



**CITY COMMISSION AGENDA  
CITY HALL COMMISSION CHAMBERS  
300 W. Plant Street**

***\*Note: Election related items are contingent upon the results being certified by the County Supervisor of Elections prior to the meeting.***

**REGULAR MEETING**

**MARCH 13, 2014**

**6:30 P.M.**

**CALL TO ORDER**

Determination of a Quorum

Invocation and Pledge of Allegiance

**1. APPROVAL OF MINUTES**

Regular Meeting of February 27, 2014

**2. PRESENTATION**

**Proclamation 14-03** honoring Fire Chief John Williamson on his retirement

**3. GENERAL ELECTION RESULTS**

A. **\*Resolution 14-02:** A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF WINTER GARDEN, FLORIDA, DECLARING THE RESULTS OF THE ELECTION HELD ON MARCH 11, 2014 FOR MAYOR/COMMISSIONER DISTRICT 5 AND COMMISSIONER DISTRICT 1 AND AUTHORIZING ISSUANCE OF CERTIFICATES – City Clerk Golden

**4. OATH OF OFFICE**

A. \*Commissioner District 1 and Mayor/Commissioner District 5 as elected on March 11, 2014 – City Clerk Golden

**5. FIRST READING AND PUBLIC HEARING OF PROPOSED ORDINANCES**

A. **Ordinance 14-13:** AN ORDINANCE OF THE CITY OF WINTER GARDEN, FLORIDA PROVIDING FOR THE ANNEXATION OF CERTAIN ADDITIONAL LANDS GENERALLY DESCRIBED AS APPROXIMATELY 0.22 ± ACRES LOCATED AT 450 WEST STORY ROAD AT THE SOUTHWEST CORNER OF WEST STORY ROAD AND FOSTER AVENUE INTO THE CITY OF WINTER GARDEN FLORIDA; REDEFINING THE CITY BOUNDARIES TO GIVE THE CITY JURISDICTION OVER SAID PROPERTY; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE

B. **Ordinance 14-14:** AN ORDINANCE OF THE CITY OF WINTER GARDEN, FLORIDA AMENDING THE FUTURE LAND USE MAP OF THE WINTER GARDEN COMPREHENSIVE PLAN BY CHANGING THE LAND USE DESIGNATION OF REAL PROPERTY GENERALLY DESCRIBED AS 0.22 ± ACRES OF LAND LOCATED AT 450 WEST STORY ROAD AT THE SOUTHWEST CORNER OF WEST STORY ROAD AND FOSTER AVEUNE FROM ORANGE COUNTY LOW DENSITY RESIDENTIAL TO CITY LOW DENSITY RESIDENTIAL; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE

C. **Ordinance 14-15:** AN ORDINANCE OF THE CITY OF WINTER GARDEN, FLORIDA REZONING APPROXIMATELY 0.22 ± ACRES OF REAL PROPERTY GENERALLY LOCATED AT 450 WEST STORY ROAD AT THE SOUTHWEST CORNER OF WEST STORY ROAD AND FOSTER AVENUE FROM ORANGE COUNTY R-2 RESIDENTIAL DISTRICT TO CITY R-2 RESIDENTIAL DISTRICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE **with the second reading and public hearing being scheduled for March 27, 2014** – Community Development Director Williams

D. **Ordinance 14-16:** AN ORDINANCE OF THE CITY OF WINTER GARDEN, FLORIDA PROVIDING FOR THE ANNEXATION OF CERTAIN ADDITIONAL LANDS GENERALLY DESCRIBED AS APPROXIMATELY 1.75 ± ACRES LOCATED AT 13100 WEST COLONIAL DRIVE ON THE SOUTH SIDE OF WEST COLONIAL DRIVE, EAST OF 5TH STREET AND WEST OF 9TH STREET INTO THE CITY OF WINTER GARDEN FLORIDA; REDEFINING THE CITY BOUNDARIES TO GIVE THE CITY JURISDICTION OVER SAID PROPERTY; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE

- E. **Ordinance 14-17:** AN ORDINANCE OF THE CITY OF WINTER GARDEN, FLORIDA AMENDING THE FUTURE LAND USE MAP OF THE WINTER GARDEN COMPREHENSIVE PLAN BY CHANGING THE LAND USE DESIGNATION OF REAL PROPERTY GENERALLY DESCRIBED AS 1.75 ± ACRES LOCATED AT 13100 WEST COLONIAL DRIVE ON THE SOUTH SIDE OF WEST COLONIAL DRIVE, EAST OF 5TH STREET AND WEST OF 9TH STREET FROM ORANGE COUNTY COMMERCIAL TO CITY COMMERCIAL; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE
- F. **Ordinance 14-18:** AN ORDINANCE OF THE CITY OF WINTER GARDEN, FLORIDA REZONING APPROXIMATELY 1.75 ± ACRES LOCATED AT 13100 WEST COLONIAL DRIVE ON THE SOUTH SIDE OF WEST COLONIAL DRIVE, EAST OF 5TH STREET AND WEST OF 9TH STREET FROM ORANGE COUNTY C-3 COMMERCIAL DISTRICT TO CITY C-2 ARTERIAL COMMERCIAL DISTRICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE **with the second reading and public hearing being scheduled for March 27, 2014** – Community Development Director Williams

6. **REGULAR BUSINESS**

- A. Recommendation to approve bids and award contract for Woodlark Well #2 project to A. C. Schultes of Florida, Inc. in the amount of \$1,036,167.00, which includes a ten percent contingency – Assistant City Manager Public Services Cochran
- B. Recommendation to approve bids and award contract for Lift Station #23 improvements to US Water Services Corporation in the amount of \$419,770.41, which includes a 10% contingency – Assistant City Manager Public Services Cochran
- C. Recommendation to approve Change Order #4 increasing the contract amount for E. Plant St. Segment 2 by \$600,722.77 to cover the cost of improvements to Segment 4 - Assistant City Manager Public Services Cochran
- D. Recommendation to approve revisions to the Community Development Block Grant Purchasing Policy and Minority Enterprise Policy – Economic Development Director Gerhartz
- E. Recommendation to approve entering into an agreement with the Orange County School Board to continue the School Resource Officer Program – Police Chief Brennan
- F. Recommendation to approve swapping City owned land at 270 W. Plant Street with the 252 W. Plant Street Partnership for their land at 252 W. Plant Street and paying for the additional incurred costs – City Manager Bollhoefer
- G. **Resolution 14-03:** A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF WINTER GARDEN, FLORIDA, APPOINTING A MAYOR PRO-TEM – City Clerk Golden

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

8. **MATTERS FROM CITY ATTORNEY** – Kurt Ardaman

9. **MATTERS FROM CITY MANAGER** – Mike Bollhoefer

10. **MATTERS FROM MAYOR AND COMMISSIONERS**

**ADJOURN** to a Regular Meeting on March 27, 2014 at 6:30 p.m. in City Hall Commission Chambers, 300 W. Plant Street, 1st floor

**NOTICE:** 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.

	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 x2254.		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.
---	--	---	--



# CITY OF WINTER GARDEN

## CITY COMMISSION REGULAR MEETING MINUTES

February 27, 2014

A **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. The invocation and Pledge of Allegiance were given.

**Present:** Mayor John Rees, Commissioners Bob Buchanan, Kent Makin, Robert Olszewski and Colin Sharman

**Also Present:** City Manager Mike Bollhoefer, City Attorney Kurt Ardaman, City Clerk Kathy Golden, Assistant to City Manager - Public Services Don Cochran, Assistant to City Manager – Administrative Services Frank Gilbert, Community Development Director Ed Williams, Finance Director Laura Zielonka, Fire Chief John Williamson, Police Chief George Brennan, Building Official Skip Lukert, Economic Development Director Tanja Gerhartz, Recreation Director Jay Conn, West Orange Times Reporter Peter M. Gordon and Orlando Sentinel Reporter Steve Hudak

### 1. **APPROVAL OF MINUTES**

**Motion by Commissioner Buchanan to approve regular meeting minutes of February 13, 2014 as submitted. Seconded by Commissioner Sharman and carried unanimously 5-0.**

### 2. **SECOND READING AND PUBLIC HEARING OF PROPOSED ORDINANCE**

A. **Ordinance 14-10:** AN ORDINANCE OF THE CITY OF WINTER GARDEN, FLORIDA, AMENDING ORDINANCE 13-64, THE CITY OF WINTER GARDEN FISCAL YEAR 2013-2014 BUDGET TO CARRY FORWARD PRIOR YEAR APPROPRIATIONS; PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE

City Attorney Ardaman read Ordinance 14-10 by title and the following excerpt from Section 1, appropriated as follows:

#### **REVENUES**

General Fund	\$ 1,551,348
CRA	7,174,710
Law Enforcement Grants	3,363
Local Option Gas Tax Fund	938,710
Transportation Impact Fee Fund	6,207,186
Utilities Operating Fund	2,454,920
Utilities Impact Fee Fund	6,280,294
Utilities Renewal & Replacement	1,949,455

Stormwater Fund	-
Total Revenues	<u>\$26,559,986</u>

Mr. Ardaman noted that the expenditures for each of the same items were the same amounts for a total expenditure of \$26,559,986.

Finance Director Zielonka stated that these are projects that were budgeted for last year which were not completed. City Manager Bollhoefer noted one change from the last meeting was that a fire engine was added because it was purchased in this year and not last year. Ms. Zielonka interjected that it was purchased last year but delivered this year.

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

**Motion by Commissioner Buchanan to adopt Ordinance 14-10. Seconded by Commissioner Makin and carried unanimously 5-0.**

3. **REGULAR BUSINESS**

A. **Recommendation to approve the architectural design for Phase 1 of Florida Hospital as presented**

Community Development Director Williams shared the excitement experienced when Florida Hospital first approached the City about locating here and bringing with it a number of professional and technical jobs. In review of other hospitals, research found hospitals to be typically pretty ugly. They are institutional, requiring large amounts of windows. It is difficult to make them look anything other than institutional or attractive. Due to time constraints, Florida Hospital was not able to commit to a particular type or style of architecture. He mentioned that approvals were given to the City Commission for final approval of the architectural style to actually be built. He stated that Florida Hospital has hired a team that has created the plans which will be shared tonight. He noted that there are other issues tied to those plans that will also be discussed. It will not be necessary to vote on those issues or give approval, but merely make the City Commission aware of the items.

Mr. Williams presented the original site plan and then went over the changes. He noted that a roundabout has been incorporated and greenway boulevard. The final acreage will not be known until a permit is approved by the water management district. He also described how the new entrance coming from the roundabout to the main facilities is carried south of the buildings and then ties back around to the nature park in conjunction with the retention pond. This will be a much more environmentally sensitive design than what was on the original site plan. Mr. Williams further explained the proposed phases and their minimal impact to the surrounding homes.

Mr. Williams explained there was a wall approximately 170 foot long, 10 to 12 foot high that stepped down to 8 foot then 6 foot; across on the north side from of the entrance to block noise and vehicle headlights from the residential areas. With the roundabout, the

wall has to be built 350 feet long to accomplish the same thing. He displayed the proposed design that is higher in the middle and steps down to 8 feet to 6 feet with landscaping. It should be both attractive and effective. There will also be an extended wall around the subdivision with landscaping and a berm, which will be reimbursed with some impact fees. Staff will make sure there is no impact on the neighboring homes.

Mr. Bollhoefer explained that the roundabout is to be designed for restaurant delivery trucks, but the hospital trucks are still required to go to the service entrance located in the back.

Mr. Bollhoefer also noted that with regard to the reimbursement using impact fees, it would be allowed because the roundabout increases the traffic that is tied to increasing the capacity of the road. The sound wall is being built because of that increase and thus you can use transportation impact fees.

Mr. Bollhoefer spoke of the State Road 429 overpass probably being the biggest issue with traffic in the long term with both Phase 1 and 2 of the hospital. Florida Hospital has agreed that they will pay to move the ramp back. Staff would also like to review this intersection and possibly blow it out every way possible to improve the traffic flow there; such as the addition of turn lanes in certain directions. He spoke of possibly getting funding from the state and OOCEA, whom staff will be meeting with on Monday.

Mr. Bollhoefer noted that the City met with several neighborhood groups and he recognized that a few were in attendance. They were shown the design and the majority liked it.

Mayor Rees inquired about the slide showing the wall labeled as "screen". He wanted to know what percentage of the noise would be cut. Mr. Bollhoefer responded that it is really hard to say what percentage, but noted that the first wall will block some of the sound. The acoustical wall will be built on top of the berm and designed to absorb some of the sound. Mayor Rees expressed that if we are going through the expense of putting up a wall he wants to be sure that it will be effective. Secondly, the wall has to be attractive with proper landscaping.

Commissioner Olszewski expressed that he would have liked to have seen this information before the meeting tonight. He asked if the City Commission was being asked to approve what is being presented. Mr. Bollhoefer explained that this item is for the City Commission to approve the architecture. Staff will be responsible for ensuring the drawings agree with the approved architecture. If the plans do not follow the architecture, staff will not be allowing it to go forward.

Commissioner Olszewski asked if someone could share some of the objections heard at the community meeting. Commissioner Sharman responded that a neighbor of his told him it looked like Health Central, so he visited Health Central. He expressed that Florida Hospital is completely different from Health Central and believes that, once this is built,

they will be very happy with it also. Mayor Rees noted that the City wants to be sure it is architecturally pleasing to the community.

Commissioner Sharman mentioned his was pleased with the design being lowered. Commissioner Olszewski interposed that this is only Phase 1 but could go up to seven stories, as previously approved by the City Commission, in later phases.

Mayor Rees mentioned the use of impact fees to mitigate traffic in the area.

**Motion by Commissioner Sharman to approve the architectural design for Phase 1 of Florida Hospital as presented with staff recommendations (*see attached Exhibit A*). Seconded by Commissioner Olszewski and carried unanimously 5-0.**

**B. Recommendation to approve funding stormwater repairs and dedicate the funds that were used for St. Augustine maintenance to improve and maintain the medians along Stoneybrook Parkway**

City Manager Bollhoefer stated that one road located on the most eastern end of the Stoneybrook subdivision was designed and approved by an engineer so each back yard had its own mini pond to handle drainage. Mr. Bollhoefer distributed pictures showing these ponds and how they connect after a hard rain. Staff has possibly found a resolution. He spoke of an agreement with Stoneybrook whereby the City would maintain the St. Augustine grass for the Stoneybrook subdivision at approximately \$30,000 per year. Staff has met with the HOA board, who has agreed to use those funds to pay for the repair of this drainage problem. Then Stoneybrook HOA will take over the cost of maintaining the St. Augustine grass. In the long term, once those funds have been used to pay for the stormwater, the City would like to dedicate the approximate \$33,000, to improve and maintain the Stoneybrook Parkway medians. This option would benefit everyone using the road as well as the residents of that subdivision. The cost to repair [*the mini ponds*] is approximately \$50,000. Staff recommends approving the utilization of those funds to repair the drainage and dedicate future funds to improving and maintaining the medians.

**Motion by Commissioner Buchanan to approve funding stormwater repairs and dedicate the funds that were used for St. Augustine maintenance to improve and maintain the medians along Stoneybrook Parkway. Seconded by Commissioner Sharman and carried unanimously 5-0.**

**Recommendation to approve extending the operating agreement for the Garden Theatre for an additional 10 years**

City Manager Bollhoefer stated that three of the current Commissioners were part of the process when the operating agreement [*for the Garden Theatre*] was negotiated. Initially this agreement was designed for a 5-year term to see how well a theater would work; then they would be given the option to renew in 10-year increments. Copies of the agreement were sent out today and he apologized for not sending them out with the agenda packets. He covered the main points of the agreement stating that part of the agreement requires

the theater meet certain performance standards. They are required to provide 25 hours a month of events or 12 shows per year. The theater would have to be made available to the City for use during City events whenever it is not in use by the theater. They are required to have one fee-based educational program per year. Mr. Bollhoefer noted that they have exceeded these performance standards. He shared that another part of the agreement is that the City is responsible for building maintenance; the theater is responsible for maintaining all the equipment, including the sound system. They are also responsible for seats, carpeting, and the marquee; with the City being responsible for replacement as needed.

Mr. Bollhoefer expressed the ability of changes to be made when and if necessary. He spoke to them regarding the replacement of their own equipment when needed. The City handles payments for the building, thus freeing up enough funds for them to ensure that they can pay for future equipment and maintenance of that equipment. Mr. Bollhoefer emphasized that he has shared with the theater that going forward they need to make sure they set aside enough capital funds to renew and replace equipment when they need it.

Mr. Bollhoefer stated that the theater has exceeded everyone's expectations, improving the downtown and making it better, in turn benefiting everyone. It has increased property values and made the City a better place, and offered to answer any questions.

Commissioner Makin noted that the current agreement is good through November 30, 2015 and wondered why it is being brought to the City Commission eight months early. Mr. Bollhoefer responded that they [*the theater*] have an opportunity for a \$90,000 grant, \$45,000 of which is coming from the County and \$45,000 of which they will put in to purchase new equipment.

Commissioner Olszewski emphasized his support of the theater and indicated his contributions even before becoming a Commissioner. He distressingly stated that he was not given the lease agreement until 10:30 a.m. this morning. He stressed that he would like to do his due diligence and review it, thereby requesting a postponement until the next meeting.

There was discussion that the theater would lose the grant if an extension was delayed.

Mayor Rees noted he had seen the agreement years ago and because it was not included in the packet, he had also called staff to ask about the agreement. He explained the City can get out of the agreement. Commissioner Olszewski again expressed his frustration. Mr. Bollhoefer again apologized.

Commissioner Sharman shared that the building is the asset. Right now it is being run well, but at the time of the original agreement the City Commission was not sure and opted to have them come back for renewal after having had a chance to review. The intent is that 10 years from now, whatever management is in place, if they are not doing the job that is being done today, the City can take it back. City Manager Bollhoefer

noted that they have to continually meet the required performance standards. Commissioner Buchanan asserted that if they fail to produce what they have been producing, the City Commission could revisit the agreement.

Commissioner Olszewski asked if someone from the theater could explain the grant. Mayor Rees recognized Becky Roper to address the Commissioner's request.

Ms. Roper, founding president of the theater, stated that the grant was brought to her attention, and at the time they were considering whether or not to apply for the grant. About a month ago they received a call that the grant would be an underfunded pool, which meant funds would be available. The board looked at it and they did have the matching funds to apply for the grant. She noted it would be worth their energy to invest the time to put the grant forward. Ms. Roper explained that \$90,000 worth of lighting equipment will benefit the attendees. She spoke of LED lighting and replacement of instruments many of which were donated and in some are 40 years or older. Mayor Rees asked if one of the qualifications is that you have a lease for an extended period. She noted they write contracts well in advance and left a large window for renewing. They did not want to wait until the end of the five years. They had requested a renewal, by letter, back in August of last year. She stated they need to have it done in order for the grant to be finished. The equipment has a certain depreciable life and will have to stay on the books for a certain amount of time, so the grant issuer (Orange County Arts and Cultural Affairs) is just looking for a long term relationship. Commissioner Sharman asked about the lease term the grant requires. Ms. Roper responded it is either five or seven years.

Commissioner Olszewski complimented the Garden Theatre and with the concerns addressed and the City Attorney's opinion, he has no problem voting on this matter.

**Motion by Commissioner Olszewski to approve extending the operating agreement for the Garden Theatre for an additional 10 years. Seconded by Commissioner Makin and carried unanimously 5-0.**

4. **MATTERS FROM PUBLIC** – There were no items.
5. **MATTERS FROM CITY ATTORNEY** – There were no items.
6. **MATTERS FROM CITY MANAGER**

**Excursion Train**

City Manager Bollhoefer announced that the excursion train will soon be running in Winter Garden. One of our first trains in many years will be running for the Bloom 'N Grow event. He noted that as part of the grant to fix the tracks, the City's share was \$12,000; and for that amount the entire track in Winter Garden was repaired. The cost alone to repair the part by Dillard Street where the train fell off was to be over \$50,000. He shared that there is talk of

future trains coming in from various other cities. Mayor Rees mentioned that the train would be a wood burning steam engine.

### **City's Bond Rating Upgraded**

City Manager Bollhoefer stated that because of the growth in Winter Garden there has been a significant increase in property tax values; more than any other City in Orange County last year. He noted that because of all the successes in Winter Garden, the City's bond rating has gone from an A+ to AA. He, the Mayor, and Commissioners thanked staff for doing such a good job to get the higher rating.

### **Windermere Road and Roberson Road Roundabout**

City Manager Bollhoefer noted that staff has been working on the roundabout for Windermere Road and Roberson Road and there have been some funding issues; the initial estimates are approximately \$1 million or more. He has been working with County Commissioner Scott Boyd, and in working with the hospital a different roundabout expert has been hired. The new expert has found a way to redesign the roundabout, and Mr. Bollhoefer is confident it can be built for approximately \$500,000 to \$700,000. He just received word from County Commissioner Boyd this morning that the County has \$500,000 to contribute to the cost of this roundabout with the City committing to \$250,000. He believes with the \$500,000 plus the \$250,000, the City should be able to move forward with this project. He requested that the City Commission give him permission to spend approximately \$4,000 to pay this expert to get the actual design of the roundabout in order to move forward and get this project done.

**Motion by Commissioner Olszewski to approve spending \$4,000 to pay the referenced expert to design the Windermere Road and Roberson Road roundabout. Seconded by Commissioner Sharman and carried unanimously 5-0.**

### **Retirement of Fire Chief John Williamson**

City Manager Bollhoefer shared that our Fire Chief, John Williamson, has submitted his retirement intentions in approximately two weeks. Mr. Williamson has accepted a position with the Orlando International Airport. In the interim, our Deputy Chief Matt McGrew will fill the position.

The Mayor and Commissioners thanked Fire Chief Williamson for his service.

## **7. MATTERS FROM MAYOR AND COMMISSIONERS**

**Commissioner Sharman** stated that he is looking forward to the road improvements on State Road 429. He also shared that the Blues and BBQ was an excellent event.

**Commissioner Olszewski** thanked Police Chief Brennan and everyone in the Winter Garden Police Department as well as the Fire Department that attended the Police Memorial dedication that was a moving event.

Commissioner Olszewski thanked staff and Parks and Recreation Director Jay Conn for all their efforts in the Blues and BBQ event.

Commissioner Olszewski reminded everyone that the Florida Collegiate Summer League is announcing the Winter Garden team name at the Winter Garden Little League this Saturday at 10:00 a.m.

Commissioner Olszewski congratulated Kristen Iannuzzi, an English teacher of West Orange High School, on being named Orange County Public Schools 2015 Teacher of the Year. He also noted that not only does she teach English, she is also the only female wrestling coach in the State of Florida, and they have already won a district championship for the Warriors.

**Commissioner Buchanan** stated that Blues and BBQ was a wonderful event. He noted that he did not know anyone which he feels is the sign of a great event. He noted that all of the restaurants were full and doing well.

**Commissioner Makin** noted that he too saw the same thing with all the new people attending the Blues and BBQ. He thanked staff for their great job in this effort. He did not hear of any problems and thought it was so amazing to see so many families turn out for this event.

Commissioner Makin thanked Police Chief Brennan for the memorial service and Fire Chief John Williamson for his service to the City.

**Mayor Rees** thanked Police Chief Brennan for the memorial event.

Mayor Rees thanked Fire Chief Williamson for his service and stated that we would miss him and wished him the best.

Mayor Rees agreed with the amount of families that attended the Blues and BBQ and stated that it was an impressive event.

The meeting adjourned at 7:23 p.m.

APPROVED:

\_\_\_\_\_  
Mayor John Rees

ATTEST:

\_\_\_\_\_  
City Clerk Kathy Golden, CMC

Exhibit A





## Proclamation

14-03

Distinguished Service September 17, 2001 to March 14, 2014

**Whereas**, Fire Chief Williamson began his distinguished career in the fire service field in 1984 at the Casselberry Fire Department where he attained the rank of Battalion Chief after 17 years; and

**Whereas**, in 2001 he served as the Assistant Fire Chief for Winter Garden and was promoted to Fire Chief in 2002 as the City's eleventh Fire Chief since 1913; and

**Whereas**, Fire Chief Williamson has lead the department in realizing two new Fire Stations (22 and 23), a new paramedic rescue vehicle, a new ladder truck, advanced life support capabilities on every response unit, and a portable fire safety house that trains our children how to get out of a burning building; and

**Whereas**, Fire Chief Williamson has provided local and state leadership in fire and emergency medical services in his role as a past President of the Central Florida Fire Chiefs' Association and past President of the Florida Fire Chiefs' Association; and

**Whereas**, Fire Chief Williamson has worked tirelessly to understand the needs of the community and how the Winter Garden Fire Department can best meet these needs and make Winter Garden a leader in fire service and emergency medical services; and

**Whereas**, under Fire Chief Williamson's leadership, the City of Winter Garden began successfully sharing fire service delivery with the county and our surrounding cities, saving significant money during deeply uncertain economic times; and

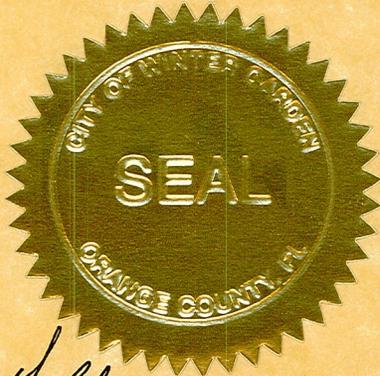
**Whereas**, Fire Chief Williamson has demonstrated throughout his life and career a sense of deep responsibility, pride and doing the right thing, whether it be for his family, his community or the fire service; and

**Whereas**, Fire Chief Williamson will retire on March 14, 2014, after more than twelve years of commendable dedication to his position and to the citizens of Winter Garden.

**Now, therefore**, the Mayor and City Commissioners do hereby confer upon

### FIRE CHIEF JOHN WILLIAMSON

its highest commendation for the manner in which he has performed his duties as a member of the Winter Garden, Florida, Fire Department, with special thanks for his professionalism, dedication to service and kindness to the members of the public.



Attest:

*Kathy Golden*

Kathy Golden, City Clerk

**In witness whereof**, I have hereunto set my hand and caused the City Seal to be affixed this 13th day of March, 2014.

*John Rees*  
Mayor John Rees



**RESOLUTION 14-02**

**A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF WINTER GARDEN, FLORIDA, DECLARING THE RESULTS OF THE ELECTION HELD ON MARCH 11, 2014 FOR MAYOR/COMMISSIONER DISTRICT 5 AND COMMISSIONER DISTRICT 1 AND AUTHORIZING ISSUANCE OF CERTIFICATES**

**WHEREAS**, on March 11, 2014, a General Election was conducted in accordance with the Charter and Ordinances of the City of Winter Garden, and the State of Florida Election Code; and

**WHEREAS**, the Registration Book closing for the election reflected that the total Registered Voters in District 1 for Precinct 1103 was 5,156; and

**WHEREAS**, the Registration Book closing for the election reflect that the total Registered Voters in District 5 (city-wide) for Precincts 1103, 2103, 3103 and 4103 was 21,518; and

**WHEREAS**, the City Clerk for Winter Garden has obtained the Certificate of Election Results from the Orange County Canvassing Board, which is hereby made a part of this Resolution, for the purpose of electing the Mayor/Commissioner District 5 and City Commissioner for District 1.

**NOW THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF WINTER GARDEN, FLORIDA**, that we do hereby declare that:

- \_\_\_\_\_ is duly elected to service as Mayor/Commissioner of District 5 for a three-year term
- \_\_\_\_\_ is duly elected to service as Commissioner of District 1 for a three-year term

and hereby authorizes the City Clerk to issue the candidates elected as Mayor Commissioner District 5 and City Commissioner District 1 a Certificate of Election.

This Resolution is duly adopted at a regular meeting of the City Commission of the City of Winter Garden, Florida, held on the 13<sup>th</sup> day of March 2014.

\_\_\_\_\_  
John Rees, Mayor

ATTEST:

\_\_\_\_\_  
Kathy Golden, CMC, City Clerk

**THE CITY OF WINTER GARDEN**  
**CITY COMMISSION AGENDA ITEM**

**From:** Ed Williams, Community Development Director

**Via:** City Manager Mike Bollhoefer

**Date:** March 5, 2014

**Meeting Date:** March 13, 2014

**Subject:** 450 West Story Road (Annexation FLU Amendment & Zoning)  
**Maria Rios**  
**Ordinance 14-13**  
**Ordinance 14-14**  
**Ordinance 14-15**  
**PARCEL ID# 22-22-27-9188-01-031**

**Issue:**

The applicant is requesting Annexation, Zoning, and Future Lands Use designation on property located at 450 West Story Road.

**Discussion:**

The City encourages infill of its jurisdictional limits through voluntary annexation of enclaves. The subject property makes up a 0.22 ± acre enclave located at 450 West Story Road. The applicant has requested Annexation into the City, Amendment to the Future Land Use Map of the City's Comprehensive Plan to designate the property as Low Density Residential, and Zoning of R-2. (See attached Staff Report).

**Recommended Action:**

Staff recommends approval of Ordinance 14-13, Ordinance 14-14 and Ordinance 14-15, with the second reading scheduled for March 27, 2014.

**Attachment(s)/References:**

Location Map  
Ordinance 14-13  
Ordinance 14-14  
Ordinance 14-15  
Staff Report

# Legend



NOT TO SCALE



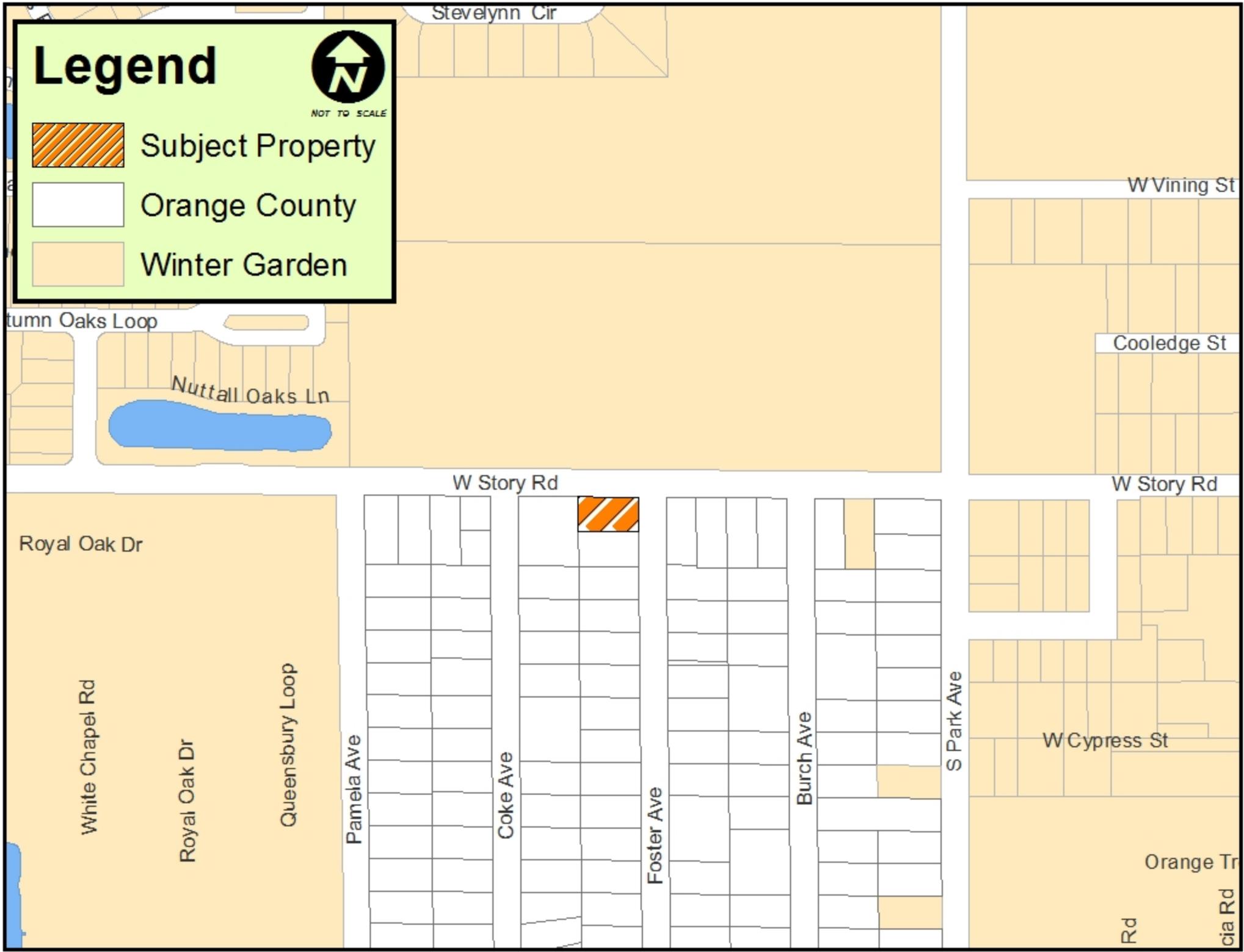
Subject Property



Orange County



Winter Garden



ORDINANCE 14-13

AN ORDINANCE OF THE CITY OF WINTER GARDEN, FLORIDA PROVIDING FOR THE ANNEXATION OF CERTAIN ADDITIONAL LANDS GENERALLY DESCRIBED AS APPROXIMATELY 0.22 ± ACRES LOCATED AT 450 WEST STORY ROAD AT THE SOUTHWEST CORNER OF WEST STORY ROAD AND FOSTER AVENUE INTO THE CITY OF WINTER GARDEN FLORIDA; REDEFINING THE CITY BOUNDARIES TO GIVE THE CITY JURISDICTION OVER SAID PROPERTY; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE.

**WHEREAS**, the owner of the land, generally described as approximately 0.22 ± acres located at 450 West Story Road, at the southwest corner of West Story Road and Foster Avenue and legally described in Section 2 of this Ordinance, which land is reasonably compact and contiguous to the corporate limits of the City of Winter Garden, Florida (“City”), has, pursuant to the prerequisites and standards set forth in § 171.044, Fla. Stat., petitioned the City Commission for voluntary annexation;

**WHEREAS**, the petition for voluntary annexation referenced herein bears the signatures of all owners of the property or properties described in Section 2 of this Ordinance (*i.e.*, the property or properties to be annexed); and

**WHEREAS**, the City has determined that the property described in Section 2 of this Ordinance is located in an unincorporated area of the County and that annexation of such property will not result in the creation of an enclave.

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

**SECTION 1: *Annexation.*** That the City Commission through its Planning and Zoning Board has conducted an investigation to determine whether the described property meets the prerequisites and standards set forth in Chapter 171, Fla. Stat. and has held a public hearing and said petition and made certain findings.

**SECTION 2: *Description of Area Annexed.*** That, after said public hearing and having found such petition meets said prerequisites and standards, the property legally defined in ATTACHMENT “A” and graphically shown on the attached map shall be annexed into the City of Winter Garden, Florida.

**SECTION 3: *Effect of Annexation.*** That the City of Winter Garden, Florida, shall have all of the power, authority, and jurisdiction over and within the land as described in Section 2 hereof, and the inhabitants thereof, and property therein, as it does and have over its present corporate limits and laws, ordinances, and resolutions of said City shall apply and shall have equal force and effect as if all territory had been part of said City at

the time of the passage of such laws, ordinances, and resolutions.

**SECTION 4:** *Apportionment of Debts and Taxes.* Pursuant to § 171.061, Fla. Stat., the area annexed to the City shall be subject to all taxes and debts of the City upon the effective date of annexation. However, the annexed area shall not be subject to municipal ad valorem taxation for the current year if the effective date of the annexation falls after the City levies such tax.

**SECTION 5:** *Instructions to Clerk.* Within seven (7) days following the adoption of this Ordinance, the City Clerk or his/her designee is directed to file a copy of this ordinance, including ATTACHMENT "A" hereto, with the clerk of the circuit court and the chief administrative officer of Orange County as required by § 171.044(3), Fla. Stat.

**SECTION 6:** *Severability.* Should any portion of this Ordinance be held invalid, then such portions as are not declared invalid shall remain in full force and effect.

**SECTION 7:** *Effective Date.* This Ordinance shall become effective upon adoption at its second reading.

**FIRST READING AND PUBLIC HEARING:** \_\_\_\_\_, 2014.

**SECOND READING AND PUBLIC HEARING:** \_\_\_\_\_, 2014.

**ADOPTED** this \_\_\_\_\_ day of \_\_\_\_\_, 2014, by the City Commission of the City of Winter Garden, Florida.

**APPROVED:**

\_\_\_\_\_  
JOHN REES, Mayor/Commissioner

**ATTEST:**

\_\_\_\_\_  
KATHY GOLDEN, City Clerk

**ATTACHMENT "A"**

**LEGAL DESCRIPTION**

PARCEL ID#: 22-22-27-9188-01-031

The North 74.00 feet of Lots 3 and 4, Block A, WESTCHESTER PLACE, according to the plat thereof, as recorded in Plat Book Q, Page 141, Public Records of Orange County, Florida, being more particularly described as follows: Begin at the Northeast corner of Lot 4, Block A, WESTCHESTER PLACE, according to the plat thereof, as recorded in Plat Book Q, Page 141, Public Records of Orange County, Florida, thence run South 01°01'00" East along the East line of said Lot 4, Block A, 74.01 feet; thence run North 90°00'00" West 130.00 feet to the West line of Lot 3, Block A, of said WESTCHESTER PLACE; thence run North 01°01'00" West along said West line, 74.01 feet to the Northwest corner of said Lot 3, Block A; thence run North 90°00'00" East 130.00 feet to the Point of Beginning.

Containing 0.221 acres, more or less.

ORDINANCE 14-14

AN ORDINANCE OF THE CITY OF WINTER GARDEN, FLORIDA AMENDING THE FUTURE LAND USE MAP OF THE WINTER GARDEN COMPREHENSIVE PLAN BY CHANGING THE LAND USE DESIGNATION OF REAL PROPERTY GENERALLY DESCRIBED AS 0.22 ± ACRES OF LAND LOCATED AT 450 WEST STORY ROAD AT THE SOUTHWEST CORNER OF WEST STORY ROAD AND FOSTER AVEUNE FROM ORANGE COUNTY LOW DENSITY RESIDENTIAL TO CITY LOW DENSITY RESIDENTIAL; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE.

**WHEREAS**, on the 13<sup>th</sup> of June, 1991, the City Commission of the City of Winter Garden adopted Ordinance 91-16 which adopted a new Comprehensive Plan for the City of Winter Garden, and on the 24<sup>th</sup> of June, 2010, the City Commission of the City of Winter Garden adopted Ordinance 10-19 readopting and amending the Comprehensive Plan for the City of Winter Garden;

**WHEREAS**, the owner of that certain real property generally described as 0.22 ± acres of land located at 450 West Story Road at the southwest corner of West Story Road and Foster Avenue, and legally described in ATTACHMENT "A" (the "Property") has petitioned the City to amend the Winter Garden Comprehensive Plan to change the Future Land Use classification from Orange County Low Density Residential to City Low Density Residential; and

**WHEREAS**, the City of Winter Garden's Local Planning Agency and City Commission have conducted the prerequisite advertised public hearings pursuant to Chapter 163, Florida Statutes, regarding the adoption of this ordinance; now, therefore,

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

**SECTION I.** *FLUM Amendment.* The City of Winter Garden hereby amends the Future Land Use Map of the City of Winter Garden Comprehensive Plan by designating the aforesaid Property to City Low Density Residential as set forth in ATTACHMENT "B".

**SECTION II.** *Effective Date.* Provided that the Property described herein is annexed into the City of Winter Garden pursuant to Ordinance 14-13, this Ordinance shall become effective 31 days after adoption, unless the Ordinance is timely challenged pursuant to § 163.3187(5), Fla. Stat., in which case, the Ordinance shall not be effective until the state land planning agency or the Administrative Commission, respectively, issues a final order

determining that the adopted Ordinance is in compliance.

**SECTION III. Severability.** Should any portion of this Ordinance be held invalid, then such portions as are not declared invalid shall remain in full force and effect.

**FIRST READING AND PUBLIC HEARING:** \_\_\_\_\_, 2014.

**SECOND READING AND PUBLIC HEARING:** \_\_\_\_\_, 2014.

**ADOPTED** this \_\_\_\_\_ day of \_\_\_\_\_, 2014, by the City Commission of the City of Winter Garden, Florida.

**APPROVED:**

\_\_\_\_\_  
JOHN REES, Mayor/Commissioner

**ATTEST:**

\_\_\_\_\_  
KATHY GOLDEN, City Clerk

**ATTACHMENT "A"**

**LEGAL DESCRIPTION**

PARCEL ID#: 22-22-27-9188-01-031

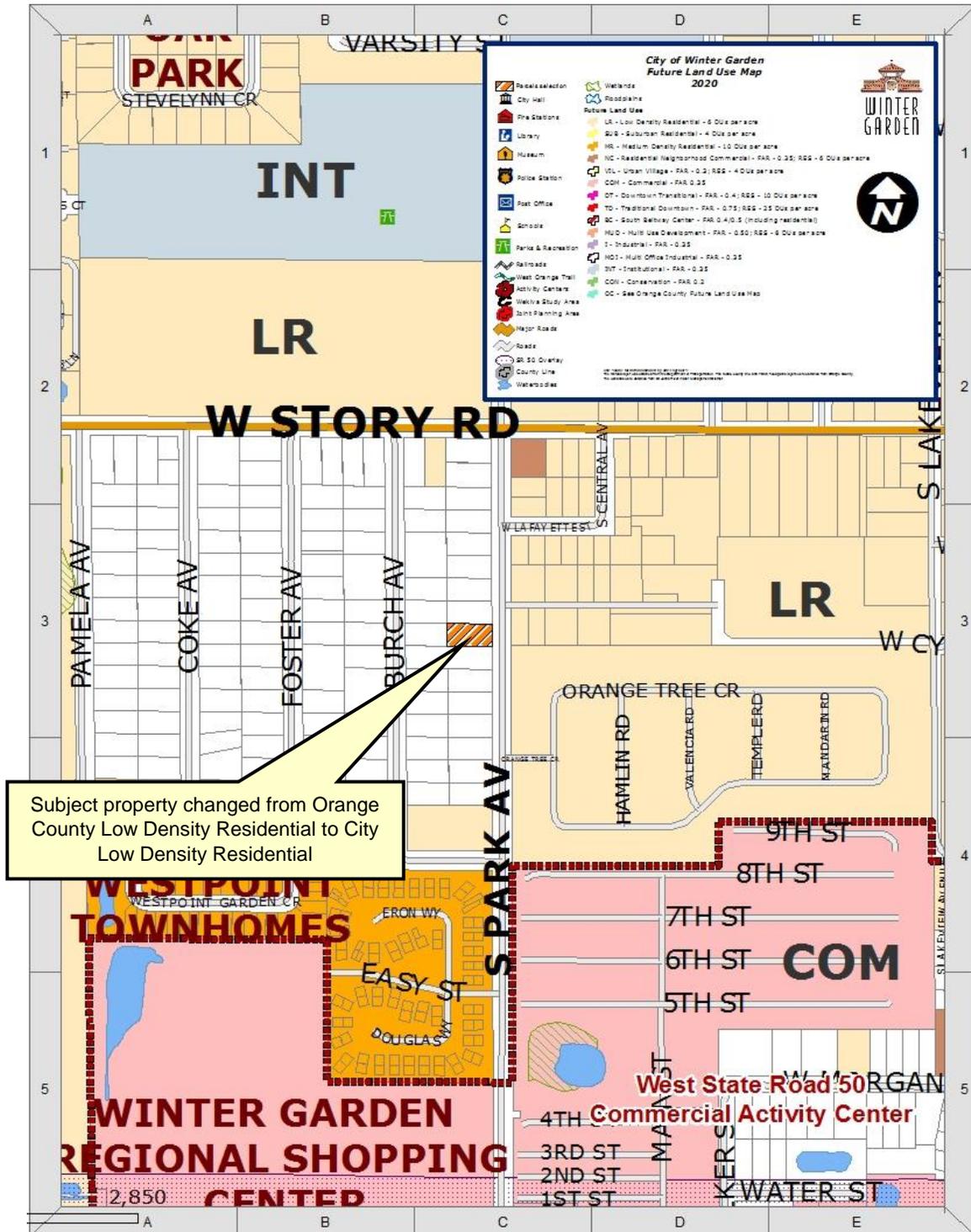
The North 74.00 feet of Lots 3 and 4, Block A, WESTCHESTER PLACE, according to the plat thereof, as recorded in Plat Book Q, Page 141, Public Records of Orange County, Florida, being more particularly described as follows: Begin at the Northeast corner of Lot 4, Block A, WESTCHESTER PLACE, according to the plat thereof, as recorded in Plat Book Q, Page 141, Public Records of Orange County, Florida, thence run South 01°01'00" East along the East line of said Lot 4, Block A, 74.01 feet; thence run North 90°00'00" West 130.00 feet to the West line of Lot 3, Block A, of said WESTCHESTER PLACE; thence run North 01°01'00" West along said West line, 74.01 feet to the Northwest corner of said Lot 3, Block A; thence run North 90°00'00" East 130.00 feet to the Point of Beginning.

Containing 0.221 acres, more or less.

ATTACHMENT "B"

FUTURE LAND USE MAP

710 South Park Avenue



ORDINANCE 14-15

AN ORDINANCE OF THE CITY OF WINTER GARDEN, FLORIDA REZONING APPROXIMATELY 0.22 ± ACRES OF REAL PROPERTY GENERALLY LOCATED AT 450 WEST STORY ROAD AT THE SOUTHWEST CORNER OF WEST STORY ROAD AND FOSTER AVENUE FROM ORANGE COUNTY R-2 RESIDENTIAL DISTRICT TO CITY R-2 RESIDENTIAL DISTRICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE.

**WHEREAS**, the owner of that certain real property generally described as 0.22 ± acres of land located at 450 West Story Road at the southwest corner of West Story Road and Foster Avenue, and legally described in Section 1 of this ordinance has petitioned the City to rezone said property from Orange County R-2 Residential District to the City’s R-2 Residential District zoning classification, therefore;

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

**SECTION 1: *Rezoning.*** After due notice and public hearing, the zoning classification of real property legally described on ATTACHMENT “A,” is hereby rezoned from Orange County R-2 Residential District to City R-2 Residential District in the City of Winter Garden, Florida.

**SECTION 2: *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 3: *Non-Severability.*** Should any portion of this Ordinance be held invalid, then the entire Ordinance shall be null and void.

**SECTION 4: *Effective Date.*** This Ordinance shall become effective simultaneously upon the effective date of Ordinance 14-14 which is an amendment to the Future Land Use Map of the City of Winter Garden Comprehensive Plan that allows the property described herein to be zoned as provided in this Ordinance.

**FIRST READING AND PUBLIC HEARING:** \_\_\_\_\_, 2014.

**SECOND READING AND PUBLIC HEARING:** \_\_\_\_\_, 2014.

**ADOPTED** this \_\_\_\_\_ day of \_\_\_\_\_, 2014, by the City Commission of the City of Winter Garden, Florida.

**APPROVED:**

\_\_\_\_\_  
JOHN REES, Mayor/Commissioner

**ATTEST:**

\_\_\_\_\_  
KATHY GOLDEN, City Clerk

**ATTACHMENT "A"**

**LEGAL DESCRIPTION**

PARCEL ID#: 22-22-27-9188-01-031

The North 74.00 feet of Lots 3 and 4, Block A, WESTCHESTER PLACE, according to the plat thereof, as recorded in Plat Book Q, Page 141, Public Records of Orange County, Florida, being more particularly described as follows: Begin at the Northeast corner of Lot 4, Block A, WESTCHESTER PLACE, according to the plat thereof, as recorded in Plat Book Q, Page 141, Public Records of Orange County, Florida, thence run South 01°01'00" East along the East line of said Lot 4, Block A, 74.01 feet; thence run North 90°00'00" West 130.00 feet to the West line of Lot 3, Block A, of said WESTCHESTER PLACE; thence run North 01°01'00" West along said West line, 74.01 feet to the Northwest corner of said Lot 3, Block A; thence run North 90°00'00" East 130.00 feet to the Point of Beginning.

Containing 0.221 acres, more or less.

# CITY OF WINTER GARDEN

## PLANNING & ZONING DIVISION

300 West Plant Street - Winter Garden, Florida 34787-3011 • (407) 656-4111

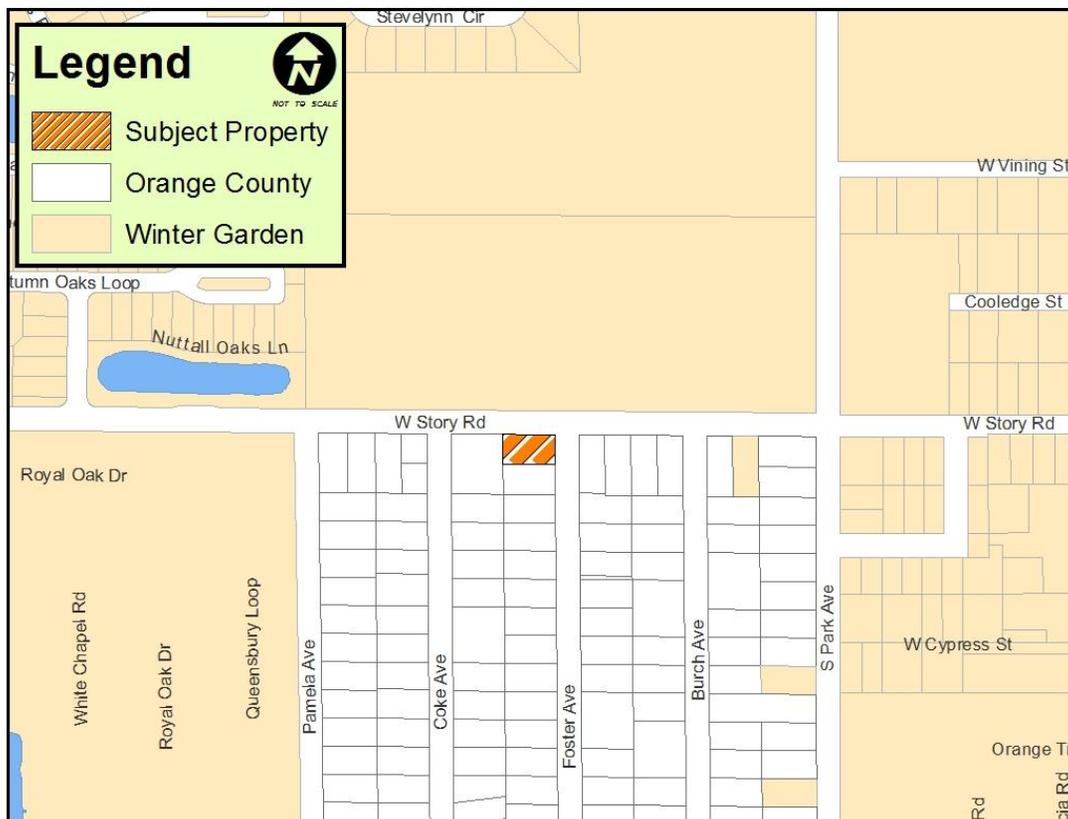
# STAFF REPORT

**TO:** PLANNING AND ZONING BOARD  
**PREPARED BY:** STEVE PASH, SENIOR PLANNER  
**DATE:** FEBRUARY 27, 2014  
**SUBJECT:** ANNEXATION – ZONING – FLU AMENDMENT  
**450 WEST STORY ROAD (0.22 +/- ACRES)**  
**PARCEL ID #:** 22-22-27-9188-01-031  
**APPLICANT:** MARIA RIOS

### 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 450 West Story Road and is approximately 0.22 ± acres. The map below depicts the proximity of the subject property to the City's jurisdictional limits:



The applicant has requested annexation into the City, amendment to the Future Land Use Map (FLUM) of the City's Comprehensive Plan to designate the property as Low Density Residential, and rezoning the property to R-2 Residential District.

In accordance with the City's Comprehensive Plan, permitted uses within the Low Density Residential land use include single family homes and churches and schools. The zoning classifications that are consistent with the Low Density Residential land use designation include PUD, R-1A, R-1, R-2, R-1B, and INT.

The City endorses infill of its jurisdictional limits through voluntary annexation of enclaves. The elimination of enclaves through voluntary annexation furthers the goals, objectives, and policies of the City's Comprehensive Plan.

### **EXISTING USE**

The subject property is currently developed with a single-family house.

### **ADJACENT LAND USE AND ZONING**

The property located to the north is a City Park (Veterans Park), zoned C-2 and located in the City. The properties located to the east, south, and west are developed with single family homes, zoned R-2 and located in Orange County.

### **PROPOSED USE**

The owner is proposing to annex the property and keep the existing structure.

### **PUBLIC FACILITY ANALYSIS**

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.

### **SUMMARY**

City Staff recommends approval of the proposed Ordinances. Annexation will provide a more efficient delivery of services to the property and further the goals and objectives of the City of Winter Garden's Comprehensive Plan to eliminate enclaves.

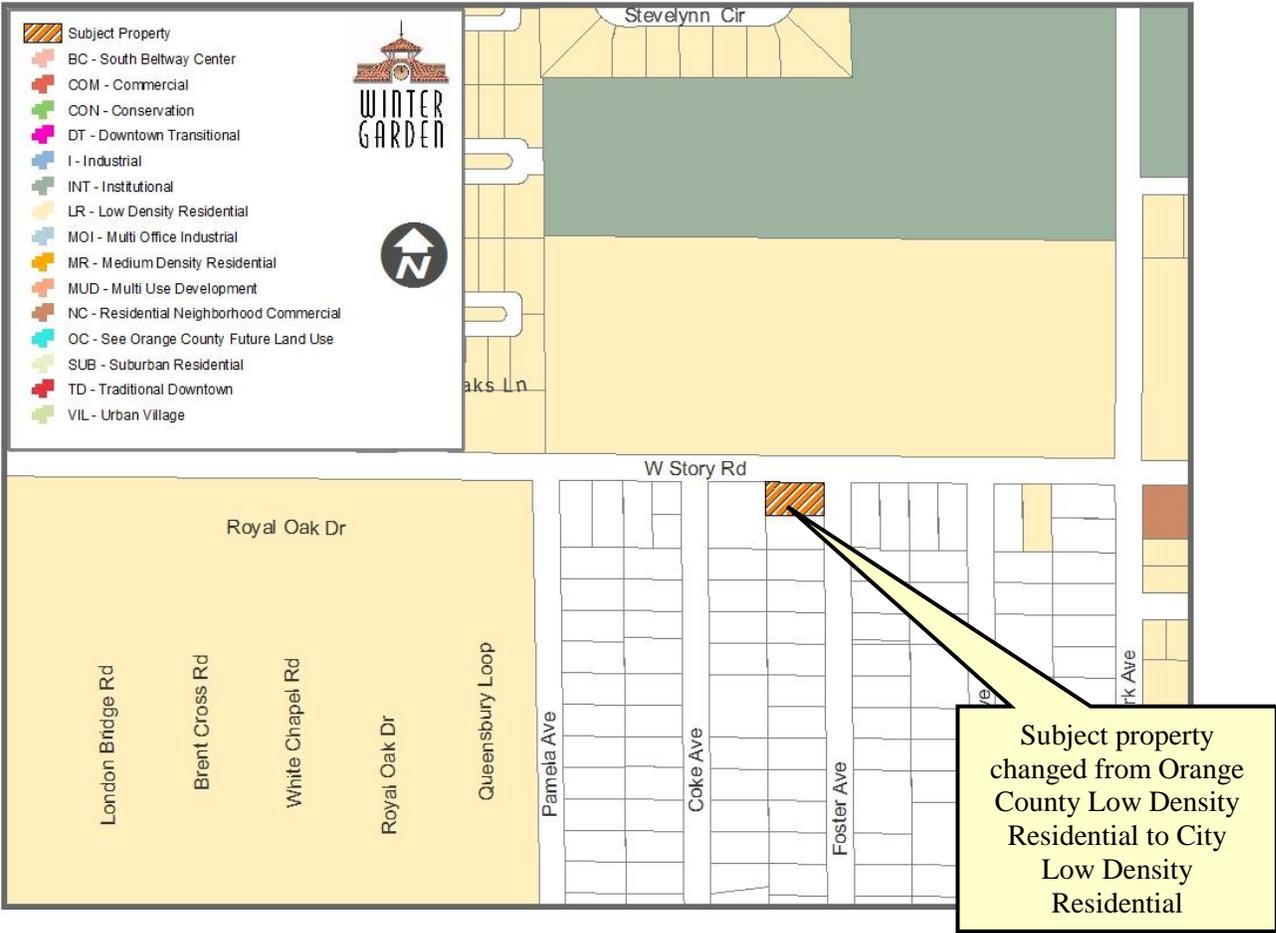
**MAPS**

**AERIAL PHOTO**

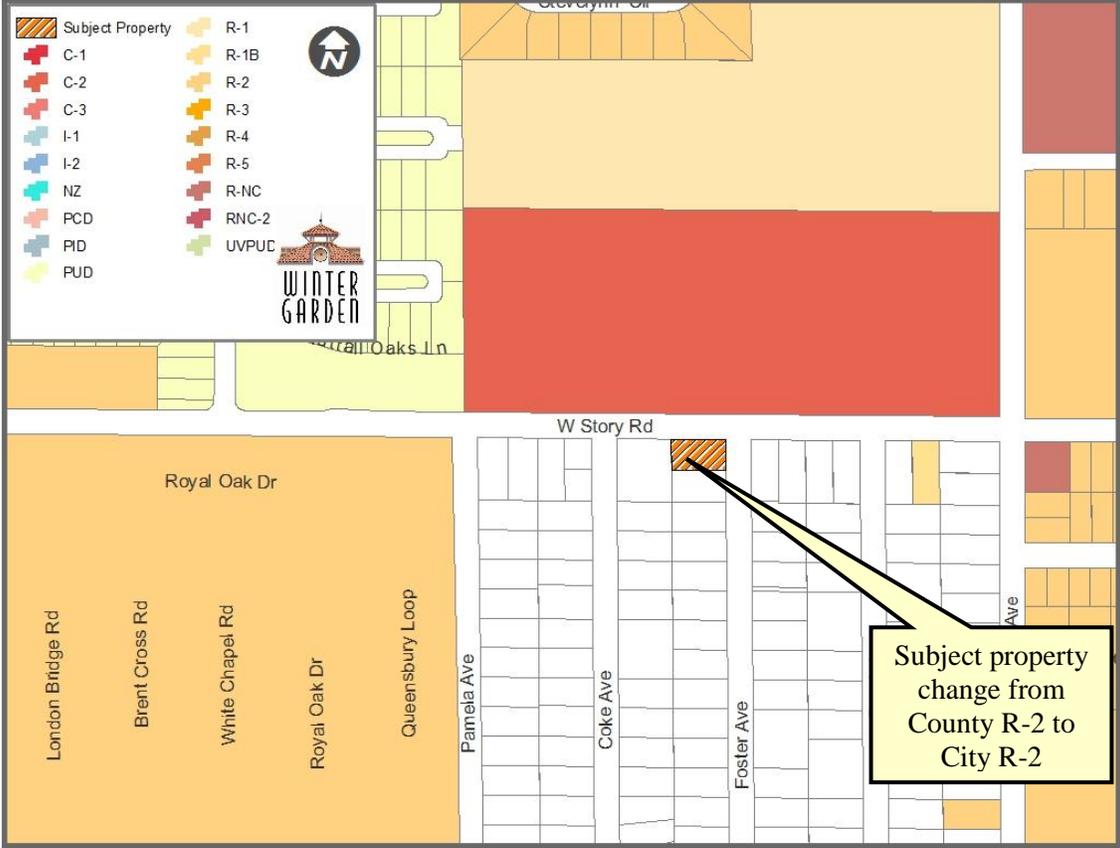
**450 West Story Road**



**FUTURE LAND USE MAP**  
**450 West Story Road**



**ZONING MAP**  
**710 South Park Avenue**



**END OF STAFF REPORT**

**THE CITY OF WINTER GARDEN**  
**CITY COMMISSION AGENDA ITEM**

**From:** Ed Williams, Community Development Director

**Via:** City Manager Mike Bollhoefer

**Date:** March 5, 2014

**Meeting Date:** March 13, 2014

**Subject:** 13100 West Colonial Drive (Annexation FLU Amendment & Zoning)  
**Lake Butler Groves, Inc.**  
**Ordinance 14-16**  
**Ordinance 14-17**  
**Ordinance 14-18**  
**PARCEL ID# 26-22-27-8108-00-060**

**Issue:**

The applicant is requesting Annexation, Zoning, and Future Lands Use designation on property located at 13100 West Colonial Drive.

**Discussion:**

The City encourages infill of its jurisdictional limits through voluntary annexation of enclaves. The subject property makes up a 1.75 ± acre enclave located at 13100 West Colonial Drive. The applicant has requested Annexation into the City, Amendment to the Future Land Use Map of the City's Comprehensive Plan to designate the property as Commercial, and Zoning of C-2. (See attached Staff Report).

**Recommended Action:**

Staff recommends approval of Ordinance 14-16, Ordinance 14-17 and Ordinance 14-18, with the second reading scheduled for March 27, 2014.

**Attachment(s)/References:**

Location Map  
Ordinance 14-16  
Ordinance 14-17  
Ordinance 14-18  
Staff Report

# Legend



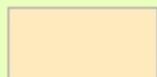
NOT TO SCALE



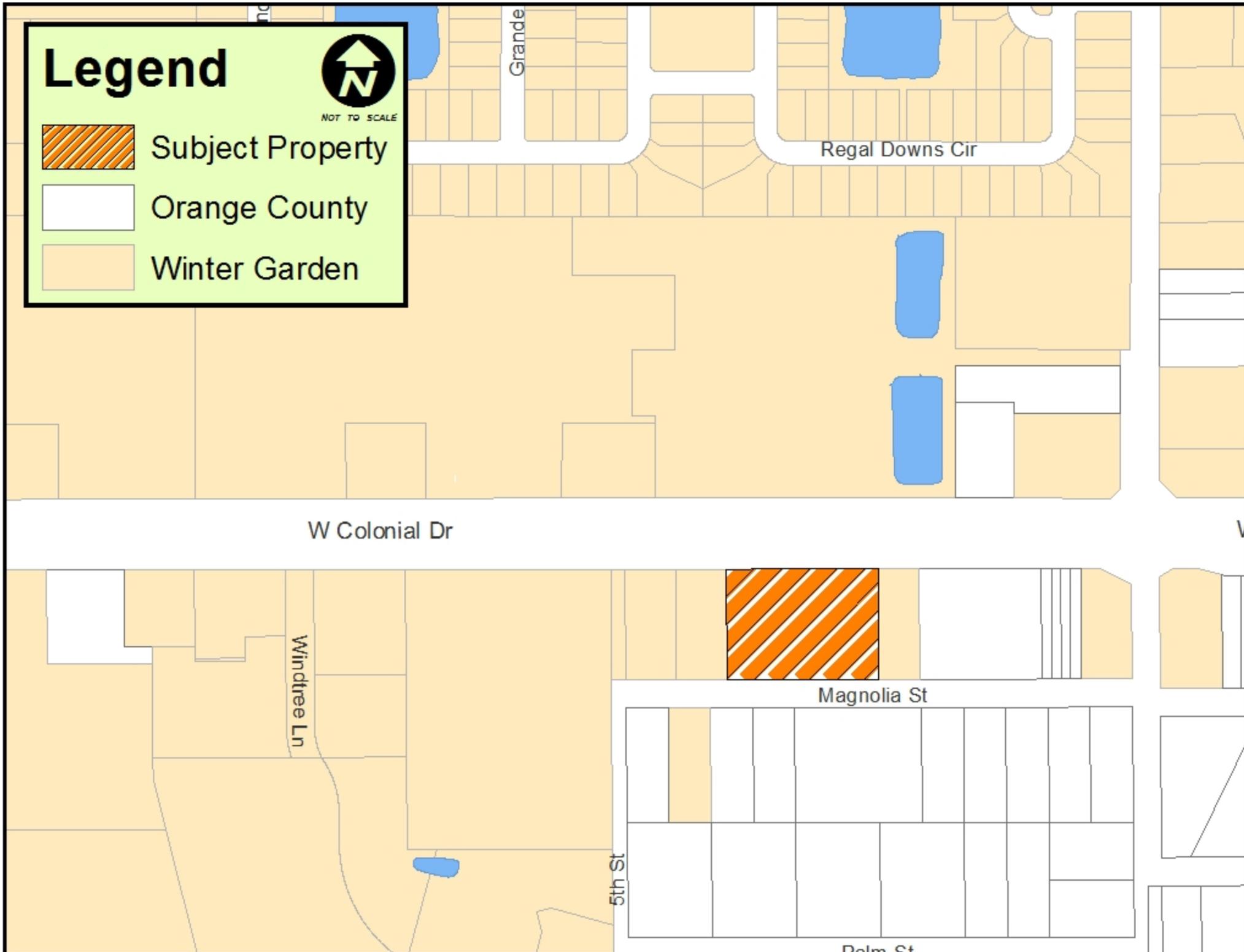
Subject Property



Orange County



Winter Garden



ORDINANCE 14-16

AN ORDINANCE OF THE CITY OF WINTER GARDEN, FLORIDA PROVIDING FOR THE ANNEXATION OF CERTAIN ADDITIONAL LANDS GENERALLY DESCRIBED AS APPROXIMATELY 1.75 ± ACRES LOCATED AT 13100 WEST COLONIAL DRIVE ON THE SOUTH SIDE OF WEST COLONIAL DRIVE, EAST OF 5<sup>TH</sup> STREET AND WEST OF 9<sup>TH</sup> STREET INTO THE CITY OF WINTER GARDEN FLORIDA; REDEFINING THE CITY BOUNDARIES TO GIVE THE CITY JURISDICTION OVER SAID PROPERTY; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE.

**WHEREAS**, the owner of the land, generally described as approximately 1.75 ± acres located on the south side of West Colonial Drive, east of 5<sup>th</sup> Street and west of 9<sup>th</sup> Street and legally described in Section 2 of this Ordinance, which land is reasonably compact and contiguous to the corporate limits of the City of Winter Garden, Florida (“City”), has, pursuant to the prerequisites and standards set forth in § 171.044, Fla. Stat., petitioned the City Commission for voluntary annexation;

**WHEREAS**, the petition for voluntary annexation referenced herein bears the signatures of all owners of the property or properties described in Section 2 of this Ordinance (*i.e.*, the property or properties to be annexed); and

**WHEREAS**, the City has determined that the property described in Section 2 of this Ordinance is located in an unincorporated area of the County and that annexation of such property will not result in the creation of an enclave.

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

**SECTION 1: *Annexation.*** That the City Commission through its Planning and Zoning Board has conducted an investigation to determine whether the described property meets the prerequisites and standards set forth in Chapter 171, Fla. Stat. and has held a public hearing and said petition and made certain findings.

**SECTION 2: *Description of Area Annexed.*** That, after said public hearing and having found such petition meets said prerequisites and standards, the property legally defined in ATTACHMENT “A” and graphically shown on the attached map shall be annexed into the City of Winter Garden, Florida.

**SECTION 3: *Effect of Annexation.*** That the City of Winter Garden, Florida, shall have all of the power, authority, and jurisdiction over and within the land as described in Section 2 hereof, and the inhabitants thereof, and property therein, as it does and have over its present corporate limits and laws, ordinances, and resolutions of said City shall

apply and shall have equal force and effect as if all territory had been part of said City at the time of the passage of such laws, ordinances, and resolutions.

**SECTION 4:** *Apportionment of Debts and Taxes.* Pursuant to § 171.061, Fla. Stat., the area annexed to the City shall be subject to all taxes and debts of the City upon the effective date of annexation. However, the annexed area shall not be subject to municipal ad valorem taxation for the current year if the effective date of the annexation falls after the City levies such tax.

**SECTION 5:** *Instructions to Clerk.* Within seven (7) days following the adoption of this Ordinance, the City Clerk or his/her designee is directed to file a copy of this ordinance, including ATTACHMENT "A" hereto, with the clerk of the circuit court and the chief administrative officer of Orange County as required by § 171.044(3), Fla. Stat.

**SECTION 6:** *Severability.* Should any portion of this Ordinance be held invalid, then such portions as are not declared invalid shall remain in full force and effect.

**SECTION 7:** *Effective Date.* This Ordinance shall become effective upon adoption at its second reading.

**FIRST READING AND PUBLIC HEARING:** \_\_\_\_\_, 2014.

**SECOND READING AND PUBLIC HEARING:** \_\_\_\_\_, 2014.

**ADOPTED** this \_\_\_\_\_ day of \_\_\_\_\_, 2014, by the City Commission of the City of Winter Garden, Florida.

**APPROVED:**

\_\_\_\_\_  
JOHN REES, Mayor/Commissioner

**ATTEST:**

\_\_\_\_\_  
KATHY GOLDEN, City Clerk

**ATTACHMENT "A"**

**LEGAL DESCRIPTION**

PARCEL ID#: 26-22-27-8108-00-060

BEGIN AT THE SOUTHWEST CORNER OF SAID LOT 6; THENCE N89°41'00"W ALONG THE SOUTH LINE OF SAID LOTS 6, 7 AND 8, A DISTANCE OF 324.00 FEET TO THE SOUTHWEST CORNER OF SAID LOT 8; N00°00'48"E ALONG THE WEST LINE OF SAID LOT 8, A DISTANCE OF 235.00 FEET TO A POINT ON A LINE LYING 45 FEET SOUTH OF AND PARALLEL TO THE NORTH LINE OF SAID LOTS 6, 7 AND 8; THENCE LEAVING SAID WEST LINE S89°41'00"E, A DISTANCE OF 324.00 FEET TO A POINT ON THE EAST LINE OF SAID LOT 6; THENCE S00°00'48"W ALONG SAID EAST LINE, A DISTANCE OF 235.00 FEET TO THE POINT OF BEGINNING.

CONTAINING 1.75 ACRES MORE OR LESS.

ORDINANCE 14-17

AN ORDINANCE OF THE CITY OF WINTER GARDEN, FLORIDA AMENDING THE FUTURE LAND USE MAP OF THE WINTER GARDEN COMPREHENSIVE PLAN BY CHANGING THE LAND USE DESIGNATION OF REAL PROPERTY GENERALLY DESCRIBED AS 1.75 ± ACRES LOCATED AT 13100 WEST COLONIAL DRIVE ON THE SOUTH SIDE OF WEST COLONIAL DRIVE, EAST OF 5<sup>TH</sup> STREET AND WEST OF 9<sup>TH</sup> STREET FROM ORANGE COUNTY COMMERCIAL TO CITY COMMERCIAL; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE.

**WHEREAS**, on the 13<sup>th</sup> of June, 1991, the City Commission of the City of Winter Garden adopted Ordinance 91-16 which adopted a new Comprehensive Plan for the City of Winter Garden, and on the 24<sup>th</sup> of June, 2010, the City Commission of the City of Winter Garden adopted Ordinance 10-19 readopting and amending the Comprehensive Plan for the City of Winter Garden;

**WHEREAS**, the owner of that certain real property generally described as 1.75 ± acres of land located at 13100 West Colonial Drive on the south side of West Colonial Drive, east of 5<sup>th</sup> Street and west of 9<sup>th</sup> Street, and legally described in ATTACHMENT "A" (the "Property") has petitioned the City to amend the Winter Garden Comprehensive Plan to change the Future Land Use classification from Orange County Commercial to City Commercial; and

**WHEREAS**, the City of Winter Garden's Local Planning Agency and City Commission have conducted the prerequisite advertised public hearings pursuant to Chapter 163, Florida Statutes, regarding the adoption of this ordinance; now, therefore,

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

**SECTION I.** *FLUM Amendment.* The City of Winter Garden hereby amends the Future Land Use Map of the City of Winter Garden Comprehensive Plan by designating the aforesaid Property to City Commercial as set forth in ATTACHMENT "B".

**SECTION II.** *Effective Date.* Provided that the Property described herein is annexed into the City of Winter Garden pursuant to Ordinance 14-16, this Ordinance shall become effective 31 days after adoption, unless the Ordinance is timely challenged pursuant to § 163.3187(5), Fla. Stat., in which case, the Ordinance shall not be effective until the state land planning agency or the Administrative Commission, respectively, issues a final order

determining that the adopted Ordinance is in compliance.

**SECTION III. Severability.** Should any portion of this Ordinance be held invalid, then such portions as are not declared invalid shall remain in full force and effect.

**FIRST READING AND PUBLIC HEARING:** \_\_\_\_\_, 2014.

**SECOND READING AND PUBLIC HEARING:** \_\_\_\_\_, 2014.

**ADOPTED** this \_\_\_\_\_ day of \_\_\_\_\_, 2014, by the City Commission of the City of Winter Garden, Florida.

**APPROVED:**

\_\_\_\_\_  
JOHN REES, Mayor/Commissioner

**ATTEST:**

\_\_\_\_\_  
KATHY GOLDEN, City Clerk

**ATTACHMENT "A"**

**LEGAL DESCRIPTION**

PARCEL ID#: 26-22-27-8108-00-060

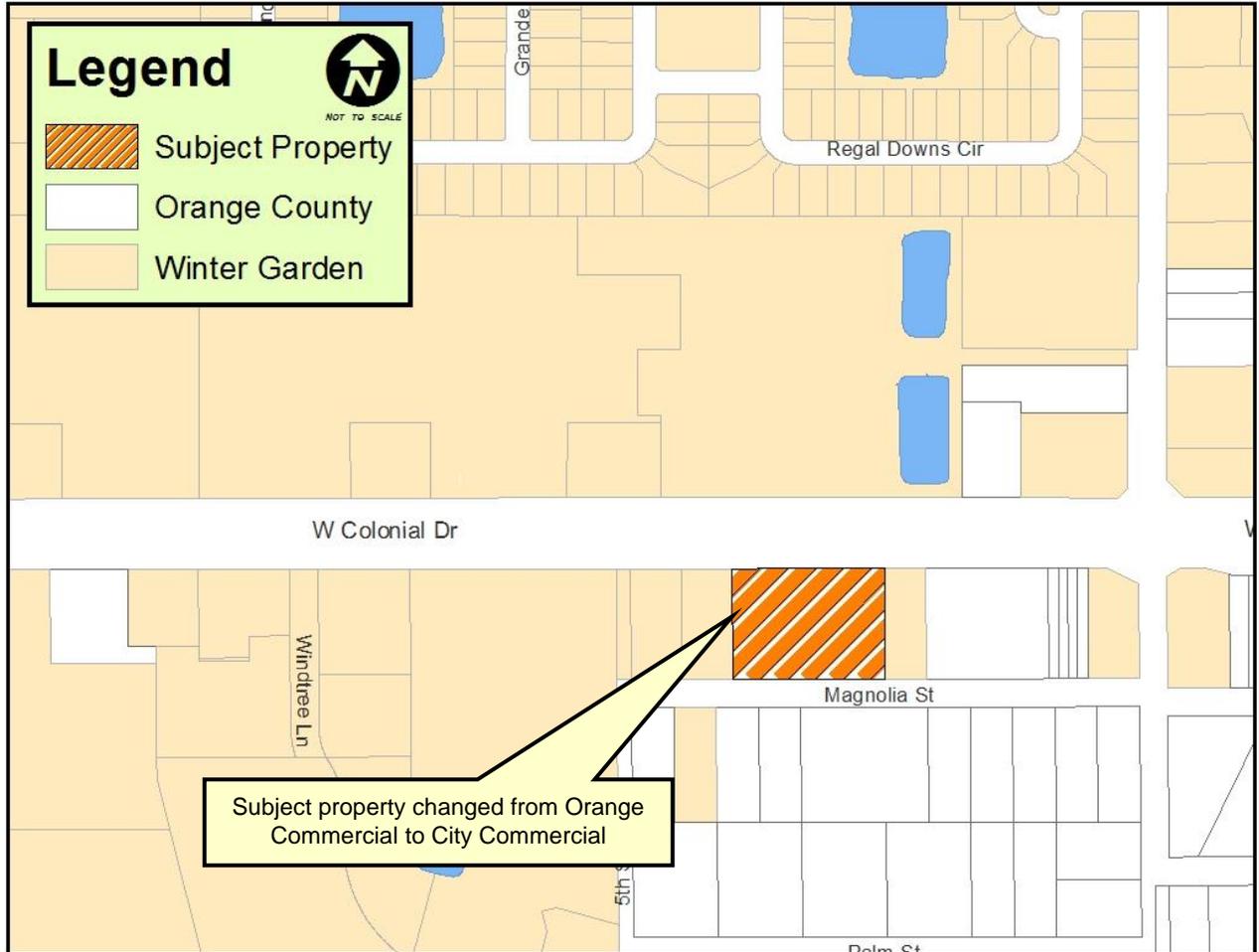
BEGIN AT THE SOUTHWEST CORNER OF SAID LOT 6; THENCE N89°41'00"W ALONG THE SOUTH LINE OF SAID LOTS 6, 7 AND 8, A DISTANCE OF 324.00 FEET TO THE SOUTHWEST CORNER OF SAID LOT 8; N00°00'48"E ALONG THE WEST LINE OF SAID LOT 8, A DISTANCE OF 235.00 FEET TO A POINT ON A LINE LYING 45 FEET SOUTH OF AND PARALLEL TO THE NORTH LINE OF SAID LOTS 6, 7 AND 8; THENCE LEAVING SAID WEST LINE S89°41'00"E, A DISTANCE OF 324.00 FEET TO A POINT ON THE EAST LINE OF SAID LOT 6; THENCE S00°00'48"W ALONG SAID EAST LINE, A DISTANCE OF 235.00 FEET TO THE POINT OF BEGINNING.

CONTAINING 1.75 ACRES MORE OR LESS.

**ATTACHMENT "B"**

**FUTURE LAND USE MAP**

**13100 West Colonial Drive**



ORDINANCE 14-18

AN ORDINANCE OF THE CITY OF WINTER GARDEN, FLORIDA REZONING APPROXIMATELY 1.75 ± ACRES LOCATED AT 13100 WEST COLONIAL DRIVE ON THE SOUTH SIDE OF WEST COLONIAL DRIVE, EAST OF 5<sup>TH</sup> STREET AND WEST OF 9<sup>TH</sup> STREET FROM ORANGE COUNTY C-3 COMMERCIAL DISTRICT TO CITY C-2 ARTERIAL COMMERCIAL DISTRICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE.

**WHEREAS**, the owner of that certain real property generally described as 1.75 ± acres of land located on the south side of West Colonial Drive, east of 5<sup>th</sup> Street and west of 9<sup>th</sup> Street, and legally described in Section 1 of this ordinance has petitioned the City to rezone said property from Orange County C-3 Commercial District to the City's C-2 Arterial Commercial District zoning classification, therefore; 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 rezoning approved by this Ordinance is consistent with the City of Winter Garden Comprehensive Plan; and

**WHEREAS**, further, the City Commission finds that based on competent, substantial evidence in the record, the rezoning approved by this Ordinance meets all applicable criteria for rezoning the Property to C-2 Arterial Commercial District contained within the City of Winter Garden Comprehensive Plan and the Code of Ordinances.

**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 ATTACHMENT "A," is hereby rezoned from Orange County C-3 Commercial District to City C-2 Arterial Commercial District in the City of Winter Garden, Florida.

**SECTION 2: *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 3: *Non-Severability.*** Should any portion of this Ordinance be held invalid, then the entire Ordinance shall be null and void.

**SECTION 4: *Effective Date.*** This Ordinance shall become effective simultaneously upon the effective date of Ordinance 14-17 which is an amendment to the Future Land Use Map of the City of Winter Garden Comprehensive Plan that allows the property described herein to be zoned as provided in this Ordinance.

**FIRST READING AND PUBLIC HEARING:** \_\_\_\_\_, 2014.

**SECOND READING AND PUBLIC HEARING:** \_\_\_\_\_, 2014.

**ADOPTED** this \_\_\_\_\_ day of \_\_\_\_\_, 2014, by the City Commission of the City of Winter Garden, Florida.

**APPROVED:**

\_\_\_\_\_  
JOHN REES, Mayor/Commissioner

**ATTEST:**

\_\_\_\_\_  
KATHY GOLDEN, City Clerk

**ATTACHMENT "A"**

**LEGAL DESCRIPTION**

PARCEL ID#: 26-22-27-8108-00-060

BEGIN AT THE SOUTHWEST CORNER OF SAID LOT 6; THENCE N89°41'00"W ALONG THE SOUTH LINE OF SAID LOTS 6, 7 AND 8, A DISTANCE OF 324.00 FEET TO THE SOUTHWEST CORNER OF SAID LOT 8; N00°00'48"E ALONG THE WEST LINE OF SAID LOT 8, A DISTANCE OF 235.00 FEET TO A POINT ON A LINE LYING 45 FEET SOUTH OF AND PARALLEL TO THE NORHT LINE OF SAID LOTS 6, 7 AND 8; THENCE LEAVING SAID WEST LINE S89°41'00"E, A DISTANCE OF 324.00 FEET TO A POINT ON THE EAST LINE OF SAID LOT 6; THENCE S00°00'48"W ALONG SAID EAST LINE, A DISTANCE OF 235.00 FEET TO THE POINT OF BEGINNING.

CONTAINING 1.75 ACRES MORE OR LESS.

# CITY OF WINTER GARDEN

## PLANNING & ZONING DIVISION

300 West Plant Street - Winter Garden, Florida 34787-3011 • (407) 656-4111

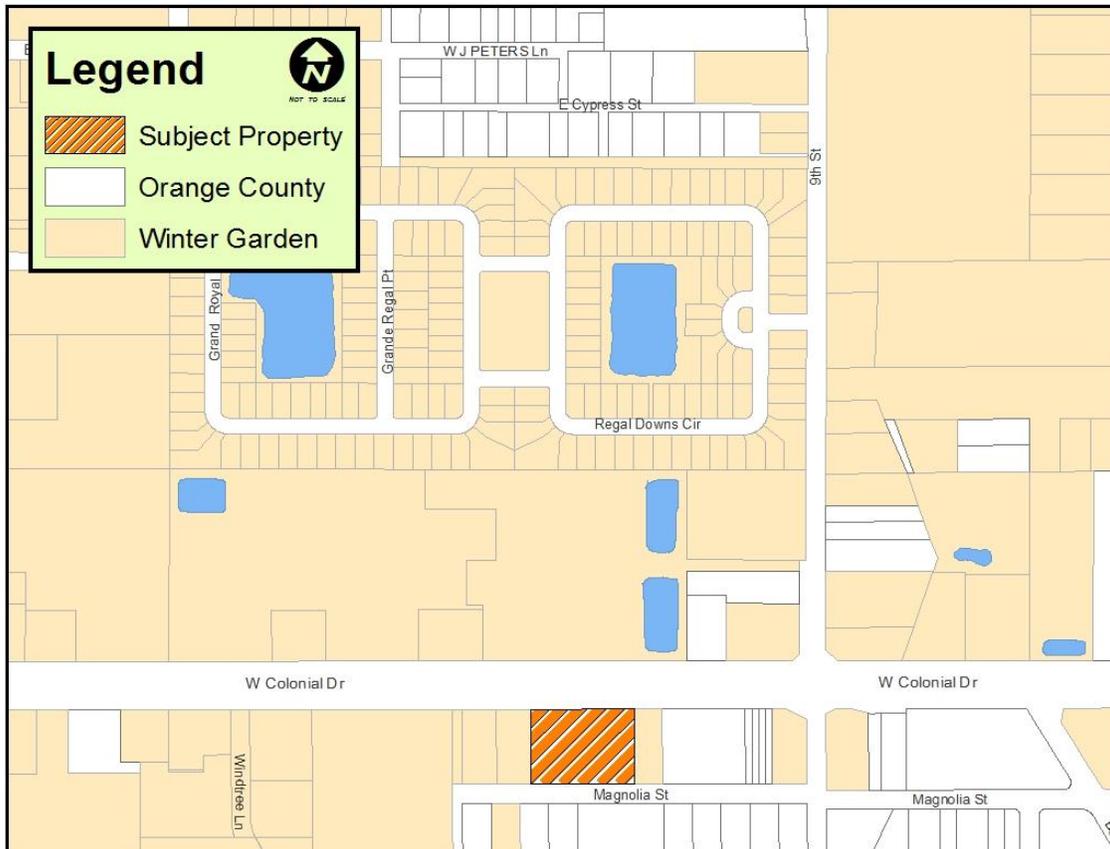
# STAFF REPORT

**TO:** PLANNING AND ZONING BOARD  
**PREPARED BY:** STEVE PASH, SENIOR PLANNER  
**DATE:** FEBRUARY 26, 2014  
**SUBJECT:** ANNEXATION – ZONING – FLU AMENDMENT  
**13100 WEST COLONIAL DRIVE (1.75 +/- ACRES)**  
**PARCEL ID #:** 26-22-27-8108-00-060  
**APPLICANT:** LAKE BUTLER GROVES, INC.

### 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 13100 West Colonial Drive and is approximately 1.75 ± acres. The map below depicts the proximity of the subject property to the City's jurisdictional limits:



The applicant has requested annexation into the City, amendment to the Future Land Use Map (FLUM) of the City's Comprehensive Plan to designate the property as Commercial, and rezoning the property to C-2 Arterial Commercial District. This property is also within the West State Road 50 Overlay, which has additional development standards.

The subject property is located within the West State Road 50 Commercial Activity Center which allows for the following land use categories: Commercial, Medium Density Residential, Industrial, and Multi Use Development. The majority of the properties located within the West State Road 50 Commercial Activity Center are designated Commercial on the Future Land Use Map, with the only exceptions being several apartment complexes and a senior living facility on the south side of the road at the western edge of the city limits which are designated Medium Density Residential on the Future Land Use Map and total about 35 acres of land.

In accordance with the City's Comprehensive Plan, permitted uses within the Commercial land use include retail, service, and professional activities. The zoning classifications that are consistent with the Commercial land use designation include C-1, C-2, C-3, C-4, PCD, and INT.

The City endorses infill of its jurisdictional limits through voluntary annexation of enclaves. The elimination of enclaves through voluntary annexation furthers the goals, objectives, and policies of the City's Comprehensive Plan.

### **EXISTING USE**

The subject property is currently developed with two commercial office buildings and a warehouse.

### **ADJACENT LAND USE AND ZONING**

The properties located to the north are developed with a retail/commercial shopping center (Kmart), zoned C-2, and located in the City. The property located to the east is developed with an Animal Hospital and Veterinary Clinic, zoned C-2 and located in the City. The properties to the south are developed with single-family homes, zoned A-1 and located in the County. The property to the west is developed with a commercial building, zoned C-2, and located in the City.

### **PROPOSED USE**

The applicant intends to annex the property, demolish all of the existing buildings, and submit for Site Plan Review to develop the property with a new auto parts retail store.

### **PUBLIC FACILITY ANALYSIS**

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.

**SUMMARY**

Annexation will provide a more efficient delivery of services to the property and further the goals and objectives of the City of Winter Garden’s Comprehensive Plan to eliminate enclaves.

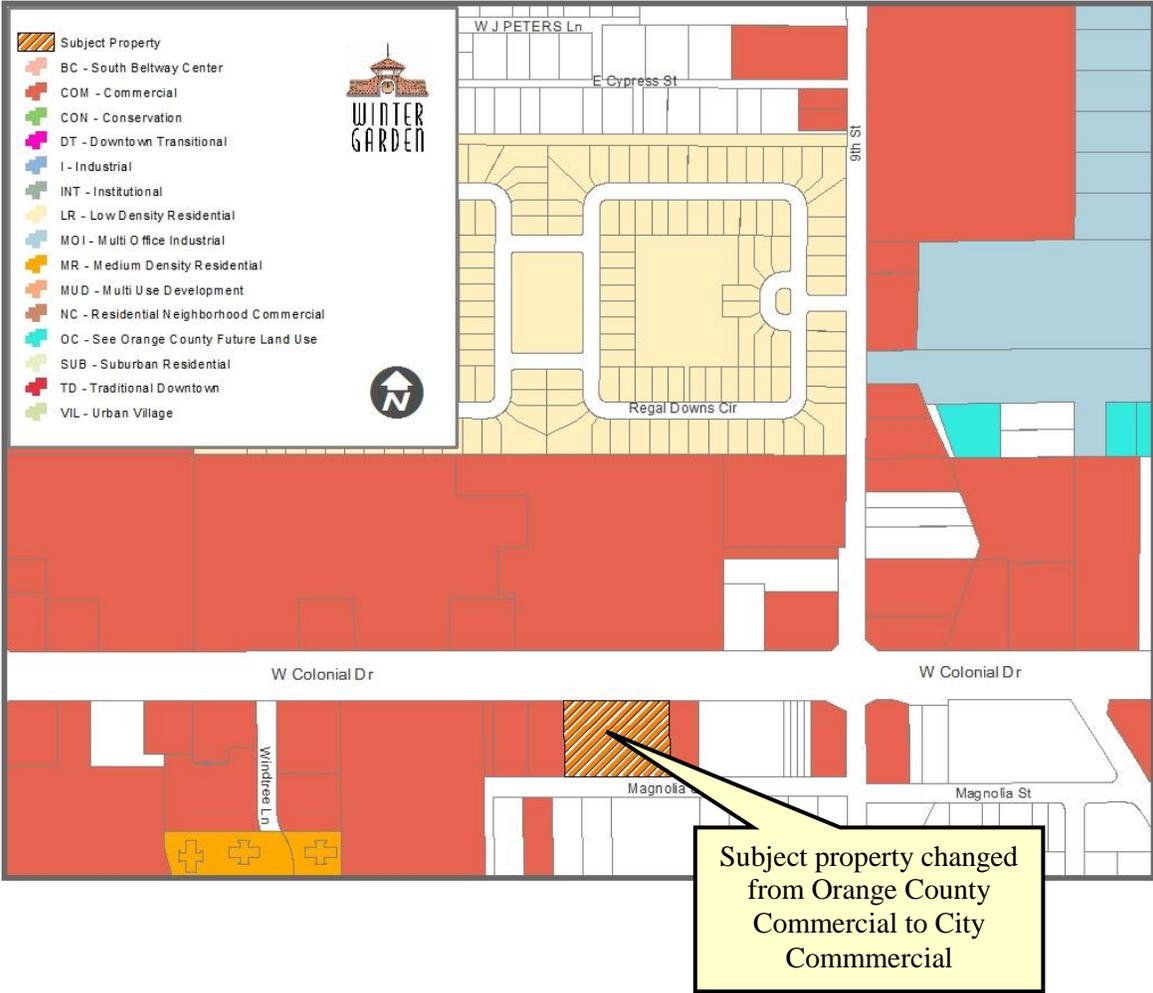
**MAPS**

**AERIAL PHOTO**

**13100 West Colonial Drive**



**FUTURE LAND USE MAP**  
**13100 West Colonial Drive**



**ZONING MAP**  
**13100 West Colonial Drive**



**END OF STAFF REPORT**

**THE CITY OF WINTER GARDEN**  
**CITY COMMISSION AGENDA ITEM**

**From:** Don Cochran, Assistant City Manager – Public Services

**Via:** Mike Bollhoefer, City Manager

**Date:** February 25, 2014                      **Meeting Date:**      March 13, 2014

**Subject:** Approve Bids for the Woodlark Well #2 Project

**Issue:** On February 5, 2014, the City of Winter Garden received bids for the Woodlark Well #2 Project, consisting of construction of a lower Floridian aquifer production well and other site improvements.

Listed below are the three lowest responsive and responsible bidders:

A. C. Schultes of Florida, Inc.	\$941,970.00
TLC Diversified, Inc.	\$1,143,567.00
All Webb's Enterprises, Inc.	\$1,159,631.00

A. C. Schultes appears to be the overall lowest qualified bidder.

The engineer's letter of recommendation concurs that A. C. Schultes is the most responsive and lowest qualified bidder.

**Recommended Action:**

Approve the bids and award the contract for the Woodlark Well #2 Project to A. C. Schultes in the amount of \$941,970.00, with a 10% contingency, bringing the total contract price to \$1,036,167.00.

**Attachments/References:**

- Engineer's Recommendation Letter
- Certified Bid Tabulation



2301 Maitland Center Parkway Suite 300  
Maitland, Florida 32751  
tel: 407 660-2552  
fax: 407 875-1161

February 17, 2014

Mr. Don Cochran  
Assistant to the City Manager  
Public Services  
City of Winter Garden  
300 West Plant Street  
Winter Garden, Florida 34787

Subject: Water Treatment Plant No. 4 (Woodlark) LFA Production Well No. 6  
City Project No. PS 11-008  
CDM Smith Project No. 109978-83136

Dear Mr. Cochran:

CDM Smith reviewed the four (4) bids received at the bid opening of February 5, 2014, for the Water Treatment Plant No. 4 (Woodlark) LFA Production Well No. 6 project. We have prepared a bid tabulation and enclosed a copy for your reference. The Bidders are listed in the bid tabulation in numerical order based on the low bidder first.

The four bids received on the Project are as follows:

<b>Bidder</b>	<b>Total Base Bid Item Nos. 1 through 8</b>
1. A.C. Schultes of Florida, Inc.	\$941,970
2. TLC Diversified, Inc.	\$1,143,567
3. All Webb's Enterprises, Inc.	\$1,159,631
4. Florida Design Contractors	\$1,730,920

The Engineer's Opinion of Probable Cost of construction was approximately \$1,300,000.

We have determined that not all of the bids were mathematically correct.

The bid submitted by TLC Diversified, Inc. contained a math error when adding the sum of bid items 1 thru 4. The total written for these bids items (1 thru 4) was \$674,567. The actual number added together for bid items 1 thru 4 is \$637,567. This revised the submitted bid total of \$1,180,567 to \$1,143,567.





Mr. Don Cochran  
February 17, 2014  
Page 2

The bid submitted by All Webb's Enterprises, Inc. contained a math error when adding the sum of bid items 1 thru 4. The total written for these bids items (1 thru 4) was \$779,631. The actual number added together for bid items 1 thru 4 is \$759,631. This revised the submitted bid total of \$1,179,631 to \$1,159,631.

The bid submitted by Florida Design Contractors contained a math or grammatical error for bid item no. 8. The written text for this bid item is "one hundred thirty five thousand two hundred three". The numerical number for this bid item is written as \$135, 283. This revised the submitted bid total of \$1,731,000 to \$1,730,920.

Additionally, the certification of the bid documents found that the Certificate of Insurance document was missing for TLC Diversified Inc. and A.C. Schultes of Florida, Inc. in the copies we received. CDM Smith contacted both of these bidders and requested and received these Certificates of Insurance. As noted in Section 00100, Instructions to Bidders, paragraph 17.1, these minor irregularities can be waived by the Owner. These irregularities are waived by CDM Smith and the Owner.

The bid documents submitted by Florida Design Contractors and All Webb's Enterprises, Inc. are not missing any documents.

Each of the Bidders attached a bid bond in an amount of 5 percent of the Grand Total Base Bid. Each of the Bidders acknowledged receipt of the Addendum No. 1, issued on January 29, 2014.

As stated in the Instructions to Bidders, the contract shall be awarded based upon the Base Bid by the lowest responsive, responsible bidder to the City.

The low bidder, A.C. Schultes of Florida, Inc., has successfully completed the work of a similar project for Manatee County. CDM Smith also checked the references listed in the General Contractors Questionnaire (Section 00430) and received statements that A.C. Schultes, completed the work performed for the references, satisfactorily and within the overall schedule and budget.

We have, therefore, determined that A.C. Schultes of Florida, Inc. is a responsible contractor, who, in our opinion, is capable of undertaking the work on the Water Treatment Plant No. 4 (Woodlark) LFA Production Well No. 6 project in a satisfactory and timely manner.

Accordingly, we recommend the City award a construction contract to the low bidder, A.C. Schultes of Florida, Inc., in the amount of \$941,970 for the construction of the Water Treatment Plant No. 4 (Woodlark) LFA Production Well No. 6.

Please contact this office if you have any questions or need further assistance.





Mr. Don Cochran  
February 17, 2014  
Page 3

Sincerely,

A handwritten signature in blue ink that reads "David J. Prah".

David J. Prah, P.E., BCEE  
Project Manager  
CDM Smith Inc.

cc: Lena Rivera  
Jason Mills  
Lee Wiseman  
Eric Grotke



City of Winter Garden  
WTP No. 4 Lower Floridan Aquifer Production Well No. 6

**Certified Bid Tabulation Sheet - February 7, 2014; 10:00 AM**

Company Name, Telephone, Contact Person, Street Address Mailing Address	Bid Amount	Addendum #1 Acknowledged	Bid Bond
Florida Design Contractors 1326 South Killian Drive Lake Park, Florida 33403 Attn: Nina Gambino (bids@floridadesigncontractors.com) 561-845-1233 (phone)/ 561-848-5992 (fax)/	\$1,730,920*	Yes	Yes
All Webb's Enterprises, Inc 309 Commerce Way Jupiter, FL 33458 (allwebbs@allwebbs.com) 561-746-2079	\$1,159,631*	Yes	Yes
TLC Diversified, Inc 2719 17th Street East Palmetto, FL 34221 Attn: Linda Moore (lmoore@tlcdiversified.com) — Phone: 941-722-0621 ext. 123	\$1,143,567*	Yes	Yes
A.C. Schultes of Florida, Inc. 11865 US Highway 41 South Gibsonton, FL 33534 Attn: Nadine Walker (admin.acsfl@verizon.net) Phone: 813-741-3010/ Fax: 813-741-3710	\$941,970.00	Yes	Yes
Certified by: <u>          <i>David J. Pich</i>          </u>	Date: <u>          2-7-14          </u>		

**Note:**

\* The certified bid tabulation dollar amount is different than the actual dollar amount submitted by this bidder due to a math error by the bidder

City of Winter Garden  
WTP No. 4 Lower Floridan Aquifer Production Well No. 6

**Certified Bid Tabulation Sheet - February 7, 2014; 10:00 AM**

Company Name, Telephone, Contact Person, Street Address Mailing Address	Bid Amount	Addendum #1 Acknowledged	Bid Bond
Florida Design Contractors 1326 South Killian Drive Lake Park, Florida 33403 Attn: Nina Gambino (bids@floridadesigncontractors.com) 561-845-1233 (phone)/ 561-848-5992 (fax)/	\$1,730,920*	Yes	Yes
All Webb's Enterprises, Inc 309 Commerce Way Jupiter, FL 33458 (allwebbs@allwebbs.com) 561-746-2079	\$1,159,631*	Yes	Yes
TLC Diversified, Inc 2719 17th Street East Palmetto, FL 34221 Attn: Linda Moore (lmoore@tlcdiversified.com) — Phone: 941-722-0621 ext. 123	\$1,143,567*	Yes	Yes
A.C. Schultes of Florida, Inc. 11865 US Highway 41 South Gibsonton, FL 33534 Attn: Nadine Walker (admin.acsfl@verizon.net) Phone: 813-741-3010/ Fax: 813-741-3710	\$941,970.00	Yes	Yes
Certified by: <u>          <i>David J. Pich</i>          </u>	Date: <u>          2-7-14          </u>		

**Note:**

\* The certified bid tabulation dollar amount is different than the actual dollar amount submitted by this bidder due to a math error by the bidder

**THE CITY OF WINTER GARDEN**  
**CITY COMMISSION AGENDA ITEM**

**From:** Don Cochran, Assistant City Manager – Public Services

**Via:** Mike Bollhoefer, City Manager

**Date:** March 4, 2014                      **Meeting Date:** March 13, 2014

**Subject:** Approve Bids for Lift Station # 23 Improvements

**Issue:** On February 25, 2014, a total of five bids were received for the Lift Station #23 Improvements Project. Listed below are the five responsive and responsible bidders:

US Water Services	\$283,220.21
(Alternate bid with odor control)	\$381,609.46
Prime Construction	\$298,000.00
(Alternate bid with odor control)	\$427,000.00
Morris & Associates	\$349,986.50
(Alternate bid with odor control)	\$477,486.50
Pospiech Contracting	\$356,000.00
(Alternate bid with odor control)	\$481,000.00
Danus Utilities	\$365,000.00
(Alternate bid with odor control)	\$493,000.00

US Water Services appears to be the lowest responsive and responsible bidder with an overall bid of \$381,609.46, including the odor control equipment.

The Engineer's letter of recommendation concurs that US Water Services is the lowest responsive qualified bidder.

**Recommended Action:**

Approve the bids and award the contract for the Lift Station #23 Improvements Project to US Water Services in the amount of \$381,609.46, with a 10% contingency, bringing the total contract price to \$419,770.41.

**Attachments/References:**

- Engineer's Letter of Recommendation
- Bid Tabulation Form



February 28, 2014

Mr. Donald Cochran  
Assistant City Manager – Public Services  
City of Winter Garden  
300 West Plant Street  
Winter Garden, FL 34787

**Subject: Lift Station No. 23 Improvements  
Recommendation of Award**

**Tt #: 200-8490-12004**

Dear Mr. Cochran:

This letter provides our recommendation for award of the Contract for Construction of the City of Winter Garden Lift Station No. 23 Improvement Project. On February 25, 2014, five (5) Contractors submitted bids for this project. Tetra Tech has completed our evaluation of these bids.

Attached to this letter is the bid tabulation for the five (5) bidders for the project. The project total bid prices submitted for the five (5) bidders are as shown below:

Bid Item Name & Category	US Water Services	Prime Construction Group	Morris & Associates	Pospiech Contracting	Danus Utilities
BASE BID	\$ 283,220.21	\$ 298,000.00	\$ 349,986.50	\$ 356,000.00	\$ 365,000.00
ADDITIVE ALTERNATE	\$ 98,389.25	\$ 129,000.00	\$ 127,500.00	\$ 125,000.00	\$ 128,000.00
BASE BID PLUS ADDITIVE ALTERNATE	\$ 381,609.46	\$ 427,000.00	\$ 477,486.50	\$ 481,000.00	\$ 493,000.00

Also, attached to this letter is the bid item checklist, which details the specific items required in the bidding documents. The bid item checklist shows that all bidders had minor omissions within the bids. These minor omissions do not warrant any bids to be disqualified.

US Water Services was the apparent low bidder with a total base bid of \$283,220.21. When considering the Additive Alternative, US Water Services remained the apparent low bidder. References provided by US Water Services include similar wastewater lift station projects. Based upon review and discussions with select references for representative lift station projects, US Water Services appears to have completed all the projects successfully and to the satisfaction of each Owner. In view of these findings it appears that US Water Services is qualified to complete the referenced project.

**Tetra Tech, Inc.**

201 E. Pine Street, Suite 1000, Orlando, FL 32801  
Tel 407.839.3955 Fax 407.839.3790 www.tetrattech.com



Mr. Donald Cochran  
February 28, 2014  
Page 2

Based on this evaluation, our recommendation is that the project be awarded to US Water Services in the amount of \$283,220.21 plus the Additive Alternate based on the City's preference and budgetary constraints.

If you have any questions or comments, please do not hesitate to call.

Very truly yours,

**Tetra Tech**

A handwritten signature in black ink, appearing to read 'Brian A. Foulkes'.

Brian A. Foulkes, P.E.  
Project Manager

MBS/slh/200-08490-12004/construction/bidsupport/Rec of Award.pdf

C: Mike Kelly, P.E., City of Winter Garden  
Craig Sandt, City of Winter Garden

Apparent Low Bidder



Bid Opening: February 25, 2014

Bid Item	Bid Item Name & Category	Total Quantity (A)	Unit	US Water Services		Prime Construction Group		Morris & Associates		Pospiech Contracting		Danus Utilities	
				Unit Cost (B)	Item Cost (AxB)	Unit Cost (B)	Item Cost (AxB)	Unit Cost (B)	Item Cost (AxB)	Unit Cost (B)	Item Cost (AxB)	Unit Cost (B)	Item Cost (AxB)
1	Mobilization and Demobilization, Complete	1	LS	\$ 7,200.00	\$ 7,200.00	\$ 25,000.00	\$ 25,000.00	\$ 16,500.00	\$ 16,500.00	\$ 60,500.00	\$ 60,500.00	\$ 15,000.00	\$ 15,000.00
2	General Requirements	1	LS	\$ 270,900.21	\$ 270,900.21	\$ 5,000.00	\$ 5,000.00	\$ 20,332.50	\$ 20,332.50	\$ 4,500.00	\$ 4,500.00	\$ 337,500.00	\$ 337,500.00
3	Indemnification	1	LS	\$ 1,000.00	\$ 1,000.00	\$ 1,000.00	\$ 1,000.00	\$ 1,000.00	\$ 1,000.00	\$ 1,000.00	\$ 1,000.00	\$ 1,000.00	\$ 1,000.00
4	All other work not included in Line Items 1, 2, and 3 to Construction the LS No. 23 Improvements	1	LS	\$ 4,120.00	\$ 4,120.00	\$ 267,000.00	\$ 267,000.00	\$ 312,154.00	\$ 312,154.00	\$ 290,000.00	\$ 290,000.00	\$ 11,500.00	\$ 11,500.00
<b>BASE BID</b>					<b>\$ 283,220.21</b>		<b>\$ 298,000.00</b>		<b>\$ 349,986.50</b>		<b>\$ 356,000.00</b>		<b>\$ 365,000.00</b>
<b>ADDITIVE ALTERNATE</b>													
A	Odor Control System and Associated Electrical	1	LS	\$ 98,389.25	\$ 98,389.25	\$ 129,000.00	\$ 129,000.00	\$ 127,500.00	\$ 127,500.00	\$ 125,000.00	\$ 125,000.00	\$ 128,000.00	\$ 128,000.00
<b>TOTAL BASE BID PLUS ADDITIVE ALTERNATE</b>					<b>\$ 381,609.46</b>		<b>\$ 427,000.00</b>		<b>\$ 477,486.50</b>		<b>\$ 481,000.00</b>		<b>\$ 493,000.00</b>

**THE CITY OF WINTER GARDEN**  
**CITY COMMISSION AGENDA ITEM**

**From:** Don Cochran, Assistant City Manager – Public Services  
**Via:** Mike Bollhoefer, City Manager  
**Date:** March 5, 2014                      **Meeting Date:** March 13, 2014  
**Subject:** Change Order #4 to the E. Plant St. Segment 2 Project Adding the Road Improvements to Segment 4  
**Issue:** Change Order #4 to the E. Plant St. Segment 2 Road Improvements Project would authorize the existing contractor to complete the road improvements to Segment 4 under the contract for Segment 2.

The cost of the improvements to Segment 4 totals \$901,339.67. The overall cost will be reduced by \$300,616.90 due to a reduction in the excavation and disposal of contaminated soils in the Segment 2 Project.

Addition of Segment 4 Improvements	\$901,339.67
Deduction Resulting from Change Order #4	(\$300,616.90)
<b>Total Cost of Segment 4 Improvements</b>	<b>\$600,722.77</b>

The contractor has agreed to this change order and will undertake Segment 4 with the same project superintendent once Segment 2 has been completed.

**Recommended Action:**

Recommend approving Change Order #4 in the amount of \$600,722.77.

**Attachments/References:**

- Change Order #4 of the E. Plant St. Segment 2 Road Improvements Project



**CITY OF WINTER GARDEN**  
**300 West Plant Street**  
**Winter Garden, FL 34787**  
**(407) 656-4111 (407) 656-4952 (Fax)**

**CHANGE ORDER NO. 4**

**BID # PS12-002**

**PLANT STREET**  
**(SEGMENT 2)**

**CITY OF WINTER GARDEN**  
**ORANGE COUNTY, FLORIDA**

PROJECT NO.: PN # 08-006

DATE: February 20, 2014.

CONTRACTOR: DeWitt Excavating, Inc.

AGREEMENT DATE: December 18 2012

---

The following changes are hereby made to the CONTRACT DOCUMENTS.

---

Original CONTRACT PRICE \$ 5,875,096.85

Current CONTRACT PRICE ADJUSTED by previous CHANGE ORDER \$ 6,198,735.27

Net Increase (Decrease) Resulting from this CHANGE ORDER \$ 600,722.77

The current CONTRACT PRICE including this CHANGE ORDER \$ 6,799,458.04

ORIGINAL CONTRACT TIME:

540 Consecutive Calendar Days from Notice to Proceed Date: January 7, 2013

Current CONTRACT TIME adjusted by previous CHANGE ORDERS Date: 550 Days

Net Increase Resulting from this CHANGE ORDER Days: 127 Days

Current CONTRACT TIME including this CHANGE ORDER Date: 677 Days

CHANGES ORDERED:

## I. GENERAL

This change order is necessary to cover changes in the work to be performed under this Contract. The GENERAL CONDITION, SUPPLEMENTARY CONDITIONS, SPECIFICATIONS and all parts of the Project Manual listed in Article 1, Definitions, of the GENERAL CONDITIONS apply to and govern all work under this change order.

## II. REQUIRED CHANGES:

Issue A: Incorporate work as shown on the Plant Street Segment 4 Final Plans Dated 1-23-2014.

Issue B: Install fiber optic pull boxes and 2" conduit as shown on blue-line mark ups of Plant Street Segment 4 Drawings, Sheets S-4 thru S-7.

Issue C: Install light pole bases, conduit and electrical service as shown on Plant Street Segment 4 red-line mark-ups of Sheets No. 11 and 12.

Issue D. Reduce the quantity of Pay item 120-999, Excavation & Disposal of Contaminated Soils, by six thousand six hundred fifty six (6,656) CY.

Issue E: Increase Contract Time by one hundred twenty seven (127) days.

## III. JUSTIFICATION

Issue A: By adding the proposed Plant Street Segment 4 work to the existing Plant Street Segment 2 Contract the traveling public, the City of Winter Garden and the Contractor, DeWitt Excavating, Inc., will benefit.

1. There will be less disruption to the traveling public by maintaining continuity of work.
2. The City eliminates to cost of the bidding process.
3. The Plant Street Segment 4 work will be able to start and finish at least 4 months early as compared to following the normal bidding process.
4. By the Contractor agreeing to maintain existing contract unit prices the city is most likely receiving a cost benefit. FDOT cost trends show an increase of 1.4% since the Segment 2 Project was bid and it is estimated cost will increase 2% in 2014.
5. The City and Contactor receive benefits by increasing their work load without having to mobilize crews and equipment.

Issue B: After the Plant Street Segment 4 100% Plans were submitted, it was determined it would be in the City's best interest to continue the installation of fiber optic pull boxes and 2" conduit for future communications. Plant Street Segments 2, & 3 to the east, include the 2" conduit and fiber optic pull boxes.

Issue C: The City Staff including the City Manager decided it would be beneficial to extend the decorative lighting installed in the Downtown area from Dillard Street East to 3<sup>rd</sup> Street.

Issue D: All the excavation work on Plant Street Segment 2 Project in the vicinity of contaminated sites has been completed. The quantity of contaminated soils excavated and disposed of off site is far less than the original estimated quantity. Therefore, the quantity of Pay item 120-999, Excavation and Disposal of Contaminated Soils, is being reduced by six thousand six hundred seventy (6,670) cubic yards resulting in a credit of \$300,616.90. This credit will help off-set the additional cost of Segment 4 yet leave ample contingency funds for the remaining work.

Issue E: The Engineer's original estimate for Plant Street Segment 4 Contract Time, based on Segment 4 going through the normal Letting process was two hundred twenty (220) Contract Days.

However, since the current Segment 2 Project is ahead of schedule and the contractor anticipates saving time by completing the two projects together; the Contractor has requested only one hundred twenty seven (127) additional days of Contract Time.

**IV. NARRATIVE OF NEGOTIATIONS**

Issue A: : on January 8, 2014 Mr. David Koger, the Resident Project Administrator, forwarded via Email a preliminary set of Plans to Mr. Bob Davila, Project Manager for DeWitt Excavating Inc.. On January 14, Mr. Koger forwarded Final Segment 4 Plans to Mr. Davila via Email and requested confirmation DeWitt Excavation, Inc. would be willing to use existing Segment 2 unit prices if the Segment 4 work was added to their contract. On January 15, 2014 Mr. Davila submitted his Price Proposal for the Segment 4 work which used existing Unit Prices where applicable. The total cost of the Price Proposal was \$880,999.67. After the Weekly Progress meeting held on 1-22-2014, Mr. Art Miller, City Engineer, Mr. Sandt, Construction Manager and Mr. Koger, RPA questioned Mr. Davila about the Segment 4 cost proposal. There were three primary items discussed: 1). The cost of Mobilization. 2). The cost of the Concrete Flumes. 3). The cost of the Root Barrier. Mr. Davila explained the Mobilization Cost included their bond cost which they would be charged for a Change Order of this magnitude. Mr. Davila agreed to revisit the cost of the Concrete Flumes but said the Root Barrier cost were quoted by a Subcontractor and felt it was a good price considering the work and the risk involved. On January 23, 2014 Mr. Davila submitted a revised cost proposal which showed a lower cost for the Concrete Flumes and had a new Total Cost of \$ 870,499.67. Fursan Munjed, P.E. the Engineer of Record for both Plant Street Segment 2 and Segment 4 Projects has recommended accepting DeWitt's latest proposal.

Issue B: Negotiations for this item are still ongoing. DeWitt has not received confirmation from their Subcontractor they will honor existing unit prices. Estimated cost using existing unit prices is \$13,360.00.

Issue C: Negotiations for this item are still ongoing. DeWitt had not yet received a price quote form their Subcontractor for this work. Estimated cost for this work is \$17,480.00.

Issue D: No negotiations are necessary. This is simply a reduction in quantity of an existing pay item.

Issue E: The Contractor has request for one hundred twenty seven (127) additional days of Contract Time was found to be reasonable by the Engineer of Record and City Staff and has therefore been accepted..

**V. PAYMENT**

Issue A: incorporate Segment 4 work into the Plant Street Segment 2 Contract. .

Change Order Item No.	Description	Net Increase (Decrease) Quantity	Unit	Unit Price	Net Increase (Decrease) Price
CO #4	See attached Itemization of Cost	1	LS	\$	\$
<b>Total Net Increase (Decrease) Change Order No. 4 Issue A</b>					<b>\$ 870,499.67</b>

Issue B: Future Communications conduit and pull boxes .

Change Order Item No.	Description	Net Increase (Decrease) Quantity	Unit	Unit Price	Net Increase (Decrease) Price
CO#4B	Estimate for Future Communication Conduit and Pull Boxes	1	LS	\$ 13,360.00	\$ 13,360.00
<b>Total Net Increase (Decrease) Change Order No. 4 Issue B</b>					<b>\$ 13,360.00</b>

Issue C: Install light pole based, conduit and electrical service for City installed Decorative Lighting.

Change Order Item No.	Description	Net Increase (Decrease) Quantity	Unit	Unit Price	Net Increase (Decrease) Price
CO # 4-C	Estimate for installation of Bases, Conduit and Electrical Service	1	LS	\$ 17,480.00	\$ 17,480.00
<b>Total Net Increase (Decrease) Change Order No. 4 Issue C</b>					<b>\$ 17,480.00</b>

Issue D: Reduce the quantity of Pay Item 120-999, Excavation and Disposal of Contaminated Soils.

Change Order Item No.	Description	Net Increase (Decrease) Quantity	Unit	Unit Price	Net Increase (Decrease) Price
120-999	EXCAVATION & DISPOSAL OF CONTAMINATED SOILS	(6,670)	CY	\$ 45.07	\$ (-300,616.90)
<b>Total Net Increase (Decrease) Change Order No. 4 Issue D</b>					<b>\$ (-300,616.90)</b>
<b>Total Net Increase (Decrease) Change Order No. 4</b>					<b>\$ 600,722.77</b>

VI. APPROVAL AND CHANGE AUTHORIZATION

This proposed change to the Contract is to be approved by the City of Winter Garden Commission.

**Acknowledgements:**

The aforementioned change, and work affected thereby, is subject to all provisions of the original contract not specifically changed by this Change Order; and,

It is expressly understood and agreed that the approval of the Change Order shall have no effect on the original contract other than matters expressly provided herein.

CONTRACTOR acknowledges, by its execution and acceptance of this Change Order, that the adjustments in Contract Price and Time shown hereon constitute full and complete compensation and satisfaction for all costs and modifications of performance time incurred by the CONTRACTOR as a result of this Change Order. No other claim for increased costs of performance or modifications of time will be granted by the OWNER for the Work covered by this Change Order. The CONTRACTOR hereby waives and releases any further claims for cost or time against the OWNER arising from or relating to the matters or Work set forth or contemplated by this Change Order.

RECOMMENDED BY:

PEGASUS ENGINEERING, LLC  
Engineer

ACCEPTED BY:

DeWitt Excavating, Inc.  
Contractor

By: \_\_\_\_\_  
Signature

By: \_\_\_\_\_  
Signature

Name: David Koger  
Printed

Name: Robert Davila  
Printed

Date: February, 2014

Date: February, 2014

Title: Resident Project Administrator

Title: Project Manager

APPROVED BY:

CITY OF WINTER GARDEN, FLORIDA  
Owner

By: \_\_\_\_\_  
Signature

Name: Donald R Cochran  
Printed

Date: February, 2014

Title: Assistant City Manager – Public Services

**THE CITY OF WINTER GARDEN**

**AGENDA ITEM**

**From:** Tanja Gerhartz, Economic Development Director

**To:** Mike Bollhoefer, City Manager

**Date:** March 6, 2014      **Meeting Date:** March 27, 2014

**Subject:** CDBG Update and Revisions to the CDBG Purchasing Policy and Minority Enterprise Policy

**Discussion:**

The CDBG application is moving along. The City's consultant is conducting the first round of due diligence to determine which of the applications meet the CDBG criteria. The City hopes to select the applicants and homes for repairs later this spring.

The Department of Economic Opportunity has reviewed all the ordinances, guidelines and policies the City recently adopted. They are asking that changes be made to one of the documents, which is the CDBG Purchasing Policy.

They have requested changes that align with state and federal regulations for all CDBG purchases. Specifically, OMB Circular A-102, attachment O; 24 CFR Part 85 Section 85.36; s. 287.055, Florida Statutes.

**Recommended Action:**

Move to approve the revisions to the CDBG Purchasing Policy and Minority Enterprise Policy.

**Attachments/References:**

Policy with Revisions

CITY OF WINTER GARDEN  
COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM  
PURCHASING POLICY  
INCLUDING THE  
MINORITY BUSINESS ENTERPRISE POLICY

Section 1                    PURPOSE

This policy is adopted to assure that commodities and services for the Community Development Block Grant Programs are obtained efficiently and effectively in free and open competition and through the use of sound procurement practices. All City staff and other persons (subgrantees or contractors) with designated responsibility for the administration of CDBG award contracts are responsible for ensuring compliance with all applicable federal and state laws and regulations. These include but are not limited to: OMB Circular A-102, attachment O; 24 CFR Part 85 Section 85.36; s. 287.055, Florida Statutes.

Section 2                    APPLICATION OF POLICY

This policy shall apply to contracts or agreements for the procurement of all materials, supplies, services, construction and equipment for any Community Development Block Grant Program solicited or entered into after the effective date of this policy.

Section 3                    PURCHASING DIRECTOR

The City Clerk shall serve as the central purchasing officer (the "Purchasing Officer") of the City of Winter Garden for all contracts or agreements described in Section 2.

Section 4                    PURCHASING AND CONTRACT AWARD PROCEDURES

Section 4.01                PURCHASING CATEGORIES; THRESHOLD AMOUNTS

Except as to Sole Source Purchases (Section 4.06) and Cooperative Purchasing (Section 4.07), all purchases and contract awards are to be made subject to the provisions of the appropriate Section according to the following threshold amounts:

- A. Small Purchases (Section 4.02) ..... \$1.00 to \$750.00
- B. Purchasing Quotes (Section 4.03) .....\$750.01 to \$5,000.00
- C. Competitive Sealed Bids/Proposals  
(Section 4.04 & 4.05) .....\$5,000.01 and above

Section 4.02                SMALL PURCHASES

The purchase of commodities, equipment and services which cost less than the threshold authorized in Section 4 does not require solicitation of quotes or bids. Small purchases shall be authorized by the Purchasing Officer or his/her designees.

Section 4.03                PURCHASING QUOTES

The purchase of goods and services which cost within the range authorized for purchasing quotes in Section 4 shall require competitive quotations from three or more vendors. The quotations shall be obtained by the Purchasing Division and shall be reviewed and awarded by the Purchasing Officer.

1. Conditions For Use. All contracts for purchases of a single item, services or aggregate in excess of the established base amount for Competitive Sealed Bids/Proposals in Section 4, where price, not qualifications, is the basis for contract award, shall be awarded by competitive sealed bidding.
  
2. Invitation to Bid. An invitation to bid shall be issued and shall include specifications, all contractual terms and conditions, and the place, date, and time for opening or submittal. No later than five working days prior to the date for receipts of bids, a vendor shall make a written request to the City for interpretations or corrections of any ambiguity, inconsistency or error which the vendor may discover. All interpretations or corrections will be issued as addenda. The City will not be responsible for oral clarifications. No negotiations, decisions or actions shall be initiated or executed by the proposer as a result of any discussions with any City employee prior to the opening of proposals. Only those communications which are in writing from the City may be considered as a duly authorized expression on the behalf of the Commission. Also, only communications from firms or individuals which are in writing and signed will be recognized by the Commission as duly authorized expressions on behalf of proposers.
  - (1) Alternate(s). Alternate bids will not be considered unless authorized by and defined in the Special Conditions of the bid specifications.
  - (2) Approved Equivalents. The City reserves the right to determine acceptance of item(s) as an approved equivalent. Bids which do not comply with stated requirements for equivalents in the bid conditions are subject to rejection. The procedure for acceptance of equivalents shall be included in the general conditions of the bid.
  
3. Public Notice. Public Notice shall be by publication in a newspaper of general circulation at least twelve (12) working days prior to bid opening. Notice of the Invitation to Bid shall give date, time, and place set forth for the submittal of proposals and opening bids.
  
4. Bid Opening. Bids shall be opened publicly. The Purchasing Officer or his/her designee shall open bids in the presence of one or more witnesses at the time and place designated in the Invitation to Bid. The amount of each bid, and other such relevant information as may be deemed appropriate by the Purchasing Officer together with the name of each bidder, and all witnesses shall be recorded. The record (Bid Report) and each bid shall be open to public inspection.
  
5. Bid Acceptance and Evaluation. Bids shall be unconditionally accepted without alteration or correction, except as authorized in this policy. Bids shall be evaluated based on the requirements set forth in the Invitation to Bid, which may include, but not be limited to criteria to determine acceptability such as; inspection, testing, quality, recycled or degradable material content, workmanship, delivery, and suitability for a particular purpose. Those criteria that will effect the bid price and be considered in evaluation for award shall be objectively measured, such as discounts, transportation costs, and total or

life cycle costs. No criteria may be used in bid evaluation that are set forth in the Invitation to Bid, in regulations, or in this policy.

6. Bid Agenda Item. After evaluation, the Purchasing Officer will prepare a recommendation and shall place the item on the agenda of the City Commission.
  
7. Correction or Withdrawal of Bids; Cancellation of Awards. Correction or withdrawal of inadvertently erroneous bids before or after award, or cancellation of awards or contracts based on such bids mistakes, shall be permitted where appropriate. Mistakes discovered before bid opening may be modified or withdrawn by written or telegraphic notice received in the office designated in the Invitation to Bid prior to the time set for bid opening. After bid opening, corrections in bids shall be permitted only to the extent that the bidder can show by clear and convincing evidence that a mistake, of non-judgemental character was made, the nature of the mistake, and the bid price actually intended. After bid opening, no changes in the bid price or other provisions of bids prejudicial to the interest of the City or fair competition shall be permitted. In lieu of bid correction, a low bidder alleging a material mistake of fact may be permitted to withdraw his bid if:
  - (1) the mistake is clearly evident on the face of the bid document but the intended correct bid is not similarly evident; or
  - (2) the bidder submits evidence which clearly and convincingly demonstrates that a mistake was made. All decisions to permit the correction or withdrawal of bids or to cancel awards or contracts based on bid mistakes shall be supported by a written determination made by the Purchasing Officer.
  
8. Multi-Step Sealed Bidding. When it is considered impractical to initially prepare a purchase description to support an award based on price, an Invitation for bids may be issued requesting the submission of unpriced offers to be followed by an invitation for bids limited to those bidders whose offers have been determined to be technically acceptable under the criteria set forth in the first solicitation.
  
9. Award. The contract shall be awarded with reasonable promptness to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the Invitation to Bid.

The City reserves the right to waive any informality in bids and to make an award in whole or in part when both conditions are in the best interest of the City of Winter Garden. Any requirement which is waived must be documented and kept in the file.

  - (1) Notice of Intended Award. The contract shall be awarded by written notice. Every procurement of contractual services shall be evidenced by a written agreement. Notice of intended award, including rejection of some or all of bids



contracts required to be awarded by competitive sealed proposals will be awarded according to the provisions of Section 4.052.

Section 4.051                      PROFESSIONAL ARCHITECTURAL, ENGINEERING,  
LANDSCAPE ARCHITECTURAL, AND LAND SURVEYING SERVICES

1.     Public Announcement. It is the policy of the City to publicly announce all requirements for professional architectural, engineering, landscape architectural, and land surveying services and to negotiate such contracts on the basis of demonstrated competence and qualifications at fair and reasonable prices. In the procurement of such services, the City may require firms to submit a statement of qualifications, performance data and other related information for the performance of professional services.

(1)   Scope of Project Requirements. Prior to submission of the request for proposals for professional as an agenda item for approval by the Commission, the Purchasing Officer shall submit to the City written project requirements indicating the nature and scope of the professional services needed, including but not limited to the following:

- (a) the general purpose of the services or study;
- (b) the objectives of the study or services;
- (c) estimated period of time needed for the services or the study;
- (d) the estimated cost of the service or study;
- (e) whether the proposed study or service would or would not duplicate any prior or existing study or services;
- (f) list of current contracts or prior services or studies which are related to the proposed study or service;
- (g) the described qualifications, listed in order of importance, of the person or firm applicable to the scope and nature of the services requested.

(2)   Distribution of Project Requirements. The Purchasing Officer shall distribute the written project requirements as approved by the City Commission to all persons on the mailing list who have indicated an interest in being considered for the performance of such professional services and to any additional persons as the Purchasing Officer or using agency deems desirable. The written project requirements shall include a statement of the relative importance of each of the requirements. The project requirements shall be accompanied by an Invitation to such persons to submit an indication of interest in performing the required services, and by notification of the date and time when such indications of interest are due. This date shall not be less than fourteen calendar days from the date of public notice when the Purchasing Officer shall publish in at least one newspaper of wide general circulation in the region.

(3)   Modification Prohibition. After the publicized submission time and date, indications of interest shall not be modified or allowed to be modified in any manner except for correction of clerical errors or other similar minor irregularities as may be allowed by the Selection

Committee (defined in Section 4.051B) prior to making its selection of those best qualified to be formally interviewed.

(4) Reuse of Existing Plans. There shall be no public notice requirements or utilization of the selection process as provided in this section for projects in which the City is able to reuse existing plans from a prior project. However, public notice of any plans which are intended to be reused at some future time shall contain a statement which provides that the plans are subject to reuse.

2. Selection Committee Membership and Evaluation. Depending on the expected complexity and expense of the professional services to be contracted, the City may determine whether a three member or five member selection committee will best serve the needs of the Commission.

(1) Three Member Committee Composition. Membership of a three-member selection committee shall be appointed by the City Commission.

(2) Five Member Committee Composition. Membership of a five-member selection committee shall be appointed by the City Commission.

(3) Selection Committee Evaluation. Only written responses of statements of qualifications, performance data, and other data received in the purchasing office by the publicized submission time and date shall be evaluated. Only those respondents who are determined to be best qualified based upon the evaluation of written responses and selected for Formal interview may submit additional data. From among those persons evidencing, by timely submission of written responses, an interest in performing the services the Selection Committee shall:

(a) prepare an alphabetical list of those persons determined by the Selection Committee to be qualified, interested and available; and

(b) designate no less than three persons on the alphabetical list considered by the Selection Committee to be best qualified to perform the work required.

(4) Shortlisting. The best qualified respondents shall be based upon the Selection Committee's ability to differentiate qualifications applicable to the scope and nature of the services to be performed. The Selection Committee shall determine qualifications, interest and availability by reviewing the written responses that express an interest in performing the services, and by conducting formal interviews of no less than three selected respondents that are determined to be best qualified based upon the evaluation of written responses. The determination may be based upon, but not limited to, the following considerations:

(a) competence, including technical educational and training, experience in the kind

of project to be undertaken, availability of adequate personnel, equipment and facilities, the extent of repeat business of the persons, and where applicable, the relationship of construction costs estimates by the person to actual cost on previous projects;

- (b) current work load;
- (c) financial responsibilities;
- (d) ability to observe and advise whether plans and specifications are being compiled with, where applicable;
- (e) record of professional accomplishments;
- (f) proximity to the project involved, if applicable;
- (g) record of performance; and
- (h) ability to design an approach and work plan to meet the project requirements, where applicable.

(5) Interview and Commission Approval. After conducting the formal interviews, the Selection Committee shall list those respondents interviewed in order of preference based upon the considerations listed in subsection (4) above. The respondents so listed shall be considered to be the most qualified and shall be listed in order of preference starting at the top of the list. The list of best qualified persons shall be forwarded to the Commission for approval prior to beginning contract negotiations. Negotiation sequence shall be based on the order of preference.

3. Negotiation Staff. Contract negotiations shall be conducted by the Purchasing Officer unless the Commission President directs that negotiations be conducted by a Negotiation Committee.

Negotiation. The Purchasing Officer or the Negotiation Committee shall negotiate a contract with the firm considered to be the most qualified to provide the services at compensation and upon terms which the Purchasing Officer or the Negotiation Committee determines to be fair and reasonable to the City. In making this decision, the Purchasing Officer or the Negotiation Committee shall take into account the estimated value, the scope, the complexity, and the professional nature of the services to be rendered. As a part of the negotiation, the Purchasing Officer or the Negotiation Committee shall conduct a cost analysis, including evaluation of profit, based on a cost breakout by the firm of its proposed price. Should the Purchasing Officer or the Negotiations Committee be unable to negotiate a satisfactory contract with the firm considered to be the most qualified, negotiations with that firm will be formally terminated. The Purchasing Officer or the Negotiation Committee shall then undertake negotiations with the second most qualified firm. Failing accord with the second most qualified firm, the Purchasing Officer or the Negotiation Committee shall formally terminate negotiations, and then shall undertake negotiations with the third most qualified firm. Should the Purchasing Officer or the Negotiation Committee be unable to negotiate a satisfactory contract with any of the selected firms, the Selection Committee shall select

additional firms in order of their competence and qualifications, and the Purchasing Officer or Negotiation Committee shall continue negotiations in accordance with this section until an agreement is reached or until a determination has been made not to contract for services.

Section 4.052 OTHER COMPETITIVE SEALED PROPOSALS (non-287.055 services)

1. Conditions for Use. All contracts required by Section 5.05 to be awarded by competitive sealed proposals that are not for the procurement of professional architectural, engineering, landscape architectural, and land surveying services, will be awarded according to the provisions of this section.
2. Consultant's Competitive Negotiation Act. Professional services within the scope of the practice of architecture, professional engineering, landscape architecture, or registered land surveying, as defined under the Consultant's Competitive Negotiation Act (Section 287.055, Florida Statutes), shall be secured under the provisions of Section 4.051.
3. Commission Approval. Proposals anticipated to exceed the threshold established in Section 4 for Competitive sealed Proposals shall be approved by the City of Winter Garden prior to solicitation.
4. Public Notice. Adequate public notice of the Request for Proposal shall be given in the same manner as provided in subsection 4.04C of this policy for competitive sealed bidding.
5. Evaluation Factors. The Request for Proposals shall state the relative importance of criteria outlined in the scope of services, fee proposal, and other evaluation.
6. Proposal Cancellation or Postponement. The Purchasing Officer may, prior to a proposal opening, elect to cancel or postpone the date and/or time for proposal opening or submission.
7. Revisions and Discussions with Responsible Offerors. As provided in the Request for Proposals, and under regulations promulgated by the City Commission of the City of Winter Garden, discussions may be conducted with responsible offerors who submit proposals determined to be qualified of being selected for award for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals, and such revisions may be permitted after submission and prior to award for the purpose of obtaining the best and final offers. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing offerors. The Purchasing Officer shall prepare a written summary of the proposals and make written recommendation of award to the City Commission. As a part of the recommendation, the Purchasing Officer shall conduct a

cost analysis, including evaluation of profit, based on a cost breakout by the firm of its proposed price.

8. Award. Award shall be made by the City Commission to the lowest responsible offer
9. or whose proposal is determined in writing to be the most advantageous to the City of Winter Garden, taking into consideration the evaluation factors set forth in the Request for Proposals. No other factors or criteria shall be used in the evaluation criteria that is not included in the Request for Proposal.

Section 4.06 SOLE SOURCE PURCHASES

1. Sole Source Certification. The procurement for all professional services and any contract resulting from a non-competitive procurement process must meet the requirements of 24 CFR 85.36 and Section 287.055 of the Florida Statutes.

The City's Purchasing Officer must conduct a cost or price analysis of all proposed prices on sole source purchases, analysis shall include a review of profit as a separate element.

~~A contract may be awarded for a supply, service, material, equipment or construction item(s) without competition when the Purchasing Officer with the concurrence of the City Clerk, certifies in writing after conducting a good faith review of available sources, that there is only one available source for the required material, supply, service equipment, or construction item(s). Such awards will be made within the authorized procurement limits. When a purchase exceeds five thousand dollars (\$5,000.00), the item will be placed on the agenda for the Commission to approval and clarification that the vendor has been determined to be sole source. When a purchase exceeds twenty five thousand dollars (\$25,000.00) it will require prior DEO approval.~~

2. Additional Purchases from Certified Sole Source . The Purchasing Officer may be authorized, after initial sole source certification and DEO approval , to make additional purchases from a sole source vendor for not less than one year or until such time a contrary evidence is presented regarding sole source eligibility, whichever period is less.

Section 4.07 COOPERATIVE PURCHASING

1. State Contracts. The Purchasing Officer is authorized to purchase goods or services for any dollar amount from authorized vendors listed on the respective state contracts of the Department of General Services, subject otherwise to the requirements of this policy.
2. Other Governmental Units. The Purchasing Officer shall have the authority to join other units of government in cooperative purchasing ventures when the best interest of the City would be served thereby, and the same is in accordance with this policy and with the City and State Law.

Section 4.08 BID PROTEST

1. Right to Protest. Any actual prospective bidder, offeror, or contractor who is aggrieved

in connection with the solicitation or award of contract may protest to the City Commission. Protestors shall seek resolution of their complaints initially with the Purchasing Officer and secondly with the City Clerk prior to protesting to the City Commission.

2. Filing a Protest. Any persons who is effected adversely by the decision or intended decision of the City shall file with the Purchasing Officer a notice of protest in writing within 72 hours after the posting of bid tabulation or after receipt of the notice of intended decision and file a formal written protest within 10 calendar days after he/she filed the notice of protest, Failure to file a notice of protest or failure to file a formal written protest shall constitute a waiver of proceedings under this Section. A written protest is filed with the City when it is delivered to and received in the office of the Purchasing Officer.
  1. The notice of protest shall contain at a minimum: the name of the bidder; the bidders address and phone number; the name of the bidder's representative to whom notices may be sent; the name and bid number of the solicitation; and a brief factual summary of the basis of the protest.
  2. The formal written protest shall; identify the protestant and the solicitation involved; include a plain, clear, statement of the grounds on which the protest is based; refer to the statutes, laws, ordinances, or other legal authorities which the protestant deems applicable to such grounds; and specifically request the relief to which the protestant deems himself entitled by application of such authorities to such grounds.
  3. The protestant shall mail a copy of the notice of protest and the formal written protest to any person with whom he/she is in dispute.
3. Settlement and Resolution. The Purchasing Officer shall; within 14 days of the formal written protest, attempt to resolve the protest prior to any proceedings arising from the position. Provided, however, if such settlement will have the effect of determining a substantial interest of another party or business, such settlement must be reached in the course of the proceedings provided herein.
4. Protest Proceedings. If the protest cannot be resolved by mutual agreement, the Purchasing Officer shall conduct or designate another to conduct a protest proceeding pursuant to the following procedures:
  - (1) Protest Proceeding Procedures.
    - (a) The presiding officer shall give reasonable notice to all substantially affected persons or businesses. Otherwise petitions to intervene will be considered on their merits as received.

- (b) At or prior to the protest proceeding, the protestant may submit any written or physical materials, objects, statements, or affidavits, and arguments which he/she deems relevant to the issues raised.
  - (c) In the proceeding, the protestant, or his/her representative or counsel, may also make an oral presentation of his evidence and arguments. However, neither direct nor cross examination of witnesses shall be permitted, although the presiding officer may make whatever inquiries he/she deems pertinent to a determination of the protest.
  - (d) The judicial rules of evidence shall not apply and the presiding officer shall base his/her decision on such information given in the course of the proceeding upon which reasonable prudent persons rely in the conduct of their affairs.
  - (e) Within seven (7) working days of the conclusion of the proceeding, the presiding officer shall render a decision which sets forth the terms and conditions of any settlement reached. Such decision of the presiding officer shall be conclusive as to the recommendation to the City Commission.
  - (f) Any party may arrange for the proceedings to be stenographically recorded and shall bear the expense of such recording.
- (2) Intervenor. The participation of intervenors shall be governed by the terms of the order issued in response to a petition to intervene.
  - (3) Time Limits. The time limits in which protests must be filed as provided herein may be altered by specific provisions in invitation for bids or request for proposal
  - (4) Entitlement to Costs. In no case will the protesting bidder or offeror be entitled to any costs incurred with the solicitation, including bid preparation costs and attorney's fees.
5. Stay of Procurement During Protests. In the event of a timely protest under Subsection A of this Section, the Purchasing Officer shall not proceed further with the solicitation or award of the contract until all administrative remedies have been exhausted or unless the City Commission makes a determination that the award of a contract without delay is necessary to protect the substantial interest of the City.

Section 4.09                      CONTRACT CLAIMS

- 1. Authority of the Purchasing Officer to Settle Bid Protests and Contract Claims. The Purchasing Officer is authorized to settle any protest regarding the solicitation or award of a City contract, or any claim arising out of the performance of a City contract, prior to an appeal to the City Commission or the commencement of an action in a court of competent jurisdiction, but may not settle any such protest or claim for consideration of \$1,000.00 or greater in value without prior approval of the City Commission.
- 2. Decision of the Purchasing Officer. All claims by a contractor against the City relating

to a contract, except bid protests, shall be submitted in writing to the Purchasing Officer for a decision. The contractor may request a conference with the Purchasing Officer on the claim. Claims include, without limitation, disputes arising under a contract, and those based upon breach of contract, mistake, misrepresentation, or other cause for contract modification or rescission.

3. Notice to the Contractor of the Purchasing Officer's Decision. The decision of the Purchasing Officer shall be promptly issued in writing, and shall be immediately mailed or otherwise furnished to the contractor. The decision shall state the reasons for the decision reached, and shall inform the contractor of his appeal rights under Subsection D of this section.
4. Finality of the Purchasing Officer Decision; Contractor's Right to Appeal. The Purchasing Officer's decision shall be final and conclusive unless, within 10 calendar days from the date of receipt of the decision, the contractor files a notice of appeal with the City Commission.
5. Failure to Render Timely Decision. If the Purchasing Officer does not issue a written decision regarding any contract controversy within fourteen calendar days after receipt of a written request for a final decision, or within such longer period as may be agreed upon between the parties, then the aggrieved party may proceed as if an adverse decision had been issued.

Section 4.10  
OF LAW

REMEDIES FOR SOLICITATION OR AWARDS IN VIOLATION

1. Prior to Bid Opening or Closing Date for Receipt of Proposals. If prior to the bid opening or the closing date for receipt of proposals, the Purchasing Officer after consultation with the City Attorney, determines that solicitation is in violation of federal, state, or local law or ordinance, then the solicitation shall be canceled or revised to comply with applicable law.
2. Prior to Award. If after bid opening or the closing date for receipt of proposals, but prior to the award contract, the Purchasing Officer after consultation with the City Attorney, determines that a solicitation or a proposed award of a contract is in violation of federal, state, or municipal law or ordinance, then the solicitation or proposed award shall be canceled.
3. After Award. If, after award, the Purchasing Officer after consultation with the City Attorney, determine that a solicitation or award of a contract was in violation of applicable law or ordinance, then;
  - (1) if the person awarded the contract has not acted fraudulently or in bad faith:

- (a) the contract may be ratified and affirmed, provided it is determined that doing so is in the best interest of the City; or
  - (b) the contract may be terminated and the person awarded the contract shall be compensated for actual costs reasonably incurred under the contract plus a reasonable profit, but excluding attorney's fees, prior to termination; or
- (2) if the person awarded the contract has acted fraudulently or in bad faith the contract may be declared null and void or voidable, if such action is in the best interest of the City.

Section 5

CONTRACT ADMINISTRATION

Section 5.1      CONTRACT PROVISION

1. Standard Contract Clauses and Their Modification. The City after consultation with the City Attorney, may establish standard contract clauses for use in City contracts. However, the Purchasing Officer may, upon consultation with the City Attorney, vary any such standard contract clauses for any particular contract.
2. Contract Clauses. All City contracts for supplies, services, and construction shall include provisions necessary to define the responsibilities and rights of the parties to the contract. The Purchasing Officer after consultation with the City Attorney, may propose provisions appropriate for supply, service, or construction contracts, addressing among others the following subjects:
  - (1) the unilateral right of the City to order, in writing, changes in the work within the scope of the contract;
  - (2) the unilateral right of the City to order in writing temporary stopping of the work or delaying performance that does not alter the scope of the contract;
  - (3) variations occurring between estimated quantities or work in contract and actual quantities;
  - (4) defective pricing;
  - (5) time of performance and liquidated damages;
  - (6) specified excuses for delay or nonperformance;
  - (7) termination of the contract for default;
  - (8) termination of the contract in whole or in part for the convenience of the City;
  - (9) suspension of work on a construction project ordered by the City;
  - (10) site conditions differing from those indicated in the contract, or ordinarily encountered, except that a differing site conditions clause need not be included in a contract
    - (a) when the contract is negotiated;
    - (b) when the contractor provides the site or design; or
    - (c) when the parties have otherwise agreed with respect to the risk of differing site conditions;

- (11) value engineering proposals;
- (12) remedies;
- (13) access to records/retention records;
- (14) environmental compliance; and
- (15) prohibition against contingency fees;
- (16) insurance to be provided by contractor covering employee property damage, liability and other claims, with requirements of certificates of insurance and cancellation clauses;
- (17) bonding requirements as set by the City Commission;
- (18) causes of and authorization for suspension of contract for improper contractor activity.

Section 5.2            PRICE ADJUSTMENTS

1.    Method of Price Adjustment. Adjustments in price during the term of a contract shall be computed in one or more of the following ways upon approval by the City:
  - (1) by agreement on a fixed price adjustment before adjustment before commencement of the pertinent performance or as soon thereafter as practicable;
  - (2) by unit prices specified in the contract or subsequently agreed upon;
  - (3) by costs attributable to the events or situations under such clauses with adjustment of profit or fee, all as specified in the contract or subsequently agreed upon by the City;
  - (4) in such other manner as the contracting parties may mutually agree; or
  - (5) in the absence of agreement by the parties, by a unilateral determination by the City of the costs attributable to the events or situations under such clauses with adjustment of profit or fee as computed by the City, subject to the provisions of this Section.
  
2.    Costs or Pricing Data Required. A contractor shall be required to submit cost or pricing data if any adjustment in contract price is subject to the provisions of this Section.

Section 5.3            CHANGE ORDERS/CONTRACT AMENDMENTS

Change orders and contract amendments, which provide for the alteration of the provisions of a contract may be approved by an appropriate person based upon the dollar value of the change or amendment. The purchasing categories thresholds designated in Section 4.01 shall govern the appropriate level of approval.

Section 5.4            ASSIGNMENTS OF CONTRACTS

No agreement made pursuant to any section of this policy shall be assigned or sublet as a whole or in part without the written consent of the City nor shall the contractor assign any monies due or to become due to the contractor hereunder without the previous written consent of the City.

Section 5.5            RIGHT TO INSPECT PLANT

The City may, as its discretion, inspect the part of the plant or place of business of a contractor or

any subcontractor which is related to the performances of any contract awarded, or to be awarded, by the City. The right expressed herein shall be included in all contracts or subcontracts that involve the performance of any work or service involving the City.

## Section 6                      RIGHTS OF CITY COMMISSION

Nothing in this policy shall be deemed to abrogate, annul, or limit the right of the City Commission ~~when acting in the best interest of the City. , in the best interest of t~~ The City Commission reserves the right to reject all bids received in response to a request, to determine in its sole discretion the responsiveness and responsibility of any bidder, to approve and authorize or to enter into any contract it deems necessary and desirable for the public welfare, or to vary the requirements of the Policy in any instance when desirable for public good. All allocated CDBG funds must meet the requirements of 24 CFR 85.36 and Section 287.055 of the Florida Statutes.

## Section 7                      CITY PROCUREMENT RECORDS

1.     Contract File. All determinations and other written records pertaining to the solicitation, award, or performance of a contract shall be maintained for the City in a contract file.
  
2.     Retention of Procurement Records. All procurement records shall be retained and disposed of by the City in accordance with records retention guidelines and schedules established by the State of Florida.

## Section 8                      SPECIFICATIONS

### Section 8.1                      MAXIMUM PRACTICABLE COMPETITION

All specifications shall be drafted to promote overall economy and encourage competition in satisfying the City needs and shall not be unduly restrictive. The policy applies to all specifications including, but not limited to, those prepared for the City by architects, engineers, designers, and draftsmen.

### Section 8.2                      USE OF BRAND NAME OR EQUIVALENT SPECIFICATIONS

1.     Use. Brand name or equivalent specifications may be used when the City determines that:
  - (1) no other design, performance, or qualified product list is available;
  - (2) time does not permit the preparation of another form of purchase description, not including a brand name specification;
  - (3) the nature of the product or the nature of the City requirements makes use of a brand name equivalent specifications suitable for the procurement; or
  - (4) use of brand name or equivalent specification is in the City's best interest.
  
2.     Designation of Several Brand Names. Brand names or equivalent specifications shall seek to designate three, or as many different brands as are practicable, as "or equivalent"

references and shall further state the substantially equivalent products to those designated may be considered for award.

3. Required Characteristics. The brand name or equivalent specifications shall include a description of the particular design, functional, or performance characteristics required.
4. Nonrestrictive Use of Brand Name or Equivalent Specifications. Where a brand name or equivalent specification is used in a solicitation, the solicitation shall contain explanatory language that the use of a brand name is for the purpose of describing the standard of quality, performance, and characteristics desired and is not intended to limit or restrict competition.
5. Determination of Equivalents. Any prospective bidder may apply, in writing, for a pre-bid determination of equivalence by the Purchasing Director. If sufficient information is provided by the prospective bidder, the Purchasing Director may determine, in writing and prior to the bid opening time, that the proposed product would be equivalent to the brand name used in the solicitation.
6. Specifications of Equivalents Required for Bid Submittal. Vendors proposing equivalent products must include in their bid submittal the manufacturer's specifications for those products. Brand names and model numbers are used for identification and reference purposes only.

### Section 8.3                    BRAND NAME SPECIFICATIONS

1. Use of Brand Name Specifications. Since the use of a brand name specification is restrictive of product competition, it may be used only when the Purchasing Director makes a determination that only the identified brand name item will satisfy the City needs.
2. Competition. The Purchasing Director shall seek to identify sources from which the designated brand name item or items can be obtained and shall solicit such sources to achieve whatever degree of price competition is practicable. If only one source can supply the requirement, the procurement shall be made under Section 4.10, Sole Source Purchases.

### Section 9                    ETHICS IN PUBLIC CONTRACTING

#### Section 9.1                    CRIMINAL PENALTIES

To the extent that violations of the ethical standards of conduct set forth in this section constitute violations of the State Criminal Code they shall be punishable as provided therein. Such penalties shall in addition to civil sanctions set forth in this part.

#### Section 9.2                    EMPLOYEE CONFLICT OF INTEREST



Section 9.6                      SANCTIONS

1.     Employee Sanctions. Upon violation of the ethical standards by an employee, officer or agent of the City, or other appropriate authority may:
  - (1) impose one or more appropriate disciplinary actions as defined in the City Personnel Rules and regulations, up to and including termination of employment; and;
  - (2) may request investigations and prosecution
  
2.     Non-employee Sanctions. The Commission may impose any one or more of the following sanctions on a non-employee for violation of the ethical standards:
  - (1) written warnings;
  - (2) termination of contracts; or
  - (3) debarment or suspension as provided in Section 15.

Section 9.7     RECOVERY OF VALUE TRANSFERRED OR RECEIVED IN BREACH OF ETHICAL STANDARDS

1.     General Provisions. The value of anything being transferred or received in breach of the ethical standards of this policy by a City employee or non-employee may be recovered from both the City employee and non-employee.
  
2.     Recovery of Kickbacks by the City of Winter Garden. Upon a showing that a subcontractor made a kickback to prime contractor or a higher tier subcontractor in connection with the award of a subcontract or order thereunder, it shall be conclusively presumed that the amount thereof was included in the price of the subcontract or order and ultimately borne by the City and will be recoverable hereunder from the recipient. In addition, that amount may also be recovered from the subcontractor making such a kickback. Recovery from one offending party shall not preclude recovery from other offending parties.

Section 10                      FEDERAL POLICY NOTICE

Section 10.1                      PATENTS

If a contract involving research and development, experimental, or demonstration work is being funded in whole or in part by assistance from a federal agency, then the contract shall include the following provisions:

1.     Notice To Contractor. The contract shall give notice to the contractor of the applicable grantor agency requirements and regulations concerning reporting of, and rights to, any discovery or inventions arising out of the contract.



to those items only. This evaluation is the main factor in building a realistic program with attainable targets.

(2) All department and divisions under the jurisdiction of the City Commission are responsible for implementing this program and for making every reasonable effort to utilize MBEs and WBE's when opportunities are available. The Purchasing Officer will take the lead role in this process by taking active steps to encourage minority or women owned businesses.

(3) Regarding the implementation of this policy, it is the Commission's intent to foster economic development in the City's area by establishing its MBE goals based on availability of minority and women-owned businesses located within the City. This is no way intended to limit or restrict competition. Rather, availability of area companies will be used to guide MBE goals. Such geographical preferences may be adjusted, amended or repealed by the City Commission, with or without a public hearing, as deemed necessary.

3. Definition. Minority Business Enterprise (MBE) as used herein, means a business that is owned and controlled at least 51% by one or more minority persons (MBE) or by one or more women (WBE) and whose management and daily operations are controlled by one or more such persons.
4. Administrative Responsibilities. The Purchasing Officer is responsible for the coordination of the Minority Business Enterprise Program and registration.

(1) Capital Improvement Projects

(a) REVIEW

The Purchasing Officer and an appropriate department representative shall review each proposed project or bid to determine potential for utilization of MBE/WBEs and report their finds to the City Commission. This review is based on known availability of capable MBE/WBEs in the area in relation to the scope of the bid package and considers how a project might be broken down into sub-bids.

(b) PRE-BID ACTIVITY

(1) Language regarding the Minority Business Enterprise Program will be inserted into bid specifications to assure that prospective bidders are aware of a requirement to make good faith efforts to utilize MBE/WBEs.

(2) Registered MBE/WBEs, the Minority Contractors Association and other organizations for minority and women owned businesses will be notified in writing regarding pre-bid conferences where information on project scope and specifications will be presented, along with other types of technical assistance.

(3) Available plans and specification will be to MBE/WBE associations along with any special instructions on how to pursue bids.

(4) Majority (prime) contractors on a bid list will be sent a letter outlining

the Minority Business Enterprise Program procedures, the supportive documentation required for submittal with their bid, and a list of MBE/WBE contractors on the bid list.

(5) No contractor will be awarded a bid until the contractor has provided specific detailed documentation on how MBE/WBEs will be utilized, and such a plan is approved by the City Commission.

(6) The MBE/WBE participation plan for a specific project and the contractor commitment to carry out the program will become a part of the contract awarded by the City. Failure to keep these commitments will be deemed noncompliance with the contract and may result in a breach of contract.

## (2) Contractor Responsibilities

(a) Contractors must indicate all MBE/WBEs, contracted for quotes regarding a particular scope of work and submit a completed "Intent to Perform" sheet containing information and documentation obtained from each MBE/WBEs.

(b) A contractor who determines that a MBE/WBEs, names in the bid submittal, is unavailable or cannot perform, will request approval from the Purchasing Officer to name an acceptable alternate. Such requests will be approved when adequate documentation of cause for the change is presented by the contractor.

(c) A contractor's MBE/WBE plan will utilize MBE/WBEs to perform commercially useful functions in the work bid. A MBE/WBE is performing a commercially useful function when it is responsible for the management and performance of a distinct element of the total work.

(d) Contractors are required to make good faith efforts to obtain MBE/WBE participation when so stipulated by bid specifications and/or contracts. If these efforts are unsuccessful, the contractor will submit a non-availability or refusal to participate and will request waiver of MBE/WBE participation.

(e) The contractor who is the successful bidder will attend pre-construction conferences with appropriate City representatives to review the project scope and the MBE/WBE utilization plan.

(f) The contractor who is the successful bidder must request a change order for any modification to the MBE/WBE plan. Change orders require Commission approval and are contingent on contractor documentation of MBE/WBE involvement in the change requested and documentation of cause for these changes.

## (3) MBE/WBE Contractor's Responsibilities

(a) MBEs/WBEs must register with the Purchasing Officer in order to participate

in the Minority Business Enterprise Program.

(b) MBEs/WBEs should attend pre-construction conferences to obtain information and technical assistance on projects and bid procedures in which they (MBEs/WBEs) have submitted bids.

4. Joint Venture Responsibilities

(a) All joint ventures between minority and non-minority contractors must meet the “joint venture” definition included in the policy.

(b) The use by MBE/WBEs or prime contractors of “minority fronts” or other fraudulent practices which subvert the true meaning and spirit of the Minority Business Enterprise Program, will not be tolerated and may result in termination of participation.

(c) A joint venture consisting of minority and non-minority business enterprise will be credited with MBE/WBE participation on the basis of the percentages of the dollar amount of the work to be performed by the MBE/WBEs.

(d) Contracts subject to this policy shall contain provisions stating that liquidated damages may be assessed against the general contractor and/or the MBE/WBE specifications in the contract(s). Such liquidated damage provisions shall be in a form approved by the Commission.

5. Fulfilling MBE/WBE Participation Requirements

For the purpose of this policy, a general contractor may utilize the services of a MBE/WBE subcontractor, manufacturer, and/or supplier in estimating and satisfying the scope of work, provided that written contract/agreement is executed between the general contractor and the subcontractor, manufacturer, and/or the supplier.

6. Payment

(1) Payment will be expedited by the City Commission within thirty (30) days upon completion and acceptance of the project. Special consideration may be given to hardship cases upon notification by MBEs/WBEs.

(2) The City will provide work progress payments to all business at the completion and subsequent acceptance by Commission representatives within various stages of a particular project.

7. Waiver of Bid Bond Requirements.

The Commission may, at its discretion, waive any of the requirements of this Section when it is determined to be in the best interest of the City.

8. Bid List.

A bid list for the purpose of bid solicitations shall be maintained by the City. The list shall consist of firms that apply.

- (1) The City may remove firms from the bid list for any of the following reasons:
  - (a) consistent failure to respond to bid invitations (three (3) consecutive instances) within the last eighteen month period; or
  - (b) failure to update the information in file including address, product or service description or business description.
  
- (2) The Commission may remove firms from the bid list for the following reasons:
  - (a) failure to perform according to contract provisions;
  - (b) conviction in a court of law of any criminal offense in connection with the conduct of business.
  - (c) clear and convincing evidence of a violation of any federal or state anti-trust law based on the submission of bids or proposals or the awarding of contracts.
  - (d) clear and convincing evidence that a vendor has attempted to give a Commission employee, officer or agent a gratuity of any kind for the purpose of influencing recommendation or decision in connection with any part of the City Commission purchasing activity;
  - (e) violation of circumvention of the Minority Business Enterprise Program; or
  - (f) other reasons deemed appropriate by the City Commission

(3) This policy is consistent with and subordinate to the City Purchasing Policy. Wherever conflicts may exist, the provision in the Purchasing Policy will prevail.

9. Reporting.

The Purchasing Officer or appropriate person will report, at least annually, to the Commission on the Status of the Minority Business Enterprise Program. Records will be maintained reflecting participation of local minority and women owned businesses and shall be reported.

10. Severability Clause.

Each separate provision of this program is deemed independent of all other provisions herein so that if any provision or provisions be declared invalid, all other provisions hereof shall remain valid and full force and effect.

**DULY ADOPTED** by the City Commission of the City of Winter Garden, Florida this \_\_\_\_\_ day of \_\_\_\_\_, ~~2012~~2014.



**THE CITY OF WINTER GARDEN**  
**CITY COMMISSION AGENDA ITEM**

**From:** George Brennan, Police Chief

**Date:** March 7, 2014

**Meeting Date:** March 13, 2014

**Subject:** Recommendation to approve entering into an agreement with the Orange County School Board to continue the School Resource Officer Program.

**Issue:** Enter into an agreement for the Winter Garden Police Department to provide School Resource Officer (SRO) services to Lakeview Middle, SunRidge Middle, Dillard Elementary, Whispering Oak Elementary, and SunRidge Elementary schools.

**Recommended action:** Approve the execution of the SRO agreement with the Orange County School Board.

**Attachments/References:** Letter from OCPS and the Agreement to be executed.



# ORANGE COUNTY PUBLIC SCHOOLS

P.O. Box 271  
32802-0271

Orlando, Florida  
(407) 317-3200

445 W. Amelia Street  
32801-1127

March 4, 2014

Chief George Brennan  
Winter Garden Police Department  
251 Plant Street  
Winter Garden, Florida 34787

Dear Chief Brennan,

Enclosed please find three (3) copies of the Contract between the School Board of Orange County and the Winter Garden Police Department for the School Resource Officer Program. This document represents an outcome from a well-coordinated process and provided a standard framework of the School Resource Officer Program as we work together in the future. Please return two (2) fully executed copies to my office and retain one (1) copy for your files. Our department will return a copy of the document with board signatures immediately after approval.

Thank you for your assistance. If you have any questions, please call my office at 407.317.3468.

Sincerely,

Douglas L. Tripp  
Senior Director  
Safety and Security Services

## AGREEMENT

between

The School Board of Orange County, Florida

and

The City of Winter Garden

for

The School Resource Officer Program

This agreement is entered into this 1<sup>st</sup> day of July, 2013 between the School Board of Orange County, Florida, a public body corporate organized and existing under the Constitution and laws of the State of Florida, hereinafter referred to as the "School Board," or OCPS and the City of Winter Garden, Florida, hereinafter referred to as the "Law Enforcement Agency."

WITNESSETH

NOW, THEREFORE, in mutual consideration of the covenants herein, the Law Enforcement Agency and the School Board agree as follows:

1. This Agreement shall be in effect from July 1, 2013 through June 30, 2014, unless otherwise terminated as provided herein.
2. The Law Enforcement Agency shall assign officers according to the manpower formula listed below to be School Resource Officers ("SROs") for OCPS.
  - A. 2 Officers at each high school  
1 Officer at each middle school  
1 Officer for every 4 elementary schools and K-8 school
  - B. In the event the Law Enforcement Agency is able to provide a full-time SRO to a K-8 school (five days a week) the parties may agree that a full-time SRO shall be provided by the Law Enforcement Agency at such school to provide the middle school curriculum and requirements.
  - C. The Law Enforcement Agency will at a minimum provide such services to the schools listed as in **Exhibit "A"**.
  - D. OCPS shall provide notice to the Law Enforcement Agency for the jurisdiction where the school is located, at least one (1) year prior to the commencement of any new school construction or conversion, to discuss and negotiate the need for additional law enforcement resources at the subject school. Both parties acknowledge that the budgetary cycle for the Law Enforcement Agency requires sufficient lead time to properly budget for, select, train and equip law enforcement officers.

- E. A written, agreed upon process by both the Law Enforcement Agencies and the Orange County School Board will be used to determine the assignment of an SRO to a school that did not have previous coverage.
  - F. Any changes to the staffing levels contained in this agreement shall be in writing and signed by both parties.
3. All SROs shall meet or exceed the following qualifications:
- A. Minimum of two years experience as a state certified law enforcement officer.
  - B. Currently certified by the State of Florida as a law enforcement officer.
  - C. SROs will receive formal training (to include SRO Basic Certification Training) with a focus on school based law enforcement within 12 months of being assigned to the SRO program.
  - D. These requirements may be modified by mutual agreement of the Law Enforcement Agency and the Senior Director – Safety and Security of OCPS.
4. Each SRO work year will follow the schedule established by the School Board for 10-month teachers. An individual agency may enter into an agreement with OCPS for summer school assignment at a particular school as the need arises. Summer rates will be on a pro rata basis of the 10 month rate.
- A. The SRO shall make reasonable efforts to arrive at their assigned campus one half (½) hour before the school day begins and shall remain on campus one half (½) hour after the school day ends. This schedule may be altered if the SRO determines there is a need for the SRO to address an issue involving students in areas adjacent to the school. The SRO will make reasonable efforts to notify the school of the change.
  - B. The Law Enforcement Agency will only provide additional SRO services when the request is made by OCPS Safety and Security. All such requests will be reviewed and approved by the Law Enforcement agency based upon staffing availability and internal agency policy.
  - C. The parties agree that representatives of OCPS Safety and Security and from law enforcement management will hold a pre-school year planning meeting and a post school year debriefing meeting to address operational issues and concerns.
5. OCPS agrees to reimburse the Law Enforcement Agency at a rate of:
- A. \$27,500 per full-time officer for the 10-month school year at each middle and high school; and  
  
\$6,875 for the 10-month school year at each elementary and K-8 school identified in **Exhibit "A"**.

6. SROs assigned to elementary schools shall, by mutual agreement, teach either the *MAGIC*, *Fantastic Foundations*, *Super Kids*, *D.A.R.E.* or the *Exploration of Public Service Occupations* (locally referred to as Law Awareness) curriculums, or any other curriculum that is mutually agreed to between the parties, as guest presenters in fifth grade classes and in other grades as agreed to between the parties.
  - A. If a Law Enforcement Agency has a similar type of elementary school curriculum they would like to teach to the schools, a complete copy of the proposed curriculum and lesson plan will be submitted to OCPS Safety and Security for approval.
  - B. Revisions to the elementary school law enforcement curriculum shall be submitted to OCPS Safety and Security for district review and approval prior to being implemented.
7. SROs assigned to middle schools may, by mutual agreement, have a teaching assignment which consists of the G.R.E.A.T. (Gang Resistance Education and Training), Super Teens, Exploration of Public Service Occupations, Cyber Safety, or a combination of any of these classes/curriculums.
  - A. If a Law Enforcement Agency has a similar type of middle school curriculum they would like to teach at schools, a complete copy of the proposed curriculum and lesson plan will be submitted to OCPS Safety and Security for approval.
  - B. Revisions to the middle school law enforcement curriculum shall be submitted to OCPS Safety and Security for district review and approval prior to being implemented.
8. SROs assigned to high schools may instruct specialized short-term programs by invitation of school administration or faculty member.
9. Any exceptions to the instructional responsibilities outlined herein must be mutually agreed upon by the appropriate designee from OCPS Curriculum Services, the appropriate designee from OCPS Safety and Security, the appropriate school principal and the Law Enforcement Agency.
10. SROs shall be responsible for the following additional duties:
  - A. Encouraging individual and small group discussion with students, faculty, and parents about matters related to law enforcement.
  - B. Making referrals to community agencies offering assistance to juveniles and their families, such as mental health clinics, drug treatment centers, etc. when the officer deems appropriate.
  - C. Assisting other law enforcement officers in matters relating to the SROs' school assignments.
  - D. Actively support the OCPS Early Truancy Intervention Program (ETI) under the direction of the school system and the State Attorney 9th Judicial Circuit of Florida.

- E. The Law Enforcement Agency will participate in active assailant drills conducted by OCPS and may participate in developing strategies to enhance the effectiveness of the drills.
  - F. The assigned SROs will be on the premises of the school as a uniformed presence while OCPS Safety and Security conduct their weapons screening program. The weapons screening is solely the responsibility of OCPS and the SRO's will not participate in screening or searching any student, OCPS employee, or any other person as part of OCPS's screening program, unless the officer can articulate reasonable suspicion that the person is armed justifying a pat down or probable cause to search based upon the belief weapons or contraband are illegally possessed. Temporary re-assignment of SROs from other schools is permissible to ensure a uniformed presence during the screening process. OCPS must provide a minimum of two (2) business days' notice to the Law Enforcement Agency management staff.
  - G. If the Law Enforcement Agency cannot temporarily re-assign an SRO to another school for the weapons screening program, OCPS will decide if they want to operate the weapons screening with just the assigned SRO or if they want to pay the law enforcement agency for off-duty detail officers to be present.
  - H. Upon receiving a public records request from OCPS and as permitted by law, any reports or documentation created in the course of a criminal investigation shall be forwarded to the OCPS Safety and Security for appropriate action and dissemination to the affected school as necessary.
11. The Law Enforcement Agency will submit a combined agency SRO activity log to OCPS Safety and Security by the 15<sup>th</sup> day of the following month. This activity log can be combined with any duty log created or already in place by an individual agency.
  12. Law Enforcement agencies, within statutory and policy guidelines, shall share with OCPS Safety and Security criminal information (to include specific incidents and trends), potential threats to the school, criminal gang activities, and other issues that could affect the safety of the school environment.
  13. SROs should wear their department issued uniforms while working on campus and at school events, unless exempted by their immediate supervisor.
  14. SROs are under the direct supervision and control of the Law Enforcement Agency. They remain employees of the Law Enforcement Agency and are responsible and accountable to the Law Enforcement Agency's chain of command. SROs will coordinate their SRO activities with the principals and other appropriate staff members of their assigned schools.
  15. The SRO program in regards to OCPS represents a management function through OCPS Safety and Security. All concerns and conflicts regarding SROs and OCPS schools will be administered through the OCPS Senior Director – Safety and Security and the appropriate designee from the Law Enforcement Agency unless otherwise prohibited by law or agency policy.
  16. The SRO will, in a reasonable and practical time frame and within statutory and agency guidelines, communicate any law enforcement action the SRO takes on campus with the principal or his/her designee. The SRO shall inform the principal or his/her designee

prior to removing any student from class to conduct custodial interrogations. Any student information provided to the SRO or Law Enforcement Agency shall be subject to student privacy laws.

17. School administration will advise the SRO of criminal activity that occurs on school campus. Behavior that could be defined as a "petty act of misconduct" under Florida Statute 1006.13(c) will be discussed by school administration and the SRO to determine if there is an appropriate student discipline remedy in lieu of criminal prosecution. If the parties agree that the offense should be handled by the school, the offense will be handled by OCPS.
18. If criminal activity is suspected, the primary investigative party will be the Law Enforcement Agency. The status and findings of the investigation, where permitted by Florida law and the law enforcement agency's policy, will be communicated with school administration. A school investigation may be done concurrently, but shall not interfere with law enforcement activities.
19. SROs shall not be assigned any duties regularly given to school personnel, such as lunchroom or hall duty. The SRO however, shall be visible in student populated areas before school, during class change, at lunch, and during dismissal when not involved in other Law Enforcement Duties. The SRO shall patrol the perimeter and external portion of the school when the SRO's schedule permits.
20. SROs are not school disciplinarians. The SRO will not transport suspended or disruptive students unless authorized by their supervisor. The parties shall cooperate in informing the student's parents in the event the student is being transported to another location.
21. SRO's are required to be absent from campus from time to time to attend training, due to illness, due to military obligations, to appear in court and to perform certain administrative functions required by their position with the Law Enforcement Agency. The SRO supervisor will approve all SRO absences from campus and notify the school administration in advance, when possible. The Law Enforcement Agency will make reasonable efforts to replace SROs who are absent, based upon available resources of the Law Enforcement Agency.
22. Should it become necessary to conduct formal law enforcement interviews on school grounds with students or staff, the SRO shall abide by applicable State law and the Law Enforcement Agency's policy and procedure. School Board personnel shall cooperate with those efforts.
23. Nothing herein shall be construed as imposing a legal duty for school and/or student security upon the Law Enforcement Agency. This Agreement shall not be construed as creating a special relationship between the Law Enforcement Agency and any person or entity.
24. Payment shall be made in two equal installments with the first payment due on or before December 31, 2013, and the second installment due on or before June 30, 2014.
25. Either party may terminate this Agreement without cause upon 30 days written notice to the other party. In the event of such a termination, the Law Enforcement Agency shall be paid on a pro rata basis for services rendered to the date of termination. Further, either party may immediately terminate this Agreement for cause upon giving written notice to the other party and a 30-day opportunity to cure any material default.

26. Neither party may assign this Agreement.
27. The terms and provisions of this Agreement constitute the entire contract between the parties with respect to the subject matter hereof and shall supersede all previous communications, representations, or agreements, either verbal or written, between the parties. No change, alteration, or modification of this Agreement shall be effective unless in writing and signed by both parties hereto.
28. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. The venue of any litigation arising hereunder shall be Orange County, Florida.
29. It is understood and agreed to by the parties that at no time shall a law enforcement officer acting pursuant to this Agreement be an employee or agent of the School Board. The law enforcement officer shall always be and remain an employee of the Law Enforcement Agency when performing their function herein.
30. The Parties agree that they will engage in meaningful, face to face negotiations beginning in January 2014 in preparation for the 2014-2015 school year. Each party will assign personnel to their respective team that have the ability to negotiate on behalf of their organization.

**Signatures on Following Page**

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by the undersigned persons as duly authorized.

CITY OF WINTER GARDEN, FLORIDA

THE SCHOOL BOARD OF ORANGE  
COUNTY, FLORIDA

BY: \_\_\_\_\_  
Mayor

BY: \_\_\_\_\_  
William E. Sublette, Chairman

(Corporate Seal)

(Corporate Seal)

ATTEST:

BY:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Barbara M. Jenkins,  
Superintendent

This document has been reviewed by the Office of the General Counsel on behalf of The School Board of Orange County, Florida, for its exclusive use and reliance, this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

BY: \_\_\_\_\_  
Eileen D. Fernandez, Associate General  
Counsel

Exhibit "A"

**The City of Winter Garden  
2013-2014 School Year  
Reimbursement for School Resources Officers**

	<b>School</b>	<b>School #</b>	<b>Level</b>	<b># of Officers</b>	<b>Amount</b>
1.	Dillard Elem.	0511	E	.25	6,875
2.	Whispering Oaks E.	0322	E	.25	6,875
3.	SunRidge Elem.	1821	E	.25	6,875
4.	Lakeview Middle	0352	M	1.00	27,500
5.	SunRidge Middle	1911	M	1.00	27,500
	<b>Total</b>			<b>2.75</b>	<b>75,625</b>

**THE CITY OF WINTER GARDEN**  
**CITY COMMISSION AGENDA ITEM**

**From:** Michael Bollhoefer, City Manager

**Date:** March 7, 2014

**Meeting Date:** March 13, 2014

**Subject:** Land swap at 252 Plant Street

**Issue:** The City of Winter Garden currently owns the land located at 270 W. Plant Street, which is adjacent to the old Planning and Zoning building. The 252 W. Plant Street Partnership owns 252 W. Plant Street which is the parcel in between 270 W. Plant and the fountain. Staff would like to swap the piece the City owns with the piece owned by the partnership and use the piece adjacent to the fountain as a small gateway park into the pavilion area.

The 252 W. Partnership group is agreeable to the swap; however, they want to be compensated for the additional costs they would incur because of this swap. These costs would include architectural, engineering and legal costs described in the accompanying letter from R.C. Stevens and the letter from South Millhousen (summarized in the cost allocation spreadsheet). The city would pay for these costs with \$117,000 in cash and \$18,000 in parking impact fee credits.

**Recommended action:** Approve swapping the City owned land at 270 W. Plant Street with the 252 W. Plant Street Partnership for their land at 252 W. Plant Street and paying for the additional incurred costs.

**City of Winter Garden**  
**Land swap calculations**

Total Design and Preconstruction Services Costs from R.C. Stevens letter	\$ 127,913.00
Less: Preconstruction Services	<u>\$ (7,613.00)</u>
	\$ 120,300.00
 Negotiation and Review Fees	
South Millhausen letter	\$ 5,000.00
Due Diligence, Engineering Review etc.	
South Millhausen letter	<u>\$ 10,000.00</u>
	\$ 135,300.00
 Rounding	<u><u>\$ 135,000.00</u></u>

# R.C. STEVENS

CONSTRUCTION COMPANY

October 21, 2013

Mr. John R. Kirby, P.E.  
308 South Dillard Street  
Winter Garden, FL 34787

Re: **Design/Preconstruction Proposal**  
**252 Plant Street**  
**RCS Estimate #E13-020**

Dear Mr. Kirby:

Thank you for the opportunity to provide you with the proposal for Design and Preconstruction services for a three story 36,000 square foot office building to be located at 252 Plant Street, Winter Garden Florida. I've included a Concept Drawing of the proposed facility. Below is a breakdown of our Fee based on the concept drawing provided by Farmer Architecture.

Design and Preconstruction Services:

Design Development and Engineering Consultants	\$ 14,233.00
Landscape Architect	\$ 3,558.00
Architectural Shell Design	\$ 49,816.00
Architectural Renderings and Rendered Plans	\$ 3,558.00
Civil Engineering Design	\$ 11,031.00
Structural Engineering Design	\$ 13,521.00
Mechanical and Electrical Design	\$ 22,299.00
Budget Estimating	\$ 2,284.00
Preconstruction Services	\$ 7,613.00
<b>TOTAL:</b>	<b>\$127,913.00</b>

Additional Items:

Construction Administration (Allowance)	\$ 14,233.00
Geotechnical Borings and Reports (Allowance)	\$ 3,500.00

Deliverables:

1. Design development of the conceptual plans previously prepared by Farmer Architecture including review of the program with the owner, development of the final floor plans based upon the programmatic requirements, development of the final elevations, code and zoning review, and meeting with the appropriate city officials necessary to obtain approval of the design development package.
2. Preparation of an exterior perspective rendering, a rendered site plan and rendered floor plans suitable for us in the building marketing materials.

28 S. MAIN STREET  
WINTER GARDEN, FLORIDA 34787  
PHONE (407) 299-3800  
FAX (407) 291-9237

CGC017008 CGC034168  
Follow us on 

640 BREVARD AVE., SUITE 105  
COCOA, FLORIDA 32922  
PHONE (321) 639-3730  
FAX (321) 639-3590

3. Preparation of architectural construction documents for the shell building and interior core elements which will be based upon the approved design development package for the shell building. A Probable Cost Estimate will be provided when the architectural drawings are 50% complete and a Final Cost of Construction Estimate will be provided when the Construction Documents have been completed.
4. Preconstruction services will include team coordination meetings with the Design team and owner using processes from our ***Right Track™*** Design Build program. These will include constructability review, budget comparisons, scheduling, meeting coordination, meeting minutes and historical documentation.
5. Structural engineering services related to the above shell construction.
6. Plumbing, mechanical, electrical and fire protection engineering services for the shell building and core areas, preparation of building systems to accommodate the future tenant finish and the site/exterior building.
7. Site/Civil engineering services related to the site grading and bringing the utilities to the building.
8. Landscape architecture services including hardscape design.
9. Assistance during permitting to respond to comments from the authorities and agencies having jurisdiction.
10. Architectural Construction Administration services including review of contractor submittals, response to the contractor requests for information and site visits during construction by the architect and by the engineers will be provided on an as needed basis.

Architectural, Contractor and Engineering reimbursable expenses including printing and reproduction cost for the permit submittals, long distance telephone charges, shipping, handling cost and travel expenses, will be invoiced in addition to the professional fees at the rate of 1.15 times the actual expense.

Sincerely:

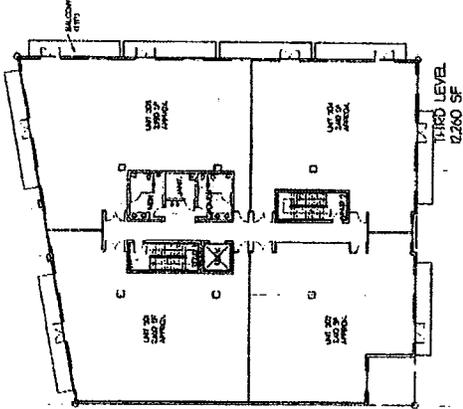
***R.C. STEVENS CONSTRUCTION CO., INC.***



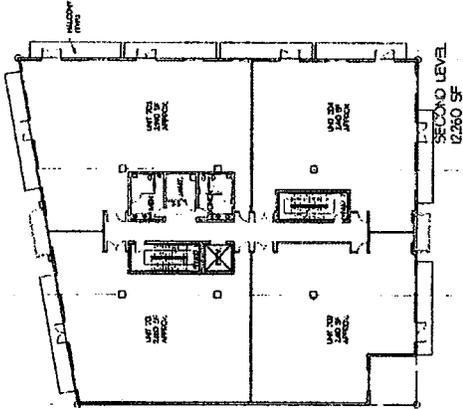
Darrell K. Palama  
Project Manager.

Cc: file

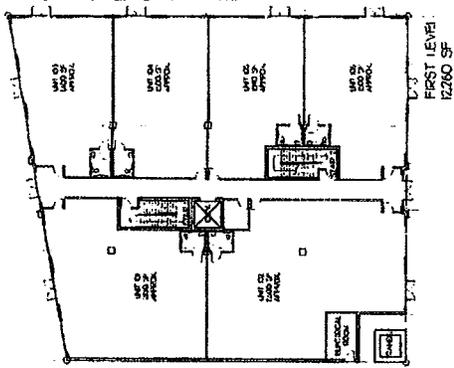
Consultant:  
 David H. Estess AIA  
 License #A97070  
 941 Lakes Boulevard LN  
 Orlando, FL 32814  
 Phone: (813) 441-3320



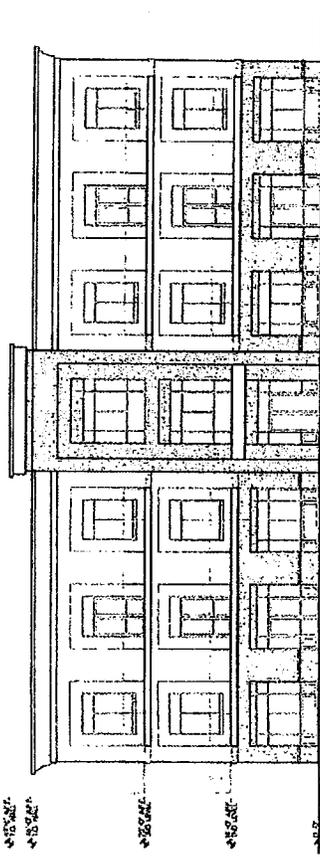
3 THIRD LEVEL  
 SCALE: 1/8" = 1'-0"



2 SECOND LEVEL  
 SCALE: 1/8" = 1'-0"



1 FIRST LEVEL  
 SCALE: 1/8" = 1'-0"



4 PRELIMINARY FRONT ELEVATION  
 SCALE: 1/8" = 1'-0"



## South Milhausen

A PROFESSIONAL ASSOCIATION

October 14, 2013

**REPRESENTATION AGREEMENT  
PERSONAL AND CONFIDENTIAL  
VIA ELECTRONIC DELIVERY**

252 W. Plant St., LLC  
c/o Rodney Jolley  
1226 Grandmere Court  
Windermere, Florida 34786

**Re: Representation Agreement;  
252 W Plant Street Land Swap;  
City of Winter Garden.**

Mr. Jolley:

Our firm greatly appreciates the confidence you have placed in our legal skills and we welcome the opportunity to maintain your representation with respect to your current matters involving the potential land swap for the parcel located at 252 West Plant Street, City of Winter Garden Orange County, Florida, inclusive of transactional contract negotiation, redevelopment representation and preparation of condominium declaration and corresponding work required, and finally including any general legal transactional matters, any litigation matters, and with respect to any other matters for which you request "in writing" our legal services (for purposes of this Representation Agreement the term "you" or "your" shall include any corporate representation of any entity named herein or any other entity in which you direct our firm to perform legal services.) Our firm shall not be responsible to perform any legal services not specifically set forth in writing in advance by you as client.

The purpose of this representation agreement (hereinafter referred to as the "Agreement") is to set forth our mutual understanding concerning your legal representation by this firm. The following terms and conditions shall set forth our agreement regarding your representation:

1. **FEES.** Our firm shall be compensated for our services in the form of legal fees, which shall be computed by multiplying an hourly rate for the work being performed by the time expressed in hours expended during a normal billing period. Presently our firm's normal billing period is monthly, based on the calendar month. The current rates for legal representation by our firm range from \$175.00 to \$400.00 per hour based on the experience of the attorney and the difficulty of the legal representation (we reserve the right to determine the qualification of the attorney best suited to perform the legal services.) Paralegal rates shall be billed out at \$145.00 per hour. Per our conversation Scott Rost shall bill out at

Gateway Center  
1000 Legion Place • Suite 1200  
Orlando, FL 32801  
Tel 407 539 1638  
Fax 407 539 2679  
[www.southmilhausen.com](http://www.southmilhausen.com)

Jeffrey Milhausen  
J. Todd South  
Richard D. Baxter  
John Christensen  
Sherry Lambson-Eisele  
Jason Hawkins  
Lisa Khan, P.A. \*  
Marlene Kirtland  
Derek A. Kurtz \*  
James R. Lavigne  
Mary J. Lyttle, P.A. \*  
F. Lee Morrison  
Patrick C. Painter  
Justin Peterson \*\*  
David H. Popper  
J. Carlos Real \*  
Scott R. Rost \*  
Jennifer A. Smith  
Scott South  
Cameron H. P. White

BOARD CERTIFIED BY THE FLORIDA  
BAR IN BUSINESS LITIGATION  
OF COUNSEL  
ALSO ADMITTED IN NEW YORK

\$300.00 per hour and my rate shall remain at \$350.00 per hour. These rates shall be subject to a discretionary annual increase that shall be reflected on your statements. We reserve the right to determine which of our attorneys and staff shall be assigned to a particular matter, based upon considerations of allocations of time and the degree of expertise of our staff in a given situation. Please be advised that attorney's fees and paralegal fees will be charged for any and all work performed on your behalf including, but not limited to, research, meetings, document review and organization, office conferences, telephone conferences, correspondence, document drafting, memos, court appearances, general litigation matters, travel time, and any other matter necessary for our effective representation of you.

2. **COSTS.** During your representation, our firm may incur various costs, including, but not limited to, the following: document filing and recording fees, administrative fees, governmental fees, mileage and travel fees, lodging fees, telephone calls, photocopying charges, service of process fees, court costs and fees, investigative fees, expert fees, witness fees, deposition costs, printing fees, postage fees, and any other related fees or expenses. Our firm follows the allowed Florida statutory costs schedules. Please note that all costs shall be separately included and itemized in your monthly billing statements and shall be due in accordance with the fees for the billing period. Please note that there may be some delay in the billing of costs. Although some of these costs may be paid upfront by the firm, they will be included on your monthly statements, and we require reimbursement in full for those costs immediately upon your receipt of our monthly statement. We may also reserve the right to request that you pay some costs directly to the vendor. In those instances, we will forward the invoice directly to you with instructions for you to send payment directly to that vendor.

3. **RETAINER.** Per our conversations and information as provided by you we are providing this retainer estimate based upon our understanding of the scope of work to be performed. Since this project appears to be fluid we will reserve the right to revise these estimates based upon new terms and conditions required during your representation. In an effort to provide you with a limited detailed retainer estimate, we have set forth a simple breakout of retainer fees required in an effort, again, to begin to provide you with a better understanding of the fees that will be incurred for this project.

Our initial retainer requirement shall be estimated at Twenty Five Thousand Dollars (\$25,000.00) (hereinafter referred to as the "Retainer") broken out as follows:

- (\$ 5,000.00) Five Thousand Dollars for Contract Negotiation and Reviews
- (\$10,000.00) Ten Thousand Dollars for Closing Due Diligence, Engineering Reviews, Title and Survey Reviews and Development Representation
- (\$10,000.00) Ten Thousand Dollars for Preparation of Condominium Declaration and Association Formation including Survey Exhibit Review and Preparation (excluding filing costs).

Our firm reserves the right to set future retainer amounts based on a reasonable estimation of fees to be incurred and to require an additional retainer based on the retainer balance in our firm's accounts and our estimation of the fees associated with the balance of your representation. In the event that the Retainer is not paid in full, or in the event that any invoice amount remains outstanding beyond thirty (30) days from the date of billing, then both parties expressly agree that our firm shall be entitled to immediately cease any further work or representation on your behalf and immediately terminate our obligation hereunder without affecting any other rights or remedies at law or equity. Please note that any retainer is not a flat fee payment for legal representation and you will receive monthly bills for our services which are due upon receipt. Our firm shall not be required to perform under this Agreement until its full execution and receipt of required retainer funds if applicable. Additionally, by signing below, you agree

that at any time the firm may apply any retainer, or other amount held in trust for you, to the payment of all unpaid legal fees, costs, or other advances paid by the firm on your behalf at any time either during or at the conclusion of the representation.

4. **BILLING.** Our firm shall provide an itemized statement monthly on which we will list all of the fees and costs that have been incurred through the billing date set forth on the invoice. Please note that all monthly billing invoices and additional Retainer fees shall be due and payable to our firm upon receipt. All outstanding fees and costs that are not paid within 30 days from the invoice date of the monthly billing statements shall automatically accumulate interest in the amount of eighteen percent (18%) per year. Failure to promptly pay shall entitle our firm to draw against your retainer funds, to immediately stop any further representation, and to seek all legal remedies available at law or equity, jointly and severally against all parties named herein or defined as "you" or "your" above, including recovery of legal fees incurred through all appeals, bankruptcy proceedings and collection efforts. Venue shall lie exclusively in Orange County, Florida for all claims or causes of action brought hereunder. In the event that our firm holds any funds on your behalf, in addition to any other rights or remedies, we shall be entitled to retain an amount equal to the unpaid balance of the fees and costs owing to our firm by you for our services, until such time as our fees and costs are paid in full. You understand and agree that the firm shall be entitled to a charging lien on all of your real and personal property, or any monies payable to you, for any unpaid amounts due to the firm.

Once again thank you choosing our firm and we look forward to our representation. We hope that this retainer agreement has clearly set forth the basis of your representation. For purposes of this Agreement, a facsimile or electronically transmitted signature shall constitute a binding execution of the party so executing upon delivery, and counterpart execution shall be considered one document upon receipt of all counterpart execution signatures. If you have any questions regarding the terms expressed in this Representation Agreement, then please do not hesitate to contact our office. I am

Very truly yours,

Jeffrey P. Milhausen, Esq.  
For the Firm

Your duly authorized signature below indicates your understanding of and agreement to the terms and conditions set forth above. Any signature in an individual capacity shall be considered a personal obligation for the terms and conditions expressed herein of the executing party, and all obligations shall be joint and several as against all executing parties. It is expressly understood that South Milhausen, P.A. is not retained for representation, nor obligated to perform any services, until this Agreement is fully executed and delivered along with the retainer set forth herein. Facsimile or electronically transmitted signatures shall constitute original signatures for purposes of execution and delivery. This Agreement may be executed in counterparts.

252 W Plant Street, LLC

By: \_\_\_\_\_  
Rodney Jolley  
As Manager and in Individual Capacity



## LAND SWAP AGREEMENT

THIS LAND SWAP AGREEMENT (herein called this "Agreement"), is made this \_\_\_\_ day of \_\_\_\_\_, 2014, ("Effective Date") by and between 252 W. PLANT STREET, LLC, a Florida limited liability company and WEST PLANT STREET PARTNERS, LLC, a Florida limited liability company, whose mailing address is 308 S. Dillard Street, Winter Garden, Florida 34787 (herein collectively referred to as "SELLER"), and the CITY OF WINTER GARDEN, a Florida municipal corporation, whose address is 300 West Plant Street, Winter Garden, Florida 34787 ("CITY"). The SELLER and CITY are sometimes herein jointly referred to as the "Parties."

WHEREAS, SELLER is the fee simple owner of that certain parcel of land situated in Orange County, Florida, adjacent to Plant Street with Orange County Tax Parcel Identification #23-22-27-2888-04-075 and legally described in that certain special warranty deed recorded on October 22, 2004 in Official Records Book 7671, Page 0778, Public Records of Orange County, Florida which legal description is attached hereto as **Exhibit "A"** (herein "252 West Plant Property"); and

WHEREAS, the CITY owns the water fountain and park property with Orange County Tax Parcel Identification #23-22-27-2888-04-074, which is more particularly identified and legally described on the attached **Exhibit "B"** (herein "Fountain Property"); and

WHEREAS, for recreational and other governmental uses the CITY desires to acquire fee simple ownership of the eastern \_\_feet (consisting of approximately \_\_\_\_\_ square feet) of the 252 West Plant Property ("Extended Park Property"); and

WHEREAS, the 252 West Plant Property is west of and adjacent to the Fountain Property; and

WHEREAS, the CITY is the fee simple owner of that certain approximately 19,039 square foot parcel of land situated in Orange County, Florida with Orange County Tax Parcel Identification #23-22-27-2888-04-073 that is adjacent to Plant Street and adjacent to and west of the 252 West Plant Property (herein "Old Planning Department Property"); and

WHEREAS, the SELLER desires to convey to the CITY fee simple ownership of the Extended Park Property in exchange for the CITY's conveyance of fee simple ownership of the eastern \_\_\_\_ feet (consisting of \_\_\_\_\_ square feet) of the Old Planning Department Property, which is more particularly identified and legally described on the attached **Exhibit "C"** (herein "Swap Property").

For and in consideration of the above recitals and provisions set forth in this Agreement, the receipt and sufficiency of which is acknowledged and agreed to by the parties, the Parties agree as follows:

## **I. AGREEMENT TO SELL AND PURCHASE; CONSIDERATION; CLOSING DATE:**

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

B. Agreement to Sell and Convey. SELLER hereby agrees to convey to CITY in fee simple and CITY hereby agrees to accept conveyance from SELLER, subject to the terms, conditions and provisions hereinafter set forth, the Extended Park Property.

C. Consideration to SELLER for Conveyance. In consideration for SELLER's conveyance of the Extended Park Property to the CITY, the CITY will:

1. Simultaneously with the conveyance of the Extended Park Property to the City, the City will convey the Swap Property to the SELLER subject to the terms, conditions and restrictions hereinafter set forth, so that upon the execution and recording of the deeds contemplated by this Agreement, the CITY will be the fee simple owner of the parcel of land identified and legally described in **Exhibit "D"** attached hereto (herein "City Parcel"), and SELLER will be the fee simple owner of the parcel of land identified and legally described in **Exhibit "E"** (herein "Seller Parcel") attached hereto. It is the express intent of the SELLER and CITY that the Extended Park Property shall be immediately adjacent to the Fountain Property without gaps and gores, and SELLER shall take all actions and execute all documents at or before Closing to ensure such at Closing.

2. At Closing, the CITY will pay to SELLER **\$117,000.00**, subject to City approval, as provided below, for reimbursement of SELLER's previously incurred architectural, engineering and planning expenses ("Seller's Soft Costs") for proposed development of the 252 West Plant Property, in addition to providing written confirmation from CITY to SELLER that SELLER is entitled to \$18,000.00 in parking free credits in connection with SELLER's proposed development of SELLER's parcel. On or before ten (10) days after the Effective Date, Seller shall submit to City, receipts, invoices and other records of Seller's Soft Costs. If the CITY determines in CITY's discretion such costs are unreasonable, CITY may notify Seller, in writing, of the amount of Seller's Soft Costs that CITY is willing to pay. Seller shall have until and including the fifth (5<sup>th</sup>) day after CITY's notice to SELLER of the amount of Seller's Soft Costs that CITY is willing to pay to notify CITY, in writing, that such amount that CITY is willing to pay is acceptable or terminate this Agreement.

3. CITY, at its expense, will seek a lot split/combination approval in order to establish the City Parcel, Seller Parcel and the westerly remaining portion of the Old Planning Department Property, each as separate legal lots for development purposes, the approval of which is anticipated on or before forty-five (45) days after Closing.

4. At Closing, the CITY will grant to SELLER an eight (8) foot by \_\_\_ foot aerial easement for SELLER's construction and placement of 2<sup>nd</sup> floor balcony attached to the north, south and east walls of Seller's future building to be constructed on the Seller Parcel. The balcony shall be above at least \_\_\_ feet above existing grade. The locations and legal description of the 8 feet by \_\_\_ feet easement areas are attached to the aerial easement attached hereto as **Exhibit "F."** The attached Exhibit "F" is the Aerial Easement Agreement to be executed and delivered to Seller at Closing.

5. At closing, the CITY will grant to SELLER a fifteen (15) foot by \_\_\_ foot non-exclusive easement for outdoor seating over a portion of the Extended Park Property. The location and legal description of the 15' wide by \_\_\_ foot long easement area is attached to the Non-exclusive Subordinate Seating Easement Agreement attached hereto as **Exhibit "G."** The attached Exhibit "G" is the "Non-exclusive Subordinate Seating Easement Agreement to be executed and delivered to Seller at Closing.

D. If there are no legal descriptions attached to the Aerial Easement Agreement and/or Non-Exclusive Subordinate Seating Easement Agreement attached to this Agreement, respectively, as Exhibits "F" and "G" and the parties on or before thirty (30) days after the Effective Date do not mutually agree on acceptable legal descriptions for both easements, either party may terminate this Agreement by providing written notice of such termination to the other on or before the forty fifth (45<sup>th</sup>) day after the Effective Date. If there are no legal descriptions attached to the Aerial Easement Agreement and/or the Non-Exclusive Subordinate Seating Easement Agreement and the legal descriptions are not agreed to by both parties and neither party terminates this Agreement on or before the forty fifth (45<sup>th</sup>) day after the Effective Date for failure to agree on either or both such legal descriptions, then the easement(s) without agreed legal description(s) shall not be required, executed or delivered.

E. Closing. On or before the sixtieth (60<sup>th</sup>) day after the Effective Date, the Closing of the transactions contemplated by this Agreement shall occur at the office of Fishback, Dominick, Bennett, Ardaman, Ahlers, Langley & Geller LLP ("Fishback Law Firm"), at 1947 Lee Road, Winter Park, Florida 32789, or Winter Garden City Hall at 300 West Plant Street, Winter Garden, Florida, whichever the CITY may choose.

F. Mortgage. SELLER represents that there is an existing mortgage lien against the 252 West Plant Property by way of that certain mortgage executed by SELLER to United Heritage Bank recorded 10/25/2005 in Official Records Book 8266, Page 4454, last assigned of record to M&I Marshall & Ilsley Bank, a Wisconsin banking corporation, by Assignment of Mortgage recorded on 06/12/2007 in Official Records Book 9300, Page 1412, Notice of Renewal of Promissory Note recorded in Official Records Book 9337, Page 1073, of the Public Records of Orange County, Florida and related financing statements (the "Mortgage"). SELLER represents and warrants that the outstanding Mortgage balance which constitutes a lien on the 252 West Plant Property is less than the funds being paid by CITY for Seller's Soft Costs under Paragraph

I. C. 2. It is a closing requirement that the Mortgage shall be fully satisfied by SELLER at closing by using the Seller's Soft Costs proceeds (or a portion thereof) to payoff the Mortgage and to obtain and record a satisfaction of the Mortgage, or SELLER may elect to payoff the Mortgage and obtain a satisfaction of Mortgage prior to closing using its independent funds. Within ten (10) days from the Effective Date, SELLER shall seek and obtain an estoppel certificate from the Mortgage holder addressed to SELLER, CITY and Fishback Law Firm evidencing the payoff amount for the Mortgage with a payoff good through date effective at least to the anticipated closing date and 30 days thereafter, and provide such to the CITY and Fishback Law Firm.

## **II. TITLE COMMITMENT, CONVEYANCE & INSURANCE:**

A. Extended Park Property Title Commitment. CITY, at CITY's expense, shall obtain, by or through the Fishback Law Firm as Title Agent within fifteen (15) days from the Effective Date of this Agreement, an A.L.T.A. Form B (Florida) title commitment for the Extended Park Property for title insurance (the "Commitment A") in the amount of \_\_\_\_\_. The Extended Park Property shall be free and clear of all liens, easements, restrictions and encumbrances except for easements and restrictions of record, which shall not, in CITY's reasonable judgment, interfere with the CITY's intended use of the City Parcel (the "Permitted Exceptions"). In the event the Commitment A shows any exceptions to title, exclusive of the Permitted Exceptions, that are unacceptable to the CITY, the CITY shall notify SELLER of any objections in writing within ten (10) days of CITY's City Manager's receipt of Commitment A specifying the defects which exist with respect to the title to the Extended Park Property, and SELLER shall have a period of three (3) days after receipt of such written notice within which: (i) elect to cure any defects in title to the satisfaction of CITY; or (ii) notify CITY that it elects not to cure any defects. If SELLER elects by written notice to cure the defects in title, SELLER shall have thirty (30) days to cure such defects, at its expense. Upon SELLER's election not to cure or failure to cure defects in title within the time limit aforesaid, the CITY may, at its option, either: (i) terminate this Agreement and upon such termination all rights and liabilities arising hereunder shall terminate; or (ii) waive its objections in this subsection II. A. and, subject to all the other terms and provisions of this Agreement, close this transaction in the same manner as if no such defect or defects had been found, provided however, that exceptions may be made to the title insurance policy for such uncured defects. The closing date shall be extended as necessary to effectuate the intent of this Section II and any of its subsections.

B. Swap Property Title Commitment. CITY, at CITY's expense, shall obtain, by or through the Fishback Law Firm as Title Agent within fifteen (15) days from the date of this Agreement, an A.L.T.A. Form B (Florida) title commitment concerning the Swap Property for title insurance (the "Commitment B") in the amount of \_\_\_\_\_. The Swap Property shall be free and clear of all liens, easements, restrictions and encumbrances except for easements and restrictions of record, which shall not, in SELLER's reasonable judgment, interfere with the

development of the Swap Property (the “Permitted Exceptions”). In the event the Commitment B shows any exceptions to title, exclusive of the Permitted Exceptions, that are unacceptable to the SELLER, the SELLER shall notify CITY of any objections in writing within ten (10) days of SELLER’s receipt of Commitment B specifying the defects which exist with respect to the title to the Swap Property, and CITY shall have a period of three (3) days after receipt of such written notice within which: (i) elect to cure any defects in title to the satisfaction of SELLER; or (ii) notify SELLER that CITY elects not to cure any defects. If CITY elects by written notice to cure the defects in title, CITY shall have thirty (30) days to cure such defects, at its expense. Upon CITY’s election not to cure or failure to cure defects in title within the time limit aforesaid, the SELLER may, at its option, either: (i) terminate this Agreement and upon such termination all rights and liabilities arising hereunder shall terminate; or (ii) waive all conditions in this subsection II B and, subject to all the other terms and provisions of this Agreement, close this transaction in the same manner as if no such defect or defects had been found, provided however, that exceptions may be made to the title insurance policy for such uncured defects. The closing date shall be extended as necessary to effectuate the intent of this Section II and any of its subsections.

C. Extended Park Property Title. The Extended Park Property shall be conveyed to CITY by SELLER by Special Warranty Deed and shall be free and clear of all liens, easements, restrictions and encumbrances except taxes and special assessments, if any, for the year of closing and subsequent years, and the Permitted Exceptions as described subsection II. A. Possession will be given as of the date of closing. A proration will be made as of the date of closing for real estate taxes and special assessments and the prorated amount of such real property taxes and special assessments attributable to the SELLER shall be withheld from the closing proceeds and escrowed in accordance with the provisions of Section 196.295, Florida Statutes; provided, however, that if the conveyance occurs between November 1 and December 31, then SELLER shall be responsible for real property taxes for the entire year. The CITY is exempt from real estate taxes and under no circumstances shall the CITY have any obligation for real estate taxes.

D. Swap Property Title. The Swap Property shall be conveyed to SELLER by CITY by Special Warranty Deed and shall be free and clear of all liens, easements, restrictions and encumbrances except taxes and special assessments, if any, for the year of closing and subsequent years, and the Permitted Exceptions as described in subsection II. B. Possession will be given as of the date of closing. The CITY is exempt from real estate taxes and under no circumstances shall the CITY have any obligation for real estate taxes.

E. Quit Claim Deeds. To ensure that there are no gaps and gores in the legal descriptions and to otherwise effectuate the intent of the Parties concerning the transaction contemplated by this Agreement, in addition to the Special Warranty Deeds required in Section II of this Agreement, the Closing Agent or the CITY may require as a condition of the Closing for: (i) the SELLER to execute a quit claim deed concerning the City Parcel conveying any and all interest

SELLER may have in the City Parcel to the CITY; (ii) the CITY to execute a quit claim deed concerning Seller Parcel conveying any and all interest CITY may have in the Seller Parcel to SELLER; (iii) a certification by a Florida licensed surveyor, at the CITY's expense, that there are no gaps and gores in the legal descriptions between the City Parcel and Seller Parcel, and between the Extended Park Property and the Fountain Property, and other such surveyor certifications as may be required for title insurance purposes; and (iv) the legal descriptions attached to this Agreement be corrected and reflected in the closing documents if an error in the legal descriptions is discovered or such are not otherwise consistent with the intended purpose of the transaction contemplated by this Agreement. The Closing may be extended for a reasonable period of time as needed to obtain the surveyor certifications required herein.

F. Title Insurance. An Owner's Policy of Title Insurance to be issued pursuant to the Commitment A is to be purchased and issued to CITY at CITY's expense after closing. An Owner's Policy of Title Insurance to be issued pursuant to the Commitment B is to be purchased by the CITY and issued to SELLER at the CITY's expense after closing. This subsection II. F. shall survive closing.

G. Further Assurances. At or subsequent to closing, SELLER will, without additional consideration, sign, acknowledge, and deliver a further assurances agreement and any other documents and take any other action necessary or appropriate, as reasonably requested by the CITY or the Closing Agent, to carry out the intent and purpose of this Agreement, including for the issuance of title insurance.

**III. CLOSING COSTS:** SELLER shall pay for the cost of recording any corrective instruments concerning the Extended Park Property, SELLER's attorney's fees, costs for clearing encumbrances and curing title defects and costs for satisfying mortgages and liens on the Extended Park Property conveyed. The CITY shall pay documentary stamp tax on the deeds and costs for the title commitments and the title insurance policies, recording costs associated with the special warranty deeds and quit claim deeds described in subsection II, if any, and closing document preparation concerning the conveyance of both the Extended Park Property and the Swap Property.

#### **IV. AS-IS SALE.**

Except for warranties of title and other warranties specified in Sections V and VI of this Agreement, the Extended Park Property and Swap Property are being conveyed "as-is" without representations and warranties (express or implied), including without limitation, concerning the condition of such properties and suitability for the respective intended uses. Given the nature of this transaction, in the event certain statutory disclosures or any other disclosures required by law were not made to the SELLER and/or the CITY herein, the SELLER and CITY each for themselves and for their successors and assigns, hereby waive any and all statutorily required

disclosures, and release each other from any and all claims or right to terminate this Agreement on the basis that such disclosures have not or were not made.

**V. SELLER'S WARRANTIES:**

A. SELLER warrants that SELLER is in sole constructive or actual possession of the Extended Park Property and SELLER has no actual knowledge of another person having any right to possession of the Extended Park Property, or asserts any claim of title or other interests in it. SELLER warrants that the Extended Park Property is not the homestead of SELLER.

B. SELLER has no actual knowledge of any outstanding contracts for the sale of the Extended Park Property to any person or persons whomsoever except for the CITY, nor any unrecorded deed, mortgage, lease or other conveyances affecting the title to the Extended Park Property.

C. SELLER has no actual knowledge of any assessments that are now liens on the Extended Park Property are shown in the Official Records. SELLER has no actual knowledge of any judgments, claims, disputes, demands or other matters pending against SELLER that could attach to the Extended Park Property or affect title to the Extended Park Property or any part thereof, or does or could prohibit or make unlawful the consummation of this transaction, or render the SELLER unable to consummate this transaction.

D. SELLER warrants that there have been no improvements made upon the Extended Park Property within the past ninety (90) days for which there remain any outstanding and unpaid bills for labor, materials or supplies for which a lien or liens might be claimed by anyone.

E. SELLER warrants that the undersigned person(s) signing for SELLER has full authority to bind SELLER to this Agreement and to convey the Extended Park Property to the CITY and to accept conveyance of the Swap Property from the CITY.

F. It is a closing condition that representations and warranties of the SELLER contained in this Agreement will be true on and as of the closing date with the same effect as though those representations and warranties have been made on and as of that date. Further, in consideration of this Agreement, the SELLER and each of the entities that constitute the SELLER jointly and severally, shall, and does hereby agree to defend, indemnify, save and hold harmless the CITY from and against any all claims, suits, actions, damages, judgments, liabilities and expenses in connection with or arising out of any or all of the aforesaid warranties and representations. SELLER and each of the entities that constitute the SELLER jointly and

severally, shall execute an affidavit at closing agreeing that the warranties herein are true on and as of the closing date and that such warranties survive closing.

**VI. CITY's WARRANTIES:**

A. Except for a parking lease that CITY intends to terminate prior to Closing, CITY warrants that CITY is in sole constructive or actual possession of the Swap Property and CITY has no actual knowledge of another person having any right to possession of the Swap Property, or asserts any claim of title or other interests in it. CITY warrants that the Swap Property is not the homestead of CITY.

B. CITY has no actual knowledge of any outstanding contracts for the sale of the Swap Property to any person or persons whomsoever except for the SELLER, nor any unrecorded deed, mortgage, lease or other conveyances affecting the title to the Swap Property.

C. CITY has no actual knowledge of any assessments that are now liens on the Swap Property are shown in the Official Records. CITY has no actual knowledge of any judgments, claims, disputes, demands or other matters pending against CITY that could attach to the Swap Property or affect title to the Swap Property or any part thereof, or does or could prohibit or make unlawful the consummation of this transaction, or render the CITY unable to consummate this transaction.

D. CITY warrants that there have been no improvements made upon the Swap Property within the past ninety (90) days for which there remain any outstanding and unpaid bills for labor, materials or supplies for which a lien or liens might be claimed by anyone.

E. CITY warrants that the undersigned person(s) signing for CITY has full authority to bind CITY to this Agreement and to convey the Swap Property to the SELLER and to accept conveyance of the Park Property from the SELLER.

F. It is a closing condition that representations and warranties of the CITY contained in this Agreement will be true on and as of the closing date with the same effect as though those representations and warranties have been made on and as of that date. Further, in consideration of this Agreement, the CITY shall, and does hereby agree to defend, indemnify, save and hold harmless the SELLER from and against any all claims, suits, actions, damages, judgments, liabilities and expenses in connection with or arising out of any or all of the aforesaid warranties and representations. CITY shall execute an affidavit at closing agreeing that the warranties herein are true on and as of the closing date and that such warranties survive closing.

**VII. OTHER AGREEMENTS:** No prior or present agreements or representations shall be binding upon any of the Parties hereto unless incorporated in this Agreement. No modification or change in this Agreement shall be valid or binding upon the Parties unless in writing, executed by the Parties to be bound thereby. Typewritten or handwritten provisions inserted herein or

attached hereto as Addenda, and initialed by all Parties, shall control all printed provisions in conflict therewith.

**VIII. DISCLOSURES:** The Extended Park Property is held by an entity or entities or form of ownership as set forth in Section 286.23, Florida Statutes that requires certain disclosures to be made and SELLER agrees to fully comply with said statutory disclosure requirements and such disclosures shall be made under oath by affidavit executed before or at Closing, subject to the penalties prescribed for perjury.

**IX. RADON GAS / MOLD:** Radon is naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county public health unit. Pursuant to § 404.056(8), Florida Statutes.

Mold is naturally occurring and may cause health risks or damage of property. If either party is concerned or desires additional information regarding mold, such party should contact an appropriate professional.

**X. NOTICE:** Any notice or demand to be given or that may be given hereunder shall be in writing and shall be (i) delivered through United States mail, postage prepaid, certified, return receipt requested, or (ii) delivered through Federal Express, UPS, or other expedited mail or package service, addressed to the Parties at the address shown below. Any notice or demand that may be given hereunder shall be deemed complete (i) upon deposition of such notice or demand in the United States mail with property postage affixed thereto, certified, return receipt requested, or (ii) upon depositing any such notice or demand with Federal Express, UPS, or other expedited mail with package delivery to the appropriate address as herein provided. Any party hereto may change said address by notice in writing to the other Parties in the manner herein provided. All notices shall be sent to SELLER and the CITY as the following addresses:

CITY: Mike Bollhoefer, City Manager  
City of Winter Garden  
300 West Plant Street  
Winter Garden, Florida 34787  
Telecopy: (407) 656-4952  
Telephone: (407) 656-4111

With a copy to: A. Kurt Ardaman, City Attorney  
Fishback Dominick  
1947 Lee Road  
Winter Park, Florida 32789  
Telecopy: (407) 425-2863  
Telephone: (407) 262-8400

SELLER: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**XI. ESCROW / CLOSING AGENT:** SELLER and CITY agree that Fishback Law Firm shall serve as counsel to CITY, the Escrow Agent, Title Agent and Closing Agent, and in the event of any dispute, conflict or lawsuit, either between SELLER, CITY or Escrow Agent or any combination thereof, SELLER agrees that the Fishback Law Firm may serve as Escrow Agent, Title Agent, Closing Agent and attorneys for CITY in this transaction and in any dispute concerning or arising from this Agreement. Further, in the event of any dispute, conflict or lawsuit, involving any deposit, or this Agreement or the transaction or obligations or rights under this Agreement, the Escrow Agent may interplead the disputed funds or documents with the Clerk of the Circuit Court. SELLER and CITY shall each pay Escrow Agent attorneys' fees and costs related to any dispute, conflict and litigation relating to this Agreement, or the transaction, or obligations or rights provided in this Agreement. Further, CITY and SELLER each indemnify and hold harmless the Escrow Agent from all losses, damages, claims, disputes, lawsuits, interests, and other adverse matters caused by Escrow Agent excluding gross negligence and intentional misappropriation by Escrow Agent. Monies held by Escrow Agent under this Agreement, if any, shall be placed in a non-interest bearing account. This Section XI survives termination of this Agreement and Closing.

**XII. BROKERS:** This Agreement was not brought about, directly or indirectly, by any real estate agency or broker and no commission or fee will be payable on the sale hereunder. SELLER shall and hereby indemnifies CITY against and holds CITY harmless from all liabilities, costs, damages and expenses (including reasonable attorneys fees), arising from any claims for commissions or other similar fees in connection with the transactions covered by this Agreement, based upon alleged arrangements or agreements made by SELLER. CITY shall and hereby indemnifies SELLER against and holds SELLER harmless from all liabilities, costs, damages and expenses (including reasonable attorneys fees), arising from any claims for commissions or other similar fees in connection with the transactions covered by this Agreement, based upon alleged arrangements or agreements made by CITY. This Section XII survives termination of this Agreement and Closing.

**XIII. DEFAULT.** If the CITY fails to perform any of the covenants of this Agreement, SELLER shall as its sole remedy: (i) have the right to terminate this Agreement; or (ii) seek specific performance of this Agreement. SELLER waives monetary damages in the event of breach or default of CITY. If SELLER fails to perform any of the covenants of this Agreement, CITY shall: (i) have the right to terminate this Agreement; or (ii) seek specific performance of this Agreement.

**XIV. DISPUTES.**

1. Mediation. Any disputes, claims or counterclaims between CITY and SELLER 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 twenty (20) 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.

2. Laws/Venue. All of the terms and conditions stated herein shall be construed under the laws of the State of Florida. Exclusive venue for any lawsuits filed relating to or arising from this Agreement shall be in a court of proper jurisdiction in Orange County, Florida.

3. Attorneys' Fees. The prevailing party in any lawsuit filed concerning the breach of this Agreement shall be entitled to reimbursement of reasonable attorney's fees, experts' fees and other litigation costs incurred in such lawsuit against the non-prevailing party.

**XV. MISCELLANEOUS:** Time is of the essence in this Agreement. All covenants and agreements herein contained shall extend to and be obligatory upon the heirs, executors, administrators, trustees, successors and assigns of the respective parties. In the event any date or time period in this Agreement falls on a Saturday, Sunday or legal holiday recognized by the State of Florida, the date or time period shall be extended to the next business day. Nothing herein shall constitute a waiver of or be deemed a waiver of the CITY's sovereign immunity protections. Nothing herein shall constitute or be deemed a waiver or limitation of CITY's home rule and police power authority. The effectiveness of this Agreement is subject to City of Winter Garden City Commission approval. If the date on the first page of this Agreement designated Effective Date is blank, the Effective Date of this Agreement shall be upon the date of the last of the Parties to execute this Agreement and after City Commission approval. Electronic and/or

facsimile signatures to this Agreement shall be deemed original signatures. This Agreement may be executed in any number of counterparts, the aggregate of which shall constitute a single document. The conveyances from City to Seller and Seller to City contemplated by this Agreement are not severable.

IN WITNESS WHEREOF, the SELLER and the CITY have hereunto set their hands and seals the day and year above written.

Signed, sealed and delivered in the presence of:

**“CITY”**

**CITY OF WINTER GARDEN**

\_\_\_\_\_  
Michael Bollhoefer, City Manager

**“SELLER”**

**252 W. Plant Street, LLC**, a Florida limited liability company

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**West Plant Street Partners, LLC**, a Florida limited liability company

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**RESOLUTION 14-03**

**A RESOLUTION OF THE CITY COMMISSION OF THE  
CITY OF WINTER GARDEN, FLORIDA, APPOINTING  
A MAYOR PRO-TEM**

**WHEREAS**, Sec. 2 of the City Charter states that the at the first regular commission meeting after an election, including any runoffs and swearing in of commissioner(s); and

**WHEREAS**, Sec. 2 of the City Charter also states the commission shall elect from among its members a Mayor Pro-Tem; and

**WHEREAS**, the Charter also states that the Mayor Pro-Tem shall serve until a successor is elected; and

**WHEREAS**, a new Mayor Pro-Tem must be appointed;

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

**Section 1.** That \_\_\_\_\_ is hereby appointed to serve as Mayor Pro-Tem until the first meeting after the 2015 election results has been certified.

**Section 2.** That this resolution shall be in full force and effect immediately upon its passage and adoption.

This Resolution is duly adopted at a regular meeting of the City Commission of the City of Winter Garden, Florida, held on the 13th day of March 2014.

APPROVED:

\_\_\_\_\_  
John Rees, Mayor/Commissioner

ATTEST:

\_\_\_\_\_  
Kathy Golden, City Clerk