REGULAR MEETING  March 14, 2019   6:30 p.m.

CALL TO ORDER
Determination of a Quorum
Opening Invocation and Pledge of Allegiance

1. APPROVAL OF MINUTES
   Regular Meeting Minutes – February 28, 2019

2. PRESENTATION:
   A. Promotional Acknowledgments – Fire Chief McGrew

3. FIRST READING AND PUBLIC HEARING OF ORDINANCES
   A. Ordinance 19-15: AN ORDINANCE OF THE CITY OF WINTER GARDEN, FLORIDA, REZONING CERTAIN REAL PROPERTY GENERALLY DESCRIBED AS APPROXIMATELY 0.54 +/- ACRES OF LAND GENERALLY LOCATED AT 43 1ST STREET, EAST OF 1ST STREET, SOUTH OF E BAY STREET, AND WEST OF 2ND STREET, FROM C-2 (ARTERIAL COMMERCIAL DISTRICT) TO PCD (PLANNED COMMERCIAL DEVELOPMENT); PROVIDING FOR CERTAIN PCD REQUIREMENTS AND DESCRIBING THE DEVELOPMENT AS THE VMG OFFICE PCD; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE with the second reading and public hearing March 28, 2019 – Community Development Director Pash

   B. Ordinance 19-16: AN ORDINANCE OF THE CITY OF WINTER GARDEN, FLORIDA; AMENDING CHAPTER 94 “NATURAL RESOURCE PROTECTION” TO ADD A NEW SECTION 94-1 GOVERNING FERTILIZER USE WITHIN THE CITY; ADOPTING THE ORANGE COUNTY REGULATIONS PERTAINING TO FERTILIZER USE AND AUTHORIZING COUNTY AND CITY ENFORCEMENT THEREOF WITHIN THE CITY; PROVIDING FOR CODIFICATION, SEVERABILITY, CONFLICTS, AND AN EFFECTIVE DATE with the second reading and public hearing March 28, 2019 – Assistant City Manager – Public Services Williams

4. SECOND READING AND PUBLIC HEARING OF ORDINANCE
   A. Ordinance 19-10: AN ORDINANCE OF THE CITY OF WINTER GARDEN, FLORIDA, AMENDING ORDINANCE 18-32, THE CITY OF WINTER GARDEN FISCAL YEAR 2018-2019 BUDGET TO CARRY FORWARD PRIOR YEAR APPROPRIATIONS; PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE – Finance Director Zielonka

5. REGULAR BUSINESS
   A. Recommendation to approve and award the City of Orlando Piggyback Agreement with American Grinding Company, LLC for Citywide Sidewalk Inspection and Grinding Services – Assistant City Manager – Public Services Williams

   B. Recommendation to approve RFQ rankings and award contracts for continuing professional surveying services to Southeastern Surveying and Mapping, Inc., Cribb Philbeck Weaver Group (CPWG), Inc., and KPM Franklin – Assistant City Manager – Public Services Williams

   C. Recommendation to waive formal procurement process and award contract to Cathcart Construction Company, LLC in the amount of $71,770 for installation of underdrains within Traditions Subdivision - Assistant City Manager – Public Services Williams

   D. Recommendation to reduce Code Lien for 226 6th Street - Community Development Director Pash
E. Recommendation to approve Seventh Amendment to the Restated Interlocal Agreement for Joint Planning Area Between Orange County and the City of Winter Garden - Community Development Director Pash

F. Recommendation to approve SPECIAL EVENT – Annual Spring Fever in the Garden by Bloom 'N Grow Garden Society - April 6 - 7, 2019 in Downtown Winter Garden – Community Development Director Pash

G. Recommendation to approve Agreement for Acquisition of Property and authorize City Manager to execute documents for property located at East Crown Point Road and Fullers Cross Road – Planning Consultant Williams

6. MATTERS FROM PUBLIC (Limited to 3 minutes per speaker)

7. MATTERS FROM CITY ATTORNEY – Kurt Ardaman

8. MATTERS FROM CITY MANAGER – Mike Bollhoefer

9. MATTERS FROM MAYOR AND COMMISSIONERS

ADJOURN to a Regular Meeting on Thursday, March 28, 2019 at 6:30 p.m. in City Hall Commission Chambers, 300 W. Plant Street, 1st floor

NOTICES:
In accordance with Florida Statutes 286.0105, if any person decides to appeal any decision made by said body with respect to any matter considered at such meeting, he/she will need a record of the proceedings and, for that 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. The City of Winter Garden does not prepare or provide such record.

Any opening invocation that is offered before the official start of the Commission meeting shall be the voluntary offering of a private person, to and for the benefit of the Commission. The views or beliefs expressed by the invocation speaker have not been previously reviewed or approved by the City Commission or the city staff, and the City is not allowed by law to endorse the religious or non-religious beliefs or views of such speaker. Persons in attendance at the City Commission meeting are invited to stand during the opening invocation and to stand and recite the Pledge of Allegiance. However, such invitation shall not be construed as a demand, order, or any other type of command. No person in attendance at the meeting shall be required to participate in any opening invocation that is offered or to participate in the Pledge of Allegiance. You may remain seated within the City Commission Chambers or exit the City Commission Chambers and return upon completion of the opening invocation and/or Pledge of Allegiance if you do not wish to participate in or witness the opening invocation and/or the recitation of the Pledge of Allegiance. (Reference Resolutions 15-04 and 16-02)

Those needing assistance to participate in any of these proceedings should contact the City Clerk's Office at least 48 hours in advance of the meeting (407) 656-4111 x2297.

Help for the hearing impaired is available through the Assistive Listening System. Receivers can be obtained at the meeting from the Information Technology Department (407) 656-4111 x5455.
REGULAR MEETING of the Winter Garden City Commission was called to order by Mayor Rees at 6:30 p.m. at City Hall, 300 West Plant Street, Winter Garden, Florida. An Opening Invocation and Pledge of Allegiance were given.

Present: Mayor John Rees and Commissioners  
Lisa Bennett – District 1      Bob Buchanan – District 2  
Mark A. Maciel – District 3      Colin Sharman – District 4  

Also Present: City Manager Mike Bollhoefer, City Attorney A. Kurt Ardaman, City Clerk Angee Grimmage, Assistant City Manager of Administrative Services Frank Gilbert, Assistant City Manager of Public Services Jon Williams, Community Development Director Stephen Pash, Economic Development Director Tanja Gerhartz, Finance Director Laura Zielonka, Information Technology Director Chad Morrill, Fire Chief Matt McGrew and Police Chief Stephen Graham

1. **APPROVAL OF MINUTES**
Motion by Commissioner Buchanan to approve regular meeting minutes of February 14, 2019 as submitted. Seconded by Commissioner Bennett and carried unanimously 5-0.

- **RETIREMENT RECOGNITION - HIRAM “Benny” BLEDSOE**
City Manager Bollhoefer recognized and expressed the City’s appreciation to Hiram “Benny” Beldsoe for a little over 33 years of service to the citizens and the City of Winter Garden.

2. **FIRST READING AND PUBLIC HEARING OF ORDINANCES**
   A. **Ordinance 19-10:** AN ORDINANCE OF THE CITY OF WINTER GARDEN, FLORIDA, AMENDING ORDINANCE 18-32, THE CITY OF WINTER GARDEN FISCAL YEAR 2018-2019 BUDGET TO CARRY FORWARD PRIOR YEAR APPROPRIATIONS; PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE

   City Attorney Ardaman read Ordinance 19-10 by title only. Finance Director Zielonka stated that this ordinance amends the current year budget. It carries forward the prior year appropriations for projects budgeted in the last fiscal year but not completed by the year end. Ms. Zielonka noted the agenda packet lists the projects in Exhibit 1.

   Mayor Rees opened the public hearing; hearing and seeing none. He closed the public hearing.
Motion by Commissioner Buchanan to approve Ordinance 19-10 with second reading and public hearing March 14, 2019. Seconded by Commissioner Bennett and carried unanimously 5-0.

3. **SECOND READING AND PUBLIC HEARING OF ORDINANCE**

A. **Ordinance 19-11:** AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF WINTER GARDEN, FLORIDA AMENDING CHAPTER 38, ARTICLE II, DIVISION III OF THE CODE OF ORDINANCES OF THE CITY OF WINTER GARDEN REGARDING LOT CLEARING TO CREATE PROVISIONS RELATING TO LOT MAINTENANCE REQUIREMENTS FOR RECREATIONAL FACILITIES, INCLUDING, WITHOUT LIMITATION, GOLF COURSES AND OPEN SPACE; PROVIDING FOR STANDARDIZED UPKEEP AND PROPERTY RELATED NUISANCE ABATEMENT REQUIREMENTS FOR RECREATIONAL FACILITIES, INCLUDING, WITHOUT LIMITATION, GOLF COURSES AND OPEN SPACE; PROVIDING FOR CODIFICATION, SEVERABILITY, AND AN EFFECTIVE DATE.

City Attorney Ardaman read Ordinance 19-11 by title only. Community Development Director Pash stated that this is an amendment to Chapter 38 of Division III concerning lot clearing. He noted that it adds definitions for excessive growth, and adds requirements related to shrubs. Staff recommends approval of Ordinance 19-11.

Mayor Rees opened the public hearing; hearing and seeing none, he closed the public hearing.

Motion by Commissioner Sharman to adopt Ordinance 19-11. Seconded by Commissioner Maciel and carried unanimously 5-0.

4. **REGULAR BUSINESS**

A. **Recommendation to deny a Site Plan for 1200 Daniels Road (Daniels Road Business Park) which did not meet all code requirements**

City Attorney Ardaman informed the City Commission that this is a matter continued from the last hearing. All evidence and testimony heard at the last meeting should be considered in their decision after the hearing is completed. He advised that anyone who may have had any related communication outside of the hearing should disclose that information at this point in the meeting. Mr. Ardaman also noted the proposed order of the proceedings.

Mayor Rees stated that after reading the distributed materials, he had a few questions and asked the City Manager. Commissioner Buchanan disclosed that he also did the same.

Planning Consultant Ed Williams stated that this is an appeal of a denial of a site plan. He noted that after reviewing the applicant’s submittal packet from the last meeting, staff felt it important to bring a couple of issues to the attention of the City Commission.
Mr. Williams stated that the property involved in the site plan is two parcels by two different corporations. This is important as the City requirement on the application is that all property owners be identified and become responsible parties. Mr. Williams noted that this application only includes one property owner, which is the northern property. The business park association that owns Tract A, a platted parcel, were not included on the applications. He indicated that Tract A is dedicated as stormwater retention for the benefit of all lots within the Daniels Road Business Park. He noted that the applicant representative, Mr. Roberts, is in both of those corporations, but there are other properties and users involved.

Mr. Williams stated that the City also has a drainage easement. He displayed a dedication of the plat which states that it is for the rights of the business park owners, the two banks along the frontage and the City has drainage and an access easement through this property around the perimeter of the site plan. Mr. Williams noted that the applicant has not submitted anything from the other members of the property owner’s association, lots one and two. He described the location and access to drainage easements. He shared the reason for concern being that if the applicant were to develop as the site plan has been submitted, it goes over the drainage and access easements as provided in the plat; requiring an amendment to the plat. It would require agreement of the other property owners, as well as the City giving up its rights. He noted that there has not been a review by staff to determine which of those easements the City can or cannot surrender. He noted that all of this would need to be addressed before completing this process with the site plan.

Mayor Rees opened a public hearing.

Joan Cleary, 15842 Citrus Grove Loop, Winter Garden, Florida shared general information in terms of wetlands. She shared her experience being adjacent to wetlands, noting that they live in the Hickory Hammock Subdivision. She stated that Hickory Hammock is adjacent to a very large conservation area and shared that upon moving in, four years ago, there were many bees, butterflies, and frogs. She shared how a company was given the task to remove invasive plants from the conservation area on their property, the process, and the effects of the changes. She informed how frogs give indications about the health of the local environment; which she states is no longer healthy. She shared about the decline of insects and how important scientist across the globe are warning about their decimation. She expressed that we protect our wetlands because our lives ultimately depend on them. Ms. Clearly thanked the City Commission for protecting our wetlands and our welfare.

Mayor Rees closed the public hearing.
Dan Roberts, 25613 Hawks Run Lane, Sorrento, Florida, thanked the City Commission for the opportunity to make another presentation. He hopes he would be able to answer any questions the City Commission may have, as well as share additional information he thinks is important to this particular project. He noted he would review information he provided at the last meeting and would give a summary evaluation of the existing wetlands. Mayor Rees asked if he could address his comments as they related to the City’s position on this issue.

Mr. Roberts noted two points he would like to discuss. One being a response to the memo presented to the City Commission at the end of their last presentation; to Ed Williams from a biologist, Amy Daly, from CPH, Inc. Mr. Roberts noted that the memo included an acknowledgement that they did obtain the permit from the St. Johns River Water Management District (SJRWMD); it provides a blueprint for the type of construction we are to put into the project. Mr. Roberts read an excerpt from the memo, indicating that the important part is a rainfall of 2.33 inches, an almost record in January. He stated that this particular biologist walked the property within 48 hours of this rainfall. He indicated that he is sure that the City had flooding in various parts as a result. This depression on their property would naturally have some water in it as a result of nearly two and a half inches of stormwater. His concerns are that a good extent of the report, particularly discussing the health of the wetland, and the Uniform Mitigation Assessment Methodology (UMAM) scores the CPH biologist gave has been skewed because of this onetime event with the rainfall. For that fact alone, he feels that this particular report should be completely disregarded.

Mr. Roberts addressed comments made by Mr. Williams regarding easements. He shared history of the property he owned at the Fairwinds and SunTrust locations. He noted that he developed those sites in 2004 and 2005. The City required that he plat the property, as there were more than two parcels in the parent tract. In doing so, they were required to show stormwater easements, which he states were intended to be temporary. Both parcels were included in their permit application with the St. John River Water Management District. He noted that it was an oversite not to have the second parcel in the application for site plan approval. He indicated that because the voting rights of the property is based on acreage, he is the President of the business park association and controls that Limited Liability Corporation (LLC). He expressed that they would re-route their stormwater easements to meet the plan. It was always their intention to do this, post site plan approval. He noted having a friendly relationship with SunTrust and Fairwinds and this would not be a problem and feels this is not an issue of concern for the City Commission.

Mr. Roberts noted that they are willing to work with the City, not trying to skirt anything and are trying to develop a fine product for the City. He shared his history of development projects. He then shared history of changes that the City requested. He
indicated that they have done everything they could possibly do to accommodate the Development Review Committee (DRC).

**Mr. Roberts** referred to a document he distributed that summarizes each of the reports they have in their permits; noting that the full reports and studies have also been provided. He read report excerpts from GAI Consultants, Austin Environmental, US Army Corps of Engineers, and the St. John River Water Management District. He stated that he has done everything he could possibly do to meet the requirements for this wetlands situation.

**Mr. Roberts** described projects where he states the City has approved the eradication of wetlands and listed them. He stated that they are not reinventing the process, they are following it. He asked the City Commission if they do not agree with the reports that he has provided, then they should deny him. However, if it is thought that he has given un-redacted, sound views and studies supporting their position, then he requests approval for this project.

**Commissioner Sharman** asked Mr. Roberts, in that he is stating they have done everything possible to help mitigate this wetland, have they considered just building on the non-wetland portion of the property; and considered submitting a site plan for that. Mr. Roberts responded that the way the wetland comes into Daniels Road; the jurisdictional line is not straight. He explained that from a practical standpoint it is impossible to come up with a design that would not impact the wetlands.

**Commissioner Maciel** noted that he is a property rights person, and in reviewing the materials given, he thought meetings would have taken place to see if there could be some compromise; to see if something could be worked out with staff. He asked if there was any discussion about rearranging or re-doing the site plan to make it a different project, one that the City and they could accept. **Commissioner Maciel** stated that he would like to hear Mr. Robert’s, as well as staff’s, position on this issue. **Mr. Roberts** stated that they never had any serious discussions over that. **Commissioner Maciel** asked if the answer to the question is that it is all or nothing. **Mr. Roberts** responded that it was told that the City would oppose anything he does on this property. He noted a number of iterations over the years that have been turned away. Mr. Roberts addressed the wetlands issue and history of removal in the area. **Commissioner Sharman** asked if those were his developments that he worked with the City to complete. **Mr. Roberts** explained that he sold the properties to Fairwinds and to SunTrust and was not part of the building. **Commissioner Maciel** asked Mr. Roberts if the answer to the question is that it is all or nothing. **Mr. Roberts** stated that he does not know how it can be partial. He then shared that he was going to be here, that he is not making any threats, looking at the best interest of this project, would like the right to develop his property. He noted that a denial would be sending him to court, which he does not want to do. He then shared history of purchasing the property and listed the
benefits of the project; stating that the benefits far outweigh any downside. Mr. Roberts referred to the property as having nothing left, no organics left, has already been mitigated, the wetland have been revised, and it is non-functional. He again asked for support for this project.

Mayor Rees asked if there were questions for staff.

Commissioner Sharman asked Planning Consultant Ed Williams if any kind of partial development or compromise had been considered over the years; or has it been kind of an all or nothing approach. Mr. Williams stated that it has not been an all or nothing approach, as it is not the way things are done in Winter Garden. He stated that in fact, as in his testimony in the first hearing, staff will continue to work with Mr. Roberts, no matter which way this decision goes; staff will try to get the development on the upland parcel. Mr. Williams indicated that it very well could allow for some small encroachment to square it off. Mr. Williams stated that staff would try an encourage him to improve the existing impacted wetlands from mitigation, but it is his choice to do that or go to a regional bank. Mr. Williams stated that he has never heard of staff stating that they would not allow Mr. Roberts’ property to be developed. He explained that what has been said, by staff and himself, is that the City is not going to support development on the wetlands, but will support plenty of development on the uplands. Commissioner Sharman clarified that there is an opportunity to come in and square off the property, work with staff on this, and also work on an access road. Mr. Williams noting this would be for fire protection and utilities. Mr. Williams stated that the church to the south has submitted site plans; staying out of the wetland area. Commissioner Sharman asked if the City’s own expert evaluated the value of the wetlands. Mr. Williams responded yes, she rated under the same systems and has a slightly different value. Mr. Williams explained amendments to the wetland ordinance provide for outside consultants when there may be differences between the applicant and staff. These consultants verify staff’s position so as not to have unfair treatment of a piece of property.

Commissioner Maciel noted that this is not a property rights issue, as it is not a right to fill in the wetland and asked that Mr. Williams expound on the changes and the ordinances regarding mitigation. Mr. Williams explained how the City periodically goes through its regulations and review for potential problems and issues. One being a reference to the St. Johns River Water Management District (SJRWMD) in the core of the City’s policy regarding wetlands; the City mistakenly included those provisions. It is the City that approves uses; the SJRWMD has no rights on the use of the property. If the local government approves the use of the property, then the permit to impact the wetland can be relied on.

Motion by Commissioner Sharman to deny a Site Plan for 1200 Daniels Road (Daniels Road Business Park) which did not meet all code requirements.
Commissioner Sharman noted that it is of his personal opinion is that we try to preserve as much as we can and come to some kind of compromise down the road.

Motion seconded by Commissioner Maciel and carried unanimously 5-0.

Mayor Rees thanked Mr. Roberts and stated that he thinks it is agreed, by all, that something would get worked out.

B. Recommendation to approve retirement of Canine Mack, award custody to Mathew Griffin, and approve purchase of replacement canine through existing budgeted funds

Police Chief Graham explained that Canine Officer Mack has reached a point where he needs to be medically retired. He shared that Canine Officer Mack has been with the City on the street for almost four years. He shared that Officer Griffin is requesting to maintain ownership. Staff recommends retirement of Canine Officer Mack and awarding custody to Officer Griffin.

Commissioner Sharman shared information about the breed and their common medical issues. Police Chief Graham also noted that the frequent training can be stressful as it is quite physical.

There was discussion on the City having two dogs that serve a dual purpose of patrol operations and both are narcotics certified for drug searches. Officer Mathew Griffin and Canine Officer Mack made an appearance at this point in the meeting.

Motion by Commissioner Sharman to approve retirement of Canine Mack, award custody to Mathew Griffin, and approve purchase of replacement canine through existing budgeted funds. Seconded by Commissioner Bennett and carried unanimously 5-0.

Dispensed as the City Commission and convened as the Community Redevelopment Agency at 7:25 p.m.

Present: Chairman John Rees, Members Lisa Bennett, Bob Buchanan, Mark A. Maciel, Colin Sharman, Orange County Representative Jeff Sedloff, and CRAAB Member Larry Cappleman

C. Recommendation to approve a façade matching grant of up to $10,000 for 4 E. Plant Street (Plantation Jewelers) and authorize the City Manager to execute an agreement, subject to conditions

Economic Development Director Gerhartz stated that for consideration is a façade matching grant for Plantation Jewelers located at 4 East Plant Street. She noted that the application has been reviewed and approved by City staff, the Architectural Review and Historic Preservation Board and the CRA Advisory Board (CRAAB). The CRA Advisory
Board has recommended approval of a matching grant of up to $10,000 for improvements. Those improvements include a new brick façade, a new aluminum awning and a new commercial store front. She noted that the total exterior improvements are valued at $60,000. Actions requested are the approval of a façade matching grant not to exceed $10,000, all City conditions to be met, and authorize the City Manager to execute an agreement with the property owner and the applicant. CRA Member Cappleman confirmed the CRAAB’s approval, stating that it was unanimous.

Motion by CRA Member Cappleman to approve a façade matching grant of up to $10,000 for 4 E. Plant Street (Plantation Jewelers) and authorize the City Manager to execute an agreement, subject to conditions. Seconded by CRA Member Sedloff and carried unanimously 7-0

D. BOARD APPOINTMENT: Community Redevelopment Agency Advisory Board
Community Development Director Pash stated that there is one vacancy on this board and at the last Community Redevelopment Agency Advisory Board (CRAAB) applications were reviewed and the board recommended Daniel Welsh for appointment to this board. Staff recommends approval.

City Manager Bollhoefer indicated postponement of this item is requested as additional research is needed; staff will speak with CRAAB.

Motion by CRA Member Sharman to POSTPONE appointment to the CRA Advisory Board to a date and time uncertain. Seconded by CRA Member Sedloff and carried unanimously 7-0.

Adjourned as the Community Redevelopment Agency and reconvened as the City Commission at 7:29 p.m.

5. MATTERS FROM PUBLIC
Charlie Mae Wilder, 813 East Bay Street, Winter Garden, Florida, stated that on behalf of the East Winter Garden Neighborhood Alliance she extends their thanks for more inclusiveness and for the incredible Martin Luther King Parade and festival. She gave a special thanks to Commissioner Colin Sharman for representing the entire City Commission at the MLK event. She thanked staff members Laura Coar, Jackie Mathis, and the entire Parks and Recreation for their dedication and planning, stating that this made these events incredibly successful and fun. Ms. Wilder stated that they are also grateful for the incredible hard work of Commissioner Mark Maciel in prioritizing the contributions of the African American community in Winter Garden through the Winter Garden Heritage display featured earlier that evening. She expressed that they are beginning to see their dreams of one Winter Garden coming to life.
Ms. Wilder also announced the work days for the Community Garden and invited everyone to come and participate.

Channa Lloyd, Partnership Specialist and Representative for the United States Census Bureau, introduced herself and noted that they will soon be working in the Winter Garden area. She shared information about the importance of the census and how it affects the State of Florida and the City of Winter Garden. She noted that this will take place in April of 2020. She also noted items such as an education phase, State of Florida representation in the Senate due to population, redistricting due to population, Federal funds based on population, and expressed that funding effects everything. Ms. Lloyd listed a number of items that these funds will affect. She spoke of hard to count areas and noted some of those indicators and how complete count committees are formed to reach residents.

Ms. Lloyd noted that this is one of the largest peacetime operatives that brings jobs to the areas it serves by use of people that live in the area. She also noted that there will be differences in how the census will be completed, such as online, and also a 1-800 number for assistance will be available over the phone.

Commissioner Maciel inquired as to if there would be work with some of the non-profit organizations to get the word out. Ms. Lloyd responded that there are the State, County, as well as local cities complete count committees. These committees may be gathered from faith-based, school-based, and small business based committees such as partnering with the Chamber of Commerce as they get closer they will go down to community level.

Commissioner Maciel inquired how this works with the City Liaison. Ms. Lloyd stated that the City Liaison is appointed by the highest elected officials. That person is the go to person for the complete count committee. She noted that the City Liaison works with her to ensure that the committees are not crossing each other with an event. In those cases, they would make suggestions for partners in the community.

Joseph Richardson, 220 N. Highland Avenue, Winter Garden, Florida responded to statements made by Charlie Mae Wilder and made the City Commission aware of an ongoing workshop sponsored by the Oasis Church and the Valencia Community College of Peace and Justice on race and relations.

Mr. Richardson addressed comments of the City Manager as noted from the last meeting, and he voiced appreciation to Commissioner Sharman for comments related to including everyone on the invocators list. He also spoke of the process the City uses to choose invocators.

6. MATTERS FROM CITY ATTORNEY – There were no items.
7. MATTERS FROM CITY MANAGER

- **MetroPlan Advisory Board Representation**
  City Manager Bollhoefer stated that the City has not recently had anyone as a representative on the MetroPlan. He noted speaking with Commissioner Bennett and also with Commissioner Maciel, with Commissioner Maciel volunteering. There was discussion about the board and its importance for the City of Winter Garden, and the board’s meeting schedule.

  **Motion by Commissioner Sharman to appoint Commissioner Mark Maciel as representative for the City of Winter Garden to the MetroPlan Advisory Board. Seconded by Commissioner Bennett and carried unanimously 5-0.**

MATTERS FROM MAYOR AND COMMISSIONERS

Mayor Rees thanked everyone for attending.

The meeting adjourned at 7:43 p.m.

APPROVED:

______________________________
Mayor John Rees

ATTEST:

______________________________
City Clerk Angee Grimmage, CMC
THE CITY OF WINTER GARDEN
CITY COMMISSION AGENDA ITEM

From: Matt McGrew, Fire Chief
Via: Mike Bollhoefer, City Manager

Date: March 7, 2019  Meeting Date: March 14, 2019

Subject: Promotional Acknowledgements

Issue: Fire Chief McGrew requests to acknowledge the promotions of the following individuals:

- Frederick Davis to Fire Lieutenant
- Michael Gurney to Fire Lieutenant
- James Anderson to Fire Engineer
- Frank Genua to Fire Engineer
- Jeffrey Justice to Fire Engineer
- Jordan Sabat to Fire Engineer
- Arthur Vogler to Fire Engineer

Recommended action: Authorize Chief McGrew to do this after the approval of minutes portion of the agenda.

Attachment:
The applicant is requesting to rezone the property located at 43 1st Street to Planned Commercial Development (PCD).

Discussion:
The applicant is requesting to rezone the +/- 0.54 acre property located at 43 1st St to PCD to permit the development of the south side of the (proposed combined) parcel with a new 3,200 +/- square foot, 1-story (with a 2nd floor mezzanine) office building. The project also includes associated site elements such as parking areas, sidewalks, drive aisles, and landscaping (see attached Staff Report). The proposed rezoning is consistent with the City’s Comprehensive Plan and the City of Winter Garden Code of Ordinances.

Recommended Action:
Staff recommends approval of Ordinance 19-15 with the second reading and adoption hearing anticipated to be on March 28, 2019.
LOCATION MAP

43 1st Street

PCD Rezoning
INTRODUCTION

The purpose of this report is to evaluate the proposed project for compliance with the City of Winter Garden Code of Ordinances and Comprehensive Plan.

The subject property is located at 43 1st Street, east of 1st Street, south of E Bay Street, and west of 2nd Street and is approximately 0.54 ± acres. The map below depicts the location of the subject property within the City of Winter Garden municipal limits:
The applicant is requesting to rezone 0.54 ± acres of land to Planned Commercial Development (PCD). The subject property is located within the City of Winter Garden municipal limits, and carries the zoning designation C-2 (Arterial Commercial District) in the City of Winter Garden. The subject property is designated TD Traditional Downtown on the Future Land Use Map of the Comprehensive Plan.

The subject property is located within the City of Winter Garden’s Historic Downtown District overlay area.

EXISTING USE
The subject property is composed of two parcels that the applicant is proposing to combine as part of the development process. The subject property currently contains an 1,800 +/- square foot masonry commercial office building that was constructed in 1920 and a 1,500 +/- square foot warehouse building constructed in 2016. The south side of the property also currently features an asphalt-paved parking area that is in poor condition.

ADJACENT LAND USE AND ZONING
The property located to the west of the subject property is developed with a two-story mixed-use commercial and residential building. The property is zoned C-2 and is located with the City of Winter Garden’s municipal limits. The property to the north of the subject property contains a single-story warehouse building, is zoned C-2, and is located in the City. The property to the east is developed with several commercial and industrial buildings that are associated with the Winter Garden Citrus Growers Association. This property is zoned C-2 and is located in the City. The property to the south contains a segment of CSX railroad tracks. This property does not have a zoning designation and is located in Unincorporated Orange County.

PROPOSED USE
The applicant is requesting PCD rezoning to permit the development of the south side of the (proposed combined) parcel with a new 3,200 +/- square foot, 1-story (with a 2nd floor mezzanine) office building. The new building will house VMG’s office headquarters as well as other office uses. The development also includes associated site development such as new parking areas, sidewalks, drive aisles, and landscaping. Proposed permitted uses for the property include professional office, personal services, and light industrial uses that are accessory to a primary office use.

The proposed architectural elevations received approval from the City’s Architectural Review and Historic Preservation Board on August 21, 2018.

PUBLIC FACILITY ANALYSIS
The property will have two vehicular access points onto 1st Street, which is the same number that currently exist on site. The northern driveway will be maintained, while the access point to the south will be developed as a one-way exit only driveway.

Water, sewer, and reclaimed utilities by the City of Winter Garden will be required for any new development of the property. At such time that the property is developed, all necessary utility lines will be extended and connections made, all extension and connection costs shall be borne by the property owner.

The City will provide garbage collection, police protection, and all other services regularly provided to City of Winter Garden residents including building permits. The property will be served by both Orange County Fire and Rescue and the City of Winter Garden Fire Department.
under the First Response System.

All concurrency requirements identified by the City of Winter Garden Code of Ordinances and Comprehensive Plan will be met by the proposed development.

**SUMMARY**

The proposed development is a reasonable use of the land. The proposed development will not generate a significant increase in traffic volume beyond that which is currently generated by other developments in the area. This type of development is consistent with other commercial and light industrial developments that exist in this area of Historic Downtown.

Staff has coordinated with the applicant, who has received approval from the Architectural Review and Historic Preservation Board to ensure that the development of the property will be consistent with the Historic Downtown District in terms of the building architecture, site design, and permitted uses.

The proposed rezoning from C-2 to PCD is consistent with the City’s Comprehensive Plan and the City of Winter Garden Code of Ordinances. Staff recommends approval of the proposed Ordinance to rezone the subject property from C-2 to PCD subject to the conditions outlined in Ordinance 19-15.
AERIAL PHOTO
43 1st Street
ZONING MAP
43 1st Street

Change from C-2 to PCD
FUTURE LAND USE MAP
43 1st Street

END OF STAFF REPORT
ORDINANCE 19-15

AN ORDINANCE OF THE CITY OF WINTER GARDEN, FLORIDA, REZONING CERTAIN REAL PROPERTY GENERALLY DESCRIBED AS APPROXIMATELY 0.54 +/- ACRES OF LAND GENERALLY LOCATED AT 43 1ST STREET, EAST OF 1ST STREET, SOUTH OF E BAY STREET, AND WEST OF 2ND STREET, FROM C-2 (ARTERIAL COMMERCIAL DISTRICT) TO PCD (PLANNED COMMERCIAL DEVELOPMENT); PROVIDING FOR CERTAIN PCD REQUIREMENTS AND DESCRIBING THE DEVELOPMENT AS THE VMG OFFICE PCD; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the owner(s) of that certain real property generally described as approximately 0.54 ± acres of certain real property generally located at 43 1st Street, east of 1st Street, south of E Bay Street, and west of 2nd Street in Winter Garden, Florida, being more particularly described on Exhibit “A” attached hereto and incorporated herein by this reference (the “Property”), desire to rezone their property from City C-2 (Arterial Commercial District) to City PCD (Planned Commercial Development), and

WHEREAS, the Planning and Zoning Board has considered this Ordinance and made a recommendation to the City Commission concerning its adoption; and

WHEREAS, after public notice and due consideration of public comment, the City Commission of the City of Winter Garden hereby finds and declares the adoption of this Ordinance and the proposed development of the Property is consistent with the City of Winter Garden Comprehensive Plan, and the City of Winter Garden Code of Ordinances, and

WHEREAS, the City Commission finds bases on competent substantial evidence in the record that the rezoning approved by this Ordinance meets all applicable criteria for rezoning under the Comprehensive Plan and the Code of Ordinances, therefore;

BE IT ENACTED BY THE CITY OF WINTER GARDEN, FLORIDA:

SECTION 1: Rezoning. The above “Whereas” clauses constitute findings by the City Commission. After due notice and public hearing, the zoning classification of real property legally described on Exhibit “A,” is hereby rezoned from (C-2) Arterial Commercial District to (PCD) Planned Commercial Development in the City of Winter Garden, Florida subject to the following conditions provisions and restrictions:

a. Applicability/Conflict. All development of or within the Property shall comply with and is subject to the requirements set forth in this Ordinance. Unless specifically identified in this Ordinance, all development on the
Property identified in Exhibit “A” must comply with the general development standards of the C-1 (Central Commercial District) Zoning district and comply with the standards outlined in Chapter 98, Article VII regarding the City of Winter Garden Historic Downtown District Overlay Requirements. Notwithstanding anything to the contrary herein, all development of or within the Property shall comply with and is subject to all requirements in the City Code, and ordinances, resolutions, and policies of the City. To the extent of any express conflicts between the express provisions of this Ordinance pertaining to permitted uses, special exception uses, prohibited uses, architectural design criteria, and other development criteria and the City Code and ordinances, resolutions, and policies of the City, the requirements set forth herein shall control to the extent of the conflict.

b. **Intent.** This Ordinance is intended to provide flexibility in the development of the Property in order to provide for proper growth and to guide development and construction in an integrated approach in order to promote a commercial development that provides an aesthetically pleasing and pedestrian oriented development within the context of Historic Downtown Winter Garden. Permitted and special exception uses will be established to maintain a safe, well developed project that enhances and supports the City and its citizens without causing distress on the nearby residents, local businesses, and roads.

c. **Development Plans.** The Property shall be developed in substantial conformance with the Preliminary Development Plans attached hereto as Exhibit “B”. Should any conflict exist between this Ordinance and the Preliminary Development Plans attached hereto as Exhibit “B”, then the standards and conditions established by this Ordinance shall control to the extent of the conflict.

d. **Design Criteria / Architectural Standards.**

1. **Architecture -** All new buildings and accessory structures within the Property shall adhere to the architectural character exhibited by the VMG Office Building Elevations, attached hereto as Exhibit “C”.

2. **Landscape Design –** Unless precluded by existing overhead power lines, landscaping located adjacent to public rights-of-way shall include canopy trees planted at a maximum of 50’ on center along the road frontage. These trees may be located within a landscape bed or within tree grates installed along the frontage sidewalk. All other areas shall be required to adhere to the landscape design standards for specified commercial corridors in accordance with Chapter 118, Article X, Division 3 of the City of Winter Garden Code of Ordinances.

3. **Site Furnishings –** Bicycle parking spaces shall be provided in a
quantity commensurate with the proposed uses. Benches and trash receptacles shall be provided near the main building entrances.

4. **Impervious Surface Area Ratio**- The maximum impervious surface area ratio for the Property shall not exceed 80% and shall be consistent with the overall maximum impervious surface area ratio that the Planned Commercial Development is designated and permitted for by Saint John's River Water Management District.

5. **Dark Skies**- all exterior lighting shall be designed to provide safe, convenient and efficient lighting for pedestrians and vehicles. Exterior lighting shall be designed as dark skies lighting in a consistent and coordinated manner for the entire project in compliance with the requirements of Chapter 118, Article X, Division 4 of the City Code of Ordinances.

6. **Building Height**- The maximum building height shall not exceed 40 feet.

7. **Setbacks and Required Yards**-
   i. Front: 6'
   ii. Side: 5'
   iii. Rear: 5'

e. **Permitted Uses**- The permitted uses allowed on the Property are as follows:
   1. Professional Office Uses.
   2. Warehousing & Light Industrial Uses if they are accessory to a primary office use.

f. **Special Exception Uses**- The special exception uses for this Property are as follows:
   1. Other uses which the Planning and Zoning board determines are of the type and intensity of activity similar to and compatible with the permitted uses.

g. **Prohibited Uses**- Any use not specifically set forth in this Ordinance as a Permitted or Special Exception Use is prohibited. Without limiting the foregoing, the following are expressly prohibited:
   1. Any use prohibited in the C-1 Zoning District not specifically outlined under the Permitted or Special Exception Uses.
   2. Automobile, motorcycle, recreational vehicle or boat sales, rental, storage, painting, service or repair or any combination thereof.
   3. Daycares.
4. Nursing homes or assisted living facilities.
5. Dry cleaners.
7. Manufacturing and heavy industrial uses, transportation terminals, large-scale storage warehousing and other activities of a similar nature.
10. Churches, temples, synagogues, mosques, or other religious gathering places.
12. Crematories/Funeral Homes.
13. Adult entertainment.
14. Adult or pornographic book, magazine, video, and novelty stores or sales.
15. Any use not in keeping with a pedestrian-oriented, mixed-use, historic downtown character.

SECTION 2: Staff Conditions.

1. Plans and supporting calculations shall be signed and sealed by the appropriate design professional as required by statute and administrative code.

2. The Applicant shall submit plans and documentation showing adherence to Section 118-68, requirements for site plans, as required by the City Code.

3. General Requirements:
   a) All gravity sanitary pipe and fittings shall be SDR 26.
   b) All compaction shall be 98% of the modified proctor maximum density (AASHTO T-180).
   c) As-built record drawings shall comply with City of Winter Garden requirements available on-line (note on plan).
   d) All Storm (≥12”) and Sanitary lines (≥6”) shall be inspected by CCTV prior to completion.

4. All utilities shall conform to Chapter 78 of the City Code. Impact fees will be required for any utility connections and shall be paid prior to issuance of building permit and City execution of FDEP permit applications. The site shall be served by City water, sewer and reuse. All utilities required for the development shall be run to the site at the Developer’s expense, including potable water, reclaimed water (if available) and sanitary sewer. 100% of all required water,
irrigation and sewer impact fees shall be paid prior to City execution of FDEP permits and issuance of site or building permits.

5. Sanitary lines for commercial buildings shall be 6” minimum.

6. A binding lot agreement will be required to combine the parcels. City Commission Approval is required.

7. Final plans shall show drainage for the site (to be supported by the soil report).

8. If existing buildings are to be demolished, a demolition permit will be required.

9. Four 9’ X 18’ parking spaces with no overhang are permitted as shown on the Preliminary Development Plans (Exhibit “B”). These spaces shall be labeled “Compact”.

10. Minimum 5’ wide concrete sidewalks shall be constructed along all street frontages pursuant to Code. Any damaged, broken or cracked sections (including existing curbs and pavement) shall be replaced prior to issuance of certificate of occupancy.

11. The use of HDPE pipe shall meet all City material and installation requirements as specified in the City’s Standards & Specifications including Class I bedding, HP polypropylene pipe, laser profiling, installation per ASTM D2321, etc. (see under on-line forms on website).

12. A geotechnical report is required for review and as the basis for the site and stormwater design.

13. Landscaping shall not encroach on required sight lines at intersections or driveways. Design Engineer shall provide certification that sight distance requirements are being met. All irrigation on the site shall be designed to be supplied by reclaimed water when available and shall be served by a jumper to potable water until that time. Irrigation system shall include a building-mounted weather station.

14. A separate tree removal permit is required to remove any trees.

15. No trees may be planted over or within 5 feet of any utility lines. Only sod or shrubs may be planted over utility lines.

16. Permit from SJRWMD is required as well as permits or exemptions from FDEP for water, wastewater and NPDES. FDOT drainage, utility, and driveway permits required (if applicable).

17. The Owner is responsible for meeting all provisions of ADA and Florida Accessibility Code.

18. All work shall conform to City of Winter Garden standards and specifications.
19. The City of Winter Garden will inspect private site improvements only to the extent that they connect to City owned/maintained systems (roadways, drainage, utilities, etc.). It is the responsibility of the Owner and Design Engineer to ensure that privately owned and maintained systems are constructed to the intended specifications. The City is not responsible for the operation and maintenance of privately owned systems, to include, but not be limited to, roadways, parking lots, drainage, stormwater ponds or on-site utilities.

20. The Contractor is responsible for the notification, location and protection of all utilities that may exist within the project limits.

21. No fill or runoff will be allowed to discharge onto adjacent properties; existing drainage patterns shall not be altered. The City of Winter Garden is not granting rights or easements for drainage from, or onto, property owned by others, including by way of any development order or permit issued. Obtaining permission, easements or other approvals that may be required to drain onto private property is the Owner/Developer's responsibility. Should the flow of stormwater runoff from, or onto adjacent properties be unreasonable or cause problems, the City shall not be responsible and any corrective measures required will be the responsibility of the Owner/Developer. Site construction shall adhere to the City of Winter Garden erosion and sediment control requirements as contained in Chapter 106 - Stormwater. If approval is granted by the City of Winter Garden, it does not waive any permits that may be required by federal, state, regional, county, municipal or other agencies that may have jurisdiction.

22. After final plan approval, a preconstruction meeting will be required prior to any commencement of construction. The applicant shall provide an erosion control and street lighting plan at the preconstruction meeting and shall pay all engineering review and inspection fees prior to construction. Inspection fees in the amount of 2.25% of the cost of all site improvements shall be paid prior to issuance of the building permit.

SECTION 3: General Requirements.

a. Land Development Approvals and Permits- This Ordinance does not require the City to issue any permit or approval for development, construction, building permit, or other matter by the City relating to the Property or the project or any portion thereof. These and any other required City development approvals and permits shall be processed and issued by the City in accordance with procedures set forth in the City’s Code of Ordinances and subject to this Ordinance.
b. Amendments- Minor amendments to this Ordinance will be achieved by Resolution of the City Commission of the City of Winter Garden. Major amendments to this Ordinance will require approval of the City Commission of the City of Winter Garden by Ordinance.

c. Expiration/Extension- Expiration of this PCD shall be governed in accordance with Section 118-830, City of Winter Garden Code of Ordinances. Time extensions may be granted in accordance with Section 118-829, City of Winter Garden Code of Ordinances.

SECTION 4: Zoning Map. The City Planner is hereby authorized and directed to amend the Official Winter Garden Zoning Map in accordance with the provisions of this ordinance.

SECTION 5: Non-Severability. Should any portion of this Ordinance be held invalid, then the entire Ordinance shall be null and void.

SECTION 6: Effective Date. This Ordinance shall become effective upon adoption at its second reading.


ADOPTED this _____ day of ____________, 2019, by the City Commission of the City of Winter Garden, Florida.

APPROVED:

____________________________________
JOHN REES, Mayor/Commissioner

ATTEST:

____________________________________
ANGELA GRIMMAGE, City Clerk
Exhibit “A”


Legal Description:
Lots 5, 6, 7 and 8 BLOCK 2, of TWIN CITY DEVELOPMENT Subdivision, according to the Plat thereof, recorded in Plat Book E, Page 26, Public Records of Orange County, Florida, LESS that portions lying within the railroad right-of-way
Exhibit “B”

COVER PAGE

VMG OFFICE
PRELIMINARY DEVELOPMENT PLANS

(6 PAGES - ATTACHED)
VMGC OFFICE PCD  
WINTER GARDEN, FLORIDA  
JANUARY 2019

**SHEET INDEX:**
- 000  COVER SHEET
- 001  DEVELOPMENT SITE & UTILITY PLAN
- 002  PLANTING PLAN
- 003  SITE PLAN ELECTRICAL
- 004  SITE PLAN PHOTOGRAMETRICS
- 005  EXTERIOR RENDERINGS

**PARCEL ID:**
23-02-27-8816-02-050 AND 23-02-27-8816-02-070

**DRAINAGE STATEMENT:**
1. On-site stormwater management facilities will be provided to meet the needs as per water management district (SFWMD) and City of Winter Garden requirements.
2. Stormwater management system will comply with SFWMD and City of Winter Garden criteria. Aerosol recharge protection basin recharge standard does not apply as on-site soils are not Agile soil type "A" soils per the SFWMD soils map.

**ZONING INFORMATION:**
- SITE: C-2
- FRONT/WEST: 1ST ST./C-2
- BACK/EAST: RAILROAD ROW/C-2
- REAR/NORTH: C-2

**CONTACT INFORMATION:**
- ARCHITECT: MACADA ARCHITECTS, INC.
- 117 S. MAIN ST., WINTER GARDEN, FL 34787
- PHONE: 407-855-6789
- EMAIL: info@macadaarchitects.com

- ENGINEER: CHUCK WERDEGUA, S.J. 
- 105 S. MAIN ST., WINTER GARDEN, FL 34787
- PHONE: 407-855-9567
- EMAIL: chuck@werdegua.com

**PROPERTY DESCRIPTION:**
- Lot: 5, 6, 7, 8, 9, 10 & 11, BLOCK B, CITY OF WINTER GARDEN, located in the City of Winter Garden, Orange County, Florida, 0.45 acres.

**ALLOWABLE USES:**
- Commercial, Industrial, and Light Manufacturing

**FLOOD ZONE:**
- Base Flood Elevation (BFE) is 88 feet.

**VICINITY & EXISTING ZONING MAP**
[Map image showing zoning and parcel details]
Exhibit “C”

COVER PAGE

VMG OFFICE
ARCHITECTURAL ELEVATIONS

(1 PAGE - ATTACHED)
THE CITY OF WINTER GARDEN

CITY COMMISSION AGENDA ITEM

From: Jon Williams, Assistant City Manager – Public Services
Via: Mike Bollhoefer, City Manager
Date: March 7, 2019   Meeting Date: March 14, 2019
Subject: Ordinance No. 19-16 Amending Chapter 94 “Natural Resource Protection” To Add a New Section 94-1 Governing Fertilizer Use Within the City.

Issue: The Winter Garden City Code currently contains no comprehensive regulations pertaining to fertilizer use within the City. It is in the best interests of the health, safety, and welfare of the residents of Winter Garden and the general public that the City adopt and authorize enforcement of the fertilizer regulations contained within the Orange County Code, Chapter 15, Article XVII, within the boundaries of the City.

The City enforcement is a requirement of the stormwater element of National Pollutant Discharge Elimination System (NPDES) Permit governed by the Florida Department of Environmental Protection. The City is a co-permittee with Orange County responsible for monitoring the stormwater discharges to major water bodies.

A copy of the Orange County Code, Chapter 15, Article XVII is attached hereto as Exhibit “A.”

Recommended Action:

Staff recommends approving the first reading of Ordinance 19-16 with second reading and public hearing scheduled for March 28, 2019.

Attachments/References:

Exhibit “A” – Article XVII – Fertilizer Management Ordinance
ORDINANCE NO. 19-16

AN ORDINANCE OF THE CITY OF WINTER GARDEN, FLORIDA;
AMENDING CHAPTER 94 “NATURAL RESOURCE PROTECTION” TO
ADD A NEW SECTION 94-1 GOVERNING FERTILIZER USE WITHIN
THE CITY; ADOPTING THE ORANGE COUNTY REGULATIONS
PERTAINING TO FERTILIZER USE AND AUTHORIZING COUNTY
AND CITY ENFORCEMENT THEREOF WITHIN THE CITY;
PROVIDING FOR CODIFICATION, SEVERABILITY, CONFLICTS,
AND AN EFFECTIVE DATE.

WHEREAS, the Winter Garden City Code currently contains no comprehensive regulations pertaining to fertilizer use within the City; and

WHEREAS, the City finds that it is in the best interests of the health, safety, and welfare of the residents of Winter Garden and the general public that the City adopt and authorize enforcement of the fertilizer regulations contained within the Orange County Code, Chapter 15, Article XVII, within the boundaries of the City; and

WHEREAS, a copy of the Orange County Code, Chapter 15, Article XVII is attached hereto as Exhibit “A.”

NOW, THEREFORE, BE IT ENACTED BY THE CITY COMMISSION OF THE CITY OF WINTER GARDEN, 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 Ordinance.

SECTION 2. City Code Amendment. Article I of Chapter 94 of the City Code is hereby amended to add a new Section 94-1 thereof, to read as follows:

Sec. 94-1. – Fertilizer Regulations. Chapter 15, Article XVII of the Orange County Code governing fertilizer use shall apply within the boundaries of the City. Orange County and relevant personnel and agents thereof shall have the authority to enforce and administer Chapter 15, Article XVII of the Orange County Code within the boundaries of the City. The City and relevant personnel and agents thereof shall have the authority to enforce and administer Chapter 15, Article XVII of the Orange County Code within the boundaries of the City using any enforcement mechanism available under the City Code, County Code, or by law.

SECTION 3. Codification. This Ordinance shall be incorporated into the Winter Garden City Code. Any section, paragraph number, letter and/or any heading may be changed or modified as necessary to effectuate the foregoing. Grammatical, typographical and similar or like errors may be corrected, and additions, alterations, and omissions not affecting the construction or meaning of this ordinance and the City Code may be freely made.
SECTION 4. **Severability.** If any section, subsection, sentence, clause, phrase, word or provision of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, whether for substantive, procedural, or any other reason, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions of this ordinance.

SECTION 5. **Conflicts.** In the event of a conflict or conflicts between this Ordinance and any other ordinance or provision of law, this Ordinance controls to the extent of the conflict, as allowable under the law.

SECTION 6. **Effective date.** This ordinance shall become effective immediately upon adoption by the City Commission of the City of Winter Garden, Florida.

FIRST READING: , 2019

SECOND READING: , 2019

ADOPTED this day of , 2019, by the City Commission of the City of Winter Garden, Florida.

CITY COMMISSION
CITY OF WINTER GARDEN

/S/
John Rees, Mayor/Commissioner

ATTEST:

/S/
Angela Grimmage, City Clerk
ARTICLE XVII. - FERTILIZER MANAGEMENT ORDINANCE

Sec. 15-800. - Findings and purpose.

As a result of impairment to the county's surface waters, groundwater, and springs caused by excessive nutrients, the county has determined that the improper use of fertilizers on land creates a risk of contributing to adverse effects on surface and groundwater. This ordinance regulates the proper use and application of fertilizer, training requirements, and restricted application periods in the county.

Orange County's Environmental Protection Division will provide to the board of county commissioners a summary of data collected and current research related to excessive nutrients for evaluation and consideration of ordinance revisions on or before December 31, 2019.

(Ord. No. 2017-14, § 2, 6-20-17)

Sec. 15-801. - Definitions.

Apply or application means the physical deposit, placement, or release of fertilizer upon soil, turf, or landscape plants.

Applicator means any person who applies fertilizer.

Article means chapter 15, article XVII, of the Orange County Code of Ordinances, as amended, unless otherwise specified.

Best management practices (BMPs) means the practice or combination of practices based on research, field testing and expert review, determined to be the most effective and practicable on-location means, including economic and technological considerations, for improving water quality, conserving water supplies and protecting natural resources.

Commercial applicator means any person who applies fertilizer in exchange for money, goods, services or other valuable consideration and who is required by law, ordinance, or regulation to obtain an Orange County local business tax certificate.

Fertilizer means any substance or mixture of substances, excluding pesticides, organic composts, and fertilizer derived from biosolids, that contains one (1) or more recognized plant nutrients and promotes plant growth, or controls soil acidity or alkalinity, or provides other soil enrichment, or provides other corrective measures to the soil.

Guaranteed analysis means the percentage of plant nutrients or measures of neutralizing capability claimed to be present in a fertilizer.

Golf course means any public or private area of land designed and used exclusively for playing or practicing golf, including tees, fairways, greens, rough areas, hazards and driving ranges (stand-alone ranges or those associated with a golf course). A golf course shall also include the following uses if they are accessory to the above uses: clubhouses, and all facilities adjacent to and associated with the daily operations of the above-referenced areas. Golf-related structures or features on residentially zoned private land shall not constitute a golf course.

Groundcover means plants used in mass as alternative to turf or lawn and/or to create variety in landscape; usually not having a mature height over two (2) feet tall.

Landscape plants means any shrub, tree, or groundcover, excluding turf and vegetable gardens.

Person means any person, natural or artificial, individual, firm, association, organization, partnership, business trust, corporation, company, agent, employee, or any other legal entity, the United States of America, and the State of Florida and all political subdivisions, regions, districts, municipalities, and public agencies.

Restricted season means the period from June 1 through September 30.
Slow release means nitrogen in a form which delays its availability for plant uptake and use for an extended period after application, or which extends its availability to the plant longer than a readily available, rapid or quick-release product. This definition includes the terms "controlled release," "timed release," "slowly available," and "water insoluble."

Turf, sod, or lawn means a mat layer of monocotyledonous plants, including but not limited to, Bahia, Bermuda, Centipede, Paspalum, St. Augustine, or Zoysia.

(Ord. No. 2009-26 , § 1, 10-6-09; Ord. No. 2017-14 , § 3, 6-20-17)

Sec. 15-802. - Applicability.

(a) Consistent with section 704 of the Orange County Charter, this ordinance shall be applicable throughout all of Orange County, except in municipalities that have minimum standards for the regulation of fertilizer application that are no less strict than those in this article.

(b) Any business that sells fertilizer shall post a notice provided by the county stating that the use of lawn and landscape fertilizers in the county is restricted in accordance with this chapter.

(Ord. No. 2009-26 , § 1, 10-6-09; Ord. No. 2017-14 , § 4, 6-20-17)

Sec. 15-803. - Weather and seasonal restrictions.

(a) No fertilizer containing nitrogen or phosphorus shall be applied to turf or landscape plants during a period for which the National Weather Service has issued any of the following advisories for any portion of the county: a severe thunderstorm warning or watch, flood warning or watch, tropical storm warning or watch, or hurricane warning or watch.

(b) No person, except applicators certified pursuant to section 15-809 herein, shall apply fertilizer containing nitrogen or phosphorus to turf or landscape plants during the restricted season from June 1 through September 30.

(Ord. No. 2009-26 , § 1, 10-6-09; Ord. No. 2017-14 , § 5, 6-20-17)

Sec. 15-804. - Fertilizer content; application rate.

(a) No fertilizer shall be used unless labeled in accordance with state law.

(b) No fertilizer containing phosphorus shall be applied to turf or landscape plants. Provided, however, where phosphorus deficiency has been demonstrated in the soil by a soil analysis test performed by a laboratory using University of Florida's Institute of Food and Agricultural Sciences ("UF/IFAS") approved methodology, phosphorus may then be applied at a rate no greater than one-quarter (0.25) of one (1) pound of phosphorus per one thousand (1,000) square feet per application, not to exceed one-half (0.5) pound of phosphorus per one thousand (1,000) square feet per year. Any person who obtains such a soil analysis test showing a phosphorus deficiency may apply phosphorus and shall provide the test results to the Orange County Environmental Protection Division, Attention: Manager within thirty (30) days of receipt of results.

(c) No fertilizer containing nitrogen shall be applied unless at least fifty (50) percent of its nitrogen content is slow release as indicated on the Guaranteed Analysis label, with no more than one (1) pound total nitrogen per one thousand (1,000) square feet of area per application. This requirement shall change to at least sixty-five (65) percent slow release if the product is readily available on the local commercial market by July 1, 2020.

(d) Notwithstanding subsection 15-804(c), commercial applicators may apply fertilizer at a rate that does not exceed one-half (0.5) of one (1) pound of readily available nitrogen per one thousand
(1,000) square feet of area, provided, however, that any application that exceeds one-half (0.5) of one (1) pound of nitrogen shall conform to subsection 15-804(c).

(e) Notwithstanding any other provision of this section 15-804, fertilizers applied to turf must follow the guidelines found in Rule 5E-1.003, F.A.C., as it may be amended.

(Ord. No. 2009-26 , § 1, 10-6-09; Ord. No. 2017-14 , § 6, 6-20-17)

Sec. 15-805. - Fertilizer-free zones.

(a) No fertilizer shall be applied within fifteen (15) feet of any wetland or surface waters, including but not limited to a lake, pond, stream, water body, water course, or canal.

(b) No fertilizer shall be deposited, washed, swept, or blown off, intentionally or inadvertently, onto any impervious surface, public right-of-way, public property, stormwater drain, ditch, conveyance, or water body. Any fertilizer applied, spilled, or deposited, either intentionally or accidentally, on any impervious surface shall be immediately and completely removed to the greatest extent practicable. Fertilizer released on an impervious surface must be immediately contained and either legally applied to turf or landscape plants or any other legal site, or returned to the original or other appropriate container.

(c) A low-maintenance zone is strongly recommended, though not required, for all areas within ten (10) feet of the normal high water elevation of any lake, pond, stream, water body, water course or canal, or any wetland, excluding permitted stormwater ponds. Low-maintenance zones should be planted and managed in such a way as to minimize the need for watering, mowing, and other active maintenance. No mowed or cut vegetative material may be deposited or left remaining in this zone or deposited in the water. Care should be taken to prevent over-spray of aquatic weed control products in this zone.

(Ord. No. 2009-26 , § 1, 10-6-09; Ord. No. 2017-14 , § 7, 6-20-17)

Sec. 15-806. - Mode of application.

Broadcast spreaders applying fertilizers must be equipped with deflector shields positioned to deflect fertilizer from all impervious surfaces, rights-of-way, stormwater drains, ditches, conveyances, and water bodies.

(Ord. No. 2009-26 , § 1, 10-6-09)

Sec. 15-807. - Grass clippings and vegetative material/debris.

Grass clippings and/or vegetative material/debris shall not be deposited, washed, swept, or blown off, intentionally or inadvertently, onto any impervious surface, public right-of-way, stormwater drain, ditch, conveyance, or water body.

(Ord. No. 2009-26 , § 1, 10-6-09)

Sec. 15-808. - Exemptions; exceptions.

(a) Sections 15-805 through 15-810 of this article shall not apply to golf courses; provided, however, fertilizer shall not be applied to golf courses in excess of the provisions set forth in Rule 5E-1.003(3), F.A.C., as it may be amended.
(b) This article shall not apply to any bona fide farm operation that the county is without authority to regulate with regard to fertilizer application pursuant to the Florida Right to Farm Act, F.S. (2016) § 823.14 et seq., or other applicable state law.

(c) This article shall not apply to sports turf areas at parks and athletic fields.

(Ord. No. 2009-26, § 1, 10-6-09; Ord. No. 2017-14, § 10, 6-20-17)

Sec. 15-809. - Training requirements; proof of compliance.

(a) No commercial applicator shall cause fertilizer to be applied, except at his or her own residence, without a valid limited certification for urban landscape commercial fertilizer application from the Florida Department of Agriculture and Consumer Services, as specified in section 15-809(c).

(b) Each commercial applicator shall ensure that each applicator he or she employs has a valid limited certification for urban landscape commercial fertilizer application from the Florida Department of Agriculture and Consumer Services prior to the application of fertilizer.

(c) Possession of a valid limited certification for urban landscape commercial fertilizer application from the Florida Department of Agriculture and Consumer Services or the Florida Department of Environmental Protection's Florida Friendly Best Management Practices for Protection of Water Resources by the Green Industries training by UF/IFAS shall suffice as evidence of completion of a county-approved best management practices training program.

(d) Non-commercial applicators shall provide proof on an annual basis of successful completion of the online training "Orange County Fertilizer Application Education Course for Citizens" on the Orange County fertilizer web page.

(e) Certified applicators must show proof of training on all vehicles used during applications.

(Ord. No. 2009-26, § 1, 10-6-09; Ord. No. 2017-14, § 11, 6-20-17)

Editor's note—Ord. No. 2017-14, § 11, adopted June 20, 2017, amended § 15-809 and in so doing changed the title of said section from "Commercial training requirements; proof of compliance" to "Training requirements; proof of compliance," as set out herein.

Sec. 15-810. - Commercial applicators; business tax certificate.

Prior to obtaining or renewing an Orange County local business tax certificate for a business that provides landscape services, each commercial applicator shall provide proof of successful completion from county-approved best management practices training programs within the previous three (3) years. Possession of a valid limited certification for urban landscape commercial fertilizer application from the Florida Department of Agriculture and Consumer Services or the Florida Department of Environmental Protection's Florida Friendly Best Management Practices for Protection of Water Resources by the Green Industries training by UF/IFAS shall suffice as evidence of completion of a county-approved best management practices training program.

(Ord. No. 2009-26, § 1, 10-6-09; Ord. No. 2017-14, § 11, 6-20-17)

Sec. 15-811. - Variances.

(a) All requests for a variance(s) from the requirements of this article shall be made in writing to the Manager of the Orange County Environmental Protection Division. The manager may require the applicant for a variance to provide such information as necessary to carry out the purpose of this article. The manager may approve, approve with conditions or deny requests for variances. A
variance may be granted if strict application of the Orange County Fertilizer Management Ordinance would lead to unreasonable or unfair results in particular instances, provided that the applicant demonstrates with particularity that compliance will result in a substantial economic, health or other hardship on the applicant requesting the variance or those served by the applicant.

(b) Variances may be issued by the manager only upon satisfaction of the following:

(1) A showing of good and sufficient cause by the applicant and that the cause is not self-imposed, and

(2) A determination by the manager that the variance is the minimum necessary to afford relief, and

(3) A determination by the manager that failure to grant the variance would result in a practical difficulty or a physical hardship affecting the applicant's economic use of the property, and

(4) A determination by the manager that the granting of the variance will not result in threats to the health, safety and welfare of the residents of the county or conflict with existing local laws or ordinances.

(c) Any person aggrieved by the decision of the manager may appeal pursuant to the provisions of section 15-38.

(Ord. No. 2009-26, § 1, 10-6-09)

Sec. 15-812. - Enforcement and penalty.

(a) It shall be unlawful for any person to violate any provision of this article, except section 15-802(b), or any provision of any resolution enacted pursuant to the authority of this article. Every code enforcement officer is authorized to enforce the provisions of this article. Any person who violates any provision of this article, except section 15-802(b), or any provision of any resolution enacted pursuant to the authority of this article, shall be subject to the following penalties:

(1) First violation: Written notice.

(2) Second violation: Fine of fifty dollars ($50.00), except for commercial applicators it shall be five hundred dollars ($500.00).

(3) Third and subsequent violations: Fine of one hundred dollars ($100.00), except for commercial applicators it shall be seven hundred fifty dollars ($750.00).

(b) In addition to the enforcement provisions provided, the county may avail itself of any other legal or equitable remedy available to it including, without limitation, injunctive relief, in the enforcement of any provision of this article or any provision of any resolution enacted pursuant to the authority of this article. Any person violating this article shall be held liable for all costs incurred by the county in connection with enforcing this article, or any resolution enacted pursuant to the authority of this article including, but not limited to, attorney's fees.

(Ord. No. 2009-26, § 1, 10-6-09; Ord. No. 2017-14, § 14, 6-20-17)

Secs. 15-813—15-819. - Reserved.
From: Laura Zielonka, Finance Director
Via: Michael Bollhoefer, City Manager

Date: March 8, 2019    Meeting Date: March 14, 2019

Subject: Ordinance 19-10: AN ORDINANCE OF THE CITY OF WINTER GARDEN, FLORIDA, AMENDING ORDINANCE 18-32, THE CITY OF WINTER GARDEN FISCAL YEAR 2018-2019 BUDGET TO CARRY FORWARD PRIOR YEAR APPROPRIATIONS; PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE

Issue: Ordinance 19-10 amends the current year budget to carry forward prior year appropriations for projects, machinery and equipment and other items budgeted but not purchased and projects budgeted but not completed by fiscal year ending FY 2018. This will ensure that there is adequate funding to purchase those items and complete those projects that were not completed by year-end.

Recommended action: Motion to approve Ordinance 19-10.

Attachments/References: Ordinance 19-10
ORDINANCE 19-10

AN ORDINANCE OF THE CITY OF WINTER GARDEN, FLORIDA, AMENDING ORDINANCE 18-32, THE CITY OF WINTER GARDEN FISCAL YEAR 2018-2019 BUDGET TO CARRY FORWARD PRIOR YEAR APPROPRIATIONS; PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, on September 27, 2018, the City Commission of the City of Winter Garden, Florida, adopted Ordinance 18-32 appropriating and allocating all revenue and funds of the City of Winter Garden, Florida for the tax year beginning October 1, 2018 and ending September 30, 2019;

WHEREAS, the City Commission has decided to amend the City of Winter Garden, Florida Budget for the tax year beginning October 1, 2018 and ending September 30, 2019 to provide for budget carryovers from the preceding budget year;

BE IT ENACTED BY THE CITY OF WINTER GARDEN, FLORIDA:

SECTION 1: That the sum of $31,566,395 to be appropriated as follows:

REVENUES

<table>
<thead>
<tr>
<th>Fund</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>General Fund</td>
<td>$6,147,772</td>
</tr>
<tr>
<td>Community Redevelopment Agency Fund</td>
<td>360,000</td>
</tr>
<tr>
<td>Law Enforcement Trust Fund</td>
<td>24,765</td>
</tr>
<tr>
<td>Local Option Gas Tax Fund</td>
<td>699,968</td>
</tr>
<tr>
<td>General Fund Fire Impact Fee Fund</td>
<td>3,457,061</td>
</tr>
<tr>
<td>Transportation Impact Fee Fund</td>
<td>4,258,325</td>
</tr>
<tr>
<td>Utilities Operating Fund</td>
<td>9,812,587</td>
</tr>
<tr>
<td>Utilities Impact Fee Fund</td>
<td>2,557,965</td>
</tr>
<tr>
<td>Utilities Renewal &amp; Replacement</td>
<td>3,588,080</td>
</tr>
<tr>
<td>Stormwater Fund</td>
<td>369,566</td>
</tr>
<tr>
<td>Solid Waste Fund</td>
<td>104,306</td>
</tr>
<tr>
<td>Trailer City Fund</td>
<td>186,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$31,566,395</strong></td>
</tr>
</tbody>
</table>

EXPENDITURES

<table>
<thead>
<tr>
<th>Fund</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>General Fund</td>
<td>$6,147,772</td>
</tr>
<tr>
<td>Community Redevelopment Agency Fund</td>
<td>360,000</td>
</tr>
</tbody>
</table>
Law Enforcement Trust Fund  
Local Option Gas Tax Fund  
General Fund Fire Impact Fee Fund  
Transportation Impact Fee Fund  
Utilities Operating Fund  
Utilities Impact Fee Fund  
Utilities Renewal & Replacement  
Stormwater Fund  
Solid Waste Fund  
Trailer City Fund  

$31,566,395

SECTION 2:  Detail for the aforementioned totals is attached as Exhibit 1, which shall be incorporated in the Ordinance. Should any portion of this Ordinance be held invalid, then such portions as are not declared to be invalid shall remain in full force and effect.

SECTION 3:  This Ordinance shall become effective upon its adoption at the second reading and public hearing.

READ FIRST TIME:

READ SECOND TIME AND PUBLIC HEARING HELD:

APPROVED:

/S/
Mayor/Commissioner John Rees

ATTEST:

/S/
Angela Grimmage, City Clerk

Ordinance 19-10
<table>
<thead>
<tr>
<th>Account Number</th>
<th>Project</th>
<th>Account Description</th>
<th>Amount</th>
<th>Item Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>001-0775-366.00-00</td>
<td>15036</td>
<td>Contributions</td>
<td>1,700,000</td>
<td>Grant from West Orange Health District for Tucker Ranch Farm</td>
</tr>
<tr>
<td>001-0213-399.99-99</td>
<td>Use of Fund Balance</td>
<td>4,447,772</td>
<td>To balance revenues/expenditures</td>
<td></td>
</tr>
<tr>
<td><strong>Total Revenues</strong></td>
<td></td>
<td></td>
<td><strong>6,147,772</strong></td>
<td></td>
</tr>
</tbody>
</table>

**Executive:**

<table>
<thead>
<tr>
<th>Account Number</th>
<th>Project</th>
<th>Account Description</th>
<th>Amount</th>
<th>Item Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>001-0213-512.61-00</td>
<td>16036</td>
<td>Land</td>
<td>116,107</td>
<td>Tremaine/Boyd Cleanup</td>
</tr>
<tr>
<td>001-0215-552.63-00</td>
<td>17001</td>
<td>Improvements Other Than Buildings</td>
<td>126,277</td>
<td>Wayfinding Signage Phase II</td>
</tr>
</tbody>
</table>

**Information Tech:**

<table>
<thead>
<tr>
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<th>Project</th>
<th>Account Description</th>
<th>Amount</th>
<th>Item Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>001-0225-513.60-00</td>
<td>14002</td>
<td>Improvements Other Than Buildings</td>
<td>100,000</td>
<td>Fiber Internet Connection</td>
</tr>
<tr>
<td>001-0225-513.62-00</td>
<td>18001</td>
<td>Building</td>
<td>55,910</td>
<td>Data Center Air Conditioning</td>
</tr>
<tr>
<td>001-0225-513.64-00</td>
<td>Equipment</td>
<td>55,912</td>
<td>Network Switched Phase II</td>
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</table>

**Police:**

<table>
<thead>
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<th>Account Description</th>
<th>Amount</th>
<th>Item Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>001-0521-521.62-00</td>
<td>16019</td>
<td>Building</td>
<td>115,768</td>
<td>Purchase and install generator for police station</td>
</tr>
<tr>
<td>001-0521-521.62-00</td>
<td>17002</td>
<td>Building</td>
<td>43,665</td>
<td>Roof repair- Gym/Evidence room</td>
</tr>
<tr>
<td>001-0521-521.64-00</td>
<td>Police Equipment</td>
<td>110,831</td>
<td>Vehicles and Equipment Funded in FY18 to be delivered in FY19</td>
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</table>

**Telecommunications:**

<table>
<thead>
<tr>
<th>Account Number</th>
<th>Project</th>
<th>Account Description</th>
<th>Amount</th>
<th>Item Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>001-0530-521.62-00</td>
<td>17003</td>
<td>Building</td>
<td>94,330</td>
<td>Roof repair- Communications Center</td>
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<tr>
<td>001-0530-521.62-00</td>
<td>18003</td>
<td>Building</td>
<td>29,230</td>
<td>Fire Suppression System</td>
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</table>

**Fire:**

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<th>Project</th>
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<th>Amount</th>
<th>Item Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>001-0620-522.62-00</td>
<td>17004</td>
<td>Building</td>
<td>2,200</td>
<td>Fire Admin Cabinet</td>
</tr>
<tr>
<td>001-0622-522.64-00</td>
<td>18030</td>
<td>Equipment</td>
<td>261,512</td>
<td>New Rescue 22 and Capital Equipment</td>
</tr>
<tr>
<td>001-0622-522.52-00</td>
<td>Operating Supplies</td>
<td>10,383</td>
<td>New Rescue 22 Non-Capital Items</td>
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</tr>
<tr>
<td>001-0624-522.52-00</td>
<td>Uniforms</td>
<td>26,697</td>
<td>Uniforms</td>
<td></td>
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<tr>
<td>001-0624-522.62-00</td>
<td>Equipment</td>
<td>10,235</td>
<td>New Engine 24 (Capital Items)</td>
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</tr>
<tr>
<td>001-0624-522.62-00</td>
<td>Building</td>
<td>2,800</td>
<td>Sn 24 - Storage Shed - A/C Units</td>
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**Streets:**

<table>
<thead>
<tr>
<th>Account Number</th>
<th>Project</th>
<th>Account Description</th>
<th>Amount</th>
<th>Item Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>001-0741-541.63-00</td>
<td>13011</td>
<td>Improvements Other Than Buildings</td>
<td>1,124,195</td>
<td>Dillard St Improv - SR 50&gt; Plant St</td>
</tr>
<tr>
<td>001-0741-541.63-00</td>
<td>16033</td>
<td>Improvements Other Than Buildings</td>
<td>400,000</td>
<td>Trail Enhancement (Oval)</td>
</tr>
<tr>
<td>001-0741-541.63-00</td>
<td>16033</td>
<td>Improvements Other Than Buildings</td>
<td>75,000</td>
<td>Tremaine St Brickling</td>
</tr>
</tbody>
</table>

**Human Resources:**

<table>
<thead>
<tr>
<th>Account Number</th>
<th>Project</th>
<th>Account Description</th>
<th>Amount</th>
<th>Item Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>001-0745-513.52-01</td>
<td>Operating Supplies</td>
<td>5,750</td>
<td>Supplies ordered in Sep and received in Oct</td>
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</table>

**Facilities:**

<table>
<thead>
<tr>
<th>Account Number</th>
<th>Project</th>
<th>Account Description</th>
<th>Amount</th>
<th>Item Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>001-0746-539.63-00</td>
<td>16004</td>
<td>Improvements Other Than Buildings</td>
<td>3,548</td>
<td>Downtown Streetlight Retrofit</td>
</tr>
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</table>

**Fleet:**

<table>
<thead>
<tr>
<th>Account Number</th>
<th>Project</th>
<th>Account Description</th>
<th>Amount</th>
<th>Item Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>001-0747-539.62-00</td>
<td>17010</td>
<td>Building</td>
<td>3,071</td>
<td>Light/Heavy Shop Heating</td>
</tr>
<tr>
<td>001-0747-539.63-00</td>
<td>17011</td>
<td>Improvements Other Than Buildings</td>
<td>16,455</td>
<td>Fuel Island Pump Replacement</td>
</tr>
</tbody>
</table>

**Parks and Recreation:**

<table>
<thead>
<tr>
<th>Account Number</th>
<th>Project</th>
<th>Account Description</th>
<th>Amount</th>
<th>Item Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>001-0775-572.63-00</td>
<td>13007</td>
<td>Improvements Other Than Buildings</td>
<td>926,812</td>
<td>Tucker Ranch Heritage Park</td>
</tr>
<tr>
<td>001-0775-572.63-00</td>
<td>15036</td>
<td>Improvements Other Than Buildings</td>
<td>1,717,547</td>
<td>Tucker Ranch Farm</td>
</tr>
<tr>
<td>001-0775-572.63-00</td>
<td>14007</td>
<td>Improvements Other Than Buildings</td>
<td>210,000</td>
<td>Newton Park Dock Replacement</td>
</tr>
<tr>
<td>001-0775-572.63-00</td>
<td>15002</td>
<td>Improvements Other Than Buildings</td>
<td>25,000</td>
<td>Newton Park Landscape (Sch. For spring ’19)</td>
</tr>
<tr>
<td>001-0775-572.63-00</td>
<td>15003</td>
<td>Improvements Other Than Buildings</td>
<td>8,880</td>
<td>Little League Sunblock (add another section)</td>
</tr>
<tr>
<td>001-0775-572.63-00</td>
<td>16005</td>
<td>Improvements Other Than Buildings</td>
<td>10,471</td>
<td>Athletic Field Renovations</td>
</tr>
<tr>
<td>001-0775-572.63-00</td>
<td>17013</td>
<td>Improvements Other Than Buildings</td>
<td>14,582</td>
<td>Fountain UV Light Replacement</td>
</tr>
<tr>
<td>001-0775-572.63-00</td>
<td>17014</td>
<td>Improvements Other Than Buildings</td>
<td>15,000</td>
<td>Newton Park Basin Bridge</td>
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<tr>
<td>001-0775-572.63-00</td>
<td>17040</td>
<td>Improvements Other Than Buildings</td>
<td>5,698</td>
<td>Newton Park Pier Repairs</td>
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<tr>
<td>001-0775-572.63-00</td>
<td>17052</td>
<td>Improvements Other Than Buildings</td>
<td>12,600</td>
<td>Veterans Park Ball Stop</td>
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<tr>
<td>001-0775-572.63-00</td>
<td>17056</td>
<td>Improvements Other Than Buildings</td>
<td>225,000</td>
<td>9th St Community Farm</td>
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<tr>
<td>001-0775-572.63-00</td>
<td>17058</td>
<td>Improvements Other Than Buildings</td>
<td>46,000</td>
<td>Jesse Brock Roof (Temp Repairs made)</td>
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<tr>
<td>001-0775-572.63-00</td>
<td>17020</td>
<td>Improvements Other Than Buildings</td>
<td>16,020</td>
<td>Farnsworth House Demo</td>
</tr>
<tr>
<td><strong>Total Expenditures</strong></td>
<td></td>
<td></td>
<td><strong>6,147,772</strong></td>
<td></td>
</tr>
</tbody>
</table>
## Exhibit 1

<table>
<thead>
<tr>
<th>Account Number</th>
<th>Project</th>
<th>Account Description</th>
<th>Amount</th>
<th>Item Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Community Redevelopment Agency Fund</td>
<td>120-0213-399.99-99</td>
<td>Use of Fund Balance</td>
<td>360,000</td>
<td>To balance revenues/expenditures</td>
</tr>
<tr>
<td></td>
<td></td>
<td><strong>Total Revenues</strong></td>
<td>360,000</td>
<td></td>
</tr>
<tr>
<td></td>
<td>120-0213-552.63-00</td>
<td>17001 Improvements Other Than Buildings</td>
<td>60,000</td>
<td>Downtown Wayfinding Signs</td>
</tr>
<tr>
<td></td>
<td>120-0213-552.63-00</td>
<td>17022 Improvements Other Than Buildings</td>
<td>300,000</td>
<td>East Winter Garden Zone 1</td>
</tr>
<tr>
<td></td>
<td></td>
<td><strong>Total Expenditures</strong></td>
<td>360,000</td>
<td></td>
</tr>
<tr>
<td>Law Enforcement Trust Fund</td>
<td>121-1121-399.99-99</td>
<td>Use of Fund Balance</td>
<td>24,765</td>
<td>To balance revenues/expenditures</td>
</tr>
<tr>
<td></td>
<td></td>
<td><strong>Total Revenues</strong></td>
<td>24,765</td>
<td></td>
</tr>
<tr>
<td></td>
<td>121-1421-521.62-00</td>
<td>18013 Building</td>
<td>24,765</td>
<td>Lighting- K9 Training area</td>
</tr>
<tr>
<td></td>
<td></td>
<td><strong>Total Expenditures</strong></td>
<td>24,765</td>
<td></td>
</tr>
<tr>
<td>Local Option Gas Tax Fund</td>
<td>160-0741-399.99-99</td>
<td>Use of Fund Balance</td>
<td>699,968</td>
<td>To balance revenues/expenditures</td>
</tr>
<tr>
<td></td>
<td></td>
<td><strong>Total Revenues</strong></td>
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<td></td>
<td>160-0741-541.63-00</td>
<td>15020 Improvements Other Than Buildings</td>
<td>30,000</td>
<td>Downtown Brick Pavers</td>
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<td>160-0741-541.63-00</td>
<td>16008 Improvements Other Than Buildings</td>
<td>49,028</td>
<td>Pavement Striping</td>
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<td>160-0741-541.63-00</td>
<td>16027 Improvements Other Than Buildings</td>
<td>5,000</td>
<td>Lakeview Reserve HOA</td>
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<td>160-0741-541.63-00</td>
<td>17023 Improvements Other Than Buildings</td>
<td>50,000</td>
<td>SR 50 Crosswalk Striping</td>
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<td></td>
<td>160-0741-541.63-00</td>
<td>18014 Improvements Other Than Buildings</td>
<td>499,655</td>
<td>Street Resurfacing FY18</td>
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<tr>
<td></td>
<td>160-0741-541.63-00</td>
<td>18017 Improvements Other Than Buildings</td>
<td>66,285</td>
<td>Tremaine St Brickling (Boyd-Man)</td>
</tr>
<tr>
<td></td>
<td></td>
<td><strong>Total Expenditures</strong></td>
<td>699,968</td>
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</tr>
<tr>
<td>General Impact Fee Fund</td>
<td>170-0521-399.99-99</td>
<td>Use of Fund Balance</td>
<td>39,409</td>
<td>To balance revenues/expenditures</td>
</tr>
<tr>
<td></td>
<td>170-0620-399.99-99</td>
<td>Use of Fund Balance</td>
<td>1,817,652</td>
<td>To balance revenues/expenditures</td>
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<tr>
<td></td>
<td>170-0872-399.99-99</td>
<td>Use of Fund Balance</td>
<td>1,600,000</td>
<td>To balance revenues/expenditures</td>
</tr>
<tr>
<td></td>
<td></td>
<td><strong>Total Revenues</strong></td>
<td>3,457,061</td>
<td></td>
</tr>
<tr>
<td></td>
<td>170-0521-521.64-00</td>
<td>Equipment</td>
<td>2,924</td>
<td>Dispatch Workstations</td>
</tr>
<tr>
<td></td>
<td>170-0521-521.64-00</td>
<td>Equipment</td>
<td>30,164</td>
<td>New Officer Vehicle</td>
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<tr>
<td></td>
<td>170-0521-521.64-00</td>
<td>Machinery and Equipment</td>
<td>6,320</td>
<td>Tablets for new authorized positions</td>
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<tr>
<td></td>
<td>170-0622-522.62-00</td>
<td>18015 Buildings</td>
<td>1,786,750</td>
<td>Fire Station - Southwest WG</td>
</tr>
<tr>
<td></td>
<td>170-0620-522.64-00</td>
<td>18028 Equipment</td>
<td>30,902</td>
<td>Fire Engine - Station 21</td>
</tr>
<tr>
<td></td>
<td>170-0872-572.61-00</td>
<td>Land</td>
<td>1,600,000</td>
<td>Purchase of Property Adjacent to Newton Park</td>
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<tr>
<td></td>
<td></td>
<td><strong>Total Expenditures</strong></td>
<td>3,457,061</td>
<td>Approved at 4/18/18 Commission Meeting</td>
</tr>
<tr>
<td>Transportation Impact Fee Fund</td>
<td>174-0741-399.99-99</td>
<td>Use of Fund Balance</td>
<td>4,258,325</td>
<td>To balance revenues/expenditures</td>
</tr>
<tr>
<td></td>
<td></td>
<td><strong>Total Revenues</strong></td>
<td>4,258,325</td>
<td></td>
</tr>
<tr>
<td></td>
<td>174-0741-541.63-00</td>
<td>08005 Improvements Other Than Buildings</td>
<td>1,000,000</td>
<td>Marsh Rd (CR545&gt; Holky Hammock)</td>
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<tr>
<td></td>
<td>174-0741-541.63-00</td>
<td>09041 Improvements Other Than Buildings</td>
<td>165,574</td>
<td>SR 50 Median Landscaping</td>
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<tr>
<td></td>
<td>174-0741-541.63-00</td>
<td>12026 Improvements Other Than Buildings</td>
<td>422,486</td>
<td>Plant/Avon Intersection</td>
</tr>
<tr>
<td></td>
<td>174-0741-541.63-00</td>
<td>13017 Improvements Other Than Buildings</td>
<td>2,068,901</td>
<td>Stonefully Roundabout</td>
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<tr>
<td></td>
<td>174-0741-541.63-00</td>
<td>13043 Improvements Other Than Buildings</td>
<td>125,739</td>
<td>Lulu Ck/Stormwater Landscaping</td>
</tr>
<tr>
<td></td>
<td>174-0741-541.63-00</td>
<td>13049 Improvements Other Than Buildings</td>
<td>184,329</td>
<td>E Crown Pl/Fullers Cross Intersection</td>
</tr>
<tr>
<td></td>
<td>174-0741-541.63-00</td>
<td>15008 Improvements Other Than Buildings</td>
<td>100,000</td>
<td>Plant St East-Median Landscaping</td>
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<tr>
<td></td>
<td>174-0741-541.63-00</td>
<td>16010 Improvements Other Than Buildings</td>
<td>178,261</td>
<td>E Crown Pl-Plant to Crown Pt Cross</td>
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<tr>
<td></td>
<td>174-0741-541.63-00</td>
<td>16029 Improvements Other Than Buildings</td>
<td>3,093</td>
<td>Plant/E Crown Turn Lane</td>
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<tr>
<td></td>
<td>174-0741-541.63-00</td>
<td>18043 Improvements Other Than Buildings</td>
<td>9,942</td>
<td>CR545 4-LN Tumpk to SR50</td>
</tr>
<tr>
<td></td>
<td></td>
<td><strong>Total Expenditures</strong></td>
<td>4,258,325</td>
<td></td>
</tr>
</tbody>
</table>
### Utilities Operating Fund

<table>
<thead>
<tr>
<th>Account Number</th>
<th>Project</th>
<th>Account Description</th>
<th>Amount</th>
<th>Item Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>410-2116-399.99-99</td>
<td>Use of Fund Balance</td>
<td>9,812,587</td>
<td></td>
<td>To balance revenues/expenditures</td>
</tr>
<tr>
<td><strong>Total Revenues</strong></td>
<td></td>
<td><strong>9,812,587</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>13044</td>
<td>410-2116-533.63-00</td>
<td>Improvements Other Than Buildings</td>
<td>300,000</td>
<td>Johns Lake Waterside Util U/S</td>
</tr>
<tr>
<td>15009</td>
<td>410-2117-533.63-00</td>
<td>Improvements Other Than Buildings</td>
<td>7,259,295</td>
<td>Marsh Rd Potable/Reuse Tanks</td>
</tr>
<tr>
<td>17025</td>
<td>410-2117-533.63-00</td>
<td>Improvements Other Than Buildings</td>
<td>300,000</td>
<td>WWTP-Expansion at Crest Av</td>
</tr>
<tr>
<td>17053</td>
<td>410-2117-533.63-00</td>
<td>Improvements Other Than Buildings</td>
<td>250,000</td>
<td>McKey Groves Utility Upsizing</td>
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<tr>
<td>16030</td>
<td>410-2126-533.52-01</td>
<td>Miscellaneous Operating Supplies</td>
<td>250,356</td>
<td>Meter Change Out Project</td>
</tr>
<tr>
<td>12022</td>
<td>410-2126-533.63-00</td>
<td>Improvements Other Than Buildings</td>
<td>22,391</td>
<td>Flex Net Install</td>
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<tr>
<td>16013</td>
<td>410-2126-533.63-00</td>
<td>Improvements Other Than Buildings</td>
<td>120,775</td>
<td>Stoneybrook West Reuse Backflows</td>
</tr>
<tr>
<td>16014</td>
<td>410-2126-533.63-00</td>
<td>Improvements Other Than Buildings</td>
<td>120,000</td>
<td>2&quot; Water Main Upgrades</td>
</tr>
<tr>
<td>18021</td>
<td>410-2126-533.63-00</td>
<td>Improvements Other Than Buildings</td>
<td>26,885</td>
<td>Tucker Ranch Utilities</td>
</tr>
<tr>
<td>18022</td>
<td>410-2126-533.63-00</td>
<td>Improvements Other Than Buildings</td>
<td>1,083,535</td>
<td>Aquifer Recharge Project</td>
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<tr>
<td><strong>Total Expenditures</strong></td>
<td></td>
<td><strong>9,812,587</strong></td>
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<td></td>
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</tbody>
</table>

### Utilities Impact Fee Fund

<table>
<thead>
<tr>
<th>Account Number</th>
<th>Project</th>
<th>Account Description</th>
<th>Amount</th>
<th>Item Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>411-2116-399.99-99</td>
<td>Use of Fund Balance-Water</td>
<td>2,557,965</td>
<td></td>
<td>To balance revenues/expenditures</td>
</tr>
<tr>
<td><strong>Total Revenues</strong></td>
<td></td>
<td><strong>2,557,965</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>15009</td>
<td>411-2126-533.63-00</td>
<td>Improvements Other Than Buildings</td>
<td>45,558</td>
<td>Marsh Rd Potable Tanks</td>
</tr>
<tr>
<td>15012</td>
<td>411-2126-533.63-00</td>
<td>Improvements Other Than Buildings</td>
<td>1,055,759</td>
<td>Southwest Reuse Phase III</td>
</tr>
<tr>
<td>16006</td>
<td>411-2126-533.63-00</td>
<td>Improvements Other Than Buildings</td>
<td>8,500</td>
<td>S Highland (Smith &gt; Maple)</td>
</tr>
<tr>
<td>16014</td>
<td>411-2126-533.63-00</td>
<td>Improvements Other Than Buildings</td>
<td>72,797</td>
<td>2&quot; Water Main Upgrades (city-wide)</td>
</tr>
<tr>
<td>17026</td>
<td>411-2126-533.63-00</td>
<td>Improvements Other Than Buildings</td>
<td>288,000</td>
<td>Windward Cay Reuse/Retrofit</td>
</tr>
<tr>
<td>17027</td>
<td>411-2126-533.63-00</td>
<td>Improvements Other Than Buildings</td>
<td>1,087,351</td>
<td>Reclaim/Reuse/Aquifer Projects</td>
</tr>
<tr>
<td><strong>Total Expenditures</strong></td>
<td></td>
<td><strong>2,557,965</strong></td>
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### Utilities Renewal & Replacement Fund

<table>
<thead>
<tr>
<th>Account Number</th>
<th>Project</th>
<th>Account Description</th>
<th>Amount</th>
<th>Item Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>412-2116-399.99-99</td>
<td>Use of Fund Balance</td>
<td>3,588,080</td>
<td></td>
<td>To balance revenues/expenditures</td>
</tr>
<tr>
<td><strong>Total Revenues</strong></td>
<td></td>
<td><strong>3,588,080</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>15013</td>
<td>412-2126-533.63-00</td>
<td>Improvements Other Than Buildings</td>
<td>485,663</td>
<td>Gravity Sewer Rehab</td>
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<tr>
<td>16020</td>
<td>412-2126-533.63-00</td>
<td>Improvements Other Than Buildings</td>
<td>3,102,417</td>
<td>9th Street Sewer Upgrades</td>
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<tr>
<td><strong>Total Expenditures</strong></td>
<td></td>
<td><strong>3,588,080</strong></td>
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<td></td>
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</tbody>
</table>

### Stormwater Fund

<table>
<thead>
<tr>
<th>Account Number</th>
<th>Project</th>
<th>Account Description</th>
<th>Amount</th>
<th>Item Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>420-2218-399.99-99</td>
<td>Use of Fund Balance</td>
<td>369,566</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Total Revenues</strong></td>
<td></td>
<td><strong>369,566</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>14011</td>
<td>420-2618-538.63-00</td>
<td>Improvements Other Than Buildings</td>
<td>99,893</td>
<td>Stormwater R&amp;R Improvements</td>
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<tr>
<td>15015</td>
<td>420-2618-538.63-00</td>
<td>Improvements Other Than Buildings</td>
<td>118,645</td>
<td>Bradford Park Erosion Control</td>
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<tr>
<td>15019</td>
<td>420-2618-538.63-00</td>
<td>Improvements Other Than Buildings</td>
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<td>Stormwater R&amp;R Improvements</td>
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<tr>
<td>16027</td>
<td>420-2618-538.63-00</td>
<td>Improvements Other Than Buildings</td>
<td>8,332</td>
<td>Lakeview Reserve HOA</td>
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<tr>
<td>17028</td>
<td>420-2618-538.63-00</td>
<td>Improvements Other Than Buildings</td>
<td>74,500</td>
<td>Stormwater Pollution Control</td>
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<tr>
<td>18002</td>
<td>420-2618-538.63-00</td>
<td>Improvements Other Than Buildings</td>
<td>2,476</td>
<td>Stormwater Sampling NPDES</td>
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<tr>
<td>18035</td>
<td>420-2618-538.63-00</td>
<td>Improvements Other Than Buildings</td>
<td>49,150</td>
<td>Stormwater Master Plan</td>
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<tr>
<td><strong>Total Expenditures</strong></td>
<td></td>
<td><strong>369,566</strong></td>
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</table>

### Solid Waste Fund

<table>
<thead>
<tr>
<th>Account Number</th>
<th>Project</th>
<th>Account Description</th>
<th>Amount</th>
<th>Item Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>430-3134-399.99-99</td>
<td>Use of Fund Balance</td>
<td>104,306</td>
<td></td>
<td>To balance revenues/expenditures</td>
</tr>
<tr>
<td><strong>Total Revenues</strong></td>
<td></td>
<td><strong>104,306</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>17054</td>
<td>430-3134-534-62-00</td>
<td>Building</td>
<td>104,306</td>
<td>Fleet Shop Addn for Heavy Solid Waste Trucks</td>
</tr>
<tr>
<td><strong>Total Expenditures</strong></td>
<td></td>
<td><strong>104,306</strong></td>
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</tr>
</tbody>
</table>
### Exhibit 1

<table>
<thead>
<tr>
<th>Account Number</th>
<th>Project</th>
<th>Account Description</th>
<th>Amount</th>
<th>Item Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>450-3657-399.99-99</td>
<td>Use of Fund Balance</td>
<td>186,000</td>
<td>To balance revenues/expenditures</td>
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</table>

**Total Revenues**

<table>
<thead>
<tr>
<th>Account Number</th>
<th>Project</th>
<th>Account Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>450-3657-539.62-00</td>
<td>Buildings</td>
<td>67,000</td>
<td>Office Renovations</td>
</tr>
<tr>
<td>450-3657-539.62-00</td>
<td>Buildings</td>
<td>30,000</td>
<td>Orange Dr Laundry/RR Renovations</td>
</tr>
<tr>
<td>450-3657-539.62-00</td>
<td>Buildings</td>
<td>85,000</td>
<td>Laurel St Laundry/RR Renovations</td>
</tr>
<tr>
<td>450-3657-539.63-00</td>
<td>Improvement Other Than Bldg</td>
<td>4,000</td>
<td>Upgrade city owned lots</td>
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</table>

**Total Expenditures**

<table>
<thead>
<tr>
<th>Account Number</th>
<th>Project</th>
<th>Account Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>450-3657-399.99-99</td>
<td>Use of Fund Balance</td>
<td>186,000</td>
<td>To balance revenues/expenditures</td>
</tr>
</tbody>
</table>

**Grand Total**

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>31,566,395</td>
</tr>
</tbody>
</table>
From: Jon Williams, Assistant City Manager – Public Services
Via: Mike Bollhoefer, City Manager
Date: March 7, 2019 Meeting Date: March 14, 2019

Subject: Approve Piggyback Agreement with the City of Orlando and American Grinding Company, LLC for Citywide Sidewalk Inspection and Grinding Services.

Issue: The City of Orlando awarded contract no. IFB18-0282 to American Grinding Company, LLC as the lowest responsive and qualified bidder in June of 2018 to provide sidewalk inspection and grinding services. Staff is requesting to piggyback on this contract to accomplish citywide sidewalk condition assessment and grinding of raised joints.

Staff in the Streets Division will designate the work area and there is no guaranteed minimum amount of services under this agreement. Piggybacking provides the City with the opportunity to benefit from economies of scale on this contract.

Recommended Action:

Approve and award the City of Orlando Piggy-Back Contract with American Grinding Company, LLC for the citywide sidewalk condition assessment and grinding of raised joints in the amount of $6.45 per LF unit price as specified in the original government contract no. IFB18-0282.

Attachments/References:

- Agreement for Sidewalk Inspection and Grinding with Exhibit “A”
SERVICES AGREEMENT FOR SIDEWALK INSPECTION AND GRINDING
(PIGGY BACK AGREEMENT TO SERVICES AGREEMENT
BETWEEN CITY OF ORLANDO AND AMERICAN GRINDING COMPANY, LLC)

THIS SERVICES AGREEMENT FOR SIDEWALK INSPECTION AND GRINDING (this "Agreement") is entered into by and between the CITY OF WINTER GARDEN, a Florida municipal corporation, whose address is 300 West Plant Street, Winter Garden, Florida 34787 (hereinafter referred to as "City"), and AMERICAN GRINDING SERVICES, LLC, whose address is 15 Union Avenue S.E., Suite 100, Grand Rapids, MI 49503 (hereinafter referred to as "CONTRACTOR").

WHEREAS, the City desires to engage an independent contractor to provide sidewalk inspection and grinding services on a task assigned basis; and

WHEREAS, the City of Orlando ("Orlando") has previously selected CONTRACTOR through the competitive procurement process pursuant to IFB 18-0282 to provide Orlando with sidewalk inspection and grinding services and Orlando entered into that certain Contract and Acceptance Form dated June 19, 2018 to provide such services, a true and accurate copy of which is attached hereto as Exhibit "A" and incorporated herein by this reference (collectively herein "Original Government Contract"); and

WHEREAS, the City has reviewed the procurement documents concerning Orlando’s procurement of CONTRACTOR’s services and agrees with the process and the selection of CONTRACTOR; and

WHEREAS, the City has reviewed the Original Government Contract and has found the terms and conditions as set out in the such contract to be reasonable, acceptable and of benefit to the City’s citizens; and

WHEREAS, the City has determined that use and procurement of CONTRACTOR’s services pursuant to the terms and conditions of the Original Government Contract by piggybacking on such contract is cost-effective and in the best interest of the City; and

NOW THEREFORE, for good and valuable consideration, which the parties acknowledge, the City and CONTRACTOR agrees to enter into and does hereby enter into this Agreement as set forth herein:

1. RECITALS: The foregoing Recitals are true and correct and are incorporated herein as material provisions of this Agreement by this reference.

2. SERVICES. CONTRACTOR, as an independent contractor and consultant, shall provide the City with sidewalk inspection and grinding services in accordance with the terms and conditions of the Original Government Contract between Orlando and CONTRACTOR attached hereto as Exhibit “A,” except that the “City of Winter Garden” shall be substituted for the “City” and references to “City of Orlando.” For services rendered by CONTRACTOR to the City, the City shall pay CONTRACTOR based on the $6.45 per LF unit price specified in the Original Government Contract.
Contract multiplied by the number of units ordered by the City of Winter Garden through work orders issued by the City to CONTRACTOR. The City shall specify the location of services to be performed through work orders. There is no guaranteed minimum amount of units or services to be ordered under this Agreement. The date of final completion for services by CONTRACTOR under this Agreement is to be established for each task through work order(s) issued by the City. Except to the extent they conflict with this Agreement, the scope of services, terms and conditions of the Original Government Contract are hereby incorporated into this Agreement as material terms and conditions. In the event the terms of this Agreement conflict with the terms of the Original Government Contract, the terms of this Agreement shall control to the extent of the conflict. In the event that the terms of this Agreement conflict with the terms of WG Proposal, the terms of this Agreement shall control to the extent of the conflict. The City shall have no liability or responsibility for or concerning CONTRACTOR's services performed for Orlando or any other party. The estimated annual expenditure under the Original Governmental Contract does not apply to this Agreement.

3. TERM/TERMINATION. The term of this Agreement shall be from the Effective Date until June 30, 2020, unless terminated earlier in accordance with this Agreement. This Agreement may be terminated in the same manner as specified in the Original Government Contract. Thereafter, this Agreement may be extended as mutually agreed to by CONTRACTOR and the City (through its City Manager) for up to two (2) additional one year renewal terms running August 1st to June 30th.

4. INSURANCE. Within ten (10) days from the Effective Date and prior to rendering services to the City, CONTRACTOR shall provide the City with certificates of insurance evidencing insurance coverage required by the Original Government Contract. CONTRACTOR shall maintain required insurance coverage during the term of this Agreement.

5. Public Records Act. The public records act provisions of the Original Government Contract and the CONTRACTOR's duties thereunder are incorporated herein, except for the Orlando specific information which is substituted with the following: IF CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO CONTRACTOR's DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT: Angela Grimmage, City Clerk, 300 West Plant Street, Winter Garden, Florida 34787; Email: agrimmage@cwgdn.com.

6. Deductive Change Orders. At any time and without penalty or cost, City shall have the right to reduce or eliminate any portion of the services not yet performed by CONTRACTOR from a particular work order (or task order) or generally from this Agreement through a unilateral directive or change order, and reduce the work order (or task order) sum accordingly based on hourly rates and unit prices for the portion of the services being eliminated.

7. No Liens. CONTRACTOR acknowledges and agrees that the City is a Florida municipality, and as such, the City's property, the work and the Project involved are not subject to
construction liens pursuant to Chapter 713, Florida Statutes and other any liens. CONTRACTOR and its sub-contractors, materialmen and laborers shall not file or record claims of lien or any other liens against the work, the Project or any property owned by the City. CONTRACTOR hereby agrees to indemnify, defend and hold the City harmless from all liens filed by CONTRACTOR and its sub-contractors, materialmen and laborers and all other claiming through CONTRACTOR against the Project, work and any property owned by the City, including for the City’s attorneys’ fees and costs (including for pre-suit, trial and appellate level expenses with attorneys selected by City).

8. Notice. Whenever in this Agreement it is necessary to give notice or demand by either party to the other, such notice or demand shall be given in writing and sent by certified or registered mail, return receipt requested, and addressed as follows:

To CONTRACTOR: American Grinding Company, LLC
Attn: President
15 Union Avenue S.E., Suite 100
Grand Rapids, MI 49503

To City: City of Winter Garden
Assistant City Manager for Public Services
300 West Plant Street
Winter Garden, Florida

With copy to: City of Winter Garden
Attn: City Attorney
300 West Plant Street
Winter Garden, Florida

9. EFFECTIVE DATE. The Effective Date of this Agreement shall be the date when the last of the parties has executed this Agreement.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement as of the day and year entered by the last party executing this Agreement as written below.

American Grinding Company, LLC

CITY OF WINTER GARDEN, a Florida municipal corporation

By: Michael Bollhoefer
Its: City Manager
Date: ___________________________

By: Joel VanVeen
Its: President, American Grinding
Date: 2/22/19
CITY OF ORLANDO
INVITATION FOR BIDS (IFB)

DATE OF ISSUE: MARCH 27, 2018
IFB DUE DATE: APRIL 26, 2018
IFB DUE TIME: 2:00 p.m., Local Time, City of Orlando, FL

BID DELIVERY LOCATION: City of Orlando
Procurement and Contracts Division
400 South Orange Avenue, Fourth Floor
Orlando, Florida 32801
Bid opening held at same location.

IFB TITLE: SIDEWALK INSPECTION AND GRINDING

IFB NO: IFB18-0282
(IFB NUMBER MUST BE PLACED ON FRONT OF ENVELOPE)

THIS IS NOT AN ORDER

DIRECT ALL INQUIRIES TO: Maureen S. Bowman, Purchasing Agent II
Phone: (407) 246-2363
Email: TeamC @cityoforlando.net

BUSINESS NAME & ADDRESS

American Grinding Company, LLC
Business Name

15 Union Ave SE, Suite #100
Address

Grand Rapids, MI 49503
City, State, Zip

(888) 556-7344 Telephone Number

Joel Van Veen Contact Individual

15 Union Ave SE, Suite #100 Contact Address

Grand Rapids, MI 49503 Contact City, State, Zip

(321) 234-3441 Contact Telephone Number

joel @ americangrindingco.com Contact Email Address

It is the intent and purpose of the City of Orlando that this Invitation for Bids promotes competitive bidding. It shall be the bidder's responsibility to advise the City's Procurement and Contracts Division at the address noted herein, if any language, requirements, etc. or any combination thereof, inadvertently restricts or limits the requirements stated in this Invitation for Bids to a single source. Such notification must be submitted in writing and must be received by the Procurement and Contracts Division not later than ten (10) days prior to the bid closing date.
SPECIFICATIONS FOR THE SIDEWALK INSPECTION AND GRINDING

I. GENERAL

A. This work is a service contract for the Sidewalk Trip Hazard Remediation and Condition Survey for the City of Orlando (City). The initial Contract time will be for a period of one year (12 months) with up to four (4) additional twelve (12) month periods or portions thereof, up to a cumulative total of sixty (60) months. The Work includes surveying all sidewalks in the City, documenting trip hazards, damaged sidewalks, and grinding raised joints and uneven cracks. Replacing damaged sidewalk panels is not part of the Work. Staff in the Streets and Stormwater Division will designate initial Work Areas for the Contractor to begin work, but the Contractor will be responsible for surveying and reporting repair needs for the City sidewalks as determined by the City of Orlando Streets and Stormwater Division. The minimum grinding rate is to be no less than 250 linear feet per day and have an average range of 250 to 350 linear feet per day.

B. The estimated annual expenditure is $750,000.00.

C. These specifications cover the Contractor’s requirements for sidewalk grinding and reporting of trip hazards greater than ¼ inch. A trip hazard may include: cracks, separations, and or raised edges in the sidewalk surface that have a minimum of ¼ inch difference in elevation across the crack or edge. The reports will become part of the City’s sidewalk hazard inventory.

D. The Work described in each item includes the Contractor furnishing of all materials, equipment, supplies, and tools, along with the performance of all labor and services, and all incidentals necessary to complete the repairs and reports associated with sidewalk trip hazards within the City.

E. The Contractor shall have a minimum of three (3) years experience in sidewalk grinding. References shall include projects in the State of Florida during the last three (3) years that involve sidewalk grinding and trip hazard remediation.

II. EQUIPMENT

A. Equipment must be able to grind from 1/4 inch to 2 inches. Grinding equipment must be self contained with integral debris/dust recovery system and designed to capture debris and dust by-products of the grinding operation to minimize the presence of air-borne dust.

B. Grinding will be done dry without the use of water.

C. Equipment noise must be minimal so it does not disturb the public and the public will not need to wear hearing protection if located 10 ft. or further from the operation of the equipment. Per OSHA, hearing protection is required for individuals exposed to noise over 85 dB, as such the City requires that the equipment to perform the Work must not exceed the 85 dB at 10 ft.
D. Contractor shall own or lease commercial equipment that the City considers sufficient to provide services as specified. Commercial concrete grinding equipment is required.

E. Equipment shall be kept in good working order at all times. Proposed equipment shall be documented in Attachment “L”, Bidder’s Equipment List, attached in Forms and Submittal Documents. Bidder shall submit additional pages as necessary to document the equipment. Bidder will submit applicable descriptive literature and technical data to fully detail all features, designs, construction, finishes of the equipment proposed for grinding on this project.

F. The failure of the Contractor to obtain and maintain sufficient equipment to provide the services as specified in this solicitation may be cause for termination of Contract.

G. Inspection and acceptance of proposed equipment to be used on this project shall be performed by a representative from the City’s Streets and Stormwater Division, or such other specifically designated City Representative.

III. SCOPE OF WORK

A. Work Areas: Staff in the Streets and Stormwater Division will provide maps to the Contractor with Work Areas and street names as Work Orders. The Contractor will be responsible for surveying all sidewalks in the Work Areas, performing repairs, and identify other repair needs.

B. Trip Hazard Locations: Contractor will identify and remove all trip hazards in the Work Area that are between ¼” to 2” in height (as long as 2” of concrete thickness remains after grinding), and where the cross slope of the sidewalk does not exceed 2%. The surface area after grinding must be textured to meet ADA standards for pedestrian safety; which includes a slip resistant surface that does not become slippery when wet. Panels that are not repairable, or fractured, or broken will be documented in a weekly report.

C. Trip Hazard Location Documentation: The Contractor shall provide the City with an Excel spreadsheet (Microsoft Excel 2007 or later) in electronic format that lists the GPS location, street name and address, length and height of the trip hazard, and the length of each grind. The Contractor will document all hazards that cannot be removed by grinding. After the Contractor submits the weekly report, City staff will verify and document the reported work.

D. Advance Notification of Work: The Contractor shall coordinate with the Streets and Stormwater Division two weeks in advance of initiating work in the identified Work Areas in a manner agreed upon by the Contractor and City prior to contract execution.

E. Mobilization: There are no additional costs for mobilization. If the Contractor completes work in one Work Area in less than a full day and needs to move to another Work Area in the same day, the Contractor may not charge a fee for mobilization between Work Areas. The work will be continuous throughout the year. Mobilization is included in the Contract linear price.
F. Damage to Grass/Vegetation Areas: Grass or landscaped areas damaged by the Contractor shall be restored at the Contractor's expense to conditions that are equal to or better than the existing conditions prior to commencement of work. Restoration shall be at the direction of Streets and Stormwater staff.

G. Utility Conflicts and Coordination: If the Contractor damages any utilities, they shall immediately notify the Utility Company and Streets and Stormwater Division within 30 minutes of the damage. Any damage to existing utilities shall be repaired at the Contractor's expense.

H. Damage to Existing Irrigation System: If the Contractor damages any portion of an existing irrigation system they shall immediately notify the Property Owner either through personal contact or leaving their contact information to the extent practicable. The Contractor shall also notify the Streets and Stormwater Division within one hour of the damage. Any damage to existing irrigation systems shall be repaired at the Contractor's expense.

I. Clean up: Should the integral vacuum system fail to collect all debris, the Contractor shall sweep the sidewalks thoroughly after the grinding operation. All debris collected shall be removed and disposed to a recycling location or to a location approved by the Streets and Stormwater Division.

J. Permits and Traffic Control: The Contractor shall furnish and install all construction signs, pavement markings, barricades, and all other safety controls for the duration of each work-area. The Contractor must notify the City where they are working by e-mail or telephone. The Traffic Control Manager will determine if permits are required. The Contractor is responsible for compliance with any permits determined necessary by the Traffic Control Manager. The Contractor shall have a certified Florida Department of Transportation Intermediate Maintenance of Traffic (M.O.T.) Control person.

K. Measurements: Measurement is based on a liner foot of grinding regardless what the thickness is of the sidewalk.

IV. POLLUTION AND NOISE CONTROLS

A. Noise Control: Noise Control shall be in accordance with Federal, State, and City regulations. The Contractor shall comply with all City Ordinances and Regulations dealing with noise abatement.

B. Vibration Control: Vibration Control shall be in accordance with Federal, State, and City regulations. It is the Contractor's sole responsibility to prevent damage from vibration to adjacent structures and property.

C. Air Pollution Controls: Air Pollution Control shall be in accordance with Federal, State, and City regulations.

1. Fugitive Dust
   a. Do not cause or allow the emissions from any transport, handling, construction or storage activity to remain visible in the atmosphere beyond the property line of the emission source.
b. Take precautions to minimize dust emissions from operations involving demolition, excavation, grading, clearing of land and disposal of solid waste.

c. Do not cause or allow particulate matter to exceed 100 mg/m³ when determined as the difference between upwind and downwind samples collected on high volume samples at the property line for a minimum of five hours.

d. Take precautions to prevent visible particulate matter from being deposited upon public roadways as a direct result of construction or hauling operations. Precautions shall include the removal of particulate matter from equipment before movement to paved streets, or the prompt removal of material from paved streets onto which such material has been deposited.

2. Solid and Hazardous Waste

a. Solid and Hazardous Waste Control shall be in accordance with Federal, State, and City regulations.

b. The Contractor is solely responsible for the disposal of any hazardous waste that is generated by the Contractor's operation.

D. Execution: In order to implement these regulations, Contractor shall use the following procedures and techniques:

1. Air Pollution

a. Dust

1) Cover loads of materials, debris and soil transported from construction sites.

2) Daily water down and sweep streets, which have heavy volumes of construction vehicles carrying debris and excavated materials.

3) Establish regular cycles and locations for washing trucks, which haul soil from the site.

4) Water down construction sites as needed to suppress dust, during handling of excavation soil or debris or during demolition.

b. Burning of wastes on site is prohibited. Remove scrap and waste material and dispose of in accordance with laws, codes, regulations, ordinances and permits.

c. Use construction equipment, which has been designed and equipped to prevent or control air pollution in conformance with the regulations of the EPA, state and local authorities. Contractor shall have available evidence of such design and equipment shall be maintained and made available for inspection by Construction Manager.

d. Establish and maintain records of the routine maintenance program for internal combustion engine powered vehicles and equipment used on the project. These records shall be held available for inspection by Construction Manager.
2. Solid and Hazardous Waste
   a. Solid wastes may be disposed of in a number of ways, including reuse on the project, sale for fuel, through controlled incineration, donation to other public private dump sites, either free or for a fee. The method of disposal is restricted according to the classification of the waste material by the CFR 40 - 190 to 399, and by local requirements.
   b. Hazardous material shall be disposed of in Class I or Class II-1 waste disposal facilities.
   c. Haul routes for transporting solid or hazardous wastes are subject to the approval of Construction Manager.

V. INSPECTIONS AND OBSERVATIONS
   A. The City Representative or designee will make periodic reviews of the entire site to evaluate the Contractor's performance. The Contractor will, on sole judgment of the City Representative or his designee, make necessary repairs and adjustments required to fulfill the obligations and conditions of the Contract.
   B. Contractor personnel are expected to conduct themselves in a courteous manner, performing their functions with the appropriate professionalism.

VI. MEASUREMENT AND PAYMENT
   A. Payment for all work done in compliance with the Contract Documents, inclusive of furnishing all manpower, equipment, materials, and performance of all operations relative to construction of this project, will be made under Pay Items. Work for which there is not a pay item will be considered incidental to the Contract and no additional compensation will be allowed.
   B. The City reserves the right to modify work as may be necessary, and increase or decrease quantities of Work to be performed, including deduction or cancellation of any one or more of the Pay Items. Changes in the Work shall not be considered as a waiver of any conditions of the Contract nor invalidate any provisions thereof. When changes result in changes in the quantities of the Work to be performed, the Contractor will accept payment according to Contract Unit Prices that appear in the original contract.
   C. The Contractor's attention is again called to the fact that the quotations for the various items of work are intended to establish a total price cost for completing the work in its entirety. Should the Contractor feel that the cost of any item of the work has not been established by the Bid Form, Contractor shall include the cost for the work in some other applicable bid item, so that his proposal for the project does reflect his total price for completing the work in its entirety.
   D. The quantities for payment under this Contract shall be determined by actual measurement and payment of the completed items, in place, ready for service and accepted by the City, in accordance with the applicable method of measurement therefore contained herein. A representative of the Contractor shall witness all field measurements.
E. Work performed by the Contractor outside the limits of construction shall be at the Contractor's expense.

F. Invoice Processing

1. Contractor will invoice the City per location. The Contractor shall list the linear feet of work completed per location in the spread sheet provided by the Contractor.

2. Contractor shall submit to the City Representative an invoice for completed work only after a field inspection of work has been jointly verified with representatives of the Contractor and City. The City Representative shall issue a Work Order Acceptance Certificate to the Contractor upon successful verification of the completed work. All Invoices shall be presented to Streets & Stormwater Division 1010 Woods Ave. Orlando, FL 32805, for processing.

G. Payment of Subcontractors

Final and complete payment will be made on the basis of completion and acceptance by the City of the work performed under the contract and receipt of satisfactory evidence that all payrolls, bills for materials, have been paid in full. Payments of subcontractors shall be made in compliance with §218.735 (6) et sq. Florida Statutes. The existence of any unpaid bills or charges for labor, materials or other supplies used directly by the Contractor or any subcontractor under the contract, shall constitute cause for the City to withhold final payment until said bills or charges are paid.
Bidder's Name: American Grinding Company, LLC

**BID PRICE FORM**

You are invited to Bid on the following: **SIDEWALK INSPECTION AND GRINDING**

The bidder, having carefully examined the specifications and Terms and Conditions herein, proposes to furnish all labor, materials, equipment and other items without exception for the proper execution and completion of the work, and if awarded the contract, to complete the said work within time limits as specified for the following bid prices.

<table>
<thead>
<tr>
<th>Item No.</th>
<th>Estimated Unit</th>
<th>Unit</th>
<th>Description</th>
<th>Unit Price</th>
<th>Total</th>
</tr>
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<tr>
<td>1</td>
<td>75,000</td>
<td>LF</td>
<td>Seventy Five Thousand Linear Feet</td>
<td>$6.45</td>
<td>$483,750.00</td>
</tr>
</tbody>
</table>

GRAND TOTAL $ 483,750.00

Bidder Initials __JVV_

1. FOB Point ______ Destination ______

2. Discount Payment Terms (if any): ___% , if paid within ___ days after receipt of invoice.

3. Is your company willing to accept the VISA ePayable solution for payment of all invoices?  
   ✓ Yes   ___ No

4. Is your company willing to serve as a secondary supplier in the event your company is not selected for primary award?  
   ✓ Yes   ___ No

Recheck your quotations prior to submission. Bids may not be changed after being opened.
BIDDER'S CERTIFICATION FORM:

I have carefully examined the Invitation for Bids, Instructions to bidders, General, Standard and Special Conditions, Specifications, Contract and Acceptance Form and any other documents accompanying or made a part of this Invitation for Bids.

I hereby propose to furnish the goods or services specified in the Invitation for Bids at the prices or rates quoted in my bid. I agree that my bid will remain firm for a period of up to ninety (90) days in order to allow the City adequate time to evaluate the bids.

I agree to abide by all conditions of this bid and understand that a background investigation may be conducted by the Orlando Police Department prior to award.

I certify that all information contained in this bid is truthful to the best of my knowledge and belief. I further certify that I am duly authorized to submit this bid on behalf of the bidder as its act and deed and that the vendor/contractor is ready, willing and able to perform if awarded the bid.

I certify, under oath, that this bid is made without prior understanding, agreement, connection, discussion, or collusion with any other person, firm or corporation submitting a bid for the same product or service. I further certify that no officer, employee or agent of the City of Orlando or of any other Proposer has a financial interest in this bid. I further certify that the undersigned executed this Bidder's Certification with full knowledge and understanding of the matters therein contained and was duly authorized to do so.

American Grinding Company, LLC
NAME OF BUSINESS

BY: Joel Van Veen
SIGNATURE

15 Union Ave SE, Suite #100
MAILING ADDRESS

Grand Rapids, MI 49503
CITY, STATE, ZIP CODE

(311) 231-3341
TELEPHONE NUMBER

(888) 556-7799
FAX NUMBER

Joel@americangrindingco.com
E-MAIL ADDRESS

State of Florida
County of Orange

Sworn to (or affirmed) and subscribed before me this 20 day of April, 2018, by

Joel Van Veen.

Signature of Notary
Notary Public, State of Florida

Personally Known -OR-
Produced Identification

Type: MI DL

Company Tax ID # 45-5068772
(The City only requires Company Tax ID numbers. The City is not requesting individual social security numbers.)
CONTRACT AND ACCEPTANCE FORM FOR SOLICITATION NO. IFB18-0282:

Upon execution of this contract below by the City of Orlando ("City"), the undersigned hereby agrees to provide all goods and services set forth in its bid in response to the above referenced solicitation ("Solicitation") in accordance with, and subject to, all terms, conditions, and provisions of the Solicitation at the prices set forth in the undersigned’s bid for the items and work awarded to it by the City. This Contract and Acceptance Form together with the (i) Solicitation, including all addenda, and (ii) the undersigned’s bid in response to the Solicitation, including all schedules and forms submitted with the bid, all of which are hereby incorporated herein by this reference, shall constitute the formal written contract between the City and the undersigned.

STATE OF ..............................
COUNTY OF ..............................

NAME & TITLE, TYPED OR PRINTED

Joel Van Veen  President

AMERICAN GRINDING COMPANY, LLC

NAME OF BUSINESS

15 Union Ave SE, Suite #100

MAILING ADDRESS

GRAND RAPIDS, MI 49503

CITY, STATE, ZIP CODE

PHONE: (321) 234-3411

FAX: (888) 556-7344

E-MAIL: joel@americangrindingco.com

FOR USE BY THE CITY OF ORLANDO ONLY

This contract is awarded to the party listed above as a: Primary Supplier:  Secondary Supplier:  

This contract is for: All Item Numbers:  Item Numbers:  

INITIAL CONTRACT TERM:  7/31/18 to 7/30/19

ACCEPTANCE:

CITY OF ORLANDO, FLORIDA

By: ........................................

Chief Procurement Officer

DAVID BILLINGSLEY, CPSM, C.P.M.

Date: June 19, 2018

APPROVED AS TO FORM AND LEGALITY for the use and reliance of the City of Orlando, Florida, only.

CITY OF ORLANDO, FLORIDA

By: ........................................

Assistant City Attorney

ORLANDO, FLORIDA

Date: June 18, 2018
From: Jon Williams, Assistant City Manager - Public Services
Via: Mike Bollhoefer, City Manager
Date: March 7, 2019  Meeting Date: March 14, 2019
Subject: Approval of the rankings and contracts for continuing professional surveying services

Issue: Staff has completed the request-for-qualifications process for continuing consulting contracts for professional surveying services. The following three firms have been selected for the City Commission’s consideration:

Southeastern Surveying and Mapping, Inc.
Cribb Philbeck Weaver Group (CPWG), Inc.
KPM Franklin

The surveying services will be related to engineering design and property boundaries for water, wastewater, stormwater, and roadway projects.

The work will be performed on an as-needed basis. Compensation is based on an hourly fee schedule.

Recommended action:

Approve the RFQ rankings and the contracts for continuing professional surveying services with the following companies:

Southeastern Surveying and Mapping, Inc.
Cribb Philbeck Weaver Group (CPWG), Inc.
KPM Franklin

Attachments/References:

- Contracts for Professional Surveying Services
CONTINUING CONSULTING CONTRACT FOR
PROFESSIONAL SURVEYING AND MAPPING SERVICES

THIS CONTRACT (hereinafter “Contract” or “Agreement”) made and entered into this _____day of ______________2019, by and between the CITY OF WINTER GARDEN, a Florida municipal corporation, whose address is 300 West Plant Street, Winter Garden, Florida 34787, hereinafter referred to as “CITY” and Southeastern Surveying and Mapping Corporation, whose address is 6500 All American Boulevard, Orlando, FL 32810, hereinafter referred to as “CONSULTANT.”

RECITALS

WHEREAS, the CITY desires to retain professional consulting services for professional surveying and mapping services of a specified nature and on a task by task basis; and

WHEREAS, the CITY desires to employ the CONSULTANT in connection with the services required, upon the terms and conditions hereinafter set forth, and the CONSULTANT is desirous of obtaining such employment and of performing such services upon said terms and conditions.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter contained, it is agreed by and between the parties hereto as follows:

SECTION 1
GENERAL PROVISIONS

1.1 Services. The CONSULTANT shall provide services (“Services”) for the CITY as required by the CITY on a task-by-task basis, which may include, but is not limited to:

- Engineering surveys
- Boundary surveys
- Topographic surveys
- Aerial surveys
- Right-of-way surveys and maps
- Hydrographic surveys
- Quantity surveys
- As-built surveys
- Underground utility surveys
- Planimetric maps
- Easements
- Legal descriptions and sketch of description
- Construction layout
- Cut and fill calculations
- G.I.S./CADD services
- GPS services
- Plan review services, including plat review per F.S. Chapter 177
- Other related surveying and mapping services

The CONSULTANT hereby represents and warrants to CITY that CONSULTANT is experienced in and competent to perform the Services described in this Agreement. If the CONSULTANT finds that it is not
experienced in or licensed to perform the Services for a particular Service Authorization requested by the CITY, the CONSULTANT shall immediately inform the CITY of such prior to the issuance of the Service Authorization, and the CITY shall not issue such Services Authorization to CONSULTANT. The CONSULTANT shall perform any and all Services assigned in a timely, efficient, and cost-effective manner that complies with professional industry standards, and applicable federal, state, and local laws and regulations, and, in the case of surveying services, in accordance with professional surveying standards.

1.2 Services Authorization. The CITY shall, from time to time at its sole discretion, authorize the CONSULTANT in writing to provide Services for a specific task or project (“Project”) by issuing a Services Authorization. A Services Authorization shall, by mutual agreement of the parties, set forth, (1) the Scope of Services, (2) the time for performance, (3) method and amount of compensation, whether such is to be paid pursuant to a lump sum amount or the fee schedule attached as Exhibit “A” and incorporated herein, (4) the deliverables, if any (which are the items to be provided to the CITY as a result of the Services), and (5) the services, information and data that can be provided by the CITY to the CONSULTANT.

1.3 No Guarantee on Amount or Type of Work. The CITY does not guarantee, warrant, or represent that any number of Projects or any particular type of Project will be assigned to the CONSULTANT under the terms of this Agreement. Furthermore, the purpose of this Agreement is not to authorize a specific Project, but to set forth certain duties, obligations, rights, and responsibilities that shall be automatically incorporated into any Services Authorization that may be mutually agreed to by the parties. The CITY shall have the sole discretion to select the Project(s), if any, which may be given to the CONSULTANT. The CONSULTANT shall not be entitled to compensation for any services rendered in excess of those specifically requested by CITY.

1.4 Contract Period. The Contract Period is for one (1) year from the date of CITY COMMISSION approval with an option by the CITY to renew the contract on an annual basis up to, but not to exceeding five (5) years. Unless terminated by the CITY prior to the end of any one year term, the contract shall be automatically renewed on the annual anniversary date of the CITY COMMISSION’s approval of this Agreement for the next succeeding one year term with the condition that the CITY’s obligation to pay under this Agreement for each year is contingent upon the CITY in its good faith judgment having sufficient funds to make an annual appropriation for the Services to be provided under this Agreement. The Agreement shall continue in full force and effect from the date first written above until terminated in accordance with Section 6 or until the Agreement automatically expires five (5) years after CITY COMMISSION approval. The above time periods may be extended to complete Services being rendered under a specific task that has already been identified in a Services Authorization issued prior to the expiration of the Agreement.

1.5 All references to drawings shall mean both traditionally drafted as well as computer-based, and all submissions of drawings will include paper, mylar, and computer file versions as appropriate. The CONSULTANT shall provide all computer generated material to the CITY in a digital format that is compatible with those systems employed by the CITY.
SECTION 2
RESPONSIBILITY OF THE CONSULTANT

2.1 The CONSULTANT shall be responsible for the professional quality, technical accuracy, and the coordination of all designs, drawings, borings, studies, tests, inspections, assessments, specifications, and other Services furnished by the CONSULTANT under this Contract. The CONSULTANT shall, without additional compensation, correct or revise any errors or deficiencies in its designs, drawings, borings, studies, tests, inspections, assessments, specifications, and other Services.

2.2 For each Project, the CONSULTANT shall provide a Project Manager who must be currently employed by the CONSULTANT and will serve as CONSULTANT point person for correspondence and other communication with the CITY’s representatives.

2.3 Substitution of the Project Manager or Other Key Personnel. The CONSULTANT shall not substitute any key personnel without the prior written approval of the City Manager or the City Manager’s appointee (“City Project Manager”) to oversee the specific task assigned to CONSULTANT. Any such requests shall be supported by comprehensive documentation outlining the reason(s) for the proposed substitution to include the specific qualifications of the proposed substitute. Approval of the request shall be at the discretion of the CITY. Further, the CITY, in lieu of approving a substitution, may initiate other actions under the contract, including termination of CONSULTANT under this Contract or under the specific task assigned.

2.4 Neither the CITY’s review, approval or acceptance of, nor payment for, the services required under this Contract shall be construed to operate as a waiver of any rights under this Contract or of any cause of action arising out of the performance of this Contract, and the CONSULTANT shall be and remain liable to the CITY in accordance with applicable law for all damages suffered directly or indirectly by the CITY caused by the CONSULTANT’s negligent performance of any of the Services furnished under this Contract.

2.5 The rights and remedies of the CITY provided for under this Contract are in addition to any other rights and remedies provided by law.

2.6 The CONSULTANT shall take reasonable measures and precautions to minimize damage to site(s) where Services are being performed and any improvements located thereon resulting or arising from the performance of the Services.

2.7 Public Records Laws. CONSULTANT acknowledges and agrees that the CITY is a public entity that is subject to Florida’s public records laws and as such, records in CONSULTANT’s possession relating to Project(s) and work performed for the CITY are subject to inspection and copy pursuant to Chapter 119, Florida Statutes, unless otherwise exempt, deemed confidential, or excepted by applicable law. CONSULTANT shall comply with Chapter 119, Florida Statutes, and specifically with the “Contractor” requirements of Section 119.0701(2)(b), Florida Statutes concerning public records, which statutory requirements are hereby incorporated herein by this reference.

IF THE CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONSULTANT’S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT CITY OF WINTER GARDEN, ATTN: CITY CLERK, TELEPHONE: 407-656-4111, EMAIL:
Upon request by the CITY, the CONSULTANT shall, within three business days, supply copies of said public records to the CITY. All books, cards, registers, receipts, documents, and other papers in connection with this Agreement shall, at any and all reasonable times during the normal working hours of the CONSULTANT, be open and freely exhibited to the CITY for the purpose of examination and/or audit. Since public records are of utmost importance to the conduct of CITY business and because of the legal obligations imposed upon the CITY and CONSULTANT by the Public Records Law, CONSULTANT agrees that it shall, under no circumstances, withhold possession of any public records, including originals, copies or electronic images thereof when such are requested by the CITY, regardless of any contractual or other dispute that may arise between CONSULTANT and the Owner. Upon termination or expiration of this Agreement, CONSULTANT shall make arrangement with the CITY’s City Clerk to deliver public records in CONSULTANT’s possession to the CITY. This provision shall survive expiration and termination of this Agreement.

2.8 If the CONSULTANT is comprised of more than one legal entity, each such entity shall be jointly and severally liable hereunder.

SECTION 3
CITY’S RESPONSIBILITIES

3.1 Requirements for the Project. The CITY shall provide criteria and information as may be needed by the CONSULTANT to ascertain and meet the CITY’s requirements for the assigned task in a timely manner, including objectives and constraints.

3.2 Access to Property. The CITY shall arrange for access to and make provisions for the CONSULTANT to enter upon public and private property as required for the CONSULTANT to perform its Services.

3.3 City Project Manager. The CITY reserves the right to appoint a City Project Manager for any Services Authorization. The City Project Manager shall issue any and all written authorizations to the CONSULTANT that the Project may require, or that may otherwise be defined or referred to in this Agreement. The City Project Manager shall also, 1) act as the CITY’s agent with respect to the Services rendered hereunder; 2) transmit instructions to and receive information from the CONSULTANT; 3) communicate the CITY’s policies and decisions to the CONSULTANT regarding the Services; 4) determine, initially, whether the CONSULTANT is fulfilling its duties, responsibilities, and obligations hereunder; and 5) determine, initially, the merits of any allegation by the CONSULTANT respecting the CITY’s nonperformance of any Project obligation. All determinations made by the City Project Manager, as outlined above, shall be final and binding upon the CONSULTANT in regard to further administrative review, but shall not be binding upon the CONSULTANT in regard to general appearances before or appeals to the Winter Garden City Commission, or appearances before or appeals to a court of competent jurisdiction.

3.4 Notice and Extension of Term. The CITY shall give prompt written notice to the CONSULTANT whenever the CITY observes or otherwise becomes aware of any development that affects the scope or timing of the CONSULTANT’s Services, or any defect in the work of contractor(s) affecting a Project. If the CONSULTANT has been delayed in completing its Services through no fault or negligence of its own, and, as a result, will be unable to complete performance fully and satisfactorily under the provisions of any
Services Authorization, then, in the CITY’s sole discretion, and upon the submission to the CITY of evidence of the causes of the delay, the CONSULTANT shall be granted an extension of its Project schedule equal to the period the CONSULTANT was actually and necessarily delayed.

SECTION 4
PAYMENTS TO CONSULTANT

4.1 For the first three (3) years (first one-year term and two subsequent one year renewal terms, if exercised) of this Agreement, the CONSULTANT’s rates shall be fixed for those certain services as set forth in Exhibit “A” attached hereto and incorporated herein. Prior to the renewal of the term for the 4th year of this Agreement, the CITY and CONSULTANT shall meet and discuss in good faith and negotiate rate increases to go into effect for the last two (2) one-year renewal terms of this Agreement. This provision shall not prohibit the City from negotiating a lump sum (or fixed priced) for each Project for which a Services Authorization is desired.

4.2 CONSULTANT will invoice the CITY for services upon completion of Project Services or once each month for Services performed during the preceding monthly period. The CITY will pay the CONSULTANT for the Services as detailed in each of the CONSULTANT’s narrative invoices, and in accordance with the lump sum price negotiated for such services or schedule of fees and reimbursable expenses as set forth in Exhibit “A” attached hereto and incorporated herein. The invoices shall be in a format and contain information required by the CITY.

4.3 In accordance with Part VII, Chapter 218, Florida Statutes (Local Government Prompt Payment Act), invoices shall be paid by the City to the CONSULTANT within forty-five (45) calendar days of the City’s receipt of a proper invoice(s) (“Payment Period”), unless, the CITY: 1) within 10 days after the improper payment request or invoice is received, notifies the CONSULTANT, in writing, that the payment request or invoice is improper and indicates what corrective action on the part of the CONSULTANT is needed to make the payment request or invoice proper.

4.4 The CONSULTANT fully acknowledges and agrees that if at any time it performs Services on a Project contemplated by the parties, such Services which have not been, a) fully negotiated, reduced to writing, and formally executed by both the CITY and CONSULTANT; or b) reduced to writing by the CITY and signed by the CITY, then the CONSULTANT shall perform such Services without liability to the CITY, and at the CONSULTANT’s own risk.

4.5 For services that are not performed pursuant to a lump-sum contract, the CITY shall only be obligated to pay for those Services that the CONSULTANT can demonstrate are reasonable, provable, and within the Scope of Services of any Services Authorization.

4.6 No Liens. CONSULTANT acknowledges and agrees that the CITY is a Florida municipality and, as such, the CITY’s public property and the Project(s) involved are not subject to construction liens pursuant to Chapter 713, Florida Statutes or any other lien statute. CONSULTANT shall not file or record claims of lien or any other liens against any Project or property owned by the CITY.

4.7 Records. CONSULTANT agrees to maintain, and to cause each of CONSULTANT’s subconsultants and subcontractors to maintain, complete and accurate books and records (“Books”) in accordance with sound accounting principles and standards, and relating to all Services and the Project, and the related costs and expenditures to the CITY that have been contracted for and paid during the life of any Specific Authorization. The Books shall identify the Services rendered during each month of the Services Authorization, the date on which each Project expense was incurred, and whether the expense was Service
or reimbursable-related. These Books shall be maintained for five (5) years following Final Payment; five (5) years following termination of any Services Authorization; or any other time beyond five (5) years as may be required by Florida’s applicable Public Records retention schedules, whichever is the longer of these times. All Books shall be subject to audit by the CITY at all times during the term of this Agreement and for a period of one (1) year after the termination of this Agreement.

4.8 Final Payment. The acceptance by the CONSULTANT, its successors, or assigns, of any Final Payment due upon the termination of this Agreement or any Services Authorization or completion of any Project, shall constitute a full and complete release of the CITY from any and all claims or demands regarding further compensation for authorized Services rendered prior to such Final Payment that the CONSULTANT, its successors, or assigns have or may have against the CITY under the provisions of this Agreement, 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.

4.9 Local Government Prompt Payment Act (Disputed Invoices). In the event that the CITY receives an improper payment request or invoice, the City shall notify the CONSULTANT, in writing, that the payment request or invoice is improper and indicate what corrective action on the part of the vendor is needed to make the payment request or invoice proper. If a dispute arises between the CITY and the CONSULTANT concerning payment of a payment request or proper invoice, the dispute shall be finally determined by the local governmental entity pursuant to administrative dispute resolution procedures, which shall be commenced within 45 days after the CITY received the disputed payment request or proper invoice and concluded by final decision of the CITY within 60 days after the CITY received such. Such dispute resolution procedures shall be those procedures as may be currently established by resolution or ordinance of the CITY, or, if no such procedures have been established, the dispute shall be reviewed by the City Manager or his/her designee, who shall endeavor to meet with the CONSULTANT to discuss the nature of the dispute and attempt to reach a resolution of the dispute within the time allotted by law. If no resolution amenable to the parties can be reached, the City Manager or his/her designee shall issue a final decision in writing to the CONSULTANT within 60 days as required by statute.

SECTION 5
SCOPE, COST, AND FEE ADJUSTMENT

5.1 General. The CONSULTANT or the CITY may at any time notify the other of requested changes to the Scope of Services as set forth in a Services Authorization. The notification shall state the Scope modification and an adjustment of the cost estimate and fee specified in the subject Services Authorization to reflect such modification. The cost and fee adjustment due to modification in the Scope of Services may be calculated utilizing the same method of compensation applicable to the Services Authorization prior to the Scope modification. The CONSULTANT and the CITY understand that, unless the cost and fee adjustment is within a previously approved budget, any change to the Scope of Services must be approved or authorized by the Winter Garden City Commission. If the cost and fee adjustment is within a previously approved budget for changes to the Scope of Services for the overall Project, the change may be approved by the City Manager.

5.2 Scope Reduction. The CITY shall have the sole right to reduce (or eliminate, in whole or in part) the Scope of any Project at any time and for any reason, upon written notice to the CONSULTANT specifying the nature and extent of the reduction. In such event the CONSULTANT shall be fully compensated for the Services already performed, including payment of all Project-specific fee amounts due and payable prior to the effective date stated in the CITY’s notification of the reduction. The
CONSULTANT shall also be compensated for the Services remaining to be done and not reduced or eliminated on the Project.

5.3 Scope Suspension. The CITY may, at any time and for any reason, direct the CONSULTANT to suspend work (in whole or in part) under this Agreement or any Service Authorization. Such direction shall be in writing, and shall specify the period during which Services shall be stopped. The CONSULTANT shall resume its Services upon the date specified or upon such other date as the CITY may thereafter specify in writing. The period during which the CITY stops the Services shall be added to the applicable Services Authorization term as CONSULTANT’s sole remedy for such suspension or delay. The suspension or delay of Services, regardless of whether caused by the actions or inactions of the CITY, shall not give rise to any claim by the CONSULTANT against the CITY.

SECTION 6
TERMINATION

6.1 Termination

This Agreement may be terminated, at any time, by either party by delivering a written notice to the other party at least thirty (30) days prior to the intended termination date. In the event of the termination of this Agreement, CONSULTANT shall be paid for Services completed prior to and on the date of termination, including those reimbursable reasonable and provable expenses required by any Services Authorization and actually incurred by the CONSULTANT; provided however, if CONSULTANT terminates this Agreement prior to the completion of a Project(s), CONSULTANT shall not be compensated for uncompleted work in progress, including but not limited to circumstances where no final report or testing results have been produced to the CITY.

6.2 Delivery of Materials Upon Termination

In the event of termination of this Agreement (or any Services Authorization) and prior to the CONSULTANT’s satisfactory completion of all the Services described or alluded to herein, the CONSULTANT, unless otherwise excused by the CITY in writing, shall promptly furnish the CITY, at no additional cost or expense, with one (1) physical copy and one (1) electronic copy of the following items, any or all of which may have been produced prior to and including the date of termination: data, specifications, test results, calculations, estimates, plans, drawings, computer print outs, surveys, construction documents, photographs, summaries, reports, memoranda; and any and all other documents, instruments, information, and materials (whether or not completed) generated or prepared by the CONSULTANT, or by any subconsultant or subcontractor, in rendering the Services described herein ("Documents"), and not previously furnished to the CITY by the CONSULTANT pursuant to this Agreement, or any Services Authorization. The Documents shall be the sole property of the CITY, and the CITY shall be vested with all rights provided therein of whatever kind and however created. The CONSULTANT shall also require that all such Subconsultants agree in writing to be bound by the provisions of this Subsection.

SECTION 7
MATERIALS, REUSE OF DOCUMENTS, AND CONFIDENTIALITY

7.1 General. One reproducible copy and one electronic copy of all Documents shall be supplied to the CITY at the CITY’s request by the CONSULTANT, and at the CITY’s cost. The final work product of all such materials, along with all formal CONSULTANT-CITY correspondence concerning any Project (e.g.
letters, tapes, memoranda, etc.) shall be the sole property of the CITY. Furthermore, the CITY may reuse such Documents at no additional cost, and the CITY shall be vested with all rights of whatever kind and however created that may be in existence thereto.

7.2 **Reuse of Documents.** The CITY acknowledges that the Documents are not intended for use in connection with any Project or purpose other than the Project and purpose for which the materials are prepared. Any use by the CITY of such Documents in connection with a Project or purpose other than that for which such Documents were prepared, without the prior written consent of the CONSULTANT, shall be at the CITY’s sole risk, and the CONSULTANT shall have no responsibility or liability related thereto.

**SECTION 8**
**NOTICES**

All notices denominated as such by this Agreement, or the City Code, or Florida law, required to be given to the CONSULTANT hereunder shall be in writing, and shall be given by hand-delivery or United States mail, postage prepaid, addressed to:

Southeastern Surveying and Mapping Corporation  
ATTN: Thomas K. Mead, PSM (President)  
6500 All American Boulevard  
Orlando, Florida 32810  
tmead@southeasternsurveying.com

CONSULTANT

All notices required to be given to the CITY shall be in writing, and shall be given by hand delivery or United States mail, postage prepaid, to the CITY and City Attorney, separately, at:

**CITY OF WINTER GARDEN**  
300 W. Plant Street  
Winter Garden, Florida 34787  
Attention: City Manager

**CITY OF WINTER GARDEN**  
300 W. Plant Street  
Winter Garden, Florida 34787  
Attention: City Attorney

Either party may change its address, for the purposes of this Subsection, by written notice to the other party given in accordance with the provisions of this Subsection.

**SECTION 9**
**WAIVER OF CONSEQUENTIAL DAMAGES**

IN NO EVENT SHALL THE CITY 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 CONSULTANT OR ANY THIRD PARTIES ARISING OUT OF THIS AGREEMENT AND/OR CONCERNING THE PERFORMANCE OF SERVICES BY THE CONSULTANT OR BY THE CITY UNDER THIS AGREEMENT OR UNDER A SERVICES AUTHORIZATION ISSUED UNDER THIS AGREEMENT.

**SECTION 10**
**INDEMNIFICATION AND INSURANCE**
10.1 **Indemnification.** The CONSULTANT agrees to indemnify, defend and hold harmless the CITY, its representatives, employees, agents, and elected and appointed officials, from liabilities, damages, losses and costs, including, but not limited to, reasonable attorneys’ fees and costs, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of the CONSULTANT and persons employed or utilized by the CONSULTANT in the performance of any Services rendered under this Agreement or any Services Authorization issued pursuant to this Agreement. For purposes of compliance with Florida law, CONSULTANT acknowledges that this provision shall be deemed a part of the Project specifications or the bid documents.

10.2 **Insurance.** The CONSULTANT shall purchase, maintain, and keep in full force, effect, and good standing, insurance in an amount necessary to fully protect CONSULTANT and its employees, agents, subconsultants and subcontractors from claims of the nature that are detailed below, that may arise out of, or result from, the CONSULTANT’s operations, performance, or Services, or all of these things, or any of these things in combination (CONSULTANT’s Operations), whether the CONSULTANT’s Operations are by the CONSULTANT, any of its employees, agents, subconsultants or subcontractors, or anyone directly or indirectly employed by any of them for whose act or 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 (with coverage limits required by present Florida Statutes);

2. Claims for damages because of bodily injury, occupational sickness or disease, or death of the CONSULTANT’s employees;

3. Claims for damages because of bodily injury, sickness or disease, or death of any person other than the CONSULTANT’s employees;

4. Claims for damages insured by usual personal injury liability coverage;

5. Claims for damages 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 (with coverage of at least $500,000 per occurrence);

7. Claims for bodily injury or property damage arising out of completed operations; and

8. Professional liability insurance (with coverage of at least $1,000,000 per occurrence).

10.3 **CITY’s Right to Inspect Policies.** The CONSULTANT shall, upon fifteen (15) days’ written request from the CITY, deliver copies to the CITY of any or all insurance policies and certificates of insurance relating to such policies that are required in this Agreement or any Services Authorization.

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**SECTION 11**

**MISCELLANEOUS PROVISIONS**
11.1 **Non-Exclusive Contract.** This Agreement is non-exclusive, and may be terminated at the CITY’s convenience with the proper notice having been given to the CONSULTANT pursuant to Sections 6 and 8 above. It is understood and acknowledged that the rights granted herein to the CONSULTANT are non-exclusive, and the CITY shall have the right, at any time, to enter into similar agreements with other surveyors, consultants, and subconsultants, and so forth, to have them perform such professional services as the CITY may desire.

11.2 **[Intentionally Left Blank]**

11.2.1 **Discrimination.** The CONSULTANT, for itself, its delegates, successors-in-interest, and its assigns, and as a part of the consideration hereof, does hereby covenant and agree that, 1) in the furnishing of Services to the CITY 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 CONSULTANT 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 CITY shall have the right to terminate this Agreement.

11.2.2 **Compliance with Law.** The CONSULTANT 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 CONSULTANT to its employees. The CONSULTANT shall also require, by contract, that all subconsultants and subcontractors shall comply with the provisions of this subsection.

11.2.3 **Licenses.** The CONSULTANT shall, during the life of this Agreement, 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 the CONSULTANT to render its Services or Work as described herein. The CONSULTANT shall also require all subconsultants and subcontractors to comply by contract with the provisions of this subsection.

11.2.4 **Compliance with New Regulations.** The CONSULTANT agrees that at such time as the local, state, or federal agencies modify their grant procedures in order for the CITY or the CONSULTANT to qualify for local, state, or federal funding for the Services to be rendered by the CONSULTANT, then the CONSULTANT shall consent to and make such modifications or amendments in a timely manner. If the CONSULTANT is unable to comply with applicable local, state, or federal laws and regulations governing the grant of such funds for Services to be rendered herein, then the CITY shall have the right, by written notice to the CONSULTANT, to terminate this Agreement. Furthermore, if the CONSULTANT’s compliance with such laws, regulations, rules, or procedures causes a material change to a term or condition of this Agreement, or to any Services Authorization, then the CITY agrees, upon sufficient proof of material changes as may be presented to it by the CONSULTANT, to amend all related CITY/CONSULTANT contractual obligations, and to revise such Project budgets accordingly.

11.3 **Consultant Not Agent of City.** The CONSULTANT is not authorized to act as the CITY’s agent hereunder and shall have no authority, expressed or implied, to act for or bind the CITY hereunder, either in CONSULTANT’s relations with subconsultants or subcontractor, or in any other manner whatsoever except as otherwise stated in a Services Authorization. CONSULTANT 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 CITY only with respect to the scope of work and the general results required.
11.4 **Assignment and Delegation.** The CITY and the CONSULTANT bind themselves and their partners, successors, executors, administrators, and assigns, to the other party of this Agreement in respect to all duties, rights, responsibilities, obligations, provisions, conditions, and covenants of this Agreement; except that the CONSULTANT shall not assign, transfer, or delegate its rights or duties, or both of these things, in this Agreement without the prior written consent of the CITY. The CITY has the absolute right to withhold such consent at its convenience, and, furthermore, if the CONSULTANT attempts to assign, transfer, or delegate its rights or duties in violation of these provisions without the CITY’s consent, then the CITY may terminate this Agreement as a breach of contract by the CONSULTANT and a failure by the CONSULTANT to substantially perform its obligations hereunder, and any such assignment shall be null, void, and of no legal effect. The CITY shall have the right to assign its rights (or any part of them) or to delegate its duties and obligations (or any part of them) to another entity that shall be bound by all applicable terms and conditions as provided in this Agreement.

11.5 **Entire Agreement.** This Agreement constitutes the entire Agreement between the parties, and shall supersede and replace all prior agreements or understandings, written or oral, relating to the matters set forth therein, and that specifically related to the execution of this particular document.

11.6 **Amendment.** This Agreement may be amended or modified only by a Services Authorization, or an Amendment, and as duly authorized and executed in writing by the parties.

11.7 **Validity.** The validity, interpretation, construction, and effect of this Agreement shall be in accordance with and governed by the laws of the State of Florida, only. In the event any provision hereof is determined to be unenforceable or invalid, such unenforceability or invalidity shall not affect the remaining provisions of this Agreement, which shall remain in full force and effect. To that extent, this Agreement is deemed severable.

11.8 **Headings.** The headings of the Sections or Subsections of this Agreement are for the purpose of convenience only, and shall not be deemed to expand, limit, or modify the provisions contained in such Sections or Subsections.

11.9 **Timeliness.** The CITY and the CONSULTANT acknowledge and understand that time is of the essence in this Agreement and any Service Authorization, and that the Services shall be performed in as expeditious a manner as may be in accord with the nature of each Project.

11.10 **Public Entity Crime.** Any Person or affiliate, as defined in 287.133 of the Florida Statutes, shall not be allowed to contract with the CITY, 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 CITY 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 City.

11.11 **Force Majeure.**
1. “Force Majeure” refers to any unforeseeable event, including, but not limited to, wars or natural disasters, the occurrence and effect of which is unavoidable and insurmountable. Economic burden, unprofitability, or other issues commonly associated with the conduct of business shall be deemed foreseeable events and shall not constitute a Force Majeure for the purposes of this Contract or any Service Authorizations issued hereunder.

2. Should a Party, due to the occurrence of Force Majeure, fail to perform this Agreement in full or in part, such Party shall be exempted and excused from those responsibilities and obligations for Services (other than for delay in the payment of money due and payable) to the extent that such responsibilities and obligations are proximately caused by such Force Majeure.

3. Should a Party fail to perform on time its duties or obligations under this Agreement and subsequently Force Majeure were to occur, such Party shall not be exempted from any of its liabilities hereunder as a result of its failure to perform such duties or obligations.

4. Should a Party be unable to perform this Agreement as a result of Force Majeure, it shall immediately inform the other Party of the situation and the reason(s) for the nonperformance, so as to minimize any losses incurred by the other Party as a consequence thereof. Such notification shall be in the form of a sworn affidavit from a principal of the Party claiming the existence of a Force Majeure event and shall fully set forth the details of the event as well as the direct effect of such upon the ability or capacity of the Party to render its Services pursuant to this Contract or Services Authorization. If feasible, the Parties may agree to amend in writing the schedules for any Services authorized to accommodate the situation; however, should a Force Majeure event preclude the Consultant from performing time-sensitive Services for the City, the City may terminate this Agreement or any Services Authorization issued hereunder and reassign Services to another Consultant at no risk or liability to the City.

11.12 Remedies and Costs. Unless specified otherwise herein, all remedies provided in this Agreement shall be deemed cumulative and additional, and not in lieu or exclusive of each other or of any other remedy available to either party, at law or in equity.

11.13 Dispute Resolution and Exclusive Venue. As a condition precedent to the filing of any suit or other legal proceeding and if the parties do not agree to the resolution of a dispute pursuant to § 4.8 of this Contract, 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 CITY shall select the mediator who, if selected solely by the CITY 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. The sole and exclusive venue for any litigation shall be in Orange County, Florida before the County Court or Circuit Court of the Ninth Judicial Circuit, in and for Orange County, Florida.

11.14 Attorneys’ Fees and Litigation Costs. In the event of mediation or litigation between the parties concerning or arising from this Agreement or any Services Authorization and unless otherwise provided by law, each party shall bear their own attorneys’ fees and litigation costs except for in claims by the CITY
for indemnity against CONSULTANT under this Agreement, for which claim(s), attorneys’ fees and litigation cost shall be due and payable to the prevailing party.

11.15 No Waiver of Sovereign Immunity. Nothing contained in this Agreement shall be considered or deemed a waiver of the CITY’s sovereign immunity protections or of any other immunity, defense or privilege afforded to the CITY or its officials, officers, employees and agents under law.

IN WITNESS WHEREOF, this Agreement has been fully executed on behalf of the parties hereto and by its duly authorized representatives, as of the date first written above.

ATTEST:

[Signature]

Name: Angela Grimmage, City Clerk

(SEAL)

APPROVED BY THE WINTER GARDEN CITY COMMISSION AT A MEETING HELD ON _____________, 20______.

[Signature]

By: [Signature]

Name: Thomas K. Mead, PSM

Title: President

APPROVED:

CITY OF WINTER GARDEN, FLORIDA

[Signature]

Name: Mike Bollhoefer, City Manager
## Exhibit A – Southeastern Surveying and Mapping Corporation Fee Schedule

### Surveying & Mapping Services

<table>
<thead>
<tr>
<th>Personnel Classification</th>
<th>Typical Work Tasks</th>
<th>Hourly Billing Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Professional Surveyor &amp; Mapper/PSM</td>
<td>Project Management, Project Surveyor Quality Control/Quality Assurance Reviews</td>
<td>$139.00 / per hour</td>
</tr>
<tr>
<td>Expert Witness</td>
<td>Attendance and Testimony at Trial</td>
<td>$278.00 / per hour</td>
</tr>
<tr>
<td>Survey Technician</td>
<td>Project Calculations Mapping Services</td>
<td>$98.00 / per hour</td>
</tr>
</tbody>
</table>

#### Survey Division

<table>
<thead>
<tr>
<th>Crew Size</th>
<th>Description</th>
<th>Billing Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Man Field Crew</td>
<td>Completes field data collection and inventory.</td>
<td>$103.00 / per hour</td>
</tr>
<tr>
<td>2 Man Field Crew</td>
<td>Performs reconnaissance activities for completion of survey related tasks.</td>
<td>$139.00 / per hour</td>
</tr>
<tr>
<td>3 Man Field Crew</td>
<td></td>
<td>$175.00 / per hour</td>
</tr>
<tr>
<td>4 Man Field Crew</td>
<td></td>
<td>$200.00 / per hour</td>
</tr>
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</table>

<table>
<thead>
<tr>
<th>Description</th>
<th>Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sketch of Description</td>
<td>$526.00</td>
</tr>
<tr>
<td>Residential Elevation</td>
<td>$478.00</td>
</tr>
<tr>
<td>Commercial Elevation</td>
<td>$903.00</td>
</tr>
<tr>
<td>Mortgage Survey quoted on a task by task basis per requirements</td>
<td></td>
</tr>
</tbody>
</table>

### GIS Mapping Services

<table>
<thead>
<tr>
<th>Personnel Classification</th>
<th>Typical Work Tasks</th>
<th>Hourly Billing Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Professional Engineer</td>
<td>Project Management, Quality Control/Quality Assurance Reviews</td>
<td>$139.00 / per hour</td>
</tr>
<tr>
<td>GIS Analyst</td>
<td>Database Design, Programming/ Quality Control/Quality Assurance</td>
<td>$103.00 / per hour</td>
</tr>
<tr>
<td>GIS Technician</td>
<td>Data Entry, Data Editing</td>
<td>$92.00 / per hour</td>
</tr>
<tr>
<td>2 Man GPS Crew</td>
<td>Field Asset Inventory (sub-meter)</td>
<td>$139.00 / per hour</td>
</tr>
<tr>
<td>1 Man GPS Crew</td>
<td>Field Asset Inventory (sub-meter)</td>
<td>$82.00 / per hour</td>
</tr>
</tbody>
</table>

---

**Licenses:**
- PSM: Florida Professional Surveyor & Mapper
- PLS: Alabama Professional Land Surveyor
- PE: Professional Engineer

**Certifications:**
- EI: Engineering Intern
- GISP: Geographic Information Systems Professional
- CST: Certified Survey Technician
### Subsurface Utility Engineering Services

#### Designating Services

<table>
<thead>
<tr>
<th>Service Description</th>
<th>Regular Rate</th>
<th>Emergency/On Call Services</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Night/Weekend/Overtime</td>
</tr>
<tr>
<td>Project Manager</td>
<td>$139.00 / per hour</td>
<td>$208.50</td>
</tr>
<tr>
<td>Senior Technician</td>
<td>$ 98.00 / per hour</td>
<td>$147.00</td>
</tr>
<tr>
<td>2 Man SUE Crew</td>
<td>$198.00 / per hour</td>
<td>$297.00</td>
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<tr>
<td>3 Man SUE Crew</td>
<td>$251.00 / per hour</td>
<td>$376.50</td>
</tr>
<tr>
<td>GPR Bore Route</td>
<td>$599.50</td>
<td>$898.50</td>
</tr>
</tbody>
</table>

\[ \text{Vacuum Excavation (Test Holes/VVH)} \]

<table>
<thead>
<tr>
<th>Test Holes Type</th>
<th>Rate per Test Hole</th>
<th>Rate per Test Hole with extra charges</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Test Hole/Dirt</td>
<td>$492.00</td>
<td>$738.00</td>
</tr>
<tr>
<td>1 Test Hole/Asphalt/Concrete</td>
<td>$611.00</td>
<td>$916.50</td>
</tr>
<tr>
<td>2 - 19 Test Holes/Dirt</td>
<td>$421.00 / each</td>
<td>$631.50</td>
</tr>
<tr>
<td>20 - 49 Test Holes/Dirt</td>
<td>$385.00 / each</td>
<td>$577.50</td>
</tr>
<tr>
<td>50 - 99 Test Holes/Dirt</td>
<td>$332.00 / each</td>
<td>$498.00</td>
</tr>
<tr>
<td>100 or more Test Holes/Dirt</td>
<td>$295.00 / each</td>
<td>$442.50</td>
</tr>
<tr>
<td>100 or more Test Holes/Asphalt/Concrete</td>
<td>$336.00 / each</td>
<td>$504.00</td>
</tr>
</tbody>
</table>

\[ \text{All Exploratory Excavation Projects} \]

Test Holes deeper than 10 feet may be charged at the Exploratory Excavation Rate.

Larger excavation projects which require specialized equipment (shoring, de-watering, etc.) will be quoted on a task by task basis.

\[ \text{Vacuum Excavation for Environmental Services} \]

Vacuum Excavation for Monitoring Wells/Soil Samples when requirements dictate vacuum or hand digging down 8 feet to 10 feet prior to drilling. (3”-4” in diameter, 8’ to 10’ deep, concrete/asphalt removed if necessary)

1 – 9 Monitoring Wells/Soil Samples | $301.00 / each | $451.50 |

10 – 19 Monitoring Wells/Soil Samples | $242.00 / each | $363.00 |

20 – 49 Monitoring Wells/Soil Samples | $182.00 / each | $273.00 |

\[ \text{Survey Services for Utility Projects} \]

<table>
<thead>
<tr>
<th>Service Description</th>
<th>Regular Rate</th>
<th>Emergency/On Call Services</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Night/Weekend/Overtime</td>
</tr>
<tr>
<td>Project Manager/Professional Surveyor and Mapper</td>
<td>$139.00 / per hour</td>
<td>$208.50</td>
</tr>
<tr>
<td>Two Person Survey Field Team</td>
<td>$139.00 / per hour</td>
<td>$208.50</td>
</tr>
<tr>
<td>Three Person Survey Field Team</td>
<td>$175.00 / per hour</td>
<td>$262.50</td>
</tr>
<tr>
<td>Clerical</td>
<td>$ 62.00 / per hour</td>
<td></td>
</tr>
</tbody>
</table>

\[ \text{Concrete Radar Mapping/Imaging} \]

(concrete assessment/inspection, grid scans & debris assessment)

1 Man Crew | $217.00 / per hour | $336.00 |

\[ \text{Closed Circuit Televising (CCTV) Services} \]

(Will be quoted on a task by task basis per requirements)

\[ \text{Maintenance of Traffic (MOT)} \]

If required MOT specialist will be contracted and the cost will be passed on with a 10% mark-up for coordination.

Off Duty Officer(s) (if Required per permitting) billing will be a pass through cost **and are not included** in the per lane closure cost listed below.

<table>
<thead>
<tr>
<th>Service Description</th>
<th>Rate per Lane Closure</th>
<th>Rate Mobilization</th>
</tr>
</thead>
<tbody>
<tr>
<td>Per Lane Closure</td>
<td>$731.00</td>
<td>$931.00</td>
</tr>
<tr>
<td>Sidewalk Closures</td>
<td>$200.00</td>
<td>$300.00</td>
</tr>
</tbody>
</table>

\[ \text{Mobilization} \]

Per Project in Excess of 50 Miles from Home Office Location | $900.00 | $1,350.00 |

\[ \text{Per Diem/Lodging Expenses} \]

<table>
<thead>
<tr>
<th>Service Description</th>
<th>Rate per Day</th>
</tr>
</thead>
<tbody>
<tr>
<td>Per Day Two Person Crew</td>
<td>$319.00</td>
</tr>
<tr>
<td>Per Day Three Person Crew</td>
<td>$438.00</td>
</tr>
</tbody>
</table>

If HAZWOPER CERTIFIED personnel are required there will be a 20% increase in the Hourly Rate.

Overtime rates will be charged for jobs requiring night work or Emergency/On Call Services
CONTINUING CONSULTING CONTRACT FOR
PROFESSIONAL SURVEYING AND MAPPING SERVICES

THIS CONTRACT (hereinafter “Contract” or “Agreement”) made and entered into this _____ day of
_____________ 2019, by and between the CITY OF WINTER GARDEN, a Florida municipal corporation,
whose address is 300 West Plant Street, Winter Garden, Florida 34787, hereinafter referred to as “CITY”
and Cribb Philbeck Weaver Group, Inc., whose address is 1221 East Broadway Street, Oviedo, FL
32765, hereinafter referred to as “CONSULTANT.”

RECITALS

WHEREAS, the CITY desires to retain professional consulting services for professional
surveying and mapping services of a specified nature and on a task by task basis; and

WHEREAS, the CITY desires to employ the CONSULTANT in connection with the services
required, upon the terms and conditions hereinafter set forth, and the CONSULTANT is desirous of
obtaining such employment and of performing such services upon said terms and conditions.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter
contained, it is agreed by and between the parties hereto as follows:

SECTION 1
GENERAL PROVISIONS

1.1 Services. The CONSULTANT shall provide services (“Services”) for the CITY as required by
the CITY on a task-by-task basis, which may include, but is not limited to:

- Engineering surveys
- Boundary surveys
- Topographic surveys
- Aerial surveys
- Right-of-way surveys and maps
- Hydrographic surveys
- Quantity surveys
- As-built surveys
- Underground utility surveys
- Planimetric maps
- Easements
- Legal descriptions and sketch of description
- Construction layout
- Cut and fill calculations
- G.I.S./CADD services
- GPS services
- Plan review services, including plat review per F.S. Chapter 177
- Other related surveying and mapping services
The CONSULTANT hereby represents and warrants to CITY that CONSULTANT is experienced in and competent to perform the Services described in this Agreement. If the CONSULTANT finds that it is not experienced in or licensed to perform the Services for a particular Service Authorization requested by the CITY, the CONSULTANT shall immediately inform the CITY of such prior to the issuance of the Service Authorization, and the CITY shall not issue such Services Authorization to CONSULTANT. The CONSULTANT shall perform any and all Services assigned in a timely, efficient, and cost-effective manner that comports with professional industry standards, and applicable federal, state, and local laws and regulations, and, in the case of surveying services, in accordance with professional surveying standards.

1.2 Services Authorization. The CITY shall, from time to time at its sole discretion, authorize the CONSULTANT in writing to provide Services for a specific task or project (“Project”) by issuing a Services Authorization. A Services Authorization shall, by mutual agreement of the parties, set forth, (1) the Scope of Services, (2) the time for performance, (3) method and amount of compensation, whether such is to be paid pursuant to a lump sum amount or the fee schedule attached as Exhibit “A” and incorporated herein, (4) the deliverables, if any (which are the items to be provided to the CITY as a result of the Services), and (5) the services, information and data that can be provided by the CITY to the CONSULTANT.

1.3 No Guarantee on Amount or Type of Work. The CITY does not guarantee, warrant, or represent that any number of Projects or any particular type of Project will be assigned to the CONSULTANT under the terms of this Agreement. Furthermore, the purpose of this Agreement is not to authorize a specific Project, but to set forth certain duties, obligations, rights, and responsibilities that shall be automatically incorporated into any Services Authorization that may be mutually agreed to by the parties. The CITY shall have the sole discretion to select the Project(s), if any, which may be given to the CONSULTANT. The CONSULTANT shall not be entitled to compensation for any services rendered in excess of those specifically requested by CITY.

1.4 Contract Period. The Contract Period is for one (1) year from the date of CITY COMMISSION approval with an option by the CITY to renew the contract on an annual basis up to, but not to exceeding five (5) years. Unless terminated by the CITY prior to the end of any one year term, the contract shall be automatically renewed on the annual anniversary date of the CITY COMMISSION’s approval of this Agreement for the next succeeding one year term with the condition that the CITY’s obligation to pay under this Agreement for each year is contingent upon the CITY in its good faith judgment having sufficient funds to make an annual appropriation for the Services to be provided under this Agreement. The Agreement shall continue in full force and effect from the date first written above until terminated in accordance with Section 6 or until the Agreement automatically expires five (5) years after CITY COMMISSION approval. The above time periods may be extended to complete Services being rendered under a specific task that has already been identified in a Services Authorization issued prior to the expiration of the Agreement.

1.5 All references to drawings shall mean both traditionally drafted as well as computer-based, and all submissions of drawings will include paper, mylar, and computer file versions as appropriate. The CONSULTANT shall provide all computer generated material to the CITY in a digital format that is compatible with those systems employed by the CITY.
SECTION 2
RESPONSIBILITY OF THE CONSULTANT

2.1  The CONSULTANT shall be responsible for the professional quality, technical accuracy, and the coordination of all designs, drawings, borings, studies, tests, inspections, assessments, specifications, and other Services furnished by the CONSULTANT under this Contract. The CONSULTANT shall, without additional compensation, correct or revise any errors or deficiencies in its designs, drawings, borings, studies, tests, inspections, assessments, specifications, and other Services.

2.2  For each Project, the CONSULTANT shall provide a Project Manager who must be currently employed by the CONSULTANT and will serve as CONSULTANT point person for correspondence and other communication with the CITY’s representatives.

2.3  Substitution of the Project Manager or Other Key Personnel. The CONSULTANT shall not substitute any key personnel without the prior written approval of the City Manager or the City Manager’s appointee (“City Project Manager”) to oversee the specific task assigned to CONSULTANT. Any such requests shall be supported by comprehensive documentation outlining the reason(s) for the proposed substitution to include the specific qualifications of the proposed substitute. Approval of the request shall be at the discretion of the CITY. Further, the CITY, in lieu of approving a substitution, may initiate other actions under the contract, including termination of CONSULTANT under this Contract or under the specific task assigned.

2.4  Neither the CITY’s review, approval or acceptance of, nor payment for, the services required under this Contract shall be construed to operate as a waiver of any rights under this Contract or of any cause of action arising out of the performance of this Contract, and the CONSULTANT shall be and remain liable to the CITY in accordance with applicable law for all damages suffered directly or indirectly by the CITY caused by the CONSULTANT’s negligent performance of any of the Services furnished under this Contract.

2.5  The rights and remedies of the CITY provided for under this Contract are in addition to any other rights and remedies provided by law.

2.6  The CONSULTANT shall take reasonable measures and precautions to minimize damage to site(s) where Services are being performed and any improvements located thereon resulting or arising from the performance of the Services.

2.7  Public Records Laws. CONSULTANT acknowledges and agrees that the CITY is a public entity that is subject to Florida’s public records laws and as such, records in CONSULTANT’s possession relating to Project(s) and work performed for the CITY are subject to inspection and copy pursuant to Chapter 119, Florida Statutes, unless otherwise exempt, deemed confidential, or excepted by applicable law. CONSULTANT shall comply with Chapter 119, Florida Statutes, and specifically with the “Contractor” requirements of Section 119.0701(2)(b), Florida Statutes concerning public records, which statutory requirements are hereby incorporated herein by this reference.

IF THE CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONSULTANT’S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT CITY OF WINTER
GARDEN, ATTN: CITY CLERK, TELEPHONE: 407-656-4111, EMAIL: agrimmage@cwgdn.com; 300 WEST PLANT STREET, WINTER GARDEN, FLORIDA 34787.

Upon request by the CITY, the CONSULTANT shall, within three business days, supply copies of said public records to the CITY. All books, cards, registers, receipts, documents, and other papers in connection with this Agreement shall, at any and all reasonable times during the normal working hours of the CONSULTANT, be open and freely exhibited to the CITY for the purpose of examination and/or audit. Since public records are of utmost importance to the conduct of CITY business and because of the legal obligations imposed upon the CITY and CONSULTANT by the Public Records Law, CONSULTANT agrees that it shall, under no circumstances, withhold possession of any public records, including originals, copies or electronic images thereof when such are requested by the CITY, regardless of any contractual or other dispute that may arise between CONSULTANT and the Owner. Upon termination or expiration of this Agreement, CONSULTANT shall make arrangement with the CITY’s City Clerk to deliver public records in CONSULTANT’s possession to the CITY. This provision shall survive expiration and termination of this Agreement.

2.8 If the CONSULTANT is comprised of more than one legal entity, each such entity shall be jointly and severally liable hereunder.

SECTION 3
CITY’S RESPONSIBILITIES

3.1 Requirements for the Project. The CITY shall provide criteria and information as may be needed by the CONSULTANT to ascertain and meet the CITY’s requirements for the assigned task in a timely manner, including objectives and constraints.

3.2 Access to Property. The CITY shall arrange for access to and make provisions for the CONSULTANT to enter upon public and private property as required for the CONSULTANT to perform its Services.

3.3 City Project Manager. The CITY reserves the right to appoint a City Project Manager for any Services Authorization. The City Project Manager shall issue any and all written authorizations to the CONSULTANT that the Project may require, or that may otherwise be defined or referred to in this Agreement. The City Project Manager shall also, 1) act as the CITY’s agent with respect to the Services rendered hereunder; 2) transmit instructions to and receive information from the CONSULTANT; 3) communicate the CITY’s policies and decisions to the CONSULTANT regarding the Services; 4) determine, initially, whether the CONSULTANT is fulfilling its duties, responsibilities, and obligations hereunder; and 5) determine, initially, the merits of any allegation by the CONSULTANT respecting the CITY’s nonperformance of any Project obligation. All determinations made by the City Project Manager, as outlined above, shall be final and binding upon the CONSULTANT in regard to further administrative review, but shall not be binding upon the CONSULTANT in regard to general appearances before or appeals to the Winter Garden City Commission, or appearances before or appeals to a court of competent jurisdiction.

3.4 Notice and Extension of Term. The CITY shall give prompt written notice to the CONSULTANT whenever the CITY observes or otherwise becomes aware of any development that affects the scope or timing of the CONSULTANT’s Services, or any defect in the work of contractor(s)
affecting a Project. If the CONSULTANT has been delayed in completing its Services through no fault or negligence of its own, and, as a result, will be unable to complete performance fully and satisfactorily under the provisions of any Services Authorization, then, in the CITY’s sole discretion, and upon the submission to the CITY of evidence of the causes of the delay, the CONSULTANT shall be granted an extension of its Project schedule equal to the period the CONSULTANT was actually and necessarily delayed.

SECTION 4
PAYMENTS TO CONSULTANT

4.1 For the first three (3) years (first one-year term and two subsequent one year renewal terms, if exercised) of this Agreement, the CONSULTANT’s rates shall be fixed for those certain services as set forth in Exhibit “A” attached hereto and incorporated herein. Prior to the renewal of the term for the 4th year of this Agreement, the CITY and CONSULTANT shall meet and discuss in good faith and negotiate rate increases to go into effect for the last two (2) one-year renewal terms of this Agreement. This provision shall not prohibit the City from negotiating a lump sum (or fixed priced) for each Project for which a Services Authorization is desired.

4.2 CONSULTANT will invoice the CITY for services upon completion of Project Services or once each month for Services performed during the preceding monthly period. The CITY will pay the CONSULTANT for the Services as detailed in each of the CONSULTANT’s narrative invoices, and in accordance with the lump sum price negotiated for such services or schedule of fees and reimbursable expenses as set forth in Exhibit “A” attached hereto and incorporated herein. The invoices shall be in a format and contain information required by the CITY.

4.3 In accordance with Part VII, Chapter 218, Florida Statutes (Local Government Prompt Payment Act), invoices shall be paid by the City to the CONSULTANT within forty-five (45) calendar days of the City’s receipt of a proper invoice(s) (“Payment Period”), unless, the CITY: 1) within 10 days after the improper payment request or invoice is received, notifies the CONSULTANT, in writing, that the payment request or invoice is improper and indicates what corrective action on the part of the CONSULTANT is needed to make the payment request or invoice proper.

4.4 The CONSULTANT fully acknowledges and agrees that if at any time it performs Services on a Project contemplated by the parties, such Services which have not been, a) fully negotiated, reduced to writing, and formally executed by both the CITY and CONSULTANT; or b) reduced to writing by the CITY and signed by the CITY, then the CONSULTANT shall perform such Services without liability to the CITY, and at the CONSULTANT’s own risk.

4.5 For services that are not performed pursuant to a lump-sum contract, the CITY shall only be obligated to pay for those Services that the CONSULTANT can demonstrate are reasonable, provable, and within the Scope of Services of any Services Authorization.

4.6 No Liens. CONSULTANT acknowledges and agrees that the CITY is a Florida municipality and, as such, the CITY’s public property and the Project(s) involved are not subject to construction liens pursuant to Chapter 713, Florida Statutes or any other lien statute. CONSULTANT shall not file or record claims of lien or any other liens against any Project or property owned by the CITY.

4.7 Records. CONSULTANT agrees to maintain, and to cause each of CONSULTANT’s subconsultants and subcontractors to maintain, complete and accurate books and records (“Books”) in
accordance with sound accounting principles and standards, and relating to all Services and the Project, and the related costs and expenditures to the CITY that have been contracted for and paid during the life of any Specific Authorization. The Books shall identify the Services rendered during each month of the Services Authorization, the date on which each Project expense was incurred, and whether the expense was Service or reimbursable-related. These Books shall be maintained for five (5) years following Final Payment; five (5) years following termination of any Services Authorization; or any other time beyond five (5) years as may be required by Florida's applicable Public Records retention schedules, whichever is the longer of these times. All Books shall be subject to audit by the CITY at all times during the term of this Agreement and for a period of one (1) year after the termination of this Agreement.

4.8 Final Payment. The acceptance by the CONSULTANT, its successors, or assigns, of any Final Payment due upon the termination of this Agreement or any Services Authorization or completion of any Project, shall constitute a full and complete release of the CITY from any and all claims or demands regarding further compensation for authorized Services rendered prior to such Final Payment that the CONSULTANT, its successors, or assigns have or may have against the CITY under the provisions of this Agreement, 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.

4.9 Local Government Prompt Payment Act (Disputed Invoices). In the event that the CITY receives an improper payment request or invoice, the City shall notify the CONSULTANT, in writing, that the payment request or invoice is improper and indicate what corrective action on the part of the vendor is needed to make the payment request or invoice proper. If a dispute arises between the CITY and the CONSULTANT concerning payment of a payment request or proper invoice, the dispute shall be finally determined by the local governmental entity pursuant to administrative dispute resolution procedures, which shall be commenced within 45 days after the CITY received the disputed payment request or proper invoice and concluded by final decision of the CITY within 60 days after the CITY received such. Such dispute resolution procedures shall be those procedures as may be currently established by resolution or ordinance of the CITY, or, if no such procedures have been established, the dispute shall be reviewed by the City Manager or his/her designee, who shall endeavor to meet with the CONSULTANT to discuss the nature of the dispute and attempt to reach a resolution of the dispute within the time allotted by law. If no resolution amenable to the parties can be reached, the City Manager or his/her designee shall issue a final decision in writing to the CONSULTANT within 60 days as required by statute.

5.1 General. The CONSULTANT or the CITY may at any time notify the other of requested changes to the Scope of Services as set forth in a Services Authorization. The notification shall state the Scope modification and an adjustment of the cost estimate and fee specified in the subject Services Authorization to reflect such modification. The cost and fee adjustment due to modification in the Scope of Services may be calculated utilizing the same method of compensation applicable to the Services Authorization prior to the Scope modification. The CONSULTANT and the CITY understand that, unless the cost and fee adjustment is within a previously approved budget, any change to the Scope of Services must be approved or authorized by the Winter Garden City Commission. If the cost and fee adjustment is within a previously approved budget for changes to the Scope of Services for the overall Project, the change may be approved by the City Manager.
5.2 **Scope Reduction.** The CITY shall have the sole right to reduce (or eliminate, in whole or in part) the Scope of any Project at any time and for any reason, upon written notice to the CONSULTANT specifying the nature and extent of the reduction. In such event the CONSULTANT shall be fully compensated for the Services already performed, including payment of all Project-specific fee amounts due and payable prior to the effective date stated in the CITY’s notification of the reduction. The CONSULTANT shall also be compensated for the Services remaining to be done and not reduced or eliminated on the Project.

5.3 **Scope Suspension.** The CITY may, at any time and for any reason, direct the CONSULTANT to suspend work (in whole or in part) under this Agreement or any Service Authorization. Such direction shall be in writing, and shall specify the period during which Services shall be stopped. The CONSULTANT shall resume its Services upon the date specified or upon such other date as the CITY may thereafter specify in writing. The period during which the CITY stops the Services shall be added to the applicable Services Authorization term as CONSULTANT’s sole remedy for such suspension or delay. The suspension or delay of Services, regardless of whether caused by the actions or inactions of the CITY, shall not give rise to any claim by the CONSULTANT against the CITY.

**SECTION 6**

TERMINATION

6.1 **Termination**

This Agreement may be terminated, at any time, by either party by delivering a written notice to the other party at least thirty (30) days prior to the intended termination date. In the event of the termination of this Agreement, CONSULTANT shall be paid for Services completed prior to and on the date of termination, including those reimbursable reasonable and provable expenses required by any Services Authorization and actually incurred by the CONSULTANT; provided however, if CONSULTANT terminates this Agreement prior to the completion of a Project(s), CONSULTANT shall not be compensated for uncompleted work in progress, including but not limited to circumstances where no final report or testing results have been produced to the CITY.

6.2 **Delivery of Materials Upon Termination**

In the event of termination of this Agreement (or any Services Authorization) and prior to the CONSULTANT’s satisfactory completion of all the Services described or alluded to herein, the CONSULTANT, unless otherwise excused by the CITY in writing, shall promptly furnish the CITY, at no additional cost or expense, with one (1) physical copy and one (1) electronic copy of the following items, any or all of which may have been produced prior to and including the date of termination: data, specifications, test results, calculations, estimates, plans, drawings, computer print outs, surveys, construction documents, photographs, summaries, reports, memoranda; and any and all other documents, instruments, information, and materials (whether or not completed) generated or prepared by the CONSULTANT, or by any subconsultant or subcontractor, in rendering the Services described herein (“Documents”), and not previously furnished to the CITY by the CONSULTANT pursuant to this Agreement, or any Services Authorization. The Documents shall be the sole property of the CITY, and the CITY shall be vested with all rights provided therein of whatever kind and however created. The CONSULTANT shall also require that all such Subconsultants agree in writing to be bound by the provisions of this Subsection.
SECTION 7
MATERIALS, REUSE OF DOCUMENTS, AND CONFIDENTIALITY

7.1 General. One reproducible copy and one electronic copy of all Documents shall be supplied to the CITY at the CITY’s request by the CONSULTANT, and at the CITY’s cost. The final work product of all such materials, along with all formal CONSULTANT-CITY correspondence concerning any Project (e.g. letters, tapes, memoranda, etc.) shall be the sole property of the CITY. Furthermore, the CITY may reuse such Documents at no additional cost, and the CITY shall be vested with all rights of whatever kind and however created that may be in existence thereto.

7.2 Reuse of Documents. The CITY acknowledges that the Documents are not intended for use in connection with any Project or purpose other than the Project and purpose for which the materials are prepared. Any use by the CITY of such Documents in connection with a Project or purpose other than that for which such Documents were prepared, without the prior written consent of the CONSULTANT, shall be at the CITY’s sole risk, and the CONSULTANT shall have no responsibility or liability related thereto.

SECTION 8
NOTICES

All notices denominated as such by this Agreement, or the City Code, or Florida law, required to be given to the CONSULTANT hereunder shall be in writing, and shall be given by hand-delivery or United States mail, postage prepaid, addressed to:

CONSULTANT

All notices required to be given to the CITY shall be in writing, and shall be given by hand delivery or United States mail, postage prepaid, to the CITY and City Attorney, separately, at:

CITY OF WINTER GARDEN
300 W. Plant Street
Winter Garden, Florida 34787
Attention: City Manager

CITY OF WINTER GARDEN
300 W. Plant Street
Winter Garden, Florida 34787
Attention: City Attorney

Either party may change its address, for the purposes of this Subsection, by written notice to the other party given in accordance with the provisions of this Subsection.

SECTION 9
WAIVER OF CONSEQUENTIAL DAMAGES

IN NO EVENT SHALL THE CITY 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 CONSULTANT OR ANY THIRD PARTIES ARISING OUT OF THIS AGREEMENT AND/OR CONCERNING THE PERFORMANCE OF SERVICES BY THE CONSULTANT OR BY THE CITY UNDER THIS AGREEMENT OR UNDER A SERVICES AUTHORIZATION ISSUED UNDER THIS AGREEMENT.

SECTION 10
INDEMNIFICATION AND INSURANCE

10.1 Indemnification. The CONSULTANT agrees to indemnify, defend and hold harmless the CITY, its representatives, employees, agents, and elected and appointed officials, from liabilities, damages, losses and costs, including, but not limited to, reasonable attorneys’ fees and costs, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of the CONSULTANT and persons employed or utilized by the CONSULTANT in the performance of any Services rendered under this Agreement or any Services Authorization issued pursuant to this Agreement. For purposes of compliance with Florida law, CONSULTANT acknowledges that this provision shall be deemed a part of the Project specifications or the bid documents.

10.2 Insurance. The CONSULTANT shall purchase, maintain, and keep in full force, effect, and good standing, insurance in an amount necessary to fully protect CONSULTANT and its employees, agents, subconsultants and subcontractors from claims of the nature that are detailed below, that may arise out of, or result from, the CONSULTANT’s operations, performance, or Services, or all of these things, or any of these things in combination (CONSULTANT’s Operations), whether the CONSULTANT’s Operations are by the CONSULTANT, any of its employees, agents, subconsultants or subcontractors, or anyone directly or indirectly employed by any of them for whose act or 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 (with coverage limits required by present Florida Statutes);

2. Claims for damages because of bodily injury, occupational sickness or disease, or death of the CONSULTANT’s employees;

3. Claims for damages because of bodily injury, sickness or disease, or death of any person other than the CONSULTANT’s employees;

4. Claims for damages insured by usual personal injury liability coverage;

5. Claims for damages 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 (with coverage of at least $500,000 per occurrence);

7. Claims for bodily injury or property damage arising out of completed operations; and

8. Professional liability insurance (with coverage of at least $1,000,000 per occurrence).
10.3 **CITY’s Right to Inspect Policies.** The CONSULTANT shall, upon fifteen (15) days’ written request from the CITY, deliver copies to the CITY of any or all insurance policies and certificates of insurance relating to such policies that are required in this Agreement or any Services Authorization.

## SECTION 11
**MISCELLANEOUS PROVISIONS**

11.1 **Non-Exclusive Contract.** This Agreement is non-exclusive, and may be terminated at the CITY’s convenience with the proper notice having been given to the CONSULTANT pursuant to Sections 6 and 8 above. It is understood and acknowledged that the rights granted herein to the CONSULTANT are non-exclusive, and the CITY shall have the right, at any time, to enter into similar agreements with other surveyors, consultants, and subconsultants, and so forth, to have them perform such professional services as the CITY may desire.

11.2 **[Intentionally Left Blank]**

11.2.1 **Discrimination.** The CONSULTANT, for itself, its delegates, successors-in-interest, and its assigns, and as a part of the consideration hereunder, does hereby covenant and agree that, 1) in the furnishing of Services to the CITY 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 CONSULTANT 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 CITY shall have the right to terminate this Agreement.

11.2.2 **Compliance with Law.** The CONSULTANT 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 CONSULTANT to its employees. The CONSULTANT shall also require, by contract, that all subconsultants and subcontractors shall comply with the provisions of this subsection.

11.2.3 **Licenses.** The CONSULTANT shall, during the life of this Agreement, 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 the CONSULTANT to render its Services or Work as described herein. The CONSULTANT shall also require all subconsultants and subcontractors to comply by contract with the provisions of this subsection.

11.2.4 **Compliance with New Regulations.** The CONSULTANT agrees that at such time as the local, state, or federal agencies modify their grant procedures in order for the CITY or the CONSULTANT to qualify for local, state, or federal funding for the Services to be rendered herein, then the CONSULTANT shall consent to and make such modifications or amendments in a timely manner. If the CONSULTANT is unable to comply with applicable local, state, or federal laws and regulations governing the grant of such funds for Services to be rendered herein, then the CITY shall have the right, by written notice to the CONSULTANT, to terminate this Agreement. Furthermore, if the CONSULTANT’s compliance with such laws, regulations, rules, or procedures causes a material change
to a term or condition of this Agreement, or to any Services Authorization, then the CITY agrees, upon sufficient proof of material changes as may be presented to it by the CONSULTANT, to amend all related CITY/CONSULTANT contractual obligations, and to revise such Project budgets accordingly.

11.3 Consultant Not Agent of City. The CONSULTANT is not authorized to act as the CITY’s agent hereunder and shall have no authority, expressed or implied, to act for or bind the CITY hereunder, either in CONSULTANT’s relations with subconsultants or subcontractor, or in any other manner whatsoever except as otherwise stated in a Services Authorization. CONSULTANT 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 CITY only with respect to the scope of work and the general results required.

11.4 Assignment and Delegation. The CITY and the CONSULTANT bind themselves and their partners, successors, executors, administrators, and assigns, to the other party of this Agreement in respect to all duties, rights, responsibilities, obligations, provisions, conditions, and covenants of this Agreement; except that the CONSULTANT shall not assign, transfer, or delegate its rights or duties, or both of these things, in this Agreement without the prior written consent of the CITY. The CITY has the absolute right to withhold such consent at its convenience, and, furthermore, if the CONSULTANT attempts to assign, transfer, or delegate its rights or duties in violation of these provisions without the CITY’s consent, then the CITY may terminate this Agreement as a breach of contract by the CONSULTANT and a failure by the CONSULTANT to substantially perform its obligations hereunder, and any such assignment shall be null, void, and of no legal effect. The CITY shall have the right to assign its rights (or any part of them) or to delegate its duties and obligations (or any part of them) to another entity that shall be bound by all applicable terms and conditions as provided in this Agreement.

11.5 Entire Agreement. This Agreement constitutes the entire Agreement between the parties, and shall supersede and replace all prior agreements or understandings, written or oral, relating to the matters set forth therein, and that specifically related to the execution of this particular document.

11.6 Amendment. This Agreement may be amended or modified only by a Services Authorization, or an Amendment, and as duly authorized and executed in writing by the parties.

11.7 Validity. The validity, interpretation, construction, and effect of this Agreement shall be in accordance with and governed by the laws of the State of Florida, only. In the event any provision hereof is determined to be unenforceable or invalid, such unenforceability or invalidity shall not affect the remaining provisions of this Agreement, which shall remain in full force and effect. To that extent, this Agreement is deemed severable.

11.8 Headings. The headings of the Sections or Subsections of this Agreement are for the purpose of convenience only, and shall not be deemed to expand, limit, or modify the provisions contained in such Sections or Subsections.

11.9 Timeliness. The CITY and the CONSULTANT acknowledge and understand that time is of the essence in this Agreement and any Service Authorization, and that the Services shall be performed in as expeditious a manner as may be in accord with the nature of each Project.

11.10 Public Entity Crime. Any Person or affiliate, as defined in 287.133 of the Florida Statutes, shall not be allowed to contract with the CITY, 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 CITY
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 City.

11.11 Force Majeure.

1. “Force Majeure” refers to any unforeseeable event, including, but not limited to, wars or natural
disasters, the occurrence and effect of which is unavoidable and insurmountable. Economic
burden, unprofitability, or other issues commonly associated with the conduct of business shall
be deemed foreseeable events and shall not constitute a Force Majeure for the purposes of this
Contract or any Service Authorizations issued hereunder.

2. Should a Party, due to the occurrence of Force Majeure, fail to perform this Agreement in full or
in part, such Party shall be exempted and excused from those responsibilities and obligations for
Services (other than for delay in the payment of money due and payable) to the extent that such
responsibilities and obligations are proximately caused by such Force Majeure.

3. Should a Party fail to perform on time its duties or obligations under this Agreement and
subsequently Force Majeure were to occur, such Party shall not be exempted from any of its
liabilities hereunder as a result of its failure to perform such duties or obligations.

4. Should a Party be unable to perform this Agreement as a result of Force Majeure, it shall
immediately inform the other Party of the situation and the reason(s) for the nonperformance, so
as to minimize any losses incurred by the other Party as a consequence thereof. Such notification
shall be in the form of a sworn affidavit from a principal of the Party claiming the existence of a
Force Majeure event and shall fully set forth the details of the event as well as the direct effect of
such upon the ability or capacity of the Party to render its Services pursuant to this Contract or
Services Authorization. If feasible, the Parties may agree to amend in writing the schedules for
any Services authorized to accommodate the situation; however, should a Force Majeure event
preclude the Consultant from performing time-sensitive Services for the City, the City may
terminate this Agreement or any Services Authorization issued hereunder and reassign Services
to another Consultant at no risk or liability to the City.

11.12 Remedies and Costs. Unless specified otherwise herein, all remedies provided in this Agreement
shall be deemed cumulative and additional, and not in lieu or exclusive of each other or of any other
remedy available to either party, at law or in equity.

11.13 Dispute Resolution and Exclusive Venue. As a condition precedent to the filing of any suit or
other legal proceeding and if the parties do not agree to the resolution of a dispute pursuant to § 4.8 of
this Contract, 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 CITY shall
select the mediator who, if selected solely by the CITY 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. The sole and exclusive venue for any litigation shall be in Orange County, Florida before the County Court or Circuit Court of the Ninth Judicial Circuit, in and for Orange County, Florida.

11.14 Attorneys' Fees and Litigation Costs. In the event of mediation or litigation between the parties concerning or arising from this Agreement or any Services Authorization and unless otherwise provided by law, each party shall bear their own attorneys' fees and litigation costs except for in claims by the CITY for indemnity against CONSULTANT under this Agreement, for which claim(s), attorneys' fees and litigation cost shall be due and payable to the prevailing party.

11.15 No Waiver of Sovereign Immunity. Nothing contained in this Agreement shall be considered or deemed a waiver of the CITY's sovereign immunity protections or of any other immunity, defense or privilege afforded to the CITY or its officials, officers, employees and agents under law.

IN WITNESS WHEREOF, this Agreement has been fully executed on behalf of the parties hereto and by its duly authorized representatives, as of the date first written above.

ATTEST:

Michael Brock

Name: Michael Brock

(SEAL)

Angela Grimmage, City Clerk

(APPROVED BY THE WINTER GARDEN CITY COMMISSION AT A MEETING HELD ON ________________, 20__.)

By: Sheila Tarte

Name: Sheila Tarte

Title: President

APPROVED:

CITY OF WINTER GARDEN, FLORIDA

Mike Bolhoefer, City Manager
**Exhibit “A”**

<table>
<thead>
<tr>
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<th>Hourly Rate</th>
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<td>Sr. Surveyor &amp; Mapper (Principal)</td>
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</table>
CONTINUING CONSULTING CONTRACT FOR
PROFESSIONAL SURVEYING AND MAPPING SERVICES

THIS CONTRACT (hereinafter "Contract" or "Agreement") made and entered into this 6th day of
MARCH 2019, by and between the CITY OF WINTER GARDEN, a Florida municipal corporation,
whose address is 300 West Plant Street, Winter Garden, Florida 34787, hereinafter referred to as "CITY"
and KPM Franklin, whose address is 1368 East Vine Street, Kissimmee, FL 34744, hereinafter referred
to as "CONSULTANT."

RECITALS

WHEREAS, the CITY desires to retain professional consulting services for professional
surveying and mapping services of a specified nature and on a task by task basis; and

WHEREAS, the CITY desires to employ the CONSULTANT in connection with the services
required, upon the terms and conditions hereinafter set forth, and the CONSULTANT is desirous of
obtaining such employment and of performing such services upon said terms and conditions.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter
contained, it is agreed by and between the parties hereto as follows:

SECTION 1
GENERAL PROVISIONS

1.1 Services. The CONSULTANT shall provide services ("Services") for the CITY as required by
the CITY on a task-by-task basis, which may include, but is not limited to:

- Engineering surveys
- Boundary surveys
- Topographic surveys
- Aerial surveys
- Right-of-way surveys and maps
- Hydrographic surveys
- Quantity surveys
- As-built surveys
- Underground utility surveys
- Planimetric maps
- Easements
- Legal descriptions and sketch of description
- Construction layout
- Cut and fill calculations
- G.I.S./CADD services
- GPS services
- Plan review services, including plat review per F.S. Chapter 177
- Other related surveying and mapping services
The CONSULTANT hereby represents and warrants to CITY that CONSULTANT is experienced in and competent to perform the Services described in this Agreement. If the CONSULTANT finds that it is not experienced in or licensed to perform the Services for a particular Service Authorization requested by the CITY, the CONSULTANT shall immediately inform the CITY of such prior to the issuance of the Service Authorization, and the CITY shall not issue such Services Authorization to CONSULTANT. The CONSULTANT shall perform any and all Services assigned in a timely, efficient, and cost-effective manner that comports with professional industry standards, and applicable federal, state, and local laws and regulations, and, in the case of surveying services, in accordance with professional surveying standards.

1.2 Services Authorization. The CITY shall, from time to time at its sole discretion, authorize the CONSULTANT in writing to provide Services for a specific task or project (“Project”) by issuing a Services Authorization. A Services Authorization shall, by mutual agreement of the parties, set forth, (1) the Scope of Services, (2) the time for performance, (3) method and amount of compensation, whether such is to be paid pursuant to a lump sum amount or the fee schedule attached as Exhibit “A” and incorporated herein, (4) the deliverables, if any (which are the items to be provided to the CITY as a result of the Services), and (5) the services, information and data that can be provided by the CITY to the CONSULTANT.

1.3 No Guarantee on Amount or Type of Work. The CITY does not guarantee, warrant, or represent that any number of Projects or any particular type of Project will be assigned to the CONSULTANT under the terms of this Agreement. Furthermore, the purpose of this Agreement is not to authorize a specific Project, but to set forth certain duties, obligations, rights, and responsibilities that shall be automatically incorporated into any Services Authorization that may be mutually agreed to by the parties. The CITY shall have the sole discretion to select the Project(s), if any, which may be given to the CONSULTANT. The CONSULTANT shall not be entitled to compensation for any services rendered in excess of those specifically requested by CITY.

1.4 Contract Period. The Contract Period is for one (1) year from the date of CITY COMMISSION approval with an option by the CITY to renew the contract on an annual basis up to, but not to exceeding five (5) years. Unless terminated by the CITY prior to the end of any one year term, the contract shall be automatically renewed on the annual anniversary date of the CITY COMMISSION’s approval of this Agreement for the next succeeding one year term with the condition that the CITY’s obligation to pay under this Agreement for each year is contingent upon the CITY in its good faith judgment having sufficient funds to make an annual appropriation for the Services to be provided under this Agreement. The Agreement shall continue in full force and effect from the date first written above until terminated in accordance with Section 6 or until the Agreement automatically expires five (5) years after CITY COMMISSION approval. The above time periods may be extended to complete Services being rendered under a specific task that has already been identified in a Services Authorization issued prior to the expiration of the Agreement.

1.5 All references to drawings shall mean both traditionally drafted as well as computer-based, and all submissions of drawings will include paper, mylar, and computer file versions as appropriate. The CONSULTANT shall provide all computer generated material to the CITY in a digital format that is compatible with those systems employed by the CITY.
SECTION 2
RESPONSIBILITY OF THE CONSULTANT

2.1 The CONSULTANT shall be responsible for the professional quality, technical accuracy, and the coordination of all designs, drawings, borings, studies, tests, inspections, assessments, specifications, and other Services furnished by the CONSULTANT under this Contract. The CONSULTANT shall, without additional compensation, correct or revise any errors or deficiencies in its designs, drawings, borings, studies, tests, inspections, assessments, specifications, and other Services.

2.2 For each Project, the CONSULTANT shall provide a Project Manager who must be currently employed by the CONSULTANT and will serve as CONSULTANT point person for correspondence and other communication with the CITY’s representatives.

2.3 Substitution of the Project Manager or Other Key Personnel. The CONSULTANT shall not substitute any key personnel without the prior written approval of the City Manager or the City Manager’s appointee (“City Project Manager”) to oversee the specific task assigned to CONSULTANT. Any such requests shall be supported by comprehensive documentation outlining the reason(s) for the proposed substitution to include the specific qualifications of the proposed substitute. Approval of the request shall be at the discretion of the CITY. Further, the CITY, in lieu of approving a substitution, may initiate other actions under the contract, including termination of CONSULTANT under this Contract or under the specific task assigned.

2.4 Neither the CITY’s review, approval or acceptance of, nor payment for, the services required under this Contract shall be construed to operate as a waiver of any rights under this Contract or of any cause of action arising out of the performance of this Contract, and the CONSULTANT shall be and remain liable to the CITY in accordance with applicable law for all damages suffered directly or indirectly by the CITY caused by the CONSULTANT’s negligent performance of any of the Services furnished under this Contract.

2.5 The rights and remedies of the CITY provided for under this Contract are in addition to any other rights and remedies provided by law.

2.6 The CONSULTANT shall take reasonable measures and precautions to minimize damage to site(s) where Services are being performed and any improvements located thereon resulting or arising from the performance of the Services.

2.7 Public Records Laws. CONSULTANT acknowledges and agrees that the CITY is a public entity that is subject to Florida’s public records laws and as such, records in CONSULTANT’s possession relating to Project(s) and work performed for the CITY are subject to inspection and copy pursuant to Chapter 119, Florida Statutes, unless otherwise exempt, deemed confidential, or excepted by applicable law. CONSULTANT shall comply with Chapter 119, Florida Statutes, and specifically with the “Contractor” requirements of Section 119.0701(2)(b), Florida Statutes concerning public records, which statutory requirements are hereby incorporated herein by this reference.

IF THE CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONSULTANT’S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT CITY OF WINTER
GARDEN, ATTN: CITY CLERK, TELEPHONE: 407-656-4111, EMAIL: agrimmage@cwgdn.com; 300 WEST PLANT STREET, WINTER GARDEN, FLORIDA 34787.

Upon request by the CITY, the CONSULTANT shall, within three business days, supply copies of said public records to the CITY. All books, cards, registers, receipts, documents, and other papers in connection with this Agreement shall, at any and all reasonable times during the normal working hours of the CONSULTANT, be open and freely exhibited to the CITY for the purpose of examination and/or audit. Since public records are of utmost importance to the conduct of CITY business and because of the legal obligations imposed upon the CITY and CONSULTANT by the Public Records Law, CONSULTANT agrees that it shall, under no circumstances, withhold possession of any public records, including originals, copies or electronic images thereof when such are requested by the CITY, regardless of any contractual or other dispute that may arise between CONSULTANT and the Owner. Upon termination or expiration of this Agreement, CONSULTANT shall make arrangement with the CITY’s City Clerk to deliver public records in CONSULTANT’s possession to the CITY. This provision shall survive expiration and termination of this Agreement.

2.8 If the CONSULTANT is comprised of more than one legal entity, each such entity shall be jointly and severally liable hereunder.

SECTION 3
CITY’S RESPONSIBILITIES

3.1 Requirements for the Project. The CITY shall provide criteria and information as may be needed by the CONSULTANT to ascertain and meet the CITY’s requirements for the assigned task in a timely manner, including objectives and constraints.

3.2 Access to Property. The CITY shall arrange for access to and make provisions for the CONSULTANT to enter upon public and private property as required for the CONSULTANT to perform its Services.

3.3 City Project Manager. The CITY reserves the right to appoint a City Project Manager for any Services Authorization. The City Project Manager shall issue any and all written authorizations to the CONSULTANT that the Project may require, or that may otherwise be defined or referred to in this Agreement. The City Project Manager shall also, 1) act as the CITY’s agent with respect to the Services rendered hereunder; 2) transmit instructions to and receive information from the CONSULTANT; 3) communicate the CITY’s policies and decisions to the CONSULTANT regarding the Services; 4) determine, initially, whether the CONSULTANT is fulfilling its duties, responsibilities, and obligations hereunder; and 5) determine, initially, the merits of any allegation by the CONSULTANT respecting the CITY’s nonperformance of any Project obligation. All determinations made by the City Project Manager, as outlined above, shall be final and binding upon the CONSULTANT in regard to further administrative review, but shall not be binding upon the CONSULTANT in regard to general appearances before or appeals to the Winter Garden City Commission, or appearances before or appeals to a court of competent jurisdiction.

3.4 Notice and Extension of Term. The CITY shall give prompt written notice to the CONSULTANT whenever the CITY observes or otherwise becomes aware of any development that affects the scope or timing of the CONSULTANT’s Services, or any defect in the work of contractor(s)
affecting a Project. If the CONSULTANT has been delayed in completing its Services through no fault or negligence of its own, and, as a result, will be unable to complete performance fully and satisfactorily under the provisions of any Services Authorization, then, in the CITY’s sole discretion, and upon the submission to the CITY of evidence of the causes of the delay, the CONSULTANT shall be granted an extension of its Project schedule equal to the period the CONSULTANT was actually and necessarily delayed.

SECTION 4
PAYMENTS TO CONSULTANT

4.1 For the first three (3) years (first one-year term and two subsequent one year renewal terms, if exercised) of this Agreement, the CONSULTANT’s rates shall be fixed for those certain services as set forth in Exhibit “A” attached hereto and incorporated herein. Prior to the renewal of the term for the 4th year of this Agreement, the CITY and CONSULTANT shall meet and discuss in good faith and negotiate rate increases to go into effect for the last two (2) one-year renewal terms of this Agreement. This provision shall not prohibit the City from negotiating a lump sum (or fixed priced) for each Project for which a Services Authorization is desired.

4.2 CONSULTANT will invoice the CITY for services upon completion of Project Services or once each month for Services performed during the preceding monthly period. The CITY will pay the CONSULTANT for the Services as detailed in each of the CONSULTANT’s narrative invoices, and in accordance with the lump sum price negotiated for such services or schedule of fees and reimbursable expenses as set forth in Exhibit “A” attached hereto and incorporated herein. The invoices shall be in a format and contain information required by the CITY.

4.3 In accordance with Part VII, Chapter 218, Florida Statutes (Local Government Prompt Payment Act), invoices shall be paid by the City to the CONSULTANT within forty-five (45) calendar days of the City’s receipt of a proper invoice(s) (“Payment Period”), unless, the CITY: 1) within 10 days after the improper payment request or invoice is received, notifies the CONSULTANT, in writing, that the payment request or invoice is improper and indicates what corrective action on the part of the CONSULTANT is needed to make the payment request or invoice proper.

4.4 The CONSULTANT fully acknowledges and agrees that if at any time it performs Services on a Project contemplated by the parties, such Services which have not been, a) fully negotiated, reduced to writing, and formally executed by both the CITY and CONSULTANT; or b) reduced to writing by the CITY and signed by the CITY, then the CONSULTANT shall perform such Services without liability to the CITY, and at the CONSULTANT’s own risk.

4.5 For services that are not performed pursuant to a lump-sum contract, the CITY shall only be obligated to pay for those Services that the CONSULTANT can demonstrate are reasonable, provable, and within the Scope of Services of any Services Authorization.

4.6 No Liens. CONSULTANT acknowledges and agrees that the CITY is a Florida municipality and, as such, the CITY’s public property and the Project(s) involved are not subject to construction liens pursuant to Chapter 713, Florida Statutes or any other lien statute. CONSULTANT shall not file or record claims of lien or any other liens against any Project or property owned by the CITY.

4.7 Records. CONSULTANT agrees to maintain, and to cause each of CONSULTANT’s subconsultants and subcontractors to maintain, complete and accurate books and records (“Books”) in
accordance with sound accounting principles and standards, and relating to all Services and the Project, and the related costs and expenditures to the CITY that have been contracted for and paid during the life of any Specific Authorization. The Books shall identify the Services rendered during each month of the Services Authorization, the date on which each Project expense was incurred, and whether the expense was Service or reimbursable-related. These Books shall be maintained for five (5) years following Final Payment; five (5) years following termination of any Services Authorization; or any other time beyond five (5) years as may be required by Florida's applicable Public Records retention schedules, whichever is the longer of these times. All Books shall be subject to audit by the CITY at all times during the term of this Agreement and for a period of one (1) year after the termination of this Agreement.

4.8 Final Payment. The acceptance by the CONSULTANT, its successors, or assigns, of any Final Payment due upon the termination of this Agreement or any Services Authorization or completion of any Project, shall constitute a full and complete release of the CITY from any and all claims or demands regarding further compensation for authorized Services rendered prior to such Final Payment that the CONSULTANT, its successors, or assigns have or may have against the CITY under the provisions of this Agreement, 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.

4.9 Local Government Prompt Payment Act (Disputed Invoices). In the event that the CITY receives an improper payment request or invoice, the City shall notify the CONSULTANT, in writing, that the payment request or invoice is improper and indicate what corrective action on the part of the vendor is needed to make the payment request or invoice proper. If a dispute arises between the CITY and the CONSULTANT concerning payment of a payment request or proper invoice, the dispute shall be finally determined by the local governmental entity pursuant to administrative dispute resolution procedures, which shall be commenced within 45 days after the CITY received the disputed payment request or proper invoice and concluded by final decision of the CITY within 60 days after the CITY received such. Such dispute resolution procedures shall be those procedures as may be currently established by resolution or ordinance of the CITY, or, if no such procedures have been established, the dispute shall be reviewed by the City Manager or his/her designee, who shall endeavor to meet with the CONSULTANT to discuss the nature of the dispute and attempt to reach a resolution of the dispute within the time allotted by law. If no resolution amenable to the parties can be reached, the City Manager or his/her designee shall issue a final decision in writing to the CONSULTANT within 60 days as required by statute.

SECTION 5
SCOPE, COST, AND FEE ADJUSTMENT

5.1 General. The CONSULTANT or the CITY may at any time notify the other of requested changes to the Scope of Services as set forth in a Services Authorization. The notification shall state the Scope modification and an adjustment of the cost estimate and fee specified in the subject Services Authorization to reflect such modification. The cost and fee adjustment due to modification in the Scope of Services may be calculated utilizing the same method of compensation applicable to the Services Authorization prior to the Scope modification. The CONSULTANT and the CITY understand that, unless the cost and fee adjustment is within a previously approved budget, any change to the Scope of Services must be approved or authorized by the Winter Garden City Commission. If the cost and fee adjustment is within a previously approved budget for changes to the Scope of Services for the overall Project, the change may be approved by the City Manager.
5.2 **Scope Reduction.** The CITY shall have the sole right to reduce (or eliminate, in whole or in part) the Scope of any Project at any time and for any reason, upon written notice to the CONSULTANT specifying the nature and extent of the reduction. In such event the CONSULTANT shall be fully compensated for the Services already performed, including payment of all Project-specific fee amounts due and payable prior to the effective date stated in the CITY's notification of the reduction. The CONSULTANT shall also be compensated for the Services remaining to be done and not reduced or eliminated on the Project.

5.3 **Scope Suspension.** The CITY may, at any time and for any reason, direct the CONSULTANT to suspend work (in whole or in part) under this Agreement or any Service Authorization. Such direction shall be in writing, and shall specify the period during which Services shall be stopped. The CONSULTANT shall resume its Services upon the date specified or upon such other date as the CITY may thereafter specify in writing. The period during which the CITY stops the Services shall be added to the applicable Services Authorization term as CONSULTANT's sole remedy for such suspension or delay. The suspension or delay of Services, regardless of whether caused by the actions or inactions of the CITY, shall not give rise to any claim by the CONSULTANT against the CITY.

SECTION 6
TERMINATION

6.1 **Termination**

This Agreement may be terminated, at any time, by either party by delivering a written notice to the other party at least thirty (30) days prior to the intended termination date. In the event of the termination of this Agreement, CONSULTANT shall be paid for Services completed prior to and on the date of termination, including those reimbursable reasonable and provable expenses required by any Services Authorization and actually incurred by the CONSULTANT; provided however, if CONSULTANT terminates this Agreement prior to the completion of a Project(s), CONSULTANT shall not be compensated for uncompleted work in progress, including but not limited to circumstances where no final report or testing results have been produced to the CITY.

6.2 **Delivery of Materials Upon Termination**

In the event of termination of this Agreement (or any Services Authorization) and prior to the CONSULTANT's satisfactory completion of all the Services described or alluded to herein, the CONSULTANT, unless otherwise excused by the CITY in writing, shall promptly furnish the CITY, at no additional cost or expense, with one (1) physical copy and one (1) electronic copy of the following items, any or all of which may have been produced prior to and including the date of termination: data, specifications, test results, calculations, estimates, plans, drawings, computer print outs, surveys, construction documents, photographs, summaries, reports, memoranda; and any and all other documents, instruments, information, and materials (whether or not completed) generated or prepared by the CONSULTANT, or by any subconsultant or subcontractor, in rendering the Services described herein ("Documents"), and not previously furnished to the CITY by the CONSULTANT pursuant to this Agreement, or any Services Authorization. The Documents shall be the sole property of the CITY, and the CITY shall be vested with all rights provided therein of whatever kind and however created. The CONSULTANT shall also require that all such Subconsultants agree in writing to be bound by the provisions of this Subsection.
SECTION 7
MATERIALS, REUSE OF DOCUMENTS, AND CONFIDENTIALITY

7.1 General. One reproducible copy and one electronic copy of all Documents shall be supplied to the CITY at the CITY’s request by the CONSULTANT, and at the CITY’s cost. The final work product of all such materials, along with all formal CONSULTANT-CITY correspondence concerning any Project (e.g. letters, tapes, memoranda, etc.) shall be the sole property of the CITY. Furthermore, the CITY may reuse such Documents at no additional cost, and the CITY shall be vested with all rights of whatever kind and however created that may be in existence thereto.

7.2 Reuse of Documents. The CITY acknowledges that the Documents are not intended for use in connection with any Project or purpose other than the Project and purpose for which the materials are prepared. Any use by the CITY of such Documents in connection with a Project or purpose other than that for which such Documents were prepared, without the prior written consent of the CONSULTANT, shall be at the CITY’s sole risk, and the CONSULTANT shall have no responsibility or liability related thereto.

SECTION 8
NOTICES

All notices denominated as such by this Agreement, or the City Code, or Florida law, required to be given to the CONSULTANT hereunder shall be in writing, and shall be given by hand-delivery or United States mail, postage prepaid, addressed to:

CONSULTANT

All notices required to be given to the CITY shall be in writing, and shall be given by hand delivery or United States mail, postage prepaid, to the CITY and City Attorney, separately, at:

CITY OF WINTER GARDEN
300 W. Plant Street
Winter Garden, Florida 34787
Attention: City Manager

CITY OF WINTER GARDEN
300 W. Plant Street
Winter Garden, Florida 34787
Attention: City Attorney

Either party may change its address, for the purposes of this Subsection, by written notice to the other party given in accordance with the provisions of this Subsection.

SECTION 9
WAIVER OF CONSEQUENTIAL DAMAGES

IN NO EVENT SHALL THE CITY 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 CONSULTANT OR ANY THIRD PARTIES ARISING OUT OF THIS AGREEMENT AND/OR CONCERNING THE PERFORMANCE OF SERVICES BY THE CONSULTANT OR BY THE CITY UNDER THIS AGREEMENT OR UNDER A SERVICES AUTHORIZATION ISSUED UNDER THIS AGREEMENT.

SECTION 10
INDEMNIFICATION AND INSURANCE

10.1 Indemnification. The CONSULTANT agrees to indemnify, defend and hold harmless the CITY, its representatives, employees, agents, and elected and appointed officials, from liabilities, damages, losses and costs, including, but not limited to, reasonable attorneys' fees and costs, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of the CONSULTANT and persons employed or utilized by the CONSULTANT in the performance of any Services rendered under this Agreement or any Services Authorization issued pursuant to this Agreement. For purposes of compliance with Florida law, CONSULTANT acknowledges that this provision shall be deemed a part of the Project specifications or the bid documents.

10.2 Insurance. The CONSULTANT shall purchase, maintain, and keep in full force, effect, and good standing, insurance in an amount necessary to fully protect CONSULTANT and its employees, agents, subconsultants and subcontractors from claims of the nature that are detailed below, that may arise out of, or result from, the CONSULTANT's operations, performance, or Services, or all of these things, or any of these things in combination (CONSULTANT's Operations), whether the CONSULTANT's Operations are by the CONSULTANT, any of its employees, agents, subconsultants or subcontractors, or anyone directly or indirectly employed by any of them for whose act or 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 (with coverage limits required by present Florida Statutes);  

2. Claims for damages because of bodily injury, occupational sickness or disease, or death of the CONSULTANT's employees;  

3. Claims for damages because of bodily injury, sickness or disease, or death of any person other than the CONSULTANT's employees;  

4. Claims for damages insured by usual personal injury liability coverage;  

5. Claims for damages 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 (with coverage of at least $500,000 per occurrence);  

7. Claims for bodily injury or property damage arising out of completed operations; and  

8. Professional liability insurance (with coverage of at least $1,000,000 per occurrence).
10.3 CITY's Right to Inspect Policies. The CONSULTANT shall, upon fifteen (15) days' written request from the CITY, deliver copies to the CITY of any or all insurance policies and certificates of insurance relating to such policies that are required in this Agreement or any Services Authorization.

SECTION II
MISCELLANEOUS PROVISIONS

11.1 Non-Exclusive Contract. This Agreement is non-exclusive, and may be terminated at the CITY's convenience with the proper notice having been given to the CONSULTANT pursuant to Sections 6 and 8 above. It is understood and acknowledged that the rights granted herein to the CONSULTANT are non-exclusive, and the CITY shall have the right, at any time, to enter into similar agreements with other surveyors, consultants, and subconsultants, and so forth, to have them perform such professional services as the CITY may desire.

11.2 [Intentionally Left Blank]

11.2.1 Discrimination. The CONSULTANT, for itself, its delegates, successors-in-interest, and its assigns, and as a part of the consideration hereof, does hereby covenant and agree that, 1) in the furnishing of Services to the CITY 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 CONSULTANT 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 CITY shall have the right to terminate this Agreement.

11.2.2 Compliance with Law. The CONSULTANT 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 hereeto, or to the wages paid by the CONSULTANT to its employees. The CONSULTANT shall also require, by contract, that all subconsultants and subcontractors shall comply with the provisions of this subsection.

11.2.3 Licenses. The CONSULTANT shall, during the life of this Agreement, 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 the CONSULTANT to render its Services or Work as described herein. The CONSULTANT shall also require all subconsultants and subcontractors to comply by contract with the provisions of this subsection.

11.2.4 Compliance with New Regulations. The CONSULTANT agrees that at such time as the local, state, or federal agencies modify their grant procedures in order for the CITY or the CONSULTANT to qualify for local, state, or federal funding for the Services to the rendered by the CONSULTANT, then the CONSULTANT shall consent to and make such modifications or amendments in a timely manner. If the CONSULTANT is unable to comply with applicable local, state, or federal laws and regulations governing the grant of such funds for Services to be rendered herein, then the CITY shall have the right, by written notice to the CONSULTANT, to terminate this Agreement. Furthermore, if the CONSULTANT's compliance with such laws, regulations, rules, or procedures causes a material change
to a term or condition of this Agreement, or to any Services Authorization, then the CITY agrees, upon sufficient proof of material changes as may be presented to it by the CONSULTANT, to amend all related CITY/CONSULTANT contractual obligations, and to revise such Project budgets accordingly.

11.3 Consultant Not Agent of City. The CONSULTANT is not authorized to act as the CITY's agent hereunder and shall have no authority, expressed or implied, to act for or bind the CITY hereunder, either in CONSULTANT's relations with subconsultants or subcontractor, or in any other manner whatsoever except as otherwise stated in a Services Authorization. CONSULTANT 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 CITY only with respect to the scope of work and the general results required.

11.4 Assignment and Delegation. The CITY and the CONSULTANT bind themselves and their partners, successors, executors, administrators, and assigns, to the other party of this Agreement in respect to all duties, rights, responsibilities, obligations, provisions, conditions, and covenants of this Agreement; except that the CONSULTANT shall not assign, transfer, or delegate its rights or duties, or both of these things, in this Agreement without the prior written consent of the CITY. The CITY has the absolute right to withhold such consent at its convenience, and, furthermore, if the CONSULTANT attempts to assign, transfer, or delegate its rights or duties in violation of these provisions without the CITY's consent, then the CITY may terminate this Agreement as a breach of contract by the CONSULTANT and a failure by the CONSULTANT to substantially perform its obligations hereunder, and any such assignment shall be null, void, and of no legal effect. The CITY shall have the right to assign its rights (or any part of them) or to delegate its duties and obligations (or any part of them) to another entity that shall be bound by all applicable terms and conditions as provided in this Agreement.

11.5 Entire Agreement. This Agreement constitutes the entire Agreement between the parties, and shall supersede and replace all prior agreements or understandings, written or oral, relating to the matters set forth therein, and that specifically related to the execution of this particular document.

11.6 Amendment. This Agreement may be amended or modified only by a Services Authorization, or an Amendment, and as duly authorized and executed in writing by the parties.

11.7 Validity. The validity, interpretation, construction, and effect of this Agreement shall be in accordance with and governed by the laws of the State of Florida, only. In the event any provision hereof is determined to be unenforceable or invalid, such unenforceability or invalidity shall not affect the remaining provisions of this Agreement, which shall remain in full force and effect. To that extent, this Agreement is deemed severable.

11.8 Headings. The headings of the Sections or Subsections of this Agreement are for the purpose of convenience only, and shall not be deemed to expand, limit, or modify the provisions contained in such Sections or Subsections.

11.9 Timeliness. The CITY and the CONSULTANT acknowledge and understand that time is of the essence in this Agreement and any Service Authorization, and that the Services shall be performed in as expeditious a manner as may be in accord with the nature of each Project.

11.10 Public Entity Crime. Any Person or affiliate, as defined in 287.133 of the Florida Statutes, shall not be allowed to contract with the CITY, 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 CITY 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 City.

11.11 Force Majeure.

1. “Force Majeure” refers to any unforeseeable event, including, but not limited to, wars or natural disasters, the occurrence and effect of which is unavoidable and insurmountable. Economic burden, unprofitability, or other issues commonly associated with the conduct of business shall be deemed foreseeable events and shall not constitute a Force Majeure for the purposes of this Contract or any Service Authorizations issued hereunder.

2. Should a Party, due to the occurrence of Force Majeure, fail to perform this Agreement in full or in part, such Party shall be exempted and excused from those responsibilities and obligations for Services (other than for delay in the payment of money due and payable) to the extent that such responsibilities and obligations are proximately caused by such Force Majeure.

3. Should a Party fail to perform on time its duties or obligations under this Agreement and subsequently Force Majeure were to occur, such Party shall not be exempted from any of its liabilities hereunder as a result of its failure to perform such duties or obligations.

4. Should a Party be unable to perform this Agreement as a result of Force Majeure, it shall immediately inform the other Party of the situation and the reason(s) for the nonperformance, so as to minimize any losses incurred by the other Party as a consequence thereof. Such notification shall be in the form of a sworn affidavit from a principal of the Party claiming the existence of a Force Majeure event and shall fully set forth the details of the event as well as the direct effect of such upon the ability or capacity of the Party to render its Services pursuant to this Contract or Services Authorization. If feasible, the Parties may agree to amend in writing the schedules for any Services authorized to accommodate the situation; however, should a Force Majeure event preclude the Consultant from performing time-sensitive Services for the City, the City may terminate this Agreement or any Services Authorization issued hereunder and reassign Services to another Consultant at no risk or liability to the City.

11.12 Remedies and Costs. Unless specified otherwise herein, all remedies provided in this Agreement shall be deemed cumulative and additional, and not in lieu or exclusive of each other or of any other remedy available to either party, at law or in equity.

11.13 Dispute Resolution and Exclusive Venue. As a condition precedent to the filing of any suit or other legal proceeding and if the parties do not agree to the resolution of a dispute pursuant to § 4.8 of this Contract, 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 CITY shall select the mediator who, if selected solely by the CITY 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. The sole and exclusive venue for any litigation shall be in Orange County, Florida before the County Court or Circuit Court of the Ninth Judicial Circuit, in and for Orange County, Florida.

11.14 Attorneys’ Fees and Litigation Costs. In the event of mediation or litigation between the parties concerning or arising from this Agreement or any Services Authorization and unless otherwise provided by law, each party shall bear their own attorneys’ fees and litigation costs except for in claims by the CITY for indemnity against CONSULTANT under this Agreement, for which claim(s), attorneys’ fees and litigation cost shall be due and payable to the prevailing party.

11.15 No Waiver of Sovereign Immunity. Nothing contained in this Agreement shall be considered or deemed a waiver of the CITY’s sovereign immunity protections or of any other immunity, defense or privilege afforded to the CITY or its officials, officers, employees and agents under law.

IN WITNESS WHEREOF, this Agreement has been fully executed on behalf of the parties hereto and by its duly authorized representatives, as of the date first written above.

ATTEST:

By:

Name: John Kelly
Title: President

APPROVED:

CITY OF WINTER GARDEN, FLORIDA

Angela Grimmage, City Clerk

Mike Bollhoefer, City Manager

APPROVED BY THE WINTER GARDEN CITY COMMISSION AT A MEETING HELD ON ____________, 20___.
# Exhibit B - Professional Services Fee Schedule

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Effective January 1, 2017
From: Jon Williams, Assistant City Manager – Public Services

Via: Mike Bollhoefer, City Manager

Date: March 7, 2019

Meeting Date: March 14, 2019

Subject: Waive formal procurement process and award a contract to Cathcart Construction Company, LLC for the installation of underdrains within Traditions Subdivision.

Issue:

The City’s project consists of installation of underdrain, cleanouts, core and insert structure connections, sod installation, driveway removal, driveway apron installation, maintenance of traffic, and mobilization/demobilization of equipment.

Recommended Action:

Waive formal procurement process and award a contract for the installation of underdrains within Traditions Subdivision to Cathcart Construction Company, LLC in the amount of $71,770.00.

Attachments/References:

- Traditions Underdrain Agreement
- Proposal
980 LF of Underdrain (Coarse aggregate/sand, fabric) @ $47 / LF = $46,060
4 Cleanouts @ $225 / EA = $900
2 Core and Insert Structure Connections @ $550 / EA = $1,100
660 SY of St. Augustine Sod @ $4.50 / SY = $2,970
Remove 240 SY of Driveway @ $12 / SY = $2,880
240 SY New 6” Thick Driveway Aprons @ $64 / SY = $15,360
Maintenance of Traffic @ $750 / LS = $750
Mobilize/Demobilize Equipment @ $1750 /LS = $1,750

Total for this project: $71,770
TRADITIONS DRIVE UNDERDRAIN CONSTRUCTION AGREEMENT

THIS AGREEMENT made and entered into this _____ day of ______________, 2019, by and between the City of Winter Garden, a municipality organized and existing under the laws of the State of Florida whose address is 300 West Plant Street, Winter Garden, Florida 34787, hereinafter called the Owner or the City, and Cathcart Construction Company – Florida, LLC, whose principal and local address is 2564 Connection Point, Oviedo, Florida 32765, hereinafter called the Contractor. The City (or Owner) and the Contractor are collectively referred to herein as the Parties.

WITNESSETH:

WHEREAS, the City desires to retain the Contractor for the work identified herein relating to underdrain work and construction on Traditions Drive in Winter Garden, Florida 34787; and

WHEREAS, the Contractor desires to perform and provide the services set forth herein relating to underdrain work and construction on Traditions Drive upon the terms and conditions set forth herein; and

WHEREAS, the Contractor recognizes the importance to the public and to the Owner of strict compliance and adherence to all laws, rules, and regulations with particular regard to safety procedures and processes; and

WHEREAS, the City Commission has determined that it is in the best interest of the City to waive formal procurement in order to contract with Contractor for the services set forth herein.

NOW, THEREFORE, the City and the Contractor, in consideration of the mutual covenants hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, agree as follows:

SECTION 1: GENERAL PROVISIONS

(a) The term “Contractor” as used in this Agreement is hereby defined herein as that person or entity, including employees, servants, partners, principals, agents and assignees providing services under this Agreement.

(b) This Agreement is for underdrain work and construction on and about Traditions Drive located in Winter Garden, Florida 34787, as further set forth herein and as otherwise directed by the City to include all labor and materials that may be required.

(c) The recitals herein are true and correct and form and constitute a material part of this Agreement upon which the Parties have relied.

(d) The Parties hereto represent to the other that it has undertaken all necessary actions to execute this Agreement, and that it has the legal authority to enter into this Agreement and to undertake all obligations imposed on it. The person(s) executing this Agreement for the Contractor certifies that he/she/they is/are authorized to bind the Contractor fully to the terms of this Agreement.
(e) Time is of the essence of the lawful performance of the duties and obligations contained in this Agreement. The Parties covenant and agree that they shall diligently and expeditiously pursue their respective obligations set forth in this Agreement.

(f) When the term “law” is used herein, said phrase shall include statutes, codes, rules, and regulations of whatsoever type of nature enacted or adopted by a governmental entity of competent jurisdiction.

(g) It is agreed that nothing herein contained is intended or should be construed as in any manner creating or establishing a relationship of co-partners between the parties, or as constituting the Contractor (including, but not limited to, its officers, employees and agents) the agent, representative, or employee of the City for any purpose, or in any manner, whatsoever. The Contractor is to be and shall remain forever an independent Contractor with respect to all services and work performed under this Agreement.

(h) Persons employed by the Contractor in the provision and performance of the services and functions pursuant to this Agreement shall have no claim to pension, workers’ compensation, unemployment compensation, civil services or other employee rights or privileges granted to the City’s officers and employees either by operation of law or by the City.

SECTION 2: SCOPE OF SERVICES.

The Contractor shall safely, diligently and in a professional and timely manner perform, with its own equipment and assets, provide services and complete all work as specified or indicated herein relating to underdrain work, services, and construction on, about, and proximate to Traditions Drive. Such services are generally described as follows and is referred to herein as the “Work”:

Underdrain installation and work on and proximate to Traditions Drive. Such Work includes installation of underdrain, cleanouts, core and insert structure connections, sod installation, driveway removal, driveway apron installation, maintenance of traffic, and mobilization/demobilization of equipment.

SECTION 3: CONTRACTOR UNDERSTANDING OF WORK/SERVICES REQUIRED.

Execution of this Agreement by the Contractor is a representation that the Contractor is familiar with the Work and the services to be provided and/or to be performed and with local conditions. The Contractor shall make no claim for additional time or money based upon its failure to comply with this Agreement. The Contractor has informed the City, and hereby represents to the City, that it has extensive experience in performing and providing the Work and the services described in and relating to this Agreement, and that it is well acquainted with the work conditions and the components that are properly and customarily included within such projects and the requirements of laws, ordinance, rules, regulations or orders of any public authority or licensing entity having jurisdiction.

SECTION 4: CHANGE ORDERS

The City may revise the Scope of Services or other matters relating to the Work through a written Change Order. Change Orders shall identify this Agreement and may contain additional instructions or provisions specific upon certain aspects of this Agreement pertinent to the services to be provided. Such supplemental instruction or provisions shall not be construed as a modification of this Agreement. An Agreement between the parties on and execution of any
Change Order shall constitute a final settlement and a full accord and satisfaction of all matters relating to the change and to the impact of the change on unchanged work, including all direct and indirect costs of whatever nature, and all adjustments to the Contractor’s schedule.

SECTION 5: CONTRACTOR RESPONSIBILITIES

(a) The Contractor shall be responsible for the professional quality, accepted standards, technical accuracy, neatness of appearance of employees, employee conduct, safety, and the coordination of all Work and services furnished by the Contractor under this Agreement as well as the conduct of its staff, personnel, employees, and agents. The City may request and the Contractor shall provide employee addresses and drivers’ licenses. All Contractor employees shall at all times when performing work wear identification badges which, at a minimum, provide the name of the employee and the Contractor. The Contractor shall work closely with the City on all aspects of the Work.

(b) Neither the City’s review, approval or acceptance of, nor payment for, any of the Work or services required shall be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement, and the Contractor shall be and remain liable to the City in accordance with applicable law for all damages to the City caused by the Contractor’s negligent or improper performance or failure to perform any of the Work furnished under this Agreement.

(c) The rights and remedies of the City, provided for under this Agreement, are in addition to any other rights and remedies provided by law.

(d) Time is of the essence in the performance of all Work and services provided by the Contractor under the terms of this Agreement.

(e) Contractor hereby represents and warrants to City that Contractor has the knowledge, experience and skill to perform the Work and services required to be performed by it hereunder; that Contractor shall comply with all applicable federal, state and local (including the City of Winter Garden) laws, resolutions, ordinances and codes, including, without limitations, all professional registration requirements (both corporate and individual for all required basic disciplines); that it shall perform said Work and services in accordance with generally accepted professional standards, in the most expeditious and economical manner, and consistent with the best interests of City.

SECTION 6: CITY RIGHTS AND RESPONSIBILITIES.

(a) The City shall reasonably cooperate with the Contractor in a timely fashion at no cost to the Contractor as set forth in this Section.

(b) The City shall furnish City representative(s), as appointed by the designated representative to administer, review and coordinate the provision of Work and services under this Agreement.

(c) The City shall make City personnel available where, in the City’s opinion, they are required and necessary to assist the Contractor. The availability and necessity of said personnel to assist the Contractor shall be determined solely at the discretion of the City.
(d) The City has the right to examine and observe all of the Contractor’s Work and services and indicate the City’s approval within a reasonable time so as not to materially delay the performance of the Contractor.

(e) The City shall transmit instructions, relevant information, and provide interpretation and definition of City policies and decisions with respect to any and all materials and other matters pertinent to the Work and services covered or contemplated by this Agreement.

(f) The City shall give written notice to the Contractor whenever the City’s designated representative knows of a development that affects the service provided and performed under this Agreement, timing of the Contractor’s provision of Work or services, or a defect or change necessary in the performance of the Work or services of the Contractor.

(g) The rights and remedies of the City provided for under this Agreement are in addition to any other rights and remedies provided by law. The City may assert its right of recovery by any appropriate means including, but not limited to, set-off, suit, withholding, recoupment, or counterclaim, either during or after performance of this Agreement as well as the adjustment of payments made to the Contractor based upon the quality of work of the Contractor.

(h) The failure of the City to insist in any instance upon the strict performance of any provision of this Agreement or to exercise any right or privilege granted to the City hereunder shall not constitute or be construed as a waiver of any such provision or right and the same shall continue in full force and effect.

(i) Neither the City’s review, approval or acceptance of, nor payment for, any of the goods and/or services required shall be construed to operate as a waiver of any such provision or right and the same shall continue in full force and effect.

(j) All deliverable analysis, reference data, survey data, plans and reports or any other form of written instrument or document that may result from the Contractor’s services or have been created during the course of the Contractor’s performance under this Agreement shall become the property of the City after final payment is made to the Contractor or this Agreement is terminated or otherwise ceases to operate.

(k) City shall be responsible for providing and procuring work area access from the adjacent residence where the Work is to be performed.

SECTION 7: COMPENSATION

(a) Compensation to the Contractor shall be paid in one lump sum payment of SEVENTY ONE THOUSAND SEVEN HUNDRED AND SEVENTY DOLLARS ($71,770.00) as set forth in the Contractor proposal for the Traditions Drive underdrain project upon project completion and inspection and final approval of the project by the City. The Work consists of the following services and prices:
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<th>Work</th>
<th>Price</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>980 LF of Underdrain (coarse aggregate/sand, fabric)</td>
<td>@ $47 per LF</td>
<td>$46,060</td>
</tr>
<tr>
<td>4 Cleanouts</td>
<td>@ $225 each</td>
<td>$900</td>
</tr>
<tr>
<td>2 Core and Insert Structure Connections</td>
<td>@ $550 each</td>
<td>$1,100</td>
</tr>
<tr>
<td>660 SY of St. Augustine Sod</td>
<td>@ $4.50 per SY</td>
<td>$2,970</td>
</tr>
<tr>
<td>Remove 240 SY of Driveway</td>
<td>@ $12 per SY</td>
<td>$2,880</td>
</tr>
<tr>
<td>240 SY New 6” Thick Driveway Aprons</td>
<td>@ $64 per SY</td>
<td>$15,360</td>
</tr>
<tr>
<td>Maintenance of Traffic</td>
<td>@ $750 per LS</td>
<td>$750</td>
</tr>
<tr>
<td>Mobilize/Demobilize Equipment</td>
<td>@ $1,750 per LS</td>
<td>$1,750</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td></td>
<td><strong>$71,770</strong></td>
</tr>
</tbody>
</table>

(b) There are no reimbursable expenses to be paid to the Contractor except as specifically set forth herein.

(c) Contractor acknowledges and agrees that City is a Florida municipal corporation and that City’s rights-of-way and real and personal property are not subject to mechanics’ liens or any other liens. Under no circumstances shall Contractor or any subcontractors, laborers, or materialman record or file any lien(s) against the City or the City’s rights-of-way, real, or personal property.

(d) Notwithstanding any other provisions of the Agreement and incorporated documents, Contractor’s exclusive remedy for delays, impacts, disruptions, accelerations, resequencing, suspensions, and interruptions in performance of the Work or services caused by events beyond Contractor’s and its employees’, subcontractors’ and agents’ control, including delays, impacts, disruptions, accelerations, resequencing, suspensions, and interruptions claimed to be caused by or attributable to the City or its officers, employees and agents (or any combination thereof), shall be a claim for and be limited to an equitable extension of time. Contractor expressly agrees that the foregoing constitutes its sole and exclusive remedy for delays in Work/services, and Contractor expressly waives any and all other remedies for any claim for increase in Agreement compensation, damages, expenses, losses, or any other compensation.

(e) As a pre-condition of Final Payment, Contractor shall provide City with a full and final release of claims and liens from Contractor and all those persons and entities providing materials, supplies, and labor by and through Contractor and an affidavit from Contractor attesting that Contractor has paid all of its subcontractors, materialmen, and suppliers concerning the Work and services set forth herein and in any way relating to the project or this Agreement. The acceptance by the Contractor or its successors or assigns of final payment for work and services hereunder shall constitute a full and complete release of the City from any and all claims or demands regarding further compensation for work or services rendered prior to such final payment that the Contractor or its successors or assigns have or may have against the City under the provisions of this Agreement, 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.

SECTION 8: COMMENCEMENT

(a) The Contractor shall commence the provision of the Work and services as described in this Agreement upon execution of this Agreement.

(b) The Contractor and the City agree to make every effort to adhere to the schedules required by the City or as established herein. However, if the Contractor is delayed at any time in the provision of Work or services by any act or omission of the City, or of any employee, tumult of the City, or by any other contractor employed by the City, or by changes ordered by the City, or by strikes, lock outs, fire, unusual delay in transportation, terrorism, unavoidable casualties, or any other causes of force majeure not resulting from the inactions or actions of the Contractor and beyond the Contractor’s control which would not reasonably be expected to occur in connection with or during performance or provision of the services, or by delay authorized by the City pending a decision, or by any cause which the City shall decide to justify the delay, the time of completion shall be extended for such reasonable time as the City may decide in its sole and absolute discretion. It is further expressly understood and agreed that the Contractor shall not be entitled to any damages or compensation, or be reimbursed for any losses on account of any delay or delays resulting from any of the aforesaid causes or any other cause whatsoever.

SECTION 9: TERM/LENGTH OF AGREEMENT.

The Work shall be completed within 45 days from the notice to proceed issued by the City. This Agreement shall be effective upon its execution by the last of the Parties to sign this Agreement and shall terminate upon the completion of the Work and its acceptance by the City, unless terminated earlier as set forth herein.

SECTION 10: DESIGNATED REPRESENTATIVES.

(a) The City designates Jon C. Williams or his/her designated representative, to represent the City in all matters pertaining to and arising from the work and the performance of this Agreement.

(b) The City Manager, or his/her designated representative, shall have the following responsibilities.

1. Examination of all work and rendering, in writing, decisions indicating the City’s approval or disapproval within a reasonable time so as not to unreasonably and materially delay the work of the Contractor;

2. Transmission of instructions, receipt of information, and interpretations and definition of City policies and decisions with respect to design, materials, and other matters pertinent to the Work and services covered by this Agreement;

3. Giving prompt written notice to the Contractor whenever the City’s official representative knows of a defect, material issue, or change necessary in the Work or services or performance of the Contractor; and
(4) Coordinating and managing the Contractor’s preparation of any necessary applications to governmental bodies and to arrange for submission of such applications.

(c) Until further notice from the City, the designated representative for this Agreement is:

Jon C. Williams  
300 West Plant Street  
Winter Garden, Florida 34787

(d) Contractor’s designated representative is:

Matt Blanton, President  
Cathcart Construction Company - Florida  
2564 Connection Point  
Oviedo, FL 32765

SECTION 11: TERMINATION OF AGREEMENT

(a) The City may terminate this Agreement for cause at any time for any one (1) or more of the reasons as follows:

(1) If, in the City’s opinion, adequate progress to be provided for under this Agreement is not being made by the Contractor due to the Contractor’s failure to perform;

(2) If, in the City’s opinion, the quality of the Work or services provided by the Contractor is/are not in conformance with commonly accepted professional standards, standards of the City, and the requirements of federal and/or state regulatory agencies, and the Contractor has not corrected such deficiencies in a timely manner as reasonably determined by the City;

(3) Contractor or any employee or agent of the Contractor is indicted or has a direct charge issued against him/her for any crime arising out of or in conjunction with any work or services that have been performed by the Contractor;

(4) Contractor becomes involved in either voluntary or involuntary bankruptcy proceedings, or makes an assignment for the benefit of creditors;

(5) Contractor violates the Standards of Conduct provisions herein or any provision of federal, state, or local law or any provision of the City’s Code of Conduct;

(6) Contractor fails to maintain insurance policies required under this Agreement or otherwise name the City as an additional insured under same; or

(7) Contractor breaches or defaults under this Agreement.

(b) In the event of any of the causes described in this Section, the City’s designated representative may send a certified letter to the Contractor requesting that the Contractor show cause why the Agreement should not be terminated. If assurance satisfactory to the City of corrective measures to be made within a reasonable time is not given to the City within five (5) calendar days of the date of the letter, the City may consider the Contractor to be in default, and may then immediately terminate this Agreement.
(c) In the event that this Agreement is terminated for cause and it is later determined that the cause does not exist, then this Agreement shall be deemed terminated for convenience by the City, and the City shall have the right to so terminate this Agreement without any recourse by the Contractor.

SECTION 12: TERMINATION BY CONTRACTOR FOR CAUSE.

(a) Subject to Subsection (b), the Contractor may terminate this Agreement for cause after fourteen (14) days written notice and an opportunity for the City to cure if the City commits a material breach of this Agreement.

(b) In the event of the cause described in Subsection (a), the Contractor shall send a certified letter to the City stating the nature of the alleged default and requesting that the City cure the default. If adequate assurances or a plan for corrective action within a reasonable time period are not given by the City to the Contractor within five (5) days after the City’s receipt of said fourteen (14) days written notice and an opportunity to cure, then the Contractor may consider the City to be in default, and may terminate this Agreement upon additional written notice to the City.

SECTION 13: TERMINATION FOR CONVENIENCE.

(a) Notwithstanding any other provision of this Agreement, without cost or penalty, the City shall have the right at any time for its convenience to terminate this Agreement in its entirety without cause if such termination is deemed by the City to be in the public interest by giving Contractor seven (7) days notice in writing of such termination.

(b) In the event that this Agreement is terminated, the City shall identify any specific portions of the Work or service to be continued to completion pursuant to the provisions of this Agreement.

(c) In the event that after the City’s termination for cause for failure of the Contractor to fulfill its obligations under this Agreement it is found that the Contractor has not so failed, the termination shall be deemed to have been for convenience and without cause.

(d) Contractor may terminate this Agreement for its convenience upon one-hundred and fourteen (14) days advance written notice to the City.

SECTION 14: PAYMENT IN THE EVENT OF TERMINATION.

In the event this Agreement is terminated or cancelled prior to final completion without cause, payment for the unpaid portion of the services provided by the Contractor to the date of termination and any additional services performed up to the date of termination shall be paid to the Contractor.

SECTION 15: ACTION FOLLOWING TERMINATION.

Upon receipt of notice of termination given by either party, the terminated party shall promptly discontinue the provision of all services, unless the notice expressly provides otherwise.

SECTION 16: SUSPENSION.

(a) The performance or provision of the Contractor’s Work or services under this Agreement may be suspended by the City at any time.
(b) In the event the City suspends the performance or provision of the Contractor’s services hereunder, the City shall so notify the Contractor, in writing, such suspension becoming effective within seven (7) days from the date of mailing. The City shall thereafter have no further obligation for payment to the Contractor for the suspended provision of services unless and until the City’s designated representative notifies the Contractor in writing that the provision of the services of the Contractor called for hereunder are to be resumed by the Contractor.

(c) Upon receipt of written notice from the City that the Contractor’s services hereunder are to be resumed, the Contractor shall continue to provide the services to the City.

SECTION 17: EQUAL OPPORTUNITY EMPLOYMENT/NON-DISCRIMINATION.

The Contractor agrees that it will not discriminate against any employee or applicant for employment for work under this Agreement because of race, color, religion, sex, age, national origin or disability and will take affirmative steps to ensure that applicants are employed and employees are treated during employment without regard to race, color, religion, sex, age, national origin or disability. This provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or advertising; layoff or termination; rates of pay or their forms or compensation; and selection for training, including apprenticeship. The Contractor, moreover, shall comply with all the requirements as imposed by the Americans with Disability Act, the regulations of the federal government issued thereunder, and any and all requirements of federal, state, or local law related thereto.

SECTION 18: INDEMNITY.

(a) To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the City, its agents, servants, officers, officials and employees, or any of them, from and against any and all claims, judgments, injuries, damages, losses, and expenses including, but not limited to, attorney’s fees (with attorneys selected by the City) and other legal cost (at all trial and appellate levels) such as those for paralegal, investigative, and legal support services, and the actual costs incurred for expert witness testimony, arising out of or resulting from the performance or provision of the Work or services required under this Agreement, provided that same is caused in whole or part by the error, omission, negligent act, failure to act, malfeasance, misfeasance, conduct, or misconduct of the Contractor, its agents, servants, officers, officials, employees, or subcontractors (or any combination thereof). Additionally, the Contractor accepts responsibility for all damages resulting or in any way related to the performance of the Work or services relating to this Agreement. For purposes of compliance with Florida law, Contractor acknowledges that this provision shall be deemed a part of the specifications and the procurement documents for the Work. The maximum monetary limit of indemnification provided by the Contractor under this subsection and other indemnifications contained within the Agreement is two million five hundred thousand dollars ($2,500,000.00) per occurrence, which the City and the Contractor agree bears a commercially reasonable relationship to this Agreement and the Work. This Section survives termination and expiration of this Agreement and completion of the Work.

(b) In accordance with Section 725.06, Florida Statutes, adequate consideration has been provided to the Contractor for this obligation, the receipt and sufficiency of which is hereby specifically acknowledged.
(c) Nothing herein shall be deemed to affect the rights, privileges, and immunities of the City as set forth the Constitution and the laws of the state of Florida, including under section 768.28, Florida Statutes.

(d) In claims against any person or entity indemnified under this Section by an employee of the Contractor or its agents or subcontractors, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligations under this Section shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or its agent or subcontractors, under Workers Compensation acts, disability benefits acts or other employee benefit acts.

(e) The execution of this Agreement by the Contractor shall obligate the Contractor to comply with the indemnification provision in this Agreement; provided, however, that the Contractor must also comply with the provisions of this Agreement relating to insurance coverage(s).

(f) The Contractor shall submit a report to the City within twenty-four (24) hours of the date of any incident resulting in damage or which is reasonably likely to result in a claim against the City and/or Contractor that may be covered by any indemnity provision of this Agreement or any insurance coverage required by this Agreement.

SECTION 19: INSURANCE.

(a) During the term of this Agreement, the Contractor shall obtain or possess and continuously maintain the following insurance coverage, from a company or companies, with a Best Rating of A- or better, authorized to do business in the state of Florida and in a form acceptable to the City and with only such terms and conditions as may be acceptable to the City.

(1) Worker’s Compensation/Employer Liability: The Contractor shall provide Worker’s Compensation for all employees. The limits will be statutory limits for Worker’s Compensation insurance and $1,000,000.00 for Employer’s Liability.

(2) Comprehensive General Liability: The Contractor will provide coverage for all operations including, but not limited to, contractual, products and complete operations and personal injury. The Comprehensive General Liability Insurance limits will not be less than $1,000,000 per occurrence and $2,000,000 general aggregate.

(3) Comprehensive Automobile Liability: The Contractor shall provide complete coverage for owned and non-owned vehicles for limits not less than $1,000,000 CSL or its equivalent.

(b) All insurance other than Worker’s Compensation to be maintained by the Contractor shall specifically include the City as an additional insured.

(c) Contractor shall provide Certificates of Insurance to the City evidencing that all such insurance is in effect prior to commencement of the Work or services under this Agreement from the City. These Certificates of Insurance shall become part of this Agreement. Neither approval by the City nor failure to disapprove the insurance furnished by a Contractor shall relieve the Contractor or the Contractor’s full responsibility for performance of any obligation including the Contractor’s indemnification of the City under this Agreement. If, during the period which an insurance company is providing the
insurance coverage required by this Agreement, an insurance company shall: (1) lose its Certificate of Authority, (2) no longer comply with section 440.57, Florida Statutes, or (3) fail to maintain the requisite Best’s Rating and Financial Size Category, the Contractor shall, as soon as the Contractor has knowledge of any such circumstance, immediately notify the City and immediately replace the insurance coverage provided by the insurance company with a different insurance company meeting the requirements of this Agreement. Until such time as the Contractor has replaced the unacceptable insurer with insurance acceptable to the City, the Contractor shall be deemed to be in default of this Agreement.

(d) The insurance coverage shall contain a provision that requires that prior to any changes in the coverage, except increases in aggregate coverage, fourteen (14) days prior notice will be given to the City by submission of a new Certificate of Insurance.

(e) Contractor shall furnish Certificates of Insurance directly to the City’s designated representative. The certificates shall clearly indicate that the Contractor has obtained insurance of the type, amount and classification required by this Agreement. At any time during the term this Agreement, Contractor shall within five (5) days’ written request from the City, deliver copies to the City of any or all insurance policies and certificates of insurance relating to such policies that are required in this Agreement.

(f) Nothing in this Agreement or any action relating to this Agreement shall be construed as the City’s waiver of sovereign immunity beyond the limits set forth in Section 768.28, Florida Statutes.

(g) The City shall not be obligated or liable under the terms of this Agreement to any party other than the Contractor. There are no third party beneficiaries to this Agreement.

(h) Contractor is an independent contractor and not an agent, representative, or employee of the City. The City shall have no liability except as specifically provided in this Agreement.

(i) All insurance shall be primary to, and not contribute with, any insurance or self-insurance maintained by the City.

SECTION 20: STANDARDS OF CONDUCT.

(a) Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Contractor, to solicit or secure this Agreement and that the Contractor has not paid or agreed to pay any person, company, corporation, individual or firm other than a bona fide employee working solely for the Contractor, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award of making this Agreement.

(b) Contractor shall not discriminate on the grounds of race, color, religion, sex, or national origin in the performance of work under this Agreement or violate any laws pertaining to civil rights, equal protection or discrimination.

(c) Contractor hereby certifies that no undisclosed (in writing) conflict of interest exists with respect to the Agreement, including, but not limited to, any conflicts that may be due to representation of other clients, customers or vendees, other contractual relationships of the Contractor, or any interest in property that the Contractor may have. The Contractor further certifies that any conflict of interest that arises during the term of this Agreement shall be immediately disclosed in writing to the City. Violation of this Section shall be considered as justification for immediate termination of this Agreement.
(d) Contractor shall ensure that all taxes due from the Contractor are paid in a timely and complete manner including, but not limited to, occupational license tax, business tax receipts, or similar.

(e) If the City determines that any employee or representative of the Contractor is not satisfactorily performing his/her assigned duties or is demonstrating improper conduct pursuant to any assignment or work performed under this Agreement, the City shall so notify the Contractor, in writing. The Contractor shall immediately remove such employee or representative of the Contractor from such assignment.

(f) Contractor shall not publish any documents or release information regarding this Agreement to the media without prior approval of the City.

(g) Contractor shall certify, upon request by the City, that the Contractor maintains a drug free workplace policy in accordance with section 287.0878, Florida Statutes. Failure to submit this certification may result in termination of this Agreement.

(h) If the Contractor or an affiliate is placed on the convicted vendor list following a conviction for a public entity crime, such action may result in termination of this Agreement by the City. The Contractor shall provide a certification of compliance regarding the public crime requirements set forth in state law upon request by the City.

(i) The City reserves the right to unilaterally terminate this Agreement if the Contractor refuses to allow public access to all documents, papers, letters, or other materials subject to provisions of Chapter 119, Florida Statutes, and other applicable law, and made or received by the Contractor in conjunction, in any way, with this Agreement.

(j) Contractor shall comply with the requirements of the Americans with Disabilities Act (ADA), and any and all related federal or state laws which prohibits discrimination by public and private entities on the basis of disability.

(k) The City will not intentionally award publicly-funded contracts to any contractor who knowingly employs unauthorized alien workers, constituting a violation of the employment provisions contained in 8 U.S.C. Section 1324a(e) Section 274A(e) of the Immigration and Nationality Act (INA). The City shall consider the employment by the Contractor of unauthorized aliens, a violation of Section 274A(e) of the INA. Such violation by the Contractor of the employment provisions contained in Section 274A(e) of the INA shall be grounds for immediate termination of this Agreement by the City.

(l) Contractor agrees to comply with federal, state and local environmental, health, and safety laws and regulations applicable to the services provided to the City.

(m) Contractor shall ensure that all services are provided to the City after the Contractor has obtained, at its sole and exclusive expense, any and all permits, licenses, permissions, approvals or similar consents.

(n) If applicable, in accordance with section 216.347, Florida Statutes, the Contractor shall not use funds provided by this Agreement for the purpose of lobbying the Legislature, the judicial branch or any State Agency.

(o) Contractor shall advise the City, in writing, if it has been placed on a discriminatory vendor list, may not submit a bid on a contract to provide services to a public entity, or may not transact business with any public entity.
(p) Contractor shall not engage in any action that would create a conflict of interest in the performance of any City employee 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.

(q) Any person or affiliate, as defined in section 287.133, Florida Statutes, shall not be allowed to contract with the City, nor be allowed to enter into a subcontract for work or services under this Agreement, if such a person or affiliate has been convicted of a public entity crime within three (3) years of the date the IFB was advertised, or if such person or affiliate was listed on the State's convicted vendor list within three (3) years of the date the IFB 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 City obtained in violation of this subsection shall be subject to immediate termination for cause. A sub-contractor who obtains a subcontract in violation of this subsection shall be immediately removed from performing work and promptly replaced by a sub-contractor acceptable to the City. Contractor represents and warrants that Contractor complies with this subsection and that Contractor shall at all times continue to comply with the requirements of this subsection.

(r) If Contractor 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 Contractor, Contractor shall be liable to the City for an amount equal to such unsupported part of the claim in addition to all costs to the City attributable to the cost of reviewing said part of Contractor’s claim. The City and the Contractor 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. Contractor agrees to be bound by the provisions of the Florida False Claims Act for purposes of this Agreement.

SECTION 21: ACCESS TO RECORDS/AUDIT/PUBLIC RECORDS.

(a) Contractor shall maintain books, records, documents, time and cost accounts and other evidence directly related to its provision or performance of services under this Agreement. Any and all time records and cost data shall be maintained in accordance with generally accepted accounting principles.

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

(c) The City may perform, or cause to have performed, an audit of the records of the Contractor before or after final payment. This audit shall be performed at a time mutually agreeable to the Contractor and the City subsequent to the close of the final fiscal period in which services are provided or performed. Total compensation to the Contractor may be determined subsequent to an audit as provided for in this Section, and the total compensation so determined shall be used to calculate final payment to the Contractor. Conduct of this audit shall not delay final payment as required by this Section.
(d) In addition to the above, if federal, state, county, or other entity funds are used for any services under this Agreement, the Comptroller General of the United States or the Chief Financial Officer of the State of Florida, or the County of Orange, or any representatives, shall have access to any books, documents, papers, and records of the Contractor which are directly pertinent to services provided or performed under this Agreement for purposes of making audit, examination, excerpts, and transcriptions.

(e) In the event of any audit or inspection conducted reveals any overpayment by the City under the terms of the Agreement, the Contractor shall refund such overpayment to the City within fourteen (14) days of notice by the City of the request for the refund.

(f) Contractor agrees to fully comply with all state laws relating to public records.

(g) Contractor agrees that if any litigation, claim, or audit is started before the expiration of the record retention period established above, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved and final action taken.

(h) Public Records Laws: Contractor acknowledges and agrees that the City is a public entity that is subject to Florida’s public records laws and as such, documents in Contractor’s possession relating to the services performed for the City are subject to inspection pursuant to Chapter 119, Florida Statutes, unless otherwise exempt or excepted by applicable law. Moreover, Contractor agrees to perform and observe the requirements of section 119.0701, Florida Statutes, and Contractor will keep and maintain public records that ordinarily and necessarily would be required by the City in order to perform the services or Work hereunder; provide the public with access to public records on the same terms and conditions that the City would provide the records and at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law; and shall meet all requirements for retaining public records and transfer, at no cost, to the City all public records in possession of the Contractor upon termination of this Agreement and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the public agency in a format that is compatible with the information technology systems of the City. It is hereby specifically agreed that any record, document, computerized information and program, e-mail, audio or video tape, photograph, or other writing of the Contractor, its representatives, employees, agents, entities, and its independent contractors and associates related, directly or indirectly, to the Agreement or the services, shall be deemed to be a Public Record whether in the possession or control of the City or the Contractor, unless an exemption or exception under applicable law applies. Such records, documents, computerized information and programs, e-mails, audio or video tapes, photographs or other writings of the Contractor are subject to the provisions of Chapter 119, Florida Statutes, and may not be destroyed without the specific written approval of the City. While in the possession and control of the Contractor, its representatives, employees, agents, entities, and its independent contractors and associates, all public records shall be secured, maintained, preserved, and retained in the manner specified pursuant to the Public Records Law, at Contractor’s expense. Upon request by the City, the Contractor shall, at Contractor’s expense, within five (5) business days, supply copies of said public records to the City. All books, cards, registers, receipts, documents, and other papers in connection with the Agreement shall, at any and all reasonable times during the normal working hours of the Contractor, be open and freely exhibited to the City for the purposes of examination and/or audit. Since the City’s documents are of utmost importance to the conduct of the City’s business and because of the legal obligations imposed upon the City and Contractor by the Public Records Law, Contractor agrees that
it shall, under no circumstances, withhold possession of any public records, including
originals, copies or electronic images thereof when such are requested by the City,
regardless of any contractual or other dispute that may arise between Contractor and the
City. **IF THE CONTRACTOR HAS QUESTIONS REGARDING THE
APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE
CONTRACTOR’S DUTY TO PROVIDE PUBLIC RECORDS
RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN
OF PUBLIC RECORDS AT: ANGEE GRIMMAGE, CITY CLERK, 300
WEST PLANT STREET, WINTER GARDEN, FLORIDA 34787; E-
mail agrimmage@cwgdn.com; telephone – 407-656-4111 (ext. 2297).**
This Section survives expiration and termination of the Agreement and completion of the
work and services hereunder.

SECTION 22: CODES AND DESIGN STANDARDS.

(a) All services to be provided for performed by the Contractor shall, at a minimum,
be in conformance with commonly accepted industry and professional codes and standards,
standards of the City, and the laws of any and all federal, state and local regulatory
agencies.

(b) The Contractor shall be responsible for keeping apprised of any changing laws
applicable to the services to be performed under this Agreement.

SECTION 23: ASSIGNABILITY.

Contractor shall not sublet, assign or transfer any interest in this Agreement, or claims for
the money due or to become due out of this Agreement to a bank, trust company, or other financial
institution without prior written City approval. When approved by the City, written notice of such
assignment or transfer shall be furnished promptly to the City.

SECTION 24: CONTROLLING LAWS/VENUE/INTERPRETATION.

(a) This Agreement is to be governed by and construed in accordance with the laws of
the state of Florida.

(b) Exclusive venue for any legal proceeding related to this Agreement shall be in the
Ninth Judicial County Court or Circuit Court in and for Orange County, Florida.

(c) This Agreement is the result of *bona fide* arms-length negotiations between the City
and the Contractor and all parties have contributed substantially and materially to the
preparation of the Agreement. Accordingly, this Agreement shall not be construed or
interpreted more strictly against any one party than against any other party.

(d) In the event of litigation arising out of this Agreement or the Work, each party shall
bear their own attorney’s fees and costs, except to the extent the Contractor is otherwise
required by the indemnity and hold harmless provisions of this Agreement.

SECTION 25: ONE YEAR POST- ACCEPTANCE WARRANTY.

The Contractor declares and agrees that the City shall have the right to require Contractor
to and upon demand the Contractor shall, at Contractor’s expense, repair, correct, replace, restore
and make all things comply with and be in good workmanlike condition in accordance with the
procurement documents, including all work and materials, which within a period of one (1) year
from acceptance of the Work by the City are found to be defective or fail in any way to comply with the procurement documents or this Agreement. Contractor shall commence such warranty work within a reasonable time after a request by the City, which reasonable time shall be no longer than thirty (30) days from a request by the City unless otherwise agreed to by the City, and the work shall be diligently performed to completion. Any repair, correction, replacement or restoration of work performed under warranty shall comply with the requirements of the procurement documents and this Agreement and shall be verified by the performance of testing, at Contractor’s expense, as City may require. Should Contractor fail to promptly make the necessary redesign, corrections, repair, replacement, and tests, City may perform or cause to be performed the same, or any portion thereof, and Contractor shall be liable to the City for the expense of such. The Contractor acknowledges that the above one (1) year repair, correction replacement and restoration period is separate from and in addition to Contractor’s warranty that the Work has been completed in compliance with the procurement documents and this Agreement. The above one (1) year repair, replace, and restoration period is not a limitation upon Contractor’s other obligations under the procurement documents or this Agreement, other warranties, or liabilities pursuant to F.S. 95.11. This provision relates only to the specific obligation of the Contractor to repair, correct, replace and restore the Work, and has no relationship to the time within which the obligation to comply with the procurement documents or this Agreement 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.

SECTION 26: FORCE MAJEURE.

Neither party shall be considered in default in performance of its obligations hereunder to the extent that performance of such obligations, or any of them, is delayed or prevented by Force Majeure. Force Majeure shall include, but not be limited to, hostility, terrorism, revolution, civil commotion, strike, epidemic, fire, flood, wind, earthquake, explosion, any law, proclamation, regulation, or ordinance or other act of government, or any act of God or any cause whether of the same or different nature, existing or future; provided that the cause whether or not enumerated in this Section is beyond the control and without the fault or negligence of the party seeking relief under this Section.

SECTION 27: EXTENT OF AGREEMENT/INTEGRATION/AMENDMENT.

(a) This Agreement, together with the exhibit(s), if any, constitutes the entire integrated Agreement between the City and the Contractor and supersedes all prior written or oral understandings in connection therewith. This Agreement, and all the terms and provisions contained herein, including without limitation the exhibits hereto, constitute the full and complete agreement between the parties hereto to the date hereof, and supersedes and controls over any and all prior agreements, understandings, representations, correspondence and statements whether written or oral.

(b) This Agreement may only be amended, supplemented or modified by a formal written amendment executed by the parties.

(c) Any alterations, amendments, deletions, or waivers of the provisions of this Agreement shall be valid only when expressed in writing and duly signed by the parties.
SECTION 28: NOTICES.

(a) Whenever either party desires to give notice unto the other, it must be given by written notice, sent by registered United States mail, with return receipt requested, or overnight courier service (e.g., FedEx and UPS), addressed to the party for whom it is intended, at the place last specified, and the place for giving of notice shall remain such until it shall have been changed by written notice in compliance with the provisions of this Section.

(b) For the present, the parties designate the following as the representative places for giving of notice, to-wit:

For the City:
City of Winter Garden
Attn: City Manager
300 West Plant Street
Winter Garden, Florida 34787

With copy to:
City of Winter Garden
Attn: Public Services Department
300 West Plant Street
Winter Garden, Florida 34787

For the Contractor:
Matt Blanton, President
Cathcart Construction Company - Florida
2564 Connection Point
Oviedo, FL 32765

(c) Written notice requirements of this Agreement shall be strictly construed and such requirements are a condition precedent to pursuing any rights or remedies hereunder. The Contractor agrees not to claim any waiver by City of such notice requirements based upon City having actual knowledge, implied, verbal or constructive notice, lack of prejudice or any other grounds as a substitute for the failure of the Contractor to comply with the express written notice requirements herein. Computer notification (e-mails and message boards) shall not constitute proper written notice under the terms of the Agreement.

SECTION 29: WAIVER.

The failure of the City to insist in any instance upon the strict performance of any provision of this Agreement or to exercise any right or privilege granted to the City hereunder shall not constitute or be construed as a waiver of any such provision or right and the same shall continue in full force and effect.

SECTION 30: NO GENERAL CITY OBLIGATION.

(a) In no event shall any obligation of the City under this Agreement be or constitute a general obligation or indebtedness of the City, a pledge of the ad valorem taxing power of the City or a general obligation or indebtedness of the City within the meaning of the
Constitution of the state of Florida or any other applicable laws, but shall be payable solely from legally available revenues and funds.

(b) Contractor shall not have the right to compel the exercise of the \textit{ad valorem} taxing power of the City.

(c) IN NO EVENT SHALL THE CITY BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES OR DELAY DAMAGES, INCLUDING LOSS OF PROFITS, LOSS OF REVENUE, OR LOSS OF USE, OR COST OF COVER INCURRED BY CONTRACTOR OR ANY THIRD PARTIES ARISING OUT OF THIS AGREEMENT AND/OR CONCERNING THE PERFORMANCE OF SERVICES BY THE CONTRACTOR OR BY THE CITY UNDER THIS AGREEMENT.

SECTION 31: CAPTIONS.

The Section headings and captions of this Agreement are for convenience and reference only and in no way define, limit, or describe the scope or intent of this Agreement or any part thereof, or in any way affect this Agreement or construe any provision of this Agreement.

SECTION 32: SEVERABILITY/CONSTRUCTION.

(a) If any term, provision or condition contained in this Agreement shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement, or the application of such term, provision or condition to persons or circumstances other than those in respect of which it is invalid or unenforceable, shall not be affected thereby, and each term provision and condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law when consistent with equity and the public interest.

(b) All provisions of this Agreement shall be read and applied in \textit{para materia} with all other provisions hereof. However, the terms of this Agreement shall control (to the extent of a conflict) in the event of a conflict exist between this Agreement and any exhibit incorporated herein.

SECTION 33: MEDIATION/DISPUTE RESOLUTION.

Any disputes, differences, claims, or counterclaims between City and Contractor arising out of or in connection with this Agreement which cannot be amicably resolved by the parties through good faith negotiations shall first be submitted to nonbinding mediation for resolution. 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 City shall select the mediator who, if selected solely by the City, 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; provided however, a lawsuit may be filed prior to the satisfaction of the mediation requirement in order to
preserve a claim that will elapse due to an immediate forthcoming expiration of an applicable statute of limitation. In the event a lawsuit is filed prior to the completion of the mediation requirement, the lawsuit shall be abated upon motion of either party until such time as the mediation requirement has been satisfied. 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.

SECTION 34: COUNTERPARTS.

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which, taken together, shall constitute one and the same document.

IN WITNESS WHEREOF, the Parties hereto have made and executed this Agreement on the respective dates under each signature: the City through its City Commission taking action on the ______ day of _____________, 2019, and the Contractor signing by and through its duly authorized corporate officer having the full and complete authority to execute same.

OWNER:
CITY OF WINTER GARDEN, a Florida municipal corporation

By: __________________________

Michael Bollhoefer, City Manager

Date: ______________

CONTRACTOR:

______________________________

By: __________________________

______________________________

Title:____________________________

(CORPORATE SEAL)

ATTEST: _______________________

______________________________
From: Steve Pash, Community Development Director
Via: City Manager Mike Bollhoefer
Date: March 8, 2019  Meeting Date: March 14, 2019
Subject: Reduce and remove Code Enforcement liens for 226 6th Street (PARCEL ID# 23-22-27-4042-12-160)
CODE CASE 07-999 – Building Permit $1,049, 230.00
CODE CASE 08-171 – MOWING $115.00
CODE CASE 08-1014 – Mowing $115.00

Issue:

The previous owners of this property incurred Code Enforcement liens in 2007 and 2008 for an unfit structure and the City mowing the property.

Discussion:

The new owners purchased the property in 2015 and hired a licensed contractor to renovate the house (before and after pictures attached). The house has been renovated and the contractor is seeking to get a certificate of occupancy for the house. In order to receive the Certificate of Occupancy all liens must be paid and the owners are requesting a reduction to the fines/liens on this property.

Recommended Action:

Staff recommends that City Commission reduce the lien to $230.00 to cover City expenses and release the lien if paid by March 22, 2019.

Attachment(s)/References:

Letter from contractor requesting reduction
Before and After Pictures
March 07, 2019

Mr. Steve Pash
Community Development Director
City of Winter Garden
Winter Garden, Fl

Re: Permit 17-3680
BUILDING PERMIT
226 6th Street,
Winter Garden, Fl
Owner: Arredondo Herman R.

Dear Sir,

The purpose of this communication is to make an exposition as well as an explanation about the project mentioned above (Attached you’ll find the pictures of the house as it was before and after).

When we wanted to start the project, we addressed our interest to the City of Winter Garden in order to comply with all the requirements from this city and FBC 2017. In fact, we complied with all permits and inspections until the project was finished, and as you can see in the picture, it ended up been a very nice house that enhances the neighborhood.

Now we have the situation that this house owes to the City of Winter Garden the amount of US$1,049,230.00 for code violations, which for the owner is impossible to pay. By this means we want to kindly ask you to interpose your good offices so that this amount is reduced to a value attainable by the owner and also obtain the Certificate of Occupancy.

Best regards,

Juan A Vasquez Mata
CGC1520470
General Contractor
juan@3vdconstructions.com
407-219-8252
From: Steve Pash, Community Development Director
Via: City Manager Mike Bollhoefer
Date: March 8, 2019 Meeting Date: March 14, 2019
Subject: Joint Planning Area Amendment #7

Issue:
Two properties (Parcel ID # 10-23-27-0000-00-033 and Parcel ID # 10-23-27-0000-00-034) on the south side of Tilden Road would like to annex into the City of Winter Garden and they are outside of the Joint Planning Area.

Discussion:
There are 2 properties on the south side of Tilden Road that would like to annex into the City of Winter Garden. These properties are within the City of Winter Garden service area, but outside of the Joint Planning Area. We have worked with Orange County to amend the JPA to include these two properties so the owners can begin the process to annex the property into the City of Winter Garden.

Recommended Action:
Staff recommends that City Commission approve the Agreement so it can be sent to Orange County Board of Commissioners.

Attachment(s)/References:
Joint Planning Agreement #7
SEVENTH AMENDMENT TO THE RESTATED INTERLOCAL AGREEMENT FOR JOINT PLANNING AREA BETWEEN ORANGE COUNTY AND THE CITY OF WINTER GARDEN

This Seventh Amendment to the Restated Interlocal Agreement for Joint Planning Area ("Seventh Amendment") is made by and between Orange County, Florida, a Charter County and political subdivision of the State of Florida ("County"), and the City of Winter Garden, a Florida municipal corporation ("City").

WHEREAS, a Restated Interlocal Agreement for Joint Planning Area was approved by the City on June 12, 1997, and approved and executed by the County on June 19, 1997, and became effective on June 19, 1997; and

WHEREAS, the First Amendment to the Restated Interlocal Agreement was approved and executed by the City on February 8, 2001, and was approved and executed by the County on April 17, 2001; and

WHEREAS, the Second Amendment to the Restated Interlocal Agreement was approved and executed by the City on February 28, 2002, and was approved and executed by the County on February 26, 2002; and

WHEREAS, the Third Amendment to the Restated Interlocal Agreement was approved and executed by the City on September 26, 2002, and was approved and executed by the County on October 8, 2002; and

WHEREAS, the Fourth Amendment to the Restated Interlocal Agreement was approved and executed by the City on April 22, 2004 and approved and executed by the County on May 25, 2004; and

WHEREAS, the Fifth Amendment to the Restated Interlocal Agreement was approved by the City on October 14, 2004 and approved and executed by the County on November 9, 2004; and

WHEREAS, the Sixth Amendment to the Restated Interlocal Agreement was approved by the City and approved by the County on April 17, 2007; and

WHEREAS, the aforesaid Restated Interlocal Agreement for Joint Planning Area and all amendments thereto are collectively herein referred to as the "Restated Agreement"; and

WHEREAS, County and City now desire to amend the Restated Agreement by expanding the Joint Planning Area depicted on Exhibit "A" of the Restated Agreement to include portions of certain properties south of Tilden Road, generally east of SR 429 and west of the West Orange Country Club (the "Expansion Area"), and to assign City land uses to the Expansion Area;

NOW, THEREFORE, in consideration of the mutual covenants set forth in the Restated Agreement and this Seventh Amendment, the County and the City agree as follows:
1. **Amendments to Restated Agreement:**

   a. Amendment to the Joint Planning Area. The Joint Planning Area as reflected in Exhibit "A" to the Restated Agreement, is hereby replaced and superseded by Exhibit “A” to this Seventh Amendment, which is attached hereto and incorporated herein by reference.

   b. Expansion Area.

   1. Exhibit “B,” attached to this Seventh Amendment and incorporated herein by reference, depicts the Expansion Area, more particularly described as: (i) a portion of the 40.17 +/- acre property located at 14950 Tilden Road, having Orange County Tax Parcel ID# 10-23-27-0000-00-034, and (ii) a portion of the adjoining 40.25 +/- acre property located at 14908 Tilden Road, having Orange County Tax Parcel ID #10-23-27-0000-00-033. Exhibit “C,” attached to this Seventh Amendment and incorporated herein by reference, consists of the legal description for the Expansion Area.

   2. After annexation, the City shall assign the City’s Suburban Residential Future Land Use (4 dwelling units per acre) to the Expansion Area. This land use will be the maximum density that will be allowed to be developed in the Expansion Area, subject to any other limitations and restrictions that may be approved at the time of the City’s adoption of a comprehensive plan amendment and rezoning approval.

   c. Termination Date. The term of the Restated Agreement is hereby extended to October 31, 2022 and shall automatically extend beyond such date for consecutive one (1) year terms each year thereafter unless either the City or County delivers a notice of nonrenewal to the other party at least nine (9) months prior to the termination date in 2022 or to any one (1) year renewal term.

   d. Enclave/Annexation. Paragraph 6. i. of the Restated Agreement is hereby replaced with the following language:

   1. Enclaves. The City and County shall work together in good faith to enter into interlocal agreements pursuant to section 171.046(2)(a), Florida Statutes (2018), to eliminate enclaves of 110 acres or less.

   e. Residential Development. No rezoning application or development plan for residential development in the Expansion Area shall be considered for approval if such rezoning application or development plan has not been processed as a Planned Unit Development. This provision shall survive the expiration and termination of the Restated Agreement, as amended. The Planned Unit Development documents shall include and
illustrate the following general design guidelines:

i. How the development will achieve architectural articulation, variation, and scale to create visual interest along streets and give importance to pedestrian scale and use over vehicular use.

ii. How the development will reinforce a sense of community and increase walkability. Pedestrian and vehicle connections shall be required between residential subdivisions and between residential and commercial areas.

iii. How the development will incorporate accessible, common spaces such as parks or greens to encourage resident interaction, create focal points for community identity, and provide breaks in building repetition and provide relief to development intensity.

iv. Gated streets shall not restrict pedestrian and bicycle access.

v. Stormwater facilities shall be designed and incorporated into open spaces and amenities.

vi. Block length and street patterns shall be determined based on achieving the following:

   a. A visually interesting interconnected street network;
   b. Enhancement of view corridors and vistas to parks, open space, lakes, or other significant features;
   c. Protection of natural features and/or specimen trees;
   d. Encouragement of pedestrian access and utility; and
   e. Elimination of long, continuous runs of similar lot sizes, repetitive building facades, and building masses.

vii. Garages should be located to the rear of single-family residential lots or at least five (5) feet behind the primary building façade. Side entry garages may be located in front of the primary building façade and behind the front setback line.

viii. How the development will achieve compatibility between uses utilizing: comparable lot size or building square footage on adjoining lots; building height; building length; use of step backs in building elevations; separation through landscaped buffers; walks; natural buffers; increased building setbacks; and/or street roadway separation.
ix. Front porches shall be provided on at least fifty percent (50%) of all single-family residential units.

x. Primary building entrances shall be visible and accessible from the street and shall have a walkway from the primary entrance to the sidewalk.

xi. Architectural features shall be used such as: balconies; covered entries; bay windows; variation in massing and height of primary facades using L’s, wings, and changes in wall planes; hip, gable and gambrel roofs (no flat roofs); all which enhance the street front appearance and promote an appropriate massing and scale that will be consistent with the character and identity of the development.

xii. Multi-family development:
   a. Shall be integrated into the pedestrian scale and interconnected street network avoiding large building mass and repetitive architecture commonly associated with campus or garden style apartment complexes.
   b. Parking for multi-family residents should be encouraged behind principal buildings. Principal buildings should front on the street.

2. No Further Changes. The foregoing terms and conditions are hereby incorporated into the Restated Agreement. Except as expressly set forth in this Seventh Amendment, the Restated Agreement in its original form shall remain in full force and effect. Capitalized terms used in this Seventh Amendment that are also used in the Restated Agreement shall have the same meaning as set forth in the Restated Agreement. In the event of any conflict or ambiguity between the Restated Agreement and this Seventh Amendment, this Seventh Amendment controls.

3. Effective Date. This Seventh Amendment to the Restated Agreement shall take effect upon the date of approval by the City, or upon the date of approval by the County, whichever last occurs.

(Remainder of Page Left Blank Intentionally)
Seventh Amendment to the Restated Interlocal Agreement for Joint Planning Area Between Orange County and the City of Winter Garden

ORANGE COUNTY, FLORIDA
By: Board of County Commissioners

By:
Jerry L. Demings
Orange County Mayor

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

By:
Deputy Clerk

CITY OF WINTER GARDEN, FLORIDA

By:
John Rees, Mayor

ATTEST:

Angela Grimmage, City Clerk
EXHIBIT “C”

EXPANSION AREA LEGAL DESCRIPTION

A parcel of land lying in Section 10, Township 23 South, Range 27 East, Orange County, Florida, being more particularly describes as follows:
Commence at the Northwest corner of said Section 10, thence S00°02’35”E along the West line of the Northwest quarter (1/4) of said Section 10 for 30.00 feet to the Point of Beginning, said point being a point on the South right-of-way line of Tilden Road as described in Official Records Book 72, pages 71 and 72 of the Public Records of Orange County, Florida, thence N89°42’20”E along said South right-of-way line for 791.79 feet to the point of curvature of a curve concave to the Southwest; thence Southeast along said South right-of-way of Tilden Road and along the arc of said curve having a radius of 188.93 feet; through a central angle of 29°35’24” for 97.57 feet to a point on the East line of the West two-thirds (2/3) of the West half (1/2) of said Northwest quarter (1/4); thence S00°04’53”E along said East line for 1643.32 feet to a point on the North line of Exhibit “B” of the Agreement Regarding Zoning and Land Use as described in Official Records Book 10700, Page 2125; thence N50°40’33”W along said North line of Exhibit “B” for 573.95 feet; thence S89°38’15”W for 99.07 feet to a point on the North line of Exhibit “C” of the Agreement Regarding Zoning and Land Use as described in Official Records Book 10700, Page 2125; thence continue S89°38’15”W along said North line of Exhibit “C” for 343.50 feet to a point on the West line of aforesaid Northwest quarter (1/4) of Section 10; thence N00°02’35”W along said West line for 1302.50 feet to the Point of Beginning. Containing 28.318 acres (1,233,553 square feet), more or less.
THE CITY OF WINTER GARDEN
CITY COMMISSION AGENDA ITEM

From: Steve Pash, Community Development Director
Via: Mike Bollhoefer, City Manager
Date: March 7, 2019  Meeting Date: March 14, 2019
Subject: Request to approve the Garden Society Bloom and Grow event.

Background Summary and Discussion:

The Garden Society is requesting approval to hold their annual “Spring Fever in the Garden” event in Downtown Winter Garden on Saturday, April 6, 2019 and Sunday April 7, 2019. The event set up and activities will be the same as previous years and will have merchandise and food vendors and amplified music throughout downtown.

Recommendation:
City Staff recommend approval of this event as per the application.

Attachment:
Application
Event Site Map
SPECIAL EVENT APPLICATION

DATE OF APPLICATION: 02/21/2019
ORGANIZATION/GROUP: Bloom & Grow Garden Society
NAME OF EVENT: "Spring Fever in the Garden"
CONTACT/REPRESENTATIVE: Linda Bouton
ALT. PHONE #: lindacb47@gmail.com
PHONE #: 321-276-4287
EMAIL: lindacb47@gmail.com
EVENT LOCATION: 100 S Lakeview Ave
PROPOSED DATES: April 6 & 7
HOURS: Saturday 9am - 5pm / Sunday 10am - 4pm
ESTIMATED DAILY ATTENDANCE: 50,000

PLEASE CHECK ALL OF THE FOLLOWING THAT APPLY:

<table>
<thead>
<tr>
<th>TYPE OF EVENT</th>
<th>EVENT DETAILS</th>
<th>EQUIPMENT AT EVENT</th>
</tr>
</thead>
<tbody>
<tr>
<td>Festival</td>
<td>Admission Charge/Ticket Sales</td>
<td>Amplified Speaking/Music</td>
</tr>
<tr>
<td>Exhibit(s)</td>
<td>Alcohol Served</td>
<td>Portable Restrooms</td>
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<tr>
<td>Carnival/Circus/Fair</td>
<td>Alcohol Sales</td>
<td>Sports Equipment</td>
</tr>
<tr>
<td>General Meeting</td>
<td>Fireworks/Pyrotechnics</td>
<td>Stage/Props/Production</td>
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<tr>
<td>Parade</td>
<td>Food Trucks</td>
<td>Tents # &amp; Size of:</td>
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<tr>
<td>Block Party or Picnic</td>
<td>Merch. Vendors # of:</td>
<td>Temporary Event Signage</td>
</tr>
<tr>
<td>Sporting Event/Competition</td>
<td>Open to Public</td>
<td>Dumpsters/Receptacles</td>
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<tr>
<td>Wedding/Reception</td>
<td>Street/Sidewalk Closure</td>
<td>Cooking Equipment Used</td>
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<tr>
<td>Revival</td>
<td>City Water Used</td>
<td>Gas Open Flame</td>
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<td>Other (Explain):</td>
</tr>
<tr>
<td></td>
<td>City Electric Used</td>
<td></td>
</tr>
</tbody>
</table>

Please complete all of the following:

DATE RECEIVED: 3/15/2019
PERMIT FEED ON: INIT.

Per City Code 27.1.3 "Special Events" are defined as any public assembly of 100 or more people in any park, sidewalk, alley, lake or other publically owned area. Completed applications should be submitted no less than 30 days prior to the first date of the proposed event. Events that require closure of any city street or are anticipated having more than 500 people in attendance will require approval of the City Commission.

Special events on City property where 500 or more people are reasonably anticipated to be in attendance or where there are requests for street closures will require prior approval by the City Commission, at least four weeks prior to the scheduled event. The applicant must complete all of the following information.

REVISED 02/23/2016
**SPECIAL EVENTS POLICIES AND PROCEDURES**

**FOOD VENDING**
The Dept. of Business and Professional Regulation of the State of Florida requires that you notify their Division of Hotels and Restaurants no later than three days prior to any temporary event where food will be sold. All food vendors must meet minimum safety and sanitation requirements and pay a temporary event licensing fee if they do not already hold an annual license with the State of Florida. The Division of Hotels and Restaurants can be reached at 850-487-1395 or visit [http://www.myfloridalicense.com/dbpr/hr/licensing/GT_tempevents.html](http://www.myfloridalicense.com/dbpr/hr/licensing/GT_tempevents.html) for more information.

**EVENT INSURANCE**
Limits will in most instances be required in the following amounts:
- General Aggregate $1,000,000
- Products Aggregate $1,000,000
- Personal & Advertising Injury $250,000
- Each Occurrence $250,000
- Fire Legal Liability $50,000
- Medical Payments $2,000

City staff reserves the right to request increased limits deemed necessary for certain high-risk activities. Individuals, groups without insurance, or groups that do not produce an appropriate certificate of insurance two weeks prior to the event date will be required to purchase individual event policies through the City Insurance carrier at limits deemed necessary by city staff.

Prices for appropriate policies are established by the insurance broker and are non-negotiable. If proper insurance is not obtained or paid for at least two weeks prior to the scheduled event, the City reserves the right to cancel the event request.

**PERMIT FEES**
- Events with less than 25 in attendance: $25.00
- Events with 25 - 200 people in attendance: $150.00
- Events with over 200 people in attendance: $1,000.00

**FEES**
Other fees will be assessed if deemed necessary by certain applicable departments. Although not an exhaustive list, fees may be assessed for police officers, police supervisors, fire protection, EMT personnel, street barricading, electric usage, necessary maintenance staff, trash receptacles & collection, other necessary staff on-site during event hours, etc. Bonds of up to $5,000,000 may be required at the discretion of city staff for events with attendance over 500 people and events hosting certain high-risk activities. All fees must be paid in full in cash, certified check or money order at least two weeks prior to the event date to avoid cancellation.

**MISCELLANEOUS POLICIES**
- Bounce houses, inflatables, and any type of rides are not allowed on City property.
- Event advertising will not include any reference of endorsement by the City of Winter Garden.
- Temporary event signage must meet city code requirements. Contact W.G. code enforcement for info.
- There are other special requirements for Motion Photography Production.
- There are special requirements for Fireworks.
- Any event utilizing Plant St. and effectively closing the West Orange Trail must notify Orange County Parks and Recreation at 407-654-1108.
- If any portion of a state road is to be closed, a state D.O.T. request form must be obtained from the Winter Garden Police Dept., completed and returned to the WGPD to be filed with the State of Florida. Such requests should be submitted at least six weeks prior to the event date.
- May be required to meet with City to present details of event.

**APPROVAL PROCESS**
Community Development, Economic Development, City Manager and Parks & Recreation Departments will review all requests and forward to additional departments as needed. You may be contacted to provide further information. You will be notified of initial approval, additional fee requirements and if further commission approval will be required in 2 to 4 weeks. Conditions of approval document may be included as part of final approval.

Revised 02/23/2016
SPECIAL EVENTS

PLEASE PROVIDE A GENERAL DESCRIPTION OF THE EVENT THAT INCLUDES ALL FEATURES BEING PROPOSED TO TAKE PLACE. ELABORATE ON ANY OF THE ABOVE CHECKED ITEMS, IF NECESSARY: (USE BACK IF NEEDED)

Festival of garden related vendors and a few food type vendors. Entertainment through out downtown Winter Garden. Emcee at the Gazebo with announcements both days. "Chalkin it Up" in front of City Hall. There will be a Kids Zone area. City should have 501C3 document on file.

NO APPLICATION WILL BE ACCEPTED UNLESS THE FOLLOWING ITEMS ARE INCLUDED. (APPROVAL PROCESS WILL NOT BEGIN UNTIL THE FOLLOWING IS SUBMITTED):

• COPY OF 501C-3 FORM SIGNIFYING NON-PROFIT STATUS (IF APPLICABLE)
• SITE PLAN INDICATING ALL AFFECTED AREAS, STREETS PROPOSING TO BE CLOSED, TEMPORARY POWER SOURCES TO BE INSTALLED, PORTABLE RESTROOM LOCATIONS, VENDOR PLACEMENT, PARADE ROUTE OR ANY OTHER SIGNIFICANT FEATURES.
• COPY OF APPLICANT’S INSURANCE CERTIFICATE NAMING THE CITY OF WINTER GARDEN AS ADDITIONALLY INSURED.
• IF ATTENDANCE IS REASONABLY ANTICIPATED TO BE GREATER THAN 100 PEOPLE, YOU SHOULD ALSO INCLUDE A PLAN FOR :
  * SANITATION – RESTROOM, PORT-O-LET PLACEMENT, POTABLE WATER, TRASH RECEPTACLES & COLLECTION PLAN, ETC.
  * PARKING AND TRAFFIC – REROUTING TRAFFIC AROUND BLOCKED STREETS, PARKING FOR EVENT PATRONS, ETC.
  * MEDICAL CARE – FIRST AID STATIONS, EMS SERVICES, AMBULANCE ON SITE, ETC.
  * SECURITY – OFF-DUTY OFFICERS SCHEDULES, SECURITY SERVICE UTILIZED, # OF EVENT STAFF IN ATTENDANCE, ETC.
• IF YOU WANT TO HAVE ANY SIGNAGE, PLEASE PROVIDE A SITE PLAN SHOWING WHERE SIGNS ARE PROPOSED (THE CITY PROHIBITS SNIPE SIGNS).

FOR OFFICIAL USE ONLY

TECHNICIAN INITIAL: ____________________________ DATE RECEIVED: ____________________________ □ FEE PAID

CITY MANAGER/DESIGNEE: ____________________________ DATE: ____________________________ APPROVED: □ Yes/ □ No

CONDITIONS:

_________________________ ____________________________

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REVISED 02/23/2016
*Spring Fever 2019*

Street Closure
Barricade Locations

- Police Station
- City Hall
- Pavillon Farmers' Market
- Theater
- Edgewater Hotel
- Train Station
- W Joiner St

N Central Ave
N Highland Ave
N Lakeview Ave
North Boyd St
N Main St
S Central Ave
S Highland Ave
S Lakeview Ave
S Boyd St
S Main St
W Plant St
W Tremaine St