents to the City which include a Digital Signature shall apply for and receive electronic credentials from a Certificate Authority. Such persons must also comply with any requirements of their respective professional governing boards pertaining electronic signatures.



7.7.3 Anyone affixing a Digital Signature to a document submitted to the City must affix his or her Digital Signature so that it is visible on the document itself. When the document is submitted to the City the submitter shall provide contemporaneously his or her Certificate so that the City may verify that the document was signed and submitted by the person purporting to do so.

7.7.4 The Procurement Manager shall have the authority to specify those Certificate Authorities that are acceptable to the City for the purpose of using Certificates to persons submitting Digital Signatures to the City.

7.7.5 Except to the extent provided by law, and when submitted in compliance with applicable law and this policy any Digital Signature shall have the same force and effect as a manual signature.



city commission **agenda item**

item type	Public Hearings	meeting date	11/27/2017
prepared by	City Clerk	approved by	
board approval	N/A final vote		
strategic objective	Investment in Public Assets and Infrastructure		

subject

Ordinance - 540 Interlachen Avenue easement vacate (2)

motion / recommendation

Approve motion to vacate easement. There are no known utilities within this easement.

background

The City of Winter Park received a request to vacate a portion of power easement described in OR Book 3187, Pg. 205 and OR Book 8045, Pg. 4770 located at 540 Interlachen Ave. (Exhibit A)

alternatives / other considerations

Not approve easement vacate.

fiscal impact

No direct financial impact as a part of this action

ATTACHMENTS:

Description	Upload Date	Type
Ordinance	10/31/2017	Cover Memo
Exhibit A	10/31/2017	Cover Memo

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

ORDINANCE NO. _____-17

AN ORDINANCE OF THE CITY OF WINTER PARK, FLORIDA VACATING A PORTION OF POWER EASEMENT LOCATED AT 540 INTERLACHEN AVENUE, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN OFFICIAL RECORDS BOOK 3187, PAGE 205, AND OFFICIAL RECORDS BOOK 8045, PAGE 4770, OF THE PUBLIC RECORDS OF ORANGE COUNTY, MORE PARTICULARLY DESCRIBED IN PROVIDING FOR CONFLICTS, RECORDING 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 the City Commission has made such a determination.

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 the easement legally described in that certain legal description and sketch of description attached hereto as **Exhibit "A"**.

Section 2. In the event of any conflict between this Ordinance and any other ordinance or portions of ordinances, this Ordinance controls

Section 3. After adoption, this Ordinance shall be recorded in the public records of Orange County, Florida.

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 _____, 2017.

Mayor Steven Leary

ATTEST:

City Clerk Cynthia S. Bonham

LEGAL DESCRIPTION

Exhibit "A"

LEGAL DESCRIPTION:

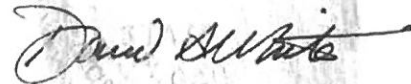
A STRIP OF LAND, BEING A PORTION OF LOT 498, BLOCK 1, PLAN OF TOWN OF WINTER PARK ACCORDING TO THE PLAT THEREOF AS RECORDED IN MISCELLANEOUS BOOK 3, PAGE 220, PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA BEING DESCRIBED AS FOLLOWS:

COMMENCE AT THE NORTHWEST CORNER OF SAID LOT 498 FOR A POINT OF REFERENCE, THENCE RUN SOUTH 69°55'44" EAST, ALONG THE NORTH LINE OF THAT CERTAIN DISTRIBUTION EASEMENT RECORDED OFFICIAL RECORDS BOOK 3187, PAGE 205 AND OFFICIAL RECORDS BOOK 8045, PAGE 4770 AND THE NORTH LINE OF SAID LOT 498, A DISTANCE OF 125.00 FEET TO THE NORTHEAST CORNER OF SAID DISTRIBUTION EASEMENT, THENCE DEPARTING SAID NORTH LINE RUN SOUTH 20°04'16" WEST ALONG EAST LINE OF SAID DISTRIBUTION EASEMENT, 8.29 FEET TO THE POINT OF BEGINNING, THENCE CONTINUE SOUTH 20°04'16" WEST, 1.71 FEET TO THE SOUTHEAST CORNER OF SAID DISTRIBUTION EASEMENT; THENCE RUN NORTH 69°55'44" WEST ALONG SAID SOUTH LINE, 7.32 FEET; THENCE RUN NORTH 11°00'10" EAST, 0.56 FEET; THENCE RUN SOUTH 78°47'50" WEST, 7.50 FEET TO THE POINT OF BEGINNING;

THE ABOVE DESCRIBE STRIP OF LAND LIES IN THE CITY OF WINTER PARK, ORANGE COUNTY, FLORIDA AND CONTAINING 8.3 SQUARE FEET, MORE OR LESS.

SURVEYOR'S NOTES:

- (1) THIS LEGAL DESCRIPTION IS NOT VALID UNLESS IT BEARS THE SIGNATURE AND ORIGINAL RAISED SEAL OF THE FLORIDA LICENSED SURVEYOR AND MAPPER IDENTIFIED BELOW.
- (2) NO ABSTRACT FOR RIGHTS-OF-WAY, EASEMENTS, OWNERSHIP OR OTHER INSTRUMENTS OF RECORD HAVE BEEN PROVIDED TO THIS FIRM.
- (3) BEARINGS SHOWN HEREON ARE ASSUMED RELATIVE TO THE NORTH LINE OF LOT 498, BLOCK 1, PLAN OF TOWN OF WINTER PARK ACCORDING TO THE PLAT THEREOF AS RECORDED IN MISCELLANEOUS BOOK 3, PAGE 220, PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA DERIVED FROM RTK-GPS VALUES OBTAINED USING LENGEMANN OF FLORIDA'S L-NET NETWORK (NGS NAD 83 (NSRS2007)) BEING SOUTH 69°55'44" EAST.
- (4) THE "LEGAL DESCRIPTION" HEREON HAS BEEN PREPARED BY THE SURVEYOR AT THE CLIENT'S REQUEST.
- (5) THIS LEGAL DESCRIPTION DOES NOT CONSTITUTE A BOUNDARY SURVEY, AS SUCH.
- (6) THE CLASSIFICATION USE OF THE LAND, PURSUANT TO THE STANDARDS OF PRACTICE SET FORTH IN RULE CHAPTER 5J-17 FLORIDA ADMINISTRATIVE CODE, FLORIDA STATUTES 472.027, IS SUBURBAN. THE MINIMUM RELATIVE DISTANCE ACCURACY OF THIS MAP OF BOUNDARY SURVEY ACHIEVES OR EXCEEDS ONE FOOT IN 7,500 FEET.
- (7) ATTENTION IS DIRECTED TO THE FACT THAT THIS MAP MAY HAVE BEEN REDUCED IN SIZE BY REPRODUCTION. THIS MUST BE CONSIDERED WHEN OBTAINING SCALED DATA.



DAVID A. WHITE, P.S.M.
FLORIDA REGISTRATION NO. 4044
PEC - SURVEYING AND MAPPING, LLC
CERTIFICATE OF AUTHORIZATION NO.: LB 7808
DATE OF SIGNATURE: 10-10-17

(THIS IS NOT A SURVEY)

SEE SHEET 1 OF 2 FOR LEGAL DESCRIPTION AND SURVEYOR'S NOTES

PEC

SURVEYING AND MAPPING, LLC

CERTIFICATE OF AUTHORIZATION NUMBER LB 7808

2100 Alafaya Trail, Suite 203 • Oviedo, Florida 32765 • 407-542-4967

WWW.PECONLINE.COM

SECTION 6, TOWNSHIP 22 SOUTH, RANGE 30 EAST

DATE: 10-10-17

PREP BY: T.W.B.

DRAWN BY: T.W.B.

JOB #: 17-123

Exhibit "A" cont



WWW.PECONLINE.COM

JOB #: 17-123



city commission **agenda item**

item type	Public Hearings	meeting date	11/27/2017
prepared by	Finance	approved by	City Manager
board approval	N/A final vote		
strategic objective	Fiscal Stewardship		

subject

Ordinance - Fire Pension (1)

motion / recommendation

Adopt recommended ordinance

background

The attached ordinance was presented by Scott Christianson, Pension Attorney for the Fire Fighters 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 Share Plan.

Using the default rules for sharing premium tax dollars in Florida Statute 175.351 was established in the current Collective Bargaining Agreement. Leadership of the Collective Bargaining Unit reviewed the allocation formulas for both the Initial and Annual allocations.

alternatives / other considerations

fiscal impact

Funding of the Share Plan begins October 1, 2018. Effective October 1, 2018, one-half of the accumulated premium tax revenues as of September 30, 2012 (\$102,055.50) will be used to pay down the unfunded liability of the Fire Pension

Plan and the other half (\$102,055.50) will go to the Share Plan. This is the Initial Funding Allocation of the accumulated additional premium tax revenues.

Also, effective October 1, 2018 and each year thereafter, one half of the annual premium tax revenues in excess of the 2012 amount (\$385,648) will be split 50/50 between reducing City contribution requirements and the Share Plan. This is the Annual Funding Allocation. FY 2017 premium tax revenues were below \$385,648 so if these provisions had been in place at that time, there would have been no funding to split. All premium tax revenues would have been used to reduce the City's required contributions to the Fire Pension Plan. The first \$385,648 in premium tax revenues will always be used to offset the City's contribution requirements.

ATTACHMENTS:

Description	Upload Date	Type
Fire pension ordinance	11/13/2017	Cover Memo

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF WINTER PARK, FLORIDA, AMENDING CHAPTER 74, PERSONNEL, ARTICLE V, RETIREMENT AND PENSION PLANS, DIVISION 3, FIREFIGHTERS, OF THE CODE OF ORDINANCES OF THE CITY OF WINTER PARK; AMENDING SECTION 74-151, DEFINITIONS; AMENDING SECTION 74-154, FINANCES AND FUND MANAGEMENT; AMENDING SECTION 74-155, CONTRIBUTIONS; AMENDING SECTION 74-156, BENEFIT AMOUNTS AND ELIGIBILITY; AMENDING SECTION 74-157, PRE-RETIREMENT DEATH; AMENDING SECTION 74-158, DISABILITY; AMENDING SECTION 74-159, VESTING; AMENDING SECTION 74-160, OPTIONAL FORMS OF BENEFITS; AMENDING SECTION 74-165, MAXIMUM PENSION; AMENDING SECTION 74-166, DISTRIBUTION OF BENEFITS; AMENDING SECTION 74-176, DEFERRED RETIREMENT OPTION PLAN; AMENDING SECTION 74-178, PRIOR FIRE SERVICE; ADDING SECTION 74-180, SUPPLEMENTAL BENEFIT COMPONENT FOR SPECIAL BENEFITS; CHAPTER 175 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 3, Firefighters, of the Code of Ordinances of the City of Winter Park, is hereby amended by amending Section 74-151, Definitions, to amend the definitions of "Accumulated Contributions", "Actuarial Equivalent", "Credited Service", "Firefighter", and "Spouse", to read as follows:

* * * * *

Accumulated Contributions means a Member's own contributions with interest, ~~beginning October 1, 1992, 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

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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.

* * * * *

Credited Service means the total number of years and fractional parts of years of service as a Firefighter with Member contributions, when required, omitting intervening years or fractional parts of years when such Member was not employed by the City as a Firefighter. A Member may voluntarily leave his Accumulated Contributions in the Fund for a period of five (5) years after leaving the employ of the Fire Department pending the possibility of being reemployed as a Firefighter, without losing credit for the time that he was a Member of the System. If a vested Member leaves the employ of the Fire Department, his Accumulated Contributions will be returned only upon his written request. If a Member who is not vested is not reemployed as a Firefighter with the Fire 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 shall be returned. 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 Firefighter 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 Firefighter 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 Firefighter 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 Firefighter 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.

* * * * *

Firefighter means an actively employed full-time person employed by the City, including his initial probationary employment period, who is certified as a Firefighter as a condition of employment in accordance with the provisions of ~~§633.35~~ 633.408, Florida Statutes, and whose duty it is to extinguish fires, to protect life and to protect property. The term includes all certified, supervisory, and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time Firefighters, part-time firefighters, or auxiliary firefighters but does not include part-time firefighters or auxiliary firefighters.

* * * * *

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 3, Firefighters, of the Code of Ordinances of the City of Winter Park, is hereby amended by amending Section 74-154, Finances and Fund Management, subsection 6.B.(3), to read as follows:

* * * * *

6. B. (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.

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- (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 3: That Chapter 74, Personnel, Article V, Retirement and Pension Plans, Division 3, Firefighters, of the Code of Ordinances of the City of Winter Park, is hereby amended by amending Section 74-155, Contributions, subsection 2., State Contributions, to read as follows:

* * * * *

2. *State Contributions.* Any monies received or receivable by reason of laws of the State of Florida, for the express purpose of funding and paying for retirement benefits for Firefighters of the City shall be deposited in the Fund comprising part of this System immediately and under no circumstances more than five (5) days after receipt by the City. In accordance with the August 30, 2012 letter from the Florida Department of Management Services, all Chapter 175 premium tax revenues received through September 30, 2018 shall be used to offset the City's annual contribution to the Fund. Effective October 1, 2018, as mutually agreed by the City and the Firefighters' Union, the statutory default provisions for the use of Chapter 175 premium tax revenues in Section 175.351, F.S. shall be applied. Effective October 1, 2018, one-half of the accumulated premium tax revenues as of September 30, 2012 (\$102,055.50) shall be used to pay down the unfunded liability, and one-half of the accumulated premium tax revenues as of September 30, 2012 (\$102,055.50) shall be used to fund the share plan as provided in Section 74-180. Effective October 1, 2018, all annual premium tax revenues up to the 2012 amount (\$385,648) shall be used to offset the City's annual contribution to the Fund, and premium tax revenues in excess of \$385,648 shall be used as follows: one-half of the excess shall be used to offset the City's annual contribution to the Fund, and one-half of the excess shall be used to fund the share plan, as provided in Section 74-180.

* * * * *

SECTION 4: That Chapter 74, Personnel, Article V, Retirement and Pension Plans, Division 3, Firefighters, of the Code of Ordinances of the City of Winter Park, is hereby amended by amending Section 74-156, Benefit Amounts and Eligibility, subsections 4.C., and 5.C., to read as follows:

* * * * *

4. C. Notwithstanding any other provision of this section 74-156, retirement benefits of Members with at least ten (10) years of Credited Service who terminate employment with the City for any reason, voluntary or involuntary, on or after ~~the effective date of this ordinance~~ March 1, 2013 and prior to attaining eligibility for early or normal retirement, are not payable until the Member attains age fifty-five (55).

* * * * *

5. C. Notwithstanding any other provision of this subsection 5, Members who terminate City employment for any reason, voluntary or involuntary, on or after ~~the effective date of this ordinance~~ March 1, 2013 and prior to attaining eligibility for normal or early retirement shall not be eligible for a cost of living adjustment pursuant to this subsection.

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* * * * *

SECTION 5: That Chapter 74, Personnel, Article V, Retirement and Pension Plans, Division 3, Firefighters, of the Code of Ordinances of the City of Winter Park, is hereby amended by amending Section 74-157, Pre-Retirement Death, subsections 2.A.(3), 2.B.(2) and 3., to read as follows:

* * * * *

2. A. (3) A Beneficiary may elect to receive an actuarial equivalent life benefit and the Board may elect to make a lump sum payment pursuant to Section ~~10~~ 74-160, subsection 7.

* * * * *

2. B. (2) A Spouse Beneficiary may not elect an optional form of benefit, however the Board may elect to make a lump sum payment pursuant to Section ~~10~~ 74-160, subsection 7.

* * * * *

3. The board shall determine whether death occurred as a direct result of the performance of duties as a firefighter and the In-Line of Duty Presumptions in Section ~~8~~ 74-158, subsection 2 shall apply.

SECTION 6: That Chapter 74, Personnel, Article V, Retirement and Pension Plans, Division 3, Firefighters, of the Code of Ordinances of the City of Winter Park, is hereby amended by amending Section 74-158, Disability, subsections 1., 3., and 6., to read as follows:

* * * * *

1. *Disability Benefits In-Line of Duty.* Any Member who shall become totally and permanently disabled to the extent that he is unable, by reason of a medically determinable physical or mental impairment, to render useful and efficient service as a Firefighter, which disability was directly caused by the performance of his duty as a Firefighter, shall, upon establishing the same to the satisfaction of the Board, be entitled to a monthly pension equal to three percent (3%) of his Average Final Compensation multiplied by the total years of Credited Service, but in any event, the minimum amount paid to the Member shall be forty-two percent (42%) of the Average Final Compensation of the Member. Terminated persons, either vested or non-vested, are not eligible for disability benefits, ~~except that those terminated by the City for medical reasons may apply for a disability within thirty (30) days after termination.~~ Notwithstanding the previous sentence, if a Member is terminated by the City for medical reasons, the terminated person may apply for a disability benefit if the application is filed with the Board within thirty (30) days from the date of termination. If a timely application is received, it shall be processed and the terminated person shall be eligible to receive a disability benefit if the Board otherwise determines that he is totally and permanently disabled as provided for above.

* * * * *

3. *Disability Benefits Not-in-Line of Duty.* Any Member with ten (10) years or more Credited Service who shall become totally and permanently disabled to the extent that he is unable, by reason of a medically determinable physical or mental impairment, to render useful and efficient service as a Firefighter, which disability is not directly caused by the performance of his duties as a Firefighter shall, upon establishing the same to the satisfaction of the Board, be entitled to a monthly pension equal to three percent (3%) of his Average Final Compensation multiplied by the total years of Credited Service. Terminated persons, either

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vested or non-vested, are not eligible for disability benefits, ~~except that those terminated by the City for medical reasons may apply for a disability within thirty (30) days after termination.~~ Notwithstanding the previous sentence, if a Member is terminated by the City for medical reasons, the terminated person may apply for a disability benefit if the application is filed with the Board within thirty (30) days from the date of termination. If a timely application is received, it shall be processed and the terminated person shall be eligible to receive a disability benefit if the Board otherwise determines that he is totally and permanently disabled as provided for above.

* * * * *

6. *Disability Payment.* The monthly benefit to which a Member is entitled in the event of the Member's disability retirement shall be payable on the first day of the first month after the Board determines such entitlement. However, the monthly retirement income shall be payable as of the date the Board determined such entitlement, and any portion due for a partial month shall be paid together with the first payment. The last payment will be:
- A. If the Retiree recovers from the disability, the payment due next preceding the date of such recovery, or
 - B. If the Retiree dies without recovering from disability, the payment due next preceding his death or the 120th monthly payment, whichever is later.

Provided, however, the disability Retiree may select, at any time prior to the date on which benefit payments begin, an optional form of benefit payment as described in Section ~~40 74-160~~, subsection 1.A. or 1.B., which shall be the Actuarial Equivalent of the normal form of benefit.

* * * * *

SECTION 7: That Chapter 74, Personnel, Article V, Retirement and Pension Plans, Division 3, Firefighters, of the Code of Ordinances of the City of Winter Park, is hereby amended by amending Section 74-159, Vesting, subsection 3., to read as follows:

* * * * *

3. Notwithstanding any other provision of this section 74-159, 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 8: That Chapter 74, Personnel, Article V, Retirement and Pension Plans, Division 3, Firefighters, of the Code of Ordinances of the City of Winter Park, is hereby amended by amending Section 74-160, Optional Forms of Benefits, subsections 1.D., 2., 4., and 5., to read as follows:

* * * * *

1. D. For any Member who does not participate in the DROP pursuant to Section ~~26 74-176~~, 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

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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.

* * * * *

4. Upon change of a Retiree's joint pensioner in accordance with this Section, the amount of the retirement income payable to the Retiree shall be actuarially redetermined to take into account the age of the former joint pensioner, the new joint pensioner and the Retiree and to ensure that the benefit paid is the Actuarial Equivalent of the present value of the Retiree's then current benefit at the time of the change. Any such Retiree shall pay the actuarial recalculation expenses. Each request for a change will be made in writing on a form prepared by the Board and on completion will be filed with the Board. In the event that no designated Beneficiary survives the Retiree, such benefits as are payable in the event of the death of the Retiree subsequent to his Retirement shall be paid as provided in Section ~~H~~ 74-161.
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 74-157.
 - 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 ~~H~~ 74-161.
 - D. If a Member continues beyond his normal retirement date pursuant to the provisions of Section 74-156, 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

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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 9: That Chapter 74, Personnel, Article V, Retirement and Pension Plans, Division 3, Firefighters, of the Code of Ordinances of the City of Winter Park, is hereby amended by amending Section 74-165, Maximum Pension, subsections 6., 8., and 12.B., and by adding subsection 13, to read as follows:

* * * * *

6. *Less than Ten (10) Years of Participation ~~or Service~~.* The maximum retirement benefits payable under this Section to any Member who has completed less than ten (10) years of ~~Credited Service with the City participation~~ shall be the amount determined under subsection 1 of this Section multiplied by a fraction, the numerator of which is the number of the Member's years of ~~Credited Service participation~~ and the denominator of which is ten (10). The reduction provided by this subsection cannot reduce the maximum benefit below 10% of the limit determined without regard to this subsection. The reduction provided for in this subsection shall not be applicable to pre-retirement disability benefits paid pursuant to Section 74-158, or pre-retirement death benefits paid pursuant to Section 74-157.

* * * * *

8. *Ten Thousand Dollar (\$10,000.00) Limit; Less Than Ten Years of Service.* Notwithstanding anything in this Section 74-165, 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 74-165 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 74-165 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

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under Code Section 417(e) shall be included in the annual benefit for purposes of the limit under Code Section 415(b).

SECTION 10: That Chapter 74, Personnel, Article V, Retirement and Pension Plans, Division 3, Firefighters, of the Code of Ordinances of the City of Winter Park, is hereby amended by amending Section 74-166, Distribution of Benefits, subsections 2.B.(4), 3.A.(2), 3.B., and 5.B., 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.

* * * * *

3. A. (2) The Member's entire interest must be distributed pursuant to Section 74-156, Section 74-157, Section 74-159, or Section ~~40~~ 74-160 (as applicable) and in any event over a period equal to or less than the Member's life or the lives of the Member and a designated beneficiary, or over a period not extending beyond the life expectancy of the Member or of the Member and a designated beneficiary. The life expectancy of the Member, the Member's spouse, or the Member's beneficiary may not be recalculated after the initial determination for purposes of determining benefits.

- B. *Amount Required to be Distributed by Required Beginning Date.* The amount that must be distributed on or before the Member's required beginning date (or, if the Member dies before distributions begin, the date distributions are required to begin under Section 74-157) is the payment that is required for one (1) payment interval. The second payment need not be made until the end of the next payment interval even if that payment interval ends in the next calendar year. Payment intervals are the periods for which payments are received, e.g., monthly. All of the Member's benefit accruals as of the last day of the first distribution calendar year will be included in the calculation of the amount of the annuity payments

* * * * *

5. B. *Distribution Calendar Year.* A calendar year for which a minimum distribution is required. For distributions beginning before the Member's death, the first distribution calendar year is the calendar year immediately preceding the calendar year which contains the Member's required beginning date. For distributions beginning after the Member's death, the first distribution calendar year is the calendar year in which distributions are required to begin pursuant to Section 74-157.

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SECTION 11: That Chapter 74, Personnel, Article V, Retirement and Pension Plans, Division 3, Firefighters, of the Code of Ordinances of the City of Winter Park, is hereby amended by amending Section 74-176, Deferred Retirement Option Plan, to read as follows:

Sec. 74-176. - Deferred Retirement Option Plan.

1. *Definitions.* As used in this Section ~~26~~ 74-176, the following definitions apply:"
 - A. "DROP"—The City of Winter Park Firefighters' 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 Firefighter, 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 eighty-four (84) months beginning at the time his election to participate in the DROP first becomes effective. An person who is currently in the DROP on the effective date of the ordinance extending the permissible DROP period provided for in this paragraph may extend his DROP participation as provided herein. 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 Firefighter.
 - (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 Firefighter.

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- (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 29 74-179, 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 Firefighter, no amounts shall be paid to him from the System until he terminates his employment as a Firefighter. 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 Firefighter.

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 Firefighter 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 Firefighter.
- (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:

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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 Fire 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 Fire Department after the permissible period of DROP participation will be eligible for pre-retirement death and disability benefits, and will accrue additional Credited Service or benefits only as provided for in Section ~~29~~ 74-179.

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 Firefighter. Except as provided in subsection 4.E., no amounts

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shall be paid to a Member from the DROP prior to his termination of employment as a Firefighter.

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 benefit is 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.* This subsection applies to distributions made on or after January 1, 2002. 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 24 74-174.

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.

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- 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 74-176 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

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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 five (5) 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.

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- (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 ~~26~~ 74-176 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 12: That Chapter 74, Personnel, Article V, Retirement and Pension Plans, Division 3, Firefighters, of the Code of Ordinances of the City of Winter Park, is hereby amended by amending Section 74-178, Prior Fire Service, to read as follows:

Sec. 74-178. - Prior fire service.

Unless otherwise prohibited by law, and except as provided for in Section 74-151, the years or fractional parts of years that a Member previously served as a Firefighter with the City during a period of previous employment and for which period Accumulated Contributions were withdrawn from the Fund, or the years and fractional parts of years that a Member served as a Firefighter for any other municipal, county or special district fire department in the State of Florida shall be added to his years of Credited Service provided that:

1. The Member contributes to the Fund the sum that he would have contributed, based on his Salary and the Member contribution rate in effect at the time that the Credited Service is requested, had he been a Member of the System for the years or fractional parts of years for which he is requesting credit plus amounts actuarially determined such that the crediting of service does not result in any cost to the Fund plus payment of costs for all professional services rendered to the Board in connection with the purchase of years of Credited Service.
2. Multiple requests to purchase Credited Service pursuant to this Section may be made at any time prior to Retirement.

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3. Payment by the Member of the required amount shall be made within six (6) months of his request for credit, but not later than the retirement date, and shall be made in one (1) lump sum payment upon receipt of which Credited Service shall be given.
4. The maximum credit under this Section for service other than with the City of Winter Park shall be five (5) years of Credited Service and shall count for all purposes, except vesting and eligibility for not-in-line of duty disability benefits. There shall be no maximum purchase of credit for prior service with the City of Winter Park and such credit shall count for all purposes, including vesting.
5. In no event, however, may Credited Service be purchased pursuant to this Section for prior service with any other municipal, county or special district fire 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 74-156, subsection ~~44-B~~ 12.B.
6. For purposes of determining credit for prior service as a Firefighter as provided for in this Section, in addition to service as a Firefighter in this State, credit may be purchased by the Member in the same manner as provided above for federal, other state, county or municipal service if the prior service is recognized by the Division of State Fire Marshal, as provided under Chapter 633, Florida Statutes,, or the Firefighter provides proof to the Board that such service is equivalent to the service required to meet the definition of a Firefighter under Section 74-151.

SECTION 13: That Chapter 74, Personnel, Article V, Retirement and Pension Plans, Division 3, Firefighters, of the Code of Ordinances of the City of Winter Park, is hereby amended by adding Section 74-180, Supplemental Benefit Component for Special Benefits; Chapter 175 Share Plans, to read as follows:

Sec. 74-180. Supplemental Benefit Component for Special Benefits; Chapter 175 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 benefit 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 175 premium tax monies for each plan year which are allocated to this supplemental component as provided for in Section 175.351, F.S. 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 175 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, and for those Members who retired or entered the DROP on or after October 1, 1999 and prior to September 30, 2015. Beginning September 30, 2016 and each September 30 thereafter, share accounts shall be established for all Members who were actively employed as of the preceding October 1. Each year, individual Member share

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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 175 Contributions.

- (1) Initial Allocation of Chapter 175 Accumulated Excess Premium Tax Revenues.

Effective October 1, 2018, one-half of the Chapter 175 accumulated excess premium tax revenues as of September 30, 2012 (\$102,055.50) shall be allocated to eligible Member Share Accounts as provided herein. For the purpose of the initial allocation, eligible Members are Members who are actively employed on September 30, 2018, and Members who retired or entered the DROP on or after October 1, 1999 and prior to September 30, 2018 (including disability retirees), or the Beneficiaries of such Members who are deceased (not including terminated vested persons). The allocation shall be in an amount equal to a fraction of the total amount, the numerator of which shall be the Member's total years and fractional parts of years of Credited Service, and the denominator of which shall be the sum of the total years and fractional parts of years of Credited Service of all eligible Members to whom allocations are made. Beneficiaries shall receive an allocation based on the years of Credited Service of the deceased Member.

- (2)

Annual
Allocation of
Chapter 175
Premium Tax
Revenues for
Plan Years
Commencing
October 1,
2018 and
Subsequent
Plan Years.

Effective for the Plan Year commencing October 1, 2018 and each October 1 thereafter, 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 September 30, 2019 and each September 30 thereafter (including each disability Retiree), or Beneficiary of a deceased Member (not including terminated vested persons) who is otherwise eligible for an allocation as of such date shall receive a share allocation as follows:

One-half of the Chapter 175 premium tax revenues received during the Plan Year ending on September 30, 2019 and each September 30 thereafter in excess of the 2012 amount (\$385,648) 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

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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.

- (3) 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 175 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.

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5. Eligibility For Benefits. Any Member (or his Beneficiary) who terminates employment as a Firefighter 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 74-156, 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 Firefighter 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 74-159.
- (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 74-158, subsection 1. or a not-in-line of duty disability benefit pursuant to Section 74-158, subsection 3., 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 Firefighter, one hundred percent (100%) of the value of his share account shall be paid to his designated Beneficiary as provided in Section 74-157.
- (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 74-180 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.

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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 74-165, subsection 11.
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 14: Specific authority is hereby granted to codify and incorporate this Ordinance in the existing Code of Ordinances of the City of Winter Park.

SECTION 15: All Ordinances or parts of Ordinances in conflict herewith be and the same are hereby repealed.

SECTION 16: 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 17: 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 _____, 2017.

By: _____
Mayor Steve Leary

Attest: _____
Cynthia S. Bonham, City Clerk

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city commission **agenda item**

item type	Public Hearings	meeting date	11/27/2017
prepared by	Public Works	approved by	
board approval	N/A final vote		
strategic objective	Investment in Public Assets and Infrastructure		

subject

Ordinance - Request by Donald W. McIntosh Associates to vacate a utility easement at 2010 Mizell Avenue (1)

motion / recommendation

Approve motion to vacate easement. There are no known utilities within this easement and letters of "no objection" are attached from each potential utility.

background

The City of Winter Park received a request from Donald W. McIntosh Associates, Inc. to vacate the easement located at 2010 Mizell Avenue, Winter Park, FL.

alternatives / other considerations

Not approve easement vacate.

fiscal impact

No direct financial impact as a part of this action

ATTACHMENTS:

Description	Upload Date	Type
Title Sheet	11/17/2017	Cover Memo
Ordinance	11/17/2017	Cover Memo
Request Letter	11/17/2017	Cover Memo
back up	11/17/2017	Cover Memo
Letters of no objection	11/17/2017	Cover Memo

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

ORDINANCE NO. _____-17

**AN ORDINANCE OF THE CITY OF WINTER PARK, FLORIDA,
VACATING AND TERMINATING AN EASEMENT ENCUMBERING THE
PROPERTY LOCATED AT 2010 MIZELL AVENUE AS RECORDED IN
OFFICIAL RECORDS BOOK 4964, PAGE 2797 AND OFFICIAL
RECORDS BOOK 4971, PAGE 4948, PUBLIC RECORDS OF ORANGE
COUNTY, FLORIDA; PROVIDING FOR CONFLICTS, RECORDING AND
AN EFFECTIVE DATE.**

WHEREAS, the City of Winter Park is the original Grantee of that certain easement recorded in Official Records Book 4964, Page 2797 and Official Records Book 4971, Page 4948, Public Records of Orange County, Florida ("Easement"); and

WHEREAS, the owner of the property located at 2010 Mizell Avenue, Winter Park, Florida, for which the Easement encumbers, in part, has requested that the City vacate, abandon and terminate the Easement; and

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 easements no longer needed for municipal or public purposes; and

WHEREAS, the City Commission has made a determination that the Easement is no longer needed for municipal or public purposes.

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, abandons and terminates that certain easement recorded in Official Records Book 4964, Page 2797 and Official Records Book 4971, Page 4948, Public Records of Orange County, Florida.

Section 2. In the event of any conflict between this Ordinance and any other ordinance or portions of ordinances, this Ordinance controls.

Section 3. After adoption, this Ordinance shall be recorded in the public records of Orange County, Florida.

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 _____, 2017.

Mayor Steven Leary

ATTEST:

City Clerk Cynthia S. Bonham

S:\AKA\CLIENTS\Winter Park\Public Works Department W600-26039\Easement Vacation\Agenda Item -2010 Mizell Ave- Ordinance (marcotte) 11-27-17.docx



June 20, 2017

**DONALD W. MCINTOSH
ASSOCIATES, INC.**

Mr. Don Marcotte
Asst. Dir P/W-City Engineer
City of Winter Park
401 Park Avenue South
Winter Park, FL 32789

Re: Project Wellness
Utility Easement Vacate
PID# 09-22-30-0120-05-010

Dear Mr. Marcotte:

Pursuant to your request, we have enclosed the Utility Company letters of no objections for the proposed vacate and abandonment of the Easement granted to the City of Winter Park recorded in Official Records Book 4964 Page 2797 and Official Records Book 4964 Page 4989, of the Public Records of Orange County Florida, copies attached. The site is located at 2010 Mizell Avenue.

CIVIL ENGINEERS

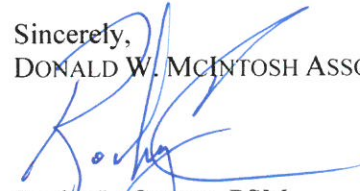
LAND PLANNERS

SURVEYORS

We have enclosed a copy of the Utility Easement Vacate Area map and the plat of PROJECT WELLNESS as recorded in Plat Book 91 Pages 149 and 150 of said Public Records.

Please let me know if you have any questions,

Sincerely,
DONALD W. MCINTOSH ASSOCIATES, INC.


Rocky L. Carson, PSM
Vice President

/jdv

Encls.

c: Ms. Rebecca Wilson/ Lowndes, Drosdick, Doster, Kantor & Reed, P.A.
Mr. Ron Lambert / Winter Park Health Foundation
Donald W. McIntosh, Jr. / Donald W. McIntosh Associates, Inc.
John M. Florio, P.E. / Donald W. McIntosh Associates, Inc.
John T. Townsend, P.E. / Donald W. McIntosh Associates, Inc.

2200 Park Ave. North

Winter Park, FL

32789-2355

Fax 407-644-8318

407-644-4068

**THIS INSTRUMENT PREPARED BY
AND RETURN TO:**

Randolph J. Rush, Esquire
Winderweeple, Haines, Ward
& Woodman, P.A.
Post Office Box 880
Winter Park, Florida 32790

EASEMENT

THIS EASEMENT made this 17th day of October, 1995,
between WINTER PARK MEMORIAL HOSPITAL ASSOCIATION, INC., a Florida
not-for-profit corporation, of 1870 Aloma Avenue, Suite 200, Winter
Park, Florida 32789, Grantor, and the CITY OF WINTER PARK, a
Florida municipal corporation, of 401 Park Avenue South, Winter
Park, Florida 32789, Grantee:

W I T N E S S E T H:

That the Grantor, for and in consideration of the mutual
benefits, covenants and conditions herein contained, and in
consideration of the sum of One and No/100 Dollar (\$1.00) paid by
the Grantee, the receipt and sufficiency of which is hereby
acknowledged, does hereby give and grant unto the Grantee and its
successors and assigns, a non-exclusive underground utility
easement, as is more particularly hereafter described, with full
authority to enter upon, install, construct, operate and maintain
public utilities, including but not limited to sanitary sewer,
stormwater and water facilities within said easement as the Grantee
and its successors and assigns may deem necessary or desirable;
said public utilities being located in an easement area (the
"Easement Area") within Grantor's premises in Orange County,
Florida, to-wit:

A 15 foot easement being 7.50 feet on either side
of the following described centerline:

Commence at the Northeast corner of Lot 1, Block 5
ALOMA SECTION 1 as recorded in Plat Book O, Page
51, of the Public Records of Orange County,
Florida, said point also being on the Southerly
right of way line of Mizell Avenue; thence along
the Easterly line of said Lot 1, N 39°36'06" W
27.00 feet to the point of beginning; thence S
42°35'28" W 158.74 feet; thence N 89°01'29" W 11.00
feet to a point on the Easterly right of way line
of Edinburgh Drive and the point of terminus, said
point being 5.00 feet South of the Northwest corner
of Lot 3, Block 5 of said ALOMA SECTION 1.

TAX PARCEL ID # 09-22-30-0120-05010

TO HAVE AND TO HOLD the same unto the Grantee, its
successors and assigns forever.

Grantor hereby warrants and covenants (a) that Grantor is
the owner of the fee simple title to the premises in which the
above-described Easement Area is located, (b) that Grantor has full
right and lawful authority to grant and convey this easement to
Grantee, and (c) that Grantee shall have quiet and peaceful
possession, use and enjoyment of this easement.

Grantor reserves unto itself and its successors and
assigns the use of the surface of the Easement Area.

Grantee shall, at its sole cost and expense, repair and replace any improvements or landscaping disturbed or damaged by Grantee during the construction, maintenance, repair, or removal of such facilities.

All covenants, terms, provisions and conditions herein contained shall inure and extend to and be obligatory upon the successors and assigns of the respective parties hereto.

IN WITNESS WHEREOF, the Grantor has hereunto set his hand and seal the day and year first above written.

Signed, Sealed and Delivered
in the Presence of:

WINTER PARK MEMORIAL HOSPITAL
ASSOCIATION, INC., a Florida
not-for-profit corporation
1870 Aloma Avenue
Winter Park, Florida 32789

BY Patricia M. Ashmore
Patricia M. Ashmore, President

Print Name Patricia M. Ashmore

Print Name Debbie Watson

STATE OF FLORIDA
COUNTY OF ORANGE

17 The foregoing instrument was acknowledged before me this day of October, 1995, by PATRICIA M. ASHMORE, as President of Winter Park Memorial Hospital Association, Inc., a Florida not-for-profit corporation, on behalf of said corporation. She is personally known to me or produced as identification.



LAURA M. BRAGG
COMMISSION # 00808771
EXPIRES AUG 15, 1997
Atlantic Bonding Co., Inc.
800-732-2245

Laura M. Bragg
Print Name Laura M. Bragg
NOTARY PUBLIC
My Commission Expires: Aug. 15, 1997

OR BK 4964 Pg 279B
Orange Co FL 5402170

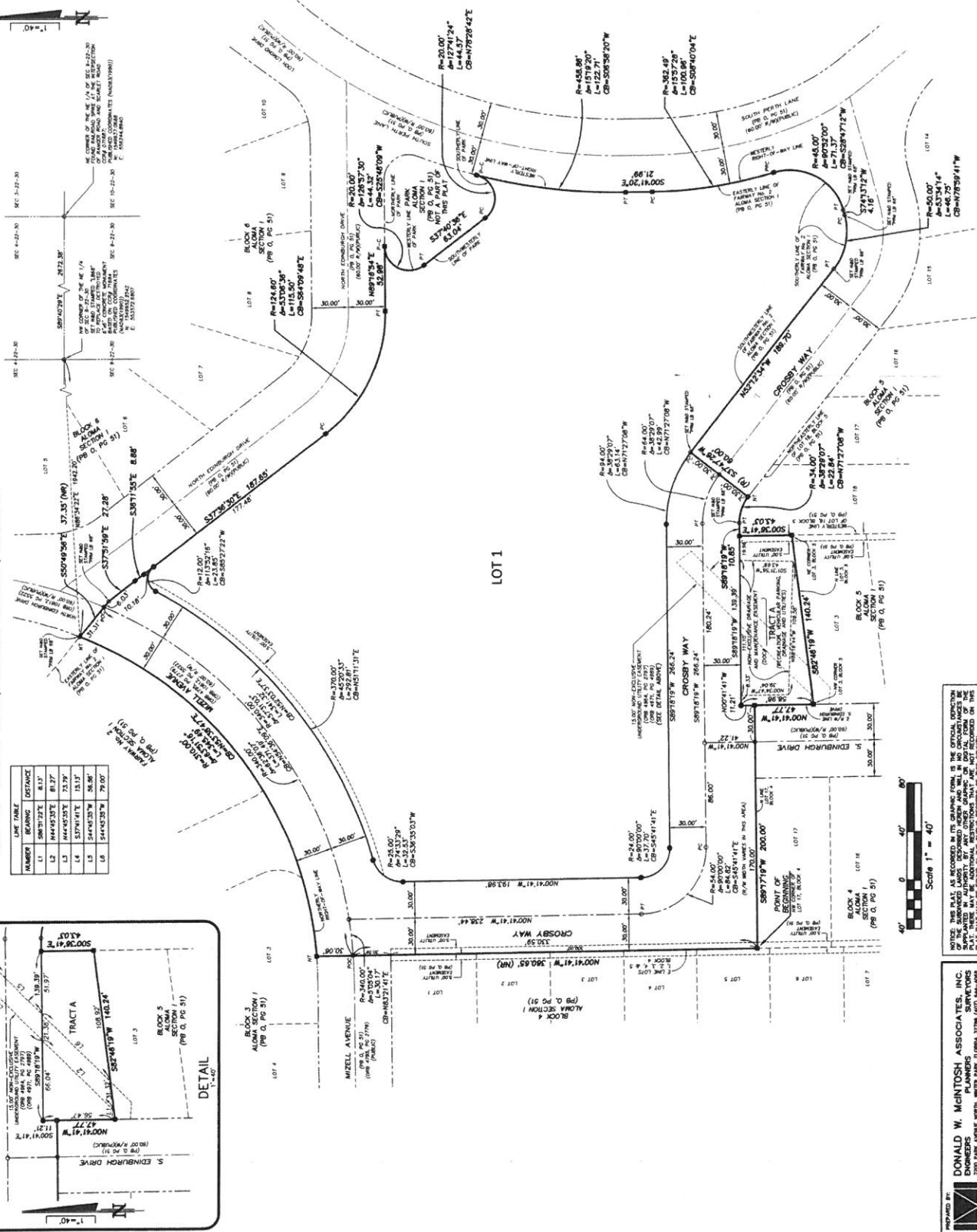
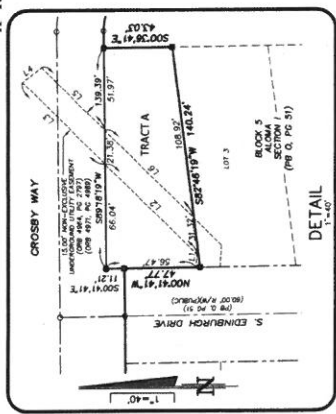
Record Verified - Martha G. Haynie

w:\wpfiles\rjr\wpah\city.ess

PROJECT WELLNESS

A REPLAT OF A PORTION OF ALOMA SECTION 1, PLAT BOOK 0, PAGE 51,
OF THE PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA,
LYING IN SECTION 9, TOWNSHIP 22 SOUTH, RANGE 30 EAST,
CITY OF WINTER PARK, ORANGE COUNTY, FLORIDA.

NUMBER	LINE	BEARING	DISTANCE
L1	S89°12'22"E	81.37'	
L2	S44°42'35"E	73.79'	
L3	S77°14'11"E	15.17'	
L4	S44°42'35"E	56.96'	
L5	S44°42'35"E	79.00'	



NOTES: THIS PLAT, AS RECORDED IN ITS ORIGINAL FORM, IS THE OFFICIAL COPY OF THE SUBDIVISION LAYOUT. ANY CHANGES TO THE PLAT, INCLUDING BUT NOT LIMITED TO, THE ADDITION OF NEW LOTS OR THE DELETION OF EXISTING LOTS, MUST BE APPROVED BY THE FLORIDA DEPARTMENT OF REVENUE, DIVISION OF LAND MANAGEMENT, AND THE FLORIDA DEPARTMENT OF TRANSPORTATION, DIVISION OF HIGHWAYS, BEFORE BEING RECORDED. ANY CHANGES TO THE PLAT THAT ARE NOT APPROVED BY THESE AGENCIES SHALL BE VOID AND OF NO EFFECT.

PREPARED BY: DONALD W. MCINTOSH ASSOCIATES, INC.
2200 PARKWAY, SUITE 200, WINTER PARK, FLORIDA 32789 (407) 885-1111
CERTIFICATE OF AUTHORIZATION NUMBER: 1488

Printed: Tue 13-Dec-2016 - 10:22AM
P:\Proj2016\16017\Using\Map\0508\plat\Project_wellness.plt.dwg



AN EMERA COMPANY

RECEIVED

JUN 19 2017

McINTOSH ASSOC. INC.

Crystal Corbitt
Distribution Easement Coordinator,
Real Estate
Office: 813.228.1091
FAX: 813.228.1376
clcorbitt@tecoenergy.com

June 14, 2017

Rocky L. Carson, PSM
Donald W. McIntosh Associates, Inc.
2200 Park Ave. North
Winter Park, FL 32789-2355

RE: Proposed Easement Vacation, 2010 Mizell Ave, PID# 09-22-30-0120-05-010, Winter Park

Rocky Carson:

Please be advised that Peoples Gas System, a division of Tampa Electric Company has no interest in any easements that may or may not be a matter of public record. We have no objection to such easements being released.

If you have any questions, please feel free to contact me.

Thank you,

A handwritten signature in blue ink that reads "Crystal L. Corbitt".

Crystal L. Corbitt
Distribution Easement Coordinator
Real Estate Services



**DONALD W. MCINTOSH
ASSOCIATES, INC.**

March 10, 2017
Marvin.UsryJr@charter.com

Charter (Brighthouse)
Mr. Marvin Usry
Mr. P J King, Construction Supervisor
3767 All American Blvd.
Orlando, FL 32810

Re: Project Wellness
Easement Release Request – City of Winter Park

Dear Gentlemen:

CIVIL ENGINEERS

LAND PLANNERS

SURVEYORS

I am in the process of requesting the City of Winter Park vacate an easement as shown on the copy of the enclosed Utility Easement Vacate Area map and proposed plat. The site is located at 2010 Mizell Avenue – PID# 09-22-30-0120-05-010 in Winter Park. In order to have this action heard, I must provide letters of no objection from utility companies serving the neighborhood.

Please review your records, complete the form below, and return this letter to me at Donald W. McIntosh Assoc., Inc. If you have any questions, please contact Rocky L. Carson, PSM at (407) 644-4068 – rocky@dwma.com

Sincerely,

DONALD W. MCINTOSH ASSOCIATES, INC.

Rocky L. Carson, PSM
Vice President

RC/jmr

Enclosures:

Utility Easement Vacate Area Map
Proposed Plat
ORB 4964, PG 2797 & ORB 4971, PG 4989

2200 Park Ave. North

Winter Park, FL

32789-2355

Fax 407-644-8318

407-644-4068

c: Ms. Rebecca Wilson, Lowndes, Drosdick, Doster, Kantor & Reed, P.A.
Mr. Ron Lambert, Winter Park Health Foundation
Mr. Donald W. McIntosh, Jr.
John M. Florio, P.E.
John Townsend, P.E.

F:\Proj2016\16012\SURadmin\Csc044 utility letters 030917 brighthouse.doc

<http://www.dwma.com>



_____ The subject parcel is not within our service area.

☒ The subject parcel is within our service area. We do not have any facilities within the easement/right of way. We have no objection to the vacation.

_____ The subject parcel is within our service area. We object to the vacation.

Additional comments: _____

9, 22, 30

Signature: Marvin L. Usry, Jr.

Print Name: MARVIN L. USRY, JR.

Title: CONST. SUPV.

Date: 3/13/17

cc: P.J. KING, CHARTER COMMUNICATIONS



**DONALD W. MCINTOSH
ASSOCIATES, INC.**

March 10, 2017

jriegler@cityofwinterpark.org

City of Winter Park
Mr. Jason Riegler
Water/Wastewater Asst. Utility Director
401 Park Avenue South
Winter Park, FL 32789-4386

Re: Project Wellness
Easement Release Request – City of Winter Park

Dear Mr. Riegler:

CIVIL ENGINEERS

LAND PLANNERS

SURVEYORS

I am in the process of requesting the City of Winter Park vacate an easement as shown on the copy of the enclosed Utility Easement Vacate Area map and proposed plat. The site is located at 2010 Mizell Avenue – PID# 09-22-30-0120-05-010 in Winter Park. In order to have this action heard, I must provide letters of no objection from utility companies serving the neighborhood.

Please review your records, complete the form below, and return this letter to me at Donald W. McIntosh Assoc., Inc. If you have any questions, please contact Rocky L. Carson, PSM at (407) 644-4068 – rocky@dwma.com

Sincerely,

DONALD W. MCINTOSH ASSOCIATES, INC.

Rocky L. Carson, PSM
Vice President

RC/jmr

Enclosures:

Utility Easement Vacate Area Map
Proposed Plat
ORB 4964, PG 2797 & ORB 4971, PG 4989

2200 Park Ave. North

Winter Park, FL

32789-2355

Fax 407-644-8318

407-644-4068

c: Ms. Rebecca Wilson, Lowndes, Drosdick, Doster, Kantor & Reed, P.A.
Mr. Ron Lambert, Winter Park Health Foundation
Mr. Donald W. McIntosh, Jr.
John M. Florio, P.E.
John Townsend, P.E.

F:\Proj2016\16012\SURadmin\Cisc044 utility letters 030917 City of Winter Park.doc

<http://www.dwma.com>



_____ The subject parcel is not within our service area.

X_____ The subject parcel is within our service area. We do not have any facilities within the easement/right of way. We have no objection to the vacation.

_____ The subject parcel is within our service area. We object to the vacation.

Additional comments: Only applicable for potable water and sanitary sewer.
Stormwater is not included.

Signature: Digitally signed by Jason Riegler, P.E.
DN: C=US,
Print Name: E=jriegler@cityofwinterpark.org, O=City
of Winter Park, OU=Water and
Title: Wastewater Utility Department,
CN="Jason Riegler, P.E."
Date: Date: 2017.03.24 12:59:41-04'00'

Jean del Valle

From: Brana, Nick <Nick.Brana@duke-energy.com>
Sent: Thursday, March 16, 2017 2:35 PM
To: Jean del Valle; Rocky L. Carson, PSM
Subject: RE: Project Wellness (DWMA 16012)
Attachments: No Objection ORB (4964-2797).pdf

Jean & Rocky,

Please find attached, the response regarding Release/Vacate of Easement for the property of 2010 Mizell Avenue, Winter Park, and specifically OR Bk. 4964, Pg. 2797. Please let me know if you need anything further here. Thank you.

Kindly,

Nick Brana
Land Rep, Land Services
O: 407-942-9727
C: 321-439-9070
Nick.Brana@Duke-Energy.com

From: Jean del Valle [<mailto:jdelvalle@dwma.com>]
Sent: Friday, March 10, 2017 2:15 PM
To: Brana, Nick; Rocky L. Carson, PSM
Subject: Project Wellness (DWMA 16012)

*** Exercise caution. This is an EXTERNAL email. DO NOT open attachments or click links from unknown senders or unexpected email. ***

DONALD W. MCINTOSH ASSOCIATES, INC.
2200 PARK AVENUE NORTH, WINTER PARK, FLORIDA 32789
PHONE (407) 644-4068 - FAX (407) 644-8318
CIVIL ENGINEERS
LAND PLANNERS / SURVEYORS

EMAIL TRANSMITTAL

TO: Nicholas Brana
COMPANY: Duke Energy, Inc.
DATE: March 10, 2017
JOB NO.: 16012
Job Name: Project Wellness

DESCRIPTION:



X The subject parcel is not within our service area.

_____ The subject parcel is within our service area. We do not have any facilities within the easement/right of way. We have no objection to the vacation.

_____ The subject parcel is within our service area. We object to the vacation.

Additional comments: These Easements were granted to the
City of Winter Park, and are not within Duke
Energy service territory. Duke has "No Objection."

Signature: Nick Brana

Print Name: NICK BRANA

Title: LAND AGENT

Date: 3/15/17

April 14, 2017



LETTER OF NO OBJECTION

Donald W. McIntosh Assoc., Inc.
2200 Park Avenue North
Winter Park Florida 32789-2355

Via Email: rocky@dwma.com

SUBJECT: PROPOSED VACATE OF THE EASEMENTS GRANTED TO THE CITY OF WINTER PARK, RECORDED IN ORANGE COUNTY OFFICIAL RECORDS BOOK 4964 PAGE 2797 AND ORANGE COUNTY OFFICIAL RECORDS BOOK 4964 PAGE 4989, AS RECORDED IN THE PUBLIC RECORDS OF ORANGE COUNTY FLORIDA ; ORANGE COUNTY PARCEL ID IS 09-22-30-0120-05-010; PRN 787475

Dear Mr. Carson,

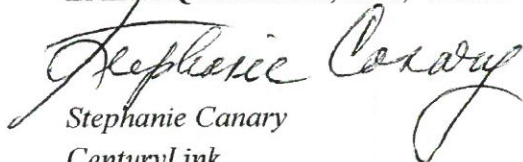
Please be advised that Embarq Florida, Inc., d/b/a CenturyLink has no objection to the proposed vacate and abandonment of the Easements granted to the City Of Winter Park recorded in Orange County Official Records Book 4964 Page 2797 and Orange County Official Records Book 4964 Page 4989, recorded in the Public Records of Orange County Florida, as requested by Rocky L. Carson.

The location of said vacate is more particularly shown on the attached sketch. The Property Address is 2010 Mizell Avenue, Winter Park Florida and the Orange County Parcel ID is 09-22-30-0120-05-010.

Should there be any questions or concerns, please contact me at 352-425-8763 or by email at stephanie.canary@centurylink.com.

Sincerely,

EMBARQ FLORIDA, INC., D/B/A CENTURYLINK


Stephanie Canary
CenturyLink

319 SE Broadway Street
Mailstop: D7303L0401-4058
Ocala FL 34471
stephanie.canary@centurylink.com
Phone: Cell: (352) 425-8763
Fax: (352) 368-8889

David C. Kennedy, CenturyLink

PRN 787475

Orange Co FL 5402170
10/25/95 03:02:28pm
OR Rk 4964 Pg 2797
Rec 10.50 DSC .70

THIS INSTRUMENT PREPARED BY
AND RETURN TO:

Randolph J. Rush, Esquire
Winderwee, Haines, Ward
& Woodman, P.A.
Post Office Box 880
Winter Park, Florida 32790

Orange Co FL 5418912
11/04/95 10:34:07am
OR Bk 4971 Pg 4989
Rec 10.50 DSC .70

EASEMENT

THIS EASEMENT made this 17th day of October, 1995, between WINTER PARK MEMORIAL HOSPITAL ASSOCIATION, INC., a Florida not-for-profit corporation, of 1870 Aloma Avenue, Suite 200, Winter Park, Florida 32789, Grantor, and the CITY OF WINTER PARK, a Florida municipal corporation, of 401 Park Avenue South, Winter Park, Florida 32789, Grantee:

W I T N E S S E T H:

That the Grantor, for and in consideration of the mutual benefits, covenants and conditions herein contained, and in consideration of the sum of One and No/100 Dollar (\$1.00) paid by the Grantee, the receipt and sufficiency of which is hereby acknowledged, does hereby give and grant unto the Grantee and its successors and assigns, a non-exclusive underground utility easement, as is more particularly hereafter described, with full authority to enter upon, install, construct, operate and maintain public utilities, including but not limited to sanitary sewer, stormwater and water facilities within said easement as the Grantee and its successors and assigns may deem necessary or desirable; said public utilities being located in an easement area (the "Easement Area") within Grantor's premises in Orange County, Florida, to-wit:

A 15 foot easement being 7.50 feet on either side of the following described centerline:

Commence at the Northeast corner of Lot 1, Block 5 ALOMA SECTION 1 as recorded in Plat Book O, Page 51, of the Public Records of Orange County, Florida, said point also being on the Southerly right of way line of Mizell Avenue; thence along the Easterly line of said Lot 1, N 39°36'06" W 27.00 feet to the point of beginning; thence S 42°35'28" W 158.74 feet; thence N 89°01'29" W 11.00 feet to a point on the Easterly right of way line of Edinburgh Drive and the point of terminus, said point being 5.00 feet South of the Northwest corner of Lot 3, Block 5 of said ALOMA SECTION 1.

TAX PARCEL ID # 09-22-30-0120-05010

TO HAVE AND TO HOLD the same unto the Grantee, its successors and assigns forever.

Grantor hereby warrants and covenants (a) that Grantor is the owner of the fee simple title to the premises in which the above-described Easement Area is located, (b) that Grantor has full right and lawful authority to grant and convey this easement to Grantee, and (c) that Grantee shall have quiet and peaceful possession, use and enjoyment of this easement.

Grantor reserves unto itself and its successors and assigns the use of the surface of the Easement Area.

STATE OF FLORIDA, COUNTY OF ORANGE I HEREBY CERTIFY
that the foregoing is a true copy of the original filed in this office.

JILL M. S. AIN, City Clerk
City of Winter Park, Florida

Notary: 11/19/95

City Clerk - Winter Park

Grantee shall, at its sole cost and expense, repair and replace any improvements or landscaping disturbed or damaged by Grantee during the construction, maintenance, repair, or removal of such facilities.

All covenants, terms, provisions and conditions herein contained shall inure and extend to and be obligatory upon the successors and assigns of the respective parties hereto.

IN WITNESS WHEREOF, the Grantor has hereunto set his hand and seal the day and year first above written.

Signed, Sealed and Delivered
in the Presence of:

WINTER PARK MEMORIAL HOSPITAL
ASSOCIATION, INC., a Florida
not for-profit corporation
1870 Aloma Avenue
Winter Park, Florida 32789

BY Patricia M. Ashmore
Patricia M. Ashmore, President

Patricia M. Ashmore
Print Name Patricia M. Ashmore

OR Bk 4971 Pg 4990
Orange Co FL 5418912

Record Verified - Martha O. Haynie

STATE OF FLORIDA
COUNTY OF ORANGE

4. The foregoing instrument was acknowledged before me this
17 day of October, 1995, by PATRICIA M. ASHMORE, as President of
Winter Park Memorial Hospital Association, Inc., a Florida not-for-
profit corporation, on behalf of said corporation. She is
personally known to me or produced _____ as
identification.



LAURA M. BRAGG
COMMISSION # CC 308771
EXPIRES AUG 18, 1997
Atlantic Bonding Co., Inc.
800-732-2245

Laura M. Bragg
Print Name Laura M. Bragg
NOTARY PUBLIC
My Commission Expires: Aug 18, 1997

OR Bk 4964 Pg 2798
Orange Co FL 5402170

Record Verified - Martha O. Haynie

w:\wpfiles\rjr\wpmh\city.eas



**DONALD W. MCINTOSH
ASSOCIATES, INC.**

March 10, 2017

Marvin.UsryJr@charter.com

Charter (Brighthouse)
Mr. Marvin Usry
Mr. P J King, Construction Supervisor
3767 All American Blvd.
Orlando, FL 32810

Re: Project Wellness
Easement Release Request – City of Winter Park

Dear Gentlemen:

CIVIL ENGINEERS

LAND PLANNERS

SURVEYORS

I am in the process of requesting the City of Winter Park vacate an easement as shown on the copy of the enclosed Utility Easement Vacate Area map and proposed plat. The site is located at 2010 Mizell Avenue – PID# 09-22-30-0120-05-010 in Winter Park. In order to have this action heard, I must provide letters of no objection from utility companies serving the neighborhood.

Please review your records, complete the form below, and return this letter to me at Donald W. McIntosh Assoc., Inc. If you have any questions, please contact Rocky L. Carson, PSM at (407) 644-4068 – rocky@dwma.com

Sincerely,

DONALD W. MCINTOSH ASSOCIATES, INC.

Rocky L. Carson, PSM
Vice President

RC/jmr
Enclosures:

Utility Easement Vacate Area Map
Proposed Plat
ORB 4964, PG 2797 & ORB 4971, PG 4989

2200 Park Ave. North

Winter Park, FL

32789-2355

Fax 407-644-8318

407-644-4068

c: Ms. Rebecca Wilson, Lowndes, Drosdick, Doster, Kantor & Reed, P.A.
Mr. Ron Lambert, Winter Park Health Foundation
Mr. Donald W. McIntosh, Jr.
John M. Florio, P.E.
John Townsend, P.E.

F:\Proj2016\16012\SURAdmin\Csc044 utility letters 030917 brighthouse.doc

<http://www.dwma.com>



_____ The subject parcel is not within our service area.

☒ The subject parcel is within our service area. We do not have any facilities within the easement/right of way. We have no objection to the vacation.

_____ The subject parcel is within our service area. We object to the vacation.

Additional comments: _____

9, 22, 30

Signature: Marvin L. Usry, Jr.

Print Name: MARVIN L. USRY, JR.

Title: CONST. SUPV.

Date: 3/13/17

cc: P.J. KING, CHARTER COMMUNICATIONS



**DONALD W. MCINTOSH
ASSOCIATES, INC.**

March 10, 2017

jriegler@cityofwinterpark.org

City of Winter Park
Mr. Jason Riegler
Water/Wastewater Asst. Utility Director
401 Park Avenue South
Winter Park, FL 32789-4386

Re: Project Wellness
Easement Release Request – City of Winter Park

Dear Mr. Riegler:

CIVIL ENGINEERS

LAND PLANNERS

SURVEYORS

I am in the process of requesting the City of Winter Park vacate an easement as shown on the copy of the enclosed Utility Easement Vacate Area map and proposed plat. The site is located at 2010 Mizell Avenue – PID# 09-22-30-0120-05-010 in Winter Park. In order to have this action heard, I must provide letters of no objection from utility companies serving the neighborhood.

Please review your records, complete the form below, and return this letter to me at Donald W. McIntosh Assoc., Inc. If you have any questions, please contact Rocky L. Carson, PSM at (407) 644-4068 – rocky@dwma.com

Sincerely,

DONALD W. MCINTOSH ASSOCIATES, INC.

Rocky L. Carson, PSM
Vice President

RC/jmr

Enclosures:

Utility Easement Vacate Area Map
Proposed Plat
ORB 4964, PG 2797 & ORB 4971, PG 4989

2200 Park Ave. North

Winter Park, FL

32789-2355

Fax 407-644-8318

407-644-4068

F:\Proj2016\16012\SURAdmin\Cisc044 utility letters 030917 City of Winter Park.doc

c: Ms. Rebecca Wilson, Lowndes, Drosdick, Doster, Kantor & Reed, P.A.
Mr. Ron Lambert, Winter Park Health Foundation
Mr. Donald W. McIntosh, Jr.
John M. Florio, P.E.
John Townsend, P.E.

<http://www.dwma.com>



_____ The subject parcel is not within our service area.

X

_____ The subject parcel is within our service area. We do not have any facilities within the easement/right of way. We have no objection to the vacation.

_____ The subject parcel is within our service area. We object to the vacation.

Additional comments: Only applicable for potable water and sanitary sewer.
Stormwater is not included.

Signature: Digitally signed by Jason Riegler, P.E.
DN: C=US,
Print Name: E=jriegler@cityofwinterpark.org, O=City
of Winter Park, OU=Water and
Title: Wastewater Utility Department,
CN="Jason Riegler, P.E."
Date: Date: 2017.03.24 12:59:41-04'00'

Jean del Valle

From: Brana, Nick <Nick.Brana@duke-energy.com>
Sent: Thursday, March 16, 2017 2:35 PM
To: Jean del Valle; Rocky L. Carson, PSM
Subject: RE: Project Wellness (DWMA 16012)
Attachments: No Objection ORB (4964-2797).pdf

Jean & Rocky,

Please find attached, the response regarding Release/Vacate of Easement for the property of 2010 Mizell Avenue, Winter Park, and specifically OR Bk. 4964, Pg. 2797. Please let me know if you need anything further here. Thank you.

Kindly,

Nick Brana
Land Rep, Land Services
O: 407-942-9727
C: 321-439-9070
Nick.Brana@Duke-Energy.com

From: Jean del Valle [<mailto:jdelvalle@dwma.com>]
Sent: Friday, March 10, 2017 2:15 PM
To: Brana, Nick; Rocky L. Carson, PSM
Subject: Project Wellness (DWMA 16012)

*** Exercise caution. This is an EXTERNAL email. DO NOT open attachments or click links from unknown senders or unexpected email. ***

DONALD W. MCINTOSH ASSOCIATES, INC.
2200 PARK AVENUE NORTH, WINTER PARK, FLORIDA 32789
PHONE (407) 644-4068 - FAX (407) 644-8318
CIVIL ENGINEERS
LAND PLANNERS / SURVEYORS

EMAIL TRANSMITTAL

TO: Nicholas Brana
COMPANY: Duke Energy, Inc.
DATE: March 10, 2017
JOB NO.: 16012
Job Name: Project Wellness

DESCRIPTION:



X The subject parcel is not within our service area.

_____ The subject parcel is within our service area. We do not have any facilities within the easement/right of way. We have no objection to the vacation.

_____ The subject parcel is within our service area. We object to the vacation.

Additional comments: These Easements were granted to the
City of Winter Park, and are not within Duke
Energy service territory. Duke has "No Objection."

Signature: Nick Brana

Print Name: NICK BRANA

Title: LAND AGENT

Date: 3/15/17

April 14, 2017



LETTER OF NO OBJECTION

Donald W. McIntosh Assoc., Inc.
2200 Park Avenue North
Winter Park Florida 32789-2355

Via Email: rocky@dwma.com

SUBJECT: PROPOSED VACATE OF THE EASEMENTS GRANTED TO THE CITY OF WINTER PARK, RECORDED IN ORANGE COUNTY OFFICIAL RECORDS BOOK 4964 PAGE 2797 AND ORANGE COUNTY OFFICIAL RECORDS BOOK 4964 PAGE 4989, AS RECORDED IN THE PUBLIC RECORDS OF ORANGE COUNTY FLORIDA ; ORANGE COUNTY PARCEL ID IS 09-22-30-0120-05-010; PRN 787475

Dear Mr. Carson,

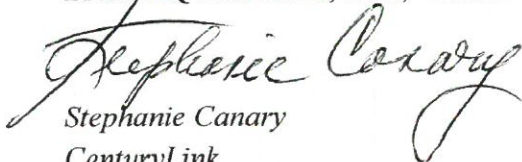
Please be advised that Embarq Florida, Inc., d/b/a CenturyLink has no objection to the proposed vacate and abandonment of the Easements granted to the City Of Winter Park recorded in Orange County Official Records Book 4964 Page 2797 and Orange County Official Records Book 4964 Page 4989, recorded in the Public Records of Orange County Florida, as requested by Rocky L. Carson.

The location of said vacate is more particularly shown on the attached sketch. The Property Address is 2010 Mizell Avenue, Winter Park Florida and the Orange County Parcel ID is 09-22-30-0120-05-010.

Should there be any questions or concerns, please contact me at 352-425-8763 or by email at stephanie.canary@centurylink.com.

Sincerely,

EMBARQ FLORIDA, INC., D/B/A CENTURYLINK


Stephanie Canary
CenturyLink

319 SE Broadway Street
Mailstop: D7303L0401-4058
Ocala FL 34471
stephanie.canary@centurylink.com
Phone: Cell: (352) 425-8763
Fax: (352) 368-8889

David C. Kennedy, CenturyLink

PRN 787475



city commission **agenda item**

item type	Public Hearings	meeting date	11/27/2017
prepared by	Public Works	approved by	
board approval	final vote		
strategic objective	Investment in Public Assets and Infrastructure		

subject

Ordinance - Request of Hope and Help Center of Central Florida, Inc. to vacate the easement at 1935 Woodcrest Drive (1)

motion / recommendation

Approve motion to vacate easement. There are no known utilities within this easement and letters of "no objection" are attached from each potential utility.

background

The City of Winter Park received a request from Hope and Help Center of Central Florida, Inc. to vacate the easement located at 1935 Woodcrest Drive, Winter Park, FL. Owner is requesting this vacation as the Owner is currently under contract to sell the subject property to Weekly Homes, LLC.

alternatives / other considerations

Not approve easement vacate.

fiscal impact

No direct financial impact as a part of this action

ATTACHMENTS:

Description	Upload Date	Type
Title Sheet	11/16/2017	Cover Memo
Ordinance	11/16/2017	Cover Memo
Request Letter	11/16/2017	Cover Memo

Letters of No Objection

11/16/2017

Cover Memo

Back up

11/16/2017

Cover Memo

Back up

11/16/2017

Cover Memo

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

ORDINANCE NO. _____-17

AN ORDINANCE OF THE CITY OF WINTER PARK, FLORIDA, VACATING AND TERMINATING AN EASEMENT ENCUMBERING PROPERTY LOCATED AT 1935 WOODCREST DRIVE, ORIGINALLY IN FAVOR OF FLORIDA POWER CORP. DATED AUGUST 23, 1968 AS RECORDED IN OFFICIAL RECORDS BOOK 1758, PAGE 518, PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA, THEREAFTER ASSIGNED BY FLORIDA POWER CORP. D/B/A PROGRESS ENERGY FLORIDA, INC. TO THE CITY OF WINTER PARK BY WAY OF THAT CERTAIN IRREVOCABLE ASSIGNMENT OF EASEMENT RIGHTS DATED JUNE 1, 2005 AND RECORDED IN OFFICIAL RECORDS BOOK 8045, PAGE 4770, AS RECORDED IN THE PUBLIC RECORDS OF ORANGE COUNTY FLORIDA; PROVIDING FOR CONFLICTS, RECORDING AND AN EFFECTIVE DATE.

WHEREAS, the City of Winter Park is the successor and assignee of the original Grantee of that certain easement recorded in Official Records Book 1758, Page 518, Public Records of Orange County, Florida ("Easement"); and

WHEREAS, the owner of the property located at 1935 Woodcrest Drive, Winter Park, Florida for which the Easement encumbers has requested that the City vacate, abandon and terminate the Easement; and

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 easements no longer needed for municipal or public purposes; and

WHEREAS, the City Commission has made a determination that the Easement is no longer needed for municipal or public purposes.

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, abandons and terminates that certain easement recorded in Official Records Book 1758, Page 518, Public Records of Orange County, Florida.

Section 2. In the event of any conflict between this Ordinance and any other ordinance or portions of ordinances, this Ordinance controls.

Section 3. After adoption, this Ordinance shall be recorded in the public records of Orange County, Florida.

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 _____, 2017.

Mayor Steven Leary

ATTEST:

City Clerk Cynthia S. Bonham



707 Mendham Boulevard, Suite 104
Orlando, Florida 32825
(P) 407.645.2577
(F) 407.866.2793
www.hopeandhelp.org

October 6, 2017

VIA E-MAIL ONLY

Debbie Wilkerson, Office Manager
Public Works Administration
401 Park Avenue South
Winter Park, Florida 32789
dwilkerson@cityofwinterpark.org

Subject: 1) Request for Commission Approval
2) Request to Vacate Utility Easement for overhead power lines (the "Utility Easement") at
1935 Woodcrest Drive, Winter Park, Florida 32792 (the "Subject Property")

Dear Ms. Wilkerson:

As the owner of the Subject Property, Hope & Help Center of Central Florida, Inc. ("Owner"), hereby respectfully requests Commission Approval of the Utility Easement, originally in favor of Florida Power Corp. dated August 23, 1968 and recorded in Official Records Book 1758, Page 518, and thereafter assigned by Florida Power Corp., d/b/a Progress Energy Florida, Inc., to the City of Winter Park by way of that certain Irrevocable Assignment of Easement Rights dated June 1, 2005 and recorded in Official Records Book 8045, Page 4770, all being as recorded in the Public Records of Orange County, Florida, be vacated and made of no further force and effect as to the Subject Property.

Owner is requesting this vacation as the Owner is currently under contract to sell the Subject Property to Weekley Homes, LLC ("Weekley") on or before October 2017. The closing is conditioned upon Weekley obtaining the necessary project approvals for its intended redevelopment of the Subject Property, which include demolition of the existing structure located thereon and the granting of new utility easements, all as required and necessary to facilitate Weekley's proposed new construction in accordance with permitting and final plan approvals. As such, the existing Utility Easement (and the overhead power lines and appurtenant poles, guys, etc.) are no longer needed and will be relocated and replaced as indicated herein. Attached hereto is a survey showing the location of the Utility Easement, which is proposed to be vacated or otherwise, released and letters from all utility companies stating their position on the proposed release.

All utility organizations provided signed letters, attached hereto, confirming they have no objection to vacating the easement.

Thank you for your assistance in connection with this matter and please contact me should you have any questions or require any additional information.

Very truly yours,

A handwritten signature in black ink that reads 'Lisa Barr'.

Lisa Barr
Executive Director

cc: Mr. Neel Shivcharran (via e-mail)



707 Mendham Boulevard, Suite 104
Orlando, Florida 32825
(P) 407.645.2577
(F) 407.866.2793
www.hopeandhelp.org

City of Winter Park
401 Park Avenue South
Winter Park, FL 32789-4386
Attn: Mr. Terry Hotard, Electric Asst. Director
thotard@cityofwinterpark.org

_____ The subject parcel is not within our service area.

 X The subject parcel is within our service area. We do not have any facilities within the easement/right of way. We have no objection to the vacation.

_____ The subject parcel is within our service area. We object to the vacation.

Additional comments: N/A

Signature: Michael A. Passarella

Print Name: Michael A. Passarella

Title: Engineering Manager - Electric Utility

Date: 4 October 2017

Digitally signed by Michael A. Passarella
DN: cn=Michael A. Passarella, o=City of Winter
Park, ou=Electric Utility Operations,
email=mpassarella@cityofwinterpark.org, c=US
Date: 2017.10.04 14:23:41 -04'00'



707 Mendham Boulevard, Suite 104
Orlando, Florida 32825
(P) 407.645.3577
(F) 407.666.2793
www.hopeandhelp.org

FAX HEADER

To: Mr. Jason Riegler
Company: City of Winter Park
Water/Wastewater Asst. Utility Director
Fax #: 407-643-1680

Subject: Request to Vacate Utility Easement for overhead
power lines (the "Utility Easement") at 1935
Woodcrest Drive, Winter Park, Florida 32792 (the
"Subject Property")

From: Lisa Barr
Company: Hope & Help
Phone: 407-645-2577, Ext. 121
Email: lbarr@hopeandhelp.org

4 PAGES

Good afternoon Mr. Riegler,

Please find the attached request to vacate utility easements at 1935 Woodcrest Drive, Winter Park, FL 32792.

Please confirm receipt of this request at your earliest convenience.

If you have any questions or need additional information, please let me know.

Thanks and have a great day!

Lisa Barr
Executive Director



707 Mendham Boulevard, Suite 104
Orlando, Florida 32825
(P) 407.645.2577
(F) 407.645.2793
www.hopeandhelp.org

August 28, 2017

VIA FAX ONLY

City of Winter Park
401 Park Avenue South
Winter Park, FL 32789-4386

Attn: Mr. Jason Riegler, Water/Wastewater Asst. Utility Director
Fax # 407-643-1680

RE: Request to Vacate Utility Easement for overhead power lines (the "Utility Easement") at 1935 Woodcrest Drive, Winter Park, Florida 32792 (the "Subject Property")

Dear Mr. Riegler:

I am in the process of requesting the City of Winter Park vacate an (easement/right of way) as shown on the copy of the enclosed tax map. The site is located at 1935 Woodcrest Drive in Winter Park. In order to have this action heard, I must provide letters of no objection from utility companies serving the neighborhood.

Please review your records, complete the form, below, and return this letter to me at lbarr@hopeandhelp.org. If you have any questions, please contact me at (407) 645-2577, Ext. 121.

Sincerely

Lisa A Barr

Lisa Barr, Executive Director
707 Mendham Blvd., Suite 104
Orlando, FL 32825-3245



707 Mendham Boulevard, Suite 101
Orlando, Florida 32825
(F) 407.645.2577
(F) 407.645.2793
www.hopeandhelp.org

City of Winter Park
401 Park Avenue South
Winter Park, FL 32789-4386
Attn: Mr. Jason Riegler, Water/Wastewater Asst. Utility Director
Fax # 407-643-1680

- _____ The subject parcel is not within our service area.
- _____ The subject parcel is within our service area. We do not have any facilities within the easement/right of way. We have no objection to the vacation.
- _____ The subject parcel is within our service area. We object to the vacation.

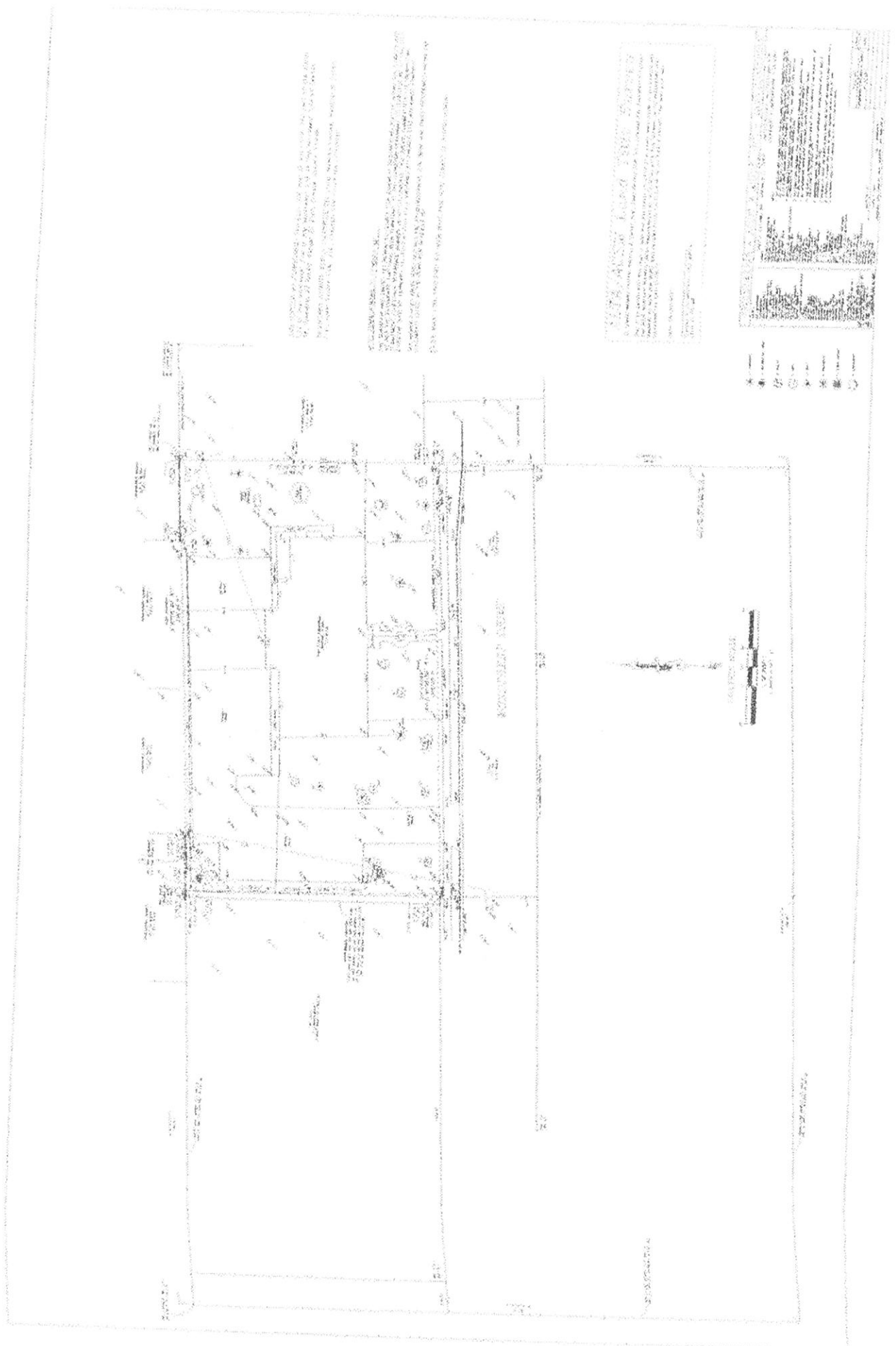
Additional comments: Water and wastewater utilities only.

Signature: Digitally signed by Jason Riegler, P.E.
Date: 2017.08.31 09:22:06-04'00'

Print Name: Jason Riegler

Title: Assistant Utilities Director

Date: 8/31/17





707 Mendham Boulevard, Suite 104
Orlando, Florida 32825
(P) 407.645.2577
(F) 407.866.2793
www.hopeandhelp.org

Charter (Brighthouse)
3767 All American Blvd
Orlando, FL 32810
Attn: Mr. Marvin Usry
Marvin.UsryJr@charter.com

- _____ The subject parcel is not within our service area.
- ☒ _____ The subject parcel is within our service area. We do not have any facilities within the easement/right of way. We have no objection to the vacation.
- _____ The subject parcel is within our service area. We object to the vacation.

Additional comments: _____

16, 22, 30

Signature: Marvin L. Usry Jr.

Print Name: MARVIN L. USRY, JR.

Title: CONSTRUCTION SUPERVISOR

Date: 8/30/2017



AN EMERA COMPANY

Crystal Corbitt
Distribution Easement Coordinator,
Real Estate
Office: 813.228.1091
FAX: 813.228.1376
clcorbitt@tecoenergy.com

September 1, 2017

Lisa Barr
Executive Director
Hope & Help
707 Mendham Blvd., Suite 104
Orlando, FL 32825-3245

RE: Easement Vacate Request: 1935 Woodcrest Drive, Winter Park, FL 32792

Lisa Barr:

Please be advised that Peoples Gas System, a division of Tampa Electric Company has no interest in any easements that may or may not be a matter of public record. We have no objection to such easements being released.

If you have any questions, please feel free to contact me.

Thank you,

A handwritten signature in blue ink that reads "Crystal L. Corbitt".

Crystal L. Corbitt
Distribution Easement Coordinator
Real Estate Services

PEOPLES GAS
702 NORTH FRANKLIN STREET
P.O. BOX 2562
TAMPA, FL 33601-2562
AN EQUAL OPPORTUNITY COMPANY

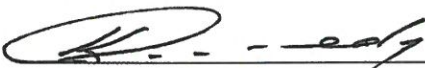


707 Mendham Boulevard, Suite 104
Orlando, Florida 32825
(P) 407.645.2577
(F) 407.866.2793
www.hopeandhelp.org

Century Link
952 First St.
Altamonte Springs, FL 32701
Attn: Ms. Dina Dominguez
Dina.Dominguez@CenturyLink.com

- ☐ The subject parcel is not within our service area.
- ☒ The subject parcel is within our service area. We do not have any facilities within the easement/right of way. We have no objection to the vacation.
- ☐ The subject parcel is within our service area. We object to the vacation.

Additional comments: _____

Signature: 

Print Name: DAVE KENNEDY

Title: ENGINEER I

Date: 8/30/17

Recording: \$ 375.50
Doc. stamps: -
Int. tax: -
TOTAL: \$ 375.50

THIS INSTRUMENT WAS PREPARED BY AND,
AFTER RECORDING, RETURN TO:

Joel B. Giles, Esquire
Florida Bar No.: 0350591
CARLTON FIELDS, P.A.
One Progress Plaza, Suite 2300
Post Office Box 2861
St. Petersburg, Florida 33731-2861
(727) 821-7000
(727) 822-3768 (Facsimile)
jgiles@carltonfields.com

INSTR 20050432318
OR BK 08045 PG 4770 PGS=44
MARTHA O. HAYNIE, COMPTROLLER
ORANGE COUNTY, FL
06/28/2005 02:51:03 PM
REC FEE 375.50

IRREVOCABLE ASSIGNMENT OF EASEMENT RIGHTS

THIS IRREVOCABLE ASSIGNMENT OF EASEMENT RIGHTS (this "Assignment") is made and entered into this 1st day of June, 2005, by and between **FLORIDA POWER CORPORATION**, d/b/a **PROGRESS ENERGY FLORIDA, INC.**, a corporation organized and existing under the laws of the State of Florida the mailing address of which is Post Office Box 14042, St. Petersburg, Florida 33733, ("Assignor") and the **CITY OF WINTER PARK, FLORIDA**, a municipal corporation created under the laws of the State of Florida with its principal place of business at (and the mailing address of which is) 401 Park Avenue South, Winter Park, Florida 32789, ("Assignee") and is made in reference to the following facts:

(A) Assignor and Assignee entered into that certain Transfer Agreement dated MAY 25, 2005, ("Agreement").

(B) Pursuant to the Agreement, Assignor is obligated to assign to Assignee all of its right, title, and interest in the electric utility distribution easements described in Exhibit "A," which is attached hereto and, by this reference, made a part hereof, (the "Easements").

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements contained in this Assignment, Ten and No/100ths Dollars (\$10.00), and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged by the parties hereto, the parties hereto hereby covenant and agree as follows:

1. **Recitals.** The statements contained in the recitals of fact set forth above (the "Recitals") are true and correct and the Recitals are, by this reference, made a part of this Assignment.

2. **Exhibits.** The exhibit attached to this Assignment is, by this reference, made a part of this Assignment.

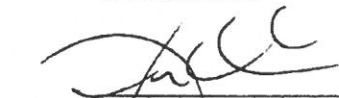
3. **Assignment of Easement Rights.** Assignor hereby irrevocably assigns to Assignee all of its right, title, and interest in and to the Easements in their "as-is, where-is" condition and without any warranties or representations regarding the Easements.

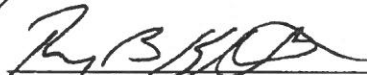
4. **Binding.** This Assignment shall be binding on Assignor and its successors and assigns and shall inure to the benefit of Assignee and its successors and assigns.

IN WITNESS WHEREOF, the Parties have executed this Assignment as of the date first above written.

WITNESSES:

FLORIDA POWER CORPORATION, d/b/a
PROGRESS ENERGY FLORIDA, INC.

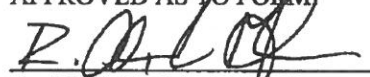

(Sign on this line)
(Print name legibly on this line.)


(Sign on this line)
(Print name legibly on this line.)

By: 
BILLY R. RALEY,
its Vice President

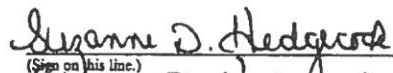
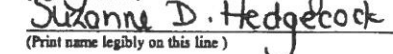
(CORPORATE SEAL)

FOR USE AND RELIANCE OF PROGRESS
ENERGY FLORIDA, INC., ONLY
APPROVED AS TO FORM


R. ALEXANDER GLENN,
Deputy General Counsel

STATE OF FLORIDA)
COUNTY OF ORANGE)

The foregoing instrument was acknowledged before me this 1st day of June, 2005, by BILLY R. RALEY, as Vice President of FLORIDA POWER CORPORATION, d/b/a PROGRESS ENERGY FLORIDA, INC., a corporation organized and existing under the laws of the State of Florida, on behalf of the corporation, who is personally known to me or has produced Florida Driver's License identification.


(Sign on this line.)

(Print name legibly on this line.)

NOTARY PUBLIC, State of Florida

COMMISSION NO.:

EXPIRATION DATE:



Suzanne D. Hedgecock
MY COMMISSION # DD048111 EXPIRES
February 27, 2006
BONDED THRU TROY FAIN INSURANCE INC.

FOR USE AND RELIANCE OF CITY OF
WINTER PARK, FLORIDA, ONLY
APPROVED AS TO FORM:


THOMAS A. CLOUD,
Special Counsel

CITY OF WINTER PARK, FLORIDA

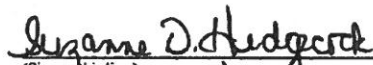

By: 
RANDY B. KNIGHT,
as its Assistant City Manager

ATTEST:

By: 
Cynthia L. Graham
City Clerk

STATE OF FLORIDA)
COUNTY OF ORANGE)

The foregoing instrument was acknowledged before me this 1st day of June, 2005, by
RANDY B. KNIGHT, as Assistant City Manager of the CITY OF WINTER PARK, FLORIDA,
a municipal corporation organized and existing under the laws of the State of Florida, on behalf
of the municipal corporation, who is personally known to me or has produced
_____ as identification.


(Sign on this line)

(Print name legibly on this line.)

NOTARY PUBLIC, State of Florida

COMMISSION NO.:

EXPIRATION DATE:



Suzanne D. Hedgecock (SEAL)
MY COMMISSION # DD068111 EXPIRES
February 27, 2006
BONDED THRU TROY FAIR INSURANCE, INC.

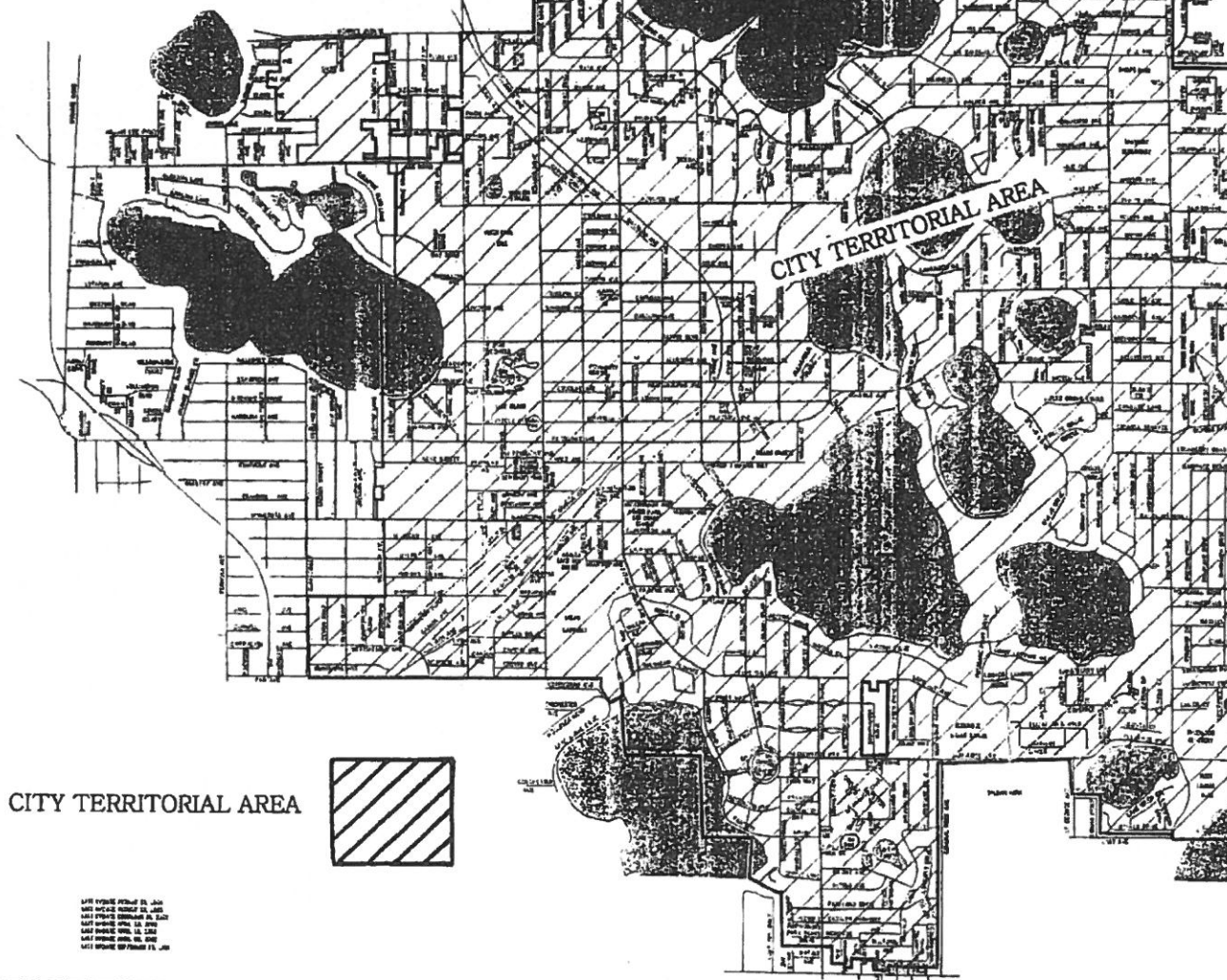
EXHIBIT "A"

List of Easements

All electric utility distribution easements owned by Assignor as of the date hereof and located within the city limits of the City of Winter Park, Florida, as described below, (the "City Limits"). The said electric utility distribution easements (the "Distribution Easements") form part of the electric utility distribution system owned by Assignor as of the date hereof and used by Assignor in providing electric utility services to customers physically located within the City Limits. The City Limits are shown on the territorial boundary map attached hereto as Exhibit "A-1" and, by this reference, made a part hereof (the "Map"). The Map was agreed to by Assignor and Assignee in arbitration in that certain action before the Circuit Court of the Ninth Judicial Circuit of Florida in and for Orange County, Florida, styled City of Winter Park, Florida, Plaintiff, v. Florida Power Corporation, Defendant, being Case No. 01-CI-01-4558-39. The Map was subsequently filed with the Florida Public Service Commission in Docket No. 050117-EL. The Distribution Easements include, but are not necessarily limited to, the electric utility distribution easements encumbering the real property identified by "Parcel ID" in Exhibit "A-2," which is attached hereto and, by this reference, made a part hereof. **Notwithstanding the foregoing and for the avoidance of any doubt, the Distribution Easements shall specifically exclude, and Assignor reserves to Assignor and its successors and assigns, any and all easements used by Assignor in connection with its power generation plants, transmission facilities, or distribution facilities used to serve customers physically located outside the City Limits.**

EXHIBIT "A-1"

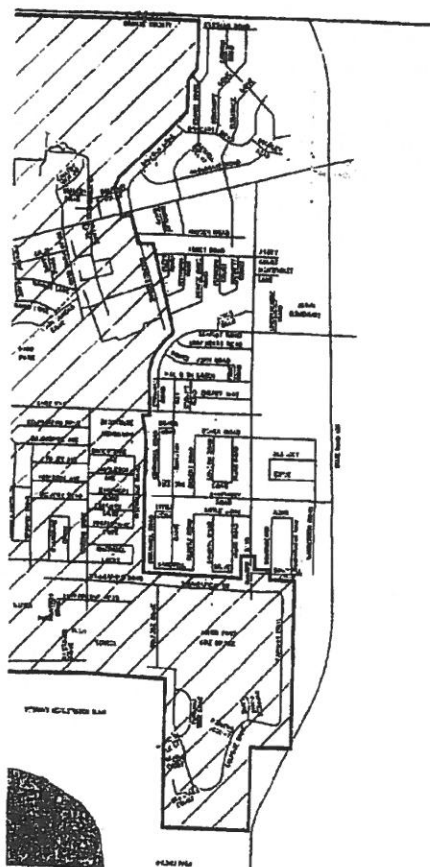
Map



STREET MAP



0 1000 2000



STREETNAME LIST

[illegible]

Parcel ID	Easement Number	Easement Area Within Underlying Parcel	Total Area Within This Easement (Sq Ft)	Category
292212784002010	771	100.01	100.01	Com
292212417205010	772	637.00	637.00	Res
292201451201010	773	265.93	265.93	Com
292212660002230	774	11.04	412.06	Office
292212750601010	774	396.99	412.06	Office
292212000000013	775	5834.55	5889.29	Office
292212000000018	775	53.02	5889.29	Office
292212643202171	776	497.73	497.73	Res
302216319002030	777	98.83	98.83	Res
302216319002060	778	51.19	99.93	Res
302216319002070	778	48.59	99.93	Res
302210305602240	779	49.98	49.98	Res
302216319003040	780	50.12	50.12	Res
302216000000013	781	564.68	2984.00	Res
302216711100010	781	2419.32	2984.00	Res
302209413409060	782	872.32	1373.90	Res
302216000000024	782	501.58	1373.90	Res
302216319001070	783	461.36	461.36	Res
302216319001140	784	537.60	537.60	Res
302216319001150	785	562.41	562.41	Res
302216319001160	786	538.06	1092.70	Res
302216319001170	786	554.07	1092.70	Res
302216319001320	787	50.17	50.17	Res
302216319001330	788	49.93	49.93	Res
302216319001380	789	51.83	99.38	Res
302216319001390	789	47.55	99.38	Res
302216319002100	790	47.61	47.61	Res
302216319002110	791	51.86	51.86	Res
302216319002150	792	50.02	50.02	Res
302216319002160	793	50.02	50.02	Res
302216319003030	794	50.91	50.91	Res
302216319004040	795	51.30	51.30	Res
302216319004050	796	51.26	51.26	Res
302216319004080	797	49.94	49.94	Res
302216319004120	798	49.98	100.00	Res
302216319004130	798	50.00	100.00	Res
302216319004160	799	49.35	100.02	Res
302216319004170	799	50.48	100.02	Res
302216319004200	800	49.17	100.18	Res
302216319004210	800	50.86	100.18	Res

10677- WP-558
30 Vert.
214701
AUG 23 9 48 AM '68
1758 PG 518

KNOW ALL MEN BY THESE PRESENTS, That the undersigned, in consideration of the sum of One Dollar and other valuable considerations, the receipt of which is hereby acknowledged, grants and conveys to FLORIDA POWER CORPORATION, its successors and assigns, the right, privilege and easement to construct, reconstruct, operate and maintain for such period of time as it may use the same or until the use thereof is abandoned, a single pole line for the transmission and distribution of electricity, including necessary communication and other wires, poles, guys, anchors, ground connections, attachments, fixtures, equipment and accessories (hereinafter collectively referred to as "facilities") desirable in connection therewith over, upon and across the following-described land in _____ ORANGE

County, State of Florida, to wit:
The East 230 feet of the North 140 feet of the Northwest 1/4 of the Northwest 1/4 of the North 1/4 of the Northwest 1/4 of Section 16, Township 22 South, Range 30 East.



An 8 foot wide Easement Area, said Easement Area being the West 8 feet of the above described property.
And; An 8 foot wide Easement Area, centerline of said Easement Area to begin at the West line, 15 feet South of the Northwest corner of the above described property and extend Northeasterly to a point on the North line, 30 feet East of said Northwest corner of said property.
RECORDED & RECORD VERIFIED

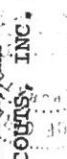
The Easement Area shall extend _____ feet on each side of the center line of power line.
Clerk of Circuit Court, Orange County, Florida.

GRANTEE shall have the right to patrol, inspect, alter, improve, repair, rebuild or remove said facilities, including the right to increase or decrease the number of wires and voltage, together with all rights and privileges reasonably necessary or convenient for the enjoyment or use thereof for the purposes above described. GRANTEE shall also have the right to trim, cut and keep clear trees, limbs and undergrowth along said line, and trees adjacent thereto, that may endanger the proper operation of the same. GRANTOR further grants the reasonable right to enter upon adjoining lands of the GRANTOR for the purpose of exercising the rights herein granted.

GRANTOR hereby agrees that no buildings or structures, other than fences, shall be constructed or located within said Easement Area. However, GRANTOR reserves the right to use said Easement Area for any other purpose which will not unreasonably interfere with the safe and proper construction, installation, operation, maintenance, alteration, repair or removal of said facilities of GRANTEE.

GRANTOR covenants that it has the right to convey the said easement and that the GRANTEE, its successors and assigns shall have quiet and peaceful possession, use and enjoyment of said easement.
All covenants, terms, provisions and conditions hereof shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF, the said GRANTOR has caused these presents to be signed in its name by its President, and its corporate seal to be affixed, attested by its Secretary, this _____ day of _____, A.D. 1968.



Signed, sealed and delivered in presence of:

By Ms. Dorothy Kutner President
Attest Dorothy Kutner Secretary
(Name of Corporation)

STATE OF FLORIDA
COUNTY OF ORANGE } ss.

I HEREBY CERTIFY that on this _____ day of _____, A.D. 1968, before me personally appeared DOROTHY KUTNER, President and _____ Secretary of CITRUS COUNCIL OF GIRL SCOUTS, INC., to me known to be the persons described in and who executed the foregoing instrument to the Florida Power Corporation and severally acknowledged the execution thereof to be their free act and deed as such officers, for the uses and purposes therein mentioned; and that they affixed thereto the official seal of said corporation, and the said instrument is the act and deed of said corporation.

WITNESS my signature and official seal in said County and State, the day and year last aforesaid.
(NOTARIAL SEAL)

My Commission Expires: Feb 16, 1972
Notary Public

This instrument prepared by St. Petersburg, Florida

Recording: \$ 375.50
Doc. stamps: -
Int. tax: -
TOTAL: \$ 375.50

THIS INSTRUMENT WAS PREPARED BY AND,
AFTER RECORDING, RETURN TO:

Joel B. Giles, Esquire
Florida Bar No.: 0350591
CARLTON FIELDS, P.A.
One Progress Plaza, Suite 2300
Post Office Box 2861
St. Petersburg, Florida 33731-2861
(727) 821-7000
(727) 822-3768 (Facsimile)
jgiles@carltonfields.com

INSTR 20050432318
OR BK 08045 PG 4770 PGS=44
MARTHA O. HAYNIE, COMPTROLLER
ORANGE COUNTY, FL
06/28/2005 02:51:03 PM
REC FEE 375.50

IRREVOCABLE ASSIGNMENT OF EASEMENT RIGHTS

THIS IRREVOCABLE ASSIGNMENT OF EASEMENT RIGHTS (this "Assignment") is made and entered into this 1st day of June, 2005, by and between **FLORIDA POWER CORPORATION**, d/b/a **PROGRESS ENERGY FLORIDA, INC.**, a corporation organized and existing under the laws of the State of Florida the mailing address of which is Post Office Box 14042, St. Petersburg, Florida 33733, ("Assignor") and the **CITY OF WINTER PARK, FLORIDA**, a municipal corporation created under the laws of the State of Florida with its principal place of business at (and the mailing address of which is) 401 Park Avenue South, Winter Park, Florida 32789, ("Assignee") and is made in reference to the following facts:

(A) Assignor and Assignee entered into that certain Transfer Agreement dated MAY 25, 2005, ("Agreement").

(B) Pursuant to the Agreement, Assignor is obligated to assign to Assignee all of its right, title, and interest in the electric utility distribution easements described in Exhibit "A," which is attached hereto and, by this reference, made a part hereof, (the "Easements").

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements contained in this Assignment, Ten and No/100ths Dollars (\$10.00), and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged by the parties hereto, the parties hereto hereby covenant and agree as follows:

1. Recitals. The statements contained in the recitals of fact set forth above (the "Recitals") are true and correct and the Recitals are, by this reference, made a part of this Assignment.

2. Exhibits. The exhibit attached to this Assignment is, by this reference, made a part of this Assignment.

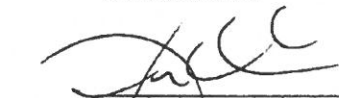
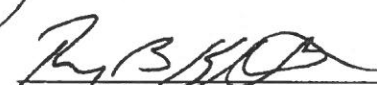
3. **Assignment of Easement Rights.** Assignor hereby irrevocably assigns to Assignee all of its right, title, and interest in and to the Easements in their "as-is, where-is" condition and without any warranties or representations regarding the Easements.

4. **Binding.** This Assignment shall be binding on Assignor and its successors and assigns and shall inure to the benefit of Assignee and its successors and assigns.

IN WITNESS WHEREOF, the Parties have executed this Assignment as of the date first above written.

WITNESSES:

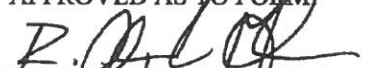
FLORIDA POWER CORPORATION, d/b/a
PROGRESS ENERGY FLORIDA, INC.


(Sign on this line)
(Print name legibly on this line.)

(Sign on this line)
(Print name legibly on this line.)

By: 
BILLY R. RALEY,
its Vice President


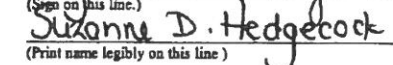
(CORPORATE SEAL)

FOR USE AND RELIANCE OF PROGRESS
ENERGY FLORIDA, INC., ONLY
APPROVED AS TO FORM


R. ALEXANDER GLENN,
Deputy General Counsel

STATE OF FLORIDA)
COUNTY OF ORANGE)

The foregoing instrument was acknowledged before me this 1st day of June, 2005, by BILLY R. RALEY, as Vice President of FLORIDA POWER CORPORATION, d/b/a PROGRESS ENERGY FLORIDA, INC., a corporation organized and existing under the laws of the State of Florida, on behalf of the corporation, who is personally known to me or has produced Florida Driver's License identification.


(Sign on this line.)

(Print name legibly on this line.)

NOTARY PUBLIC, State of Florida

COMMISSION NO.:

EXPIRATION DATE:




Suzanne D. Hedgecock
MY COMMISSION # DD048111 EXPIRES
February 27, 2006
BONDED THRU TROY FAIN INSURANCE, INC.

FOR USE AND RELIANCE OF CITY OF
WINTER PARK, FLORIDA, ONLY
APPROVED AS TO FORM:


THOMAS A. CLOUD,
Special Counsel

CITY OF WINTER PARK, FLORIDA

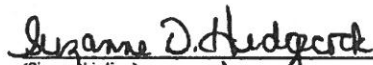

By: 
RANDY B. KNIGHT,
as its Assistant City Manager

ATTEST:

By: 
Cynthia L. Graham
City Clerk

STATE OF FLORIDA)
COUNTY OF ORANGE)

The foregoing instrument was acknowledged before me this 1st day of June, 2005, by
RANDY B. KNIGHT, as Assistant City Manager of the CITY OF WINTER PARK, FLORIDA,
a municipal corporation organized and existing under the laws of the State of Florida, on behalf
of the municipal corporation, who is personally known to me or has produced
_____ as identification.


(Sign on this line)

(Print name legibly on this line.)

NOTARY PUBLIC, State of Florida

COMMISSION NO.:

EXPIRATION DATE:



Suzanne D. Hedgecock (SEAL)
MY COMMISSION # DD068111 EXPIRES
February 27, 2006
BONDED THRU TROY FAIR INSURANCE, INC.

EXHIBIT "A"

List of Easements

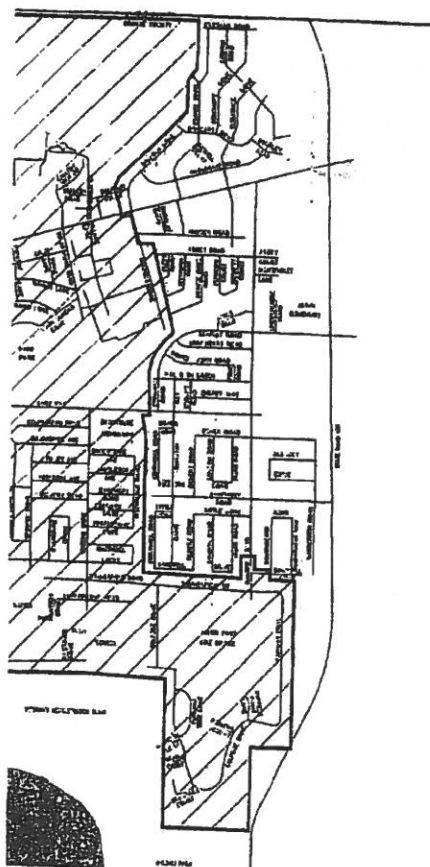
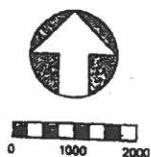
All electric utility distribution easements owned by Assignor as of the date hereof and located within the city limits of the City of Winter Park, Florida, as described below, (the "City Limits"). The said electric utility distribution easements (the "Distribution Easements") form part of the electric utility distribution system owned by Assignor as of the date hereof and used by Assignor in providing electric utility services to customers physically located within the City Limits. The City Limits are shown on the territorial boundary map attached hereto as Exhibit "A-1" and, by this reference, made a part hereof (the "Map"). The Map was agreed to by Assignor and Assignee in arbitration in that certain action before the Circuit Court of the Ninth Judicial Circuit of Florida in and for Orange County, Florida, styled City of Winter Park, Florida, Plaintiff, v. Florida Power Corporation, Defendant, being Case No. 01-CI-01-4558-39. The Map was subsequently filed with the Florida Public Service Commission in Docket No. 050117-EL. The Distribution Easements include, but are not necessarily limited to, the electric utility distribution easements encumbering the real property identified by "Parcel ID" in Exhibit "A-2," which is attached hereto and, by this reference, made a part hereof. **Notwithstanding the foregoing and for the avoidance of any doubt, the Distribution Easements shall specifically exclude, and Assignor reserves to Assignor and its successors and assigns, any and all easements used by Assignor in connection with its power generation plants, transmission facilities, or distribution facilities used to serve customers physically located outside the City Limits.**

EXHIBIT "A-1"

Map

[illegible]

STREET MAP



STREETNAME LIST

4	29	0	11	11	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100
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Parcel ID	Easement Number	Easement Area Within Underlying Parcel	Total Area Within This Easement (Sq Ft)	Category
292212784002010	771	100.01	100.01	Com
292212417205010	772	637.00	637.00	Res
292201451201010	773	265.93	265.93	Com
292212660002230	774	11.04	412.06	Office
292212750601010	774	396.99	412.06	Office
292212000000013	775	5834.55	5889.29	Office
292212000000018	775	53.02	5889.29	Office
292212643202171	776	497.73	497.73	Res
302216319002030	777	98.83	98.83	Res
302216319002060	778	51.19	99.93	Res
302216319002070	778	48.59	99.93	Res
302210305602240	779	49.98	49.98	Res
302216319003040	780	50.12	50.12	Res
302216000000013	781	564.68	2984.00	Res
302216711100010	781	2419.32	2984.00	Res
302209413409060	782	872.32	1373.90	Res
302216000000024	782	501.58	1373.90	Res
302216319001070	783	461.36	461.36	Res
302216319001140	784	537.60	537.60	Res
302216319001150	785	562.41	562.41	Res
302216319001160	786	538.06	1092.70	Res
302216319001170	786	554.07	1092.70	Res
302216319001320	787	50.17	50.17	Res
302216319001330	788	49.93	49.93	Res
302216319001380	789	51.83	99.38	Res
302216319001390	789	47.55	99.38	Res
302216319002100	790	47.61	47.61	Res
302216319002110	791	51.86	51.86	Res
302216319002150	792	50.02	50.02	Res
302216319002160	793	50.02	50.02	Res
302216319003030	794	50.91	50.91	Res
302216319004040	795	51.30	51.30	Res
302216319004050	796	51.26	51.26	Res
302216319004080	797	49.94	49.94	Res
302216319004120	798	49.98	100.00	Res
302216319004130	798	50.00	100.00	Res
302216319004160	799	49.35	100.02	Res
302216319004170	799	50.48	100.02	Res
302216319004200	800	49.17	100.18	Res
302216319004210	800	50.86	100.18	Res

16-22-30

214701 RECORDED

30 Vert.

AUG 23 9 48 AM 1968

O.R. 1758 PC 518

10687- WP-558

KNOW ALL MEN BY THESE PRESENTS, That the undersigned, in consideration of the sum of One Dollar and other valuable considerations, the receipt of which is hereby acknowledged, grants and conveys to FLORIDA POWER CORPORATION, its successors and assigns, the right, privilege and easement to construct, reconstruct, operate and maintain for such period of time as it may use the same or until the use thereof is abandoned, a single pole line for the transmission and distribution of electricity, including necessary communication and other wires, poles, guys, anchors, ground connections, attachments, fixtures, equipment and accessories (hereinafter collectively referred to as "facilities")

desirable in connection therewith over, upon and across the following-described land in ORANGE

County, State of Florida, to wit:

The East 230 feet of the North 140 feet of the Northwest $\frac{1}{4}$ of the Northwest $\frac{1}{4}$ of the Northwest $\frac{1}{4}$ of Section 16, Township 22 South, Range 30 East.



An 8 foot wide Easement Area, said Easement Area being the West 8 feet of the above described property.

And; An 8 foot wide Easement Area, centerline of said Easement Area to begin at the West line, 15 feet South of the Northwest corner of the above described property and extend Northeasterly to a point on the North line, 30 feet East of said Northwest corner of said property.

RECORDED & RECORD VERIFIED

Arthur W. Renell Clerk of

Circuit Court, Orange Co., Fla.

The Easement Area shall extend 4 feet on each side of the center line of power line.

GRANTEE shall have the right to patrol, inspect, alter, improve, repair, rebuild or remove said facilities, including the right to increase or decrease the number of wires and voltage, together with all rights and privileges reasonably necessary or convenient for the enjoyment or use thereof for the purposes above described. GRANTEE shall also have the right to trim, cut and keep clear trees, limbs and undergrowth along said line, and trees adjacent thereto, that may endanger the proper operation of the same. GRANTOR further grants the reasonable right to enter upon adjoining lands of the GRANTOR for the purpose of exercising the rights herein granted.

GRANTOR hereby agrees that no buildings or structures, other than fences, shall be constructed or located within said Easement Area. However, GRANTOR reserves the right to use said Easement Area for any other purpose which will not unreasonably interfere with the safe and proper construction, installation, operation, maintenance, alteration, repair or removal of said facilities of GRANTEE.

GRANTOR covenants that it has the right to convey the said easement and that the GRANTEE, its successors and assigns shall have quiet and peaceful possession, use and enjoyment of said easement.

All covenants, terms, provisions and conditions hereof shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF, the said GRANTOR has caused these presents to be signed in its name by its

President, and its corporate seal to be affixed, attested by its Secretary, this

2 day of July, A.D. 1968

CITRUS COUNCIL OF GIRL SCOUTS, INC.

Signed, sealed and delivered in presence of:

Kenneth F. Munn
Kenneth F. Munn

(Name of Corporation)

By *Ms. Dorothy Kutner*
President

Attest: *Gill R. Boissoneault*
Secretary

STATE OF FLORIDA }
COUNTY OF ORANGE } ss.

I HEREBY CERTIFY that on this 2nd day of July, A.D. 1968, before me personally appeared DOROTHY KUTNER and GILL R. BOISSONEAULT

respectively President and Secretary of CITRUS COUNCIL OF GIRL SCOUTS, INC. a non-profit corporation of the State of Florida, to me known to be the persons described in and who executed the foregoing instrument to the Florida Power Corporation and severally acknowledged the execution thereof to be their free act and deed as such officers, for the uses and purposes therein mentioned; and that they affixed thereto the official seal of said corporation, and the said instrument is the act and deed of said corporation.

WITNESS my signature and official seal in said County and State, the day and year last aforesaid.

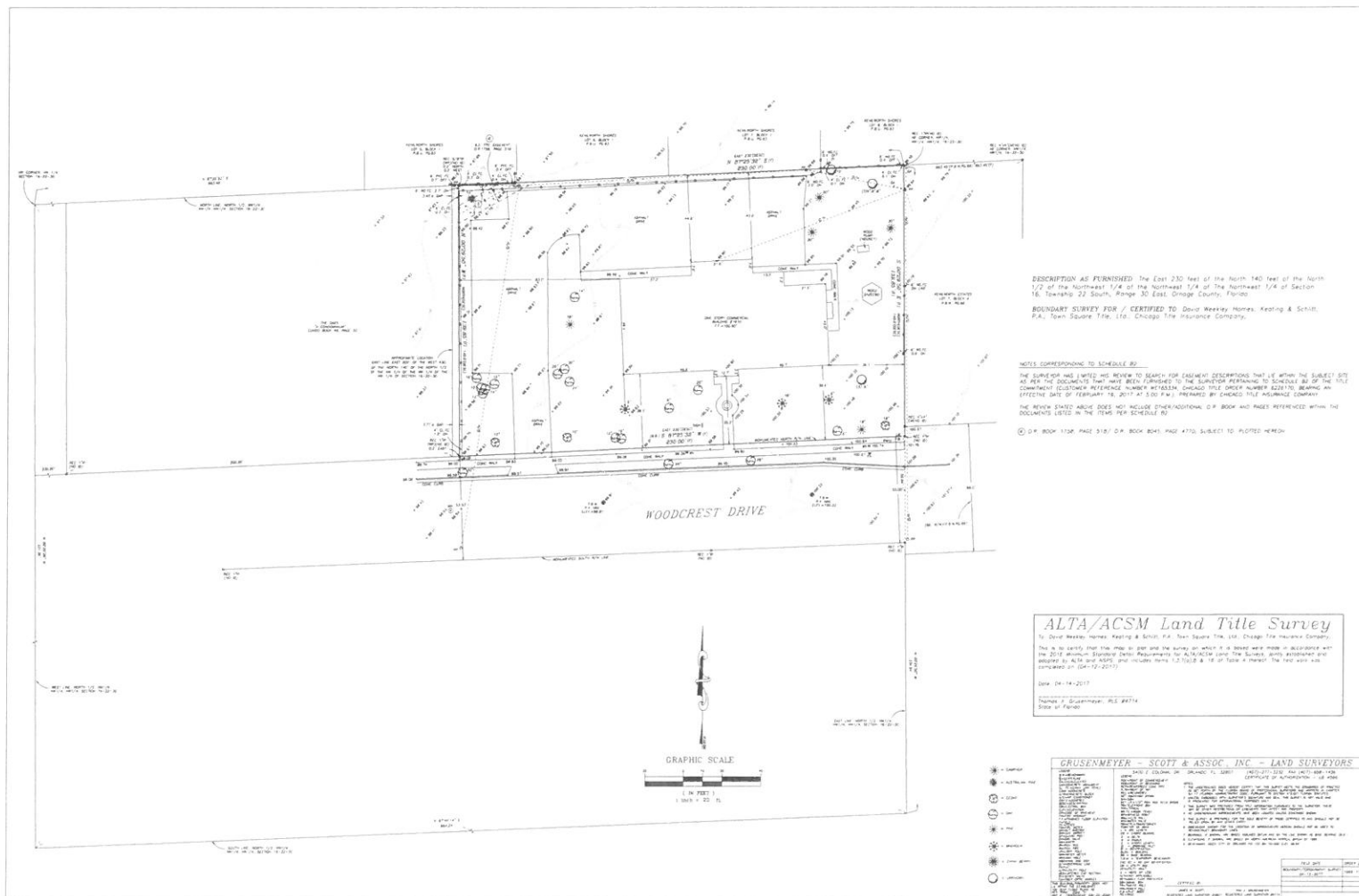
(NOTARIAL SEAL)

My Commission Expires: Feb 16, 1972

Kenneth F. Munn
Notary Public

This instrument prepared by
Florida Power Corporation
St. Petersburg, Florida







city commission **agenda item**

item type	Public Hearings	meeting date	11/27/2017
prepared by	Finance	approved by	City Manager
board approval	N/A final vote		
strategic objective	Fiscal Stewardship		

subject

Ordinance - Advance refunding Water and Sewer Refunding and Improvement Revenue Bonds, Series 2009 (1)

motion / recommendation

Approve proposed ordinance authorizing the issuance of not to exceed \$36,000,000 of Water and Sewer Refunding Revenue Bonds, Series 2017 for the purpose of advance refunding the Water and Sewer Refunding and Improvement Revenue Bonds, Series 2009.

background

The City's Financial Advisor, Public Financial Management (PFM), projects net present value savings of \$5,180,517 or 14.96% of the refunded bonds could be achieved by advance refunding the remaining 2009 water and sewer bonds. Annual debt service savings average \$513,058 over the remaining seventeen years the bond will be outstanding. These bonds do not become callable until December 1, 2019 so this would be an advance refunding.

Proposed federal income tax reform measures in their current state would prohibit the advance refunding of tax exempt bonds. After reviewing the refunding option with PFM, staff determined it would be better to capture known savings now rather than risk rising interest rates over the next two years reducing potential savings. The City's Debt Management Policy sets a minimum threshold of 5% of the bonds being refunded for an advance refunding.

PFM is reaching out to several financial institutions to solicit proposals to refund the bonds. The one proposing the lowest true interest cost will be selected to underwrite the 2017 refunding bonds.

alternatives / other considerations

Do not advance refund the 2009 bonds in 2017. If interest rates do not rise, even greater savings could be achieved by waiting until the bonds become callable later in

2019. Sensitivity analysis prepared by PFM shows if rates were to increase by 0.30% by the 2019 call date, savings would be roughly equal to an advance refunding now in the current market. Any increase in interest rates above 0.30% would make waiting a less favorable option.

fiscal impact

The City's Financial Advisor, Public Financial Management (PFM), projects net present value savings of \$5,180,517 or 14.96% of the refunded bonds can be achieved by advance refunding the 2009 bonds now. Annual debt service savings average \$513,058 over the remaining seventeen years the bond will be outstanding.

ATTACHMENTS:

Description	Upload Date	Type
Ordinance	11/20/2017	Cover Memo
Preliminary refunding numbers	11/20/2017	Cover Memo

ORDINANCE NO. []-17

AN ORDINANCE OF THE CITY OF WINTER PARK, FLORIDA, AUTHORIZING THE ISSUANCE OF A SERIES OF REFUNDING BONDS FOR THE PURPOSE OF ADVANCE REFUNDING ALL OR A PORTION OF THE CITY'S OUTSTANDING WATER AND SEWER REFUNDING AND IMPROVEMENT REVENUE BONDS, SERIES 2009 OF THE CITY; PROVIDING FOR THE PAYMENT OF SUCH REFUNDING BONDS FROM NET REVENUES OF THE WATER AND SEWER SYSTEM OF THE CITY; AND PROVIDING AN EFFECTIVE DATE.

BE IT ENACTED BY THE PEOPLE OF THE CITY OF WINTER PARK, FLORIDA:

SECTION 1. AUTHORITY FOR THIS ORDINANCE. This ordinance is enacted pursuant to the provisions of Chapter 166, Parts I and II, Florida Statutes; Sections 2.11 and 2.14 of the Charter of the City of Winter Park, Florida; Chapter 86, Article III, of the Code of Ordinances of the City of Winter Park, Florida; and other applicable provisions of law.

SECTION 2. FINDINGS. It is hereby ascertained, determined and declared that:

A. On September 10, 2009, the City of Winter Park, Florida (the "Issuer"), issued its Water and Sewer Refunding and Improvement Revenue Bonds, Series 2009 (the "Series 2009 Bonds"), to finance the cost of (i) refunding a portion of its Water and Sewer Revenue Bonds, Series 2004 (the "Series 2004 Bonds"), (ii) paying a swap termination fee in connection with the refunding of the Series 2004 Bonds, (iii) the acquisition and construction of certain improvements to the Issuer's Water and Sewer System, and (iv) paying the costs of issuance related thereto.

B. The Series 2009 Bonds were issued pursuant to Ordinance No. 2772-09 and Resolution No. 1878-04, each as amended and supplemented, in an aggregate principal amount of \$45,685,000.

C. Based upon the advice of Public Financial Management, Inc., Orlando, Florida, the financial advisor to the Issuer (the "Financial Advisor"), it is necessary and desirable to advance refund all or a portion of the outstanding Series 2009 Bonds. Such refunding of the Series 2009 Bonds will result in a savings with respect to the debt service that would otherwise be attributable to the Series 2009 Bonds.

D. The water and sewer revenue bonds to be issued to refund the Series 2009 Bonds will be secured by a pledge of the net revenues of the water and sewer system.

SECTION 3. AUTHORIZATION OF BONDS. The issuance by the Issuer of not exceeding \$36,000,000 Water and Sewer Refunding Revenue Bonds (the "Refunding Bonds"),

for the purpose of advance refunding all or a portion of the Series 2009 Bonds and paying the costs of issuance related thereto; to be dated, to bear interest at a rate or rates not exceeding the maximum legal rate per annum, to be payable, to mature, to be subject to redemption and to have such other characteristics as shall be provided by subsequent resolution of the Commission prior to their delivery, is hereby authorized. The Commission may adopt a specific bond resolution (including any resolutions supplemental to the bond resolution), supplemental to this ordinance, which sets forth the maturities of the Series 2009 Bonds to be refunded, the fiscal details of the Refunding Bonds and other covenants and provisions necessary for the marketing, sale and issuance of the Refunding Bonds.

The Refunding Bonds, when delivered by the City pursuant to the terms of the specific bond resolution and any resolution supplemental thereto as contemplated hereby shall not constitute general obligations or indebtedness of, or a pledge of the faith, credit or taxing power of, the City or of the State of Florida or any agency or political subdivision thereof, but are limited, special obligations of the City, the principal of, premium, if any, and interest on which are payable from the net revenues of the water and sewer system. Neither the City nor the State of Florida, or any agency or political subdivision thereof, will be obligated (i) to exercise its ad valorem taxing power or any other taxing power in any form on any real or personal property to pay the principal of, premium, if any, or interest on the Refunding Bonds, or other costs incident thereto, or (ii) to pay the same from any funds of the City except from the net revenues of the water and sewer system in the manner provided in the specific bond resolution and any resolution supplemental thereto. The Refunding Bonds do not constitute a lien upon any other property of or in the City.

SECTION 4. REPEAL OF INCONSISTENT PROVISIONS. All ordinances, resolutions or parts thereof in conflict with this ordinance are hereby repealed to the extent of such conflict.

SECTION 5. EFFECTIVE DATE. This ordinance shall take effect immediately upon its final passage and adoption.

ENACTED after reading by title at a regular meeting of the City Commission of the City of Winter Park, Florida, held in City Hall, Winter Park, Florida, on this ____ day of December, 2017.

Mayor

ATTEST:

City Clerk

SOURCES AND USES OF FUNDS

City of Winter Park, Florida
Water & Sewer Refunding Revenue Bonds, Series 2017

Preliminary Numbers for Illustration Purposes
Closing 12/15/17 at Raymond James Rate
Advance Refunding of W&S Refunding and Improvement Revenue Bonds, Series 2009

Sources:

Bond Proceeds:	
Par Amount	35,115,000.00
Other Sources of Funds:	
DSRF Release	1,843,331.00
	<u>36,958,331.00</u>

Uses:

Refunding Escrow Deposits:	
Cash Deposit	0.59
SLGS Purchases	<u>36,743,217.00</u>
	36,743,217.59
Delivery Date Expenses:	
Cost of Issuance	125,000.00
Underwriter's Discount	<u>87,787.50</u>
	212,787.50
Other Uses of Funds:	
Additional Proceeds	2,325.91
	<u>36,958,331.00</u>

BOND SUMMARY STATISTICS

City of Winter Park, Florida
Water & Sewer Refunding Revenue Bonds, Series 2017

Preliminary Numbers for Illustration Purposes

Closing 12/15/17 at Raymond James Rate

Advance Refunding of W&S Refunding and Improvement Revenue Bonds, Series 2009

Dated Date	12/15/2017
Delivery Date	12/15/2017
Last Maturity	12/01/2034
Arbitrage Yield	2.600067%
True Interest Cost (TIC)	2.628331%
Net Interest Cost (NIC)	2.624063%
All-In TIC	2.668738%
Average Coupon	2.600000%
Average Life (years)	10.389
Duration of Issue (years)	8.969
Par Amount	35,115,000.00
Bond Proceeds	35,115,000.00
Total Interest	9,485,434.83
Net Interest	9,573,222.33
Total Debt Service	44,600,434.83
Maximum Annual Debt Service	3,174,740.00
Average Annual Debt Service	2,629,570.35
Underwriter's Fees (per \$1000)	
Average Takedown	
Other Fee	2.500000
Total Underwriter's Discount	2.500000
Bid Price	99.750000

Bond Component	Par Value	Price	Average Coupon	Average Life	PV of 1 bp change
Bond Component	35,115,000.00	100.000	2.600%	10.389	31,089.00
	35,115,000.00			10.389	31,089.00

	TIC	All-In TIC	Arbitrage Yield
Par Value	35,115,000.00	35,115,000.00	35,115,000.00
+ Accrued Interest			
+ Premium (Discount)			
- Underwriter's Discount	-87,787.50	-87,787.50	
- Cost of Issuance Expense		-125,000.00	
- Other Amounts			
Target Value	35,027,212.50	34,902,212.50	35,115,000.00
Target Date	12/15/2017	12/15/2017	12/15/2017
Yield	2.628331%	2.668738%	2.600067%

SUMMARY OF BONDS REFUNDED

City of Winter Park, Florida
Water & Sewer Refunding Revenue Bonds, Series 2017

Preliminary Numbers for Illustration Purposes
Closing 12/15/17 at Raymond James Rate
Advance Refunding of W&S Refunding and Improvement Revenue Bonds, Series 2009

Bond	Maturity Date	Interest Rate	Par Amount	Call Date	Call Price
Water and Sewer Refunding and Improvement Revenue Bonds, Series 2009, 2009:					
SERIAL	12/01/2018	4.000%	1,640,000.00		
TERM24	12/01/2024	4.250%	6,445,000.00	12/01/2019	100.000
TERM29	12/01/2029	5.000%	12,150,000.00	12/01/2019	100.000
TERM34	12/01/2034	5.000%	14,405,000.00	12/01/2019	100.000
			34,640,000.00		

SUMMARY OF REFUNDING RESULTS

City of Winter Park, Florida
Water & Sewer Refunding Revenue Bonds, Series 2017

Preliminary Numbers for Illustration Purposes
Closing 12/15/17 at Raymond James Rate
Advance Refunding of W&S Refunding and Improvement Revenue Bonds, Series 2009

Dated Date	12/15/2017
Delivery Date	12/15/2017
Arbitrage yield	2.600067%
Escrow yield	1.694130%
Value of Negative Arbitrage	604,239.46
Bond Par Amount	35,115,000.00
True Interest Cost	2.628331%
Net Interest Cost	2.624063%
Average Coupon	2.600000%
Average Life	10.389
Par amount of refunded bonds	34,640,000.00
Average coupon of refunded bonds	4.919459%
Average life of refunded bonds	10.925
PV of prior debt to 12/15/2017 @ 2.600067%	42,136,522.26
Net PV Savings	5,180,517.17
Percentage savings of refunded bonds	14.955304%
Percentage savings of refunding bonds	14.753003%

SAVINGS

City of Winter Park, Florida
Water & Sewer Refunding Revenue Bonds, Series 2017

Preliminary Numbers for Illustration Purposes
Closing 12/15/17 at Raymond James Rate
Advance Refunding of W&S Refunding and Improvement Revenue Bonds, Series 2009

Date	Prior Debt Service	Refunding Debt Service	Savings	Annual Savings	Present Value to 12/15/2017 @ 2.6000673%
06/01/2018	833,631.25	420,989.83	412,641.42		407,755.22
12/01/2018	2,473,631.25	2,391,495.00	82,136.25	494,777.67	80,122.04
06/01/2019	800,831.25	431,340.00	369,491.25		355,804.71
12/01/2019	800,831.25	656,340.00	144,491.25	513,982.50	137,353.42
06/01/2020	800,831.25	428,415.00	372,416.25		349,475.69
12/01/2020	800,831.25	658,415.00	142,416.25	514,832.50	131,928.40
06/01/2021	800,831.25	425,425.00	375,406.25		343,297.53
12/01/2021	800,831.25	660,425.00	140,406.25	515,812.50	126,749.43
06/01/2022	800,831.25	422,370.00	378,461.25		337,265.11
12/01/2022	2,885,831.25	2,752,370.00	133,461.25	511,922.50	117,407.43
06/01/2023	756,525.00	392,080.00	364,445.00		316,492.05
12/01/2023	2,911,525.00	2,762,080.00	149,445.00	513,890.00	128,115.78
06/01/2024	710,731.25	361,270.00	349,461.25		295,740.40
12/01/2024	2,915,731.25	2,751,270.00	164,461.25	513,922.50	137,393.33
06/01/2025	663,875.00	330,200.00	333,675.00		275,179.53
12/01/2025	2,928,875.00	2,750,200.00	178,675.00	512,350.00	145,461.03
06/01/2026	607,250.00	298,740.00	308,510.00		247,937.67
12/01/2026	2,947,250.00	2,743,740.00	203,510.00	512,020.00	161,454.24
06/01/2027	548,750.00	266,955.00	281,795.00		220,692.40
12/01/2027	2,983,750.00	2,751,955.00	231,795.00	513,590.00	179,204.36
06/01/2028	487,875.00	234,650.00	253,225.00		193,259.79
12/01/2028	2,997,875.00	2,734,650.00	263,225.00	516,450.00	198,313.58
06/01/2029	425,125.00	202,150.00	222,975.00		165,833.37
12/01/2029	3,025,125.00	2,732,150.00	292,975.00	515,950.00	215,098.17
06/01/2030	360,125.00	169,260.00	190,865.00		138,332.06
12/01/2030	3,060,125.00	2,739,260.00	320,865.00	511,730.00	229,566.93
06/01/2031	292,625.00	135,850.00	156,775.00		110,727.17
12/01/2031	3,072,625.00	2,715,850.00	356,775.00	513,550.00	248,749.49
06/01/2032	223,125.00	102,310.00	120,815.00		83,153.22
12/01/2032	3,098,125.00	2,702,310.00	395,815.00	516,630.00	268,931.00
06/01/2033	151,250.00	68,510.00	82,740.00		55,495.09
12/01/2033	3,121,250.00	2,688,510.00	432,740.00	515,480.00	286,521.01
06/01/2034	77,000.00	34,450.00	42,550.00		27,811.18
12/01/2034	3,157,000.00	2,684,450.00	472,550.00	515,100.00	304,900.42
<hr/>					
	53,322,425.00	44,600,434.83	8,721,990.17	8,721,990.17	7,021,522.26

Savings Summary

PV of savings from cash flow	7,021,522.26
Less: Prior funds on hand	-1,843,331.00
Plus: Refunding funds on hand	2,325.91
Net PV Savings	5,180,517.17

BOND PRICING

City of Winter Park, Florida
Water & Sewer Refunding Revenue Bonds, Series 2017

Preliminary Numbers for Illustration Purposes
Closing 12/15/17 at Raymond James Rate
Advance Refunding of W&S Refunding and Improvement Revenue Bonds, Series 2009

Bond Component	Maturity Date	Amount	Rate	Yield	Price
Bond Component:					
	12/01/2018	1,935,000	2.600%	2.600%	100.000
	12/01/2019	225,000	2.600%	2.600%	100.000
	12/01/2020	230,000	2.600%	2.600%	100.000
	12/01/2021	235,000	2.600%	2.600%	100.000
	12/01/2022	2,330,000	2.600%	2.600%	100.000
	12/01/2023	2,370,000	2.600%	2.600%	100.000
	12/01/2024	2,390,000	2.600%	2.600%	100.000
	12/01/2025	2,420,000	2.600%	2.600%	100.000
	12/01/2026	2,445,000	2.600%	2.600%	100.000
	12/01/2027	2,485,000	2.600%	2.600%	100.000
	12/01/2028	2,500,000	2.600%	2.600%	100.000
	12/01/2029	2,530,000	2.600%	2.600%	100.000
	12/01/2030	2,570,000	2.600%	2.600%	100.000
	12/01/2031	2,580,000	2.600%	2.600%	100.000
	12/01/2032	2,600,000	2.600%	2.600%	100.000
	12/01/2033	2,620,000	2.600%	2.600%	100.000
	12/01/2034	2,650,000	2.600%	2.600%	100.000
		35,115,000			

Dated Date	12/15/2017	
Delivery Date	12/15/2017	
First Coupon	06/01/2018	
Par Amount	35,115,000.00	
Original Issue Discount		
Production	35,115,000.00	100.000000%
Underwriter's Discount	-87,787.50	-0.250000%
Purchase Price	35,027,212.50	99.750000%
Accrued Interest		
Net Proceeds	35,027,212.50	

BOND DEBT SERVICE

City of Winter Park, Florida
Water & Sewer Refunding Revenue Bonds, Series 2017

Preliminary Numbers for Illustration Purposes
Closing 12/15/17 at Raymond James Rate
Advance Refunding of W&S Refunding and Improvement Revenue Bonds, Series 2009

Period Ending	Principal	Coupon	Interest	Debt Service	Annual Debt Service
06/01/2018			420,989.83	420,989.83	
12/01/2018	1,935,000	2.600%	456,495.00	2,391,495.00	2,812,484.83
06/01/2019			431,340.00	431,340.00	
12/01/2019	225,000	2.600%	431,340.00	656,340.00	1,087,680.00
06/01/2020			428,415.00	428,415.00	
12/01/2020	230,000	2.600%	428,415.00	658,415.00	1,086,830.00
06/01/2021			425,425.00	425,425.00	
12/01/2021	235,000	2.600%	425,425.00	660,425.00	1,085,850.00
06/01/2022			422,370.00	422,370.00	
12/01/2022	2,330,000	2.600%	422,370.00	2,752,370.00	3,174,740.00
06/01/2023			392,080.00	392,080.00	
12/01/2023	2,370,000	2.600%	392,080.00	2,762,080.00	3,154,160.00
06/01/2024			361,270.00	361,270.00	
12/01/2024	2,390,000	2.600%	361,270.00	2,751,270.00	3,112,540.00
06/01/2025			330,200.00	330,200.00	
12/01/2025	2,420,000	2.600%	330,200.00	2,750,200.00	3,080,400.00
06/01/2026			298,740.00	298,740.00	
12/01/2026	2,445,000	2.600%	298,740.00	2,743,740.00	3,042,480.00
06/01/2027			266,955.00	266,955.00	
12/01/2027	2,485,000	2.600%	266,955.00	2,751,955.00	3,018,910.00
06/01/2028			234,650.00	234,650.00	
12/01/2028	2,500,000	2.600%	234,650.00	2,734,650.00	2,969,300.00
06/01/2029			202,150.00	202,150.00	
12/01/2029	2,530,000	2.600%	202,150.00	2,732,150.00	2,934,300.00
06/01/2030			169,260.00	169,260.00	
12/01/2030	2,570,000	2.600%	169,260.00	2,739,260.00	2,908,520.00
06/01/2031			135,850.00	135,850.00	
12/01/2031	2,580,000	2.600%	135,850.00	2,715,850.00	2,851,700.00
06/01/2032			102,310.00	102,310.00	
12/01/2032	2,600,000	2.600%	102,310.00	2,702,310.00	2,804,620.00
06/01/2033			68,510.00	68,510.00	
12/01/2033	2,620,000	2.600%	68,510.00	2,688,510.00	2,757,020.00
06/01/2034			34,450.00	34,450.00	
12/01/2034	2,650,000	2.600%	34,450.00	2,684,450.00	2,718,900.00
	35,115,000		9,485,434.83	44,600,434.83	44,600,434.83

PRIOR BOND DEBT SERVICE

City of Winter Park, Florida
Water & Sewer Refunding Revenue Bonds, Series 2017

Preliminary Numbers for Illustration Purposes
Closing 12/15/17 at Raymond James Rate
Advance Refunding of W&S Refunding and Improvement Revenue Bonds, Series 2009

Period Ending	Principal	Coupon	Interest	Debt Service	Annual Debt Service
06/01/2018			833,631.25	833,631.25	
12/01/2018	1,640,000	4.000%	833,631.25	2,473,631.25	3,307,262.50
06/01/2019			800,831.25	800,831.25	
12/01/2019			800,831.25	800,831.25	1,601,662.50
06/01/2020			800,831.25	800,831.25	
12/01/2020			800,831.25	800,831.25	1,601,662.50
06/01/2021			800,831.25	800,831.25	
12/01/2021			800,831.25	800,831.25	1,601,662.50
06/01/2022			800,831.25	800,831.25	
12/01/2022	2,085,000	4.250%	800,831.25	2,885,831.25	3,686,662.50
06/01/2023			756,525.00	756,525.00	
12/01/2023	2,155,000	4.250%	756,525.00	2,911,525.00	3,668,050.00
06/01/2024			710,731.25	710,731.25	
12/01/2024	2,205,000	4.250%	710,731.25	2,915,731.25	3,626,462.50
06/01/2025			663,875.00	663,875.00	
12/01/2025	2,265,000	5.000%	663,875.00	2,928,875.00	3,592,750.00
06/01/2026			607,250.00	607,250.00	
12/01/2026	2,340,000	5.000%	607,250.00	2,947,250.00	3,554,500.00
06/01/2027			548,750.00	548,750.00	
12/01/2027	2,435,000	5.000%	548,750.00	2,983,750.00	3,532,500.00
06/01/2028			487,875.00	487,875.00	
12/01/2028	2,510,000	5.000%	487,875.00	2,997,875.00	3,485,750.00
06/01/2029			425,125.00	425,125.00	
12/01/2029	2,600,000	5.000%	425,125.00	3,025,125.00	3,450,250.00
06/01/2030			360,125.00	360,125.00	
12/01/2030	2,700,000	5.000%	360,125.00	3,060,125.00	3,420,250.00
06/01/2031			292,625.00	292,625.00	
12/01/2031	2,780,000	5.000%	292,625.00	3,072,625.00	3,365,250.00
06/01/2032			223,125.00	223,125.00	
12/01/2032	2,875,000	5.000%	223,125.00	3,098,125.00	3,321,250.00
06/01/2033			151,250.00	151,250.00	
12/01/2033	2,970,000	5.000%	151,250.00	3,121,250.00	3,272,500.00
06/01/2034			77,000.00	77,000.00	
12/01/2034	3,080,000	5.000%	77,000.00	3,157,000.00	3,234,000.00
	34,640,000		18,682,425.00	53,322,425.00	53,322,425.00

ESCROW REQUIREMENTS

City of Winter Park, Florida
Water & Sewer Refunding Revenue Bonds, Series 2017

Preliminary Numbers for Illustration Purposes
Closing 12/15/17 at Raymond James Rate
Advance Refunding of W&S Refunding and Improvement Revenue Bonds, Series 2009

Period Ending	Principal	Interest	Principal Redeemed	Total
06/01/2018		833,631.25		833,631.25
12/01/2018	1,640,000.00	833,631.25		2,473,631.25
06/01/2019		800,831.25		800,831.25
12/01/2019		800,831.25	33,000,000.00	33,800,831.25
	1,640,000.00	3,268,925.00	33,000,000.00	37,908,925.00

ESCROW DESCRIPTIONS DETAIL

City of Winter Park, Florida
Water & Sewer Refunding Revenue Bonds, Series 2017

Preliminary Numbers for Illustration Purposes
Closing 12/15/17 at Raymond James Rate
Advance Refunding of W&S Refunding and Improvement Revenue Bonds, Series 2009

Type of Security	Type of SLGS	Maturity Date	First Int Pmt Date	Par Amount	Rate	Max Rate
Prior Debt (PRI), DSRF_ESC, Dec 15, 2017:						
SLGS	Certificate	06/01/2018	06/01/2018	28,258	1.360%	1.360%
SLGS	Certificate	12/01/2018	12/01/2018	107,975	1.560%	1.560%
SLGS	Note	06/01/2019	06/01/2018	25,673	1.640%	1.640%
SLGS	Note	12/01/2019	06/01/2018	1,681,425	1.700%	1.700%
				1,843,331		
Global Proceeds Escrow, Dec 15, 2017:						
SLGS	Certificate	06/01/2018	06/01/2018	535,003	1.360%	1.360%
SLGS	Certificate	12/01/2018	12/01/2018	2,044,286	1.560%	1.560%
SLGS	Note	06/01/2019	06/01/2018	486,077	1.640%	1.640%
SLGS	Note	12/01/2019	06/01/2018	31,834,520	1.700%	1.700%
				34,899,886		
				36,743,217		

SLGS Summary

SLGS Rates File	17NOV17
Total Certificates of Indebtedness	2,715,522.00
Total Notes	34,027,695.00
Total original SLGS	36,743,217.00

ESCROW COST

City of Winter Park, Florida
Water & Sewer Refunding Revenue Bonds, Series 2017

Preliminary Numbers for Illustration Purposes

Closing 12/15/17 at Raymond James Rate

Advance Refunding of W&S Refunding and Improvement Revenue Bonds, Series 2009

Type of Security	Maturity Date	Par Amount	Rate	Total Cost
SLGS	06/01/2018	563,261	1.360%	563,261.00
SLGS	12/01/2018	2,152,261	1.560%	2,152,261.00
SLGS	06/01/2019	511,750	1.640%	511,750.00
SLGS	12/01/2019	33,515,945	1.700%	33,515,945.00
		36,743,217		36,743,217.00

Purchase Date	Cost of Securities	Cash Deposit	Total Escrow Cost
12/15/2017	36,743,217	0.59	36,743,217.59
	36,743,217	0.59	36,743,217.59

ESCROW CASH FLOW

City of Winter Park, Florida
Water & Sewer Refunding Revenue Bonds, Series 2017

Preliminary Numbers for Illustration Purposes
Closing 12/15/17 at Raymond James Rate
Advance Refunding of W&S Refunding and Improvement Revenue Bonds, Series 2009

Date	Principal	Interest	Net Escrow Receipts
06/01/2018	563,261.00	270,370.67	833,631.67
12/01/2018	2,152,261.00	321,369.33	2,473,630.33
06/01/2019	511,750.00	289,081.88	800,831.88
12/01/2019	33,515,945.00	284,885.53	33,800,830.53
	36,743,217.00	1,165,707.41	37,908,924.41

Escrow Cost Summary

Purchase date	12/15/2017
Purchase cost of securities	36,743,217.00

ESCROW SUFFICIENCY

City of Winter Park, Florida
Water & Sewer Refunding Revenue Bonds, Series 2017

Preliminary Numbers for Illustration Purposes
Closing 12/15/17 at Raymond James Rate
Advance Refunding of W&S Refunding and Improvement Revenue Bonds, Series 2009

Date	Escrow Requirement	Net Escrow Receipts	Excess Receipts	Excess Balance
12/15/2017		0.59	0.59	0.59
06/01/2018	833,631.25	833,631.67	0.42	1.01
12/01/2018	2,473,631.25	2,473,630.33	-0.92	0.09
06/01/2019	800,831.25	800,831.88	0.63	0.72
12/01/2019	33,800,831.25	33,800,830.53	-0.72	
	37,908,925.00	37,908,925.00	0.00	

ESCROW STATISTICS

City of Winter Park, Florida
Water & Sewer Refunding Revenue Bonds, Series 2017

Preliminary Numbers for Illustration Purposes

Closing 12/15/17 at Raymond James Rate

Advance Refunding of W&S Refunding and Improvement Revenue Bonds, Series 2009

Escrow	Total Escrow Cost	Modified Duration (years)	Yield to Receipt Date	Yield to Disbursement Date	Perfect Escrow Cost	Value of Negative Arbitrage	Cost of Dead Time
Prior Debt (PRI):							
DSRF_ESC	1,843,331.00	1.835	1.694130%	1.694130%	1,813,017.56	30,313.44	
Global Proceeds Escrow:							
	34,899,886.59	1.835	1.694130%	1.694130%	34,325,960.54	573,926.02	0.03
	36,743,217.59				36,138,978.10	604,239.46	0.03

Delivery date 12/15/2017
Arbitrage yield 2.600067%



city commission agenda item

item type	Public Hearings	meeting date	11/27/2017
prepared by	Planning / CRA Manager	approved by	City Manager, City Attorney
board approval	yes final vote		
strategic objective	Exceptional Quality of Life, Intelligent Growth and Development		

subject

Request of Weingarten Nostat, Inc. for conditional use approval to redevelop the portion of the Winter Park Corners Shopping Center at 1903-1999 Aloma Avenue by reconstructing a new 30,348 square foot grocery store and 12,250 square feet of retail space.

motion / recommendation

Motion to approve the Conditional Use request with a variance only for three parking spaces to provide landscape opportunities adjacent to Aloma Avenue, subject to the following conditions:

1. That the final architectural elevations and materials of the Grocery Store building, the western end cap addition and the new ATM structure be approved by the P&Z Board with input from the city architect.
2. That a three parking space variance be granted to allow three additional landscape islands in the 40 space parking strip fronting Aloma Avenue.
3. That the project be limited to 60 new restaurant seats, which can be split up among tenant spaces.
4. That the project reface (stucco and paint) the existing wall in the rear of the project facing Edwin Boulevard and add street trees along Lander Road as may be necessary to screen the rear view of the loading and service areas.
5. That the applicant install a five foot minimum sidewalk along Lander Road adjacent to the east side of the project and incorporate street trees where possible with species coordinated with Urban Forestry.
6. The electric transformer/switch gear and all backflow preventers shall be located where not visible from a public street and shall also be landscaped so as to be effectively screened from view.
7. That the newly constructed square footage comply with the City's bike parking ordinance.
8. That the applicant coordinate with Florida Hospital prior to building permit to consider design opportunities that may allow for a future traffic signal.

background

Weingarten Nostat, Inc. owners of the Winter Park Corners shopping center located

at 1903-1999 Aloma Avenue are requesting Conditional Use approval to redevelop the portion of the shopping center (former Whole Foods Market site) by reconstructing a new 30,348 square foot grocery store and 12,250 square feet of retail space. The entire property measures 9.16 acres, and is zoned C-1. The grocery store tenant will be a Sprouts Farmers Market, which is a natural and organic grocer, and will be their first location in Central Florida. This is a Conditional Use because the building size exceeds 10,000 square feet.

Site and Context: The 9.16 acre property currently holds retail spaces and restaurants, as well as the former Whole Foods Market/Title Boxing building. The project would demolish that Whole Foods Market building, and rebuild a building in generally the same locations with parking in the front and side. The plan also proposes new retail spaces that will fill-in the current gap between the two buildings. To the north across Edwin Boulevard and to the west across Lakemont Avenue are single-family properties. To the south are several commercial buildings followed by the Winter Park Hospital. To the east is the Aloma Shopping Center which holds a Publix Supermarket.

Development Request: The proposed Sprouts Farmers Market is 30,348 square feet, and the proposed retail building is 12,250 square feet, both will be one-story in height. The current drive-through lanes for the Bank of America tenant space are also being removed for ten (10) additional parking spaces and landscaping. The drive-through lanes are then being replaced with a drive-up Bank of America ATM in the southwest portion of the site. The existing building facades on the site are going to get a face-lift with a new façade. The project meets the C-1 development standards in terms of density and intensity, landscaping, storm water retention, etc. Based on the property size of 9.16 acres, the project has a 23% floor area ratio (FAR) which is well within the 45% maximum FAR.

The Bank of America tenant (east end of the existing building) the existing drive-thru teller lanes are proposed to be removed for more parking and a small 1,500 square feet building addition. Part of this approval also is to allow a remote ATM site up along the Aloma Avenue frontage. Architectural approval of this end cap and ATM will be a condition of approval.

Traffic Impacts: The existing building that is to be demolished is approximately 45,000 square feet and the new buildings are approximately 42,500 square feet. Based on this scenario that the square footage of the shopping center is being reduced slightly and that they are essentially exchanging a Whole Foods supermarket for a Sprouts supermarket, the traffic generation should be no more than experienced in the past.

It is possible that the Winter Park Hospital will bring forth plans to create a new entrance to the Hospital campus from Aloma Avenue. This will allow the Hospital to have an Aloma Avenue address which will direct and focus visitors to the 'front door' of the Hospital on the east side versus everyone today who arrives at 200 N. Lakemont Avenue address, to find only the Emergency Room entrance. A key component of this plan is the installation of a new traffic light allowing safe turning movements then into and out of the Hospital campus. It also will provide the opportunity for the same safe turning movements into and out of this Aloma Corners

shopping center at the "Whole Foods/Sprouts" driveway. The only problem is the current design offsets the two driveways. Thus, staff is suggesting a condition regarding coordination with the Winter Park Hospital.

Parking Analysis: The existing shopping center was constructed prior to 1960, so therefore falls under the previous parking code requirements at one space for every four seats of restaurant seating and one space for every 250 square feet of retail/commercial. The redeveloped areas fall under the current parking requirements based on one space per 250 square feet for the approximately 40,000 square feet of new retail and one space for every three seats for the 130 seats of restaurant space proposed. The total parking required is 474 spaces, and the project yields 451 spaces. Because the applicant is requesting at least a new 130 seat restaurant, they need a 5% variance (23 spaces) to meet code.

As most patrons of this shopping center have experienced, this is a popular shopping center and restaurant destination particularly on the Thursday-Saturday night peak period. It also will likely become even more popular with a new grocery store that is making its debut in the Central Florida area. This in return means more of a parking demand than the typical parking code requirements address.

Staff is not in support of this parking variance. Every restaurant in town would like to have extra seats with a 5% parking variance to not provide parking. The parking in this shopping center on Thursday-Saturday nights was not sufficient when the Whole Foods was in operation. Thus, staff cannot support adding more restaurant seating without the required parking. Therefore, the newly constructed retail spaces may only have a restaurant with a total of 60 seats (which can be split up among tenant spaces) with the 451 parking spaces provided, and meet the parking code requirements.

Storm Water Retention: One major site improvement is that this entire 9.16 acre shopping center will be retrofitted to meet the storm water retention requirements of the City and St. Johns River Water Management District. The stormwater will be captured through an underground system. This is a major undertaking by the applicants and a significant improvement on the current conditions.

Landscaping and Tree Preservation: A specific detailed landscape plan with types, sizes, quantities, etc. is attached. Since the property was already developed, we are not dealing with removals of significant trees. The existing parking rows that do not conform to the current parking lot landscape requirements are not required to be modified as they are not being impacted. The new parking lot area which will be reconstructed after excavation for the underground storm water exfiltration system will generally meet the new landscape code requirements.

As previously mentioned, the applicant is installing a new underground stormwater system that requires removing pavement in the portion of the parking lot facing Aloma Avenue. This is one of the parking areas that does not meet the landscape island requirements since there are more than 10 spaces in a row. Rather than make the storm water upgrade punitive both via the expense and loss of parking, the staff is in support of a minor three space parking variance to allow this parking strip to meet code.

Neighborhood Compatibility: This property abuts and backs up to single-family properties along Edwin Boulevard. Back in the 1960's, a block wall was constructed in the rear to screen the loading/service area and dumpsters. That wall and the street trees accomplish that purpose. However, due to age, that wall is in disrepair, so staff is suggesting a condition of approval that the applicant's reface this wall and add additional landscaping buffer, if necessary.

Project Signage: The applicant has included a preliminary sign package as part of the Conditional Use submittal. The existing signs are primarily getting retrofitted with enhanced design, and appear to be meeting the City's sign code and are not larger than what exists today. Variances are not being granted for their signage.

Other Department Requests: To further the City's vision to create a more walkable environment, the Public Works Department has requested that the applicant install a five foot minimum sidewalk along Lander Road adjacent to the project. This will give the neighborhood to the north safe and walkable access to the project.

Architectural Articulation Variance: The architectural elevations of the new building construction facades are attached. The new retail store addition facade image is consistent with the look and appearance of the existing shopping center. The facade and image of the new Sprouts grocery store is very disappointing to the city architect and planning staff. The simplicity and lack of architecture, articulation and visual interest is likely motivated by cost factors in the real estate transaction. The façade images importantly do not meet the C-1 zoning code requirement which states that, "terracing and articulation providing additional setbacks are required to create relief to the overall massing of the building facades. Such design features of building facade articulation are required at least every 60 feet, on average, along the primary building facades facing streets or the building frontage and where the building fronts its primary parking lot area." The Sprouts building image has little or no architectural design features to create relief to the overall massing of the building, other than the front entrance. It also is not consistent with the City's Comprehensive Plan policies to avoid the "big box" styles and does not "promote quality redevelopment that strengthens the character of the City".

In the packet are images of other Sprouts grocery stores built elsewhere in the Nation that have attractive architectural styles, articulation and visual interest. Sprouts has produced quality architecture and visual interest in the past. They can do that again in this case if they try. The planning staff is not in support of this façade articulation variance and feels that the applicant needs to put forth more effort into quality redevelopment. To that end, the city architect has begun a dialogue directly with the Sprouts architectural firm in Kansas City. In the interim, the staff is recommending the exact same condition of approval imposed upon the Rollins College Facilities building, which is that the final elevations come back to the P&Z Board for approval after the collaborative design process is completed.

Conditional Use Process: Winter Park's conditional use process provides the opportunity for major projects to combine the "preliminary" and "final" Conditional Use approvals if they provide all of the information required for both. The applicants have satisfied that requirement with the exception of the architectural elevations.

Staff Summary: The proposed project is being built in conformance with the C-1 zoning code with regard to the site plan layout, but is requesting variances for parking and articulation requirements. Furthermore, the building elevations are not in conformance the Comprehensive Plan policies to promote quality redevelopment that strengthens the character of the City. Staff is not in support of the elevations as submitted nor the parking variance, and is recommending that the applicant work with the city architect and submit the final architectural elevations to the Planning & Zoning Board for final approval.

Planning and Zoning Board Summary: The Board discussed that they frequent this shopping center on a regular basis and there is no open parking anywhere on Thursday-Saturday nights. They stated that the Title Boxing and Huntington Education had no parking impact and it will be much greater with the Sprouts so they were opposed to the parking variance. In addition, they pointed out that while the overall size of the shopping center remains the same or is smaller, the size of the grocery is increasing by 9,000 square feet which will definitely increase the actual need for parking. The Board also mentioned that the process used for the Rollins facility Building with the elevations returning for approval resulted in a much better design and they welcomed that opportunity.

Planning and Zoning Board Minutes – November 7, 2017:

REQUEST OF WEINGARTEN NOSTAT INC. FOR: conditional use aPPROVAL to redevelop the portion of the winter park cornerS shopping center at 1903-1999 aloma avenue that held the former whoLE foods market by reconstructing a new 30,346 square foot grocery and new retail shop space, on property zoned c-1.

Planning Manager, Jeff Briggs, presented the staff report. He explained that Weingarten Nostat, Inc. owners of the Winter Park Corners shopping center located at 1903-1999 Aloma Avenue are requesting Conditional Use approval to redevelop the portion of the shopping center (former Whole Foods Market site) by reconstructing a new 30,348 square foot grocery store and 12,250 square feet of retail space. The entire property measures 9.16 acres, and is zoned (C-1). He noted that the grocery store tenant will be a Sprouts Farmers Market, which is a natural and organic grocer, and will be their first location in Central Florida. This is a Conditional Use because the building size exceeds 10,000 square feet.

Mr. Briggs explained that the property currently holds retail spaces and restaurants as well as the former Whole Foods Market/Title Boxing building. The project would demolish that Whole Foods Market building, and rebuild a building in generally the same locations with parking in the front and side. The plan also proposes new retail spaces will fill-in the current gap between the two buildings. To the north across Edwin Boulevard and to the west across Lakemont Avenue are single-family properties. To the south are several commercial buildings followed by the Winter Park Hospital.

He stated that also the current drive-through lanes for the Bank of American tenant space are being removed for ten (10) additional parking spaces and landscaping and

a small 1,500 square feet building addition. The drive-through lanes are then being replaced with a drive-up Bank of America ATM in the southwest portion of the site. The existing building facades on the site are going to get a face-lift with a new façade. The project meets the C-1 development standards in terms of density and intensity, landscaping, storm water retention, etc. Based on the property size of 9.16 acres, the project has a 23% floor area ratio (FAR) which is well within the 45% maximum FAR.

Mr. Briggs reviewed issues related to traffic impacts, parking analysis, storm water retention, landscaping and tree preservation, neighborhood compatibility, project signage and architectural articulation. He went over the conditional use process and summarized by stating that the proposed project is being built in conformance with the C-1 zoning code with regard to the site plan layout, but is requesting variances for parking and articulation requirements. Staff is not in support of the elevations as submitted nor the parking variance, and is recommending that the applicant work with the city architect and submit the final architectural elevations to the Planning & Zoning Board for final approval.

STAFF RECOMMENDATION IS FOR APPROVAL of the Conditional Use with a variance only for three parking spaces to provide landscape opportunities adjacent to Aloma Avenue, subject to the following conditions:

1. That the final architectural elevations and materials of the Grocery Store building, the western end cap addition and the new ATM structure be approved by the P&Z Board with input from the city architect.
2. That a three parking space variance be granted to allow three additional landscape islands in the 40 space parking strip fronting Aloma Avenue.
3. That the project be limited to 60 new restaurant seats, which can be split up among tenant spaces.
4. That the project reface (stucco and paint) the existing wall in the rear of the project facing Edwin Boulevard and add street trees along Lander Road as may be necessary to screen the rear view of the loading and service areas.
5. That the applicant install a five foot minimum sidewalk along Lander Road adjacent to the east side of the project and incorporate street trees where possible with species coordinated with Urban Forestry.
6. The electric transformer/switch gear and all backflow preventers shall be located where not visible from a public street and shall also be landscaped so as to be effectively screened from view.
7. That the newly constructed square footage comply with the City's bike parking ordinance.
8. That the applicant coordinate with Florida Hospital prior to building permit to consider design opportunities that may allow for a future traffic signal.

Mr. Briggs responded to questions from the Board.

Bob Ziegenfuss, PE, Z Development Services, presented details of the project and responded to questions from the Board regarding demolition of the property, traffic, parking, sidewalks, storm water retention and signage. Other representatives of Weingarten also provided information and answers to questions by the Board. Mr. Ziegenfuss outlined the rationale for the parking variance indicating that there were sufficient spaces but some are located by the

County Court that are not readily visible. He also explained the significant investment that the applicants are undertaking to provide storm water retention for a 9 acre site that has very little retention existing. They discussed the timing of the project which may involve the changes at the Bank of America side as a Phase II. They also indicated that discussions have begun with Florida Hospital.

The Board heard public comments from: David Williams, 205 Tyree Lane; Karen Goldberg, 619 Byron Road and Steve Goldberg, 619 Byron Road. Their comments centered on traffic impact, constructions impacts, the need to improve the rear wall and the need for a sidewalk along Edwin Boulevard, which as a cut-through route with no sidewalk needs some improvements for pedestrian safety.

No one else wished to speak. The public hearing was closed.

The Board agreed generally with Staff's recommendation. Chairman Johnston stated that he frequents this shopping center on a regular basis and there is no open parking anywhere on Thursday-Saturday nights. He stated that the Title Boxing and Huntington Education had no parking impact and it will be much greater with the Sprouts so he was opposed to the parking variance. That conclusion was supported by other Board member comments. In addition, Mr. Waugh pointed out that while the overall size of the shopping center remains the same or is smaller, the size of the grocery is increasing by 9,000 sq. ft. which will definitely increase the actual need for parking. The Board also mentioned that the process used for the Rollins facility Building with the elevations returning for approval resulted in a much better design and they welcomed that opportunity.

Motion made by Sheila De Ciccio, seconded by Ray Waugh for approval of the conditional use approval to redevelop the portion of the Winter Park Corners shopping center at 1903-1999 Aloma Avenue with a new retail shop space, subject to the conditions recommended by staff.

Motion carried unanimously with a 7-0 vote.

[alternatives / other considerations](#)

N/A

[fiscal impact](#)

N/A

ATTACHMENTS:

Description

Backup Materials

Upload Date

11/15/2017

Type

Backup Material



Sprouts Farmers Market

Nationwide

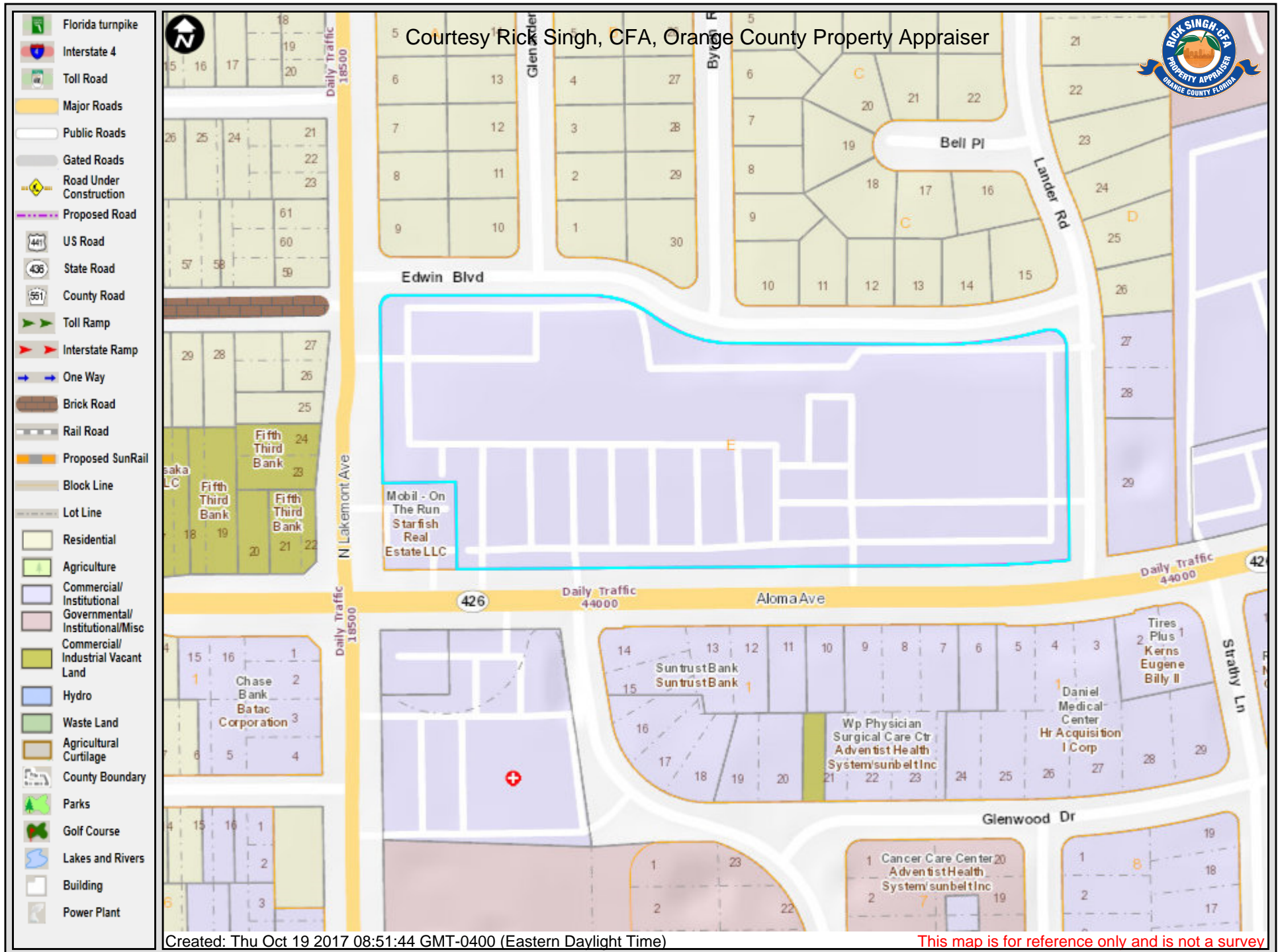
AVG. 30,000 SQUARE FEET

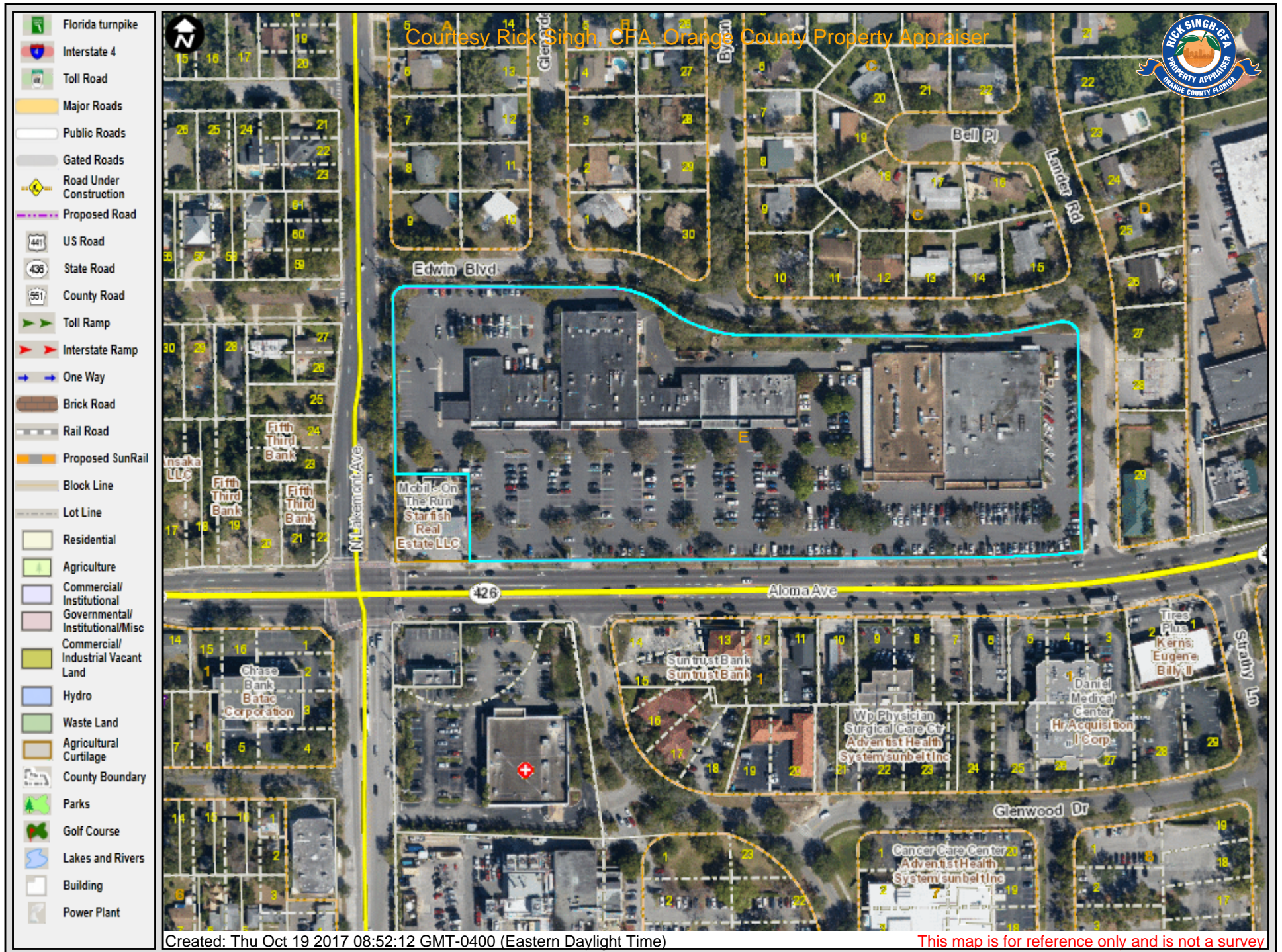












Winter Park Corners Parking Analysis
 Aloma Avenue & Lander Road, Winter Park, Florida

Parking Required

Tenant	Floor Area (S.F.)	Number of seats	Parking Requirement	No. of Parking Required
Bank of America	5,000		One parking space for each 250 S.F. of gross floor space	20.0
Computer Repair Doctor	750			3.0
Corners Custom Picture Framing	1,425			5.7
T-Mobile	1,016			4.1
Massage Envy	3,400			13.6
Christine's Nails	1,050			4.2
Winter Park Eyewear	1,050			4.2
Unique Hair	650			2.6
Designer Resale	1,050			4.2
Hair Cuttery	1,050			4.2
European Wax Center	1,050			4.2
New Retail	8,750		This includes the future 1,500 SF at the old bank drive thru area	35.0
Total	26,241			105.0

Tenant	Floor Area (S.F.)	Number of seats	Parking Requirement	No. of Parking Required
Giovanni's Italian Restaurant	3,225	88	One parking space for every four seats for existing and one per 3 seats for new	22.0
Outback Steakhouse	6,809	254		63.5
Mechine's Frozen Yogurt	1,260	25		6.3
Winter Park Burger Company	1,050	34		8.5
Smallcakes Cupcakery	1,050	8		2.0
Jersey Mike's Subs	1,050	28		7.0
Tijuana Flats	2,100	90		22.5
Rice and Beans Cocina Latina	2,100	50		12.5
Jumbo Chinese Restaurant	2,100	82		20.5
New Restaurant	5,000	130		43.3
Total	25,744	789		208.1

Tenant	Floor Area (S.F.)	Number of seats	Parking Requirement	No. of Parking Required
Orange County Courthouse	10,500		One parking space for each 250 S.F. for 85% the area and one parking space per 1,000 S.F. for the remaining 15% of the area	37.3
Grocery	30,348			107.7
Total	40,848			145.0

Tenant	Floor Area (S.F.)	Number of Student / Staff	Parking Requirement	No. of Parking Required
School of Massage Therapy	4,093	20 Students / 6 Staff	One parking space for every two students plus one space for each employee/staff	16
Total	4,093			16
Total Parking Spaces Required				474.1

With 5% deviation
 450.3548467

Parking Spaces Provided

Regular	431
Handicap	20
Total Parking Spaces Provided	451

Note: Existing restaurants are calculated at one space per 3 seats. Future restaurants will be calculated at one space per 3 seats.
 All tenants above 10,000 S.F. are calculated as one space per 250 S.F. for 85% of the area and one space per 1,000 S.F. for the remaining 15% of the area.

ALL OF BLOCK "E", EASTGATE SUBDIVISION, ACCORDING TO THE PLAT THEREOF AS
RECORDED IN PLAT BOOK "T", PAGE 127, PUBLIC RECORDS OF ORANGE COUNTY,
FLORIDA; LESS: RIGHT-OF-WAY FOR SR #426 ON THE SOUTH THEREOF;

ALSO LESS AND EXCEPT:

A PORTION OF BLOCK "E", EASTGATE SUBDIVISION, AS RECORDED IN PLAT BOOK "T", PAGE 127, OF THE PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA (LESS THAT PART IN RIGHT-OF-WAY OF STATE ROAD NO. 426), MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE SOUTHWEST CORNER OF BLOCK "E", EASTGATE SUBDIVISION, AS RECORDED IN PLAT BOOK "T", PAGE 127, OF THE PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA; THENCE RUN NORTH 05°57'30" WEST ALONG THE WEST LINE OF SAID BLOCK "E" AND THE EAST RIGHT-OF-WAY LINE OF LAKEMONT AVENUE 3.34 FEET TO THE NORTH RIGHT-OF-WAY LINE FOR STATE ROAD NO. 426 (ALOMA AVENUE), AND THE POINT OF BEGINNING; THENCE CONTINUE NORTH 05°57'30" WEST ALONG THE EAST RIGHT-OF-WAY LINE OF LAKEMONT AVENUE 153.72 FEET; THENCE DEPARTING SAID RIGHT-OF-WAY LINE RUN NORTH 89°19'27" EAST 115.00 FEET; THENCE SOUTH 05°57'27" EAST 137.68 FEET TO THE SAID NORTH RIGHT-OF-WAY LINE FOR STATE ROAD NO. 426; THENCE SOUTH 89°29'13" WEST ALONG SAID RIGHT-OF-WAY LINE 115.00 FEET TO THE POINT OF BEGINNING.

THIS BUILDING/LOT LIES IN ZONES "X", BASED ON FLOOD
INSURANCE RATE MAP NO. 12095C0255F, COMMUNITY NO.
120188, CITY OF WINTER PARK, ORANGE COUNTY, FLORIDA.

Winter Park Corners Parking Analysis				
Aloma Avenue & Lander Road, Winter Park, Florida				
Parking Required				
Tenant	Floor Area (S.F.)	Number of seats	Parking Requirement	No. of Parking Required
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Grocery	30,348			107.7
Total	40,848			145.0
Tenant	Floor Area (S.F.)	Number of Student / Staff	Parking Requirement	No. of Parking Required
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Total	4,093			16
Total Parking Spaces Required				474.1
Parking Spaces Provided				
Regular				431
Handicap				20
Total Parking Spaces Provided				451

Note: Existing restaurants calculated at one space per 4 seats. Future restaurants will be calculated at one space per 3 seats.

All tenants above 10,000 S.F. are calculated as one space per 250 S.F. for 85% of the area and one space per 1,000 S.F. for the remaining 15% of the area.

OWNER/DEVELOPER
WEINGARTEN REALTY
2720 E. COLONIAL DRIVE
ORLANDO, FLORIDA 32803
PHONE: 407-563-1125
EMAIL: DMENNING@WEINGARTEN.COM
CONTACT: DALE MENNINGER

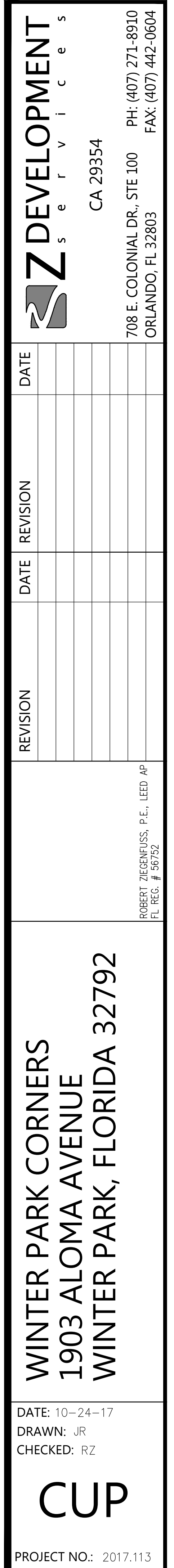
CIVIL ENGINEER
Z DEVELOPMENT SERVICES
708 EAST COLONIAL DRIVE, SUITE 100
ORLANDO, FLORIDA 32803
PHONE: 407-271-6810
EMAIL: 808@ZDEVELOPMENTSERVICES.COM
CONTACT: ROBERT ZIEGENFUSS, PE

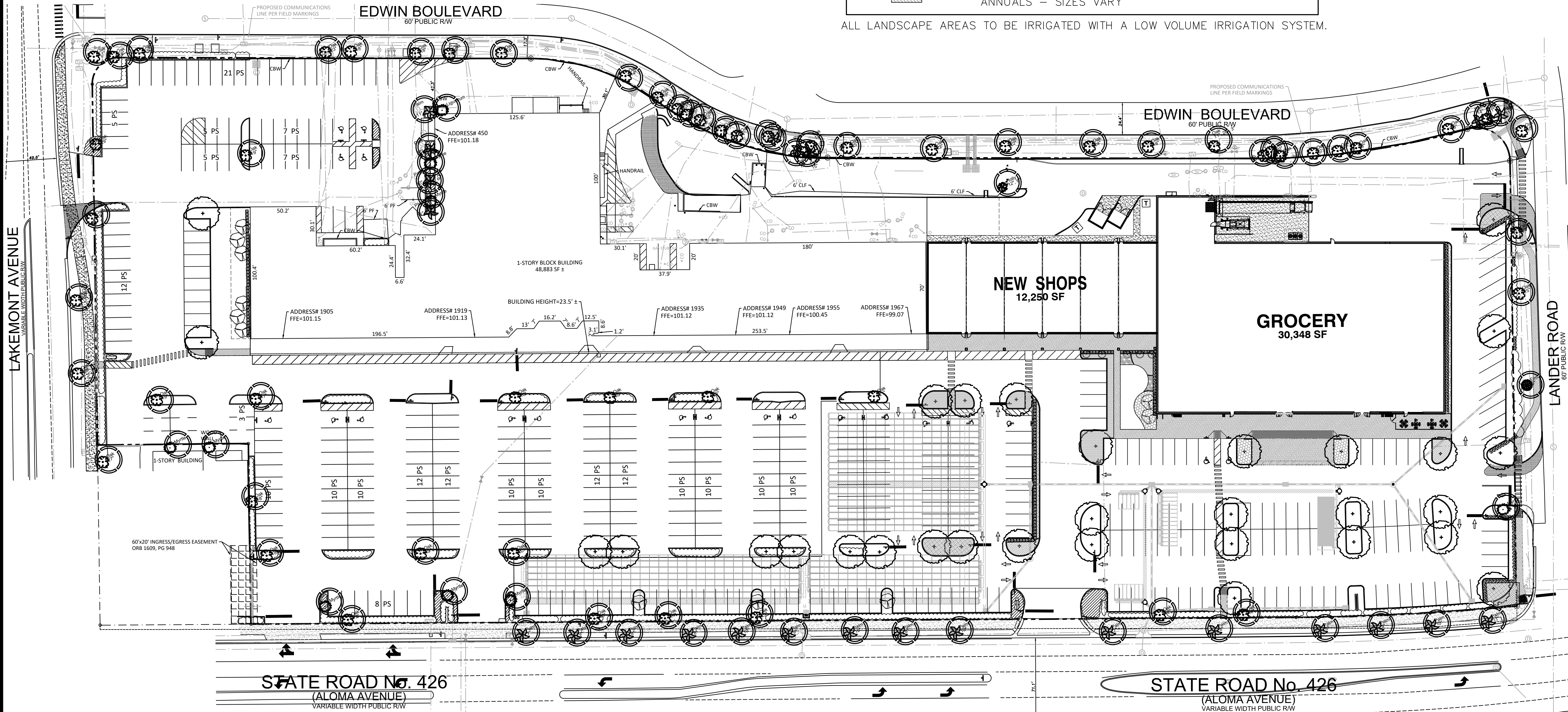
ARCHITECT
CUHACI & PETERSON
1925 PROSPECT AVENUE
ORLANDO, FLORIDA 32814
PHONE: 407-661-8800
CONTACT: CHRIS RENEGAR
EMAIL: CHRISRC@P.COM

SURVEYOR
ACCURIGHT SURVEYS OF ORLANDO, INC.
2012 EAST ROBINSON STREET
ORLANDO, FLORIDA 32803
PHONE: 407-894-6314
EMAIL: ACCU@ACCURIGHTSURVEYS.NET

GEOTECHNICAL
ENGINEER
TERRACON
1675 LEE ROAD
WINTER PARK, FL 32789
PHONE: 407-618-8366
EMAIL: BRENDAN.O'BRIEN@ TERRACON.COM
CONTACT: BRENDAN S. O'BRIEN

LANDSCAPE
DESIGNER
JASON BRIDGEWATER
CAID SCAPES
3162 PARMA DRIVE
DELTONA, FL 32738
PHONE: (386) 532-5694
EMAIL: JASONBRIDGEWATER@GMAIL.COM





EXISTING TREE TO REMAIN (TYP.)

PLANT LEGEND

SHADE TREES

LIVE OAK — QUERCUS VIRGINIANA
4" CAL./6' SPRD./14' HT.

UNDERSTORY TREE

LIGUSTRUM TREE — LIGUSTRUM LUCIDUM
3" CAL./8' SPRD./8' HT./MULTI-TRUNKED

CAPE MYRTLE — LAGERSTROEMIA INDICA
3" CAL./6' SPRD./10' HT.

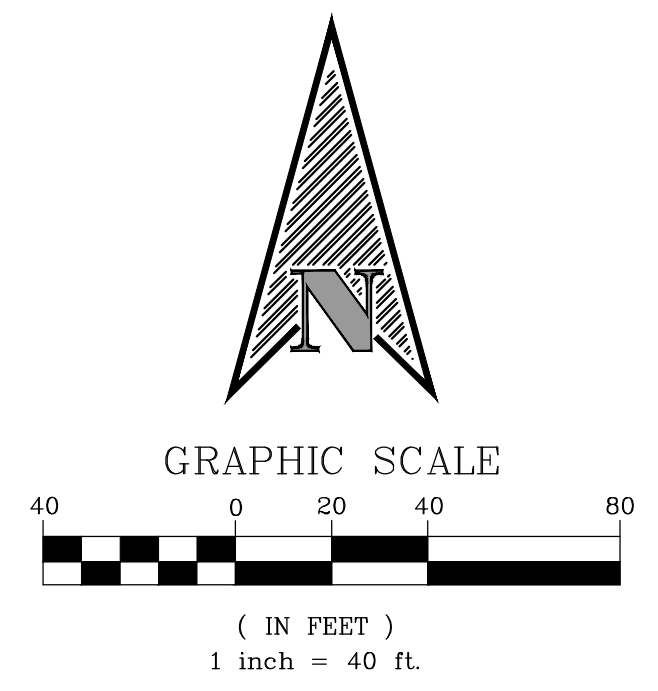
ITALIAN CYPRESS — CUPRESSUS SEMPERVIRENS
3" CAL./2' SPRD./10' HT.

SHRUBS / GROUNDCOVER

DWARF WALTER'S VIBURNUM, SWEET VIBURNUM,
FAKAHATCHEE GRASS, AZAELA, BURFORD HOLLY
PODOCARPUS, PINEAPPLE GUAVA, PHILODENDRON
WILD COFFEE, MIRROR-LEAF VIB., FLORIDA ANISE,
CRINUM LILY, CARDBOARD PALM, SAGO PALM

LIRIOPE, ASIAN JASMINE, INDIAN HAWTHORN,
BUGLE WEED, BULBINE, MONDO GRASS, JUNIPER,
ANNUALS — SIZES VARY

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Z DEVELOPMENT
s e r v i c e s
CA 29354
708 E. COLONIAL DR., STE 100 PH: (407) 271-8910
ORLANDO, FL 32803 FAX: (407) 442-0604

REVISION	DATE	REVISION	DATE
REVISED BASE	10/25/17		



WINTER PARK CORNERS
1903 ALOMA AVENUE
WINTER PARK, FLORIDA 32792

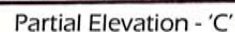
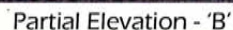
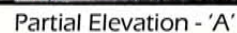
DATE: 08-02-17
DRAWN: JB
CHECKED: JB
L-1
CUP LANDSCAPE
PLAN
PROJECT NO.: 2017.113

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CADDSCAPES, INC.
Florida Landscape Architecture Firm
3162 Parma Drive Landscape Architect:
Deltona, FL 32738 Jason Bridgewater, RLA
Office: 407 310-5567 Florida Water Star AP
LCH 2600050
jasonbridgewater@gmail.com
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TOTAL SHEETS
L-1 - L-15





MATERIAL LEGEND

A - EIFS
C - SMOOTH FACE CMU
D - SPLIT FACE CMU
K - METAL
L - WOOD
M - VISUAL GLASS
N - SPANDREL GLASS



PAINT COLOR EIFS
SW 1005 PURE WHITE
SHERWIN WILLIAMS



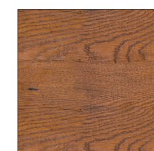
PAINT COLOR
SW 1053 ADAPTIVE
SHADE
SHERWIN WILLIAMS



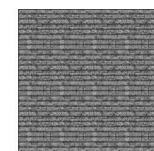
PAINT COLOR
SW 1668 MARCH
WIND
SHERWIN WILLIAMS



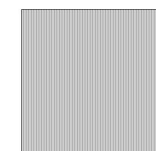
PAINT COLOR
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ESPALIER
SHERWIN WILLIAMS



WOOD TEXTURED
BREAK METAL
CANOPIES



PRE CAST
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FINISH BY
BERRIDGE



STANDING SEAM
ROOFING V-PANEL
GALVALUME FINISH
BY BERRIDGE



PAINT COLOR
SW 1011 NATURAL
CHOICE SHERWIN
WILLIAMS

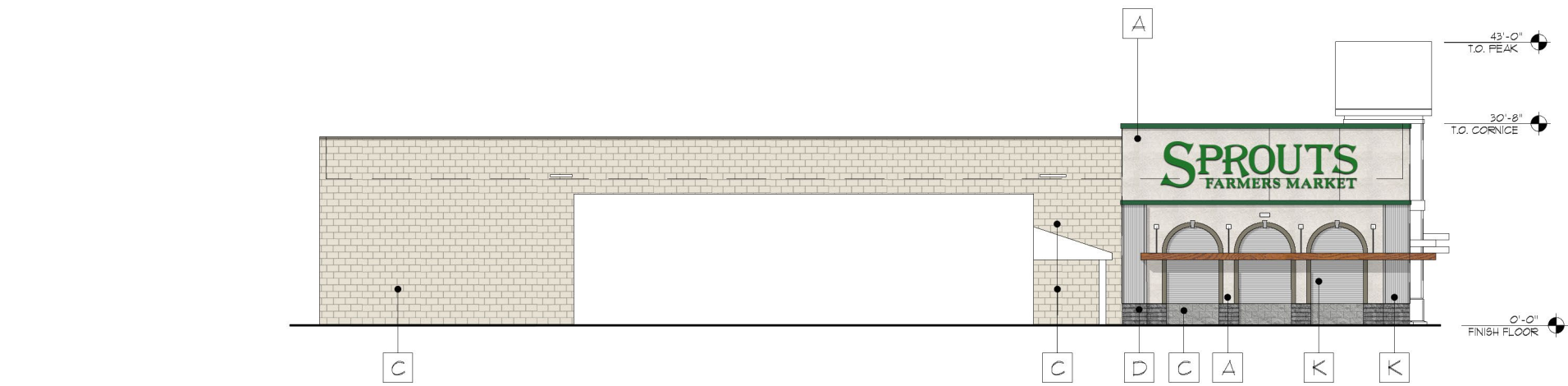
Sprouts Farmers Market | Winter Park, FL

Elevations

October 12, 2017

DESIGN REPRESENTATION ONLY - NOT FOR CONSTRUCTION - The building images shown are a representation of the current design intent only. The building images may not reflect variations in color, tone, hue, tint, shading, ambient light intensity, materials, texture, contrast, font style, construction variations required by building codes or inspectors, material availability or final design detailing.

brr



1 SOUTH ELEVATION
1/16" = 1'-0"



2 NORTH ELEVATION
1/16" = 1'-0"

MATERIAL LEGEND

- | | |
|---------------------|--------------------|
| A - EIFS | K - METAL |
| C - SMOOTH FACE CMU | L - WOOD |
| D - SPLIT FACE CMU | M - VISUAL GLASS |
| | N - SPANDREL GLASS |



PAINT COLOR EIFS
SW 1005 PURE WHITE
SHERWIN WILLIAMS



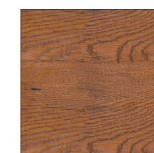
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SW 1053 ADAPTIVE
SHADE
SHERWIN WILLIAMS



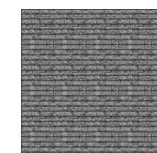
PAINT COLOR
SW 1668 MARCH
WIND
SHERWIN WILLIAMS



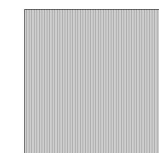
PAINT COLOR
SW 6134
ESPALIER
SHERWIN WILLIAMS



WOOD TEXTURED
BREAK METAL
CANOPIES



PRE CAST
CONCRETE
PANELS W
GALVALUME
FINISH BY
BERRIDGE



STANDING SEAM
ROOFING V-PANEL
GALVALUME FINISH
BY BERRIDGE



PAINT COLOR
SW 1011 NATURAL
CHOICE SHERWIN
WILLIAMS

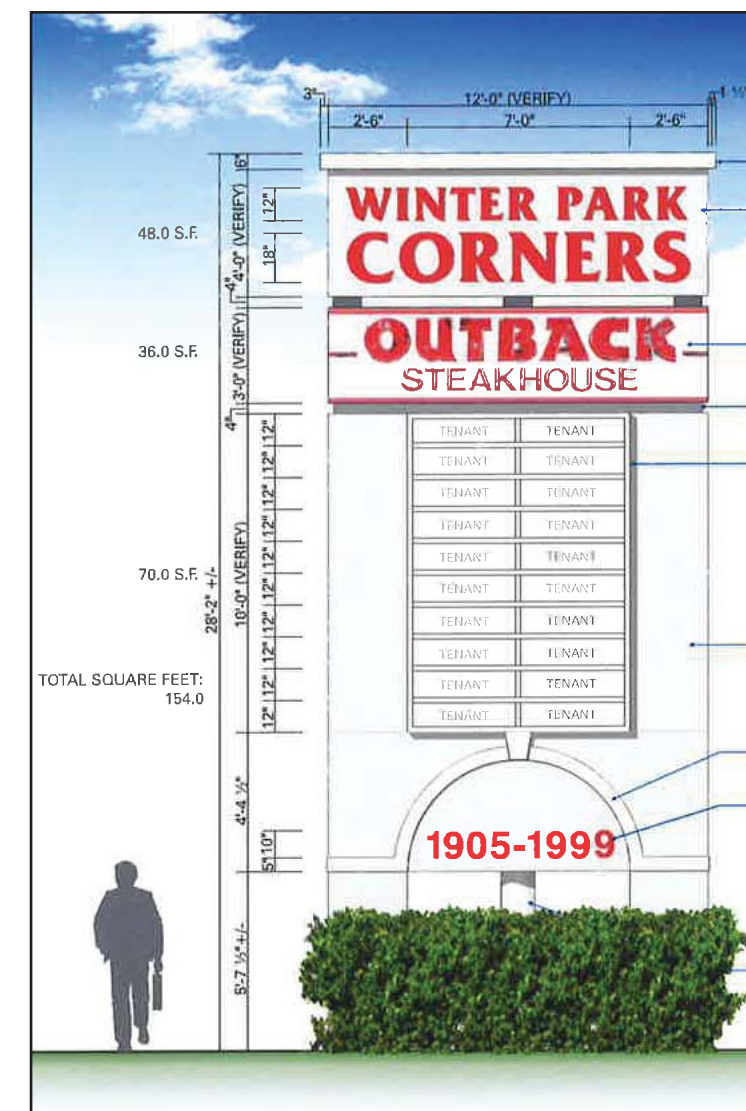
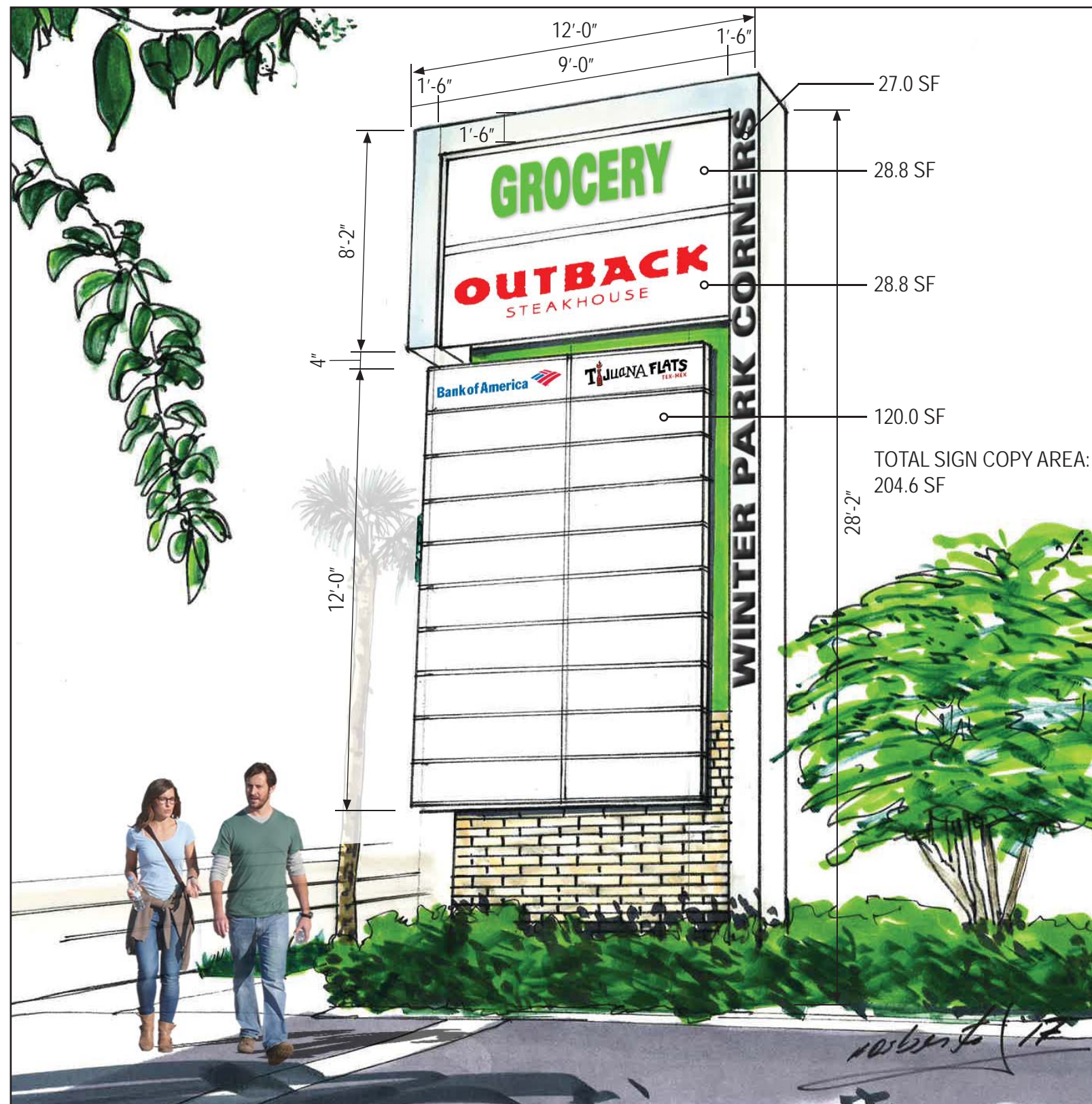
Sprouts Farmers Market | Winter Park, FL

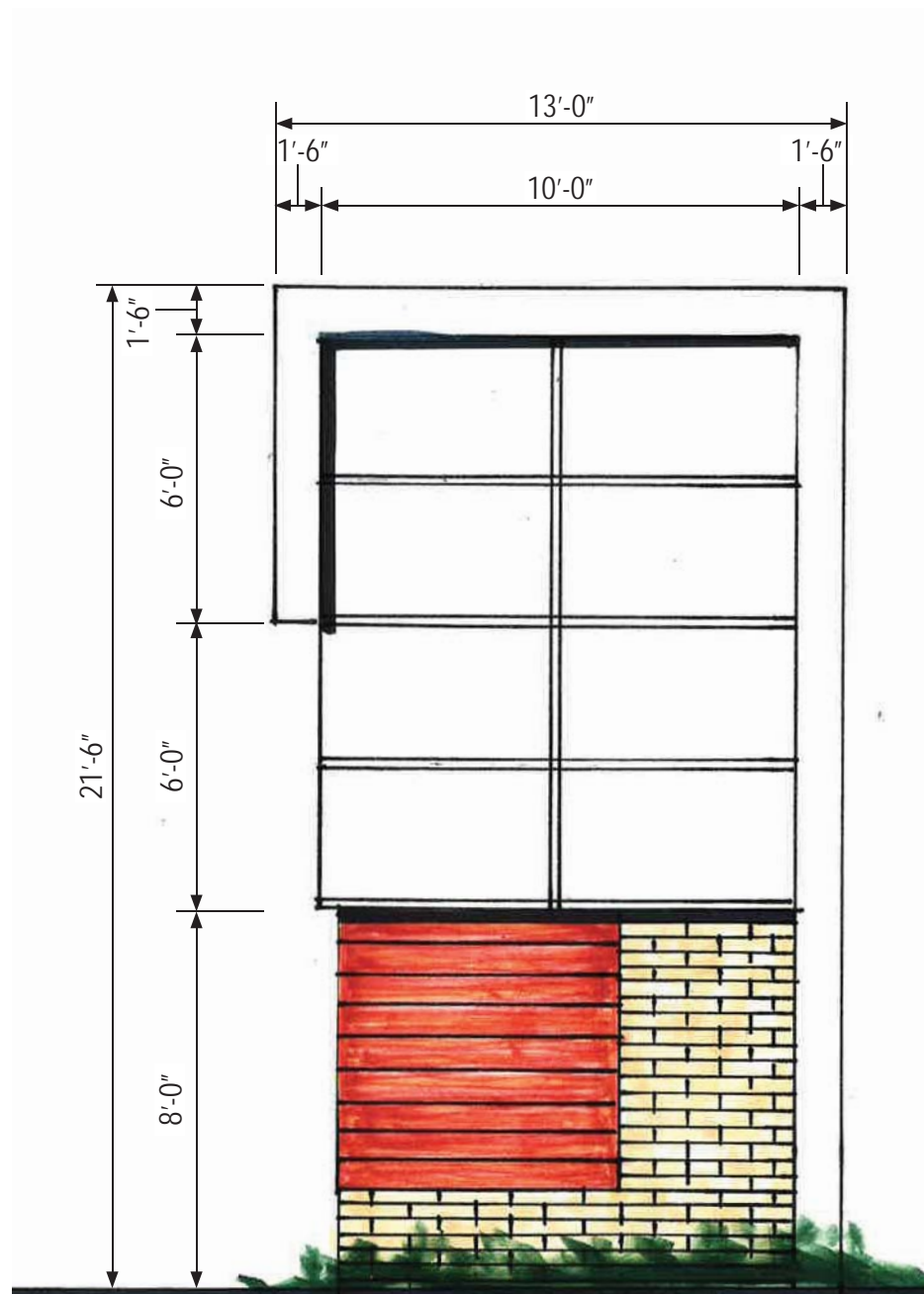
Elevations

October 12, 2017

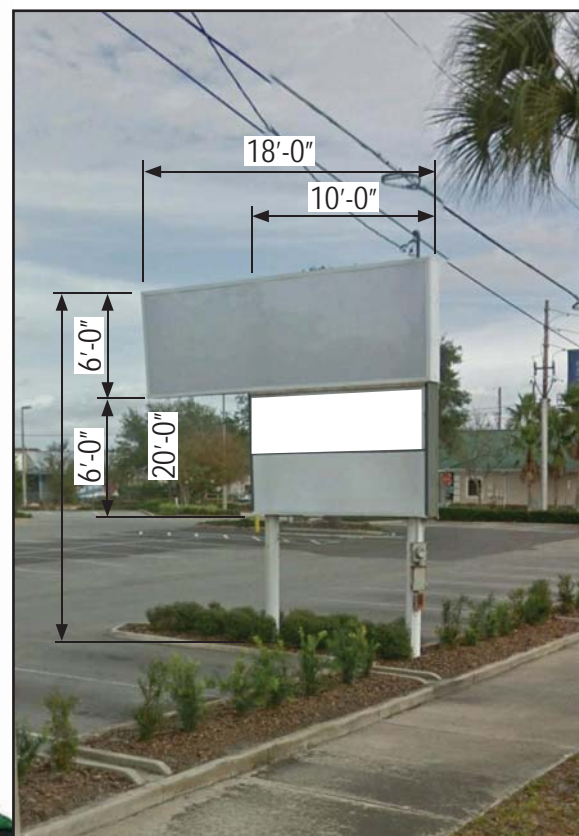
DESIGN REPRESENTATION ONLY - NOT FOR CONSTRUCTION - The building images shown are a representation of the current design intent only. The building images may not reflect variations in color, tone, hue, tint, shading, ambient light intensity, materials, texture, contrast, font style, construction variations required by building codes or inspectors, material availability or final design detailing.

brr

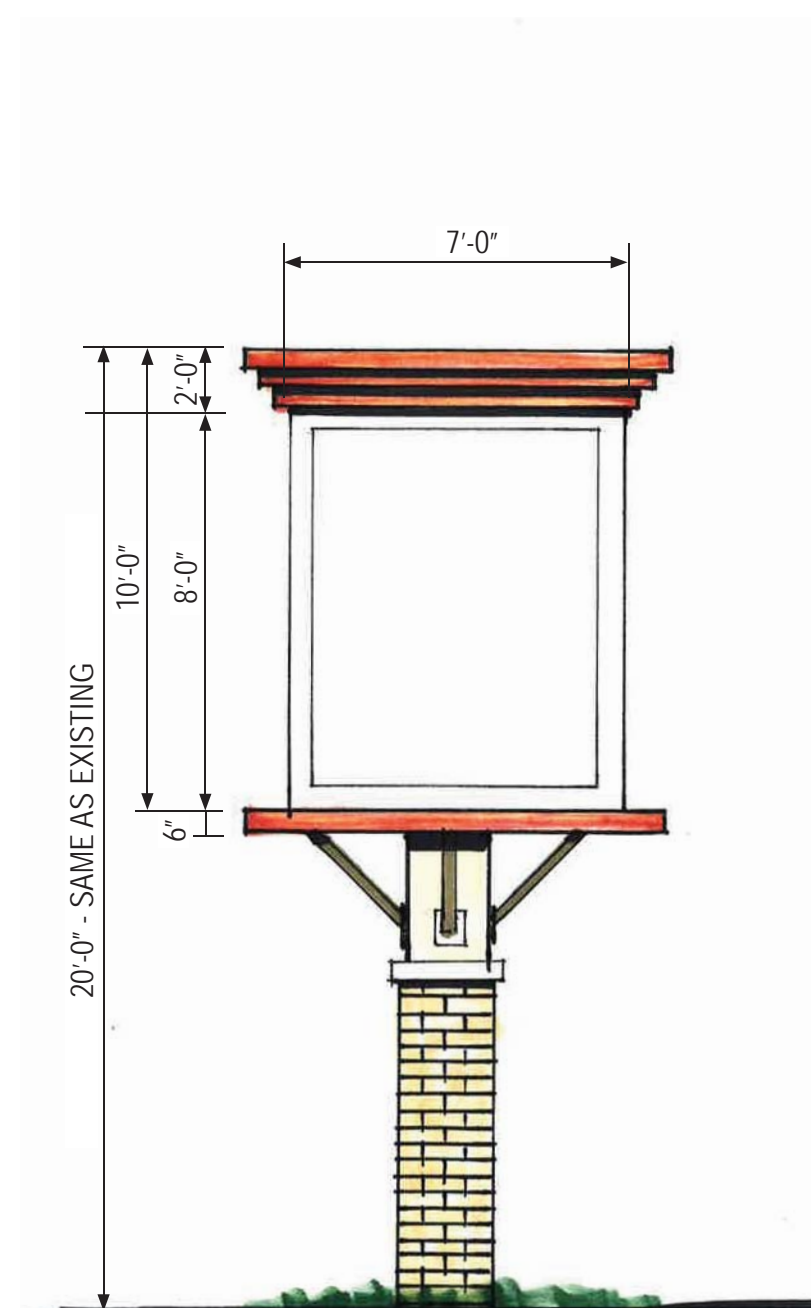




SIGNAGE 2 - PROPOSED
120 SF TOTAL SIGN
COPY AREA



EXISTING SIGNAGE 2
180 SF TOTAL SIGN
COPY AREA



SIGNAGE 3 - PROPOSED
56.5 SF TOTAL SIGN
COPY AREA



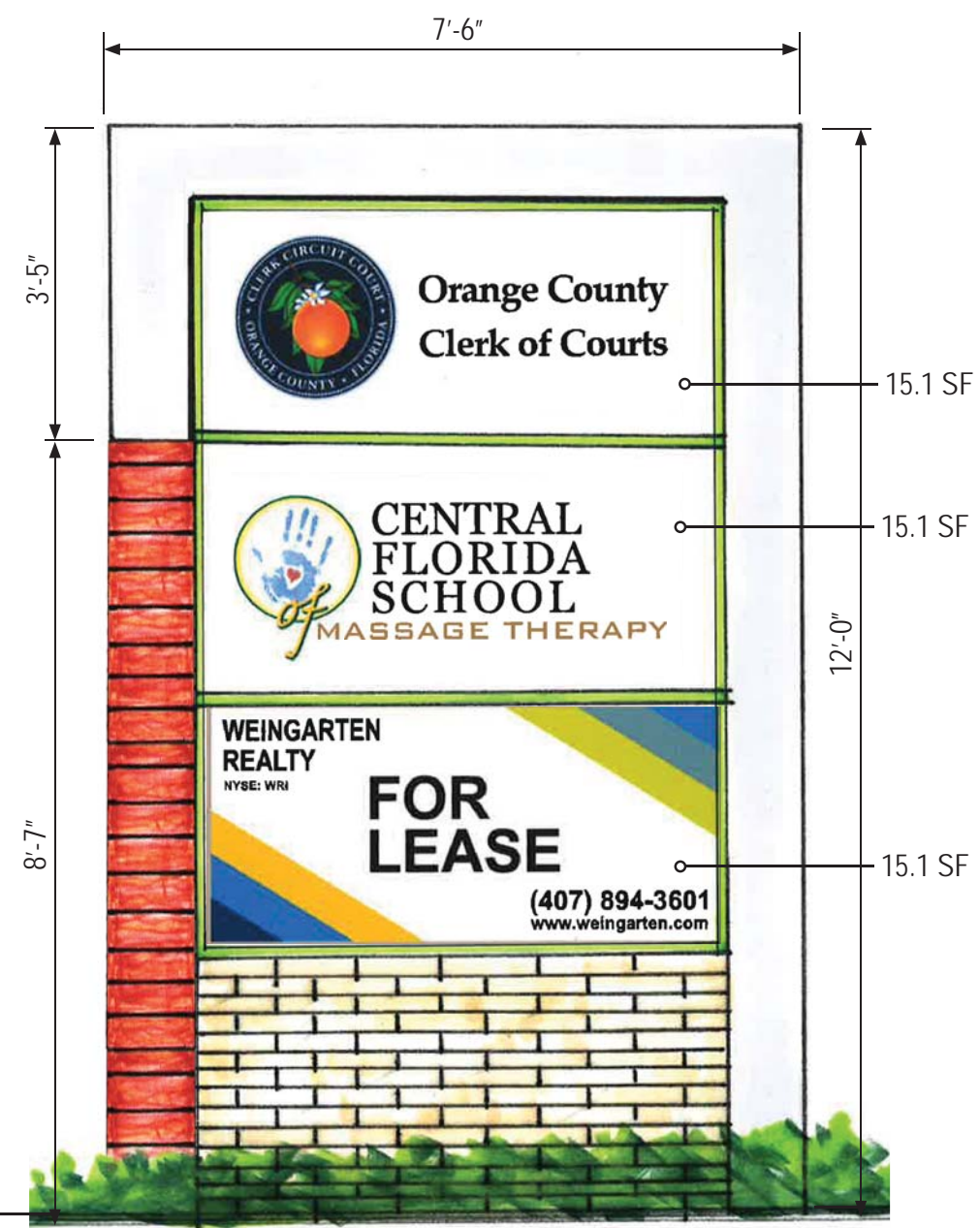
EXISTING SIGNAGE 3
70.0 SF TOTAL SIGN COPY
AREA

SIGNAGE 2 AND 3



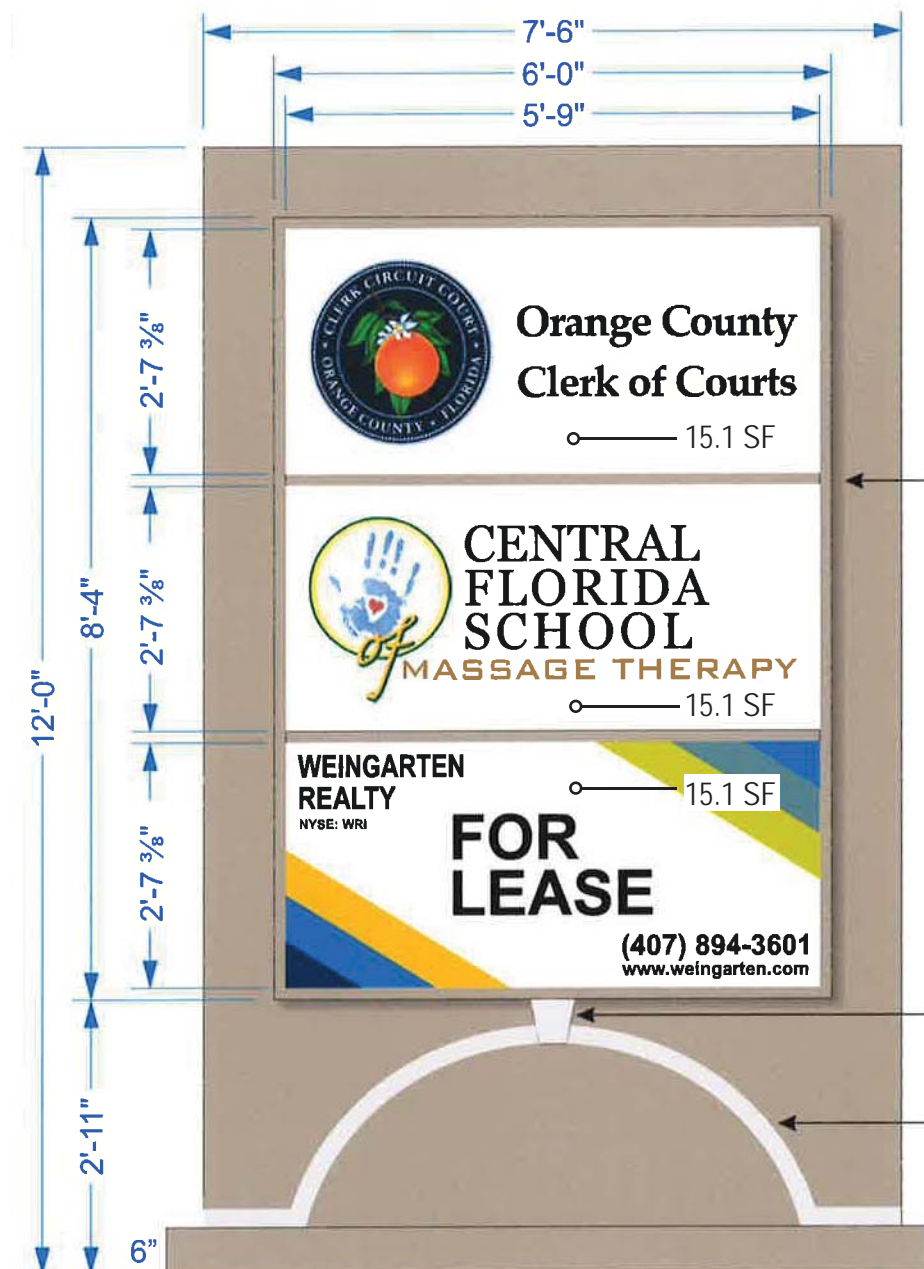
TOTAL SIGN COPY AREA:
NO CHANGES FROM EXISTING

OPTION 1



TOTAL SIGN COPY AREA:
NO CHANGES FROM EXISTING

OPTION 2



TOTAL SIGN COPY AREA:
3 X 15.1 SF = 45.3 SF

EXISTING

SIGNAGE 4 - OPTIONS AND EXISTING

TO :: PLANNING BOARD ON ISSUE 1903-1999 ALOMA AVENUE, WP CORNERS SC

I AM A RESIDENT LIVING ON THE EASTSIDE OF THE CITY OF WINTER PARK AND I WISH TO EXPRESS MY CONCERNS WITH THE DECLINE IN THE APPEARANCE OF THE BUSINESS DISTRICT ALONG ALOMA AVENUE. THE "WINTER PARK CORNERS SHOPPING CENTER" HAS NOT BEEN AN ASSET IN THE COMMUNITY FOR MANY YEARS. ISSUES INCLUDE THE POORLY MAINTAINED WALL ALONG EDWIN BLVD, LACK OF ONSITE STORM WATER RETENTION, POOR TRAFFIC MANAGEMENT TO/FROM THE PROPERTY, THE REMOVAL OF A TREE CANOPY ON THE SITE AND MANY OF THE EXISTING AGING TREES ARE IN POOR CONDITION. THE CENTER HAS A HISTORY OF REMOVAL OF LANDSCAPING AND IGNORING REPLACEMENT WITH QUALITY PLANTINGS. OVERALL, THIS PROPERTY AND THE MOBIL GAS STATION ARE NOT ADHERING TO PRESENT DAY COMMUNITY STANDARDS. IF THIS PROPERTY OWNER IS UNWILLING TO MAKE THE NECESSARY IMPROVEMENTS TO THE ENTIRE SHOPPING CENTER, AT THIS TIME, I WOULD SUPPORT A NO VOTE ON THIS DEVELOPMENT PLAN.

THE CITY OF WINTER PARK AND THE PLANNING AND ZONING BOARD HAS A PAST PRACTICE OF REQUIRING A VISUALLY APPEALING ENVIRONMENT, DECORATIVE LIGHTING, ART WORK (IE FOUNTAINS, BENCHES), AND GREEN SPACE WITH QUALITY PLANTINGS THAT WILL SURVIVE LONG TERM IN COMMERCIAL SHOPPING AREAS. EXAMPLES OF NEW SHOPPING AREAS INCLUDE TRADER JOES ON ORLANDO AVE, SHOPS AT MORSE/ORLANDO AVE, AND WHOLE FOODS AT LEE/ORLANDO AVE. I BELIEVE THE EASTSIDE COMMUNITY EXPECTS AND DEMANDS THE SAME FROM THIS SHOPPING CENTER OPERATOR. THE CENTER NEEDS MATURE LANDSCAPING THROUGHOUT THE PROPERTY AND IT NEEDS TO BE PROFESSIONALLY MAINTAINED SO THE PAST DECAY IS NOT REPEATED IN THE FUTURE.

ISSUES OF CONCERN::

- 1) LACK OF STORM WATER RETENTION ON THE PROPERTY. OTHER BUSINESSES ARE REQUIRED TO MANAGE STORM WATER. WHY NOT WITH THIS PROPERTY?
- 2) UNDERGROUNDING OF UTILITIES TO THE PROPERTY. THE POWER LINES SERVICING THE SHOPPING CENTER ARE THE PRIMARY CAUSE FOR THE DESTRUCTION OF THE TREE CANOPY ALONG EDWIN BLVD. IS THIS GOING TO BE CORRECTED WITH THIS PROJECT?
- 3) FAILURE TO MAINTAIN A VISUALLY APPEALING LANDSCAPE ALONG ALOMA AND LAKEMONT STREETS. AT NIGHT IT'S A SEA OF COLORED SIGNS AND ASPHALT. A TEXTBOOK EXAMPLE OF URBAN BLIGHT AND A SHOPPING CENTER DESIGNED FOR THE 1950'S AND 60'S.
- 4) POOR TRAFFIC FLOW TO/FROM THE PROPERTY. ADDING ANOTHER 7AM TO 10PM OPERATING GROCERY STORE AND RETAIL TO THE AREA WILL ONLY ADD TO THE CONGESTION. HOW IS THIS GOING TO BE FIXED TODAY?
- 5) WHAT IMPROVEMENTS ARE BEING PROPOSED THAT ENHANCE A PEDESTRIAN AND BICYCLE FRIENDLY AND SAFE ENVIRONMENT WHEN ACCESSING THE ENTIRE SHOPPING CENTER?

I BELIEVE A SOLUTION IS REQUIRED FOR THESE ISSUES AND IF THERE ARE NONE THE
COMMUNITY DESERVES AN EXPLANATION WHY THE PLAN FOR DEVELOPMENT IS
PROCEEDING. THE COMMUNITY WILL SURVIVE WITHOUT THIS SHOPPING CENTER.

CORDIALLY,



A CONCERNED RESIDENT OF WP



city commission agenda item

item type	Public Hearings	meeting date	11/27/2017
prepared by	Planning / CRA Manager	approved by	City Manager, City Attorney
board approval	yes final vote		
strategic objective	Exceptional Quality of Life, Intelligent Growth and Development		

subject

Ordinances - Requests of the City of Winter Park - Adopt new zoning regulations; and to adopt changes to the Concurrency Management Regulations (1)

AN ORDINANCE OF THE CITY OF WINTER PARK, FLORIDA, AMENDING CHAPTER 58 "LAND DEVELOPMENT CODE" ARTICLE III, "ZONING" SO AS TO ADOPT NEW ZONING REGULATIONS CHANGING THE PERMITTED, CONDITIONAL PROHIBITED USES AND DEVELOPMENT STANDARDS WITHIN THE ZONING DISTRICTS OF THE CITY; ADOPTING NEW DEVELOPMENT STANDARDS, DENSITIES AND INTENSITIES OF DEVELOPMENT; ADOPTING CHANGES NECESSARY TO IMPLEMENT THE CITY OF WINTER PARK, COMPREHENSIVE PLAN, GOALS, OBJECTIVES AND POLICIES DOCUMENT, DATED APRIL 24, 2017. (1)

AN ORDINANCE OF THE CITY OF WINTER PARK, FLORIDA, AMENDING CHAPTER 58 "LAND DEVELOPMENT CODE" ARTICLE II, "CONCURRENCY MANAGEMENT REGULATIONS" SO AS TO ADOPT CHANGES TO THE CONCURRENCY MANAGEMENT REGULATIONS OF THE CITY NECESSARY TO IMPLEMENT THE CITY OF WINTER PARK, COMPREHENSIVE PLAN, GOALS, OBJECTIVES AND POLICIES DOCUMENT, DATED APRIL 24, 2017. (1)

motion / recommendation

Motion to approve an Ordinance of the City of Winter Park, Florida, amending chapter 58 "Land Development Code" Article III, "Zoning" so as to adopt new zoning regulations changing the permitted, conditional prohibited uses and development standards within the zoning districts of the City; adopting changes necessary to implement the City of Winter Park, Comprehensive Plan, Goals, Objectives and Policies document, dated April 24, 2017.

Motion to approve an Ordinance of the City of Winter Park, Florida, amending chapter 58 "Land Development Code" Article III, "Concurrency Management Regulations" so as to adopt changes to the Concurrency Management Regulations of the City necessary to implement the City of Winter Park Comprehensive Plan, Goals and Policies document, dated April 24, 2017.

background

These two proposed Ordinances make the changes required to implement the recently adopted new Comprehensive Plan within the City's Land Development Code.

The first Ordinance includes the changes needed to the Zoning Code (Article III, Land Development Code) as necessary to implement the policy changes in the Comprehensive Plan adopted on March 24, 2017. The second Ordinance includes the changes needed to the Concurrency Management Regulations (Article II, Land Development Code). A summary of those changes are as follows:

1. Sec. 58-82 and 58-83 – Implements the Comp. Plan policy decision to remove the PD-1 and PD-2 zoning districts.
2. Sec. 58-82 – Implements the Comp. Plan policy decision to adopt a new Medical Arts zoning district.
3. Sec. 58-69 – Implements the Comp. Plan policy decision to change the R-4 zoning district to clarify that it only relates to existing R-4 properties; remove the affordable housing density incentives and clarify the visitor parking requirements.
4. Sec. 58-68 – Implements the Comp. Plan policy decisions to change the R-3 zoning district to fully implement the maximum 17 units/acre; remove the affordable housing density incentives; implement the policy on third floor sloped roofs and dormers; clarify the visitor parking requirements; and addresses the most common exception request for master bedrooms on the first floor.
5. Sec. 58-70 – Implements the Comp. Plan policy decision for allowance of up to eight units per acre in PURD developments approved by the City Commission within the single family future land use category.
6. Sec. 58-75 – Implements the Comp. Plan policy decisions to change the C-2 zoning district to remove drive-ins as a conditional use; require that the first floor along New England Avenue must be business occupancy with residential only on the upper floors as is the current policy along Park Avenue; implement the policy limiting building height to two stories opposite Central Park; implements the policy prohibiting 'big box' stores over 65,000 square feet and implements the prohibition on vapor lounges and smoke shops.
7. Sec 58-74 & 58-76 – Implements the Comp. Plan policy decision on the prohibition of vapor lounges and smoke shops in the C-1 and C-3 zoning districts.
8. Sec. 58-71 & 58-84 - Implements the Comp. Plan policy decision to remove the affordable housing density incentives in the General Provisions sections of the Zoning Code.
9. Article II - Land Development Code – Concurrency Management: Updates and revises the city's concurrency regulations with regard to the elimination of transportation concurrency.

Planning and Zoning Board Minutes – November 27, 2017:

REQUEST OF THE CITY OF WINTER PARK FOR: AN ORDINANCE OF THE CITY OF WINTER PARK, FLORIDA, AMENDING CHAPTER 58 "LAND DEVELOPMENT CODE" ARTICLE III, "ZONING" SO AS TO ADOPT NEW ZONING

REGULATIONS CHANGING THE PERMITTED, CONDITIONAL PROHIBITED USES AND DEVELOPMENT STANDARDS WITHIN THE ZONING DISTRICTS OF THE CITY; ADOPTING NEW DEVELOPMENT STANDARDS, DENSITIES AND INTENSITIES OF DEVELOPMENT; ADOPTING CHANGES NECESSARY TO IMPLEMENT THE CITY OF WINTER PARK, COMPREHENSIVE PLAN, GOALS, OBJECTIVES AND POLICIES DOCUMENT, DATED APRIL 24, 2017.

REQUEST OF THE CITY OF WINTER PARK FOR: AN ORDINANCE OF THE CITY OF WINTER PARK, FLORIDA, AMENDING CHAPTER 58 "LAND DEVELOPMENT CODE" ARTICLE II, "CONCURRENCY MANAGEMENT REGULATIONS" SO AS TO ADOPT CHANGES TO THE CONCURRENCY MANAGEMENT REGULATIONS OF THE CITY NECESSARY TO IMPLEMENT THE CITY OF WINTER PARK, COMPREHENSIVE PLAN, GOALS, OBJECTIVES AND POLICIES DOCUMENT, DATED APRIL 24, 2017.

Planning Manager, Jeff Briggs presented the staff report and explained that the two proposed Ordinances make the changes required to implement the recently adopted new Comprehensive Plan within the City's Land Development Code as shown below. These were discussed in detail at the October 31st P&Z work session.

1. Sec. 58-82 and 58-83 – Implements the Comp. Plan policy decision to remove the PD-1 and PD-2 zoning districts.
2. Sec. 58-82 – Implements the Comp. Plan policy decision to adopt a new Medical Arts zoning district.
3. Sec. 58-69 – Implements the Comp. Plan policy decision to change the R-4 zoning district to clarify that it only relates to existing R-4 properties; remove the affordable housing density incentives and clarify the visitor parking requirements.
4. Sec. 58-68 – Implements the Comp. Plan policy decisions to change the R-3 zoning district to fully implement the maximum 17 units/acre; remove the affordable housing density incentives; implement the policy on third floor sloped roofs and dormers; clarify the visitor parking requirements; and addresses the most common exception request for master bedrooms on the first floor.
5. Sec. 58-70 – Implements the Comp. Plan policy decision for allowance of up to eight units per acre in PURD developments approved by the City Commission within the single family future land use category.
6. Sec. 58-75 – Implements the Comp. Plan policy decisions to change the C-2 zoning district to remove drive-ins as a conditional use; require that the first floor along New England Avenue must be business occupancy with residential only on the upper floors as is the current policy along Park Avenue; implement the policy limiting building height to two stories opposite Central Park; implements the policy prohibiting 'big box' stores over 65,000 square feet and implements the prohibition on vapor lounges and smoke shops.
7. Sec 58-74 & 58-76 – Implements the Comp. Plan policy decision on the prohibition of vapor lounges and smoke shops in the C-1 and C-3 zoning districts.
8. Sec. 58-71 & 58-84 - Implements the Comp. Plan policy decision to remove the affordable housing density incentives in the General Provisions sections of the Zoning Code.
9. Article II - Land Development Code – Concurrency Management: Updates and

revises the city's concurrency regulations with regard to the elimination of transportation concurrency.
No one wished to speak. The public hearing was closed.

Motion made by Laura Turner, seconded by Laura Walda to approve and Ordinance of the City of Winter Park, Florida, amending chapter 58 "Land Development Code" Article III, "Zoning" so as to adopt new zoning regulations changing the permitted, conditional prohibited uses and development standards within the zoning districts of the City; adopting changes necessary to implement the City of Winter Park, Comprehensive Plan, Goals, Objectives and Policies document, dated April 24, 2017.

Motion carried unanimously with a 7-0 vote.

Motion made by Laura Turner, seconded by Laura Walda for an Ordinance of the City of Winter Park, Florida, amending chapter 58 "Land Development Code" Article III, "Concurrency Management Regulations" so as to adopt changes to the Concurrency Management Regulations of the City necessary to implement the City of Winter Park Comprehensive Plan, Goals and Policies document, dated April 24, 2017.

Motion carried unanimously with a 7-0 vote.

[alternatives / other considerations](#)

N/A

[fiscal impact](#)

N/A

ATTACHMENTS:

Description	Upload Date	Type
Ordinance - Comp Plan Imp Zoning	11/16/2017	Backup Material
Ordinance - Comp Plan Concurrency	11/16/2017	Backup Material
Display Ad 1st Reading	11/16/2017	Backup Material
Display Ad 2nd Reading	11/16/2017	Backup Material

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF WINTER PARK, FLORIDA, AMENDING CHAPTER 58 "LAND DEVELOPMENT CODE" ARTICLE III, "ZONING" SO AS TO ADOPT NEW ZONING REGULATIONS CHANGING THE PERMITTED, CONDITIONAL PROHIBITED USES AND DEVELOPMENT STANDARDS WITHIN THE ZONING DISTRICTS OF THE CITY; ADOPTING NEW DEVELOPMENT STANDARDS, DENSITIES AND INTENSITIES OF DEVELOPMENT; ADOPTING CHANGES NECESSARY TO IMPLEMENT THE CITY OF WINTER PARK, COMPREHENSIVE PLAN, GOALS, OBJECTIVES AND POLICIES DOCUMENT, DATED APRIL 24, 2017; PROVIDING FOR CONFLICTS; SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, the Florida Legislature has adopted Chapter 163, Florida Statutes which requires all local communities to adopt amendments to their Land Development Codes to implement the growth and development policies of Comprehensive Plans adopted pursuant to Chapter 163, Florida Statutes and Florida Administrative Rules in order to provide appropriate policy guidance for growth and development: and

WHEREAS, the Winter Park City Commission adopted a new Comprehensive Plan on April 24, 2017 via Ordinance 3076-17; and

WHEREAS, the Winter Park Planning and Zoning Board, acting as the designated Local Planning Agency, has reviewed and recommended adoption of proposed amendments to the Zoning Regulations portion of the Land Development Code having held an advertised public hearing on November 7, 2017, and rendered its recommendations to the City Commission; and

WHEREAS, the Winter Park City Commission has reviewed the proposed amendments to the Zoning Regulations portion of the Land Development Code and held advertised public hearings on November 27, 2017 and on December 11, 2017 and advertised notice of such public hearings via quarter page advertisements in the Orlando Sentinel pursuant the requirements of Chapter 166, Florida Statutes and placed the proposed amendments on the City's website on October 31, 2017; and.

WHEREAS, the portions of Chapter 58, Land Development Code, Article III, Zoning Regulations, that are to be amended and modified as described in each section and amended to read as shown herein where words with single underlined type shall constitute additions to the original text and ~~strike through~~ shall constitute deletions to the original text.

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

SECTION 1. That Chapter 58 "Land Development Code", Article III "Zoning" of the Code of Ordinances is hereby amended and modified by repealing Section 58-82 Planned Development One (PD-1) District and Section 58-83 Planned Development Two (PD-2) District in their entirety and thereby removing these two zoning districts from the "Zoning" Article of the Land Development Code but reserving those numbered sections for future use, as follows:

Sec. 58-82. Reserved

Sec. 58-83. Reserved

SECTION 2. That Chapter 58 "Land Development Code", Article III "Zoning" of the Code of Ordinances is hereby amended and modified by adding a new Section 58-82 Medical Arts (MA) District, utilizing Section 58-82 reserved above, thereby creating a new zoning district in the "Zoning" Article of the Land Development Code to read as attached as Exhibit "A" to this ordinance.

SECTION 3. That Chapter 58 "Land Development Code", Article III "Zoning" of the Code of Ordinances is hereby amended and modified within Section 58-69 Multi-Family (High Density R-4) District subsections (a) (3); (b) (5) and (e) (10) in the "Zoning" Article of the Land Development Code to read as follows:

Sec. 58-69. Multi-family (High Density R-4) District.

(a) Purpose and intent.

(1) The purpose of this district is to permit certain areas within the city to be developed for high density residential use. Areas which may be suitable for intense development include areas around the urban core and adjacent to major arterial streets.

(2) The regulations for this district attempt to encourage developments which are compatible with the existing residential character of the city and would not negatively impact existing residential neighborhoods. To accomplish this, appropriate open space, sufficient setbacks, buffers, density limits and height limitations are required. Only those areas of the city with sufficient public facilities such as utilities and roads capable of accommodating the use generated by the high-density permitted by this district can be so zoned.

(3) In conformance with the Comprehensive Plan, this R-4 zoning district designation is intended for multi-family residential use and is limited to properties with this R-4 zoning designation in existence prior to January 1, 2017. This R-4 zoning district designation shall not be approved for or assigned to any property within the City that were not zoned R-4 as of January 1, 2017. However, properties which were zoned R-4 prior to January 1, 2017 are permitted to develop and redevelop based upon the use and development standards in this district.

(b) Permitted uses.

(5) Residential complexes which are developed and operated by the Winter Park Housing Authority, or by nonprofit 501(c) corporations providing affordable housing and receiving financial support for affordable or workforce housing from agencies of the federal, state or city government. ~~provided that the following minimum requirements are met:~~

- ~~a. The density shall not exceed one unit per 1,000 square feet of ground area;~~
- ~~b. Parking provided shall not be less than one space per residential unit;~~
- ~~c. No minimum apartment size shall be required; however, the average size of all the residential units shall not be less than 500 square feet in floor area;~~
- ~~d. The site on which the complex is to be located shall be served by public utilities and streets capable of accommodating the increased residential densities permitted by this section;~~
- ~~e. The property owner enters into a formal agreement with the city to pay all taxes and fees required by the city or enters into a contractual agreement for a payment in lieu of taxes to the city, whichever shall apply because of ownership.~~

(e) *Development standards.*

(10) The intent of the Code requirement for 2.5 (2½) spaces for multiple family projects is to provide visitor parking spaces for guests, service calls, deliveries, etc. For multiple family projects providing 2.5 (2½) parking spaces per unit, the provision of those visitor spaces may not be exclusively within enclosed garages or carports and there must be at least one visitor parking space for each two units that are open and accessible for guests, service calls, deliveries, etc. Multiple family projects may not sell or lease any of the code required visitor parking spaces to individual unit owners or residents. In cases where the City may grant or has granted a variance or exception enabling the total parking spaces for any multiple family project to be less than the code required 2.5 (2½) spaces per unit, then at least fifteen (15%) percent of the total number of parking spaces approved by the City must be made available as visitor parking. All such visitor parking spaces shall be clearly marked on the pavement or have signage provided, indicating their use for visitor parking. In cases where there is restricted access security or gates for resident parking, then such restricted access security or gates, etc. shall not prohibit access to the required number of visitor parking spaces. Parking necessary for on-site management or other on-site employees shall be provided in parking spaces in excess of the number required as visitor parking. The City's Code Enforcement Board may enforce these provisions when it is witnessed by city staff that on any four consecutive occasions within any two consecutive day period, the same resident vehicle or management employee vehicle is utilizing any designated visitor parking spaces.

SECTION 4. That Chapter 58 "Land Development Code", Article III "Zoning" of the Code of Ordinances is hereby amended and modified within Section 58-68 Medium Density Multiple Family (R-3) District subsections (c) (5) (8) (10); (d) (2) (3) and (e) (1), (6) (7) in the "Zoning" Article of the Land Development Code to read as follows:

Sec. 58-68. Medium Density Multiple Family Residential (R-3) District.

(c) *Conditional uses.* The following uses may be permitted after review by the planning and zoning board and approval by the city commission in accordance with the provisions of this article. See Sec. 58-90. Conditional Uses.

(5) Residential complexes which are developed and operated by the Winter Park Housing Authority, or by nonprofit 501(c) corporations providing affordable housing and receiving financial support for affordable or workforce housing from agencies of the federal, state or city government. ~~For such projects the following minimum requirements are met:~~

- ~~a. The density shall not exceed one unit per 1,000 square feet of ground area;~~

- ~~b. Parking spaces provided shall not be less than one space per residential unit;~~
- ~~c. No minimum apartment size shall be required; however, the average size of all the residential units shall not be less than 500 square feet in floor area;~~
- ~~d. The site on which the complex is to be located shall be served by public utilities and streets capable of accommodating the increased residential densities permitted by this section;~~
- ~~e. The property owner enters into a formal agreement with the city to pay all taxes and fees required by the city or enters into contractual agreement for a payment in lieu of taxes to the city, whichever shall apply because of ownership.~~

(8) Buildings with a third floor within the central business district, provided that such conditional use approvals require two public hearing approvals by the city commission and buildings with a third floor outside the central business district subject to the normal public hearing approvals outlined in Section 58-90:

(10) Bed and breakfast inns provided such property location is one hundred (100) feet from any single family zoned property residence.

(d) *Minimum building site and maximum density.*

(1) The minimum building site required for either a single family residence or a duplex shall be the same as required by the R-2 district.

(2) The minimum building site for a multiple family complex of three to six units shall be 7,500 square feet with a minimum front width of 50 feet. The minimum building site for a multiple family complex of six units or greater shall be 15,000 square feet with a minimum front width of 100 feet and a minimum depth of 100 feet. For properties with less than 15,000 square feet in size, the provisions of the R-2 zoning district shall apply.

(3) ~~The minimum ground area per dwelling unit shall be 2,500 square feet and the maximum density shall be seventeen (17) units per acre.~~

(e) *Development standards.*

(1) Development in the R-3 district, at the discretion of the property owner, may meet the requirements of the R-2 district or shall meet the following R-3 development standards. The requirements of R-2 district must be met for lots which are 65 feet wide or less.

	Single Family	Duplexes	Multi-family housing
Min. land area (sq. ft.)	6,000	9,000 <u>6,000</u>	15,000 <u>7,500</u>
Min. lot width (ft.)	50	50	100
Min. land area per unit	6,000	4,500 <u>3,000</u>	2,500 <u>2,562</u>
Min. building setbacks (ft.):			

front yard	25	25	25
side yard	10	10	20
rear yard--one-story	10	10	20
rear yard--two-story	25	25	25
Max. building coverage	35%	35% **	40% **
Max. impervious coverage	60%	65%	70%
Max. building height (ft.)	30	30	35/30*
Min. off-street parking	2/unit	2/unit	2.5/unit

*Note: The Comprehensive Plan limits development in the R-3 zoning district to a maximum of two stories and 30 feet of building height in the area bounded by Minnesota, Azalea Lane, Melrose and Pennsylvania Avenues, certain locations.

**Note: In cases where the interior building floor plan design includes any first floor bedroom space in order to accommodate the housing needs of the elderly or mobility impaired, the building footprint coverage may be increased by up to three (3%) percent, but this shall not allow any variance or exception to the required amount of open space pervious coverage.

(6) The intent of the Code requirement for 2.5 (2½) spaces for multiple family projects is to provide visitor parking spaces for guests, service calls, deliveries, etc. For multiple family projects providing 2.5 (2½) parking spaces per unit, the provision of those visitor spaces may not be exclusively within enclosed garages or carports and there must be at least one visitor parking space for each two units that are open and accessible for guests, service calls, deliveries, etc. Multiple family projects may not sell or lease any of the code required visitor parking spaces to individual unit owners or residents. In cases where the City may grant or has granted a variance or exception enabling the total parking spaces for any multiple family project to be less than the code required 2.5 (2½) spaces per unit, then at least fifteen (15%) percent of the total number of parking spaces approved by the City must be made available as visitor parking. All such visitor parking spaces shall be clearly marked on the pavement or have signage provided, indicating their use for visitor parking. In cases where there is restricted access security or gates for resident parking, then such restricted access security or gates, etc. shall not prohibit access to the required number of visitor parking spaces. Parking necessary for on-site management or other on-site employees shall be provided in parking spaces in excess of the number required as visitor parking. The City's Code Enforcement Board may enforce these provisions when it is witnessed by city staff that on any four consecutive occasions within any two consecutive day period, the same resident vehicle or management employee vehicle is utilizing any designated visitor parking spaces.

(7) Except within the Central Business District geographical area, multi-family residential development within areas designated R-3, shall not exceed two stories in height unless approved via conditional use by the City Commission. In addition, such third floors must have a roof slope of a maximum 12:12 roof slope (45 degree angle) for the third floor starting at the second floor eave height. When the roof slope height reaches the maximum roof height, then a flat roof is permitted or the roof slope may function as a parapet wall. Dormer windows are permitted on the third floor to provide light into such spaces but the dormers may not exceed forty-five (45%) percent of within the same roof plane and must be placed at least 2.5 (2½) feet back from the second floor wall below. Alternative methods of compliance may be approved by the city commission such as

terracing and enhanced setbacks for the third floor, such as in wedding cake manner, that setbacks at least seventy-five (75%) percent of the third floor walls without roof porch coverings from the floor walls below for a significant distance on the sides facing streets or other properties.

SECTION 4. That Chapter 58 "Land Development Code", Article III "Zoning" of the Code of Ordinances is hereby amended and modified within Section 58-70 Planned Unit Residential Development (PURD) District subsections (c) (1) and (2) in the "Zoning" Article of the Land Development Code to read as follows:

Sec. 58-70. Planned Unit Residential Development (PURD) District.

(c) *Development requirements and standards for approval.*

(1) The parcel for which a PURD is proposed must be compact in shape and be in a single ownership or control. The parcel must be a minimum of two acres in size, unless provided an exception by the City Commission.

(2) The overall density of development permitted on this tract shall not exceed five units per acre for properties designated as single-family in the comprehensive plan except in the approved PURD areas where the density of single-family, zero lot line or townhouse development may be increased to eight units per acre or ten units per acre for properties designated as low density or multi-family in the comprehensive plan. This calculation shall not include the land areas to be dedicated to the City as road right-of-ways or storm water retention areas necessary for those road right-of-ways. The residential units permitted in this district may be provided by a mixture of housing types provided that the number of multi-family units does not exceed 50 percent of the total residential units; the remaining units shall include cluster housing, attached and detached single family residences.

SECTION 5. That Chapter 58 "Land Development Code", Article III "Zoning" of the Code of Ordinances is hereby amended and modified within Section 58-75 Commercial (C-2) District subsections (a) (1); (b) (1) (3) (4); (c) (5); and (e) (10) in the "Zoning" Article of the Land Development Code to read as follows:

Sec. 58-75. Commercial (C-2) District.

(a) *Purpose and intent.*

(1) This commercial zoning district is limited to the commercial portion of the geographic downtown area known as the Central Business District and the similar commercial area of the city within the Hannibal Square Neighborhood Commercial District (HSNCD) of the City's Community Redevelopment Area (CRA). As detailed in the Comprehensive Plan, Commercial (C-2) district zoning is not permitted on any property except if it is within the Central Business District "potential C-2 zoning" area depicted in the CBD Map (D-2) in the definitions section, generally described as west of Knowles Avenue, south of Swoope Avenue, north of Comstock Avenue and east of and including the New York Avenue Corridor or it is on properties abutting Morse Blvd between Capen and Virginia Avenues, abutting New England Avenue between Pennsylvania and New York Avenues, abutting Pennsylvania Avenue between Garfield and Lyman Avenues, or abutting Hannibal Square, East. No applications for C-2 zoning shall be accepted for any property outside these designated areas. Moreover, even properties within these designated areas shall have no vested right to C-2 zoning. This district has different requirements than other commercial areas especially pertaining to setbacks, parking requirements, height limitations and permitted land uses,

including a prohibition on drive-in businesses. This district is established to encourage the continuation of the present unique Park Avenue business district of the city and to provide for its use within certain other defined geographical areas as specified in the Comprehensive Plan.

(b) *Permitted uses.* All permitted uses shall be conducted so as to emphasize the pedestrian orientation of the district. Thus, drive-in type businesses or uses which have a drive-in component as part of their operation shall not be permitted ~~except to a limited degree in the area on Morse Boulevard, west of Virginia Avenue and confined to non-retail use.~~ All uses permitted shall be conducted exclusively within a building except those uses permitted which are customarily conducted in the open such as off-street parking and out-door patio seating for dining. Storage shall be limited to accessory storage of commodities sold at retail on the premises and storage shall be within a completely enclosed building. Bars, taverns and cocktail lounges are prohibited in this zoning district. In addition, no single tenant building larger than 65,000 square feet is permitted regardless if portions of such single tenant business, such as a grocery store, may have a sublease for an interior coffee shop, bank, etc.

(1) Retail businesses involved in the sale of merchandise on the premises within enclosed buildings but excluding resale establishments or pawn shops (other than clothing resale stores) and excluding vapor lounges, smoke shops, cigar stores and liquor stores provided the store is more than 300 feet from residentially used properties.

(3) Bank, savings and loans, financial institutions, travel agencies, photographic studios, interior design studios, barber shops, beauty/nail salons, spas, state licensed massage therapists, cosmetic and skin care treatment businesses, governmental, educational, medical, real estate and other offices but only when such uses are located above the ground floor within the Park Avenue Corridor or located on any floor outside the Park Avenue Corridor. This shall be referred to as the Park Avenue corridor vertical zoning restrictions.

(4) Residences located on any floor outside of the Park Avenue Corridor ~~or but only~~ above the ground floor within the Park Avenue Corridor and on properties with frontage on New England Avenue between Pennsylvania and Park Avenues.

(c) *Conditional uses.* The following uses may be permitted as conditional uses following review by the planning and zoning board and approval by the city commission in accordance with the provisions of this C-2 district section only. See Sec. 58-90 Conditional Uses.

~~(5) Drive-in business components limited to the locations to properties on Morse Boulevard, west of Virginia Avenue and limited to non-retail use.~~

(e) *Development standards.*

(10) All properties facing on Park Avenue or adjacent roads within 140 feet of Park Avenue or that are located across from Central Park and all properties that abut Central Park, where development would impact the open vista of Central Park shall be limited to two stories in height as depicted on the Maximum Height Map. Variances or approvals of development in violation of this policy are prohibited.

SECTION 6. That Chapter 58 "Land Development Code", Article III "Zoning" of the Code of Ordinances is hereby amended and modified by amending within Section 58-74 Commercial (C-1) and Section 58-76 (C-3) Districts; subsections (b) (1) in C-1 zoning and subsection (b) (3) in C-3 zoning in the "Zoning" Article of the Land Development Code as follows:

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

(b) *Permitted uses.*

(1) Retail business involving the sale of merchandise on the premises within enclosed buildings but excluding resale establishments or pawn shops (other than clothing resale stores), vapor lounges and smoke shops.

Sec. 58-76. Commercial (C-3) District.

(b) *Permitted uses.*

(1) Retail businesses involving the sale of merchandise on the premises within enclosed buildings and excluding resale establishments or pawn shops (other than clothing resale stores), vapor lounges and smoke shops. Liquor stores, provided the store is more than 300 feet from external residentially used properties. Convenience stores (unless in conjunction with fuel sales). The retail sale of motorized scooters (not motorcycles) is permitted except that only one scooter may be displayed outside the building within two feet of the building façade, and absolutely no scooter display is permitted in the area designated on the site plan for parking.

SECTION 7. That Chapter 58 "Land Development Code", Article III "Zoning" of the Code of Ordinances is hereby amended and modified by removing within Section 58-71 General Provisions for Residential Zoning Districts; subsection (ii) in the "Zoning" Article of the Land Development Code as follows:

Sec. 58-71. General Provisions for Residential Zoning Districts.

~~(ii) *Affordable and workforce housing density bonus.* The development of affordable/ workforce housing is a priority of the State Comprehensive Plan and the City's Comprehensive Plan. As such, in some cases incentives are necessary to insure the provision of affordable/ workforce housing especially within Winter Park with extremely high land costs, along with typical construction costs. The City Commission on a case by case basis may permit the maximum densities within the zoning districts to be exceeded by up to five units per acre when such allowances are used exclusively for the construction of affordable/workforce housing. This incentive shall not permit additional floor area ratio, building lot coverage or building height but is intended to allow additional units within the building parameters otherwise permitted by the respective zoning district.~~

SECTION 8. That Chapter 58 "Land Development Code", Article III "Zoning" of the Code of Ordinances is hereby amended and modified by removing within Section 58-84 General Provisions for Non-Residential Zoning Districts; subsection (aa) in the "Zoning" Article of the Land Development Code as follows:

Sec. 58-84. General Provisions for Non-Residential Zoning Districts.

~~(aa) *Affordable and workforce housing density bonus.* The development of affordable and workforce housing is a priority of the State Comprehensive Plan and the City's Comprehensive Plan. As such, in some cases incentives are necessary to insure the provision of affordable and workforce housing especially within Winter Park with extremely high land costs, along with typical construction costs. The City Commission on a case by case basis may permit the maximum densities within the zoning districts to be exceeded by up to five units per acre when such~~

~~allowances are used exclusively for the construction of affordable or workforce housing. This incentive shall not permit additional floor area ratio, building lot coverage or building height but is intended to allow additional units within the building parameters otherwise permitted by the respective zoning district.~~

SECTION 9. SEVERABILITY. If any Section or portion of a Section of this Ordinance proves to be invalid, unlawful, or unconstitutional, it shall not be held to invalidate or impair the validity, force, or effect of any other Section or part of this Ordinance.

SECTION 10. 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 this Ordinance shall become and be made a part of the Code of Ordinance of the City of Winter Park, Florida;

SECTION 11. CONFLICTS. All Ordinances or parts of Ordinances in conflict with any of the provisions of this Ordinance are hereby repealed.

SECTION 12. EFFECTIVE DATE. This Ordinance shall become effective immediately upon its passage and adoption.

ADOPTED at a regular meeting of the City Commission of the City of Winter Park, Florida, held in City Hall, Winter Park, on this _____ day of _____, 2017.

Mayor Steve Leary

ATTEST:

City Clerk

Exhibit A

Sec. 58-82. Medical Arts (MD) District.

(a) Purpose:

(1) The Medical Arts district provides for and encourages the development and operation of hospitals, clinics, medical offices and wellness/fitness facilities. Accessory complementary specialty retail businesses, food service and residential units are permitted to serve the users, visitors and employees of the medical facilities. The provisions of this zoning district shall differ from other zoning districts in that the development standards may be clustered and spread across all or portions of the medical/wellness campus, regardless of intervening streets. The Medical Arts district should encourage the development of diverse urban infill medical projects that also include open space areas and public gathering places. The increased building density permitted by this Medical Arts district contrasted with other zoning districts is balanced by the provision of health care that is important to the community at large. This district shall encourage master planning but may also incorporate single use properties for the specified medical and wellness purposes. Each building use project shall incorporate designs and architecture that enhances the surrounding area and which encourages traditionally designed, pedestrian friendly neighborhoods.

(b) Application:

(1) The Medical Arts (MD) zoning district is appropriate for limited areas along the major commercial corridors that possess prior office or commercial zoning, as specified in the Comprehensive Plan, in order to permit the efficient use of land, as well as the clustering of building density. Medical Arts (MD) zoning shall not be permitted in the Central Business District or Hannibal Square Neighborhood Commercial District. It shall be the determination of the City Commission as to whether adjacent residentially zoned properties are appropriate for addition to the Medical Arts (MD) zoning and project campus. The adoption of Medical Arts (MD) zoning shall only occur in locations where specific provisions are to be applied on a case by case basis to ensure the compatibility of character and intensity of the Medical Arts district with the surrounding development. Medical Arts district zoning shall not be utilized or applicable unless at least eighty (80%) of the floor space within the building or buildings on the campus are devoted to medical or wellness related business, except as may be necessary for employee housing.

(2) Application for Medical Arts zoning in concert with application for Medical Arts future land use designation in the Comprehensive Plan shall be made with a Master Plan that depicts the contemplated development plans, densities and building heights to be utilized or constructed within a ten (10) year time horizon. The optional adoption of a Development Agreement as part of such a request for future land use or zoning change may allow for the formal adoption of such Master Plan subject to the restrictions and limitations included in the Development Agreement. The Development Agreement shall also allow the city staff to review, process and issue building permits for individual building projects that are consistent with an adopted and approved Master Plan without a subsequent conditional use review subject to any design or other conditions that may be included in the Development Agreement.

(3) Applications for approval or amendments of a Medical Arts Zoning Master Plan shall follow the notice and public hearings procedures established for conditional uses.

(c) Permitted uses.

(1) Hospitals; (but not animal hospitals or veterinary clinics) including uses ancillary and typical to a hospital campus, such as, but not limited to administrative office buildings, out-patient services, research facilities, clinics, ambulatory surgical facilities, diagnostic and imaging facilities, adjunctive therapy facilities, energy/engineering plants, food production facilities, chapels, and daycare provided primarily for employees.

(2) Medical offices, such as those of medical doctors, physical therapists, state licensed massage therapists, and dentists;

(3) Medical and dental laboratories;

(4) Wellness and fitness facilities; physical therapy facilities;

(5) Nursing homes or health rehabilitation facilities but not including assisted living or memory care facilities.

(6) Off-street parking lots and parking garages to serve the permitted and accessory and conditional uses;

(d) Accessory uses permitted. The location of the following accessory and ancillary uses are permitted in this district. These uses must be primarily for the use and convenience of occupants and users of the building or campus. These uses shall not have signs which encourage use by the general public, other than directional signage.

(1) Restaurant or cafeteria;

(2) Card and gift shop, florist, or bank/credit union.

(3) Pharmacy store within a medical office building which sells prescription and nonprescription drugs, medicines and medically related equipment only.

(4) Residential units utilized exclusively by the employees of the permitted uses, where at least one of the full time residents of each residential unit must be a full or part-time employee or student intern of the hospital, medical office or wellness facility.

(e) Conditional uses. The following uses may be permitted as conditional uses following review by the planning and zoning board and approval by the City Commission in accordance with the provisions of this article. See Sec. 58-90. Conditional Uses.

(1) Drive-in components of any business;

(2) Buildings over 10,000 square feet, any addition over 500 square feet to an existing building over 10,000 square feet or additions over 500 square feet to existing buildings that result in a building over 10,000 square feet in size, unless exempted by the approval of a Master Plan and Development Agreement.

(e) Minimum MD building site. The minimum MD building or campus site size shall be no less than two acres and the site shall have a minimum frontage of one hundred (100) feet on a publicly dedicated right-of-way. This shall be interpreted as a campus wide requirement and properties may

be included in the campus wide (MD) district in separate ownerships as long as the combined cumulative properties comprise a minimum of two acres.

(f) Development standards.

(1) Any building constructed within this district shall adhere to the following minimum or required setbacks for front, rear and side yards. The front setback from all streets shall be a minimum of ten (10) feet from the property line. For properties along Orange Avenue, the front setback may be reduced to the average front setback of the existing buildings within that block if approved by the City Commission. Side yard setbacks shall be a minimum of five (5) feet from each property line unless the parcel shares a common line with a residentially zoned parcel, then a fifteen (15) foot setback shall be observed for any one or two story building. No building over two stories in height shall be located within 100 feet of an adjoining single family or townhouse building, as measured from property line to property line. Such distance shall include any right-of-way width if across the street from the single family or townhouse building. The rear setback shall be a minimum of thirty (30) feet from the property line.

(2) The maximum floor area ratio shall be one hundred (100%) percent. The floor area ratio shall include the floor area of any attached or detached above grade private parking garage. The permitted floor area ratio may be calculated on a campus wide or area wide collective basis of the properties in the same ownership and MD zoning without respect to intervening streets so that the average of the private land areas in the respective blocks do not collectively exceed the permitted one hundred (100%) floor area ratio even though that number may be exceeded in one or more portions of the overall campus or site area. Public right-of-ways land area shall not be included in these calculations.

(3) The maximum floor area ratios outlined above are not an entitlement and are not achievable in all situations. Many factors may limit the achievable floor area ratio including limitations imposed by the maximum height, concurrency management/level of service standards, physical limitations imposed by property dimensions and natural features as well as compliance with applicable code requirements such as, but not limited to, parking and internal circulation, setbacks, landscaping requirements, impervious lot coverage, design standards and on-site and off-site improvements and design amenities required to achieve land use compatibility.

(4) Building heights shall not exceed the height limits imposed by the this district or the Comprehensive Plan Maximum Height Map. For those properties shown with a two story maximum, the maximum building height shall be thirty-five (35) feet; for those properties shown with a three story maximum height, the maximum building height shall be forty-five (45) feet. For those properties shown with a four story maximum height, the maximum building height shall be fifty-five (55) feet; for those properties shown with a five story maximum height, the maximum building height shall be sixty-five (65) feet. Unless specifically approved by the City Commission, as a conditional use, buildings developed with less than the maximum building stories shall conform to the height for the applicable stories. For example, if a two story building is developed within an area permitting a four story building, the two story building shall conform to the thirty-five (35) foot height limit. Parking garage levels shall be counted as stories for each level except for any basement level or the open roof level.

(5) Parapet walls or mansard roofs functioning as parapet walls may be added to the permitted building height but in no case shall extend more than five (5) feet above the height limits in this subsection. Mechanical penthouses, mechanical and air conditioning equipment, elevator/stair towers and related non-occupied structures may be permitted to extend up to ten (10) feet above the height limits in this subsection. Architectural appendages, embellishments and other

architectural features may be permitted to exceed the roof heights specified in this section, on a limited basis, encompassing no more than thirty (30%) percent of the building roof length and area, up to eight (8) feet of additional height, upon approval of the city commission, based on a finding that said features are compatible with adjacent projects.

(6) For properties not shown on the Comprehensive Plan Maximum Height Map, located on a property or a campus adjacent to four lane roadways, the maximum height shall not exceed fifty-five (55) feet, or the maximum height shall not exceed forty-five (45) feet for properties located adjacent to two lane roadways. For corner properties adjacent to both four lane and two lane roadways, the maximum height shall be fifty-five (55) feet. When a building or project fronts on both four and two lane streets, the larger heights shall apply.

(7) Development shall not exceed eighty-five (85%) percent impervious coverage in this district, however the approval of a Master Plan should incorporate open space, plazas and public gathering places. This calculation shall not include the area of public right-of-ways.

(8) Whenever the rear or side property lines within this district share a common property line with parcels zoned residential, either a solid wall or vinyl fence shall be provided along the entire common line. The wall or fence shall be six (6) feet in height; except that such wall or fence shall be only three (3) feet in height from the front setback line of the adjoining parcel to the front property line of the adjoining parcel.

(9) Parking garages constructed within the district shall be constructed and maintained in strict conformance with the parking garage design guidelines, as detailed in Sec. 58-84 and as may be adopted and amended by resolution of the city commission.

(10) Other code sections related to development that should be referenced include but are not limited to Off-street Parking Regulations, Maximum Height Map, General Provisions, Definitions, Sign Regulations (Article IV), Environmental Protection (Article V) (this section includes Division 1 Storm Water, Division 6 Tree Preservation, Division 8 Landscape Regulations Division 9 Irrigation Regulations and Division 10 Exterior Lighting), Subdivision Regulations (Article VI), Historic Preservation (Article VIII) and Concurrency Management regulations (Article II).

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF WINTER PARK, FLORIDA, AMENDING CHAPTER 58 "LAND DEVELOPMENT CODE" ARTICLE II, "CONCURRENCY MANAGEMENT REGULATIONS" SO AS TO ADOPT CHANGES TO THE CONCURRENCY MANAGEMENT REGULATIONS OF THE CITY NECESSARY TO IMPLEMENT THE CITY OF WINTER PARK, COMPREHENSIVE PLAN, GOALS, OBJECTIVES AND POLICIES DOCUMENT, DATED APRIL 24, 2017; PROVIDING FOR CONFLICTS; SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, the Florida Legislature has adopted Chapter 163, Florida Statutes which requires all local communities to adopt amendments to their Land Development Codes to implement the growth and development policies of Comprehensive Plans adopted pursuant to Chapter 163, Florida Statutes and Florida Administrative Rules in order to provide appropriate policy guidance for growth and development: and

WHEREAS, the Winter Park City Commission adopted a new Comprehensive Plan on April 24, 2017 via Ordinance 3076-17; and

WHEREAS, the Winter Park Planning and Zoning Board, acting as the designated Local Planning Agency, has reviewed and recommended adoption of proposed amendments to the Zoning Regulations portion of the Land Development Code having held an advertised public hearing on November 7, 2017, and rendered its recommendations to the City Commission; and

WHEREAS, the Winter Park City Commission has reviewed the proposed amendments to the Concurrency Management Regulations portion of the Land Development Code and held advertised public hearings on November 27, 2017 and on December 11, 2017 and advertised notice of such public hearings via quarter page advertisements in the Orlando Sentinel pursuant the requirements of Chapter 166, Florida Statutes and placed the proposed amendments on the City's website on October 31, 2017; and.

WHEREAS, the portions of Chapter 58, Land Development Code, Article II, Concurrency Management Regulations, that are to be amended and modified as described in each section and amended to read as shown herein where words with single underlined type shall constitute additions to the original text and ~~strike through~~ shall constitute deletions to the original text.

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

SECTION 1. That Chapter 58 "Land Development Code", Article II "Concurrency Management Regulations" of the Code of Ordinances is hereby amended and modified by enacting the changes, additions and deletions a to read as attached as Exhibit "A" to this Ordinance.

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

SECTION 3. 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 this Ordinance shall become and be made a part of the Code of Ordinance of the City of Winter Park, Florida;

SECTION 4. CONFLICTS. All Ordinances or parts of Ordinances in conflict with any of the provisions of this Ordinance are hereby repealed.

SECTION 5. EFFECTIVE DATE. This Ordinance shall become effective immediately upon its passage and adoption.

ADOPTED at a regular meeting of the City Commission of the City of Winter Park, Florida, held in City Hall, Winter Park, on this _____ day of _____, 2017.

ATTEST:

City Clerk

Steve Leary, Mayor

EXHIBIT A

ARTICLE II. CONCURRENCY MANAGEMENT REGULATIONS

Sec. 58-31. Introduction; summary.

This Article implements the concurrency management regulations mandated by Chapter 163, Florida Statutes and ~~Rule 9J-5 Florida Administrative Code~~, as well as serving as an implementation mechanism for the City's Comprehensive Plan.

Sec. 58-32. Purpose.

- (a) The purpose of this Article is to enable growth and development to proceed in the City in compliance with the City's Comprehensive Plan. As such, this Article implements the concurrency provisions of the Comprehensive Plan that are mandated by Chapter 163, Florida Statutes and ~~Rule 9J-5 Florida Administrative Code~~ and to provide for the implementation of the City's Comprehensive Plan.
- (b) The City Commission has determined and recognized that new growth and development may necessitate expansions and improvements of infrastructure. In order to assure capacity in infrastructure systems for new growth, all new development will be reviewed to determine the effect of such development on the infrastructure systems within the City. No new development or redevelopment will be permitted which would have the effect of degrading the level of service of any infrastructure system below that level established in the Comprehensive Plan.
- (c) The City of Winter Park sponsors or experiences several special events each year such as the Winter Park Arts Festival. Such events generate temporary peak demands on the infrastructure. It would be an unnecessary and unreasonable expense to the public to develop public infrastructure to support completely such temporary periods of usage. It is not the purpose of this Article to require the complete infrastructure for these occasional special events.

Sec. 58-33. Concurrency requirements.

- (a) ~~A~~ An administrative concurrency approval shall be required to be granted by the City prior to the issuance of any development order or approval except as exempted in the Article. The following are determined to be development orders requiring a concurrency approval:
 - (1) Building Permit
 - (2) Permitted Use Approval
 - (3) Conditional Use Approval
 - (4) Site Plan Approval
 - (5) Final Plat
 - (6) Planned Unit Development
 - (7) Development Agreement, pursuant to 163.3220
 - ~~(8) Development of Regional Impact (D.R.I.)~~
 - ~~(9) Florida Quality Development (F.Q.D.)~~

- (b) A concurrency approval shall be required prior to commencement of construction of any new public facilities, or expansion thereof, whether or not a final development order or building permit is issued by the City.
- (c) A concurrency approval shall be required prior to the commencement of construction within the City of any new public facilities by any other government, school board or quasi-governmental agency.
- (d) A concurrency approval shall not be required to be granted by the City and the following development orders are exempted from the requirements of this Article:
 - (1) Development orders or building permits for single family homes or duplexes within existing platted subdivisions of record recorded prior to the effective date of the Article where all infrastructure required within the subdivision to support the property has been provided and accepted by the City.
 - (2) Development orders or building permits for other residential or non-residential development where the following standards are not exceeded:

~~Roads: 20 average daily trip ends~~
~~Water: 700 gallons per day~~ Residential projects of 10 units or less or 10,000 square feet or less for non-residential projects.
~~Sewer: 700 gallons per day~~ Residential projects of 10 units or less or 10,000 square feet or less for non-residential projects.
 - (3) ~~Development of Regional Impact (D.R.I.), Florida Quality Development (F.Q.D.) or development included in a Development Agreement adopted by the City Commission pursuant to Chapter 163, Florida Statutes. Development pursuant to a building permit issued prior to the effective date of this Article and consistent with the Comprehensive Plan, provided however, that no such building permit shall be extended except in conformance with this Article. If, however, the Code Enforcement Director determines such a building permit has lapsed or expired, pursuant to the Building Code, then no subsequent building permit shall be issued except in conformance with this Article. In addition, if the Planning Official determines that the developer is proposing a change in the plan of development resulting in impacts on public services greater than those impacts caused by the previously approved development, then no change shall be approved except in accordance with this Article.~~

Sec. 58-34. Change of use.

- (a) *Increased Impact on Public Facilities or Services.* If a proposed change of use shall have a greater impact on public facilities and/or services than the previous use, a capacity approval shall be required for the net increase only.
- (b) *Decreased Impact on Public Facilities and Services.* If the proposed change of use shall have an impact on public facilities and/or services which is equal to or less than the previous use, then the proposed change, redevelopment or modification of use may proceed without the encumbrance of additional capacity in accordance with the provisions of this Article.

(c) *Definition of "Previous Use".* For purposes of this Section, the term "previous use" shall mean either: (1) the use existing on the site when a concurrency evaluation is sought; or (2) if no active use exists on the site at the time when a concurrency evaluation is sought, then the most recent use on the site within the 10 year period immediately prior to the date of application. The applicant shall provide reasonable sufficient evidence to the satisfaction of the City which establishes the existence of such use. Such evidence may include, but shall not be limited to, utility records, phone bills, income tax returns, tax bills, occupational licenses, etc.

Sec. 58-35. Concurrency approval application and review procedures.

(a) Development projects shall be reviewed to determine the effect of the project on the capacity of the following infrastructure systems:

- ~~(a) — Traffic Circulation/Roadway Capacity~~
- (1) Potable Water Production Capacity
- (2) Sanitary Sewer Treatment Capacity
- (3) Park and Recreation Facility Conservation Land Capacity
- (4) Drainage/Stormwater Management
- (5) Solid Waste Collection and Disposal Capacity

(b) Review shall be initiated by the owner, developer or authorized agent by submitting a ~~completed Concurrency Application~~. ~~The application shall include a~~ site plan drawn from or based on a survey of the site, legal description of the property and all other information requested so that a determination of the size, scale and nature of the infrastructure impacts can be determined. Incomplete submittals will be returned to the applicant. Applications shall be reviewed in the order of acceptance as complete.

Sec. 58-36. Concurrency determination and issuance of concurrency approval.

(a) Upon completion of a review by City staff, a ~~written~~ concurrency determination shall be made by city staff issued stating whether infrastructure capacity is available to accommodate the proposed project. ~~The determination shall specify the capacity needed for the project. For any project needing an approval by the City Commission, the staff report shall indicate is inadequate infrastructure capacity exists and in the absence of such indication, adequate capacity shall be deemed to be available. For any project needing only a building permit approval the staff review comments shall indicate if inadequate infrastructure capacity exists and in the absence of such indication, adequate capacity shall be deemed to be available.~~

~~(b) — If the necessary capacity is available, the determination shall constitute a temporary reservation of that capacity for the project for a period of 30 days. During this temporary reservation period, a Concurrency Approval shall be issued upon payment of fees as established by the City Commission.~~

~~(c) — If the necessary capacity is available, but action by the City Commission is required for approval of the development and the request for Commission action has been submitted, the temporary reservation period shall extend for 30 days following Commission action.~~

(b) If the necessary capacity is not available, the concurrency determination shall identify each infrastructure system where capacity is not available and the extent of the deficiency.

Sec. 58-37. Expiration of concurrency approvals.

(a) The concurrency approval shall expire upon the expiration of the building permit or development order for which the certificate was issued including any extensions, renewals, or subsequent development orders for the same project.

~~(b) The expiration date for a Concurrency Approval issued in relation to a Development of Regional Impact (D.R.I.), a Florida Quality Development (F.Q.D.), or Development Agreement pursuant to Chapter 163.220 shall be specified in the development order or agreement.~~

(b) Where not otherwise provided a Concurrency Approval shall expire after one year.

Sec. 58-38. Standards utilized for the review of concurrency approvals.

(a) The standards utilized for review of available capacity for the issuance of concurrency approvals shall be the level of service standards established in the City's Comprehensive Plan.

Sec. 58-39. Concurrency evaluations.

(a) The City shall conduct a concurrency evaluation prior to the issuance or denial of a concurrency approval. The City shall utilize evaluation methodologies as may be approved by the City Commission and the City may also consider, utilize and rely upon in whole or in part, other appropriate methodologies, evaluations, studies, documents, or other information submitted by the applicant that are deemed to provide accuracy in the quantification of infrastructure capacity impacts.

(b) Concurrency evaluations shall be conducted prior to the issuance of all development orders specified in this article as requiring a concurrency approval. In addition, a concurrency evaluation shall be prepared for review in conjunction with all preliminary plats in excess of four lots. For any project needing an approval by the City Commission, the staff report shall indicate if inadequate infrastructure capacity exists and in the absence of such indication, adequate capacity shall be deemed to be available. For any project needing only a building permit approval the staff review comments shall indicate if inadequate infrastructure capacity exists and in the absence of such indication, adequate capacity shall be deemed to be available.

(c) Concurrency evaluations shall also be prepared for review in conjunction with applications for Comprehensive Plan text and map amendments and re-zonings. For any project needing an approval by the City Commission, the staff report shall indicate if inadequate infrastructure capacity exists and in the absence of such indication, adequate capacity shall be deemed to be available.

Sec. 58-40. Methods of capacity evaluation.

(a) In performing concurrency evaluations the city staff shall determine the amount of infrastructure capacity necessary to serve the proposed development. If such amount of infrastructure capacity that will be generated can be provided, then

the development shall be deemed to be concurrent and, accordingly the requested capacity approval may be issued. If the amount of infrastructure capacity that will be generated cannot be provided, then the development shall be deemed not to be concurrent and, accordingly the requested capacity approval shall not be issued.

(b) In order to measure the demands for infrastructure capacity from development, the following methods shall be utilized:

<u>Infrastructure System</u>	<u>Method</u>
Sanitary Sewer	Capacity - Established by Florida Dept. of Environmental Regulation Demand - Customer demand based on past usage by similar users.
Potable Water	Capacity - Established by Florida Dept. of Environmental Regulation Demand - Customer demand based on records of past usage by similar users.
Solid Waste	Capacity - As determined by Orange County Demand - Average customer demand based on records of past usage
Parks & Recreation	Capacity - Total existing park <u>and conservation land</u> acreage Demand - Number of permanent residential housing units x 2.2 persons.
Traffic Circulation	Capacity - Florida Highway Capacity Manual Demand - Institute of Traffic Engineers (ITE) Manual, latest edition
Drainage	Established in the Stormwater Management Ordinance of Article 6 Land Development Code.

(c) In performing capacity evaluations for potable water and sanitary sewer capacity, the evaluation is ~~not~~ limited to an assessment of the infrastructure capacity available at the applicable water production plant or sanitary sewage treatment facility. The concurrency evaluation does ~~not~~ address the adequacy of capacity in

water distribution pipes or sewer collection pipes necessary to serve the proposed development. The city may require the developer to fund or for the developer to cost share with the city, upgrades to the water distribution or sanitary sewer collection system in the general area of the project to address capacity sufficiency. It is the responsibility of applicants for Concurrency Approvals to ascertain whether the water distribution system or sewer collection system is adequately sized or in place as is necessary for that development. The performance of concurrency evaluations and the issuance of concurrency approvals ~~also~~ does not relieve applicants of the responsibility to obtain permits from applicable State or Federal agencies requiring such approvals.

(d) In performing concurrency evaluations for drainage, the evaluation is not limited to an assessment of the conformance to the City's storm water management ordinance as contained in this Land Development Code. The city may require the developer to fund or for the developer to cost share with the city, upgrades to the storm water conveyance system in the general area of the project to address capacity sufficiency. The performance of concurrency evaluations and the issuance of Concurrency Approvals also does not relieve applicants of the responsibility to obtain permits from applicable State or Federal agencies requiring such approvals.

~~(e) In performing concurrency evaluations for traffic circulation or roadway capacity, the evaluation shall conform to the following parameters:~~

~~(a) Level of Service for Backlogged or Constrained Facilities—the City shall not approve development which would increase the traffic volume on the State arterial roadways in the City by more than an additional five percent over the existing traffic volumes provided in the Traffic Element of the Comprehensive Plan. The City shall not approved development which would increase the traffic volume on backlogged or constrained County or City roadways by more than an additional 20 percent over the traffic volume provided in the Traffic Circulation Element of the Comprehensive Plan.~~

~~(b) Time Frame of Traffic Analysis—level of service shall be based on the peak hour (p.m.) directional traffic flow. Staff shall adjust the traffic count information as needed to reflect average peak hour/peak directional conditions as derived from traffic count stations.~~

~~(c) Trip Generation Rates—these shall be based on the latest edition of ITE's Trip Generation Manual or other specific local site surveys deemed by the City to be representative of the proposed use. All generated trips shall be assumed to be external, unless documented. Any internal capture passerby, or transit that is assumed, must be documented and agreed upon prior to analysis and subject to acceptance by City staff. Trip Distribution and Assignment method shall be approved by the City prior to analysis.~~

~~(d) Traffic Studies Required—for projects that generate more than 100 total new net trip ends per day, the applicant shall provide a traffic study which is certified by a Florida registered professional engineer or transportation planner approved by the City. For projects that generate between 21 and 100 total new net trip ends per day, the applicant has the option of submitting a traffic study. For projects generating 20 or less new net trip ends per day, there shall be no requirement for a traffic study. The City staff shall be responsible for tracking and logging the cumulative impact of all development projects.~~

- (e) ~~Traffic Impact Area~~—In determining the impact of a project on roadways, the review shall encompass the impact within, at minimum, one half mile of the development site. However, the City may require a larger traffic impact area to be studied based on the scale of the project and its traffic generation.

Sec. 58-41. Proportionate fair-share option to mitigate deficit transportation facilities.

- (a) ~~Purpose and Intent.~~ The purpose of this section is to establish a method whereby the impacts of development on transportation facilities can be mitigated by the cooperative efforts of the public and private sectors, to be known as the Proportionate Fair Share Program, as required by and in a manner consistent with §163.3180(16), F.S.
- (b) ~~Findings.~~ The City Commission finds and determines that transportation capacity is a commodity that has a value to both the public and private sectors and that the City's Proportionate Fair Share Program:
- (1) Provide a method by which the impacts of development on transportation facilities can be mitigated by the cooperative and creative efforts of the public and private sectors;
 - (2) Allows developers to proceed under certain conditions, notwithstanding the failure of transportation concurrency, by contributing their proportionate fair share of the cost of expanding or improving a transportation facility;
 - (3) Contributes to the provision of adequate public facilities for future growth and promotes a strong commitment to comprehensive facilities planning, thereby reducing the potential for moratoria or unacceptable levels of traffic and transportation congestion;
 - (4) — Maximizes the use of public funds for adequate transportation facilities to serve future growth, and may, in certain circumstances, allow the City to expedite transportation improvements by supplementing funds currently allocated for transportation improvements in the Capital Improvements Element; and
 - (5) Is consistent with §163.3180(16), F.S. and the City's Comprehensive Plan.
- (c) ~~Applicability.~~ The Proportionate Fair Share Program shall apply to any development project in the City of Winter Park where the project's traffic impact study and the City's traffic engineer determines that there is insufficient capacity on one or more segments to satisfy the development project's transportation concurrency requirements. — The Proportionate Fair Share Program does not apply to Developments of Regional Impact (DRIs) using proportionate fair share under §163.3180(12), F.S., or to developments exempted from concurrency as provided in this concurrency chapter.
- (d) ~~General Requirements.~~

- ~~(1) An applicant whose project meets the criteria of Section 168.03 may choose to satisfy transportation concurrency requirements by making a proportionate fair share contribution, pursuant to the following requirements:~~
 - ~~a. The proposed development is consistent with the comprehensive plan and applicable land development regulations, and~~
 - ~~b. The five-year schedule of capital improvements in the City's Capital Improvements Element (CIE), which includes Federal, State, County and other local governments capital improvements, includes one or more transportation improvements that, upon completion, will provide sufficient capacity for the deficient segments to accommodate the traffic generated by the proposed development.~~
- ~~(2) The City may choose to allow an applicant to satisfy transportation concurrency for a deficient segment, through the Proportionate Fair Share Program, by the developer contributing to an improvement that, upon completion, will create additional capacity on the deficient segment sufficient to accommodate the additional traffic generated by the applicant's proposed development even if the improvement project for the deficient segment is not contained in the 5-year schedule of capital improvements in the CIE where:~~
 - ~~a. The City Commission holds an advertised public hearing to consider the proportionate share agreement and corresponding future changes to the 5-year CIE, and~~
 - ~~b. The City adopts, by ordinance, an amendment adding the improvement to the 5-year schedule of capital improvements in the CIE. To qualify for consideration under this section, the proposed improvement must be reviewed by the City Commission, and determined to be financially feasible pursuant to §163.3180(16)(b)1, F.S., consistent with the comprehensive plan, and in compliance with the provisions of this ordinance. Financial feasibility for this section means that additional contributions, payments or revenue sources to fund the improvement project are reasonably anticipated during a period not to exceed 10 years.~~
- ~~(3) If the funds allocated for the five year schedule of Capital Improvements in the CIE are insufficient to fully fund construction of a transportation modification required by concurrency, the City may still enter into a binding proportionate fair share agreement with the applicant authorizing construction of that amount of development on which the proportionate fair share is calculated if the proportionate fair share amount in such agreement is sufficient to pay for one of more projects which will, in the opinion of the governmental entity or entities maintaining the transportation facilities, sufficiently benefit the impacted transportation system.~~
- ~~(4) Transportation projects shall include, but not be limited to: highway related improvements such as roadway modification, roadway widening, intersection~~

~~improvements; and system related improvements such as traffic management systems, transportation systems management, intelligent transportation systems, expansion of the transit fleet to increase service frequency, bus rapid transit and other fixed guideway corridors, transit service expansion to new areas, or other mobility projects improving the pedestrian and/or bicycle level of service.~~

- ~~(5) Any improvement project proposed to meet a developer's fair share obligation must meet design standards of the City for locally maintained roadways, Orange County for county maintained roads and of the Florida Department of Transportation (FDOT) for the state highway system.~~

~~(e) Application Process.~~

- ~~(1) Upon identification of a lack of capacity to satisfy transportation concurrency, the applicant may choose to satisfy transportation concurrency through the proportionate fair share program pursuant to the requirements of Section 168.02.9.~~
- ~~(2) Prior to submitting an application for a proportionate fair share agreement, the applicant shall attend a pre application meeting with the City Manager or designee to discuss eligibility, application submittal requirements, potential mitigation options, and related issues. The pre application meeting may be held in conjunction with a traffic study meeting.~~
- ~~(3) Eligible applicants shall submit an application to the City that includes an application fee as established by resolution and the following:~~
- ~~a. Name, address, and phone number of owner(s), developer and agent;~~
 - ~~b. Property location, including parcel identification numbers;~~
 - ~~c. Legal description and survey of property;~~
 - ~~d. Project description, including type, intensity, and amount of development;~~
 - ~~e. Phasing schedule, if applicable;~~
 - ~~f. Description of requested proportionate fair share mitigation method(s);~~
 - ~~g. Copy of concurrency application;~~
 - ~~h. Copy of the project's Traffic Impact Statement (TIS) or Traffic Impact Analysis (TIA); and~~
 - ~~i. Location map depicting the site and affected road network.~~

~~The application shall be submitted at the time of application for development plan review, Special Use Permit approval, subdivision or minor subdivision approval, or rezoning.~~

~~(4) The City Manager or designee shall review the application and certify that the application is sufficient and complete. Should the application require the City to use the professional services of a consultant, the applicant shall bear all expenses incurred by the City for use of such consultant services. If an application is determined to be insufficient, incomplete, or inconsistent with the general requirements of the proportionate fair share program as indicated in Section 168.02.9, then the applicant shall be notified in writing of the reasons for such deficiencies. If such deficiencies are not remedied by the applicant within 30 days of receipt of the written notification, then the application shall be deemed abandoned. The City Commission may, in its discretion, grant an extension of time not to exceed 60 days to cure such deficiencies, provided that the applicant has shown good cause for the extension and has taken reasonable steps to affect a cure.~~

~~(5) When an application is deemed sufficient, complete, and eligible, a proposed proportionate fair share obligation and binding agreement will be prepared by the City or the applicant with direction from the City and delivered to the appropriate parties for review.~~

~~(6) The City shall notify the applicant regarding the date of the City Commission meeting at which the agreement will be considered for final approval. No proportionate fair share agreement will be effective until approved by the City Commission.~~

~~(f) *Determining Proportionate Fair Share Obligation.*~~

~~(1) Proportionate fair share mitigation for concurrency impacts may include, separately or collectively, private funds, contributions of land, and construction and contribution of facilities as provided in §163.3180 (16)(c), F.S. Construction and contribution of facilities shall be subject to final inspection and approval by the appropriate governmental agency.~~

~~(2) A development shall not be required to pay more than its proportionate fair share. The fair market value of the proportionate fair share mitigation for the impacted facilities shall not differ based on the form of mitigation as provided in §163.3180 (16)(c), F.S.~~

~~(3) The methodology used to calculate an applicant's proportionate fair share obligation shall be as provided for in Section 163.3180 (12), F. S., as follows: The cumulative number of peak hour, peak direction trips from the complete build-out of the proposed development, or build-out of the stage or phase being approved, that are assigned to the proportionate share program segment divided by the change in the peak hour directional maximum service volume (MSV) of the proportionate share program segment resulting from construction of the proportionate share program improvement, multiplied by the anticipated construction cost of the proportionate share project in the year that construction will occur. This methodology is expressed by the following formula:~~

$$\text{Proportionate Fair Share} = \Sigma [\text{Development Trips}_i] \div (\text{SV Increase}_i) \times \text{Cost}_i$$

(Note: In the context of the formula, the term “cumulative” does not include a previously approved stage or phase of a development.)

Where: Σ = Sum of all deficient links proposed for proportionate fair share mitigation for a project.

Development Trips_i = Those trips from the stage or phase of development under review that are assigned to roadway segment “i” and have triggered a deficiency per the concurrency management system;

SV Increase_i = Service volume increase provided by the eligible improvement to roadway segment “i”;

Cost_i = Adjusted cost of the improvement to segment “i”. Cost shall consist of all improvements and associated costs, including design, right-of-way acquisition, planning, engineering, inspection, and physical development costs, directly associated with construction at the anticipated cost in the year that construction will occur.

- (4) For purposes of determining proportionate fair share obligations, the City shall determine improvement costs based upon the actual and/or anticipated costs of the improvement in the year that construction will occur. These costs will be determined or approved by the City’s public works department.
- (5) If the City has accepted an improvement project proposed by the applicant, then the value of the improvement shall be based on an engineer’s certified cost estimate provided by the applicant and approved by the City’s public works director or other method approved by the City’s public works director.
- (6) If the City has accepted right of way dedication for the proportionate fair share payment, credit for the dedication of the non-site related right of way shall be valued on the date of the dedication at 100 percent of the most recent assessed value by the County Property Appraiser or, at the option of the applicant, by fair market value established by an independent appraisal approved by the City and at no expense to the City. Said appraisal shall assume no approved development plan for the site. The applicant shall supply a drawing and legal description of the land and a certificate of title or title search of the land to the City at no expense to the City. If the estimated value of the right of way dedication proposed by the applicant (based on a City-approved appraisal) is less than the City-estimated total proportionate fair share obligation for that development, then the applicant must also pay the difference. If the estimated value of the right of way dedication proposed by the applicant (based on a City-approved appraisal) is more than the City-estimated total proportionate fair share obligation for the development, then the City will give the applicant traffic impact fee credit for the difference, if available.

- (7) ~~The City, at its discretion, may allow developments to contribute proportionate fair share to system wide projects, either solely or in conjunction with highway related improvements. For the purposes of determining proportionate fair share obligations for system wide transportation improvements such as transit service, the City shall determine improvement/modification cost based upon the actual cost of the improvement/modification as obtained from the City's public works department. The transit costs shall be calculated as follows:~~

~~Development's net, new peak hour trip generation X (Transit Service Cost/Transit Service New Peak Trips) / CF, where:~~

~~Transit Service Cost = actual cost of the service improvements within City (first 3 years)~~

~~Transit Service New Peak Trips = the new transit trips available in the peak hour based on the transit service or transit service enhancements~~

~~CF = the conversion factor of person trips to vehicle trips (the current vehicle occupancy rate per the local transportation model is 1.20, and should be confirmed before use).~~

- ~~(g) *Impact Fee Credit for Proportionate Fair Share Mitigation.* If the City adopts transportation impact fees, the following provisions shall apply.~~

- ~~(1) Proportionate fair share mitigation payments for a development project shall be applied as a credit toward the traffic impact fees assessed to that development project.~~
- ~~(2) Impact fee credits for a proportionate fair share contribution will be determined when the traffic impact fee obligation is calculated for the proposed development. If the applicant's proportionate fair share obligation is less than the development's anticipated road impact fee for the specific stage or phase of development under review, then the applicant must pay the remaining impact fee amount.~~
- ~~(3) A proportionate fair share contribution is intended to mitigate the transportation impacts of a proposed development at a specific location. As a result, any traffic impact fee credit based upon proportionate fair share contributions for a proposed development may not be transferred to any other location.~~
- ~~(4) The amount of traffic impact fee (TIF) credit for a proportionate fair share contribution may be up to but shall not exceed the project's proportionate fair share amount and will be determined based on the following formula:~~

~~$$\text{TIF Credit} = [(\text{Proportionate fair share impacted roadways' VMT}) \div (\text{Total Project VMT})] \times (\text{Total Project Traffic Impact Fee Liability})$$~~

Where:

$$\text{VMT (Vehicle miles of travel on a link)} = (\text{length of link}) \times (\text{number of trips assigned to that link})$$

$$\text{Total Project VMT} = \text{Total vehicle miles of travel on all links impacted by proportionate fair share project}$$

- (5) ~~A proportionate fair share impact fee credit shall be applied consistent with the following formula:~~

$$\text{Applicant payment} = [(\text{Total project traffic impact fees assessed}) + (\text{Proportionate Share Payment})] - (\text{TIF CREDIT})$$

~~(h) Proportionate Fair Share Agreements.~~

- ~~(1) Upon executing a proportionate fair share agreement (Agreement) and satisfying other concurrency requirements, an applicant shall receive concurrency approval for subject trips. Should the applicant fail to apply for building permits within the timeframe provided for in the City concurrency approval, then the project's concurrency vesting shall expire, and the applicant shall be required to reapply. Once a proportionate share payment for a project is made and other impact fees for the project are paid, no refunds shall be given. All payments, however, shall run with the land.~~
- ~~(2) Payment of the proportionate fair share contribution for a project and payment of other impact fees assessed to that project shall be due and must be paid prior to the effective date of the proportionate fair share agreement. The effective date shall be specified in the agreement and shall be the date the agreement is approved by the City Commission.~~
- ~~(3) All developer improvements accepted as proportionate fair share contributions must be completed within 3 (three) years of the issuance of the first building permit for the project which is the subject of the proportionate fair share agreement and be accompanied by a security instrument that is sufficient to ensure the completion of all required improvements. The security instrument shall conform to specifications set by the City Commission and approved by the City attorney. It is the intent of this section that any required improvements be completed within 3 (three) years of the issuance of the first building permit for the project which is the subject of the proportionate fair share agreement.~~
- ~~(4) Dedication of necessary right of way for facility improvements pursuant to a proportionate fair share agreement must occur prior to the effective date of the proportionate fair share agreement.~~
- ~~(5) Any requested change to a development project subsequent to issuance of a development order shall be subject to additional proportionate fair share contributions to the extent the change would increase project costs or generate additional traffic that would require mitigation.~~

~~(6) Applicants may withdraw from a proportionate fair share agreement at any time prior to the execution of the agreement. The application fee and any associated advertising costs to the City are nonrefundable.~~

~~(7) The City may enter into proportionate fair share agreements for selected corridor improvements to facilitate collaboration among multiple applicants on improvements to a shared transportation facility.~~

~~(i) *Appropriation of Fair Share Revenues.*~~

~~(1) Proportionate fair share revenues shall be placed in the appropriate project account for funding of scheduled improvements in the City Capital Improvements Element, or as otherwise established in the terms of the proportionate fair share agreement. Proportionate fair share revenues may also be used as the 50% local match for funding under the FDOT Transportation Regional Incentive Program (TRIP).~~

~~(2) In the event a scheduled facility improvement is removed from the CIP or CIE, then the proportionate fair share revenues collected for its construction may be applied toward the construction of alternative improvements within that same corridor or sector where the alternative improvement will mitigate the impacts of the development project on the congested roadway(s) for which the original proportionate fair share contribution was made.~~

Sec. 58-41. Infrastructure capacity reporting and monitoring.

(a) Periodically, the city staff shall complete and submit to the City Commission an ~~Annual~~ Capacity Availability Report. This report shall evaluate development permitting activity ~~for the previous year~~ and determine existing conditions with regard to available capacity for the infrastructure facilities subject to concurrency. The report shall specify the capacity used ~~during the previous year~~ and shall evaluate and project the capacity available and the time remaining until available infrastructure capacity is exhausted. The report shall also include any vested capacity as well as that for which development orders have been issued. The report shall include survey data available from published sources and data specifically compiled by the city in order to monitor and maintain an accurate assessment of available infrastructure capacity and the use of existing infrastructure capacity.

Sec. 58-42. Capacity reservations in furtherance of the comprehensive plan.

(a) Infrastructure capacity may be reserved to accommodate redevelopment activities within Community Redevelopment Districts established pursuant to Chapter 163 in furtherance of the goals, objectives and policies of the Comprehensive Plan. The actual percentage or amount of capacity reserved and the nature of development entitled to use the reserved capacity shall be established by the City Commission.

(b) Infrastructure capacity may be reserved to accommodate public facilities provided for in the Capital Improvements Element of the Comprehensive Plan. The actual percentage or amount of capacity reserved for a particular public facility shall be established by the City Commission.

Sec. 58-43. Appeals.

(a) A concurrency determination, concurrency approval, or exemption determination may be appealed by the applicant by filing a written notice of appeal within 15 days after receipt of the decision. While an appeal is pending, capacity shall be temporarily reserved for the project which is the subject of the appeal.

(b) Appeals must also include any fees established by the city commission. The city commission shall function as the concurrency appeals board. Appeals shall be heard by the city commission within 30 days of filing. The city manager, after consideration of information from effected City departments, shall provide to the city commission a staff recommendation on the appeal. The decision of the concurrency appeals board shall be the final administrative action.



Public Hearing

NOTICE OF AN ORDINANCE TO AMEND THE LAND DEVELOPMENT CODE TO REVISE CONCURRENCY REGULATIONS AND TO AMEND THE ZONING CODE PERMITTED LAND USE DENSITIES AND DEVELOPMENT STANDARDS IN ORDER TO IMPLEMENT THE ADOPTED COMPREHENSIVE PLAN

NOTICE IS HEREBY GIVEN that the Winter Park City Planning and Zoning Board will hold a Public Hearing on Monday, November 27, 2017 at 5:00 p.m., in City Hall Commission Chambers, located at 401 South Park Avenue in the City of Winter Park, Florida, to consider the adoption of an Ordinance to amend the Land Development Code to revise concurrency regulations and to amend the zoning code permitted land use densities and development standards in order to implement the adopted Comprehensive Plan.

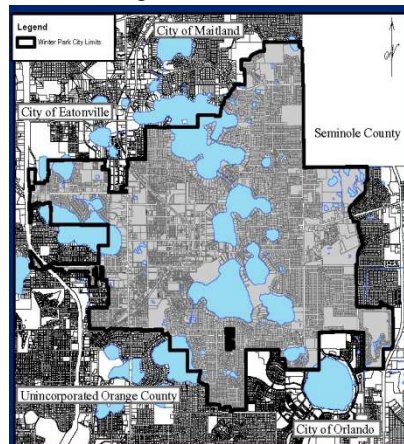
Copies of the proposed Ordinance are available for inspection in the Planning Department in City Hall, Monday through Friday, from 8 a.m. to 5 p.m., as well as on the city's official web site at www.cityofwinterpark.org.

All interested parties are invited to attend and be heard with respect to the adoption of the proposed amendments. Additional information is available in the Planning Department so that citizens may acquaint themselves with each issue and receive answers to any questions they may have prior to the hearing.

Pursuant to the provisions of the Americans with Disabilities Act: any person requiring special accommodation to participate in this meeting, because of disability or physical impairment, should contact the Planning Department at 407-599-3324 at least 48 hours in advance of this hearing.

Pursuant to §286.0105 of the Florida Statutes: if a person decides to appeal any decision made by the City Commission with respect to any matter considered at such meeting or hearing, they will need a record of the proceedings, and they need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is based.

PUBLISH: November 19, 2017 ORLANDO SENTINEL





Public Hearing

NOTICE OF AN ORDINANCE TO AMEND THE LAND DEVELOPMENT CODE TO REVISE CONCURRENCY REGULATIONS AND TO AMEND THE ZONING CODE PERMITTED LAND USE DENSITIES AND DEVELOPMENT STANDARDS IN ORDER TO IMPLEMENT THE ADOPTED COMPREHENSIVE PLAN

NOTICE IS HEREBY GIVEN that the Winter Park City Planning and Zoning Board will hold a Public Hearing on Monday, December 11, 2017 at 5:00 p.m., in City Hall Commission Chambers, located at 401 South Park Avenue in the City of Winter Park, Florida, to consider the adoption of an Ordinance to amend the Land Development Code to revise concurrency regulations and to amend the zoning code permitted land use densities and development standards in order to implement the adopted Comprehensive Plan.

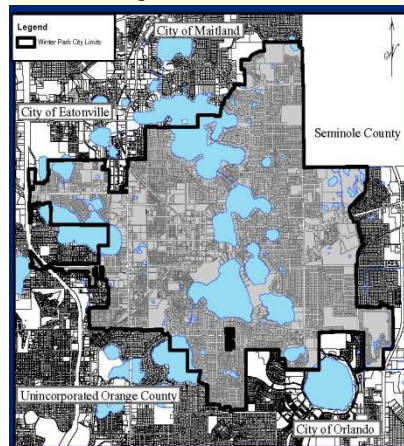
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Pursuant to §286.0105 of the Florida Statutes: if a person decides to appeal any decision made by the City Commission with respect to any matter considered at such meeting or hearing, they will need a record of the proceedings, and they need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is based.

PUBLISH: December 3, 2017 ORLANDO SENTINEL





city commission agenda item

item type	Public Hearings	meeting date	11/27/2017
prepared by	Planning / CRA Manager Approval	approved by	City Manager, City Attorney
board approval	yes final vote		
strategic objective	Exceptional Quality of Life, Intelligent Growth and Development		

subject

Ordinance - Request of the City of Winter Park, amending Chapter 58 "Land Development Code" Article III, "Zoning" so as to adopt new zoning regulations and development standards within the zoning districts of the City (1)

motion / recommendation

Motion to approve the Ordinance to adopt new Zoning Regulations and Development Standards within the zoning districts of the City.

background

This proposed Ordinance make the changes that the Planning and Building Department staff felt were needed to update the Zoning Code and to address situations where the zoning text needed improvement. A summary of those changes are as follows:

1. Sec. 58-81 Parks and Recreation (PR) District: Amends the maximum height permitted from 35 to 45 feet.
2. Sec. 58-86 – Parking Code changes:
 - a. Establishes a minimum 15% standard for visitor parking spaces within multi-family projects in surface lots and in parking garages and that at minimum at least one space must be provided without additional cost to each residential unit.
 - b. Increases the minimum term for off-site parking leases to permit building construction from 5 years to 30 years.
 - c. Provides a reference to the parking garage design standards and the requirement for parking garage management plan.
 - d. Provides a reference for storm water design requirements, particularly those involving drainage entering from adjacent public streets.
3. Sec 58-90 – Conditional Uses:

- a. Provides the ability for the City Commission to provide an exception for up to 5% floor area ratio if confined to a parking garage (Lakeside method for conditional uses and notice.
- b. Clarifies the calculation method for conditional uses and notice
- c. Clarifies that conditions of approval may require developer funded infrastructure upgrades needed for mobility, water, sewer, etc.
4. Sec. 58-87 – Lakefront Lots: Clarifies that the minimum 50 foot lakefront and wetland setback which applies to structures and swimming pools also applies to driveways and parking lots.
5. Sec. 58-71 – General Provisions for Residential Zoning Districts:
 - a. Clarifies that pool cabanas cannot be used for habitation at the closer setbacks.
 - b. Updates rules for walls and fences requiring a setback from sidewalks, gates to match fence styles, the same finish on both sides of a fence and allowance to replace nonconforming fences if setbacks are met.
 - c. Requires garage door setbacks of 20 feet from private alleys as the Code now does from public streets and sidewalks.
 - d. Clarifies the setbacks, heights and other provisions for parking within carports in office building surface parking lots.
 - e. Incorporates into the Zoning Code, the current prohibition in the Subdivision Code on private streets and gated communities.
 - f. Requires rooftop recreation decks on residential buildings to be approved by the City Commission.
 - g. Allows properties with two different zoning designations to combine the permitted density, if approved by the City Commission.
 - h. Allows solar photovoltaic (PV) as a permitted accessory use, provided that it meets the provisions of the respective zoning district and limited to the setbacks, area and coverage limitations of accessory structures in the respective zoning district.
6. Sec. 58-84 – General Provisions for Non-Residential Zoning Districts:
 - a. Limits the display of merchandise outside commercial businesses to only the Central Business District and Hannibal Square Business district zoned C-2 and not outside commercial businesses city-wide.
 - b. Clarifies the setbacks, heights and other provisions for parking within carports in multi-family parking lots.
 - c. Requires rooftop recreation decks to be approved by the City Commission.
 - d. Incorporates the alcoholic beverage regulations from Chapter 10 "Alcoholic Beverages" into the Chapter 58 (Zoning Code) since State alcoholic beverages licenses require "zoning" approval from the City.
 - e. Adds, as a place holder, adoption of the Orange County architectural design standards.
 - f. Allows solar photovoltaic (PV) as a permitted accessory use, provided that it meets the provisions of the respective zoning district and limited to the setbacks, area and coverage limitations of accessory structures in the respective zoning district.
7. Sec. 58-95 – Definitions: Provides the clarification on the calculation of floor area for carports in office/multi-family parking lots and provides consistency for basements excluded from floor area ratio for residential and commercial.
8. Sec. 58-76 – Commercial (C-3) Districts: Consistency for vet clinics and pet care businesses as treated in the office zoning districts and consistency of the 10 foot street front setbacks on West Fairbanks Avenue, as is the case city-wide.

9. Sec. 58-64 – Nonconforming Structures: Clarifies that if a nonconforming structure is destroyed by fire, tornado, hurricane, etc. that it can be rebuilt to its original dimensions but must be at least five feet from a neighboring properties and that when 90% of the roof and interior of a building is removed for renovation that the entire building must be rebuilt in compliance with current codes.

10. Sec. 58-66 – R-1AA and R-1A Districts: Incorporates in the Zoning Code, the Subdivision Code requirement on lot dimensions that corner lots must have 10 feet of additional width.

Planning and Zoning Board Minutes – November 27, 2017:

REQUEST OF THE CITY OF WINTER PARK FOR: AN ORDINANCE OF THE CITY OF WINTER PARK, FLORIDA, AMENDING CHAPTER 58 "LAND DEVELOPMENT CODE" ARTICLE III, "ZONING" SO AS TO ADOPT NEW ZONING REGULATIONS AND DEVELOPMENT STANDARDS WITHIN THE ZONING DISTRICTS OF THE CITY.

Planning Manager, Jeff Briggs presented the staff report and explained that the proposed Ordinance makes changes that the Planning and Building Department staff felt were needed to update the Zoning Code and to address situations where the zoning text needed improvement. A summary of those changes are as follows:

1. Sec. 58-81 Parks and Recreation (PR) District: Amends the maximum height permitted from 35 to 45 feet.

2. Sec. 58-86 – Parking Code changes:

a. Establishes a minimum 15% standard for visitor parking spaces within multi-family projects in surface lots and in parking garages and that at minimum at least one space must be provided without additional cost to each residential unit.

b. Increases the minimum term for off-site parking leases to permit building construction from 5 years to 30 years.

c. Provides a reference to the parking garage design standards and the requirement for parking garage management plan.

d. Provides a reference for storm water design requirements, particularly those involving drainage entering from adjacent public streets.

3. Sec 58-90 – Conditional Uses:

a. Provides the ability for the City Commission to provide an exception for up to 5% floor area ratio if confined to a parking garage (Lakeside method for conditional uses and notice.

b. Clarifies the calculation method for conditional uses and notice

c. Clarifies that conditions of approval may require developer funded infrastructure upgrades needed for mobility, water, sewer, etc.

4. Sec. 58-87 – Lakefront Lots: Clarifies that the minimum 50 foot lakefront and wetland setback which applies to structures and swimming pools also applies to driveways and parking lots.

5. Sec. 58-71 – General Provisions for Residential Zoning Districts:

a. Clarifies that pool cabanas cannot be used for habitation at the closer setbacks.

b. Updates rules for walls and fences requiring a setback from sidewalks, gates to match fence styles, the same finish on both sides of a fence and allowance to replace

nonconforming fences if setbacks are met.

c. Requires garage door setbacks of 20 feet from private alleys as the Code now does from public streets and sidewalks.

d. Clarifies the setbacks, heights and other provisions for parking within carports in office building surface parking lots.

e. Incorporates into the Zoning Code, the current prohibition in the Subdivision Code on private streets and gated communities.

f. Requires rooftop recreation decks on residential buildings to be approved by the City Commission.

g. Allows properties with two different zoning designations to combine the permitted density, if approved by the City Commission.

h. Allows solar photovoltaic (PV) as a permitted accessory use, provided that it meets the provisions of the respective zoning district and limited to the setbacks, area and coverage limitations of accessory structures in the respective zoning district.

6. Sec. 58-84 – General Provisions for Non-Residential Zoning Districts:

a. Limits the display of merchandise outside commercial businesses to only the Central Business District and Hannibal Square Business district zoned C-2 and not outside commercial businesses city-wide.

b. Clarifies the setbacks, heights and other provisions for parking within carports in multi-family parking lots.

c. Requires rooftop recreation decks to be approved by the City Commission.

d. Incorporates the alcoholic beverage regulations from Chapter 10 “Alcoholic Beverages” into the Chapter 58 (Zoning Code) since State alcoholic beverages licenses require “zoning” approval from the City.

e. Adds, as a place holder, adoption of the Orange County architectural design standards.

f. Allows solar photovoltaic (PV) as a permitted accessory use, provided that it meets the provisions of the respective zoning district and limited to the setbacks, area and coverage limitations of accessory structures in the respective zoning district.

7. Sec. 58-95 – Definitions: Provides the clarification on the calculation of floor area for carports in office/multi-family parking lots and provides consistency for basements excluded from floor area ratio for residential and commercial.

8. Sec. 58-76 – Commercial (C-3) Districts: Consistency for vet clinics and pet care businesses as treated in the office zoning districts and consistency of the 10 foot street front setbacks on West Fairbanks Avenue, as is the case city-wide.

9. Sec. 58-64 – Nonconforming Structures: Clarifies that if a nonconforming structure is destroyed by fire, tornado, hurricane, etc. that it can be rebuilt to its original dimensions but must be at least five feet from a neighboring properties and that when 90% of the roof and interior of a building is removed for renovation that the entire building must be rebuilt in compliance with current codes.

10. Sec. 58-66 – R-1AA and R-1A Districts: Incorporates in the Zoning Code, the Subdivision Code requirement on lot dimensions that corner lots must have 10 feet of additional width.

Mr. Briggs answered questions from the Board related to parking variance requests.

The P&Z Board indicated that they believed that the process of review of parking variance requests should remain as-is. Very few are approved unless there is overwhelming evidence that they are warranted.

Motion made by Ray Waugh, seconded by Sheila De Ciccio to approve the Ordinance to adopt new Zoning Regulations and Development Standards within the zoning districts of the City with the condition of removing item 3b (limit on parking variances) from the document.

Motion carried unanimously with a 7-0 vote.

alternatives / other considerations

N/A

fiscal impact

N/A

ATTACHMENTS:

Description	Upload Date	Type
Ordinance - LDC changes from Staff	11/16/2017	Ordinance
Display Ad 1st Reading	11/16/2017	Backup Material
Display Ad 2nd Reading	11/16/2017	Backup Material

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY OF WINTER PARK, FLORIDA,
AMENDING CHAPTER 58 "LAND DEVELOPMENT CODE"
ARTICLE III, "ZONING" SO AS TO ADOPT NEW ZONING
REGULATIONS AND DEVELOPMENT STANDARDS WITHIN THE
ZONING DISTRICTS OF THE CITY; PROVIDING FOR
CONFLICTS; SEVERABILITY AND AN EFFECTIVE DATE.**

WHEREAS, the Florida Legislature has adopted Chapter 163, Florida Statutes which requires all local communities to adopt amendments to their Land Development Codes to implement the growth and development policies of Comprehensive Plans adopted pursuant to Chapter 163, Florida Statutes and Florida Administrative Rules in order to provide appropriate policy guidance for growth and development: and

WHEREAS, the Winter Park City Commission adopted a new Comprehensive Plan on April 24, 2017 via Ordinance 3076-17; and

WHEREAS, the Winter Park Planning and Zoning Board, acting as the designated Local Planning Agency, has reviewed and recommended adoption of proposed amendments to the Zoning Regulations portion of the Land Development Code having held an advertised public hearing on November 7, 2017, and rendered its recommendations to the City Commission; and

WHEREAS, the Winter Park City Commission has reviewed the proposed amendments to the Zoning Regulations portion of the Land Development Code and held advertised public hearings on November 27, 2017 and on December 11, 2017 and advertised notice of such public hearings via quarter page advertisements in the Orlando Sentinel pursuant the requirements of Chapter 166, Florida Statutes and placed the proposed amendments on the City's website on October 31, 2107; and.

WHEREAS, the portions of Chapter 58, Land Development Code, Article III, Zoning Regulations, that are to be amended and modified as described in each section and amended to read as shown herein where words with single underlined type shall constitute additions to the original text and ~~strike through~~ shall constitute deletions to the original text.

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

SECTION 1. That Chapter 58 "Land Development Code", Article III "Zoning" of the Code of Ordinances is hereby amended and modified within Section 58-81 Parks and recreation District, subsection (e) (4) in the "Zoning" Article of the Land Development Code to read as follows:

Sec. 58-81. Parks and Recreation (PR) District.

(e) *Development standards.*

(4) Building heights shall not exceed two story height limits and the maximum building height shall be ~~thirty (30)~~ forty-five (45) feet for ~~flat roof buildings and thirty five (35) feet for peaked roof~~ buildings. Parapet walls or mansard roofs functioning as parapet walls on flat roofed buildings may be added to the permitted building height but in no case shall extend more than five (5) feet above the height limits in this subsection. Mechanical penthouses, mechanical and air conditioning equipment, elevator/stair towers shall not extend more than ten (10) feet above the height limits in this subsection. Architectural appendages, embellishments and other architectural features may be permitted to exceed the roof heights specified in this section, on a limited basis, encompassing no more than thirty (30%) percent of the building roof length and area, up to eight (8) feet of additional height, upon approval of the City Commission, based on a finding that said features are compatible with adjacent properties.

SECTION 2. That Chapter 58 "Land Development Code", Article III "Zoning" of the Code of Ordinances is hereby amended and modified within Section 58-86 Off-Street Parking and Loading Regulations subsections (b) (21); (h); and (j); and adding new subsections (n) (o) and (p) in the "Zoning" Article of the Land Development Code to read as follows:

Sec. 58-86. Off-Street Parking and Loading Regulations.

(b) *Specific requirements for various uses and buildings.* Listed below are the minimum parking spaces required for various buildings and uses. When the computation results in a requirement for a fractional space, a fraction of one-half or less shall be disregarded. When the fraction exceeds one-half, one additional off-street parking space will be required. Parking spaces, other than handicapped spaces, shall be nine (9) feet wide by eighteen (18) feet deep. Variances to reduce the size of parking spaces are prohibited.

(21) *Residential dwellings.* Two spaces per dwelling unit for any residential project of two units or less. Two and one-half spaces per dwelling unit for any residential project of three units or more. The planning and zoning commission may recommend and the city commission may approve variances to these provisions where conditions warrant. The intent of the Code requirement for 2.5 spaces for multiple family projects is to provide visitor parking spaces for guests, service calls, deliveries, etc. For multiple family projects providing 2.5 parking spaces per unit, the provision of those visitor spaces may not be exclusively within enclosed garages or carports and there must be at least one visitor parking space for each two units that are open and accessible for guests, service calls, deliveries, etc. Multiple family projects may not sell or lease any of the code required visitor parking spaces to individual unit owners or residents. In cases where the City may grant or has granted a variance or exception enabling the total parking spaces for any multiple family project to be less than the code required 2.5 spaces per unit, then at least fifteen (15%) percent of the total number of parking spaces approved by the City must be made available as visitor parking. All such visitor parking spaces shall be clearly marked on the pavement or have signage provided, indicating their use for visitor parking. In cases where there is restricted access security or gates for resident parking, then such restricted access security or gates, etc. shall not prohibit access to the required number of visitor parking spaces. Parking necessary for on-site management or other on-site employees shall be provided in parking spaces in excess of the number required as visitor parking. The City's Code Enforcement Board may enforce these provisions when it is witnessed by city staff that on any four consecutive occasions within any two consecutive day period, the same resident vehicle or management employee vehicle is utilizing any designated visitor parking spaces.

h. *Mixed uses.* In the case of mixed uses, the total requirements for off-street parking and loading spaces shall be the sum of the requirements of the various uses computed separately as specified

in the off-street parking regulations and off-street loading and unloading regulations of this article. The off-street parking and off-street loading space for one use shall not be considered as providing the required off-street parking and/or off-street loading space for any other use unless specifically approved by the city commission. In any multi-family building or mixed use building or project constructed after February 22, 2010, that includes residential units, constructed after September 1, 2107, at least one of the required parking spaces provided for each residential unit shall be dedicated and reserved for each particular residential unit and shall be provided to each residential unit at no additional cost as part of a monthly or other lease term other than as included in the base lease rate applicable to all other similar units and shall not be an additional cost for purchase over the agreed upon purchase price of the residential unit.

j. Off-Site Parking and Remote Parking Lots encumbered. Where the provisions of off-street parking for a building or other use established subsequent to the adoption of this article involves one or more parcels or tracts of land that are not a part of the site plot on which the principal use is situated, the applicant for a permit for the principal use shall submit his application for a building permit, and an instrument duly executed and acknowledged, which subjects that parcel or tract of land to parking uses in connection with the principal use for which it is available. The initial term of this instrument shall be at least thirty (30) five years in length. The instrument shall not be acceptable if the agreement can be terminated by either party, unless such termination is conditioned and predicated on the coincident termination of the use that necessitated the instrument agreement for parking. When a principal use has encumbered a remote parking lot in accordance with the regulations outlined herein to provide the required minimum parking spaces, then hereafter, the business tax receipt for the principal use will not be renewed by the city until the owner of the subject building presents sufficient evidence to the city that the required spaces will be provided for said use. ~~for a period of not less than five years and/or until the operator of the principal use presents sufficient evidence to the city that the required parking spaces will be provided for a period of not less than one year.~~ The applicant shall cause said instrument to be recorded in the office of the clerk of the circuit court of Orange County, Florida. A certified copy of the instrument shall be provided to the city at the time of application for a building permit or, if no building permit is required, upon the application for a business tax receipt for a use that must provide additional parking under this article. Such encumbrance shall be null and void and of no effect, if and when the city shall rescind or terminate off-street parking requirements for the building to be served by the encumbered lot, parcel or tract.

n. Parking garages. Parking garages shall be designed, constructed and maintained in accordance with the parking garage design guidelines outlined in Sections 58-71 and 58-84 of this Article. For any parking garage or deck there shall be at least two car lengths (35 feet) of stacking or queuing required whenever there is a parking ticket device or entrance gate so that such stacking does not extend over a public sidewalk or street. No parking ticket device or gate may be added to an existing parking garage unless this requirement is satisfied.

o. Parking garage management plans. The construction of any parking garage shall require the submission and approval by the City of a Parking Management Plan (PMP). The PMP shall include, at a minimum, the following elements:

1. The PMP shall include any method of charging for use of the parking structure and the proposed charges to be incurred for use of the parking garage. Without the express approval of the City, the parking garage shall not charge any fees in any manner to park within the parking garage or include charges to tenants for the ability to park within the parking garage. Any proposal to change for parking either directly or indirectly with tenant leases shall include the method by which visitors to the residential units or customers/clients to the businesses shall be entitled to park without payment of fees so that such visitors/customers/clients are not incentivized to park off-site on streets or other properties.

2. The PMP shall also include and require the City approval of signage and the location of such signage that reserves parking for specific tenant business usage. The City may require that such reserved parking signage provide for the public use of those spaces at nights or on weekends when such businesses are closed in order to facilitate the public benefit of the parking structure.
3. The PMP shall also include the contacts for the property management company responsible for the maintenance and upkeep of the parking structure. Any dangerous or unsightly conditions such as trash, broken glass or graffiti shall be remedied with 48 hours of contact from the City or the failure to remedy shall be immediate grounds for action by the Code Enforcement Board.

It shall be the responsibility of the Owner(s) of the parking structure to request approval of any amendment to the PMP and no changes to the operations of the parking garage shall be undertaken without such consent.

Both the Owner(s) of the parking structure and the City may seek amendments or changes to the PMP. The City may seek changes to the PMP when the operation of the parking garage creates situations that adversely affect the City or other property owners.

p. Drainage. The Owner(s) and the Owner's engineer of record shall be responsible for ensuring proper design and construction of stormwater drainage systems and improvements to accommodate stormwater drainage associated with parking garages, structures and lots. The Owner(s) and their successors and assigns shall be responsible for ensuring the proper operation, maintenance and repairs of all private stormwater drainage systems and improvements that accommodate stormwater drainage parking garages, structures and lots. Owner(s) shall take particular caution when designing and construction parking garages and structures that are below grade and related stormwater systems and improvements to adequately address stormwater flows from adjacent public and private lands and public rights-of-way as stormwater drainage could flow down grade into such parking garages and structures. The City is not responsible for stormwater drainage flows (or for preventing the same) into below grade parking garages and structures. The City and its officers, employees and agents shall be held harmless by the Owner(s) and its successors and assigns from any and all stormwater drainage issues relating to parking garages, structures and lots, including but not limited to, in regards to below grade parking garages and structures which may receive stormwater flows from adjacent private or public properties and public rights-of-way. The City's approval of plans and issuance of permits and inspections approvals concerning parking garages, structures and lots or any stormwater drainage systems or improvements relating thereto shall not be construed as a guarantee, warranty or representation by the City or any of its officers, employees or agents that the Owner's or Owner's engineer of record's design plan is going to properly function or prevent stormwater drainage problems, or that the improvements are properly constructed or constructed in accordance with the applicable design plan or permits.

SECTION 3. That Chapter 58 "Land Development Code", Article III "Zoning" of the Code of Ordinances is hereby amended and modified within Section 58-90 Conditional Uses, subsections (a) (2) and (c) (2), in the "Zoning" Article of the Land Development Code to read as follows:

Sec. 58-90. Conditional uses.

- (a) *Applications for conditional uses.*

(1) Within this article, various types of land uses, various types of structures, various types of businesses, certain types or sizes of buildings or certain types of licenses or business certificates have been deemed to require a conditional use approval prior to beginning operation or development. These conditional use approval requirements are to insure that such activities and projects are in conformance with the comprehensive plan policies and that they do not result in lack of compatibility and adverse effects with the type and size of buildings and the character of the surrounding area. Aside from the ability to deny such conditional uses or impose conditions upon such conditional use approvals in order to achieve these objectives, the city may also reduce the size, height and intensity of such buildings, structures and uses of land below that normally permitted within the zoning district in order to insure that these objectives are achieved.

(2) The planning and zoning ~~board~~ commission may recommend and the city commission may impose conditions upon the approval of a conditional use request. Conditional use applications encompass the entire site or property involved and do not relate only to the component of the plans requiring such conditional use approval. For residential development projects, (other than one single family home or duplex) the total square footage of the collective buildings shall be utilized to determine if a conditional use requirement applies but for the type of notice the size of the largest individual building shall be the determinant. ~~As such~~ Conditions may be imposed regarding the manner in which the entire conditional use property is developed and used and the city may impose restrictions otherwise not applicable by other typical land development codes as part of the conditional use approval. Such conditions may also include trial periods or time limits placed upon an approval. Such conditions may also be limited to the time period during which the applicant maintains the business certificate or occupational license for the business requesting such conditional use approval. Such conditions may also require infrastructure improvements for transportation, mobility, water, sewer, storm water and such.

(c) Approval of Conditional Uses.

(1) A simple majority of the city commission may override any recommendation for denial or modify any conditions of approval in the recommendation of the planning and zoning board.

(2) In order to streamline the development plan approval process, the city commission in the approval of conditional uses may also grant limited exceptions from the terms of this article. Those exceptions shall be limited to the size, number and height of accessory structures such as walls, fences and signs and shall also be limited to site and building design features involving floor area ratio (but for floor area ratio, said exemption shall be limited exclusively to floor area ratio in a parking garage and further limited to no more than five (5%) of the total floor area ratio permitted by this article), the location or number of parking spaces, the location of storm water retention facilities, building setbacks, building lot coverage and building height, but for building height, said exception shall be limited to no more than five (5) feet above the height limits of this article.

SECTION 4. That Chapter 58 "Land Development Code", Article III "Zoning" of the Code of Ordinances is hereby amended and modified within Section 58-87 Lakefront Lots, Canalfront Lots, Steamfront Lots, Wetlands, Boathouses and Docks, subsection (d) (5); (d) (5) (b) and (6) in the "Zoning" Article of the Land Development Code to read as follows:

Sec. 58-87. Lakefront lots, canalfront lots, streamfront lots, wetlands, boathouses and docks.

(d) *Other structures on lakefront, canalfront or streamfront lots.* The following standards shall apply to all construction on lakefront, canalfront or streamfront lots:

(5) Structures on lakefront lots require the approval of the planning and zoning board prior to the issuance of a building permit. As conditions necessitate, the planning and zoning board or city commission may impose increased setbacks in concert with their waterfront review or conditional use authority as necessary to accomplish the objectives in this section. Structures in this context shall also include parking lots, driveways, swimming pools, cabanas, gazebos, screen enclosures, tennis courts and other accessory buildings.

- (a) Setbacks - Single family/duplex. The setback from the water's ordinary high water elevation for single family and duplex buildings and any other accessory structures on those properties (other than boathouses, docks, over the water gazebos or retaining walls) shall be the average established by the adjacent water front properties within 200 feet of the subject property, or 50 feet, whichever is greater. The planning and zoning board shall have the authority to approve water front setbacks less than the average to a minimum of 50 feet in accordance with their water front review authority.
- (b) Setbacks - Multi-family/non-residential/mixed use. The water front setback from the water's ordinary high water elevation for multi-family (3 or more units) or non-residential or mixed use buildings and any other accessory structures on those properties (other than boathouses, docks, over the water gazebos or retaining walls) shall correspond to the height of the proposed structure. For buildings and structures 35 feet in height or less, the water front setback shall be a minimum of 75 feet. As the height of the building or structure increases, for each one foot increase in height over 35 feet in height, the water front setback shall increase by two and a half (2.5) feet. Parking lots, driveways, swimming pools or other accessory structures shall be setback a minimum of fifty (50) feet from the ordinary high water elevations below.
- (c) Ordinary High Water Elevations. For convenience, the ordinary high water elevations of the city's principal lakes are listed below. These elevations have been determined by the Florida Department of Environmental Protection (FDEP) Bureau of Survey and Mapping. All elevations reference NGVD (88 datum). For canal and stream front locations, the ordinary high water elevations are to be provided by the public works department.
 - 1. Lake Berry 69.4 feet
 - 2. Lake Killarney.... 82.0 feet
 - 3. Lake Maitland.... 65.7 feet
 - 4. Lake Mizell.... 65.7 feet
 - 5. Lake Osceola.... 65.7 feet
 - 6. Lake Sue.... 70.7 feet
 - 7. Lake Sylvan.... 71.2 feet
 - 8. Lake Virginia.... 65.7 feet
 - 9. Lake Bell.... 88.6 feet
 - 10. Lake Spier.... 89.7 feet
 - 11. Lake Forrest.... 100.0 feet
 - 12. Lake Grace.... 100.8 feet
 - 13. Lake Rose.... 87.8 feet
 - 14. Lake Tuscany.... 69.1 feet
 - 15. Lake Baldwin.... 90.7 feet
 - 16. Lake Temple.... 66.6 feet

(6) Structures on canalfront or streamfront lots require the approval of the planning and zoning board prior to the issuance of a building permit. Other than boathouses, the waterfront setback shall

be at least 50 feet from the canal bulkhead or stream. Structures in this context shall also include driveways, parking lots, swimming pools and pool decks, screen enclosures, tennis courts, cabanas and other accessory buildings. Swimming pools and decks on canalfront or streamfront lots may be permitted a minimum of 25 feet from the canal bulkhead or stream ordinary high water elevation, provided the swimming pool has an elevation of no more than two feet above the existing grade on the side closest to the canal or stream. The planning and zoning board may require, as conditions necessitate, the imposition of increased setbacks to accomplish the objectives in this section.

SECTION 5. That Chapter 58 "Land Development Code", Article III "Zoning" of the Code of Ordinances is hereby amended and modified by removing within Section 58-71 General Provisions for Residential Zoning Districts; subsections (i) (2) (a) and (b); (n) (2) and n (6); (8); (h) (5) and (o); and adding new subsections (i) (11); (ii); (mm); (nn) and (oo) in the "Zoning" Article of the Land Development Code as follows:

Sec. 58-71. General Provisions for Residential Zoning Districts.

(i) *Accessory buildings, structures, air conditioning equipment and other accessory uses in residential zones.*

(2) An accessory building may be attached to a principal structure by a one-story open sided roofed breezeway with a maximum width of eight (8) feet connected to the principal structure without meeting the setback requirements of the principal building and complying with the setbacks of the accessory building; however, all other zoning requirements must be met, such as impervious coverage, building coverage or floor area ratio, where applicable.

a. Accessory structures for the housing of persons such as guest houses, bedrooms and garage apartments including bathrooms but excluding swimming pool cabanas, shall not be located in any required yard. Pool cabanas and greenhouses no more than 500 square feet in area may be located five feet from the side lot line and ten feet from the rear lot line. Cabanas which include or are used as accessory living quarters or guest houses must meet the same setbacks as the principal home.

b. Air conditioning equipment, swimming pool equipment and electric generators shall not be located in any front yard or required side yard with street frontage unless totally shielded from view from the street by shrubbery or walls and fences otherwise complying with the zoning code. Air conditioning equipment may be located up to ten (10) feet from a rear lot line as long as they are adjacent to the accessory structure or principal structure. Air conditioning compressors and electric generators shall not be located in any side yard or within ten (10) feet from the rear lot line except that they may be permitted six (6) feet from a side or rear property line if written permission is granted by the adjacent property owner. Any air conditioning equipment placed on a roof must be screened from view from surrounding properties and from public streets.

(n) Walls and fences.

(2) Height and setbacks in residential districts. In front yards and in side yards with street frontages, walls and fences shall not exceed three feet in height above the street curb elevation. However, these decorative front yard or street frontage walls and fences may be permitted columns or posts to exceed this height limit by one foot provided they are spaced at least ten feet apart. Light fixtures may also be placed on columns at driveway entrances up to one foot in height. In street-side yard areas of corner lots, a decorative fence or wall may be constructed five feet in height above the existing ground level when setback at least ten feet from the street-side property line. In all other side and rear yard areas, walls and fences may be a maximum of six feet in height above the

ground. Where compliance with these height limits could cause a hardship due to the natural sloping topography of a particular lot, the administrative official may permit portions of a fence or wall to be up to eight feet in height in areas where the normal maximum height would be six feet; and where fences are normally limited to three feet in height above the street curb elevation, the administrative official may permit the fence to be measured from the natural ground level rather than the curb. No wall or fence shall be permitted which would in any way obstruct or impair the visibility of automobiles at intersections and points of ingress and egress to the public right-of-way. For walls and solid fences located on any street, a setback of one (1) foot from the lot line is required to prevent interference with pedestrian mobility on existing or future sidewalks. Gates located on any street must match the openness of the fencing or no less than 60% open in composition whichever is greater. Walls and fences on the lakefront, canalfront, or streamfront side of properties shall meet the requirements established in this article for such waterfront properties. For purposes of locating walls and fences, front yards shall be the area from the front lot line to the front building wall or as determined by the building director.

(6) Walls and fences shall be finished on both sides with similar architectural treatments and color on both surfaces so that, for example, a brick-veneered masonry wall shall have brick veneer on both sides or a stuccoed masonry wall shall have a stucco finish on both sides, a painted wood fence would be painted on both sides, unless different surface treatments and color are agreed upon by the property owners on both sides of the wall and the building director.

(8) Corner lots with nonconforming walls or fences for one or two family dwellings: When an existing dwelling has a nonconforming building wall or fence located along a street side yard at a distance of 10 feet or greater from the street side lot line, a new fence or wall complying with a permitted material up to six (6) high is allowed to be constructed at the same nonconforming street side setback as a replacement in the same location.

(h) *Corner lot and other residential setbacks.*

(5) Garage and carport setbacks. All corner lots shall maintain a setback to a garage or carport opening door(s)/entry of at least twenty (20) feet from any street front lot line so as to preclude the parking of ~~autos~~ vehicles over a sidewalk or in the right-of-way. Unless approved as part of an overall project development plan by the City Commission, any garage doors or carport entry facing a public or private alley or access easement or other roadway used by more than two (2) residences shall maintain a setback of at least twenty (20) feet from the garage door(s) or carport entry to the roadway pavement of the public or private alley or access easement so as to preclude the parking of vehicles over the roadway. In addition, for garages doors and a carports entry facing a side or rear interior property line, a minimum distance of 22 feet shall be provided in front of garages and carports for the minimum parking exiting and turn around space.

(i) Accessory buildings, structures, air-conditioning equipment and other accessory uses in residential zones.

(11) Solar photovoltaic (PV). Solar PV is a permitted accessory use, provided that it meets the provisions of the respective zoning district and limited to the setbacks, area and coverage limitations of accessory structures in the respective zoning district.

(o) Building to have access on a public street. Every building hereafter erected or moved shall be on a lot adjacent to ~~with frontage on~~ a public street or previously approved private street. The structures on these lots shall be so located so as to provide safe and convenient access for servicing, fire protection, other emergency vehicles, and required off-street parking. Furthermore, no building hereafter erected or moved shall be on a lot solely adjacent to an unpaved road.

(ii) *Parking Shelters.* For multi-family residential projects, the City may permit open accessory detached shelter structures for shade and rain protection for vehicles provided that the parking shelter is at least eighty (80%) open, that the posts or columns meet a minimum five (5) foot setback from adjacent properties, that the structures meets all Building Code wind load requirements; are not more than one story in height and limited to no more than 10 feet in height to the roof eve. Such parking shelters shall only cover a row of parking one space deep and may not span across a landscape island or the drive aisle. Such shelters may only located in the rear of the property or side of the property and not located in any area within twenty-five (25) feet of a right-of-way. Furthermore, such parking shelters must be architecturally consistent with the principle building and as such, metal post and canvas type coverings are not permitted.

(mm) *Gated streets and gated communities.* Consistent with the subdivision regulations provisions that prohibit private streets, and in order to promote vehicular and pedestrian ingress and egress access and for providing uninhibited emergency services access to any neighborhood, in subdivision or other housing community or housing projects, the use of gates or other access controls to restrict access to streets, neighborhoods, condominiums or other housing communities shall be prohibited. This shall not interpreted to prohibit the access management controls and gates to private residential parking garages provided unrestricted access is provided to visitor parking, that may be required per this Code or by a condition of approval of a residential project by the city commission nor shall it be interpreted to prohibit gates on driveways to any individual single family home.

(nn) *Rooftop decks.* Open or covered rooftop decks on all or portions of the top floor of flat roofed buildings for use by the residents for other than access to mechanical and air conditioning equipment shall not be permitted unless approved by the Planning and Zoning Board, or City Commission, (if part of a conditional use request), on a case by case basis, at a public hearing, following notice to all property owners within 300 feet, based upon the evaluation of the potential impact of night-time sound and activity and the impact upon the peaceful use and enjoyment of nearby properties.

(oo) *Split Residential Zoning.* In cases where a property has split and different zoning designations, the property may be used cumulatively for the density permitted by the combined zoning designations, subject to approval by the City Commission.

SECTION 6. That Chapter 58 "Land Development Code", Article III "Zoning" of the Code of Ordinances is hereby amended and modified within Section 58-84 General Provisions for Non-Residential Zoning Districts; revising subsection (r) and adding new subsections (v) (aa) (ff) and (gg) in the "Zoning" Article of the Land Development Code as follows:

Sec. 58-84. General Provisions for Non-Residential Zoning Districts.

(r) *Display of merchandise outside commercial buildings within the C-2 zoning district.* Only within the Central Business District and the Hannibal Square Business District, those properties which are zoned C-2 are allowed ~~One~~ display of merchandise ~~may to~~ be located outside of a commercial business exclusive of beautification elements such as plants (that are not for sale). This display must be placed within two (2) feet of the front wall or window of the building. This display must not block or impede pedestrian traffic or be placed on the public sidewalk and at least six (6) feet of clear sidewalk width must remain for pedestrian traffic. This display must be no more than six (6) feet in height and no more than two (2) feet in width. The display must be safely secured and removed under windy conditions. The display must be removed when the business is not open. An outside display is not permitted if the business chooses to place an outdoor portable sign.

(v). Solar photovoltaic (PV). Solar PV is a permitted accessory use, provided that it meets the provisions of the respective zoning district and limited to the setbacks, area and coverage limitations of accessory structures in the respective zoning district.

(aa) Parking Shelters. For office and commercial properties, the City may permit open parking shelter structures for shade and rain protection for vehicles provided that the shelter is at least eighty (80%) open, that the posts or columns meet a minimum five (5) foot setback from adjacent properties, that the structures meets all Building Code wind load requirements; are not more than one story in height and limited to no more than 10 feet in height to the roof eave. Such parking shelters shall only cover a row of parking one space deep and may not span across a landscape island or the drive aisle. Such shelters may only located in the rear of the property or side of the property and not located in any area within twenty-five (25) feet of a right-of-way. Furthermore, such parking shelters must be architecturally consistent with the principle building and as such, metal post and canvas type coverings are not permitted.

(ff) Rooftop decks. Open or covered rooftop decks on all or portions of the top floor of flat roofed buildings for use by the residents or tenants for other than access to mechanical and air conditioning equipment shall not be permitted unless approved by the Planning and Zoning Board, or City Commission, (if part of a conditional use request), on a case by case basis, at a public hearing, following notice to all property owners within 300 feet, based upon the evaluation of the potential impact of night-time sound and activity and the impact upon the peaceful use and enjoyment of nearby properties.

(gg) Alcohol sales and consumption. Chapter 10 of the Code of Ordinances establishes classifications for city licenses permitting the sale and consumption of alcoholic beverages. The sale and/or consumption of alcoholic beverages is limited and restricted only to the business types listed below and any other business type not listed, such as salons, spas, is not permitted alcoholic beverage sales and consumption. As such, alcoholic beverage sales and consumption is limited only to the following locations and uses listed below.

- (1) Commercially zoned retail stores but only for off-site consumption. Retail food and beverage retail stores may be permitted limited on-site consumption only for samples during wine/beer tastings, cooking school demonstrations, as special events;
- (2) Commercially zoned restaurants and food and beverage establishments having a seating capacity of not less than 24 seats for on-site and off-site consumption;
- (3) Adult congregate living facilities having a minimum of 50 living units and a seating capacity for not less than 100 seats but only for on-site consumption;
- (4) Golf clubs, tennis clubs and other private recreational facilities but only for on-site consumption;
- (5) Theatres for live performances or for films/movies with not less than 100 seats but only for on-site consumption;

(hh) Commercial Design Standards. The City has adopted in this Article, design standards for the Central Business District and Morse Boulevard areas which is also inclusive of the Hannibal Square Business District. Until additional further design standards are adopted for the other commercial corridors and non-residentially zoned properties within the City, the City is adopting, by reference, and implementing the Orange County design standards as codified in in Chapter 9, Article VIII of the Orange County Code of Ordinances. The Planning and Community Development Director, or their designee shall have the authority to approve commercial building projects in

accordance with those regulations and shall be permitted to grant waivers, as necessary for application to the context as appropriate for application within the City of Winter Park.

SECTION 7. That Chapter 58 "Land Development Code", Article III "Zoning" of the Code of Ordinances is hereby amended and modified by removing within Section 58-95 Definitions to amend the definition of "gross floor area"; subsection (1) in the "Zoning" Article of the Land Development Code as follows:

Sec. 58-95. Definitions.

For the purposes of this article, certain terms or words used herein shall be interpreted as follows:

Smoke shop – means a store selling tobacco products, electronic cigarettes or other substances, smoking equipment and accessories for the consumption of any product or businesses offering related or similar services and products; provided however, that any grocery store, supermarket, convenience store or similar retail use that only sells conventional cigars, cigarettes or tobacco as an ancillary sale shall not be defined as a "smoke shop" and shall not be subject to the restrictions in this chapter.

Gross floor area means, for the purpose of determining the floor area ratio of a building, the sum of the gross horizontal areas of the several floors of a building or buildings measured from the exterior surface of the walls or exterior of columns for roofed structures without walls. The means of deriving "gross floor area" for special circumstances is clarified as follows:

(1) Basement areas or other below grade floor areas are excluded from the "gross floor area" when more than one-half of that basement or floor height is below the existing grade or below the established curb level, if the lot grade is lower than the established curb level. ~~However, in multi-family residential condominiums and apartment projects and in office, commercial or industrial projects, these basement floor areas shall be restricted to parking, service, mechanical, or storage uses. Furthermore, these basement areas when used for service, mechanical, or storage purposes shall be limited in size for those uses to no more than 7 1/2 percent of the first floor area.~~

Lakefront lot means a lot or property which is bounded by or within 200 feet of Lakes Maitland, Osceola, Virginia, Mizell, Sue, Sylvan, Berry, Forrest, Killarney, Temple, Tuscany, Spier, Grace, Rose, Tuscany, Baldwin and Lake Bell.

Vapor lounge – also known as "vapor bar", "smoking device bar" or "electronic smoking device lounge" shall be defined as a store or lounge selling or allowing onsite consumption of tobacco or any alternative to cigarettes and/or liquid products that are manufactured for use with electronic cigarettes, tobacco products, and devices capable of providing an inhalable dose of nicotine or any other substances within the establishment.

SECTION 8. That Chapter 58 "Land Development Code", Article III "Zoning" of the Code of Ordinances is hereby amended and modified by adding within Section 58-76 Commercial (C-3) District; subsection (b) (8) and (e) (1) in the "Zoning" Article of the Land Development Code as follows:

Sec. 58-76. Commercial (C-3) District.

(b) *Permitted uses.*

(8) Animal hospitals, veterinary clinics, pet stores and other animal care businesses provided that they are in a freestanding building or have consent of the other tenants within that building; that there shall be no outside kennels, pens or runs, and there shall be no overnight or weekend boarding of animals unless the structure is located more than 200 250 feet from a residentially zoned parcel of land from the nearest residential building measured building to building.

(e) Development standards.

(1) Any building constructed within this district shall adhere to the following minimum or required setbacks for front, rear and side yards. The front setback to all streets shall be a minimum of ten (10) feet from the property line and a minimum of fifteen (15) feet on Orlando Avenue ~~and on the north side of Fairbanks Avenue and twenty (20) feet on the south side of Fairbanks Avenue.~~ For properties along Orange Avenue, the front setback may be reduced to the average front setback of the existing buildings within that block if approved by the City Commission. Side yard setbacks shall be a minimum of five (5) feet from each property line unless the parcel shares a common line with a residentially zoned parcel, then a fifteen (15) foot setback shall be observed. The rear setback shall be a minimum of thirty (30) feet from the property line unless the rear yard abuts a residentially parcel, then a thirty-five (35) foot setback shall be observed. However, within the Hannibal Square Neighborhood Commercial District area, as set forth in this section, new buildings shall have a required ten (10) foot front setback and may be permitted zero-foot side setbacks unless the parcel shares a common line with a residentially zoned parcel, then a fifteen (15) foot setback shall be observed. For any required front setback, the distance may be increased upon the determination by the public works director and police chief that a traffic sight distance safety problem may exist, to the extent required to remedy the problem.

SECTION 9. That Chapter 58 "Land Development Code", Article III "Zoning" of the Code of Ordinances is hereby amended and modified by amending within Section 58-64 Nonconforming Lots, Nonconforming Uses and Nonconforming Structures; subsections (c) (2) and (c) (3) in the "Zoning" Article of the Land Development Code as follows:

Sec. 58-64. Nonconforming Lots, Nonconforming Uses and Nonconforming Structures.

(c) Nonconforming structures.

(2) If a nonconforming structure or portion thereof be demolished or destroyed through repair, remodeling, reconstruction or any other means to an extent of more than 50 percent of its replacement cost at the time of demolition or destruction, it shall not be reconstructed or restored except in conformity with the provisions of these zoning regulations. Removal and replacement of a nonconforming portion of a building with a new structure (such as new walls or roof) is not to be permitted. When 90% or more of the roof structure of a nonconforming building is removed, and interior floor areas are remodeled including the substantial removal of existing plumbing, electrical and mechanical systems, then that building shall be deemed to have exceeded the 50% destruction threshold referenced in this paragraph.

(4) Should such nonconforming structure be demolished, destroyed, or damaged by fire, wind storm, hurricane, tornado, flood, explosion, or other such calamity, such structure may be rebuilt or restored to its original dimensions and building setback as long as the nonconformities are not increased beyond the pre-existing condition and the building is rebuilt at same setback but not less than least five (5) feet from the closest property line for those portions of the building which had nonconforming setbacks.

SECTION 10. That Chapter 58 "Land Development Code", Article III "Zoning" of the Code of Ordinances is hereby amended and modified by amending within Section 58-66 R-1AA and R-1A Districts; subsections (e) (1) and (2) in the "Zoning" Article of the Land Development Code as follows:

Sec. 58-66. R-1AA and R-1A Districts.

(e) *Minimum building site.*

(1) The minimum lot area for the R-1AA district shall be 10,000 square feet with a minimum frontage at the building line of 100 feet. Corners lots shall have an extra 10 feet of lot width required.

(2) The minimum lot area for the R-1A district shall be 8,500 square feet with a minimum frontage at the building line of 75 feet. Corners lots shall have an extra 10 feet of lot width required.

(3) The minimum lot width for lakefront property located across a street from the principal lot with the main residence shall be the same lot width as is required for main residence.

SECTION 11. SEVERABILITY. If any Section or portion of a Section of this Ordinance proves to be invalid, unlawful, or unconstitutional, it shall not be held to invalidate or impair the validity, force, or effect of any other Section or part of this Ordinance.

SECTION 12. 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 this Ordinance shall become and be made a part of the Code of Ordinance of the City of Winter Park, Florida;

SECTION 13. CONFLICTS. All Ordinances or parts of Ordinances in conflict with any of the provisions of this Ordinance are hereby repealed.

SECTION 14. EFFECTIVE DATE. This Ordinance shall become effective immediately upon its passage and adoption.

ADOPTED at a regular meeting of the City Commission of the City of Winter Park, Florida, held in City Hall, Winter Park, on this _____ day of _____, 2017.

Mayor Steve Leary

ATTEST:

City Clerk



Public Hearing

NOTICE OF AN ORDINANCE TO AMEND THE LAND DEVELOPMENT CODE TO REVISE THE ZONING REGULATION DEVELOPMENT STANDARDS; PARKING AND SETBACKS REGULATIONS AND CONDITIONAL USE PROVISIONS

NOTICE IS HEREBY GIVEN that the Winter Park City Planning and Zoning Board will hold a Public Hearing on Tuesday, November 27, 2017 at 3:30 p.m., in City Hall Commission Chambers, located at 401 South Park Avenue in the City of Winter Park, Florida, to consider the adoption of an Ordinance to amend the Land Development Code, Zoning Regulation development standards, parking and setback regulations and conditional use provisions in concert with the adopted Comprehensive Plan.

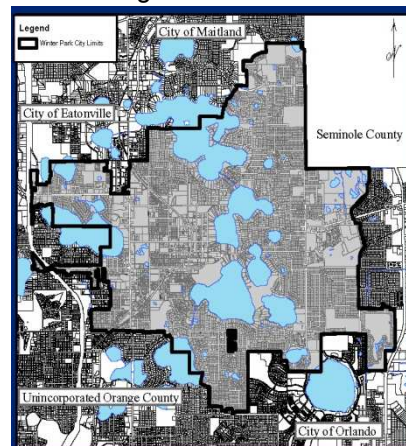
Copies of the proposed Ordinance are available for inspection in the Planning Department in City Hall, Monday through Friday, from 8 a.m. to 5 p.m., as well as on the city's official web site at www.cityofwinterpark.org.

All interested parties are invited to attend and be heard with respect to the adoption of the proposed amendments. Additional information is available in the Planning Department so that citizens may acquaint themselves with each issue and receive answers to any questions they may have prior to the hearing.

Pursuant to the provisions of the Americans with Disabilities Act: any person requiring special accommodation to participate in this meeting, because of disability or physical impairment, should contact the Planning Department at 407-599-3324 at least 48 hours in advance of this hearing.

Pursuant to §286.0105 of the Florida Statutes: if a person decides to appeal any decision made by the City Commission with respect to any matter considered at such meeting or hearing, they will need a record of the proceedings, and they need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is based.

PUBLISH: November 19, 2017 ORLANDO SENTINEL





Public Hearing

NOTICE OF AN ORDINANCE TO AMEND THE LAND DEVELOPMENT CODE TO REVISE THE ZONING REGULATION DEVELOPMENT STANDARDS; PARKING AND SETBACKS REGULATIONS AND CONDITIONAL USE PROVISIONS

NOTICE IS HEREBY GIVEN that the Winter Park City Planning and Zoning Board will hold a Public Hearing on Tuesday, December 11, 2017 at 3:30 p.m., in City Hall Commission Chambers, located at 401 South Park Avenue in the City of Winter Park, Florida, to consider the adoption of an Ordinance to amend the Land Development Code, Zoning Regulation development standards, parking and setback regulations and conditional use provisions in concert with the adopted Comprehensive Plan.

Copies of the proposed Ordinance are available for inspection in the Planning Department in City Hall, Monday through Friday, from 8 a.m. to 5 p.m., as well as on the city's official web site at www.cityofwinterpark.org.

All interested parties are invited to attend and be heard with respect to the adoption of the proposed amendments. Additional information is available in the Planning Department so that citizens may acquaint themselves with each issue and receive answers to any questions they may have prior to the hearing.

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**PUBLISH: December 3, 2017 ORLANDO
SENTINEL**

