WINTER HAVEN
THE CHAIN OF LAKES CITY

CITY COMMISSION MEETING

DATE: Monday, January 27, 2025, 6:00 p.m.

LOCATION: City Hall - John Fuller Auditorium
451 Third Street NW
Winter Haven, FL 33881

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1. **CALL TO ORDER** - Nathaniel J. Birdsong, Jr., Mayor

2. **ROLL CALL** - Vanessa Castillo, MMC, City Clerk

3. **INVOCATION** - Apostle Willie Mincey, True Holiness Tabernacle

4. **PLEDGE OF ALLEGIANCE** - Vanessa Castillo, MMC, City Clerk

5. **PRESENTATIONS**

5.A **"Reverend Joel Elvin Atkins Week" Proclamation - Robert Atkins**

Staff Contact: *Natalie Wilson, Special Events & Initiatives Coordinator , nwilson@mywinterhaven.com*

Proclamation

5.B **"Carol Bradley Week" Proclamation - Carol Bradley**

Staff Contact: *Natalie Wilson, Special Events & Initiatives Coordinator, nwilson@mywinterhaven.com*

Proclamation

5.C **"The Black Market: A Melanin Cultural Festival" Proclamation - Symone Wilson and Zanjia Zow - Founders**

Staff Contact: *LaTonya Harris, City Historian & Archivist | Deputy City Clerk, lharris@mywinterhaven.com*

Proclamation

5.D **Certificate of Achievement for Excellence in Financial Reporting - Annual Comprehensive Financial Report for the Year Ending September 30, 2023**

Staff Contact: *CJ Scott, Chief Financial Officer, cjscott@mywinterhaven.com*

Summary - GFOA Certificate of Achievement for Excellence in Financial Reporting FY 2023
GFOA Certificate of Achievement

6. **DEVELOPMENTS OF NOTE**

7. **MINUTES**

7.A **January 8, 2025, City Commission Agenda Review Session Meeting Minutes**

Staff Contact: *LaTonya Harris, Deputy City Clerk, lharris@mywinterhaven.com*

2025-01-08 DRAFT Agenda Review Session Minutes With Link

7.B **January 13, 2025, Regular City Commission Meeting Minutes**

Staff Contact: *Vanessa Castillo, MMC, City Clerk, vcastillo@mywinterhaven.com*

2025-01-13 DRAFT Regular City Commission Meeting Minutes with Link and Attachments

8. COMMENTS FROM THE AUDIENCE

9. ORDINANCE(S) - SECOND READING - PUBLIC HEARING

9.A **O-25-04 - Voluntary annexation of four (4) parcels generally located approximately 1,218 feet north of Old Bartow Lake Wales Road, east of McClean Road, and approximately 1,333 feet west of Gary Street.**

Staff Contact: *Heather Reuter, Senior Planner, hreuter@mywinterhaven.com*

Summary - Ordinance O-25-04
O-25-04

10. CONSENT AGENDA

10.A **Trail Go Local Trail Management Grant Contractual Services & Equipment**

Staff Contact: *Katie White, Project Lead, kwhite@mywinterhaven.com*

Summary - Trail GO Local Trail Management Grant Contractual Services & Equipment
Contractual Services quote (Mark Smith Excavating LLC)
RC Mower quote

10.B **Fiscal Year 2024/2025 SmartCover Sewer Monitoring Purchase**

Staff Contact: *Gary M. Hubbard, Water Department Director, ghubbard@mywinterhaven.com*

Summary - SmartCover Sewer Monitoring Purchase
SmartCover SmartLevel Remote Sewer Monitoring
SmartCover Maintenance Program

10.C **Award of the Master Contract for Progressive Design-Build of the Water Resource Facility at Pollard Road and Wastewater Treatment Plant #2 Abandonment, to Wharton-Smith, Inc. (RFQ-24-18)**

Staff Contact: *Gary M. Hubbard, Water Department Director, ghubbard@mywinterhaven.com*

Summary - Master Progressive Design Build Contract
Master Progressive Design Build Contract

10.D **Authorization for Travel and Training - Coastal & Heartland National Estuary Partnership (CHNEP) Policy Committee's 2025 meetings (Mercer)**

Staff Contact: *Amanda-Jo Nicholson, Assistant to the City Manager, anicholson@mywinterhaven.com*

Summary - 2025 CHNEP Policy Committee Meetings

10.E **Authorization for Travel & Training: Polk County Day 2025 (Birdsong, Yates, Dantzler, Dollison, Mercer, Stavres, Carnevale, Hill)**

Staff Contact: *AJ Nicholson, Assistant to the City Manager, anicholson@mywinterhaven.com*

Summary - 2025 Polk County Day

11. RESOLUTION(S)

11.A R-25-04 - Request by Harbor at Lake Henry, LLC to release the subdivision Performance Bond and confirming acceptance of improvements, infrastructure, and dedications in favor of the Public/City of Winter Haven for the Harbor at Lake Henry Subdivision.

Staff Contact: *Chris Young, Senior Planner, cyoung@mywinterhaven.com*

Summary - Resolution R-25-04
Resolution R-25-04

12. ORDINANCE(S) - FIRST READING

12.A O-25-03 - Administrative request to amend the Capital Improvements Element of the Comprehensive Plan to update the 5-year Schedule of Capital Improvements and to revise Capital Improvements Element Policies 1.1.7 and 1.1.8

Staff Contact: *Sean Byers, Planning Manager, sbyers@mywinterhaven.com*

Summary - Ordinance O-25-03
O-25-03

12.B O-25-06 - Industrial Pretreatment

Staff Contact: *Gary M. Hubbard, Water Department Director, ghubbard@mywinterhaven.com*

Summary - Ordinance O-25-06 Industrial Pretreatment
Ordinance O-25-06
Exhibit A- Pretreatment-FOG Chapter SUO
Strikethrough version for reference - Pretreatment-FOG Chapter SUO

12.C O-25-07 - Budget Ordinance

Staff Contact: *CJ Scott, Chief Financial Officer, cjscott@mywinterhaven.com*

Summary O-25-07
O-25-07
Exhibit A

13. NEW BUSINESS

13.A RFQ-24-38 - Award of Design Build Services for the Redevelopment of the Old Fire Station Number One

Staff Contact: *Eric Labbe, Director of Economic Opportunity and Community Investment, elabbe@mywinterhaven.com*

Summary - RFQ-24-38 Award of Design Build Services
RFQ-24-38 Proposal Tab Sheet
RFQ-24-38 Recommendation of Award

13.B Recommendation for Grant & Aid Application Review Committee (GAARC) Members

Staff Contact: *T Michael Stavres, City Manager, mstavres@mywinterhaven.com*

Summary - Appointment & Reappointments to GAARC
Application to serve on a board or committee - Dr. B. Jones

14. CITY COMMISSIONERS/LIAISON REPORTS

15. CITY ATTORNEY REPORT

16. CITY MANAGER REPORT

17. DEPUTY CITY MANAGER REPORT

18. CITY CLERK REPORT

19. EMERGENCY MATTERS NOT RECEIVED FOR THE AGENDA

20. ADJOURNMENT

If a person decides to appeal any decision made by the Commission with respect to any matter considered at such meeting or hearing, they will need a record of the proceedings, and that, for such purpose, they may need to ensure that a verbatim record of the proceeding is made which record includes the testimony and evidence upon which the appeal is to be based (FS 286.0105). In accordance with the Americans with Disabilities Act and Florida Statutes, Section 286.26, persons with disabilities needing special accommodations to participate in this proceeding, should contact the City Clerk's Office, 451 Third Street, NW, Winter Haven, Florida 33881, in writing, not later than 48 hours prior to the proceeding; if not in writing, then not later than four (4) days prior to the proceeding at (863) 291-5600. Vision or hearing impaired please call (800) 955-8771 for assistance.

WINTER HAVEN
THE CHAIN OF LAKES CITY

Proclamation

WHEREAS, the City of Winter Haven recognizes how diversity and inclusion are woven into the fabric of American life and solidify the foundation of strong communities; and

WHEREAS, in 2021, the City of Winter Haven began celebrating *Black History Month* by recognizing local heroes who have made a significant impact on the community; and

WHEREAS, a group of community leaders came together and identified local heroes who blazed new trails while demonstrating passion, dedication, and compassion for the community; and

WHEREAS, one hero will be recognized for each week of *Black History Month 2025*; and

WHEREAS, Reverend Joel Elvin Atkins is recognized as one of these heroes; and

WHEREAS, Reverend Atkins served as a man of faith, activist, and was so much more to many people as he helped make Winter Haven a more inclusive and equitable community; and

WHEREAS, Reverend Atkins would say, *"Only one life 'twill soon be past, only what's done for Christ will last."*, and these are words that can guide us all.

NOW, THEREFORE, I, Nathaniel J. Birdsong, Jr., Mayor of the City of Winter Haven, Florida, do hereby recognize the week of February 3, 2025, as

"Reverend Joel Elvin Atkins Week"

in the City of Winter Haven and call upon all residents to honor his legacy of leadership, justice, and unwavering dedication to the betterment of our community.

IN WITNESS WHEREOF, I have hereunto set my hand and cause the Seal of the City of Winter Haven, Florida, to be affixed this 27th day of January, 2025.

Nathaniel J Birdsong, Jr

Nathaniel J. Birdsong, Jr., Mayor

ATTEST:

Vanessa Castillo

Vanessa Castillo, MMC, City Clerk

WINTER HAVEN
THE CHAIN OF LAKES CITY

Proclamation

WHEREAS, the City of Winter Haven recognizes how diversity and inclusion are woven into the fabric of American life and solidify the foundation of strong communities; and

WHEREAS, in 2021, the City of Winter Haven began celebrating *Black History Month* by recognizing local heroes who have made a significant impact on the community; and

WHEREAS, a group of community leaders came together and identified local heroes who blazed new trails while demonstrating passion, dedication, and compassion for the community; and

WHEREAS, one hero will be recognized for each week of *Black History Month 2025*; and

WHEREAS, Carol Bradley is recognized as one of these heroes; and

WHEREAS, Carol Bradley is a decorated public servant, relationship builder, and so much more to so many people, as she dedicated her professional career to making an impact to her community; and

WHEREAS, Carol would say, *"In order to walk in great power, you have to walk in God's truth."* and these are words that can guide us all.

NOW, THEREFORE, I, Nathaniel J. Birdsong, Jr., Mayor of the City of Winter Haven, Florida, do hereby recognize the week of February 10, 2025, as

"Carol Bradley Week"

in the City of Winter Haven honors and recognizes Carol Bradley for her 35 years of service, leadership, and dedication to her community.

IN WITNESS WHEREOF, I have hereunto set my hand and cause the Seal of the City of Winter Haven, Florida, to be affixed this 27th day of January, 2025.



Nathaniel J. Birdsong, Jr.
Nathaniel J. Birdsong, Jr., Mayor

ATTEST:
Vanessa Castillo
Vanessa Castillo, MMC, City Clerk

WINTER HAVEN
THE CHAIN OF LAKES CITY

Proclamation

WHEREAS, *The Black Market, A Melanin Cultural Festival*, celebrates the richness of Black culture, creativity, and entrepreneurship; and

WHEREAS, this festival highlights the contributions of Black-owned businesses, artists, and innovators, fostering unity and economic empowerment; and

WHEREAS, it serves as a space to honor heritage, inspire future generations, and strengthen community connections.

NOW, THEREFORE, I, Nathaniel J. Birdsong, Jr., Mayor of the City of Winter Haven, Florida, do hereby honor, recognize and commend *The Black Market, A Melanin Cultural Festival* for its dedication to uplifting and celebrating Black excellence.

IN WITNESS WHEREOF, I have hereunto set my hand and cause the Seal of the City of Winter Haven, Florida, to be affixed this 1st day of February, 2025.

Nathaniel J. Birdsong, Jr.
Nathaniel J. Birdsong, Jr., Mayor

ATTEST:
Vanessa Castillo
Vanessa Castillo, MMC, City Clerk

WINTER HAVEN
THE CHAIN OF LAKES CITY

INTEROFFICE MEMORANDUM

DATE: January 14, 2025

TO: T. Michael Stavres, City Manager
M.J. Carnevale, Deputy City Manager

FROM: CJ Scott, Chief Financial Officer
Debbie Tate, Assistant Financial Services Director
Allen Weeks, Budget and Management Officer

SUBJECT: Certificate of Achievement for Excellence in Financial Reporting – Annual Comprehensive Financial Report for the Year Ending September 30, 2023

I am pleased to announce that the City has been awarded the Certificate of Achievement for Excellence in Financial Reporting by the Government Finance Officers Association (GFOA) for the 2023 Annual Comprehensive Financial Report (ACFR). This prestigious recognition reflects the City's commitment to transparency, accuracy, and fiscal responsibility in the City's financial reporting practices.

The GFOA's Certificate of Achievement is awarded to entities that demonstrate a high standard of financial reporting, including clear communication of the City's financial story and adherence to best practices in governmental accounting. This accomplishment underscores the City's dedication to maintaining the highest level of financial accountability to our stakeholders.

I would like to extend my appreciation to the Finance team, especially Debbie Tate, the Assistant Financial Services Director and everyone involved in the preparation of the ACFR. Their hard work and attention to detail have made this achievement possible.

This is the 34th consecutive year the City has received this prestigious award!

Government Finance Officers Association

Certificate of Achievement for Excellence in Financial Reporting

Presented to

City of Winter Haven
Florida

For its Annual Comprehensive
Financial Report
For the Fiscal Year Ended

September 30, 2023

Christopher P. Morrill

Executive Director/CEO

WINTER HAVEN
THE CHAIN OF LAKES CITY

CITY COMMISSION AGENDA REVIEW SESSION MINUTES

DATE: Wednesday, January 8, 2025, 5:30 p.m.

LOCATION: City Hall – John Fuller Auditorium
451 Third Street NW, Winter Haven, FL 33881

NOTE:
PowerPoint slides of certain agenda items were also presented during this meeting. Link to PowerPoint here: https://acrobat.adobe.com/id/urn:aaid:sc:VA6C2:1e97142d-31ed-49a6-9540-43b223858bca
A hard copy of the PowerPoint will be attached to the original signed minutes.

1. CALL TO ORDER - Mayor Birdsong called the meeting to order at 5:30 p.m.

2. ROLL CALL - LaTonya Harris, Deputy City Clerk

Commissioners Present: Mayor Nathaniel J. Birdsong, Jr.; Mayor Pro Tem Brian Yates; Commissioner Bradley T. Dantzler; Commissioner Tracy Mercer; and Commissioner Clifton E. Dollison.

(Commissioner Dantzler arrived at 5:31 pm.)

Staff Present: City Manager T. Michael Stavres; Deputy City Manager Michael "M.J." Carnevale; City Attorney John Murphy; Deputy City Clerk LaTonya Harris; Police Chief Vance Monroe; Economic Opportunity and Community Investment Director Eric Labbe; Public Affairs and Communications Director Katrina Hill; Chief Financial Officer Colleen "C.J." Scott; Public Works Director Brittany Hart; Parks, Recreation and Culture Director Julie Adams; Smart City Officer Hiep Nguyen; Safe Neighborhoods Director Tanya Ayers and Winter Haven Water Director Gary Hubbard.

(Deputy City Manager Carnevale arrived at 5:54 pm.)

5. PRESENTATION(S)

A. "Ana Maria Ruiz Perea" Proclamation - Ana Maria Ruiz Perea

City Manager Stavres gave an overview of this item.

There were no questions or discussion.

B. "Martin Luther King Jr. Day" Proclamation - MLK Steering Committee

City Manager Stavres gave an overview of this item.

There were no questions or discussion.

C. "Florida Arbor Day" Proclamation - Urban Forestry Advisory Board

City Manager Stavres gave an overview of this item.

There were no questions or discussion.

D. 2024 Excellence in Action Annual Impact Awards - T. Michael Stavres, City Manager

City Manager Stavres gave an overview of this item.

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E. * AGENDA REVIEW ONLY *** Strategic Plan Presentation: Environmental Stewardship**

City Manager Stavres said that this item would be presented at the end of the Agenda Review Session. (This item was later presented after item 17A.)

6. DEVELOPMENTS OF NOTE – None

Commissioner Dollison asked if there were proclamation guidelines and what they were.

Mayor Birdsong answered that the authority by the Mayor to issue proclamations was established by a statement in the Charter and explained the proclamation process.

City Attorney Murphy added for context that proclamations were ceremonial only and were not considered official actions of the Commission. He further added that proclamations were signed by the Mayor and gave further information on how they were presented.

Discussion ensued regarding how to proceed if there was a disagreement by a Commissioner with proclamation approval by the Mayor, how it appears as if the entire Commission approves, proclamation voting ideas, advanced notice suggestion, Charter parameters and revisions.

7. MINUTES

A. November 12, 2024, Regular City Commission Meeting Minutes

B. November 20, 2024, City Commission Agenda Review Session Meeting Minutes

C. November 25, 2024, Regular City Commission Meeting Minutes

D. December 4, 2024, City Commission Agenda Review Session Meeting Minutes

E. December 9, 2024, Regular City Commission Meeting Minutes

There were no questions or discussion for items 7A through 7E.

8. COMMENTS FROM THE AUDIENCE – N/A

9. ORDINANCE(S) – SECOND READING – PUBLIC HEARING – None

10. REORGANIZATION OF THE CITY COMMISSION

A. Election of Mayor – City Commission

There were no questions or discussion.

B. Election of Mayor Pro Tem - City Commission

There were no questions or discussion.

C. Swearing-in of Mayor - Frederick J. Murphy, Jr., City Attorney

There were no questions or discussion.

D. Presentation of Medallion to the Mayor - Frederick J. Murphy, Jr., City Attorney

There were no questions or discussion.

E. Swearing-in of Mayor Pro Tem - Frederick J. Murphy, Jr., City Attorney

There were no questions or discussion.

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F. Presentations of Plaques - Frederick J. Murphy, Jr., City Attorney to Mayor Nathaniel J. Birdsong, Jr. and Mayor Pro Tem Brian Yates

There were no questions or discussion.

G. Liaison Reassignments

City Manager Stavres said that there would be ballots for the Election of Mayor and the Election of Mayor Pro Tem and that the current liaison assignments were in their agenda packets.

Commissioner Dantzler asked if an alternate was needed for one of the committees. City Manager Stavres said that the Polk Transportation Planning Organization (TPO) seats had been filled and that the alternate was Commissioner Dollison. He added that Mayor Pro Tem Yates was no longer a liaison to the Ritz Theater.

Discussion ensued about current liaison assignments and possible changes due to the reorganization of the City Commission.

11. CONSENT AGENDA

A. Approval of IF & D Datasuites LLC, dba Inland Fiber, Master Services Agreement (Winter Haven, FL) for Data Center Cage and Cabinet Space

City Manager Stavres gave an overview of this item.

There were no questions or discussion.

B. Authorization for Travel & Training: Florida League of Cities (FLC) 2025 Federal Action Strike Team (FAST) Fly-In (Yates)

City Manager Stavres gave an overview of this item.

There were no questions or discussion.

C. Authorization for Travel and Training: Florida Regional Councils Association (FRCA) Policy Board Meeting (Birdsong)

City Manager Stavres gave an overview of this item.

There were no questions or discussion.

D. Developer's Agreement – Derrick McWaters

City Manager Stavres gave an overview of this item.

There were no questions or further discussion.

E. 2nd Amendment to Developer's Agreement – The Jade

City Manager Stavres gave an overview of this item.

There were no questions or discussion.

City Manager Stavres noted that there was a third agreement regarding Hamilton on Central that had been discussed and approved by the Community Redevelopment Agency (CRA) Board and was intended to be an item on the Consent Agenda, but the property was no longer under contract due to unresolved issues between the buyer and seller and thus was removed from the agenda. He explained that this removal from the agenda would also be reported at the next CRA Downtown Advisory Committee and CRA Board meetings.

F. Harmony Master Lift Station Change Order #2

City Manager Stavres gave an overview of this item.

There were no questions or discussion.

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G. Amendment No. 1 for the Septic to Sewer Remediation Area No. 6A to Wright-Pierce, Inc.

City Manager Stavres gave an overview of this item.

There were no questions or discussion.

H. Purchase of Police Vehicles

City Manager Stavres gave an overview of this item.

There were no questions or discussion.

12. RESOLUTION(S)

City Manager Stavres asked for permission to add a third resolution and said he would give an explanation after the overview of items 12A and 12B.

A. R-25-01 – Request by Forestar (USA) Real Estate Group for final plat approval of the Harmony on the Lake Eloise Phase 4 Subdivision

City Manager Stavres gave an overview of this item.

There were no questions or discussion.

B. R-25-02 – Request by VMAR DEV, LLC for final plat approval of the Villamar Phase 7 Subdivision.

City Manager Stavres gave an overview of this item.

There were no questions or discussion.

C. R-25-05 – Request by WHIP 6 QOZB, LLC for final plat approval of the Intermodal Corporate Park Phase 3 Subdivision (*added during Agenda Review Session*).

City Manager Stavres added this item and gave an overview. He said that it would be added to the January 13, 2025, Regular City Commission Meeting Agenda on January 9, 2025, with the permission of the Commission.

There was consensus of the Commission to add Resolution R-25-05 to the January 13, 2025, Regular City Commission Meeting Agenda.

13. ORDINANCE(S) - FIRST READING

A. O-25-04 - Voluntary annexation of four (4) parcels generally located approximately 1,218 feet of Old Bartow Lake Wales Road, east of McClean Road, and approximately 1,333 feet west of Gary Street.

City Manager Stavres gave an overview of this item.

There were no questions or discussion.

14. NEW BUSINESS - None

15. CITY COMMISSIONERS/LIAISON REPORTS – No report

16. CITY ATTORNEY REPORT – No report

17. CITY MANAGER REPORT

A. Procurement Manual - Amendment #2

DRAFT

City Manager Stavres gave an overview of this item after item 13A. He explained the amendment further to include its process and the old process regarding the related party disclosure form. He also noted the addition of a policy for donation of equipment to the City.

There were no questions or discussion.

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Under 5E Presentations:

***** AGENDA REVIEW ONLY *** Strategic Plan Presentation: Environmental Stewardship**

City Manager Stavres shared the results of the community survey that was completed November 2024, which included increases in customer satisfaction in each pillar (*Economic Sustainability, Quality of Life, Infrastructure, Environmental Stewardship, Community Safety and Responsible Government*). He said that the overall satisfaction was 94% and that the average number of respondents was 500 per survey.

Mayor Pro Tem Yates inquired how many were repeat and new responses. Public Affairs and Communications Director Hill answered that repeat responses could not be prevented, but explained that responses were reviewed and the process.

Mayor Pro Tem Yates asked if the response levels were normal for those type of surveys and communities.

City Manager Stavres said that it was for their approach and explained various others. He introduced Safe Neighborhoods Director Ayers and Public Works Director Hart.

Director Hart gave an overview of the *Environmental Stewardship* Agenda.

Director Ayers presented the *Lake Silver Revetment* PowerPoint slide and gave a detailed update on the project. She explained the reason why the project was created, the benefits of it and that it was expected to be completed in January 2025.

City Manager Stavres pointed out the progress the contractor had made shown on the video footage and the additional improvements that would be done adjacent to the skate park.

Director Hart presented the *Lake Conine Nature Park* slide and gave a detailed update on the wetland treatment project. She discussed the trail system, different features that would be implemented, and funding partners.

Commissioner Dantzler commented on how pleased he was that the project had begun and noted that it would be a great place for the planting of cypress trees. City Manager Stavres said that much had been planted. Director Hart said that there was vast space for tree planting and educational signage and that planting of the trees was in progress.

Director Ayers presented "Household Hazardous Waste Day" with the *Household Hazardous Waste Collection Event* slide and went over it in more detail. She commented on her excitement about events of this nature that gave the community an opportunity to properly dispose of household items.

Mayor Pro Tem Yates inquired how often the events are held. Director Hart said that it was once a year in partnership with Polk County Solid Waste and Keep Winter Haven Clean and Beautiful. She added that Polk County Solid Waste had the event six times per year with all communities within the Polk County jurisdiction.

Mayor Pro Tem Yates asked how challenging would it be to host an additional one in the summertime for City residents. Director Hart said it would require the assembling of partnerships and resources through a litter and illegal dumping mitigation plan that they were currently working on and would involve implementation of various strategies.

Mayor Pro Tem Yates inquired if there was an event to collect old appliances. Director Hart responded that there was not one and that collection was usually done by the scheduling of a bulk collection. She noted that there was an event highlighted in the litter and illegal dumping mitigation plan. City Manager Stavres said there was a Spring Clean Up event in the past to collect old appliances and explained the convenience of bulk collection. Director Hart went over technology disposal in detail and said Polk County was still calculating the collection amount.

Mayor Pro Tem Yates stated he would like to see an additional event. City Manager Stavres said that they would work on that and provide information on citizens going directly to the landfill as an option for household hazardous waste disposal.

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Director Hart presented *Urban Forestry* PowerPoint slides in much detail. She talked about the completion of the priority one tree removals, Hurricane Milton tree loss in the City, start of priority 2 tree removal, landscape ordinances updates, penalties for unauthorized tree removal and tree planting opportunities using an approved species list.

City Manager Stavres talked about available City property spaces for tree planting and why tree giveaway events were important for tree planting on private property. Commissioner Mercer asked if collaboration was made with the Utilities Department to assure trees were not planted above pipelines. City Manager Stavres answered that care had been taken in identifying available spaces. Director Hart said that they would work with a consultant regarding the second update of landscape ordinances where one included the tree planting location with respect to a utility. She noted the *Arbor Day* tree giveaway of 200 three-gallon trees in celebration of *Florida Arbor Day* on January 18, 2025. She presented an update with *Hurricane Milton Debris Collection* PowerPoint slide in much detail, showed footage of it and mentioned the collaborative assistance of Tucker Paving that provided its trucks for use in debris removal to the Public Works department. She closed out the presentation with a recap of what was discussed.

Mayor Birdsong inquired about debris removal collection by Polk County. City Manager Stavres responded that each community had various ways of approaching this issue and gave kudos to Director Hart and the Public Works team for their preparation. He explained the availability of resources in other cities.

(Commissioner Dantzler left the room at 6:33 p.m. and returned at 6:37 p.m.)

Mayor Pro Tem Yates asked about the cypress trees that were planted on Central Avenue. City Manager Stavres said they were doing excellent and saw growth on them. He added that the Infrastructure strategic pillar presentation would be in February 2025 and work on it starting on January 9, 2025.

Mayor Pro Tem Yates inquired on the difficulty and timeframe of a City code for an addition of landing pads for school bus drop offs [and pickups] in all new communities. City Manager Stavres deferred to Economic Opportunity and Community Investment Director Labbe. Director Labbe explained how there could be a requirement for private developers to make improvements and it would involve close coordination with the Polk County School Board and their transportation department.

Discussion ensued regarding quick implementation of a code for landing pads, correct placement of it, County permits, right of ways, school start times and legislative platforms.

(Commissioner Dantzler left the room at 6:42 p.m.)

18. DEPUTY CITY MANAGER REPORT – No report

19. CITY CLERK REPORT – No report

20. EMERGENCY MATTERS NOT RECEIVED FOR THE AGENDA – None

21. ADJOURNMENT – 6:44 p.m.

ATTEST:

_____
LaTonya Harris
Deputy City Clerk

CITY OF WINTER HAVEN, FLORIDA

_____
Nathaniel J. Birdsong, Jr.
Mayor

DRAFT

WINTER HAVEN
THE CHAIN OF LAKES CITY

REGULAR CITY COMMISSION MEETING MINUTES

DATE: Monday, January 13, 6:00 p.m.

LOCATION: City Hall – John Fuller Auditorium
451 Third Street NW, Winter Haven, FL 33881

NOTE:
PowerPoint slides of certain agenda items were also presented during this meeting. Link to PowerPoint here:
https://acrobat.adobe.com/id/urn:aaid:sc:VA6C2:a9d822e8-ad7e-4773-aafe-649dabd6b53c
A hard copy of the PowerPoint will be attached to the original signed minutes.

1. **CALL TO ORDER** - Mayor Birdsong called the regular meeting to order at 6:00 p.m.

2. **ROLL CALL** - Vanessa Castillo, MMC, City Clerk

Commissioners Present: Mayor Nathaniel Birdsong; Mayor Pro Tem Brian Yates; Commissioner Brad Dantzler; Commissioner Tracy Mercer; and Commissioner Clifton Dollison.

Staff Present: City Manager T. Michael Stavres; Deputy City Manager Michael "M.J." Carnevale; City Attorney John Murphy; City Clerk Vanessa Castillo; Police Chief Vance Monroe; Economic Opportunity and Community Investment Director Eric Labbe; Parks, Recreation and Culture Director Julie Adams; Public Affairs and Communications Director Katrina Hill; Chief Financial Officer Colleen "C.J." Scott; Public Works Director Brittany Hart; Safe Neighborhoods Director Tanya Ayers; and new Fire Chief Drew Neubrand *(not yet sworn in)*.

3. **INVOCATION** – Father Paul Head, St. Paul's Episcopal Church

4. **PLEDGE OF ALLEGIANCE** – Vanessa Castillo, MMC, City Clerk

5. **PRESENTATION(S)**

A. "Ana Maria Ruiz Perea" Proclamation - Ana Maria Ruiz Perea

City Manager Stavres read aloud the proclamation recognizing Ms. Parea for being the first Girls State Governor from Winter Haven. Ms. Parea accepted and thanked the City Commission.

B. "Martin Luther King Jr. Day" Proclamation - MLK Steering Committee

City Manager Stavres read aloud the proclamation recognizing January 20, 2025, as "Martin Luther King, Jr. Day" in the City of Winter Haven. Kadian Parchment accepted, thanked the City Commission, and went over all of the upcoming MLK-related activities. Also present with her were members of the MLK Committee.

C. "Florida Arbor Day" Proclamation - Urban Forestry Advisory Board

Deputy City Manager Carnevale read aloud the proclamation declaring January 17 "Florida Arbor Day" in the City of Winter Haven. Shannon Carnevale, Natural Resources and Conservation Extension Agent for UF/IFAS Extension Polk County and member of the UFAB, accepted, thanked the Commission, and said there would be a free tree giveaway after the MLK Parade from 11:00 a.m. to 3:00 p.m. Also present with her were Public Works Director Hart, Natural Resources Stormwater & Ecosystem Analyst Savannah Winstanley, and UFAB Board Chairman Zach Strang.

DRAFT

D. 2024 Excellence in Action Annual Impact Awards - T. Michael Stavres, City Manager

City Manager Stavres gave an overview of this item and announced the recipients of the following awards based on the six Strategic Pillars:

1. **Quality of Life:** *State Housing Assistance Program (SHIP)* – Assistant Economic Opportunity and Community Investment Director Cedric Cox and Affordable Housing Programs Manager Diane Durr
2. **Community Safety:** *Hurricane Milton Damage Assessment Response* – Safe Neighborhoods Director Tanya Ayers and team, various departments
3. **Responsible Government:** *Budget Brief* – Chief Financial Officer C.J. Scott, Budget and Management Officer Allen Weeks, Public Affairs and Communications Director Katrina Hill, and Financial Grant Manager Brandon Bussiere
4. **Environmental Stewardship:** *Acquisition of Bradco Farm to Advance the Sapphire Necklace* – Assistant Winter Haven Water Director Mark Bombard and Customer Service Specialist Kassidy King
5. **Infrastructure:** *FY 2024 Transportation Improvement Project* – Public Works Director Brittany Hart
6. **Economic Sustainability:** *Acquisition of Ritz Theatre* – Parks, Recreation and Culture Director Julie Adams, Assistant Parks, Recreation and Culture Director Scott Eilers, Facilities Maintenance Superintendent Richard "Tank" Artz, and Theatre Winter Haven Producing Director Dan Chesnika

Lastly, City Manager Stavres presented a *Legacy of Leadership Award* to the City Commission for the Fiscal Year 22025-2029 Strategic Plan Development and thanked them for their leadership.

6. DEVELOPMENTS OF NOTE – None

7. MINUTES

A. November 12, 2024, Regular City Commission Meeting Minutes

B. November 20, 2024, City Commission Agenda Review Session Meeting Minutes

C. November 25, 2024, Regular City Commission Meeting Minutes

D. December 4, 2024, City Commission Agenda Review Session Meeting Minutes

E. December 9, 2024, Regular City Commission Meeting Minutes

Motion by Mayor Pro Tem Yates to approve the minutes as presented.

Mayor Birdsong stated that anyone wishing to speak to the minutes could make comments now by coming to the podium and stating their name and address for the record and make comments. No one spoke for or against.

Motion carried 5:0.

8. COMMENTS FROM THE AUDIENCE – None

9. ORDINANCE(S) – SECOND READING – PUBLIC HEARING – None

10. REORGANIZATION OF THE CITY COMMISSION

(NOTE: Some of these items were presented in a different order than on the agenda)

A. Election of Mayor - City Commission

The floor was opened for nominations for the office of Mayor.

Motion by Commissioner Dollison to nominate Mayor Birdsong as Mayor for the ensuing year.

There were no further nominations or discussion.

Motion by Mayor Dantzler to close the nomination for Mayor to be considered.

All Commissioners voted in favor of closing the nominations for Mayor.

Motion carried 5:0.

There was a motion on the floor to nominate Mayor Birdsong as Mayor for the ensuing year.

Motion by Commissioner Dollison to elect Mayor Birdsong as Mayor for the ensuing year.

There was no further discussion.

Motion carried 5:0.

All Commissioners voted to elect Mayor Birdsong as Mayor for the ensuing year.

C. Swearing-in of Mayor - Frederick J. Murphy, Jr., City Attorney

Mayor Birdsong was administered the Oath of Office by City Attorney Murphy.

City Attorney Murphy noted the Oath of Office form (*see attached*) would be completed by Mayor Birdsong and given to City Clerk Castillo for the record.

D. Presentation of Medallion to the Mayor - Frederick J. Murphy, Jr., City Attorney

City Attorney Murphy presented Mayor Birdsong with the Mayor's ceremonial medallion as was the tradition.

Mayor Birdsong thanked his fellow Commissioners and said it was an honor to serve. He said he had been elected as Mayor several times, however, each time was a sobering experience for him making him realize that it was not something that "just happened", but that they work and do so together. He expressed appreciation for them all having trust in him to be Mayor and that he would do his best to uphold the values, principals, and spirit of being the Mayor for the City of Winter Haven representing them and the citizens to the best of his ability. He also thanked his family, those far and near, for being present this evening and his wife of over 55 years who had not been feeling well for the past week. She had lost her sister this weekend in Connecticut and his two nieces lost their father so they would be attending two funerals within the next two weeks so he has thankful they were present. Lastly, he expressed blessings over the Commission, City staff, and citizens of Winter Haven.

E. Election of Mayor Pro Tem - City Commission

The floor was opened for nominations for the office of Mayor Pro Tem.

Motion by Mayor Birdsong to nominate Mayor Pro Tem Yates as Mayor Pro Tem for the ensuing year.

There were no further nominations or discussion.

Motion by Commissioner Dantzler to close the nominations for Mayor Pro Tem to be considered.

All Commissioners voted in favor of closing the nominations for Mayor Pro Tem.

Motion carried 5:0.

There was a motion on the floor to nominate Mayor Pro Tem Yates as Mayor Pro Tem for the ensuing year.

Motion by Commissioner Mercer to elect Mayor Pro Tem Yates as Mayor Pro Tem for the ensuing year.

There was no further discussion.

Motion carried 5:0.

All Commissioners voted to elect Mayor Pro Tem Yates as Mayor Pro Tem for the ensuing year.

E. Swearing-in of Mayor Pro Tem - Frederick J. Murphy, Jr., City Attorney

Mayor Pro Tem Yates was administered the Oath of Office by City Attorney Murphy.
City Attorney Murphy noted the Oath of Office form (*see attached*) would be completed by Mayor Pro Tem Yates and given to City Clerk Castillo for the record.

Mayor Pro Tem Yates said he appreciated the nomination and for the Commission in making it unanimous. He also said he would always be there whenever needed.

F. Presentations of Plaques - Frederick J. Murphy, Jr., City Attorney to Mayor Nathaniel J. Birdsong, Jr. and Mayor Pro Tem Brian Yates

City Attorney Murphy read aloud the wording on plaques presented to Mayor Birdsong and Mayor Pro Tem Yates in recognition of their service as Mayor and Mayor Pro Tem for the 2024-2025 year.

G. Liaison Reassignments

Mayor Birdsong said this item had already been discussed last week [at the January 8, 2025, City Commission Agenda Review Session].

Motion by Mayor Pro Tem Yates to approve the 2025 Liaison Appointments as presented.

There was no further discussion.

Motion carried 5:0.

11. CONSENT AGENDA

A. Approval of IF & D Datasuites LLC, dba Inland Fiber, Master Services Agreement (Winter Haven, FL) for Data Center Cage and Cabinet Space

B. Authorization for Travel & Training: Florida League of Cities (FLC) 2025 Federal Action Strike Team (FAST) Fly-In (Yates)

C. Authorization for Travel and Training: Florida Regional Councils Association (FRCA) Policy Board Meeting (Birdsong)

D. Developer's Agreement - Derrick McWaters

E. 2nd Amendment to Developer's Agreement - The Jade

F. Harmony Master Lift Station Change Order #2

G. Amendment No. 1 for the Septic to Sewer Remediation Area No. 6A to Wright-Pierce, Inc.

H. Purchase of Police Vehicles

Motion by Mayor Pro Tem Yates to approve the Consent Agenda as presented.

Mayor Birdsong stated anyone wishing to speak to the consent agenda could come to the podium and state their name and address for the record. No one spoke for or against.

Motion carried 5:0.

12. RESOLUTION(S)

A. R-25-01 - Request by Forestar (USA) Real Estate Group for final plat approval of the Harmony on Lake Eloise Phase 4 Subdivision

City Attorney Murphy read Resolution R-25-01 by title only and City Manager Stavres presented.

Motion by Commissioner Mercer to approve Resolution R-25-01.

Mayor Birdsong closed the Regular City Commission Meeting and opened a Public Hearing stating anyone wishing to speak to this Resolution may come to the podium and state their name and address for the record. No one spoke for or against.

Mayor Birdsong closed the Public Hearing and reopened the Regular Commission Meeting.

Motion carried 5:0.

B. R-25-02 - Request by VMAR DEV, LLC for final plat approval of the Villamar Phase 7 Subdivision

City Attorney Murphy read Resolution R-25-02 by title only and City Manager Stavres presented.

Motion by Commissioner Mercer to approve Resolution R-25-02.

Mayor Birdsong closed the Regular City Commission Meeting and opened a Public Hearing stating anyone wishing to speak to this Resolution may come to the podium and state their name and address for the record. No one spoke for or against.

Mayor Birdsong closed the Public Hearing and reopened the Regular Commission Meeting.

Motion carried 5:0.

C. R-25-05 - Request by WHIP 6 QOZB, LLC for final plat approval of the Intermodal Corporate Park Phase 3 Subdivision

City Attorney Murphy read Resolution R-25-05 by title only. City Manager Stavres presented and said that also present to answer any questions were Mr. Campbell, who was the attorney representing this item, and Jim Ford who was also associated with the property.

Discussion ensued.

Motion by Commissioner Mercer to approve Resolution R-25-05.

Mayor Birdsong closed the Regular City Commission Meeting and opened a Public Hearing stating anyone wishing to speak to this Resolution may come to the podium and state their name and address for the record. No one spoke for or against.

Mayor Birdsong closed the Public Hearing and reopened the Regular Commission Meeting.

Motion carried 5:0.

13. ORDINANCE(S) - FIRST READING

A. O-25-04 - Voluntary annexation of four (4) parcels generally located approximately 1,218 feet of Old Bartow Lake Wales Road, east of McClean Road, and approximately 1,333 feet west of Gary Street

City Attorney Murphy read Ordinance O-25-04 by title only and City Manager Stavres presented.

Mayor Birdsong reported this item would come back for a second reading and public hearing at the January 27, 2025, Regular City Commission Meeting.

14. NEW BUSINESS

15. CITY COMMISSIONERS/LIAISON REPORTS

Commissioner Dantzler reported the following: attended a [Tourist Development Council] Arts, Culture, and Heritage Meeting at the [Historic] Ritz Theatre and said they would be holding the meetings in different locations around Polk County; gave greetings to a Leadership Polk Class; attended the ground breaking for the Winter Haven Recreational and Cultural Center (WHRCC), which had a great turnout, and said he was proud to be out there; attended the Menorah Lighting event; attended a Florida Municipal Trust Meeting (FMIT) in Tampa and said he had enjoyed dinner with the mayor of Longboat Key; attended a Main Street Winter Haven (MSWH) Holiday Social at Maritime [restaurant in Bowen Yard]; said Silver Properties had their party at the Derry Down. He congratulated Mayor Birdsong and said that he was going to do a great job, he knew his family was proud of him, and that everyone was proud of the job he was doing. He also congratulated Mayor Pro Tem Yates, told him to keep up the good work, said that he represented the City very well, and thanked him for his willingness to serve.

Commissioner Dollison reported the following: attended the Menorah lighting, which he said was very interesting and festive; congratulated Mayor Birdsong for his service for so many years and Mayor Pro Tem Yates

for his outstanding service as well; attended the WHRCC groundbreaking and said the building would be an amazing asset to the community to be enjoyed and proud of for many years to come; said it was exciting to see the accomplishments of the Marching Wolverines and their history; and attended the reopening of Ruby Tuesday [restaurant] where it was exciting to see its remodeling.; and welcomed new Fire Chief Neubrand saying he looked forward to working and meeting with him. Lastly, he said his thoughts and prayers went out to people in Southern California affected by the fire devastation.

Commissioner Dantzler also explained that he had to step out of last week's Agenda Review Session because his youngest son, who lived in Los Angeles and in the middle of all of the fires, had called him. They had discussed his escape plan, what to put in his go bag, but was thankful he did not suffer any damages, despite having to evacuate.

Commissioner Mercer reported the following: welcomed new Fire Chief Neubrand; congratulated Mayor Birdsong and Mayor Pro Tem Yates; thanked the Parks, Recreation and Culture Department for all of the Christmas events they held; attended the WHRCC groundbreaking; and attended the Menorah Lighting and other events. Lastly, she commented that long ago she had also been a part of the Future Business Leaders of America (FBA) and had competed, having won district competitions, and placed twice in the State for Miss Future Business Executive. She represented the South Florida Community College in Avon Park.

Mayor Pro Tem Yates reported the following: thanked everyone for their vote of confidence as Mayor pro tem and congratulated Mayor Birdsong. He also went over some of his top "wish list" items for 2025:

- Local clean air ordinance for City public parks and spaces, although the statewide initiative had failed – City Manager Stavres provided an update saying this was being drafted. He said that Parks, Recreation and Culture Director Adams, who was also the president of the Florida Recreation and Park Association (FRPA) had collected samples and was working with attorneys on this.
- School bus landing pad requirement for all future developments.
- Developer agreements needed to have more "teeth" and developers held accountable when obtaining funds from the City for anything attached to "affordability".

Mayor Birdsong reported the following: welcomed new Fire Chief Neubrand and thanked City Manager Stavres for doing a great job in the selection process; attended the groundbreaking for the WHRCC and said he had been serving as a Commissioner for over twenty years and the WHRCC was being spoken about ten years before that so now he was extremely happy and satisfied that City staff was able to put a plan together for the WHRCC that would be impactful, which brought it across the goal line scoring a touchdown. He also attended the Polk Transportation Planning Organization (TPO) Meeting; attended the Polk Transportation Disadvantaged Local Coordinating Board (TD-LCB) Meeting; attended Leadership Polk; attended the Menorah Lighting; attended the Central Florida Leadership Planning Council (CFRPC) Meeting where there is a State Planning Council and he represents the CFRPC. He said that this year they decided they would incorporate the Florida Regional Councils Association (FRCA) Meeting into a 501(c)4 non-profit which they voted on this past Friday in Tallahassee; and attended Ruby Tuesday's ribbon cutting for their renovation and everything looked beautiful.

16. CITY ATTORNEY REPORT

City Attorney Murphy congratulated Mayor Birdsong and Mayor Pro Tem Yates for their reappointments and welcomed incoming new Fire Chief Drew Neubrand, wishing him a long tenure at the City.

17. CITY MANAGER REPORT

A. Procurement Manual - Amendment #2
(this item occurred earlier on the agenda after item 13A)

City Manager Stavres presented this item as detailed in the summary sheet.

There were no questions or discussion.

City Manager Stavres said that no voting was needed for this item.

❖

City Manager Stavres congratulated Mayor Birdsong and Mayor Pro Tem Yates and thanked them for their support of their fellow Commissioners. He reported that a retirement celebration for current Fire Chief Emery would be held on January 27, 2025, at Nora Mayo Hall [inside Florida Citrus Building] and the swearing in for incoming Fire Chief Neubrand would be held on February 4, 2025, which were both on the Commission calendars and was a public event. He said if the Commission had an opportunity, to stop by Chief Emery's office and say thank you for doing an outstanding job for the City in keeping the community safe in all of the different roles he had served in during

his tenure. Lastly, he said he looked forward to seeing the Commission at the various event this week to commemorate Dr. Martin Luther King, Jr.

18. DEPUTY CITY MANAGER REPORT

Deputy City Manager Carnevale congratulated Mayor Birdsong and Mayor Pro Tem Yates.

19. CITY CLERK REPORT

City Clerk Castillo said she echoed all of the comments made previously [regarding Mayor Birdsong, Mayor Pro Tem Yates and incoming Fire Chief Neubrand].

❖

City Manager Stavres recognized Financial Grant Manager Bussiere in the Financial Services Department that handled all of the City's grant compliance and management, for doing something amazing this week. He said that this week he ran a 5K marathon at Disney World, then a 10K marathon on Friday, then a half marathon on Saturday, and lastly, a full marathon on Sunday, and came to work at 8:00 a.m. on Monday. He congratulated Manager Bussiere for his accomplishment and said it was a testament on what the City was trying to inspire all employees to do about being healthy and living healthy lifestyles.

20. EMERGENCY MATTERS NOT RECEIVED FOR THE AGENDA – None

21. ADJOURNMENT – 7:28 p.m.

ATTEST:

_____
Vanessa Castillo, MMC
City Clerk

CITY OF WINTER HAVEN, FLORIDA

_____
Nathaniel J. Birdsong, Jr.
Mayor

WINTER HAVEN
THE CHAIN OF LAKES CITY

OATH OF OFFICE - MAYOR

I, Nathaniel J. Birdsong, Jr, do solemny swear that I will support, protect, and defend the Constitution and Government of the City of Winter Haven, the State of Florida, and the United States of America; that I am duly qualified to hold office under the Constitution of the State; and that I will faithfully perform the duties of **Mayor** of the City of Winter Haven, on which I am now about to enter. So help me God.

City Official Nathaniel J. Birdsong, Jr

Signature Nathaniel J. Birdsong, Jr.

Date 1/13/25

STATE OF FLORIDA

COUNTY OF POLK

The foregoing instrument was acknowledged before me this 13th day of Jan. 2025, by Nathaniel J. Birdsong, Jr as **Mayor**, who is personally known to me and who did take an oath.

Notary Public Vanessa Castillo

Signature Vanessa Castillo

My Commission Expires 2/15/27

VANESSA CASTILLO
MY COMMISSION # HH 350464
EXPIRES: February 15, 2027

WINTER HAVEN
THE CHAIN OF LAKES CITY

OATH OF OFFICE – MAYOR PRO TEM

I, William Brian Yates, do solemny swear that I will support, protect, and defend the Constitution and Government of the City of Winter Haven, the State of Florida, and the United States of America; that I am duly qualified to hold office under the Constitution of the State; and that I will faithfully perform the duties of **Mayor Pro Tem** of the City of Winter Haven, on which I am now about to enter. So help me God.

City Official William Brian Yates

Signature William B. Yates

Date 1/13/25

STATE OF FLORIDA

COUNTY OF POLK

The foregoing instrument was acknowledged before me this 13th day of Jan. 2025, by William Brian Yates as **Mayor Pro Tem**, who is personally known to me and who did take an oath.

Notary Public Vanessa Castillo

Signature Vanessa Castillo

My Commission Expires 2/15/27

VANESSA CASTILLO
MY COMMISSION # HH 350464
EXPIRES: February 15, 2027

DATE: December 12, 2024

TO: Honorable Mayor and City Commissioners

VIA: T. Michael Stavres, City Manager
M.J. Carnevale, Deputy City Manager
Eric Labbe, Economic Opportunity and Community Investment Director
Sean Byers, Planning Manager

FROM: Heather Reuter, Senior Planner

SUBJECT: Ordinance O-25-04: Voluntary annexation of four (4) parcels generally located approximately 1,218 feet north of Old Bartow Lake Wales Road, east of McClean Road, and approximately 1,333 feet west of Gary Street. The area covered by this request is 93.45± acres.

BACKGROUND

Gain, Inc., petitioner, requests the City Commission annex four (4) parcels, totaling 93.45± acres, generally located approximately 1,218 feet of Old Bartow Lake Wales Road, east of McClean Road, and approximately 1,333 feet west of Gary Street. The petitioner is seeking annexation for the purpose of obtaining City utilities for the future development of the site. The parcel is contiguous to the City to the south, west, and north, and the annexation of this parcel will not create an enclave.

FINANCIAL IMPACT

Current taxable value of the subject parcel is approximately $11,483. Based on the City's current tax millage rate of 6.59 mills, expected annual tax revenue will be approximately $75.67. However, additional revenue is expected upon the development of the property.

The Voluntary Petition for Annexation which is the basis for this Ordinance is being processed and considered in order to comply with the requirements of Section 171.044 of the Florida Statutes. Accordingly, the exemption set forth in Section 166.041(4)(c)1 of the Florida Statutes applies and a business impact estimate is not required as a result of this Ordinance.

STRATEGIC PLAN ALIGNMENT

This is a routine voluntary annexation associated with normal operations of the City not specifically defined as a goal or strategy within the Strategic Plan. However, it is aligned with the Responsible Government Strategic Pillar.

RECOMMENDATION

Staff recommends the City Commission approve Ordinance O-25-04.

ATTACHMENT

- Ordinance O-25-04

ORDINANCE NO. O-25-04

AN ORDINANCE EXTENDING THE CORPORATE LIMITS OF THE CITY OF WINTER HAVEN, FLORIDA, SO AS TO INCLUDE THEREIN ADDITIONAL TERRITORY LYING CONTIGUOUS AND ADJACENT TO THE PRESENT BOUNDARIES OF THE CITY OF WINTER HAVEN, FLORIDA; DESCRIBING SAID ADDITIONAL TERRITORY; REPEALING ALL ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR THE ADMINISTRATIVE CORRECTION OF SCRIVENER'S ERRORS; AND PROVIDING AN EFFECTIVE DATE. (General Location: Four (4) parcels generally located approximately 1,218 feet north of Old Bartow Lake Wales Road, east of McClean Road, and approximately 1,333 feet west of Gary Street. The area covered by this request is 93.45± acres.)

WHEREAS, a petition to integrate territory into the City of Winter Haven, Florida, has been filed requesting the City of Winter Haven extend its corporate limits to include certain property herein described; and

WHEREAS, the City of Winter Haven deems it expedient and practical to incorporate said territory as the same is in conformity with overall plans for extending the boundaries of the City of Winter Haven into the Greater Winter Haven area; and

WHEREAS, the property herein described is contiguous and adjacent to the corporate limits of the City of Winter Haven, and the property will become a part of the unified corporate area with respect to municipal services and benefits; and

WHEREAS, the Voluntary Petition for Annexation which is the basis for this Ordinance is being processed and considered in order to comply with the requirements of Section 171.044 of the Florida Statutes. Accordingly, the exemption set forth in Section 166.041(4)(c)1 of the Florida Statutes applies and a business impact estimate is not required as a result of this Ordinance.

NOW THEREFORE, BE IT ENACTED BY THE PEOPLE OF THE CITY OF WINTER HAVEN, FLORIDA, AS FOLLOWS:

1. A petition has been filed to integrate territory into the City of Winter Haven, Florida, as attached herein as Exhibit "A."

2. That the City Commission of the City of Winter Haven does hereby annex into the corporate limits of the City of Winter Haven, Florida, the following described property:

See Composite Exhibit "B" attached hereto and made a part hereof consisting of two (2) pages,

the first being a legal description, and the second being a location map.

3. All ordinances in conflict herewith are hereby repealed to the extent necessary to give this Ordinance full force and effect.

4. The correction of typographical and/or scrivener's errors which do not affect the intent may be authorized by the City Manager or designee, without need of public hearing, by filing a corrected or recodified copy of same with the City Clerk

5. This Ordinance shall become effective immediately upon passage on second reading.

INTRODUCED on first reading this 13th day of January, 2025.

PASSED on second reading this 27th day of January, 2025.

CITY OF WINTER HAVEN, FLORIDA

_____
MAYOR-COMMISSIONER
Nathaniel J. Birdsong, Jr.

ATTEST:

_____
CITY CLERK
Vanessa Castillo, MMC

Approved as to form:

_____
CITY ATTORNEY
Frederick J. Murphy, Jr.

WINTER HAVEN
THE CHAIN OF LAKES CITY

SPACE FOR RECORDING

PETITION/CONSENT FOR ANNEXATION

The following information is required for submission of an application to annex into the city limits of Winter Haven. **Please print or type the required information below.**

Property Owner(s) Details

Name(s) of Property Owner(s): Gain, Inc.

Mailing Address: 12200 Broad River Road; Little Mountain, SC 29075-9518

Phone: (803) 240-8360 Email: Peter Washington - pwashin@gmail.com

Name of Representative (if applicable): Absolute Engineering, Inc. - Heather Wertz

Mailing Address: 1000 N. Ashley Drive, Suite 925; Tampa, FL 33602

Phone: (813) 221-1521 Email: heatherw@absoluteng.com

Property Details

Property Address or General Location: 0 McClean Rd, Lake Wales, FL 33859

Parcel Identification Number(s): 272930-000000-042010, 272930-000000-024000, 272931-000000-031010
272931-000000-013080

Legal Description of the Property (Preferably Metes & Bounds):

See attached

Proof of Property Ownership (copy attached): See attached

Reason for Request: To develop residential single family subdivision

Present Use of the Property: Citrus Groves

Existing Structures Located on the Site: None

FOR OFFICE USE ONLY

Total Acreage: 93.45

Assessed Property Value: $ 11,483 Taxable Value: $ 11,483

Subdivision: N/A

Present County Future Land Use Designation: A/RR (Agriculture/Residential Rural)

OWNER/AGENT SIGNATURE PAGE

I / We, Gain, Inc. being duly sworn, depose and say that I / we own the properties involved in this petition/consent and that I / we authorize the City of Winter Haven, in accordance with adopted City policy, rules and regulations (Resolution No. R-87-07), and in conformance with State law, to process this petition/consent and annex said property into the corporate limits of the City of Winter Haven. This Petition and Consent shall be irrevocable. No further consent of Owner shall be required for the City to annex said property immediately, or at some time in the future.

Further I / we or any agent or lessee of the subject property authorized by me / us (see attached proof of authorization) to file this petition/consent, deposes and say that the statements and answers contained in the petition/consent for annexation, and any information attached thereto, present the arguments in behalf of this petition/consent to the best of my / our ability; and that the statements and information referred to above are in all respects true and correct to the best of my / our knowledge and belief.

OWNER(S)/AGENT(S)

Signature of Owner/Agent	Signature of Owner/Agent
Heather E. Wertz, as agent	
Printed Name of Owner/Agent	Printed Name of Owner/Agent
Signature of Owner/Agent	Signature of Owner/Agent
Printed Name of Owner/Agent	Printed Name of Owner/Agent

STATE OF Florida

COUNTY OF Hillsborough

The foregoing instrument was acknowledged before me by means of ☑ physical presence or ☐ online notarization this 2nd day of October, 20 24, by Heather E. Wertz, who is ☑ personally known to me or ☐ has produced _____ as identification and who (did) (did not) take an oath.

SIGNATURE OF NOTARY PUBLIC

JAYNE MARIE DAVIS
MY COMMISSION # HH 290237
EXPIRES: July 29, 2026

TYPED, PRINTED or STAMPED NAME OF NOTARY PUBLIC

RE: Agent Authorization for Gain Property

Parcel ID#'s – 272930-000000-042010, 272930-000000-024000, 272931-000000-031010, 272931-000000-013080

To Whom It May Concern:

This letter is to authorize Absolute Engineering, Inc. to make applications to all relative governing authorities having jurisdiction for the task of annexation, land use, zoning, and permitting which include submittal to, but not limited to, the following agencies:

- City of Winter Haven
- Polk County
- Polk County Department of Health
- Florida Department of Environmental Protection
- Southwest Florida Water Management District

Job Name: Gain Property

Cassidy Land Development, LLC
Name: Albert B Cassidy
Title: Manager

10/2/24
Date:

State of Florida
County of Polk

The foregoing instrument was acknowledged before me this 2nd day of October 2024 by Albert B Cassidy who is personally known to me or who has produced _____ as identification.

Signature of Notary Public

Notary Stamp
Notary Public State of Florida
Bobbie Henley
My Commission
HH 191373
Exp. 2/17/2026

RE: Agent Authorization for Gain Property

Parcel ID#'s – 272930-000000-042010, 272930-000000-024000, 272931-000000-031010, 272931-000000-013080

To Whom It May Concern:

This letter is to authorize Cassidy Land Development, LLC, to make applications to all relative governing authorities having jurisdiction for the task of annexation, land use, zoning, and permitting which include submittal to, but not limited to, the following agencies:

- City of Winter Haven
- Polk County
- Polk County Department of Health
- Florida Department of Environmental Protection
- Southwest Florida Water Management District

Job Name: Gain Property

Peter Washington — 10/2/2024

Gain, Inc.
Name: Peter Washington
Title: Vice President

Date:

State of South Carolina
County of Richland

The foregoing instrument was acknowledged before me this 2 day of October 2024, by Peter Washington, who is personally known to me or who has produced Drivers License as identification.

Signature of Notary Public

MADELYN M. BOWERS
Notary Public
My Commission Expires
NOTARY PUBLIC
October 3, 2033
SOUTH CAROLINA

Processing Data Space	Recording Data Space
This Instrument Was Prepared By: Joseph A. Morrison 4416 Florida National Drive Lakeland, Florida 33813 (863) 644-3399 After Recording Return To: Joseph A. Morrison 4416 Florida National Drive Lakeland, Florida 33813	INSTR # 2010076452 BK 08136 PGS 1382-1383 PG(s)2 RECORDED 05/12/2010 01:11:25 PM RICHARD M WEISS, CLERK OF COURT POLK COUNTY DEED DOC 0.70 RECORDING FEES 18.50 RECORDED BY S Wiggins

TRUSTEE'S DEED

This Trustee's Deed has been executed, on the date indicated below, by Peter Washington, as Trustee of the Nell R. Washington Revocable Trust dated June 24, 1984, hereafter called the grantor, to Gain, Inc. a Florida corporation, hereafter called the grantee, whose post office address is 12200 Broad River Road, Little Mountain, SC 29075.

(Wherever used herein, the terms "grantor" and "grantee" shall include singular and plural, heirs, legal representatives, and assigns of individuals, and the successors and assigns of corporations, wherever the context so admits or requires.)

Witnesseth, that the said grantor, for and in consideration of the sum of Ten Dollars, and other valuable consideration, in hand paid by the said grantee, the receipt whereof is hereby acknowledged, and in consideration of the requirement in said trust to distribute the property to the Grantee as beneficiary, does hereby grant, bargain, and sell to the said grantee, and the grantee's heirs and assigns forever, the following described land, situated, lying, and being in Polk County, Florida, to wit:

N1/4 of NW1/4 of NE 1/4, LESS the East 350 feet thereof of Section 31, Township 29 South, Range 27 East, Polk County, Florida.

and

The SW1/4 of the SE1/4 of Section 30, Township 29 South, Range 27 East, Polk County, Florida, containing 40 acres more or less, together with the irrigation equipment located on said property.

Parcel ID Numbers: 272930-000000-024000 and 272931-000000-013080

In witness whereof, the grantor signed this Trustee's Deed on the date indicated next to the grantor's signature.

Pete Washington
Grantor - Peter Washington, as Trustee of the Nell R. Washington Revocable Trust

2/18/2010
Date

Grantor's Post Office Address:12200 Broad River Road, Little Mountain, SC 29075

Witness - Signature

Witness - Signature

C. Lauren Heath
(Printed Or Typed Name)

Richard Washington
(Printed Or Typed Name)

State Of South Carolina
County Of Richland

Affirmed before me, on 2/18/10 by Peter Washington, as Trustee of the Nell R. Washington Revocable Trust:

[ ] who is personally known to me, or
[✓] who produced the following identification: SCDL.

Peter Washington, as Trustee of the Nell R. Washington Revocable Trust, personally appeared before me at the time of notarization, and, after being given the oath, acknowledged signing the foregoing document.

C. Lauffear
Notary Public

C. Lauren Heath
(Printed Or Typed Name)

Commission Expiration Date & Commission Number: My Commission Expires March 22, 2019 (SEAL)

INSTR # 2024279215
BK 13362 Pgs 0292-0293 PG(s)2
12/10/2024 12:56:29 PM
STACY M. BUTTERFIELD,
CLERK OF COURT POLK COUNTY
RECORDING FEES 18.50

This Instrument Prepared By:
Richard A. Miller, Esquire/ks
Miller, Troiano P.A.
P.O. Box 8169
Lakeland, Florida 33802

CORRECTIVE TRUSTEE'S DEED

The Grantor, Peter Washington, as Trustee of the Robert Washington Revocable Trust, grantor, to Gain, Inc., a Florida corporation, whose post office address is 12200 Broad River Road, Little Mountain, SC 29075, grantee: does for and in consideration of the sum of Ten Dollars ($10.00) and other good and valuable consideration, the receipt and sufficiency of which consideration are hereby acknowledged, does hereby grant, sell, and convey, all of Grantor's right, title, and interest, in and to that certain property lying and being located in Polk County, Florida, which is more fully described as follows:

The SE ¼ of the SW ¼ of Section 30: and the E ½ of the NE ¼ of the NE ¼ of the NW ¼ of Section 31, less road rights of way all being in Township 29 South, Range 27 East, Polk County, Florida.

Parcel Identification Numbers: 272930-000000-042010 and 272931-000000-031010.

NB This Corrective Trustee's Deed corrects the legal description noted in the Trustee's Deed executed on the 18th day of February 2010, and recorded at O.R. Book 08136, Pages 1380 and 1381, public records of Polk County, Florida.

TOGETHER WITH all and singular the improvements, tenements, hereditaments, and appurtenances belonging or in anyway pertaining to the property.

TO HAVE AND TO HOLD the same unto the Grantee's, the Grantee's heirs, personal representatives, successors, and assigns, in fee simple forever.

AND THE Grantor further covenants with the Grantee that the Grantor has good right and lawful authority to convey the property and Grantor warrants the title to the property for any acts of Grantor and will defend the title against all lawful claims of all persons claiming by, through, or under the Grantor.

The words "Grantor," "Grantee," and "Trustee" are used for the singular and plural, as the context requires.

(Signatures appear on the following page)

DATED this 2 day of ~~November~~ December 2024.

Signed, sealed, and delivered in the presence of:

1200 Dutch Fork Rd. Irmo, SC
Print name: Joy F. Mitchell
Print Witness Address: Joy F Mitchell

Print name: Madelyn M. Bowers
Print Witness Address: 1200 Dutch Fork Rd Irmo, SC.

The Robert Washington Revocable Trust,

Peter Washington, Trustee

STATE OF SC
COUNTY OF Richland

The foregoing instrument was acknowledged before me by physical presence on this 2 day of ~~November~~ December, 2024, by Peter ~~Washinton~~ Washington, Trustee of The Robert Washington Revocable Trust, who ( ) is personally known to me or who (✓) has produced driver's license as identification.

Notary Public
My commission expires: 10/03/2033

MADELYN M. BOWERS
My Commission Expires
NOTARY PUBLIC
October 3, 2033
SOUTH CAROLINA

Stacy M. Butterfield POLK
CFN# 2024279215 OR BK 13362 PG 293 Pgs 0292-0293 12/10/2024 12:56:29 PM

Exhibit "B"
Page 1 of 2

Ordinance No. O-25-04 Annexation Boundary Descriptions

R. T. S. Sub. Parcels: 27-29-30-000000-042010 and 27-29-30-000000-024000

Described As:

The Southeast ¼ of the Southwest ¼ of Section 30, Township 29 South, Range 27 East all being in Polk County Florida, AND the Southwest ¼ of the Southeast ¼ of Section 30, Township 29 South, Range 27 East all being in Polk County Florida.

Also Described As:

Commencing at the Southeast Corner of Section 30, Township 29 South, Range 27 East, occupied by a 4x4 concrete monument labeled "LB 7159", thence along the Southern boundary of said Section 30 S88°56'25"W a distance of 1333.78 feet to the Point of Beginning and also being the Southeast corner of the Southwest ¼ of the Southeast ¼ and being occupied by a 4x4 concrete monument labeled "LB 7159", thence N00°36'13"W along the east boundary line of the Southwest ¼ of the Southeast ¼ of said section to the Northeast corner of the Southwest ¼ of the Southeast ¼ of said section a distance of 1328.48 feet being occupied by a 1" Iron Pipe, thence S89°02'27"W along the North line of the Southwest ¼ of the Southeast ¼ and the Southeast ¼ of the Southwest ¼ of said Section a distance of 2669.54 feet to the Northwest Corner of the Southeast ¼ of the Southwest ¼ of said section, thence S00°48'11"E along the West line of the Southeast ¼ of the Southwest ¼ of said section a distance of 1333.13 feet to the Southwest Corner of the Southeast ¼ of the Southwest ¼ being occupied by a 5/8" Iron labeled "LB 8112", thence N88°56'25"E along the South Boundary line of said section a distance of 2664.93 feet to the Point of Beginning.

An Area Containing: 81.49 acres more or less.

Based on information obtained from the deed, plat, and fielded information.

R. T. S. Sub. Parcels: 27-29-31-000000-031010 and 27-29-31-000000-013080

Described As:

The East ½ of the Northeast ¼ of the Northeast ¼ of the Northwest 1/4 of Section 31, Township 29 South, Range 27 East all being in Polk County Florida, AND the North ¼ of the Northwest ¼ of the Northeast ¼, LESS the East 350 feet thereof of Section 31, Township 29 South, Range 27 East all being in Polk County Florida.

Also Described As:

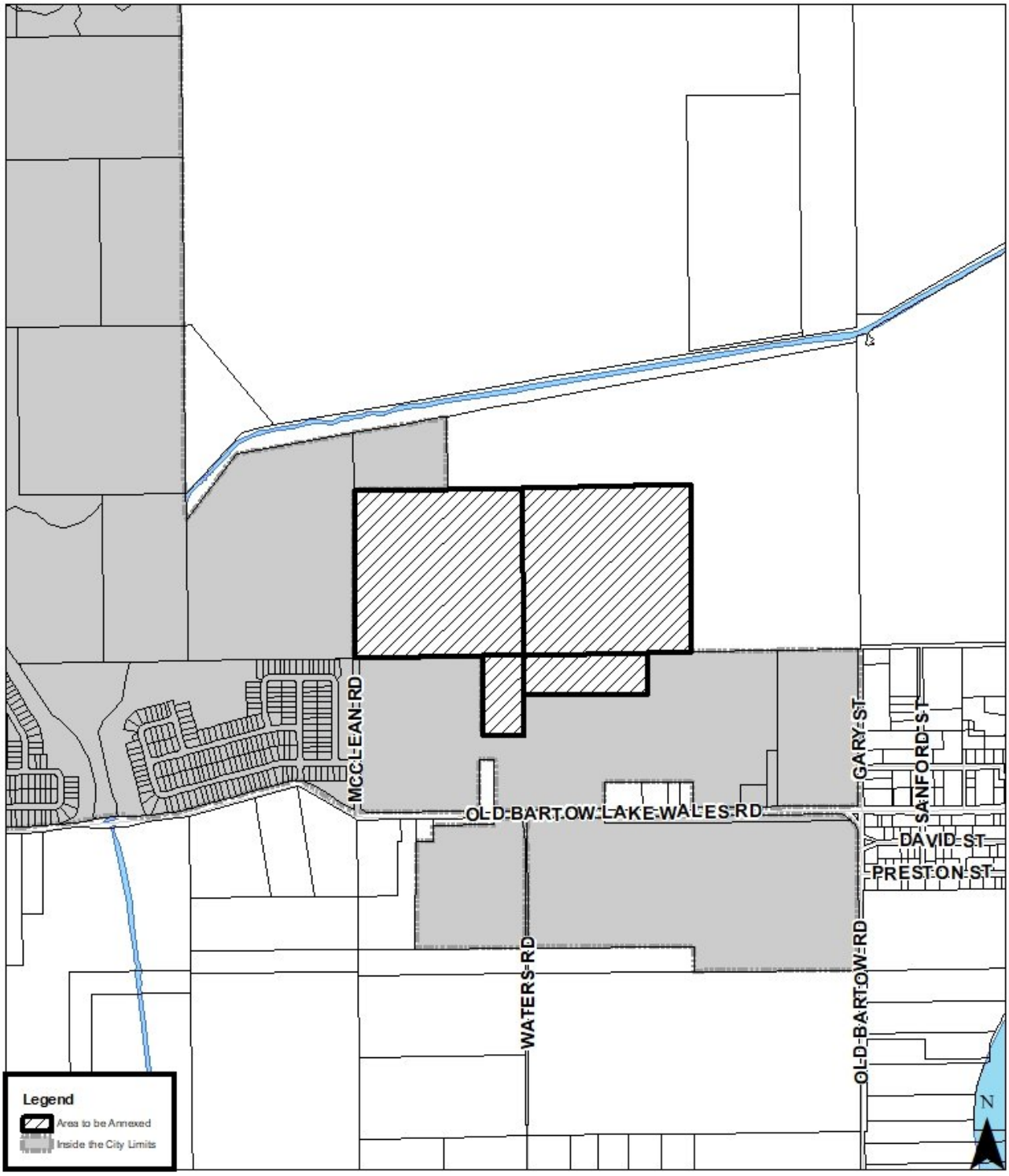
Commencing at the Northeast Corner of Section 31 Township 29 South, Range 27 East, occupied by a 4x4 concrete monument labeled "LB 7159", thence along the Northern boundary of said Section 31 S88°56'25"W a distance of 1683.81 feet to the Point of Beginning being occupied by a 4x4 concrete monument labeled "LB 8112", thence S00°25'54"E a distance of 316.78 feet to a 4x4 concrete monument labeled "LB 8112", thence S88°57'15"W a distance of 980.21 feet to a 4x4 concrete monument labeled "LB 8112", thence S00°25'41"E a distance of 315.75 feet to a 4x4 concrete monument labeled "LB 8112", thence S89°04'55"W a distance of 333.37 feet to a 4x4 concrete monument labeled "LB 8112", thence N00°27'11"W a distance of 631.47 feet to a 4x4 concrete monument labeled "LB 8112", thence N88°56'25"E a distance of 1313.85 to the Point of Beginning.

An Area Containing: 11.96 acres more or less.

Based on information obtained from the deed, plat, and fielded information.

Prepared and reviewed by the Engineering Division of the City of Winter Haven. (JL)

Exhibit "B"
Page 2 of 2



DATE: January 21, 2025

TO: Honorable Mayor and City Commissioners

VIA: T. Michael Stavres, City Manager
M.J. Carnevale, Deputy City Manager
Julie Adams, Director – Parks, Recreation and Culture

FROM: Andy Palmer, Parks Planning & Strategic Initiatives Manager
Katie White, Project Lead

SUBJECT: TRAIL-GO Local Trail Management Grant Contractual Services & Equipment

---

BACKGROUND

The City has been awarded the Trail-GO Grant through the Office of Greenways and Trails (FDEP) in the amount of $200,000. The City Commission authorized the City Manager to apply for the grant on July 22, 2024. The Trail-GO Grant Program is centered around trail maintenance and amenities. The City's application included applying Crime Prevention Through Environmental Design (CPTED) principles by clearing and opening up areas around the trail to ensure safety for trail users. Staff has finalized the following scope of work for the project:

The following items will be purchased/contracted as part of the scope:

- Contractual Services with Mark Smith Excavating LLC to clear vegetation and remove debris associated with the clearing along the Chain of Lakes Trail Corridor from Dr. MLK Jr. Blvd – US 17/92. This will open up viewsheds and help minimize vegetation for camping and debris. Vegetation removal will also aid in drainage and wetland management. The City has a continuing contract for these services with Mark Smith Excavating LLC via RFQ 23-32.
- Purchase of a Tracked Remote Mower from Jet-Vac Equipment Company, LLC. This will be utilized to help maintain the areas of clearing and slopes along the trail once cleared. This will be purchased via a piggyback off of the Florida Sheriffs Association Contract.

Staff is coordinating with the Police Department and Safe Neighborhoods regarding camps and abandoned debris along the Trail Corridor and adjacent properties to be cleared.

The City Attorney has reviewed the Grant Agreement and a fully executed copy is on file. The project is targeted to start in mid-February and last 6-8 weeks. All funds and grant closeout documents must be received by the end of June 2025 to FDEP.

FINANCIAL IMPACT

The City was awarded $200,000 from the Trail-GO Grant. As part of the application, the City committed $52,000 as a match in existing operational contractual services associated with maintaining the Chain of Lakes Trail. The $200,000 grant is currently unbudgeted. As part of this agenda item, staff is recommending that a budget amendment be completed adding $200,000 in grant revenue to the General Fund as the Trail-Go Grant is a reimbursement grant. The expenses associated with the Trail-Go Grant contractual services and equipment purchase will come out of the Parks and Grounds 312 Account. The following items are being recommended as part of this project:

- Contractual Services for Clearing -$132,224.50 (Mark Smith Excavating LLC via RFQ 23-32)
- RC Mower Purchase -$67,775.50 (Piggybacked on Florida Sheriffs Association Contract)
- Match – Existing Contractual Services associated with maintaining of COL Trail -$52,000
- Total Project $252,000

STRATEGIC PLAN ALIGNMENT

- Pillar: Quality of Life
- Goal: 2.3 – Champion arts, beautification, and address blight to be an attractive and enriching community.

RECOMMENDATION

Staff recommends the City Commission to authorize a budget amendment adding $200,000 in grant revenue to the General Fund, the contractual services for clearing and purchase of equipment as described above, and take any other action necessary related to the completion of this project.

ATTACHMENTS

- Contractual Services quote (COL Trail Clearing Quote – Mark Smith Excavating LLC)
- RC Mower quote (RC Mower Quote_Q00732)

Construction bid form

Owner information

Name	City of Winter Haven
Address	
City, State ZIP	Winter Haven, Florida
Phone	863-291-5852
Email	mcampbell@mywinterhaven.com
Project name	Walking Trail Clearing

Contractor information

Company	Mark Smith Excavating LLC
Name	Mark Smith
Address	5641 Kelly Road
City, State ZIP	Plant City, Fl. 33565
Phone	813-293-4242
Email	williammark@cs.com
Completion date	

Scope of work

To mulch and mow underbrush and collect debris along Walking Trail Corridor from Dr. MLK Jr. Blvd north to pedestrian bridge just south of Hwy 17-92. . Trees 4 inches and over to remain except invasive species. Debris to be collected for placement in dumpsters for removal from site by City of Winter Haven.

Not included

Company proposal

Mark Smith Excavating LLC to provide machinery and manpower for the compleation of above work.
Total Amount $132,224.50

Mark Smith - Mark Smith Excavating LLC	12/30/2024 **Date**

Owner acceptance

	Date

JET-VAC Equipment Company, LLC

Date: 11/07/2024

Quoted To:
City of Winter Haven
Attn: Accounts Payable*
Finance-AP@mywinterhaven.com
Winter Haven FL 33880

Location: APOPKA
Quote Number: Q00732
Expiry Date: 12/31/2024
Salesperson: MEAGAN MEYERS
meagan@jet-vac.com
Responsible: HILARY HODGE
(803) 494-4430
hilary@jet-vac.com
Attention: Carlos De Jesus

We propose to furnish the equipment described herein in accord with the specification, terms, and conditions outlined.

RC Mowers R-52 — 67,775.50

Tracked Remote Mower, 52" Deck, Vanguard 37hp Engine (Gen 5.0)
4500 LB Winch Kit - Synthetic Rope, Receiver Mounted, Storage Bracket, 1 Year Warranty
4500 LB Winch Installation
Fire Extinguisher Kit w/ Quick Release Bracket
Fire Extinguisher Installation
Replacement Blade Kit, Straight, (6) Blades & Hardware
Replacement Belt Kit (All Belts)

Comments
Contract: FSA23-EQU21.0, Equipment
Group: Mower: Remote Controlled Brush Mower
Item: 282, RC Mowers, R-52, R-52
Effective October 1, 2023 through September 30, 2025
****
QUOTE AMOUNT REFLECTS FSA BASE & OPTIONS CONTRACT PRICING &
INCLUDES CONTRACT DISCOUNT - FREIGHT INLCUDED IN SALES PRICE
****

Selling Price: 67,775.50
Tax:

Net Selling Price:	67,775.50

Accepted by:

Prepared by:

DATE: January 13, 2025

TO: Honorable Mayor and City Commissioners

VIA: T. Michael Stavres, City Manager
M.J. Carnevale, Deputy City Manager

FROM: Gary M. Hubbard, Water Department Director

SUBJECT: Fiscal Year 2024/2025 SmartCover Sewer Monitoring Purchase

---

BACKGROUND

The Water Department initiated the gravity sewer level monitoring system patented by SmartCover in May 2021. The "Smart Level" system provides satellite monitoring of sewage levels in gravity sewer collection systems notifying Water Department staff in real time of rising water levels. Winter Haven Water currently has 45 SmartCovers and 16 SmartRain sensors throughout the sewer collection system that provide:

- Sanitary Sewer Overflows (SSO) Prevention
- Inflow and Infiltration (I&I) Correlation
- Storm water Management
- Entry Detection
- Cleaning Optimization
- Combined Sewer Overflow (CSO) Management
- H2S Monitoring
- Rain Fall Monitoring

Scheduled for this Fiscal Year is the addition of 10 SmartCovers and the "SmartCare" maintenance program, which includes:

- System Troubleshooting
- Parts and Battery Maintenance
- Quick Response by Local Representative
- Routine Maintenance
- Monitoring of Sites

The City currently has a sole source agreement with Hadronex, Inc., DBA: SmartCover System to provide the patented sewer level monitoring system and maintenance system.

FINANCIAL IMPACT

The SmartCover purchase costs are itemized below and are budgeted in Fiscal Year 2024/2025 in two accounts:

- SmartCover, Smartlevel Remote Sewer Monitoring in account 402-08-323-4605 in the amount of $65,600.

- SmartCover Maintenance Program in account 402-08-323-3404 in the amount of $51,200.

STRATEGIC PLAN ALIGNMENT

- Pillar: Environmental Stewardship
- Goal: 4.4 – Integrate the elements of the ONE water philosophy to ensure a balance between water supply and nature.
- Strategy: 4.4.3 – Explore and implement the best management practices and innovative approaches to water resource infrastructure that further protects the natural environment.

RECOMMENDATION

Staff recommends the City Commission approve the purchase of 10 additional SmartCover remote monitoring equipment and the SmartCover maintenance program for fiscal year 2024/2025.

ATTACHMENTS

- SmartCover, Smartlevel Remote Sewer Monitoring
- SmartCover Maintenance Program

SMARTCOVER®

SMARTLEVEL™ REMOTE SEWER MONITORING FOR WINTER HAVEN



PREPARED FOR

The City of Winter Haven
Winter Haven, FL

PREPARED BY

Doug Boccuti
SmartCover Regional Manager

January 6, 2025

January 6, 2025

Stephen Donnelly
City of Winter Haven
401 6th Street SW
Winter Haven, FL 33880

Mr. Donnelly:

Thank you for the opportunity to submit this price proposal for a SmartLevel solution to be installed in the City of Winter Haven.

The SmartLevel system offers cost effective satellite manhole monitoring to eliminate sewer overflows, optimize collection system cleaning, and accurately identify inflow and infiltration (I&I). The comprehensive data management and analytics software platform allows you to efficiently manage real-time data to enhance performance, reduce costs, and optimize resources.

Additional benefits include:

- Continuous system visibility through Iridium satellite communication with no disruptions during extreme weather events or poor coverage associated with cellular networks.
- No confined space entry and simple manhole retrofit minimizes field resources and safety hazards
- Full data available within an hour of installation

If you have any questions, please don't hesitate to contact me at 407-404-0882 or via email at dboccuti@smartcoversystems.com.

Best Regards,

Doug Boccuti
Regional Sales Manager
SmartCover

Contents

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1.2 TRAINING 3
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3.1 DELIVERY 6
3.2 TERMS AND CONDITIONS 6
4 ONGOING COSTS 7
5 ADDITIONAL TERMS & CONDITIONS, LIMITED WARRANTY 8
6 PURCHASE ACCEPTANCE 10

1 SMARTCOVER – SMARTLEVEL MONITORING SYSTEM

SmartCover is pleased to provide the following proposal for the installation and operation of ten (10) SmartCover, SmartLevel remote monitoring system in the collection system of Winter Haven. The price for the system is provided in Section 2 - Pricing Summary. Pricing on page 5 represents the purchase, installation, and ongoing operating costs for two (2) years.

SmartCover reserves the right to amend the pricing in the proposal if additional costs to SmartCover Systems are required by the Customer (ex. bonds, additional insurance requirements beyond standard coverages carried by SmartCover, etc.).

1.1 INSTALLATION

Installation: SmartCover will install the SmartLevel hardware (see Section 2) and, while on site, verify operations, including full two-way communications to the SmartCover system. NO CONFINED SPACE ENTRY IS REQUIRED for installation of the SmartLevel unit. Installation takes no longer than ninety (90) minutes per site, usually less. Traffic control is not included in this pricing proposal and, if needed, is assumed to be the responsibility of the Customer.

1.2 TRAINING

After installation of the units and verification of operation, SmartCover will provide training to gather and interpret the SmartLevel data. Training should take no longer than one (1) hour and will be performed online (or in person if installed by SmartCover). Instructions on general data access will still be provided after the installation.

1.3 SMARTCARE™ SERVICE

When purchased with battery and parts warranty, SmartCover Labor Warranty services offered in this proposal include:

- System troubleshooting
- Routine maintenance
- Parts and battery replacement

Services will be performed by a local SmartCover factory-trained representative. Adequate spare parts inventory will be maintained locally to minimize downtime of systems.

Damage to the units caused by the Customer or Customer contractors will be documented and invoiced at the time of service.

2 PRICING SUMMARY

Part Number	Description	Unit Qty	Unit Price	Extended Price
SC-D-SB-15	***SubSonic® System Components*** • **E-Box System Control** with onboard computer, modem, digital radio; fully potted and IP-68 rated. • **Distance Sensing Module (DSM)** with 0" to 79" sensor range, with 15' cable and dual sensor. • **PowerPack™-** lithium thionyl chloride battery with high power density. • **E-Dot™ antenna**, including antenna and installation kit. **Mounting bracket kit-** three-part amounting bracket set made of heavy gauge, hard-anodized aluminum; includes all mounting hardware.	10	$4,744	$47,440
System Parts Warranty	***ONE (1) Year, System Parts-Only Warranty*** • Limited Parts-Only Warranty on all SmartCover® System™ hardware. • See Warranty Statement for complete details- Section 6	10	Included	Included
EW-SC1	***One (1) Year, Extended System Parts-Only Warranty*** ● Limited Parts-Only Warranty on all SmartCover® System™ hardware. ● See Warranty Statement for complete details	10	$474	$4,740
PowerPack™ Warranty	***TWO (2) Year, PowerPack Warranty*** • Limited Parts-Only Warranty on the PowerPack™	10	Included	Included
ASM-SC2	***Active Site Management (ASM), Two-Year***: Comprehensive support services including: • Software subscription with *unlimited number of users* accessed with secure user name and password • Complete maintenance of all cloud based software • Regular feature updates and upgrades including *SmartTrend™*. • Hosting of data storage – unlimited data storage • Iridium Satellite connectivity service with bi-directional communication. • Advisories, Maintenance Alerts and Alarms issued to customer defined personnel via email and/or text message • Ongoing technical support via phone or online.	10	$812	$8,120
Installation Labor	**Installation Completed by trained SmartCover tech.**	10	$500	$5,000
Labor Warranty	**SmartCare™ Service:** System troubleshooting and routine maintenance of installed SmartCover systems, One-Year	N/A	N/A	N/A
Tax*	**Not Included**	1	N/A	N/A
Shipping	**Shipping and Handling** **Ground shipment FOB Escondido, CA**	10	$30	$300
TOTAL	**All items above**			**$65,600**

*Note: The Customer is responsible for any applicable sales tax or for providing SmartCover a tax exempt certificate. Taxes will be added as an additional line item on invoices.

3 STANDARD TERMS & CONDITIONS

3.1 DELIVERY

- Standard: Four (4) weeks upon receipt of a Purchase Order and with receipt of complete engineering and site information from the customer as requested. To note: The "standard four (4) weeks" is not a guarantee but a good faith estimate. It is strongly recommended that an order be placed as early as possible. Reasonable efforts will be made to provide earlier delivery, if requested.
- All customers will be notified of the shipment date upon Order Acknowledgement.
- Actual availability may vary depending on total demand.

3.2 TERMS AND CONDITIONS

- Payment: Net 30 days.
- Cancellations: For all orders of less than $10,000, cancellation is accepted prior to shipment. For orders equal to or greater than $10,000, a 15% restocking charge is applied for cancellation.
- Returns: Returns are accepted with a valid Return Material Authorization (RMA) number only. Contact Customer Service for an RMA number.
- All paid Warranties and Active Site Management (ASM) services begin on the day of shipment.

4 ONGOING COSTS

Ongoing Costs

After the first year of operation, the following fees will provide ***continued comprehensive services*** including ***software support, data storage, upgrades, added features, and satellite connectivity.***

These are *annual charges* paid prior to the start of the year.

Part number	Months covered	Payment schedule	Cost per year
Active Site Management (ASM) (Required) *Website Access,* software subscription, satellite connectivity, data analysis, data storage, trend advisories, maintenance alerts, alarms, online S/C monitoring.			
ASM-SC1R	12	Every year	**$430 Each**
ASM-SC2R	24	Every other year	**$835 Each**
PowerPack™ Warranty (Optional) *PARTS-ONLY, PowerPack™ Warranty* for each installation, offering unlimited replacements during the Warranty term.			
PW-5C1R	12	Every year	**$243 Each**
PW-5C2R	24	Every other year	**$471 Each**
Systems Parts Warranty Extension (Optional) *PARTS-ONLY, Warranty for each installation,* covers: E-Box System Control, Distance Sensing Module (DSM), antenna, and mounting brackets			
EW-SC1R	12	Every year	**$488 Each**
EW-SC2R	24	Every other year	**$945 Each**
SmartCare™ Labor Warranty Extension (Optional) System troubleshooting and routine maintenance			
Labor Warranty	12	Every Year	**$1,000 Each**

SmartRain Environmental Data Service (Optional) Supplies hourly data for rainfall. Cost is per site per year.			
ASM-RD-1R	12	Every year	**$117**
ASM-RD-2R	24	Every other year	**$226**

5 ADDITIONAL TERMS & CONDITIONS, LIMITED WARRANTY

Mutual Hold Harmless

SmartCover agrees, to the fullest extent permitted by law, to indemnify and hold harmless the Customer from any and all claims that may arise, or damages that may result, to SmartCover or SmartCover staff to the extent caused by SmartCover's negligence during the performance of this contract. Customer agrees, to the fullest extent permitted by law, to indemnify and hold harmless SmartCover, its officers, directors, employees and subcontractors (collectively, SmartCover) from any and all claims that may arise, to the extent caused by the Customer's negligent acts in connection with the installation, operation, or use of the SmartCover, and the acts of its contractors, subcontractors or consultants or anyone for whom the Customer is legally liable. Neither SmartCover nor the Customer shall be obligated to indemnify the other party in any manner whatsoever for the other party's negligence.

Loss of Communications

Customer acknowledges that SmartCover is not responsible for the loss of wireless communication or internet communications or any communications used in the operation of this system.

Advisory Only

SmartCover is an advisory service only. As such, SmartCover and its founders, owners, or staff are not responsible for any damage of any kind or from any cause whatsoever that may result from, in relation to, in connection with, due to, or as a result of the installation or operation of the system, including without limitation, equipment failure, or any consequential damages caused by, or resulting from, the use or installation of the SmartCover system.

Limited Warranty

The equipment components of the SmartCover are warranted free from material defects of material and workmanship for a period of one (1) year from the date of installation. Unless otherwise stated, the SmartCover warranty herein is a parts-only warranty. Should the Customer discover any condition that might invoke a warranty claim, they are to expeditiously and without delay notify the SmartCover Technical Services group. Upon notification, SmartCover will assess and instruct the user on follow-on actions. Should a component fail as a result of a defect in material or workmanship, SmartCover will replace the component or repair it at the SmartCover location. For all valid warranty claims, as determined by SmartCover reasonable freight charges to and from Customer shall be paid by SmartCover. In all cases, SmartCover shall determine the shipping method and/or carrier unless otherwise agreed to in writing by

Customer and SmartCover. Upon approval of a warranty failure by SmartCover, SmartCover will either repair or replace the defective component at SmartCover sole discretion.

The foregoing warranty is exclusive. Repair or replacement in the manner provided above shall be the sole and exclusive remedy for breach of warranty and shall constitute fulfillment of all liabilities of SmartCover with respect to the quality and performance of the products. This warranty does not cover damage or repairs or replacements by any cause beyond the control of SmartCover, including acts of nature, improper use, lack of proper maintenance, vandalism, or unauthorized repair. SmartCover shall not be liable for any actual, exemplary, indirect or consequential damages, including damages for loss of goodwill or profits and/or losses, that stem from a failure or malfunction of the SmartCover system.

SmartCover does not provide traffic control. Customer must provide traffic control for installation and servicing of all units.

In no event shall SmartCover's liability, whether in contract or in tort (including negligence and strict liability), exceed the price of the Product from which such liability arises.

Rights to Use

The SmartCover® family of products and all resulting data produced by them are proprietary and protected by a suite of intellectual property assets including but not limited to patents, trademarks and copyrights. The right to use these products and data is limited to the purchaser only. Any disclosure, use or other unauthorized disposition of any SmartCover® product or proprietary data outside the purchaser's organization, including third-party consultants, is prohibited.

6 PURCHASE ACCEPTANCE

Prices listed are valid for 60-days from this proposal date.

ACTION: Please include this entire document with Purchase Order

Signatures

SmartCover	**City of Winter Haven**
_____	_____
Signature	*Signature*
Doug Boccuti	
Printed Name	_____
	Printed Name
Regional Sales Manager	
Title	_____
	Title
January 6, 2025	
Date	_____
	Date

SMARTCOVER®

SMARTCARE™ MAINTENANCE PROGRAM FOR WINTER HAVEN FL



PREPARED FOR

City of Winter Haven

Winter Haven, FL

PREPARED BY

Doug Boccuti
SmartCover Regional Manager

January 6, 2025

January 6, 2025

Thank you for the opportunity to submit this price proposal for the SmartCare solution to be utilized in Winter Haven, FL.

When purchased with battery and parts warranty, SmartCover Labor Warranty services offered in this proposal include:

- System troubleshooting
- Routine maintenance
- Parts and battery replacement
- Monitoring of sites
- Quick response

Services will be performed by a local SmartCover factory-trained representative. Adequate spare parts inventory will be maintained locally (with local technicians) to minimize downtime of systems.

Damage to the units caused by the Customer or Customer contractors will be documented and invoiced at the time of service.

If you have any questions, please don't hesitate to contact me at 407-404-0882 or via email at dboccuti@smartcoversystems.com.

Best Regards,

Doug Boccuti
Regional Sales Manager
SmartCover

2 PRICING SUMMARY

Part Number	Description	Unit Qty	Unit Price	Extended Price
Labor Warranty	**SmartCare™ Service:** System troubleshooting and routine maintenance of all installed SmartCover systems, One-Year	64	$800	$51,200
TOTAL	**All items above**			**$51,200**

3 OPTIONAL INSTALLATION/RELOCATION COSTS

Part Number	Description	Unit Qty	Unit Price	Extended Price
Installation	**Installation Completed by trained SmartCover tech.**	1	$500	$500
Relocation	**Relocation and Installation of any unit by SmartCover tech.**	1	$650	$650

PURCHASE ACCEPTANCE

ACTION: Please include this entire document with Purchase Order

Signatures

SmartCover	**Winter Haven, FL**
_____	_____
Signature	*Signature*
Doug Boccuti	
Printed Name	_____
	Printed Name
Regional Sales Manager	
Title	_____
	Title
January 6, 2025	
Date	_____
	Date

DATE: January 12, 2025

TO: Honorable Mayor and City Commissioners

VIA: T. Michael Stavres, City Manager
M.J. Carnevale, Deputy City Manager

FROM: Gary M. Hubbard, Water Department Director

SUBJECT: Award of the Master Contract for Progressive Design-Build of the Water Resource Facility at Pollard Road and Wastewater Treatment Plant #2 Abandonment, to Wharton-Smith, Inc.

BACKGROUND

On March 6, 2024, the City of Winter Haven issued a Request for Qualifications, RFQ-24-18, for the Progressive Design-Build of the Water Resource Facility at Pollard Road and Wastewater Treatment Plant #2 Abandonment.

On July 22, 2024, the City Commission authorized the negotiation of a contract with Wharton-Smith, Inc. The multi-year project will involve the phased upgrade of WWTP #3, the conveyance of wastewater flows from WWTP #2 to WWTP #3, the decommissioning of WWTP #2, and the construction of a 12 million gallons per day (MGD) water resource facility (WRF) with future expansion capabilities up to 24 MGD.

Wharton-Smith, Inc. will provide comprehensive services throughout the preliminary design, design, and construction phases, managed through a series of subsequently issued task orders ("Task Orders").

FINANCIAL IMPACT

There are no financial impacts associated with the Master Contract. Staff will present subsequent Task Orders for review by the City Manager and presentation to the City Commission for review and approval.

STRATEGIC PLAN ALIGNMENT

- Pillar: Infrastructure
- Goal: 3.3 – Ensure an actionable strategy is in place for the future of water resources.

- Strategy: 3.3.1 – Adopt, implement, and maintain the One Water Master Plan to ensure sufficient capacity for potable, reuse and wastewater needs.

RECOMMENDATION

Staff recommends the City Commission approve the Master Progressive Design Build Contract between the City of Winter Haven, Florida and Wharton-Smith, Inc. and authorize the City Manager to execute the said Contract and further authorize the City Manager, or his designee, take any and all actions necessary and related to the City's performance thereto.

ATTACHMENT

- Master Progressive Design Build Contract

Master Progressive Design-Build Contract

Between

the City of Winter Haven, a Florida municipal corporation

and

Wharton-Smith, Inc.

This "**Master Progressive Design-Build Contract"** (hereafter "Contract" or "Agreement") between the **City of Winter Haven**, a Florida municipal corporation (hereafter "City" or "Owner") and **Wharton-Smith, Inc. 4912 W. Salle Street, Tampa, FL 33607,** (hereafter "Design-Builder") is made and entered into this ____ day of January, 2025.

W I T N E S S E T H:

WHEREAS, on March 6, 2024, the City issued a "request for qualifications" (RFQ-24-18) (the "RFQ") seeking applications from qualified Design-Build firms interested in providing design and construction services for Progressive Design Build for the Water Recycling Facility at Pollard Road / Wastewater Treatment Plant #2 Abandonment (hereafter "Project") to be constructed on designated properties owned by the City as identified in the RFQ; and

WHEREAS, on June 20, 2024, the City received three (3) responses to the RFQ which were opened by the City's Procurement Manager in a publicly noticed meeting; and

WHEREAS, on June 24, 2024, the City's "Selection Committee" met and, in accordance with the Consultants' Competitive Negotiation Act, Section 287.055, Florida Statutes ("CCNA"), reviewed all of the responding firms' submittals, and then ranked all firms in order of preference after evaluating the firms' statements of qualifications and performance data on file; and

WHEREAS, on June 28, 2024, the Selection Committee interviewed the top three firms and ranked Design-Builder as the preferred qualified firm to provide the City with Design Build services for the Project; and

WHEREAS, this Agreement is the embodiment of the City and Design-Builder's negotiations pursuant to the CCNA; and

WHEREAS, the Project envisioned by the RFQ consists of numerous incremental components and phases that build upon each other and stabilize, improve, and expand the water recycling capabilities and capacities of the City, and which, when fully completed, will deliver the full and complete envisioned Project to the City; and

WHEREAS, Design-Builder agrees to design, construct and otherwise furnish such incremental components and/or phases of the complete Project to the City as may be assigned to Design-Builder by task

order, each of which shall be designed, constructed, and otherwise furnished in exchange for set sums, each to be known as a "Task Design Price" and a "Task Guaranteed Maximum Price"; and

WHEREAS, the Project is a living and evolving concept subject to ordinary political, budgetary, and regulatory controls that the parties anticipate will change over time and over the life of the Project, and which the parties acknowledge will affect the ultimate scope of the Project and of each individual task order assigned to Design-Builder;

NOW THEREFORE, in exchange for the mutual consideration given herein, receipt of which is acknowledged by the parties as sufficient and binding, the City and the Design-Builder agree as follows:

ARTICLE 1

GENERAL PROVISIONS

§1.1 – Incorporation of Recitals. The foregoing recitals are incorporated herein by the parties as true and correct statements forming the factual basis for entry into this Agreement between Owner and Design-Builder.

§1.2 – General Definitions & Interpretation of Contract Documents. Words utilized in the Contract Documents shall have their everyday meaning, provided however, that where one of the following listed terms is utilized in the Contract Documents, such term shall have its corresponding meaning:

"*Applicable Laws*" means all laws, statutes, ordinances, codes, building codes, regulations, rules, orders and resolutions of all national, administrative, state, local, municipal, and other governing bodies relating to Project or to the performance of Services or Work.

"*Change Order*" means a written order to Design-Builder executed by the Owner and the Design-Builder in accordance with this Agreement authorizing and directing an addition to, deletion from, or adjustment or revision to the language and requirements of the Contract Documents, or of an individual Task Order issued pursuant to the Contract Documents, and which may include, by way of example only and not of limitation, an adjustment to the compensation payable to Design-Builder including any Task Design Price and/or Task Guaranteed Maximum Price, and an adjustment to the time for performance of any individual assignment, task, component, or phase of Work, or any combination thereof.

"*Completion of Task Design Phase Requirements*" means the completion of all Work required by, and in compliance with, the Contract Documents for the Design Phase of the assignment, task, component or phase of Project Work as articulated in the relevant Task Order, including final drafts of plans, specifications, technical specifications, drawings, and any other Design document necessary to obtain approval from governmental authorities to proceed with further Project Work, including by way of example only and not of limitation, construction.

"Contract Times" means the inclusive set of date deadlines established in each Task Order for reaching identified construction targets such as Substantial Completion and Final Completion.

"*Day(s)*" means calendar day unless specifically stated otherwise.

"*Design-Builder*" means *{Name of Contracting Party & Corporate Status}.

"*Final Task Order Completion*" means the completion of all Work required by an individual Task Order in compliance with the Contract Documents including, by way of explanation and not limitation, start-up, final testing, obtaining final regulatory approvals from all applicable authorities, completion of all punch lists, obtaining the final certificate of occupancy and/or completion, and all preparations necessary to operate and maintain the construction deliverable identified in the Task Order.

"*Other Contractors*" means any contractor, but not including Design-Builder or the Subcontractors, with whom Owner enters into a direct contract for the performance of any portion of the Work.

"*Owner*" means the City of Winter Haven, a Florida municipal corporation.

"*Owner's Representative*" means the individual named in writing by Owner to act on Owner's behalf in the administration of this contract. Owner's Representative does not have authority to waive or modify any condition or term of the Contract Documents.

"*Preliminary Design*" means any and all design documents constituting the Preliminary Design for an individual Task Order as required and defined in Owner's contract with design professionals.

"Progress Payment(s)" means the periodic payments to be made to Design Builder under this Contract for Design Work and Construction Work on Task Orders, as applicable.

"Project" means the complete work as defined herein and as modified by the Contract Documents, consisting of incremental components and/or phases as may be assigned to Design-Builder by Task Order.

"*Project Documents Binder*" means the official binder kept by the City containing all of the Contract Documents, the required forms to be filled out by or utilized by the Design-Builder in accordance with the Contract Documents, and the official copy of the City-approved Task Orders, plans, specifications and other design documents for the Project.

"*Services*" means those services, functions, roles, responsibilities, obligations and duties required of Design-Builder pursuant to the terms of the Contract Documents.

"Site" means the physical location of the Project, the Superintendent's office, and materials storage areas.

"*Subcontracts*" means the contracts between Design-Builder and any Subcontractor.

"*Subcontract Costs*" means those sums properly paid or due and payable by Design-Builder under the terms of the Subcontracts.

"*Subcontractors*" means all persons, firms or corporations furnishing labor or materials in privity with or under the supervision of the Design-Builder.

"*Substantial Task Order Completion*" means that stage of completion of a Task Order, including relevant testing, appropriate interim approval by any applicable regulatory authority, and receipt of any necessary interim certificate of occupancy and/or completion, such that the Work required by Task Order is usable by Owner for the purpose for which intended.

"*Substantial Completion of Task Order A/E Work*" means that stage of completion of Task Design

Phase Services where architectural and engineering work is sufficiently complete such that the Task Design Work is usable by Owner for the purpose for which it was intended.

"*Superintendent*" means the executive representative of the Design-Builder who shall be present on the site at all times during progress of the Work and shall be authorized to receive and fulfill instructions from the Owner, and capable of properly supervising the Work. However, all Change Orders reflecting a change in a Task Guaranteed Maximum Price and/or time shall only be approved by Design-Builder's Project Manager, it being understood that the Superintendent shall not have authority to approve changes.

"*Surety*" means the person, firm, or corporation bound by the contract with and for the Design-Builder and responsible for the Design-Builder's acceptable performance of the work and for payment of all debts pertaining thereto.

"*Task Construction Phase*" means that portion of the individual Work assigned pursuant to Task Order that commences upon completion of the Task Design Phase and ends upon Owner's Representative's execution of the relevant Certificate of Final Completion.

"*Task Construction Phase Services*" means Services rendered during the Task Construction Phase of the Work identified in the relevant Task Order.

"Task Construction Work" means the labor and materials furnished by the Design-Builder or Subcontractors for the Task Construction Phase of the relevant Task Order as more specifically set forth therein, pursuant to the general terms of the Task Order and of this Agreement.

"Task Design Phase" means that portion of the individual Work assigned pursuant to a Task Order that commences upon Task Order assignment and ends upon the commencement of the Task Construction Phase.

"*Task Design Phase Services*" means Services rendered during the Task Design Phase of the Work identified in the relevant Task Order.

"*Task Design Price*" means the Design-Builder's not-to-exceed price to design the Work assigned to the Design-Builder by a Task Order and to perform Task Design Phase Services.

"Task Design Work" means the labor furnished by the Design-Builder or subcontractors for the Task Design Phase of the relevant Task Order as more specifically set forth therein, pursuant to the general terms of the Task Order and of this Agreement.

"Task Order" means the City-approved set of instructions to Design-Builder to commence the Task Design Phase for an incremental portion, component, and/or phase of the Work assigned, followed by the Task Construction Phase, or for any portion of either phase thereof.

"*Value Engineering*" means the detailed analysis of systems, equipment, materials, services, facilities, and supplies required by the Contract Documents for the purpose of achieving the desired and essential functions of the Owner's program at the lowest Life Cycle Cost consistent with required and necessary performance, reliability, quality and safety. "*Life Cycle Cost*" means the sum of all costs of the construction deliverable over its useful life, and includes the cost of design, construction, acquisition, operation, maintenance, and salvage/resale value.

"Work" means any labor, materials, or services furnished by Design-Builder, or by Design-Builder's

subcontractors, pursuant to this Contract and any Task Order issued pursuant to this Contract to include any City-approved specifications created by Design-Builder for use in the construction of the contracted-for improvements.

§1.3 – Contract Documents. The "Contract Documents," such documents together as a whole comprising the entire agreement of the parties (collectively referred to as the "Contract"), shall be the following:

(a) The RFQ, and all attachments attached hereto as Exhibit "A" and incorporated by reference;

(b) This Contract;

(c) The RFQ Qualifications Proposal to the Owner, attached hereto as Exhibit "B" and incorporated herein by reference;

(d) Required Certificates of Insurance and Endorsements pursuant to the terms of this Agreement;

(e) Required Performance and Payment Bonds;

(f) Addenda, Modifications, Task Orders, Change Orders and Field Orders as issued to the Design-Builder by the Owner and agreed to by Design-Builder;

(g) Plans, specifications, and other design documents prepared by Design-Builder to perform and complete Work for an amount not exceeding the Task Guaranteed Maximum Price for each Task Order as approved by the City;

(h) All affidavits and forms included in the Master Project Documents Binder;

(i) Further amendments to the Contract as prepared in writing, signed by both the City and the Design-Builder; and

(j) For each Task Order, the "Task Guaranteed Maximum Price".

The Contract Documents are complementary as to the design and construction of the overall Project; what is called for by one is called for by all. If during the performance of the Work, Design-Builder or any member of Design-Builder or any subcontractor finds a conflict, error or discrepancy in the Contract Documents, Design-Builder shall report the discrepancy to the City in writing at once before proceeding with the Work affected thereby. The City, upon receipt of such notice, will promptly investigate the circumstances and give appropriate instructions to the Design-Builder. Until such instructions are given, any work done by the Design-Builder after the discovery of such conflict, error, or discrepancy, which is directly or indirectly affected by such conflict, error or discrepancy, will be at its own risk and it shall bear all costs arising therefrom. In resolving conflicts, errors or discrepancies, the City's instructions to the Design-Builder shall be the final interpretation of the requirements of the Contract Documents.

§1.4 – Successors and Assigns. Design-Builder shall not assign its rights under the Contract Documents, excepting its right to payment, nor shall it delegate any of its duties under the Contract Documents without Owner's written consent. Owner shall have the right to assign its rights under this contract, but any such assignment shall not relieve Owner of its obligations hereunder. Subject to the provisions of the immediately preceding sentence, Owner and Design-Builder, respectively, bind themselves, their successors, assigns and legal representatives to the other party to this contract and to the

successors, assigns and legal representatives of such other party with respect to all terms and conditions of this contract.

§1.5 – Governing Law; Venue; Attorneys' Fees. This Contract shall be governed by the laws of the State of Florida. Venue for any litigation arising hereunder shall be exclusively in the state courts in and for Polk County, Florida. The prevailing party in any litigation arising hereunder shall be entitled to recover its reasonable attorneys' fees, costs and expenses of suit, trial and appellate.

§1.6 – Limitation on Municipal Indemnity. To the extent that any of the Contract Documents call for Owner to indemnify Design-Builder, or any party, or to the extent that any transaction made in the course of construction of the Project requires the Owner to indemnify any third-party, the following sentence shall be appended to the indemnity and shall control the indemnity as if set forth therein:

"provided, however, that regardless of whether any such obligations incurred hereunder are based on tort, contract, statute, strict liability, negligence, product liability or otherwise, the obligations of the Owner under this indemnification provision shall be limited in the same manner that would have applied if such obligations were based on, or arose out of, an action at law to recover damages in tort and were subject to section 768.28, Florida Statutes, as that section existed at the inception of the Master Progressive Design-Build Contract between Owner and Design-Builder dated *{Date of Contract}."

The addition of this language pursuant to this Agreement shall not be construed to create Owner indemnifications where none are expressly made in the terms and conditions of the Contract Documents, nor shall it create indemnifications where none are expressly made in the terms and conditions of any transaction made in the course of construction of the Project, whether implied or otherwise. Provided however that such language is not intended to exclude and does not exclude any liability in contract that the Owner may have to Design-Builder under this Agreement.

§1.7 – Severability. Should a court or other competent authority render invalid any provision of this Agreement, the parties agree that this shall not in any manner affect the enforceability of the other provisions herein.

§1.8 – Neutral Interpretation. Any controversy over the construction of this Contract shall be decided neutrally and without regard to events of authorship or negotiation.

§1.9 – Section Headings. Any section or paragraph headings appearing in this Contract have been inserted for the sole purpose of convenience and ready reference of the parties. They do not purport to, and shall not be deemed to, define, limit or extend the scope or intent of the sections and paragraphs to which they may pertain.

§1.10 – Compliance with Applicable Laws Including But Not Limited To Public Records Laws.

(a) The Design-Builder agrees to comply with all federal, state, and local laws or ordinances applicable to all of the provisions of the Contract (including, but not limited to, building codes, fire and safety regulations, and environmental regulations) and specifically acknowledges the applicability of the Public Records provisions of Florida law found in Chapter 119, Florida Statutes and as more specifically set forth in this Paragraph below. The Design-Builder represents and warrants unto the Owner that no elected official, officer, employee, or agent of the Owner has any interest, either directly or indirectly, in the business of the Design-Builder to be conducted hereunder. The Design-

Builder further represents and warrants to the Owner that it has not employed or retained any company or person, other than a bona fide employee working solely for the Design-Builder, to solicit or secure this Contract, and that it has not paid, or agreed to pay, or given or offered any fee, commission, percentage, gift, loan, or anything of value to any person, company, corporation, individual, or firm, other than bona fide Personnel working solely for the Design-Builder, in consideration for or contingent upon, or resulting from the award or making of this Contract. Further, the Design-Builder also acknowledges that it has not agreed, as an expressed or implied condition for obtaining this Contract, to employ or retain the services of any person, company, individual or firm in connection with carrying out this Contract. It is absolutely understood and agreed by the Design-Builder that, for the breach or violation of this Paragraph, the Owner shall have the right to terminate this Contract without liability and at its sole discretion, and to deduct from any amounts owed, or to otherwise recover, the full amount of any value paid by the Design-Builder. The Design-Builder shall also require, by contract, that all subcontractors shall comply with the provisions of this Paragraph.

(b) *Public Records*. Design-Builder agrees to:

1. Keep and maintain public records required by the public agency to perform the service.

2. Upon request from the public agency's custodian of public records, provide the public agency with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119 of the Florida Statutes or as otherwise provided by law.

3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the Design-Builder does not transfer the records to the public agency.

4. Upon completion of the contract, transfer, at no cost, to the public agency all public records in possession of the Design-Builder or keep and maintain public records required by the public agency to perform the service. If the Design-Builder transfers all public records to the public agency upon completion of the contract, the Design-Builder shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Design-Builder keeps and maintains public records upon completion of the contract, the Design-Builder shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the public agency, upon request from the public agency's custodian of public records, in a format that is compatible with the information technology systems of the public agency.

IF THE DESIGN-BUILDER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE DESIGN-BUILDER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CITY'S CUSTODIAN OF PUBLIC RECORDS AT (863) 291-5600, RECORDS

@MYWINTERHAVEN.COM, 451 THIRD STREET, N.W., WINTER HAVEN, FLORIDA 33881.

If the Design-Builder does not comply with a public records request, Owner shall enforce the contract provisions which may include immediate termination of contract.

(c) *Scrutinized Companies*. Section 287.135 of the Florida Statutes states that a company is ineligible to, and may not, bid on, submit a proposal for, or enter into or renew a contract with the City for goods or services in any amount if at the time of bidding on, submitting a proposal for, or entering into or renewing a contract if the company is on the Scrutinized Companies that Boycott Israel List, created pursuant to Section 215.4725 of the Florida Statutes or is engaged in a boycott of Israel; or for One Million Dollars ($1,000,000.00) or more if, at the time of bidding on submitting a proposal for, or entering into or renewing a contract, the company is on the Scrutinized Companies with Activities in Sudan List, the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to Section 215.473 of the Florida Statutes, or is engaged in business operations in Cuba or Syria. Design-Builder certifies that it does not and did not at any time since the submission of a response to the initial solicitation participate in a boycott of Israel; that it is not on the Scrutinized Companies that Boycott Israel List, Scrutinized Companies with Activities in Sudan List, or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List; and that it does not engage in business operations in Cuba or Syria. Design-Builder understands that a false certification may subject it to civil penalties, attorneys' fees and costs pursuant to Section 287.135 of the Florida Statutes and that the City may terminate this Agreement at the City's option if the Design-Builder is found to have submitted a false certification.

(d) *E-Verify*. Pursuant to Section 448.095(5)(a), Florida Statutes, the City or a contractor or subcontractor thereof may not enter into any contract unless each party to the contract registers with and uses the E-Verify system. By executing this Agreement, Design-Builder:

1. agrees and acknowledges that it is obligated to comply with the provisions of Section 448.095(5)(a), Florida Statutes, to register with and use the E-Verify system to verify the work authorization status of all new employees of the Design-Builder and any subcontractor hired by the Design-Builder;

2. agrees and acknowledges that if it enters into a contract with a subcontractor, the subcontractor must provide it with an affidavit attesting that the subcontractor does not employ, contract with, or subcontract with, an alien who is not duly authorized to work by the immigration laws or the Attorney General of the United States of America, which it must hold and maintain for the duration of this Agreement;

3. certifies to the City that it has not, within the one (1) year period preceding the effective date of this Agreement, had a contract terminated by a Florida public agency pursuant to Section 448.095(5)(c), Florida Statutes;

4. agrees and acknowledges that any failure to comply with Florida's labor regulations relating to the employment of unauthorized aliens, Florida's E-Verify laws, or the E-Verify provisions of this Section 1.10(d) of this Agreement, will lead to termination of this Agreement; and

5. agrees and acknowledges that if a subcontractor knowingly violates Florida's labor regulations relating to the employment of unauthorized aliens or Florida's E-Verify laws, fails to provide the Design-Builder with an affidavit as required by Florida's E-Verify laws, or the City has a good faith belief that a subcontractor has knowingly violated Florida's labor regulations relating to the employment of unauthorized aliens or Florida's E-Verify laws and notifies the Design-Builder of the same, the subcontract must be terminated immediately.

The City shall terminate this Agreement pursuant to Section 448.095(5)(c), Florida Statutes, if it has a good faith belief that the Design-Builder has knowingly violated Florida's labor regulations relating to the employment of unauthorized aliens or Florida's E-Verify laws. Any challenge by the Design-Builder to a termination of this Agreement, or by a subcontractor to termination of its agreement with Design-Builder, pursuant to Section 448.095(5)(c), Florida Statutes, must be filed in the Circuit Court no later than 20 calendar days after the date of termination. Design-Builder and City agree, as required by Florida law, that a termination of this Agreement under Section 448.0959(5), Florida Statutes shall not be considered a breach of contract. Further, Design-Builder and City agree that if this Agreement is terminated pursuant to Section 448.095(5), Florida Statutes, the Design-Builder may not be awarded a public contract for a period of 1 year after the date of termination.

(e) *No Consideration of Social, Political or Ideological Interests*. Design-Builder acknowledges receipt of notice from the City of the provisions of Section 287.05701 of the Florida Statutes which prohibits local governments from giving preference to a prospective contractor based on the prospective contractor's social, political or ideological interests or requesting documentation from, or considering, a prospective contractor's social, political, or ideological interests when determining if the prospective contractor is a responsible vendor. By executing this Agreement, Design-Builder affirms and agrees that the City did not request any documentation about, or give any consideration to, the Design-Builder's social, political, or ideological interests in the Agreement award process.

(f) *Contracting with Foreign Entities*. Design-Builder certifies that it is not owned by the government of the People's Republic of China, the Russian Federation, the Islamic Republic of Iran, the Democratic People's Republic of Korea, the Republic of Cuba, the Venezuelan regime of Nicolás Maduro, or the Syrian Arab Republic (collectively "Foreign Countries of Concern"), nor is it owned by any agency of or any other entity of significant control of any such government. Further, Design-Builder certifies that no government of a Foreign Country of Concern has a "controlling interest" in Design-Builder as the term is defined in Section 287.138(1)(a) of the Florida Statutes, nor is the Design-Builder organized under the laws of a Foreign Country of Concern, nor does the Design-Builder have its principal place of business located in a Foreign Country of Concern. If Design-Builder has access to the personal identifying information of any individual as a result of this Agreement, Design-Builder agrees to notify the City in advance of any contemplated transaction that would cause Design-Builder to be disqualified from such access under Section 287.138 of the Florida Statutes. Design-Builder agrees to furnish the City with an affidavit signed by an officer or representative of the Design-Builder under penalty of perjury at any time and upon request that the statements in this paragraph are true and correct.

(g) *Public Entity Crimes*. A "person" or "affiliate" as defined in Section 287.133, Florida Statutes, who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may

not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, Florida Statutes for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list. By executing this Contract, Design-Builder certifies and warrants that the submission of its proposal in response to the RFQ and the award of this Contract does not violate Section 287.133, Florida Statutes, or violate Section 287.134, Florida Statutes. Further, as a condition of the Contract Documents, Design-Builder represents and warrants to the City that the Design-Builder and all subcontractors are not under investigation for any alleged violation of such statutes.

(f) *No Coercion for Labor or Services*. Design-Builder acknowledges that Section 787.06 of the Florida Statutes requires each nongovernmental entity that is executing, renewing, or extending a contract with a public governmental entity to provide the governmental entity with an affidavit signed by an officer or authorized representative under penalty of perjury attesting that the nongovernmental entity does not use coercion for labor or services as those terms are defined by law. Design-Builder agrees to furnish the City with the necessary affidavit signed by an officer or authorized representative of the Design-Builder under penalty of perjury at any time and upon request.

§1.11 – Notices. Any notice required by this Agreement shall be in writing and shall be either delivered in person, sent by overnight courier such as United Parcel Service or Federal Express, or mailed by United States Mail, certified mail with return receipt requested and all postage charges prepaid. For any notice other than a formal invoice, electronic mail may be used together with and followed by delivery of the notice in person, dispatch of the notice by overnight courier, or mailing of the notice by United States Mail, certified mail with return receipt requested and all postage charges prepaid. Except where receipt is specifically required in this Agreement, any notice transmitted in accordance with these standards to the proper address as set forth below shall be deemed to be effective three days after the date of postmark; notices delivered in person shall be effective upon delivery; notices sent by electronic mail and followed up by one of the other delivery methods identified herein above shall be effective upon receipt by the intended recipient's electronic mail server; and notices sent by overnight courier shall be effective as of the next business day after being placed into the hands of the courier service, properly addressed; and any time period shall begin running as of that date, whether or not the notice is actually received. Notices shall be given in the following manner, or in such other manner as may be directed by either party, in writing, from time to time:

To Owner: City of Winter Haven

Attention: T. Michael Stavres

City Manager

451 Third Street NW

Winter Haven, FL 33881

mstavres@mywinterhaven.com

With a copy to: Frederick J. Murphy, Jr., Esquire

(which shall not constitute notice)

City Attorney
Boswell & Dunlap LLP
245 South Central Avenue
Bartow, FL 33830
fjm@bosdun.com

To Design-Builder:

Wharton Smith, Inc.
Attention: Timothy S Smith
Address Line 1: 750 Monroe Rd
Address Line 2:
City, State, Zip: Sanford Fl 32771
Email: tsmith@whartonsmith.com

With a copy to:
(which shall not constitute notice)

Name : John French
Firm: Wharton Smith, Inc
Address Line 1: 4912 W La Salle Street
Address Line 2:
City, State, Zip: Tampa, Fl 33607
Email: jfrench@whartonsmith.com

§1.12 – No Third Party Beneficiaries. Nothing contained in this Contract shall create a contractual relationship with, or any rights in favor of, any third party, including any Subcontractor.

§1.13 – Exhibits. All exhibits annexed hereto are incorporated by reference and made a part of the Contract and the Contract Documents.

§1.14 – Use of Term "Including". The terms "including", "includes", and their derivatives are not intended as terms of limitation, and shall be deemed in each instance to be followed by the phrase "without limitation."

§1.15 – Waiver. No waiver by Owner of any one or more defaults by Design-Builder in the performance of the provisions of this Contract shall be construed as a waiver of any other defaults, whether of a like kind or different nature. No waiver by Design-Builder of any one or more defaults by Owner in the performance of the provisions of this Contract shall be construed as a waiver of any other defaults, whether of a like kind or different nature.

§1.16 – Mediation of Disputes. In the event a dispute arises between the parties to the Contract as to any of the provisions of the Contract Documents, the performance due under the Contract Documents, or the Contract as a whole, the parties agree that upon the written request of either party, they will attempt to resolve the dispute through non-binding mediation. Each party agrees to participate in the mediation as

soon as possible after a request is made and to participate in good faith. The parties further agree that the mediation will be conducted by a Mediator certified by the Supreme Court of Florida and shall be held in Polk County, Florida. The mediator will be chosen by the Owner and Design-Builder and the parties participating in the mediation will share the Mediator's fee equally.

§1.17 – Merger. The Contract between the Owner and Design-Builder, evidenced by the Contract Documents as a complete set (to include this Agreement), represents the entire agreement between Owner and Design-Builder and supersedes all prior communications, negotiations, representations, or agreements, either written or oral. Subject only to properly issued Change Orders, the Contract may be amended only by written instrument signed by both Owner and Design-Builder and approved by the Owner's governing body.

§1.18 – Document Ownership; Reuse by Owner/City. Neither Design-Builder, nor any subcontractor, manufacturer, fabricator, supplier, distributor, or other person or organization (other than the Owner) shall have or acquire any title to or ownership rights in any of the drawings, specifications, plans, other design documents or other documents (or copies of any thereof) prepared by or bearing the seal of the Design-Builder to design the Project; and they shall not be reused on extensions of the Project or any other project, nor shall they be generally published without the written consent of the Owner. All drawings, specifications and other documents prepared in conjunction with Work shall be considered a "work made for hire" and as such, the sole property of the Owner and the Owner may reuse them at no additional expense, provided however that the Design-Builder shall not be liable for the City's reuse of any such documents on a project other than that for which such documents were prepared.

§1.19 – Independent Contractor. Design-Builder shall perform all work under the Contract as an Independent Contractor and shall not be considered an agent of the City, nor shall any of Design-Builder's subcontractors or suppliers or employees be considered agents of the City. Design-Builder and not City shall be solely responsible to any and all subcontractors and suppliers and those employed by them for their costs, expenses, fees and profits, if any, in performing any of the work required by this Contract.

§1.20 – State Bond Law Compliance. In addition to the requirements of Article 15:

(a) As required by Section 255.05 of the Florida Statutes (2024), a person entering into a formal contract with the state or any county, city, or political subdivision thereof, or other public authority or private entity, for the construction of a public building, for the prosecution and completion of a public work, or for repairs upon a public building or public work shall be required, before commencing the work or before recommencing the work after a default or abandonment, to execute and record in the public records of the county where the improvement is located, a payment and performance bond with a surety insurer authorized to do business in this state as surety. The bond must state on its front page:

1. The name, principal business address, and phone number of the contractor, the surety, the owner of the property being improved, and, if different from the owner, the contracting public entity.

2. The contract number assigned by the contracting public entity.

3. The bond number assigned by the surety.

4. A description of the project sufficient to identify it, such as a legal description or the street address of the property being improved, and a general description of the improvement.

(b) Before commencing Task Construction Work or before recommencing Task Construction Work after a default or abandonment, Design-Builder shall provide to the Owner a certified copy of a recorded bond in compliance with paragraph 1.20(a) and Section 255.05 of the Florida Statutes. Notwithstanding the terms of the Contract Documents or any other law governing prompt payment for construction services, the Owner may not make a payment to the contractor until the Design-Builder has complied with this paragraph.

(c) The bond shall be conditioned upon the Design-Builder's performance of the Work described in the Task Order in the time and manner prescribed in the Contract Documents and promptly making payments to all persons defined in Section 713.01, Florida Statutes (2024) who furnish labor, services, or materials for the prosecution of the Work provided for in the Contract Documents. A claimant may apply to the Owner for copies of the contract and bond and shall thereupon be furnished with a copy of the contract and the recorded bond. The claimant shall have a cause of action against the Contractor and surety for the amount due him or her, including unpaid finance charges due under the claimant's contract. Such action may not involve the Owner in any expense.

(d) The provisions of Section 255.05 of the Florida Statutes (2024) shall govern this Contract and are incorporated herein as if set forth in full in the Contract Documents. The performance bond and payment bond provided by Design-Builder, and, all claims made against such bonds by any party – notwithstanding any language in the Contract Documents to the contrary – shall be subject to, governed by and/or in compliance with Section 255.05 of the Florida Statutes (2024) and any and all related local, state and federal laws.

§1.21 – Legal Holidays. For purposes of the Contract Documents, "legal holidays" are those holidays where the Owner's City Hall is closed for the transaction of regular municipal business.

§1.22 – Local Government Prompt Payment Act Compliance.

(a) The provisions of the Local Government Prompt Payment Act, Sections 218.70, et seq., Florida Statutes (2024) are incorporated herein as if set forth in full. To the extent there is conflict between the text of the Contract Documents and the text of the Local Government Prompt Payment Act or this Paragraph, the text of the Local Government Prompt Payment Act and of this Paragraph shall control.

(b) As required by the flush left language of Section 218.735(1) of the Florida Statutes (2024), the name of the agent or employee designated to receive the Design-Builder's application for payment for construction services will be furnished to the Design-Builder by separate written notice no later than ten (10) days after the issuance of the *Notice to Proceed With Construction*.

(c) Pursuant to Section 218.735(8)(a) of the Florida Statutes (2024), Owner, as a Florida municipality, elects to withhold retainage in an amount not exceeding five (5) percent of each progress payment made to the Design-Builder during the Construction Phase until final completion and acceptance of the Project by the Owner.

(d) As required by Section 218.735(7) of the Florida Statutes (2024), the Owner and Design-Builder shall

develop the list of items required to render complete, satisfactory and acceptable the construction services purchased within thirty (30) calendar days after reaching substantial completion. The list shall be developed as follows:

1. The Owner shall have ten (10) calendar days after the date of Substantial Completion to submit objections, comments, and suggested revisions to the punch list.

2. Design-Builder shall promptly review the Owner's objections, comments and suggested revisions and shall within ten (10) calendar days after receipt of the punch list, provide any objections, comments and suggested revisions to the same.

3. Owner, in consultation with the Owner's Representative if necessary, shall review the Design-Builder's objections, comments and suggested revisions. Within ten (10) calendar days of Owner's receipt of the Design-Builder's objections, comments and suggested revisions, the Owner shall determine and issue the final punch list and deliver the same to the Design-Builder.

4. Delivery of the items on the punch list by the Design-Builder shall occur within five (5) calendar days of Design-Builder's receipt of the final punch list from the Owner.

5. Final completion of the Project shall occur within the Contract Times, and no earlier than thirty (30) calendar days after the delivery of the punch list to the Design-Builder by the Owner.

(e) Pursuant to Section 218.735(9) of the Florida Statutes (2024), all payments due to the Design-Builder and not made within the time periods provided for by the Local Government Prompt Payment Act shall bear interest at the rate of one percent (1.000%) per month.

(f) Disputes between the Design-Builder and the Owner concerning the payment of a Design-Builder's payment request or invoice shall be determined by the Owner's governing body pursuant to the Local Government Prompt Payment Act and the dispute resolution procedure established by Resolution or Ordinance of the Owner's governing body pursuant to Section 218.735(4), Florida Statutes, or, in the absence thereof, pursuant to Section 218.76(2), Florida Statutes.

§1.23 – Owner's Reserved Right to Dispute Invoice, Work to Proceed. Owner may, within ten days of its receipt of an invoice, reasonably and in good faith dispute the amount of the invoice, and withhold payment on such disputed amount. Should Owner exercise this right, work and/or services shall proceed in the normal course without regard to payment or non-payment of the disputed portions of the invoice, *provided however*, that Owner shall remit the non-disputed portions of the invoice to Design-Builder.

§1.24 – Limitations on Owner's Responsibilities. Whenever in the Contract Documents the terms "as ordered", "as directed", "as required", "as allowed", "as approved" or terms of like effect or import are used or the adjectives "reasonable", "suitable", "acceptable", "proper", "satisfactory" or adjectives of like effect or import are used to describe requirement, direction, review or judgment of Owner as to the Work, it is intended that such requirement, direction, review or judgment will be solely to evaluate the Work for compliance with the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective shall not be effective to assign to Owner any duty or authority to supervise or direct the furnishing or performance of the Work or any duty or authority to undertake responsibility for

Design-Builder's means, methods, techniques, sequences, procedures of construction, or for Design-Builder's acts or omissions, including the acts or omissions of any of Design Builder's subcontractors or suppliers.

ARTICLE 2

THE WORK

§2.1 – Task Orders; The Work.

(a) When the Owner determines it has a need for Design-Builder's services under this Agreement, the City shall issue the Owner a mutually agreeable written authorization to proceed with Work, called a Task Order, that provides a full description of the task or series of tasks to be performed. Each Task Order issued by the Owner shall be complementary to the Contract Documents, as provided in Paragraph 1.3 of this Agreement, and subordinate to the general terms and conditions of this Agreement.

(b) The Work shall be that work required of Design-Builder to design, construct and deliver such incremental portions, components and/or phases of the Project as the Owner may see fit to assign to Design-Builder by Task Order. In general, for each Task Order issued under this Contract, Owner and Design-Builder agree to "phase" the Task Order into two separate portions of the Work:

> The "*Task Design Phase*" wherein the Design-Builder will perform services to deliver to the Owner its design for the incremental portion, component, and/or phase of the Work assigned by Task Order and all related materials, including, but not limited to, design documents, concept drawings, plans, materials documents and specifications; and
>
> The "*Task Construction Phase*" wherein the Design-Builder will perform construction services to physically construct and deliver the incremental portion, component, and/or phase of the Work assigned by Task Order.

All Work for both the Task Design Phase and the Task Construction Phase shall be delivered as more particularly set forth in this Agreement and for a Task Guaranteed Maximum Price, determined in accordance with Paragraph 3.6 and Article 5 of this Agreement, plus any change orders issued in accordance with the terms of this Agreement and less any Owner credits as described herein.

(c) Due to the scope of the overall Project, at the Owner's discretion, a Task Order may consist solely of a Task Design Phase or a Task Construction Phase. If a Task Order consists of a Task Design Phase, the Task Order shall include, and be deemed to include, a provision permitting the Owner to suspend Work following Substantial Completion of Task Order A/E Work. If a Task Order consists of a Task Construction Phase, Task Construction Work shall be consistent with the Task Order, the Contract Documents, and prior Task Design Work completed by Design Builder.

(d) Due to the incremental aspects of the Project, it is possible that the Owner may issue concurrent Task Orders to Design-Builder. To ensure effective Owner communication and Owner control of the Project, when concurrent Task Orders are issued by the Owner, Design-Builder shall designate a lead

team member for each concurrent Task Order and furnish the name of each lead team member to the Owner and the Owner's Representative. Owner may, in its discretion, also designate a lead team member for each concurrent Task Order, which may be the Owner's Representative or a member of the Owner's Representative's staff, provided, that any such designation of a lead team member by Owner shall not serve to modify any communication duties or responsibilities of the Design-Builder found in this Agreement, or modify any authorities, duties, or responsibilities of the individual designated by Owner to serve as Owner's Representative under this Agreement.

§2.2 – Task Design Phase. Subject to, and in accordance with the terms and provisions of the Contract Documents, during the Task Design Phase of Work on a Task Order, the Design-Builder agrees to:

(a) Design the incremental portion, component, and/or phase of the Work assigned in the Task Order, including drafting all plans, renderings, specifications, technical specifications ("01" documents) and other design documents necessary for the timely construction of such incremental portion, component, and/or phase of the Work in accordance with the Contract Documents;

(b) Develop a timetable for construction of the incremental portion, component, and/or phase of the Work assigned by Task Order, in consultation with the Owner;

(c) Perform Architectural and Engineering phase services for the Owner;

(d) Deliver as many paper sets and electronic sets (in Adobe PDF format) of completed Owner-approved design documents, to include plans, specifications, and other design documents necessary for the issuance of appropriate building permits, as the Owner may request;

(e) Develop, in conjunction with the Owner, a "Task Guaranteed Maximum Price" for construction and completion of the incremental portion, component, and/or phase of the Work assigned in the Task Order which shall be the amount to which both the Owner and Design-Builder agree is necessary to construct and deliver the same to the Owner (being satisfactory in nature to the Owner and all governmental authorities having jurisdiction thereof), and as more specifically defined in Paragraph 5.1 of this Agreement, exclusive of the Task Design Price defined in Paragraph 3.6 of this Agreement;

(all of which are the "Task Design Phase Requirements").

§2.3 – Task Construction Phase. Subject to, and in accordance with the terms and provisions of the Contract Documents, during the Task Construction Phase of Work on a Task Order, for a Task Guaranteed Maximum Price, exclusive of the Task Design Price, the Design-Builder agrees to:

(a) Timely construct the incremental portion, component, and/or phase of the Work assigned in the Task Order for not more than the Task Guaranteed Maximum Price in accordance with the Contract Documents, the plans, specifications and technical specifications;

(b) Promptly begin constructing the incremental portion, component, and/or phase of the Work assigned in the Task Orderafter issuance of the "Notice to Proceed with Construction" by the Owner;

(c) Adhere to a developed and approved Construction Timetable for the incremental portion, component, and/or phase of the Work assigned in the Task Order;

(d) Pay for all labor, supervision, materials, supplies, furnishings, equipment and things required by the Contract Documents in the construction of the incremental portion, component, and/or phase of

the Work assigned in the Task Order;

(e) Obtain and pay for all required permits for the construction of the incremental portion, component, and/or phase of the Work assigned in the Task Orderfrom all government agencies with jurisdiction, including, but not limited to, the Florida Department of Transportation, the Southwest Florida Water Management District, Polk County Health Department, and the Florida Department of Environmental Protection;

(f) Perform Services at a level consistent with the standards and quality prevailing among construction management, design-build and general contracting firms of superior knowledge, skill and experience engaged in projects of similar size and complexity;

(f) Carry out and complete Services in an efficient, economical and timely manner, as expeditiously as is consistent with the level of skill and care required hereby and the interests of Owner, and in accordance with the Task Order and the Contract Documents;

(g) Achieve Substantial Task Order Completion of the Project on or before the date set for Substantial Task Order Completion in the Task Guaranteed Maximum Price Task Order Amendment;

(h) Achieve Final Task Order Completion of the Project on or before the date set for Final Task Order Completion in the Task Guaranteed Maximum Price Task Order amendment; and

(i) Deliver to the Owner two complete paper sets and one complete electronic Adobe PDF set of as-built drawings of the incremental portion, component, and/or phase of the Work assigned in the Task Order upon final acceptance of the same by the Owner.

(all of which are the "Task Construction Phase Requirements").

§2.4 – Contiguous Work. Design-Builder shall review and take into consideration all known contiguous work to be performed by other parties arising from any causes whatsoever. The Owner shall not consider any delays in the Work caused by said known contiguous work.

§2.5 – Duty to Correct. Design-Builder shall promptly correct any errors, omissions, deficiencies, or conflicts in its Services and the Work at its own cost and without additional compensation or reimbursement, and Design-Builder shall not be compensated or reimbursed for performing any Services necessitated by its failure to perform in accordance with the relevant Task Order and the Contract Documents.

§2.6 – Design-Builder to Provide / Procure Necessary Items. Design-Builder agrees to provide all the professional design services, labor, materials, supplies, equipment, transportation, apparatus, light, utilities, scaffolding, and tools necessary for the proper construction and completion of the incremental portion, component, and/or phase of the Work assigned in the Task Order. Design-Builder may not charge the Owner any premium, markup, or fee for the use of any Owner-provided materials, supplies, equipment, transportation, apparatus, light, utilities, scaffolding, tools, or other items provided to Design-Builder by proprietary service of the Owner or from the Owner's attic stock, inventory of current assets, or warehouse supplies, during construction and completion of its Work. Owner-provided materials, supplies, equipment, transportation, apparatus, light, utilities, scaffolding, tools, or other items does not include those construction materials, supplies, and equipment purchased by the Owner by agreement with the Design-Builder under Paragraph 6.8 below.

§2.7 – Assurances and Representations.

(a) The Design-Builder hereby represents and warrants to the Owner that it is skilled and experienced in the construction of projects of the type depicted in the Contract Documents and that the Design-Builder, by careful examination has satisfied itself as to the general area in which the improvements comprising the Project are to be located, including, but not by way of limitation, climate conditions, soil conditions, available labor supply and cost, all local governmental requirements and available equipment supply and cost as well as other items which in the Design-Builder's judgment could in any manner affect the timely performance of the Work.

(b) Design-Builder recognizes the relationship of trust and confidence established between it and the Owner by the Contract Documents. It covenants with the Owner to furnish its best skill and judgment, to cooperate with the Owner to incorporate in the Work only materials which shall be new and of the best kind of grades to be specified to insure that all workmanship shall be to the best of the recognized standards known to the various trades, to furnish efficient business administration and supervision, to keep at all times an adequate supply of workers and materials at the site and to prosecute the completion of the Work in the best and soundest way and in the most expeditious and economical manner consistent with the interests of the Owner.

(c) It shall be Design-Builder's sole responsibility to evaluate any and all topographical surveys, soil tests, drainage plans and any other engineering reports, plans or tests required to ensure that sufficient information is available for the completion of the Work. Any additional work, regardless of the nature and scope, required as a result of said surveys, tests, reports or plans in order to complete the Work shall be performed at Design-Builder's expense.

(d) Before ordering any material or doing any work, the Design-Builder shall verify all measurements at the existing site and insure the correctness of the same. No additional compensation shall be allowed or paid on account of any difference between actual dimensions and measurements indicated in the Contract Documents, plans, specifications and other design documents. Any differences found shall be submitted to the Owner for instructions before proceeding with the Work.

ARTICLE 3

TASK DESIGN PHASE PARTICULARS

§3.1 – Design to be Complementary. Design-Builder shall ensure that any plans, specifications, or other design documents created by it or any subcontractor, shall be complementary to the Contract Documents. If during the performance of Work, Design-Builder or any member of Design-Builder or any subcontractor finds a conflict, error or discrepancy between the plans, specifications, or other design documents, and the Contract Documents, Design-Builder shall report the discrepancy to the City in writing at once before proceeding with the Work affected thereby. The City, upon receipt of such notice, will promptly investigate the circumstances and give appropriate instructions to the Design-Builder. Until such instructions are given, any work done by the Design-Builder after the discovery of such conflict, error, or discrepancy, which is directly or indirectly affected by such conflict, error or discrepancy, will be at its own

risk and it shall bear all costs arising therefrom. In resolving conflicts, errors or discrepancies, the City's instructions to the Design-Builder shall be the final interpretation of the requirements of the Contract Documents.

§3.2 – Documents to be Approved by City. Design-Builder shall timely submit to the City, for review and approval, schematic design documents including, but not limited to, site plans, floor plans, elevations, sections and outline specifications which are based on and comply with the Contract Documents, the Task Order and the relevant Design Criteria Package. Design-Builder shall timely submit to the City, for review and approval, design development documents including, but not limited to, site plans, floor plans, elevations, enlarged floor plans, miscellaneous details and updated outline specifications which are based on and comply with the Contract Documents, Task Order, and Design Criteria Package and the City-approved schematic design documents. Design-Builder shall timely submit to City, for review and approval, final plans and specifications which shall be based on and in compliance with the Contract Documents, Task Order, Design Criteria Package, and the City-approved design development documents.

§3.3 – Design-Builder to Remain Liable for Design. Design-Builder shall remain fully liable to City for the adequacy of the plans and specifications and other documents, the ultimate and acceptable design and construction of the Project, and for any errors and omissions that may exist thereon, whether the work is done in house by Design-Builder, by joint venture, or by retention of a design professional by the Design-Builder.

§3.5 – Commencement of Task Design Phase Work; Substantial Completion of Task Order A/E Work and Completion of Task Design Phase Requirements Dates; Liquidated Damages.

(a) *Commencement of Task Design Phase Work*. Work shall commence on the Task Design Phase Requirements within three (3) calendar days of the ***date of issuance*** of a "Notice to Proceed With Task Design Work" by Owner.

(b) *Substantial Completion of Task Order A/E work*. Substantial Completion of the Architectural and Engineering work identified in the Task Design Phase Requirements shall be achieved not later than the date established for the same in the relevant Task Order.

(c) *Completion of Task Design Phase Requirements*. Completion of the Task Design Phase Requirements shall be achieved not later than the number of consecutive calendar days from the ***date of Substantial Completion of Task Order A/E Work*** specified by Task Order, or, if not specified by Task Order, not later than fifteen (15) consecutive calendar days from the ***date of Substantial Completion of Task Order A/E Work***.

(d) *Time of the Essence*. Time is of the essence of this Contract.

(e) *Extensions of Substantial Completion of Task Order A/E Work and Completion of Task Design Phase Requirements Dates*. Extensions of time for Design-Builder to achieve Substantial Completion of Task Order A/E Work and Completion of Task Design Phase Requirements shall be equitably awarded by Owner-issued Change Order if an unexpected delay in achieving Substantial Completion and Completion is attributable to a party other than the Design-Builder.

(f) *Liquidated Damages*. Owner and Design-Builder, recognizing that time is of the essence of this Contract, agree that Owner will suffer financial loss if the Task Design Phase Requirements are not

completed within the time frames specified in the relevant Task Order, and this Article, plus any extensions thereof. They also recognize the delays, expense and difficulty involved in proving in a legal proceeding the actual loss incurred by Owner if the Task Design Phase Requirements are not completed timely. Accordingly, instead of requiring any such proof, Owner and Design-Builder agree that as liquidated damages for delay (but not as a penalty) Design-Builder shall pay Owner the sum of Five Hundred Dollars and no cents ($500.00), or such other sum as may be determined in the relevant Task Order for each day that expires after the time specified for Substantial Completion of Task Order A/E Work has expired. Further, Design-Builder shall pay Owner the sum of Five Hundred Dollars and no cents ($500.00) for each day that expires after the time specified for Completion of Task Design Phase Requirements has expired. Owner may retain liquidated damages owed to Owner by Design-Builder under this provision from Design-Builder's compensation.

§3.6 – Task Design Price; Progress Payments.

(a) *Task Design Price;* For each Task Order assigning design work to the Design-Builder, the Owner shall pay the Design-Builder for Design Work a negotiated not-to-exceed total for the performance of the Task Design Phase Requirements (the "Design Price"). Monthly Progress Payment installments of the lump-sum Design Price, if applicable, shall be based on the percent completion of the overall Task Design Phase Requirements in accordance with the approved Design Phase Schedule of Values created pursuant to subsection (b) of this section.

(b) *Task Design Phase Schedule of Values*. In order to determine the percent completion of the overall Task Design Phase Requirements, the Design-Builder, within seven (7) days of entry into a Task Order that assigns Task Design Work, shall submit to the Owner for approval a proposed CSI-Formatted Design Phase Schedule of Values detailing the expected completion dates for the Task Design Phase Requirements. Once approved by Owner, the Task Design Phase Schedule of Values shall be incorporated in and made part of the Task Order, and of this Agreement, and such Schedule shall control the timing of and amount of the Progress Payment to be made to the Design-Builder. Owner shall have no liability for any expenses of Design-Builder beyond payment of the Progress Payment amount noted in the Design Phase Schedule of Values. Design-Builder shall not be entitled to receive additional compensation from Owner beyond that amount noted in the Task Design Phase Schedule of Values.

§3.7 – Task Construction Timetable. Design-Builder shall, after Completion of the Task Design Phase, but prior to the initiation of the Task Construction Phase, develop and submit a proposed Task Construction Timetable to the Owner detailing the expected completion dates for the Task Construction Phase Requirements. The Task Construction Timetable shall be sufficiently detailed and shall describe proposed partial completion points and due dates for filing required documents with the Owner. Further, the Task Construction Timetable shall specify the dates for Substantial Task Order Completion and Final Task Order Completion as identified in accordance with the Task Order, the Construction Documents and Article 4 herein. After development of the Task Construction Timetable, and subsequent approval thereof by the Owner, the Task Construction Timetable shall control the progress of construction of the incremental portion, component, and/or phase of the Work assigned. NOTE: THE OWNER WILL NOT ISSUE A NOTICE TO PROCEED WITH TASK CONSTRUCTION UNTIL THE DESIGN-BUILDER SUBMITS AND OBTAINS AN APPROVED TASK CONSTRUCTION TIMETABLE.

ARTICLE 4

TASK CONSTRUCTION PHASE PARTICULARS

§4.1 – Reporting Anticipated Delays During Construction Phase. Design-Builder is responsible for assuring that the incremental portion, component, and/or phase of the Work assigned will be completed on a timely basis in accordance with the established Task Construction Timetable. No extension of time will be granted unless the delay is caused by acts of the Owner (as stated in Paragraph 14.3 herein) or by unusual and unforeseeable "Acts of God" beyond the Design-Builder's control that makes it impossible to proceed with any of the Task Construction Work (e.g. Acts of God include unavoidable labor disputes, unavoidable inability to procure materials, failure of power not resulting from the Owner's or Design-Builder's actions or omissions, restrictive governmental laws enacted or taking effect after the Effective Date of this Agreement, riots, insurrections, wars, fire, or other reason of a like nature not the fault of the party delayed in doing work or doing acts required under the Contract Documents, hurricanes, unusually severe and prolonged bad weather). In the event of such Acts of God, then performance of such acts will be excused for the period of delay and the period for the performance of any such acts will be excused for the period of delay. In no event will problems with Subcontractors, suppliers or employees entitle the Design-Builder to an extension of the contract times or deadlines. Note, compensation for delays caused by the Owner is recoverable only as described in Paragraph 14.2 herein.

§4.1.1 – Design-Builder shall, within ten days from the beginning of such delay, submit written notification to the Owner of the causes of the delay. If Design-Builder fails to give such written notice, within ten days of the beginning of such delay no claim for extension will be considered. Oral notification of delays will not be sufficient. Notification of delay due to unusually severe and prolonged bad weather shall be documented by data substantiating that weather conditions were abnormal for the period of time and did adversely impact the Task Construction Schedule.

§4.1.2 – The Owner shall review such notification if an extension is requested by the Design-Builder and may extend the completion date if the Owner reasonably concludes that the facts justify such an extension.

§4.1.3 – Delays, which are excusable under the terms of this Contract, shall not excuse the Design-Builder from timely completing portions of the Contract which are not materially affected by the delay.

§4.2 Schedule of Values. Within fourteen (14) days after Owner approves design documents for the construction of no less than ninety percent (90%) of the incremental portion, component, and/or phase of the Work assigned, Design-Builder shall submit to the Owner for approval a proposed Task Construction Phase Schedule of Values detailing the expected completion dates of targets previously approved by Owner in the Task Construction Timetable. Once approved by Owner, the Task Construction Phase Schedule of Values shall be incorporated in and made part of the Task Order and this Agreement and such Schedule shall control the timing of and amount of the Progress Payment to be made to the Design-Builder. Unless otherwise provided by this Contract, Owner shall have no liability for any expenses of Design-Builder beyond payment of the Progress Payment amount noted in the Task Construction Phase Schedule of Values.

Design-Builder shall not be entitled to receive additional compensation from Owner beyond that amount noted in the Task Construction Phase Schedule of Values unless, pursuant to this Contract, Design-Builder is entitled to additional compensation. OWNER'S APPROVAL OF ANY SCHEDULE SHALL ONLY INDICATE OWNER'S ACKNOWLEDGMENT OF THE DATES CONTAINED THEREIN AND SHALL NOT CONSTITUTE RATIFICATION OR APPROVAL OF THE ACCURACY, ADEQUACY, OR LOGIC OF THE SCHEDULE, OR OF THE MEANS, METHODS, MANNER OR SEQUENCE OF WORK CONTAINED IN THE SCHEDULE.

§4.3 Commencement of Task Construction Phase Work; Substantial and Final Task Order Completion Dates; Liquidated Damages.

(a) *Commencement of Task Construction Phase work*. Work shall commence on the incremental portion, component, and/or phase of the Work assigned within fourteen (14) days of the ***date of issuance*** of a "Notice to Proceed With Task Construction Work" by Owner and receipt of all permits, which will not be issued until after the completion of the Task Design Phase Requirements.

(b) *Substantial Task Order Completion*. The date of Substantial Task Order Completion of the Project shall be established and agreed upon by both parties during the Task Design Phase but not later than fourteen (14) days after the date of issuance of the "Notice to Proceed with Task Construction of Work" by Owner or the issuance of all permits needed to perform the Task Construction Work, whichever occurs later. Design-Builder agrees to apply for all permits within ten (10) days after the completion of the Task Design Phase and diligently pursue the issuance of said permits.

(c) *Final Task Order Completion*. Final Task Order Completion of the incremental portion, component, and/or phase of the Work assigned shall be achieved not later than thirty (30) consecutive calendar days from the ***date of Substantial Task Order Completion***.

(d) *Time of the Essence*. Time is of the essence of this Contract.

(e) *Liquidated Damages*. Owner and Design-Builder, recognizing that time is of the essence of this Contract, agree that Owner will suffer financial loss if the incremental portion, component, and/or phase of the Work assigned is not completed within the time frames specified in the relevant Task Order and this Agreement, plus any extensions thereof. They also recognize the delays, expense and difficulty involved in proving in a legal proceeding the actual loss incurred by Owner if construction of the incremental portion, component, and/or phase of the Work assigned is not completed timely. Accordingly, instead of requiring any such proof, Owner and Design-Builder agree that as liquidated damages for delay (but not as a penalty) Design-Builder shall pay Owner the sum of One Thousand Five Hundred Dollars and no cents ($1,500.00) for each day that expires after the time specified for Substantial Task Order Completion has expired. Further, Design-Builder shall pay Owner the sum of One Thousand Five Hundred Dollars and no cents ($1,500.00) for each day that expires after the time specified for Final Task Order Completion has expired. Owner may retain liquidated damages owed to Owner by Design-Builder under this provision from Design-Builder's compensation.

(f) *Partial Acceptance*. The Owner has the option to accept and enjoy beneficial use of portions of the Work, which are substantially complete before the entire incremental portion, component, and/or phase of the Work assigned is completed. In the event such partial acceptance occurs, liquidated damages will not be nullified or excused but will continue until Substantial Task Order Completion of the entire incremental portion, component, and/or phase of the Work assigned. Commencing on

the date of Partial Acceptance and subject to the entire incremental portion, component, and/or phase of the Work assigned being complete to the extent of allowing the Owner to open the same as scheduled, the Owner shall reduce unaccumulated liquidated damages by a percentage which equals the ratio of the value of the accepted portion of the Work to the total value of the Work as determined by the Schedule of Values. Nothing herein shall obligate the Owner to accept portions of the Work prior to Substantial Task Order Completion.

ARTICLE 5

TASK GUARANTEED MAXIMUM PRICE

§5.1 – Task Guaranteed Maximum Price. This contract contemplates guaranteed not-to-exceed pricing Work. For each Task Order issued to Design-Builder on the Project, Owner may allocate an amount not to exceed ("Owner's Budget") for the performance and completion of the Task Design and Task Construction Work and the delivery of the incremental portion, component, and/or phase of the Work identified in the Task Order to the Owner free of all liens of any kind, including, but not limited to, any and all liens that may be placed on the same by Design-Builder, Design-Builder's subcontractors or subconsultants, and materialmen or workers. If a Task Order proceeds, as provided below, Design-Builder shall deliver the incremental portion, component, and/or phase of the Work assigned therein ready and suitable for occupation and its intended uses by Owner for an amount of compensation not to exceed a figure to be known as the "Task Guaranteed Maximum Price" which will be the amount to be charged by Design-Builder and paid by Owner for the completion of the Task Construction Work (the "Task Guaranteed Maximum Price"), but in no event shall Owner be required to agree to a Task Guaranteed Maximum Price that exceeds the Owner's Budget. Subject to the foregoing, the Owner and Design-Builder shall have up to sixty 60 days after the approval of ninety percent (90%) of the Task Design Phase Work within which to agree to and establish the Task Guaranteed Maximum Price of the relevant Task Order in a document to be entitled "Task Guaranteed Maximum Price Amendment" in substantially the same form as Exhibit "A" attached hereto and incorporated by reference herein. Design-Builder warrants to the Owner that if a Task Guaranteed Maximum Price is established, such Price shall be the maximum amount payable for the performance of the Task Construction Work, specifically including the Task Construction Phase requirements, and delivery of the incremental portion, component, and/or phase of the Work assigned to Owner free of all liens of any kind, including but not limited to, any and all liens that may be placed on the Work by the Design-Builder, Design-Builder's subcontractors or subconsultants, and materialmen or workers. Notwithstanding, the establishment of the Task Guaranteed Maximum Price by subsequent amendment, such Price shall be subject to appropriate credits due Owner and/or Design-Builder as set forth in the Task Order and this Contract. If Owner and Design-Builder agree then the contemplated Task Guaranteed Maximum Price Amendment shall be completed, approved and executed and the Task Order and this Contract as amended shall proceed. If Owner and Design-Builder are unable to agree to a Task Guaranteed Maximum Price, either Owner or Design-Builder may, upon notice to the other, terminate the Task Order in which case the Design-Builder shall complete all pending Task Design Work as directed by Owner and be paid for all Task Design Work that is completed, and thereafter Owner and Design-Builder shall be released from any further liability to each other under the Task Order for any Task Construction Phase Services. In that event, Owner and Design-Builder agree to cooperate with each other in the delivery

to Owner of Task Design Work performed and paid for by Owner including but not limited to, Task Design Work product and any permits obtained for the incremental portion, component, and/or phase of the Work assigned.

§5.2 – Items to be Included in Task Guaranteed Maximum Price. A Task Guaranteed Maximum Price, once established for a Task Order, shall be deemed by the Owner to include all aspects of constructing the incremental portion, component, and/or phase of the Work assigned therein, including, but not limited to, the Design-Builder's overhead and profit or fee of any kind. By way of illustration, and not limitation, the following items shall be deemed by the Owner to be included in a Task Guaranteed Maximum Price:

(a) *Labor Costs*. All compensation (including reasonable performance bonuses approved by Owner in writing) for salaried or hourly personnel of Design-Builder directly engaged in the performance of the Work for the Task Order, or employed for the Task Order, or engaged in estimating, drafting, engineering, expediting, scheduling, coordinating, purchasing, supervising, controlling, safety, quality, CAD, or information technology support for the Task Order Work, wherever stationed, including but not limited to the assigned Construction Executive, Director of Construction, Senior Project Manager, Project Manager, Assistant Project Manager, Superintendent and field personnel.

(b) *Costs of Materials and Equipment Incorporated in the Completed Task Construction*.

(1) Costs, including transportation, of materials and equipment incorporated or to be incorporated in the complete task construction.

(2) Costs of materials in excess of those actually installed but required to provide reasonable allowance for waste and for spoilage.

(c) *Costs of Other Materials and Equipment, Temporary Facilities and Related Items*.

(1) Costs, including transportation, installation, maintenance, dismantling, storage and removal of materials, supplies, temporary facilities, machinery, equipment, and hand tools not customarily owned by the construction workers.

(2) Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by the construction workers, which are provided by the Design-Builder at the site, whether rented from the Design-Builder or others, and costs of transportation, installation, minor repairs and replacements, dismantling, storage and removal thereof. It is the expectation of the Owner that in calculating the Task Guaranteed Maximum Price, line items for such rental charges are not be in excess of 100% of the rates set forth in the latest edition of the *Rental Rate Blue Book for Construction Equipment* published by Primedia Information, Inc., unless equipment is rented from third parties specifically for the Task Order Work; the Owner specifically reserves the right to object to that portion of the Task Guaranteed Maximum Price, and receive a credit against the Task Guaranteed Maximum Price, in the event that Design-Builder utilizes rates in excess of those mentioned herein.

(3) Costs of removal of debris from the site.

(4) Reproduction costs, costs of telegrams, facsimile transmissions and long distance telephone calls, postage and express delivery charges, telephone services at the site for the Work.

(5) Costs for travel and subsistence expenses of the Design-Builder's personnel incurred in the performance of the Work, or any attendant duty to the Design—Builder's performance of the Work, including, but not limited to, costs for company owned trucks, trailers and equipment utilized by Design-Builder.

(d) *Subcontract Costs*. Payments made by the Design-Builder to Subcontractors or Subconsultants in accordance with the requirements of the subcontracts for the Task Order; All expenses related to the engagement and/or termination of subcontractors/subconsultants and resultant expense increases, if any.

(e) *Miscellaneous Costs*.

(1) Costs of premiums for insurance and bonds for the Work.

(2) Sales, use or similar taxes imposed by any governmental authority which are related to the Work for this Project and for which the Design-Builder or Owner would be liable.

(3) Fees, assessments and all building permits and other permits, licenses and inspections for the Project.

(4) Fees of testing laboratories for tests required by the Task Order or the Contract Documents.

(5) Data processing and software costs related to the Work.

(6) Deposits lost for causes other than the Design-Builder's negligence or failure to fulfill a specific responsibility to the Owner that is set forth in the Task Order or in this Contract.

(7) Legal costs, other than those arising from disputes between the Owner and Design-Builder, Subcontractors and affiliates, reasonably incurred by the Design-Builder in the performance of the Work and with the Owner's written permission, which permission shall not be unreasonably withheld.

(8) Expenses incurred in accordance with the Design-Builder's standard personnel policy for relocation and temporary living allowances of personnel required for the Work, in case it is necessary to relocate such personnel from distant locations.

(9) Costs incurred by the Design-Builder in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons or property.

(10) Costs incurred by the Design-Builder in repairing or correcting damaged or nonconforming Work executed by the Design-Builder or its Subcontractors or suppliers;

(11) Mobilization and demobilization costs associated with this Project.

(12) Corporate safety inspection and related safety costs.

(13) Corporate quality inspection and quality assurance and control costs.

(14) Salaries and other compensation of the Design-Builder's personnel stationed at its principal office

or offices other than the site office.

(15) Expenses of the Design-Builder's principal office and offices other than the site office.

(16) Overhead and general expenses.

(17) The Design-Builder's capital expenses, including interest on the Design-Builder's capital employed for the Work.

(18) Costs due to negligence and/or malfeasance and/or other acts of the Design-Builder, Subcontractors, and/or any agents thereof or to the failure of the Design-Builder, Subcontractors, and/or any agents thereof to fulfill and/or perform the Work in accordance with the Task Order and with the Contract Documents.

(f) All other reasonably foreseeable costs and expenditures of Design-Builder in connection with the construction of the incremental portion, component, and/or phase of the Work assigned.

§5.3 –Expenses to be Documented; Billing Against Task Guaranteed Maximum Price. Design-Builder shall substantiate all expenditures with paid receipts and/or invoices as the Owner may reasonably request to determine the financial status of the Task OrderWork. As Design-Builder performs the Work necessary to deliver the incremental portion, component, and/or phase of the Work assigned, the Design-Builder shall keep a running financial statement of all expenses incurred to date thereon to include, but not be limited to, all items mentioned in Paragraph 5.2 and its subparagraphs. It is the expectation of the Owner that the Task Construction Work be delivered to the Owner, ready and suitable for occupation and Owner's intended uses at a final cost to Owner of less than the Design-Builder's Task Guaranteed Maximum Price (but for no more than the Task Guaranteed Maximum Price, absent an Owner Directed Adjustment in the scope of Task Order Work).

§5.4 – Owner Directed Adjustments in Scope of Task Order Work. The Owner may, without invalidating the Task Order, or this Contract, unilaterally alter, add or deduct from the Task Design Work and/or Task Construction Work by issuing an Owner Directed Adjustment. In the event that the Owner issues an Owner Directed Adjustment to the Design-Builder, Design-Builder and Owner shall agree on an appropriate adjustment to the Task Guaranteed Maximum Price. This provision shall not be interpreted to authorize an increase in the Task Guaranteed Maximum Price in the event that Owner rejects Task Design Work and/or Task Construction Work performed by Design-Builder or Design-Builder's subcontractors/subconsultants.

§5.5 – No Automatic Adjustments to Task Guaranteed Maximum Price. Nothing in this Agreement shall be construed to allow and/or authorize the payment to the Design-Builder of any monies in excess of the Task Guaranteed Maximum Price absent an Owner Directed Adjustment or an authorized Amendment to the Task Order and the Contract Documents.

§5.6 – Task Guaranteed Maximum Price Credits. Owner shall be entitled to credits against the Task Guaranteed Maximum Price for the following items:

(a) *Unused Excess Materials*. Unused excess materials, if any, shall be handed over to the Owner at the completion of the Task Order Work or, at the Owner's option, shall be sold by the Design-Builder or returned to the supplier. Amounts realized, if any, from such sales or returns shall be credited to the Owner as a deduction from the Task Guaranteed Maximum Price.

(b) *Discounts, Rebates and Refunds*. Trade discounts, rebates, refunds and amounts received from

sales of surplus materials and equipment and a waiver of any applicable building permit fees, if any, shall accrue to the Owner, and the Design-Builder shall make provisions so that they can be secured. Amounts which accrue to the Owner in accordance with the provisions of this Paragraph shall be credited to the Owner as a deduction from the Task Guaranteed Maximum Price.

(c) *Realized Cost Savings and Tax Exempt Purchases*. Cost savings achieved through Value Engineering, reduction in the price of materials, or other cost savings mechanisms shall be shared between Owner and the Design-Builder with 60% of all savings being credited to the Owner and 40% of all savings being retained by Design-Builder. Notwithstanding anything in the Task Order or the Contract Documents to the contrary, Owner, as a tax exempt Florida municipal corporation, may purchase materials for use in the Work and 100% of any savings realized by the Owner purchasing materials for use in the Work shall be credited to the Owner as a deduction from the Task Guaranteed Maximum Price.

§5.7 – Progress Payments. Monthly Progress Payments shall be based on the percent completion of the overall Task Construction Phase Requirements in accordance with the Schedule of Values and the Task Construction Timetable, as further described in Paragraphs 3.7 and 4.2 herein. In no event shall any interest be due and payable to Design-Builder on sums retained by the Owner pursuant to any of the terms or provisions of this Agreement, the Task Order, or the Contract Documents.

§5.8 – Owner's Reserved Rights Not to Transfer Authority Over Means and Methods. The Owner's reserved rights under this Article to direct changes in the scope of Work or to determine pricing under this Agreement shall not in any way transfer or assign Design-Builder's exclusive authority over the means, methods and manner of conducting construction activities. Owner specifically disclaims any liability for means, methods and manner of conducting construction activities relating to Work.

ARTICLE 6

PROCUREMENT OF SUBCONTRACTS, MATERIALS

AND SERVICES

§6.1 – Approval of Subcontractors. Design-Builder shall not subcontract for any part of the Services or Work on this Agreement and on any Task Order issued pursuant to this Agreement with any Subcontractor or Consultant (including affiliates and subsidiaries of Design-Builder) who is not properly licensed or against whom Owner has a reasonable objection. Design-Builder shall provide Owner's Representative with such written information as Owner deems necessary in order to determine whether to object to the Design-Builder's hiring of any Subcontractor or consultant, including proof of license. If no objection is interposed by the Owner within fifteen (15) days of its receipt of such information, Owner shall be deemed to have no such objection and Design-Builder may execute such Subcontract and shall furnish Owner a copy of same.

§6.2 – Subcontract Requirements.

(a) All Subcontracts shall afford Design-Builder rights against its Subcontractors which correspond to the rights afforded to Owner against Design-Builder herein, including those rights of contract

suspension, termination, replacement of unsatisfactory personnel at Owner's request, and documentation of Subcontractor charges as set forth herein. Except as otherwise approved by Owner in writing, all Subcontracts shall provide for the retention of five percent (5%) of amounts earned under the Subcontracts ("Subcontract Retainage"), and Owner shall not be responsible for releasing, paying, or compensating Design-Builder any amount on account of such Subcontract Retainage until such time as specified by this Contract for release of retainage.

(b) ***Employment Eligibility.*** The Design-Builder is obligated to comply with the provisions of Section 448.095, Fla. Stat., "Employment Eligibility." This includes but is not limited to utilization of the E-Verify System to verify the work authorization status of all newly hired employees, and requiring all subcontractors to provide an affidavit attesting that the subcontractor does not employ, contract with, or subcontract with, an unauthorized alien. Failure of the Design-Builder to comply will lead to termination of this Agreement, or if a subcontractor knowingly violates the statute, the Design-Builder must immediately terminate their subcontract with the subcontractor. Any challenge to termination under this provision must be filed in the Circuit Court no later than TWENTY (20) calendar days after the date of termination. If this contract is terminated for a violation of the statute by the Design-Builder, the Design-Builder may not be awarded a public contract for a period of ONE (1) year after the date of termination.

§6.3 – Coordination of the Subcontracts. Owner does not assume any responsibility for defining the limits on any Subcontracts on account of the arrangement of the specifications or plans. As part of the bidding and award of Subcontracts, Design-Builder shall ensure that the Subcontracts are coordinated so that all of the Work is properly and clearly allocated among, and assigned to, Design-Builder and Subcontractors without omission, conflict, or duplication. Design-Builder shall carefully review all Subcontracts to ensure: (a) that all subcontracted parts of Work are assigned to appropriate Subcontractors; (b) that, unless provided for by Design-Builder, provisions are made for temporary facilities and utilities necessary for the performance of the Work and for Project site facilities necessary for Design-Builder and Owner to perform their duties in the management, inspection, and supervision of the Work; (c) that responsibility for Project safety programs is properly assigned; (d) that they are in compliance with Applicable Laws; and (e) that they are in compliance with Owner's and Design-Builder's Guidelines, if any.

§6.4 – Design-Builder Responsible for Acts of Subcontractors. Design-Builder shall be responsible for any and all acts, defaults, omissions or negligence of Subcontractors and consultants, and shall be and remain liable and obligated to Owner for all Services, Work, materials and other items subcontracted. It is expressly agreed that no relationship of contract, obligation or otherwise shall be created between Owner and any Subcontractor or Consultant of Design-Builder, and a provision to this effect shall be inserted into all Subcontracts and other agreements between Design-Builder and its Subcontractors and Consultants. In no event shall Owner be liable to any of Design-Builder's Subcontractors for Work performed by such Subcontractor on behalf of the Design-Builder or for the Project. Owner will not resolve disputes between Design-Builder and any Subcontractor or disputes between Subcontractors.

§6.5 – Special Services. Design-Builder shall, as required by Contract Documents and the Schedule of Values, coordinate services from surveyors, testing laboratories, and other special consultants required for the completion of the Work.

§6.6 – Orders of Materials and Equipment. Design-Builder shall schedule, coordinate, and effect the purchase and delivery to the Project site of materials and equipment required to be provided by Design-

Builder pursuant to the Contract Documents. Design-Builder shall perform inspection services after the placement of all such orders.

§6.7 – Procurement of Materials and Equipment on Owner's Behalf. Design-Builder shall be responsible for scheduling and coordinating all materials, furnishings, tools, fixtures, computers, and equipment to be furnished by Owner under the terms of the Contract Documents for use in performance and completion of the Work. The purchase price and transportation and storage costs associated with such items shall be borne by Owner, and shall not be counted against the Guaranteed Maximum Price.

§6.8 – Direct Purchase.

§6.8.1 – The Owner is tax exempt and, upon agreement with the Design-Builder, may purchase directly various construction materials, supplies and equipment that may be part of this Contract. If direct purchases are to be made by the Owner, the Owner will, via its purchase orders, purchase the materials and the Design-Builder shall assist the Owner in the preparation of purchase orders. The Owner may direct the Design-Builder to prepare the purchase order on the Owner's form and make ready for verification and execution by the Owner. The materials may be purchased from the vendors/suppliers selected by the Design-Builder, for the price originally negotiated by the Design-Builder. The Design-Builder will prepare a list of materials, supplies and equipment and the Owner will advise the Design-Builder which items from the list it wishes to purchase directly, with enough lead time to allow this request to be incorporated into the overall construction schedule.

§6.8.2 – ISSUANCE OF THE PURCHASE ORDERS BY THE OWNER DOES NOT CHANGE ANY OF THE DESIGN-BUILDER'S RESPONSIBILITIES REGARDING MATERIAL PURCHASES, OR INSTALLATIONS, WITH THE SOLE EXCEPTION OF THE PAYMENTS FOR THE MATERIALS SO PURCHASED AND THE CONSEQUENCES OF NON-PAYMENT BY OWNER. The Design-Builder remains fully responsible for all other obligations it has under the terms of this Contract regarding materials purchased, including but not limited to, coordination of the work including ordering of materials, correct quantities ordered, submittals, protection, storage, scheduling, shipping, security, expediting, receiving, checking shipping tickets, and invoices, installation, cleaning, and all applicable warranties. Regardless of any direct purchase, the Design-Builder remains responsible for ensuring that all materials purchased meet the requirements of the Contract Documents.

§6.8.3 – In the event that materials, supplies, or equipment purchased under this option, are defective or rejected for any reason whatsoever, and it becomes necessary in the opinion of the Design-Builder to initiate legal action against the responsible party, the Owner agrees to assign and subordinate to the Design-Builder any claims the Owner has against the responsible party resulting from the purchase order and to execute any legal documents necessary to accomplish the assignment, subordination or subrogation of such claims, and to cooperate with the Design-Builder in such legal action.

§6.9 – Materials Stored. For work on which the Design-Builder intends to request payment for materials stored at the site, the schedule of values will list materials and labor as separate line items.

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ARTICLE 7

CONSTRUCTION ADMINISTRATION

§7.1 – Design-Builder to Enter into Subcontracts. Design-Builder shall enter into Subcontracts with Subcontractors for the performance of those portions of the Work not performed directly by the Design-Builder. Design-Builder shall protect Owner's interests during the performance of such Subcontracts and shall monitor and secure performance by the Subcontractors of all duties and obligations contained in the Subcontracts. Design-Builder shall promptly notify Owner's Representative in writing of any material breach by a Subcontractor and shall take all necessary steps to remedy such breach and to minimize the effect of such breach on the timely and proper completion of the work, all at no additional cost to Owner.

§7.2 – Scheduling and Coordinating Construction. Design-Builder shall be responsible for scheduling, coordinating, assigning work areas, and sequencing the Work to be performed and for coordinating same with Owner's activities and ongoing operations and any Work that may be performed by Owner's own forces or other Contractors, in a manner so as to complete the Project by the Substantial Completion Date. Design-Builder shall perform all Services required under the Contract Documents in an expeditious fashion.

§7.3 – Preconstruction Conference. At an appropriate time after execution of Subcontracts, for each construction project assigned by Task Order, Design-Builder and Owner shall conduct a preconstruction conference and shall review with the Subcontractors any special requirements of Owner with respect to the Work, including Project access, safety requirements, Design-Builder guidelines, contract procedures, scheduling, requests for payment, Submittals, Change Orders, inspections, and any and all other matters they then deem relevant to the performance of Design-Builder and the Subcontractors under the Task Order. Design-Builder shall prepare and furnish to Owner's Representative and Subcontractors detailed minutes of the preconstruction conference within seven (7) days of its conclusion.

§7.4 – Confirmation of Insurance. Before beginning any Work or phase thereof under a Task Order, Design-Builder shall timely procure and review all insurance certificates and policies required by the Contract Documents and the Subcontracts and provide copies of same to Owner's Representative. Design-Builder shall immediately cure and correct any failure of any Subcontractor or affiliated entity to comply and remain in compliance with the insurance requirements of the Contract Documents and the Subcontracts before performing Work or continuing Work under this Agreement. Design-Builder shall not permit any Subcontractor to enter the Project site or perform any Work relating to the Project unless such Subcontractor is and remains insured in accordance with the insurance requirements set out in the Contract Documents and the Subcontracts.

§7.5 – Review and Approval of Subcontractor Schedules of Values. For each phase, Task Order, and assignment of Work under this Agreement, Design-Builder shall obtain, and carefully review, all schedules of values from each Subcontractor, together with any supporting documentation or data, which Owner or Design-Builder may require from the Subcontractors. The purpose of such review and examination shall be to protect Owner from front-end loading and an unbalanced schedule of values, which allocates greater value to certain elements of the Owner-assigned Work than is indicated by such supporting documentation or data or than is reasonable under the circumstances. If any Subcontractor schedule of values is found not

to be appropriate, or if the supporting documentation or data is deemed to be inadequate, Design-Builder shall negotiate with the Subcontractor to establish a balanced schedule of values. After making its review and examination, if the Subcontractor schedule of values is found by Design-Builder to be appropriate as submitted, or if necessary, as revised, Design-Builder shall sign and deliver same to Owner's Representative thereby indicating Design-Builder's informed belief that such schedule of values constitutes a reasonable, balanced basis for payment to the Subcontractor. Design-Builder shall not sign a Subcontractor schedule of values in the absence of such belief unless directed to do so, in writing, by City Manager of Owner.

§7.6 – Supervision of Subcontractors. Design-Builder shall maintain a continuous presence on the Project site at all times during the Construction Phase of any Work assigned by Task Order through the provision of sufficient qualified supervisory and other personnel to perform the Services and obligations of this Contract. Design-Builder shall continually supervise its own forces and all Subcontractors. Design-Builder shall determine the adequacy of personnel, labor, materials, equipment and direct supervision provided by all Subcontractors and shall monitor their compliance with the construction schedule.

§7.7 – Job Progress Meetings. During the performance of Work, Design-Builder shall conduct meetings at least weekly, and at such additional times as the needs of the Project or good construction management practice may require, with the Subcontractors, for the purpose of discussing matters relating to the quality, quantity, and progress of the Work. Design-Builder shall also conduct meetings at least bi-weekly with Owner and any others Owner may desire to participate in such meetings and at such additional times as the needs of the Project or good construction management practice may require, with the Owner for the purpose of discussing all matters relating to the quality and progress of the Work. Design-Builder shall within seven (7) working days after each of the meetings prepare and distribute minutes of such meetings to Owner’s Representative, the participants and others who Design-Builder believes should reasonably be informed of the meetings including those the Owner may designate in writing to receive same.

§7.8 – Requests for Information and Interpretation. Design-Builder shall promptly provide information and interpretations to Subcontractors as necessary for the execution of the Work and shall expedite same where necessary to maintain the construction schedule. Where appropriate, Design-Builder shall transmit to Owner's Representative requests for information or interpretation from itself or as made by any Subcontractor regarding the intent and meaning of the design for construction. Design-Builder shall maintain a log of all requests for information and interpretation (the “Request Log"), recording: (a) the date each request was made; (b) the date the request was transmitted to Owner's Representative; (c) the date of receipt of the response to the request; and, if applicable; (d) the date the response to the request was transmitted to the Subcontractor. The request shall be a part of the minutes required in Section 9.7 for Job Progress Meetings. Design-Builder shall reply to requests for architectural information or services within seven (7) days.

§7.9 – Submittals. Design-Builder shall review, and indicate its approval (or require re-submission if necessary) prior to forwarding to Owner each Submittal required by the Contract Documents, including shop drawings. Product data, samples, catalogues, and other submittals (collectively, “Submittals”), provided, however, that complete shop drawings for a single trade be submitted and no partial submittals will be reviewed without the prior written agreement of the Owner. Provided further that Submittals requiring color selections which may require additional time, especially where color selection of related items is critical, must be submitted before final selections are made. Approval by Design-Builder of Submittals shall constitute Design-Builder's representation to Owner that such Submittals are in conformance with the

requirements of the Contract Documents. The review and approval required by this Paragraph shall be completed with reasonable promptness, and expedited where necessary, so as to cause no delay to the Subcontractors or Work. Design-Builder shall also maintain a detailed log (the "Submittal Log"), reflecting: (a) the date, where applicable, the Subcontractors submit to Design-Builder, and the Design-Builder submits to Owner each Submittal; (b) the date of approval or rejection of each Submittal by Design-Builder; (c) the reason for the rejection of any Submittal; and (d) the date of each subsequent action by Design-Builder, Owner or Subcontractors with respect to any Submittal. The Submittal Log shall be part of the Job Progress Meeting minutes required in Paragraph 7.7 herein. Design-Builder shall immediately report to Owner's Representative in writing any substantial delays in the Submittal process and the cause thereof and shall take appropriate steps to coordinate and expedite the Submittal process. The Owner's review of Submittals shall not relieve the Design-Builder from its obligation for performance of the Work in compliance with the Contract Documents.

§7.10 – Subcontractor Payments. Design-Builder shall promptly pay all indebtedness for labor, materials, services, tools and equipment, and for any other items used in the performance of the Work and in compliance with Florida Statutes.

§7.11 – Conditions of Employment. Design-Builder shall comply, and shall require all Subcontractors to comply, with Applicable Laws relating to the terms and conditions of employment of any employee who is employed in connection with the Project.

§7.12 – Protection of Persons and the Work. Design-Builder shall at all times take, or require to be taken, all necessary steps required to safeguard Owner's employees and property from injury or loss in connection with the performance of the Work and the Services. Design-Builder shall take, or require to be taken, all necessary steps to protect Owner's equipment, adjacent facilities, apparatus, and other property and all adjacent Work and property, including, but not limited to, the use of shoring, boarding, and other safeguards. Where the Work endangers the safety of pedestrians and drivers, barricades for traffic shall be used. Design-Builder shall keep Owner's property and the Work reasonably free from dampness, dirt, dust, and other damage and shall provide all reasonable security measures necessary to protect the Project from the elements, vandalism, theft, and other risks of property loss. All temporary protections shall be removed by Design-Builder upon completion of the Work.

§7.13 – Demolition, Removal of Materials and Burning. Except with prior written approval of the Owner the use of explosives will not be permitted. The procedure proposed for the accomplishment of any required demolition work shall be submitted to Owner's Representative for approval. The procedure shall provide for safe conduct of the work, careful removal and disposition of materials, protection of property, which is to remain undisturbed, and coordination with other Work in progress. The procedures shall include a detailed description of the methods and equipment to be used for each operation, and the sequence of operations, and shall be architecturally sound. All materials indicated to be removed shall be legally disposed of off the Owner's property. The use of burning at the Project site to dispose of refuse and debris may be permitted with Owner's permission and acquisition of proper permits by the Design-Builder from all agencies with jurisdiction, including, but not limited to, the Florida Department of Agriculture and Consumer Services (Division of Forestry) and Polk County. Design-Builder shall control the amount of dust resulting from the operations to prevent the spread of dust from creating a nuisance in the surrounding area.

§7.14 – Site Limitation. Design-Builder shall obtain Owner's Representative's authorization before establishing staging or "lay-down" areas.

§7.15 – Corrective Work. Design-Builder shall ensure correction and completion of all defective or incomplete Work. Such corrective Work shall be coordinated with and performed in such a manner as to minimize disruption to Owner's personnel facilities, and the operations of and at no cost to Owner.

ARTICLE 8

UNCOVERING AND CORRECTING WORK

§8.1 – Uncovering Work Covered Contrary to Directions. All Work is to be inspected by Owner before covering. If any of the Work is covered contrary to the request of Owner's Representative, or contrary to any provision of the Contract Documents, said Work shall, if required by Owner's Representative, be uncovered for inspection and any defective or incomplete work shall be properly corrected at Design-Builder's expense without change in the Substantial Completion Date or the Guaranteed Maximum Price.

§8.2 – Correction of Defective Work. Design-Builder shall immediately proceed to correct Work rejected by Owner's Representative as defective or failing to conform to the Contract Documents, unless such Work is accepted in accordance with Paragraph 8.5 below. Design-Builder shall bear all costs and expenses associated with correcting such rejected Work, including any additional testing and inspections and any fees and expenses of the Owner or Owner's consultants made necessary thereby, without adjustments to the Guaranteed Maximum Price or the Substantial Completion Date.

§8.3 – Correction During One Year Following Completion. If within one (1) year after the issuance of a Certificate of Final Completion any of the Work is found to be defective or not in accordance with the Contract Documents, Design-Builder shall correct such Work promptly upon receipt of written notice from Owner. This obligation shall survive Final Payment by Owner and/or termination of this Contract.

§8.4 – No Period of Limitation Established. Nothing contained in Paragraph 8.3 shall establish any period of limitation with respect to Design-Builder's other obligations and warranties under the Contract Documents. Establishment of the one year time period in Paragraph 8.3 above relates only to Design-Builder's specific duty to correct or complete the Work.

§8.5 – Owner's Option to Accept Defective Work. Owner may, at its sole discretion, choose to accept defective or nonconforming Work. Such acceptance shall not be effective unless specifically and expressly stated in writing by Owner. In such event, the Guaranteed Maximum Price *shall be reduced* by the reasonable costs of removing and correcting the defective or nonconforming Work, regardless of whether Final Payment has been made or the defective Work replaced or corrected, the intent being that Owner may use such funds to remedy such defects at a time and in a manner convenient to Owner. If the unpaid portion of the Guaranteed Maximum Price, if any, is insufficient to compensate Owner for the acceptance of defective or nonconforming Work, Design-Builder shall, upon written demand from Owner, pay Owner any shortfall of compensation for accepting defective or nonconforming Work.

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ARTICLE 9

INSPECTIONS AND CERTIFICATIONS OF COMPLETION

§9.1 – Inspection of Work. Design-Builder shall, on a continuous basis as a part of its day-to-day supervision of the Project, inspect the Work to ensure that the quality, quantity and progress of the Work meets the requirements of the Contract Documents. In making such inspections, Design-Builder shall reject Work that is defective or deficient, take steps to avoid unexcused delays in the performance of the Work, and protect Owner from overpayment.

§9.2 – Standard of Construction and Identification of Defective Work. Design-Builder shall cause all work constructed pursuant to this Agreement to be constructed in compliance with the requirements of the Contract Documents and Applicable Laws. Design-Builder shall correct all Work that does not meet the requirements of the Contract Documents and Applicable Laws unless the departure from such standards is specifically identified to, and thereafter authorized in writing by, Owner. Unless so authorized by Owner, Design-Builder shall correct all Work that does not meet the requirements of the Contract Documents and Applicable Laws at Design-Builder's expense.

§9.3 – Equipment and Other Items. When instructed by Owner's Representative, Design-Builder shall schedule and perform such inspections of equipment, fixtures, furnishings, and other items that Owner deems appropriate. Such testing and inspections shall be performed at times appropriate to the stage of fabrication, construction, installation, and testing of such items. Design-Builder shall notify Owner's Representative prior to each such testing or inspection and Owner's Representative or his designee shall be entitled to accompany Design-Builder for such testing and inspections.

§9.4 – Inspection upon Arrival, During Installation, and after Installation. Upon arrival of any materials, supplies, systems, equipment, fixtures, furnishings, and other items at the Project site, whether procured by Design-Builder or Owner, Design-Builder shall inspect such items for damage, for compliance with the Contract Documents and for compliance with all shipping documents and shall arrange for the proper storage and security of such items. Design-Builder shall also provide for and monitor the proper and timely installation of all such items on the Project. After such items are installed or made ready for use, Design-Builder shall again inspect all such items for damage and shall arrange for and monitor testing of all such items for compliance with the Contract Documents and readiness for use on the Project. If damage is discovered, Design-Builder shall immediately notify, in writing, the supplier, shipper, and Owner's Representative of such damage and shall lodge and pursue all appropriate claims associated with such damages.

§9.5 – Punch Lists and Correction of Defective Work. As per the Contract Documents and the relevant Task Order, the Design-Builder shall make a punch list in writing and complete the items on this list. Upon completion of the Design-Builder's punch list, the Design-Builder shall submit a "Request for Punch List Inspection". Design-Builder shall then, and with the assistance of Owner, prepare, and enforce a punch list and other itemizations of defective, deficient, or incomplete Work. Design-Builder shall report to Owner's Representative in its Monthly Reports its progress in correcting and completing such defective, deficient, or incomplete Work. A Punch List created under this Paragraph, and Work performed pursuant to said Punch List shall not be considered an Owner Directed Adjustment in the scope of the Work for the Project.

§9.6 – Design-Builder's Observation of Testing and Start-Up. Design-Builder shall schedule (and notify Owner's Representative of such schedule), coordinate, and observe the testing and start-up of all utilities, systems, fixtures, and other equipment and shall report the results of same to Owner's Representative in writing.

§9.7 – Transfer of Work to Owner. Design-Builder shall provide assistance to Owner in the transfer of completed Work, and all portions thereof, to Owner. Such assistance shall include, as applicable, procuring certificates of ownership, titles and warranties, procuring keys to the Work, operations and maintenance manuals and instructions, procuring supplies, start-up of Work systems, transferring Work security, arranging for training Owner in the operation and maintenance of all systems and components of the Work, and such other matters as may relate to Owner's initial occupation, possession, and use of the Work or any part thereof.

§9.8 – Substantial Completion. When Design-Builder believes that Substantial Completion of Work on a Task Order, or a designated part thereof, has been achieved, it shall notify Owner's Representative in writing and request an inspection for certification of Substantial Completion. Design-Builder shall thereafter meet on site with Owner's Representative to determine whether Substantial Completion of the Work, or the designated part thereof, has in fact been achieved. Design-Builder's written request for such inspection shall constitute a representation by Design-Builder to the Owner that Design-Builder has made all inspections of the Work required by the Contract Documents and that, to the best of Design-Builder's information and knowledge, the Work has been performed in compliance with, and the quality of the Work meets or exceeds the requirements of, the Contract Documents. If Owner's Representative agrees that Substantial Completion of the Project, or the designated part thereof, has been achieved, the Owner shall execute a Certificate of Substantial Completion. If Owner's Representative, upon inspection, concludes that Substantial Completion has not been achieved from the fault of the Design-Builder, Subcontractors, and/or any agents thereof and that re-inspection will be necessary, Design-Builder shall bear all costs of same without adjustment to the Guaranteed Maximum Price.

§9.9 – Final Completion. When Design-Builder believes that Final Completion of Work on a Task Order has been achieved, it shall notify Owner's Representative in writing and request an inspection for certification of Final Completion of the Project. Design-Builder shall thereafter meet on site with Owner's Representative to determine whether Final Completion of the Work has in fact been achieved. Design-Builder's request for such inspection shall constitute a representation by Design-Builder to Owner that Design-Builder has made all inspections of the Work as provided in the contract and that, to the best of Design-Builder's knowledge and belief, all the Work has been completed in compliance with the Contract Documents and that the quality of the Work meets or exceeds the requirements of the Contract Documents. If Owner's Representative agrees that Final Completion of the Work has been achieved, Owner shall execute a Certificate of Final Completion of the Project. If Owner's Representative, upon inspection, concludes that Final Completion has not been achieved from the fault of the Design-Builder, Subcontractors, and/or any agents thereof and that re-inspection will be necessary, Design-Builder shall bear all costs of same without adjustment to the Guaranteed Maximum Price.

§9.10 – Final Acceptance. The starting date for all warranties shall be from the date of the issuance of a Certificate of Final Completion of the Project. The more stringent of the Guarantees and Warranties in the Contract Documents shall apply.

§9.10.1 – *Responsibility of the Design-Builder*. Neither the final certificate of payment nor

any provisions in the Contract Documents shall relieve the Design-Builder of the responsibility for latent defects, unknown negligence, faulty materials, or workmanship within the extent and period provided by law.

§9.10.2 – *Warranty Periods*. Warranty periods shall be as in the Contract Documents or, if Design-Builder is notified of a defect during the applicable warranty period, until the defect is corrected to conform to the Contract requirements and to the reasonable satisfaction of the Owner.

§9.10.3 – *Certification*. The Subcontractors and suppliers shall prepare statements in the form approved by the Owner certifying that the work performed and materials supplied are in compliance with the Contract and confirming the appropriate warranty period. The Subcontractor shall submit the above statements to the Design-Builder.

§9.10.4 – *Bonding Company*. Failure of the Design-Builder or the Subcontractors to fulfill obligations of the guarantee will result in appropriate notice to the Bonding Company for action.

ARTICLE 10

PROJECT DOCUMENTATION

§10.1 – Basic Documentation. Design-Builder shall maintain the following documents on behalf of and for the use of Owner: (a) a complete set of current Subcontracts and Contract Documents, including a current set of drawings, specifications, Change Orders and modifications reflecting product and materials selections and as-built conditions on the Work; (b) all shop drawings, samples, product data, and other Submittals; (c) a clean set of the principal building layout lines, floor levels, and key site elevations certified by a qualified surveyor or Architect; (d) all required insurance certificates from Subcontractors; (e) a full copy of the Project Binder, identical to the Project Binder kept on file by the Owner; (f) all documents identified by the by the Owner or by the Owner's Representative as necessary to comply with Owner's lending and/or grant funding requirements; and (g) all other documents required by the Contract Documents. Basic documentation in this paragraph shall be organized by Task Order.

§10.2 – Daily Log. During Work on each Task Order with a Construction Phase, Design-Builder shall maintain a log of daily reports ("Daily Log") which shall identify daily weather conditions and any impact on the Work caused thereby, Design-Builder's personnel on site, all Subcontractors working each day and the number of employees of each, all visitors, the Work accomplished each day, any equipment failures or breakdowns, any procurement or delivery problems, any job site accidents or injuries, any safety or environmental violations, warnings or citations, and any other events, circumstances, or occurrences impacting the progress or cost of the Work. Design-Builder shall submit a copy of the "Daily Log" to the Owner with each periodic pay request.

§10.3 – Monthly Reports. For each active Task Order, Design-Builder shall prepare and submit to Owner's Representative a written report each month detailing the progress of the Work (the "Monthly Report"). The Monthly Report shall contain Design-Builder's estimate of percentage of completion of the Work and each element thereof, including a comparison of the status of the Work to the relevant approved Schedule of Values, identify any and all delays to the Work and the cause and extent thereof and describe

the remedial measures being taken to overcome such delays, identify any defective or deficient Work installed during the preceding month and describe the remedial measures being taken to correct the defective or deficient Work, identify any outstanding requests for information or clarification, requests for interpretation, change order requests, questions, or other matters requiring the response of either Owner, Design-Builder or a Subcontractor and shall include any and all other information required to fully inform Owner of the status of the Project and the performance of Design-Builder and Subcontractors. The Monthly Report shall include the construction schedule updates, updated cash flow forecasts, and updated comparisons of actual and estimated construction costs (including but not limited to the relevant Guaranteed Maximum Price) as required by the terms of the Contract Documents.

§10.4 – Review and Assignment of Warranties. Design-Builder shall obtain and shall transmit to Owner's Representative all special product, system, equipment or material warranties required by the Contract Documents and the Subcontracts. Design-Builder shall review all such warranties to confirm that the warranties are in compliance with the requirements of the Contract Documents and Subcontracts. By execution of this Contract, Design-Builder hereby assigns to Owner all of Design-Builder's rights, title and interest in and to any and all warranties, including Uniform Commercial Code warranties, that Design-Builder receives or is entitled to receive from any Subcontractor or supplier in connection with the Project.

§10.5 – Operations and Maintenance Documentation. Design-Builder shall obtain and transmit to Owner's Representative all documentation required by the Contract Documents regarding the operation and recommended maintenance programs relating to the various elements of the relevant Work. Two (2) complete sets of documentation shall be furnished to Owner's Representative in appropriately labeled uniform three-ring binders. One (1) complete electronic set of documentation shall also be furnished to Owner's Representative in appropriately bookmarked Adobe PDF format file.

§10.6 – Review and Approval of As-Built Drawings. Design-Builder shall continuously maintain a set of drawings clearly indicating the exact location and depth of all buried plumbing, sanitary sewers, storm sewers, heating, gas piping and electrical work with accurate dimensional reference to buildings or other fixed points.

§10.6.1 – *Withholding of Periodic Payments*. Failure on the part of the Design-Builder to maintain current As-Built Drawings will be cause for Owner to withhold all or portions of the monthly payments.

§10.6.2 – *Completion*. Upon completion of the Work under a Task Order and prior to requesting final payment for the Task Order, the Design-Builder shall deliver the As-Built Drawings to the Owner.

§10.7 – Availability of Project-Related Records to Owner. All records relating directly or indirectly to the Work which are in the possession or control of Design-Builder shall be made available to Owner, its designee, and any governmental authority for audit, inspection, and copying upon request of Owner's Representative. Such records include, without limitation: all drawings, specifications, submittals, subcontractor bids, the Daily Log, correspondence, the Request Log, the Submittal Log, minutes, e-mail documents, memoranda, tape or videotape recording, photographs, including aerial photographs, or other writings or things which document the Project, its design, and its construction.

§10.8 – Maintenance of Project-Related Records. Design-Builder shall maintain and protect all

Project-related records, including but not limited to Daily Log and Project journal, other than those required to be returned to Owner, for no less than two (2) years after Final Completion of each construction task assigned by Task Order and for any longer period of time as may be required by law.

§10.9 –Project Videotapes and Photographs. At any time requested by Owner's Representative, Design-Builder shall, at Owner's expense, record periodic narrated videotapes or take photographs depicting progress of the Work. Any specific safety or environmental incidents are to be videotaped at the time of the incident without waiting for Owner authorization. All videotapes and photographs or videotapes and photographs of safety or environmental incidents shall be submitted to Owner's Representative on a weekly basis.

ARTICLE 11

OWNER'S DUTIES, OBLIGATIONS, AND RESPONSIBILITIES

§11.1 – Provide Project Information. Owner shall provide Design-Builder with adequate information regarding Owner's requirements for Work including any desired or required design or construction schedule and any budgetary requirements.

§11.2 – Review of Documents. Owner shall review any documents submitted by Design-Builder requiring Owner's decision and shall render any required decisions pertaining thereto.

§11.3 – Access to the Site and the Work. Owner shall provide Design-Builder access to the site and to the Work as necessary for Design-Builder to perform the requirements of the Contract Documents.

§11.4 – Timely Performance. Owner shall perform those duties set forth in this Article in a timely fashion so as to permit the orderly progress of Design-Builder's Services and the Work.

§11.5 – Owner's Reviews, Inspections, Approvals, and Payments. Owner's review, inspection, or approval of any design document, Work, or any documents prepared or submitted by Design-Builder shall be solely for the purpose of determining whether such Work and such documents are generally consistent with Owner's construction program and requirements, and Design-Builder understands that Owner is relying on Design-Builder to assure compliance with the Contract Documents and compliance with general standards accepted in the Design-Build and/or architecture community. No review, inspection, or approval by Owner of such Work or documents shall relieve Design-Builder of its responsibility for the performance of its obligations under the Contract Documents or for the accuracy, adequacy, fitness, suitability, or coordination of its Services and work product. Approval by any governmental or other regulatory agency or other governing body of any Work, design document, or Subcontract shall not relieve Design-Builder of responsibility for the performance of its obligations under the Contract Documents. Payment by Owner shall not constitute a waiver of any of Owner's rights under the Contract Documents or at law, and Design-Builder expressly accepts the risk that defects in the Services or in the Work, if any, may not be discovered until after payment, including Final Payment, is made by Owner.

§11.6 – Non-Waiver. Owner's failure to exercise any right or remedy hereunder or to require compliance with any obligation of Design-Builder under the Contract Documents shall not constitute a

waiver or an estoppel of the right to exercise such right or remedy or to insist on such compliance at any other time or on any other occasion.

ARTICLE 12

PAYMENT TO DESIGN-BUILDER

§12.1 – Basis of Compensation. For Design-Builder's performance of Work and all Design Phase and Construction Phase Services in conformance with the relevant Task Order, and subject to the relevant Guaranteed Maximum Price and savings provisions as set forth the Contract Documents, Owner shall pay the Design-Builder "Compensation" consisting of: Subcontractor Costs, plus Design-Builder's fees incurred in performance of Design Phase Services, Construction Phase Services and Work plus any specific contingency approved per Paragraph 12.3 and the relevant Task Order. The Design-Builder's fee shall be deemed to apply to, without limitation, such items as overhead, profit and all expenses incurred in performance of Work and all Design Phase Services and Construction Phase Services assigned in the relevant Task Order. *Provided* that, for each Task Order the total compensation due Design-Builder from Owner shall not exceed the amount of the Guaranteed Maximum Price.

§12.2 – Form of Pay Requests and Backup Documentation. As soon as practicable after the last business day of each month, for each active Task Order, Design-Builder shall submit an invoice to Owner's Representative requesting payment ("pay request") for ninety five percent (95%) of the Subcontract Costs and/or Design-Builder's fees and expenses incurred in the performance of Services and the Work during the preceding month. At no time shall the cumulative sum invoiced or paid on a Task Order exceed an amount equal to the Guaranteed Maximum Price multiplied by the percentage of the Work actually and satisfactorily completed as determined by Owner's representative. Each pay request shall separately show the amounts of monies being claimed in connection with such pay request and any amounts claimed in connection with a Change Order. Pay requests shall also indicate Design-Builder's estimate of the percentage of completion of the Task Order Work and each element thereof according to the line items established in the Task Order Schedule of Values. Unless otherwise directed by Owner's Representative, pay requests shall be submitted in quadruplicate, bearing the appropriate identification numbers designated by Owner's representative to Owner's Representative for approval. Pay requests shall be accompanied by documentation in support of Subcontract costs as Owner's Representative may require including partial lien releases.

§12.3 – Certification Relating to Pay Requests. Each pay request shall bear the signature of Design-Builder's project manager, which signature shall constitute Design-Builder's representation to Owner that the Services and the Work indicated in the pay request have progressed to the level represented, have been properly and timely performed as required herein, that no Work has been covered contrary to the request of the Owner's Representative or contrary to any provision of the Contract Documents, that the Subcontract Costs and/or costs for self-performed work claimed in the pay request have been actually, necessarily, and reasonably incurred, that all obligations of Design-Builder covered by prior pay requests (that have not been withheld by Owner) have been paid in full, and that, to the best of Design-Builder's knowledge, information and informed belief, the amount requested is currently due and owing, there being no reason known to Design-Builder that payment of any portion thereof should be withheld. Submission of Design-Builder's pay

request for Final Payment shall further constitute Design-Builder's representation to Owner that, upon receipt from Owner of the amount requested, all obligations of Design-Builder to others incurred in connection with the Task Order Work will be paid in full within fourteen (14) days of such receipt or as negotiated by Owner and Design-Builder. In the event that Owner becomes informed that any of the foregoing representations by Design-Builder are wholly or partially inaccurate, Owner may withhold payment of sums then or in the future otherwise due to Design-Builder until the inaccuracy, and the cause thereof, is corrected to Owner's reasonable satisfaction.

§12.4 – Progress Payments During Construction. Owner will retain five percent (5%) of the value of all Task Order Work satisfactorily completed, including stored materials, and of the Task Order Guaranteed Maximum Price, as adjusted by any approved price-based Change Orders authorized to be issued under the terms and conditions of this Agreement, until the payment due at Substantial Completion of Task Order Work.

§12.4.1 – *Monthly Payments*. Progress payments by the Owner to the Design-Builder for each active Task Order will be made at least once each month.

(a) At the end of each calendar month, the Design-Builder shall submit an itemized application for payment supported by such other substantiating data as the Owner may reasonably require covering Work completed through the 25th of the month.

(b) The Design-Builder shall deliver four copies of the Periodic Request for Payment to the Owner's Representative, no later than noon on the last day of the month, which shall set forth the required information regarding the work completed during the applicable period.

§12.4.2 – *Certification by Owner; Payment*. The Owner shall review and thereafter approve or disapprove the issuance of payment no later than twenty (20) business days after receipt of a Periodic Request for Payment from Design-Builder.

§12.4.3 – *Material Payments*. When the Design-Builder requests payment for materials stored at the site, the conditions of storage shall be acceptable to the Owner.

(a) The Design-Builder shall provide satisfactory evidence of the value of materials stored, which may include copies of actual invoices.

(b) No payment shall be made for materials not stored at the site except with Owner's approval.

§12.5 – Payment at Substantial Completion. Subject to the limitations of the Guaranteed Maximum Price and provided that all conditions precedent have been satisfied, within ten (10) days after execution of the Certificate of Substantial Completion of the Project, Owner shall pay Design-Builder all sums due Design-Builder, less any amounts attributable to liquidated damages, and less two hundred percent (200%) of the reasonable cost for completing all incomplete Work, correcting and bringing into conformance all defective and nonconforming Work, and handling all unsettled claims. As a condition precedent to such payment, however, Design-Builder shall deliver to Owner's Representative the final complete set of as-built drawings in the form of marked-up blueline drawings, all required releases of lien, all certificates of occupancy or similar documents required for the occupation and use of the Project for its intended purposes, all required warranties and all Project documentation as described in Article 10 herein.

§12.6 – Lien Releases and Claim Waivers. Design-Builder's application for Final Payment shall be

accompanied by conditional final lien releases and waivers of claim from Design-Builder and all Subcontractors, together with a final payment affidavit in the general form outlined by Section 713.06, Florida Statutes describing the name of each Subcontractor who has not been paid in full, and the amount due or to become due for labor, services, or materials furnished.

§12.7 – Payment at Final Completion. Subject to each Task Order's Guaranteed Maximum Price, and provided that all conditions precedent to completion of Task Order Work have been satisfied, within ten (10) days after execution of a Certificate of Final Completion for the construction deliverable specified I the Task Order, Owner shall pay Design-Builder all unpaid sums including retainage due Design-Builder under this contract, less any amount properly withheld pursuant to the Contract Documents ("Final Payment"). Design-Builder's acceptance of Final Payment shall constitute an unconditional waiver and release of all claims by Design-Builder for additional compensation beyond that provided in the Final Payment. Final Payment by Owner shall not, however, constitute a waiver by Owner of its rights or claims arising from Design-Builder's failure to perform in accordance with the requirements of the Contract Documents.

§12.8 – Withholding of Payment. Any provision of the Contract Documents notwithstanding, Owner shall not be obligated to make a payment or payments to Design-Builder which are otherwise due, if, and for so long as, any one or more of the conditions set forth in this paragraph exists:

§12.8.1 – Design-Builder's pay request is not in the form or supported by the documentation required by this contract.

§12.8.2 – Design-Builder is in default of any of its obligations under the Contract Documents, inclusive of the relevant Task Order, that have not been cured to the Owner's reasonable satisfaction.

§12.8.3 – Any part of such payment is attributable to Services or Work which are defective or not conforming with the requirements of the Contract Documents or the relevant Task Order: provided, however, that payment shall be made as to the part thereof attributable to Services or Work which are rendered or performed in accordance with the Contract Documents and the relevant Task Order and are not defective, subject to other provisions hereof.

§12.8.4 – Design-Builder has failed to make payments within 14 days of receipt of payment from Owner to its Subcontractors, consultants, employees, or others performing Services in connection with the Project or any person has filed a claim that Design-Builder has failed to make payments due to such person, unless such claim has been bonded off the Project by the Design-Builder to the satisfaction of the Owner.

§12.8.5 – Any person has asserted a claim against Owner in whole or in part on account of alleged acts or omissions of Design-Builder, unless such claim has been bonded off the Project by the Design-Builder to the satisfaction of the Owner.

§12.8.6 – Evidence that the balance of the Work cannot be completed in accordance with the Contract Documents for the unpaid balance of the Task Order Guaranteed Maximum Price.

§12.8.7 – Failure or refusal by Design-Builder to perform the Work in accordance with the Contract Documents, including the relevant Task Order.

§12.8.8 – Damage to Owner or to a third-party to whom Owner is, or may be, liable for

property damage, personal injury, and/or claims arising out of the subject matter of this Contract and for which there is no insurance coverage insuring Owner for such liability.

§12.8.9 – Any situation or condition exists which, as set forth elsewhere herein or in the Contract Documents, reasonably justifies the withholding of payments. In the event that any of the foregoing conditions exist, Owner shall be entitled to withhold from any sum then due or thereafter to become due, including from retained sums, an amount sufficient in the sole judgment of Owner's Representative to satisfy, discharge, and defend against such claims and to make good any losses, prospective losses, costs, attorney's fees, and other expenses which may result from the existence of such conditions.

§12.9 – Disputed Pay Requests. In the event Owner's Representative disagrees with or questions all or any portion of any pay request, the amount due to Design-Builder, or the sufficiency of the information and documentation submitted by Design-Builder, Owner's Representative shall notify Design-Builder in writing within the time provided by the Local Government Prompt Payment Act. Pay disputes shall be resolved using the procedure described in Section 1.22 of this Agreement and the Local Government Prompt Payment Act.

§12.10 – Conditions Precedent to Payment. In addition to all other conditions contained herein, it shall be a condition precedent to any payment otherwise due hereunder that: (a) Design-Builder not be in material breach of this contract or in breach of any warranty made therein; (b) Design-Builder has submitted all monthly updated Construction Schedules, Monthly Reports, and cost summaries required; and (c) Design-Builder has submitted its pay requests and backup documentation in the time, form, and manner required.

§12.11 – Non-Waiver of Claims for Defective Work. Neither entrance, inspection, nor use of the Work by Owner or its representatives nor any payment (whether final or otherwise) made by Owner shall be construed as an acceptance of defective or nonconforming Work nor shall such entrance, inspection, use, or payment release Design-Builder from any of its obligations under the Contract Documents.

ARTICLE 13

CHANGE ORDERS AND EXTRA WORK

§13.1 – Change Orders; General Terms. Change Orders must be signed by both Design-Builder and Owner to be effective and incorporated as a part of the Contract Documents and, notwithstanding this requirement, a Change Order shall not be effective until the date of its execution by the Owner. The following special conditions shall apply to Change Orders:

(a) *Extension of Time*: All such Work shall be executed under the conditions of the Contract Documents as originally executed and no extension of time will be allowed unless it is shown to the reasonable satisfaction of the Owner that the change would cause a delay to the critical path of the Project.

(b) *Pricing*: In the event a change in the amount of an established Guaranteed Maximum Price is requested by Design-Builder, the Design-Builder shall submit, along with the change order request

or claim under Paragraph 14.2 herein, detailed information in accordance with Paragraph 13.2 herein, including billing statements, price quotes and receipts, justifying the Design-Builder's claim for a change in the Guaranteed Maximum Price for review and approval by the Owner. Absent an Owner Directed Adjustment in the scope of the Work to be performed for the Project, the Owner retains sole and unilateral discretion to approve a requested change in pricing by Change Order. It is the essence of this guaranteed maximum pricing contract that Design-Builder agrees to perform whatever work is necessary to fully construct and timely deliver each element, component, and/or phase of the Work to the Owner, suitable for occupancy and Owner's intended uses, regardless of whether Owner approves Design-Builder's requested change in pricing, so long as the Work performed is necessitated or reasonably implied by the scope of Work as created by the Design-Builder during the Design Phase of the Contract.

The Design-Builder will not be entitled to additional delay damages in the event the Contract is delayed as a result of a change except as approved through a Change Order executed in accordance with the terms of this Contract.

§13.2 – Increase or Decrease in Task Order Guaranteed Maximum Price. With each Design-Builder proposal for a change involving an increase or decrease in the amount of a Task Order Guaranteed Maximum Price, including a claim for Extra Work, the Design-Builder shall submit an itemized breakdown, to include but not be limited to the following, related only to Work on the Task Order:

(a) Material quantities and unit prices separated into trades.

(b) Labor costs.

(c) Construction equipment. and

(d) In the case of a proposal for an increase, overhead/fee, bonds and insurance (maximum 8% combined), or in the case of a proposal for a decrease, a commensurate reduction in overhead/fee, bonds and insurance.

Provided that Design-Builder shall not be allowed an increase in the amount of the Guaranteed Maximum Price due to personnel, labor, and subcontractor price increases ***regardless of cause***. Further, Design-Builder shall not be allowed an increase in the amount of the Guaranteed Maximum Price due to contracting/employment decisions concerning subcontractors and subconsultants, either to engage or terminate the same, whether such decisions are made at the express recommendations or directions of Owner or otherwise. Design-Builder shall also not be allowed any materials amounts for items that may be directly purchased by Owner, nor shall Design-Builder be allowed any percentage mark-up for materials incorporated that are directly purchased by Owner.

§13.3 – Extra Work. The Design-Builder shall notify all Subcontractors of the following, which shall also apply to the Design-Builder.

(a) *Written Authority*: No claims for "Extra Work" will be allowed unless written authority has been obtained from the Owner. Should the Design-Builder or any Subcontractors start any "Extra Work" without having prior written approval, such work will be construed as part of the Work required under the Contract, and no claim for "extras" will be considered or allowed.

(b) *Claim Submission Required*: All claims for "extras" or additions shall be submitted by the Design-

Builder to the Owner in accordance with Paragraph 14.2 herein. In the event a Subcontractor has a claim against the Design-Builder for "extras" or additions, the Subcontractor shall submit its claim for "extras" or additions to the Design-Builder and the Design-Builder shall immediately submit justification to the Owner for consideration in accordance with Paragraph 14.2 herein.

(c) *Determination of Value*: The value of any Extra Work shall be determined in one or more of the following ways:

1. By estimate and acceptance in a lump sum; or

2. By unit prices identified in the Task Order or subsequently agreed upon.

In the event the Design-Builder and Owner cannot agree on a fixed price for Extra Work, the Design-Builder shall complete the work and be paid at cost plus eight percent (8%) for overhead/fee, bonds and insurance. Alternatively, the Owner may elect to have another contractor perform that portion of the work affected by the change.

(d) *Work as Directed*: All Extra Work done shall be performed as specified by the Owner subject to and without waiving the provisions of Paragraph 5.8 of this Contract.

(e) *Payment for Special Items*: Unless specified differently in the relevant Task Order, Payment for Special Items shall be made in the following manner:

1. *Materials*. The Design-Builder shall receive the actual cost of materials used as shown by the original receipted bills, to which an agreed-upon percentage mark-up shall be added, *provided* that Design-Builder shall not be entitled to any materials amounts for items that may be directly purchased by Owner, nor shall Design-Builder be entitled to receive any percentage mark-up for materials incorporated in the Extra Work that are directly purchased by Owner.

2. *Rentals*. The Design-Builder shall receive a reasonable rental rate for any special equipment or machinery required to perform the Extra Work (said rental rate shall be agreed upon in writing prior to performing the work, to which sum no percentage shall be added and said rental rate shall not exceed the lesser of rates charged by local rental agencies or as provided in the latest current construction equipment rental schedule as published by Associated General Contractors).

§13.4 – Owner's Right to Audit Books. The Owner will have the right to audit all requests for payment on a cost plus basis. The Design-Builder shall cooperate in all respects in providing all information needed to complete any audit.

§13.5 – Time and Material Report. The Design-Builder shall keep a careful record of all labor and material used in connection with Work which shall be supported by a daily time and material report. Time and material reports shall be in addition to the Design-Builder's general records. Time and material records must be made on the mutually agreeable proper form and must be available to the Owner and Owner's representative at all times. All requests for payment for items other than lump sum items must be compiled from said records, broken down sufficiently to be checked by the Owner against the Design-Builder's Daily Record.

ARTICLE 14

CLAIMS BY DESIGN-BUILDER

§14.1 – Claims Generally; Contract Times. All claims against Owner or applications for an extension of any of the Contract Times specified in a Task Order shall be initiated by a written claim submitted by Design-Builder to the Owner's representative. Such claims shall be submitted to, and received by, Owner's representative not later than fourteen (14) days after the event, or the first appearance of the circumstances or conditions, giving rise to the claim, and same shall set forth in detail all known facts supporting the claim. Oral claim submissions even if documented by meeting minutes or otherwise, shall not satisfy this requirement and will not be considered. Submission of this written claim is a material condition of this Contract and failure to timely comply with this requirement will result in automatic denial of the claim regardless of the merits or substance. Design-Builder and Owner shall continue their performance under the Contract Documents regardless of the existence of any claims submitted by Design-Builder.

§14.2 – Claims for Additional Compensation. In the event Design-Builder seeks to make a claim for an increase in its compensation, and/or an adjustment of the Task Order Guaranteed Maximum Price, Design-Builder shall comply with the requirements of Paragraph 14.1 and such claim shall be made by Design-Builder before proceeding to execute any additional or changed work. Failure to satisfy this condition shall constitute a waiver by Design-Builder of any claim for additional compensation. Any liability of the Owner or Design-Builder for claims or damages from or against one another shall be limited to actual and reasonable direct costs incurred by the claiming party, except for Owner's damages resulting from Design-Builder's delays in achieving Substantial Completion, which damages shall be liquidated as provided in Paragraph 4.3(e) herein. In the event that the Design-Builder is delayed such that it cannot perform the Work called for under the Contract Documents as the result of any act or omission by the Owner or an Owner-authorized person acting on behalf of the Owner, Design-Builder shall be entitled to recover damages for extended general conditions. **Other than as provided herein in this Paragraph, the Design-Builder will not be entitled to delay damages incurred as a result of delay, regardless of cause.** Provided further that Design-Builder specifically acknowledges that the start of construction under any Task Order may be delayed up to sixty (60) days from date of execution of a Guaranteed Maximum Price Amendment due to outstanding regulatory approvals and the issuance of permits. Design-Builder waives any claims for additional compensation with regard to this delay pending receipt of written authorization from Owner allowing Design-Builder to purchase materials and equipment as required to mitigate escalation costs. In no event shall Owner be liable to the Design-Builder for any form of special, indirect or consequential damages of any kind, however the same may be caused, including, without limitation, the fault, breach of contract, tort (including the concurrent or sole and exclusive negligence), liability or otherwise of Owner or others. No change in Design-Builder's compensation, nor adjustment of the Guaranteed Maximum Price for any Task Order, shall be made except by Change Order issued in accordance with the terms of this contract.

§14.3 – Extensions of Time. In the event Design-Builder should be delayed in performing any task which at the time of the delay is then critical, or which during the delay becomes critical, as the sole result of any act or omission by the Owner or an Owner-authorized person acting in the Owner's behalf, or by Owner Directed Adjustment in the Scope of Work, or by any of the Acts of God enumerated in Paragraph 4.1 herein, the Substantial Completion Date, or as applicable, the date for Final Completion, maybe appropriately adjusted by the Owner upon the written claim of the Design-Builder to the Owner. A "task is critical" within

the meaning of this Paragraph if, and only if, said task is on the critical path of the Project schedule so that a delay in performing such task will delay the ultimate completion of the Project. Any claim for an extension of time by the Design-Builder shall comply with the requirements of Paragraph 14.1 above. If the Design-Builder fails to make such claim as required by this Article, any claim for an extension of time shall be waived. **Design-Builder shall not be entitled to delay damages, as a result of delay, regardless of cause, in the event Design-Builder fails to make a claim as required by this Article.**

§14.4 – Claims for Concealed or Unknown Conditions. In the event the Design-Builder discovers previously concealed and unknown site conditions which are materially at variance from those typically and ordinarily encountered in the general geographical location of the Work, the Design-Builder's compensation and the Guaranteed Maximum Price may be modified, either upward or downward, upon the written claim made by either party within fourteen (14) calendar days after the first appearance to such party of the circumstances. As a condition precedent to the Owner having any liability to the Design-Builder due to concealed and unknown conditions, the Design-Builder must give the Owner written notice of, and an opportunity to observe, such condition prior to disturbing it. The failure by the Design-Builder to give the written notice and make the claim as provided by this Paragraph shall constitute a waiver by the Design-Builder of any rights arising out of or relating to such concealed and unknown condition.

ARTICLE 15

PAYMENT AND PERFORMANCE BONDS

§15.1 – Execution of Payment and Performance Bonds. Unless excluded by further Amendment to the Contract Documents, the Design-Builder submitting the successful bid shall furnish a satisfactory payment and performance bonds with a corporate surety insurer authorized to do business in the State of Florida within ten (10) calendar days from the date of the execution by Owner and Design-Builder of the execution of a Task Order Guaranteed Maximum Price Amendment. The bond shall be written for one hundred percent (100%) of the Task Order Guaranteed Maximum Price.

§15.1.1 – *Owner's Form*. The Owner shall provide the form for the performance and payment bonds for execution by the Design-Builder and the Surety.

§15.1.2 – *Guarantee*. The performance and payment bonds shall be conditioned to both perform the Contract and guarantee payment of all legitimate invoices for labor and materials in the performance of the Work, including the warranty against faulty work and materials for a period of one year from the issuance of a Certificate of Final Completion and acceptance by the Owner.

§15.1.3 – *Surety Rating*. The performance and payment bond shall be acceptable to the Owner only if the surety insurer is "rated" with a current Best's rating of Excellent (A or A-) or Superior (A+) and holds a current Department of the Treasury Certificate of Authority as Acceptable Surety with an underwriting limitation of at least two times the dollar amount of the contract.

§15.1.4 – *Execution by Surety*. All bonds must be executed under corporate seal of the surety insurer and countersigned on behalf of the surety by its qualified resident agent or attorney-in-fact with proof of power attached.

§15.1.5 – *Default*. In case of default on the part of the Design-Builder, actions for all expenses incident to ascertaining and collecting losses under the bond shall lie against the bond, including architectural, and legal services.

ARTICLE 16

DESIGN-BUILDER'S PERSONNEL AND SUBCONTRACTORS

§16.1 – Personnel. Design-Builder shall assign only qualified personnel to perform the Services. At the time of execution of this Contract, the parties anticipate that the individuals named in Exhibit 'B', attached hereto ("List of Key Personnel"), will perform those functions indicated. So long as the individuals named in Exhibit 'B' remain actively employed or retained by Design-Builder or its affiliates or subsidiaries, and Owner does not require removal as provided in Paragraph 16.2, they shall perform the functions indicated next to their names. Design-Builder shall not remove or substitute such personnel without Owner's written approval, which shall not be unreasonably withheld.

§16.2 – Removal of Personnel and Subcontractors. If, at any time during the course of Work, Owner's Representative reasonably determines that the performance of any member of Design-Builder's staff or any of Design-Builder's Subcontractors or consultants is unsatisfactory, Owner may, in writing, require Design-Builder to remove such staff member or terminate such Subcontractor or consultant immediately and replace the staff member, Subcontractor or consultant. Owner agrees to supplement the Guaranteed Maximum Price, by Owner-directed Change Order, with the reasonable amount of additional costs, if any, incurred by Design-Builder in replacing a Subcontractor or consultant only.

§16.3 – Employment Taxes. Design-Builder shall be responsible for payment of all unemployment compensation, social security, and other similar taxes and benefits covering its employees.

ARTICLE 17

INDEMNIFICATION

§17.1 – General Indemnity. For and in consideration of the sum of $500.00 which is deemed by Design-Builder to be included in payments received pursuant to the Guaranteed Maximum Price, Design-Builder shall indemnify and hold Owner harmless from and against any and all liability, claims, loss, damages, costs and expense, including attorneys' fees (including attorney's fees on appeal) and expenses, and fees and expenses of experts, arising out of or resulting from any and all negligent, reckless, and/or intentional acts or omissions, or both, of Design-Builder, or other persons employed and/or utilized by the Design-Builder in the performance of this contract, including but not limited to Design-Builder's Subcontractors, and the employees, agents, and consultants of any of them. In the event Owner is alleged to be liable to any person or entity on account of alleged acts or omissions, or both, of Design-Builder, or other persons employed and/or utilized by the Design-Builder in the performance of this contract, including but not limited to Design-Builder's Subcontractors, or the employees, agents, and consultants of any of

them, Design-Builder shall defend Owner against such allegations through counsel acceptable to Owner, and Design-Builder shall bear all costs, fees and expenses of such defense, including but not limited to, attorneys' fees and expenses, court costs, and expert witness fees and expenses, and any resulting settlement, judgment, or award. This duty to indemnify and defend Owner shall apply to, claims for bodily injury (including death), and for damage to or loss of property, and for environmental damage and liabilities, incurred or sustained by Owner or any third person. Design-Builder is not, however, obligated to indemnify Owner from or against Owner's own negligence. Should Design-Builder fail to perform its duties to defend and indemnify Owner as required herein, Owner may defend or settle such claims as it deems prudent, in exercise of reasonable judgment, and Design-Builder agrees to be bound by any such defense, settlement, judgment, or award that may result from such action by Owner. This indemnification to Owner is given by Design-Builder in accordance with §§725.06 and 725.08, Florida Statutes (2023). The monetary limit on the Construction Activities Indemnification given herein by Design-Builder, in accordance with §725.06(1), Florida Statutes (2023) shall be not less than One Million Dollars and no cents ($1,000,000.00), which sum is deemed by Design-Builder to have a reasonable commercial relationship to the performance of the Work and Services pursuant to the Contract Documents.

ARTICLE 18

INSURANCE

§18.1 – Insurance Requirements. Design-Builder shall, at its own expense, procure and maintain throughout the term of this Contract, with insurers acceptable to the Owner, the types and amounts of insurance conforming to the minimum requirements set forth herein. Design-Builder shall not commence any work described under this contract or on any Task Order assigned under this contract until either (1) the required insurance is in force and evidence of insurance acceptable to the Owner has been provided to, and approved by, the Owner; or (2) a program of self-insurance has been approved by the Owner. As evidence of compliance with the insurance required herein, the Design-Builder shall furnish the Owner with:

(a) a fully completed satisfactory Certificate of Insurance evidencing all coverage required herein, and a copy of the actual additional insured endorsement as issued on the Commercial General Liability, signed by an authorized representative of the insurer(s) verifying inclusion of the Owner and its members, officials, officers and employees as Additional Insureds in the Commercial General Liability coverage; Notwithstanding the prior submission of a Certificate of Insurance, copy of endorsement, or other evidence initially acceptable to Owner, Design-Builder shall, within thirty (30) days after receipt of a written request from Owner, provide Owner with a certified copy or certified copies of the policy or policies providing the coverage required herein. Design-Builder may redact or omit, or cause to be redacted or omitted, those provisions of the policy or policies which are not relevant to the coverage required herein.

(b) the original of the policy(ies); or

(c) other evidence satisfactory to the Owner.

Until such insurance is no longer required by this Contract, the Design-Builder shall provide the Owner with renewal or replacement evidence of insurance at least thirty (30) days prior to the expiration or termination of such insurance.

Workers' Compensation/Employers' Liability: Such insurance shall be no more restrictive than that provided by the Standard Workers' Compensation Policy, as filed for use in Florida by the National Council on Compensation Insurance, without restrictive endorsements. In addition to coverage for the Florida Workers' Compensation Act, where appropriate, coverage is to be included for the Federal Employer's Liability Act and any other applicable Federal or State law. The minimum amount of coverage (inclusive of any amount provided by an umbrella or excess policy) shall be:

Part One:	"Statutory"	
Part Two:	$2,000,000	(Each Accident)
	$2,000,000	(Disease-Policy Limit)
	$2,000,000	(Disease-Each Employee)

Commercial General Liability: Such insurance shall be no more restrictive than that provided by the most recent version of standard Commercial General Liability Form (ISO Form CG 00 01) as filed for use in the State of Florida without any restrictive endorsements other than those required by ISO or the state of Florida or those described below.

The Owner and its members, officials, officers and employees shall be included as "Additional Insureds" on a form no more restrictive than ISO Form CG 20 10 (Additional Insured - Owners, Lessees, or Contractors).

The minimum limits (inclusive of amounts provided by an umbrella or excess policy) shall be:

General Aggregate	$2,000,000
Products/Completed Operations Aggregate	$1,000,000
Personal and Advertising Injury	$1,000,000
Each Occurrence	$1,000,000
Fire Damage (any one fire)	$Nil
Medical Expense (any one person)	$Nil

Automobile Liability: Such insurance shall be no more restrictive than that provided by Section II (Liability Coverage) of the most recent version of standard Business Auto Policy (ISO Form CA 00 01) without any restrictive endorsements, including coverage for liability contractually assumed, and shall cover all owned, non-owned, and hired autos used in connection with the performance of the work. Such insurance shall not be subject to any aggregate limit and the minimum limits (inclusive of any amounts provided by an umbrella or excess policy) shall be:

Each Occurrence Bodily Injury	
and Property Damage Liability Combined	$2,000,000

Additional General Conditions: The insurance or any self-insurance maintained in lieu of the required insurance, provided by the Design-Builder shall apply on a primary basis. Any insurance, or self-insurance, maintained by the Owner shall be excess of, and shall not contribute with, the insurance provided by the Design-Builder.

Except as specifically authorized by Owner or otherwise specifically authorized in this Contract, no deductible or self-insured retention for any required insurance provided by Design-Builder pursuant to this Agreement will be allowed. Subject to the approval of the Owner for which such approval shall not be unreasonably withheld by the Owner, the Design-Builder may be permitted to meet the above described insurance requirements through the use of self-insured retentions, deductibles or other form of self-insurance. Provided however that, to the extent that the Design-Builder is permitted to utilize self-insured retentions, deductibles or other form of self-insurance for any required insurance coverage, the Design-Builder shall retain the risk of any uninsured loss, which would have been recoverable under the required insurance, and will continue to be responsible for paying any amounts which would be or would have been payable under the required insurance policies as if such policies had been purchased and kept in force by the Design-Builder without any applicable self-insured retention, deductible or other form of self-insurance. This obligation to pay amounts which would have been payable under the required insurance shall include any obligation to extend such coverage to the Owner as an additional insured.

Compliance with these insurance requirements shall not limit the liability of the Design-Builder. Any remedy provided to the Owner by the insurance provided by the Design-Builder shall be in addition to and not in lieu of any other remedy (including, but not limited to, as an indemnitee of the Design-Builder) available to the Owner under this Contract or otherwise.

Neither approval nor failure to disapprove insurance furnished by the Design-Builder shall relieve the Design-Builder from responsibility to provide insurance as required by this Contract.

Certificates of Insurance must be completed as follows:

Certificate Holder:

City of Winter Haven

Attn: Risk Manager

451 Third Street NW

Winter Haven, FL 33831

Additional Insured on the Commercial General Liability:

"City of Winter Haven and its officials, officers and employees."

§18.2 – Professional Liability Insurance. Design-Builder shall provide, on a form acceptable to Owner, professional liability insurance which shall cover Design-Builder for those sources of liability arising out of the rendering or failure to render professional services in the performance of the work including any hold harmless and/or indemnification agreement. Design-Builder shall provide and maintain such professional liability insurance from the inception of services and until completion of all work required under this Agreement. Coverage must either be on an occurrence basis; or, if on a claims-made basis, the coverage must respond to all claims reported within three years following the period for which coverage is required and which would have been covered had the coverage been on an occurrence basis. The minimum limits (inclusive of any amounts provided by an umbrella or excess policy) shall be One Million Dollars and no cents ($1,000,000.00) Each Claim/Annual Aggregate. The maximum allowable deductible shall be Twenty Five Thousand Dollars and no cents ($25,000.00) Each Claim.

If Design-Builder subcontracts any of the work, the selected firm shall either include the Subcontractors in Design-Builder's coverage or require the Subcontractors to maintain Professional Liability coverage as described herein.

§18.3 – Environmental Impairment (Pollution) Liability. Such insurance will be maintained by the Design-Buildering for liability resulting from pollution or other environmental impairment, without any asbestos abatement exclusion, which arises out of, or in connection with, work or occupancy of Owner property in the Design-Builder's performance under this Contract. The Design-Builder will provide and maintain environmental coverage from the inception of the Contract. If on an occurrence basis, the insurance must be maintained throughout the duration of the Contract. If on a claims-made basis, insurance must respond to claims reported within three years after termination of the Contract. Such insurance coverage in the amount of Three Million Dollars and no cents ($3,000,000) will be maintained for a period of 10 years from the date of termination of Contract.

§18.4 – Builder's Risk Coverage. Design-Builder shall procure a policy of "Builder's Risk Coverage" from an insurer licensed to do business in the State of Florida, naming the City of Winter Haven as an additional insured, which shall include the perils of fire, extended coverages, vandalism, and malicious mischief. This coverage shall be maintained at one hundred percent (100%) of the value at risk for the full term of construction and until accepted by the Owner. Owner shall provide Builder's Risk coverage for all materials purchased through Owner's Direct Purchase Program in accordance with requirements to qualify for state sales tax savings.

(a) Builder's Risk coverage is required on all new building construction including additions to existing buildings.

(b) The Owner will provide coverage for remodeling or renovation work to protect only the Owner against loss caused by perils of fire, vandalism, malicious mischief and those included in extended coverage to the full insurable value thereof.

(c) For projects involving both new construction and remodeling or renovation, the Design-Builder is required to provide Builder's Risk coverage for the new construction portion of the Work.

(d) For remodeling or renovation work, the Design-Builder is required to provide an "installation floater" or other insurance coverage suitable to the Owner for protection of materials and equipment in transit and in storage at the site or other locations until said materials and equipment become incorporated into the Owner's existing structure.

(e) The coverage shall be provided on an "agreed value" basis without the application of any coinsurance.

The maximum deductible for other than Windstorm or Hail shall be $5,000 per occurrence. The maximum deductible per occurrence for Windstorm or Hail shall be five percent (5%) of the estimated replacement value at the time of the loss of all buildings, structures, additions, machinery and equipment. The Design-Builder shall pay on behalf of the Owner or the Owner's official, officer or employee any such deductible.

The Design-Builder shall furnish the original policies or standard form of certificates to the Owner prior to commencing work under the Contract as evidence of the required insurance coverage outlined in the

Contract Documents, together with assurance that said insurance coverage shall not materially change, lapse or be canceled during the work covered thereby without giving the Owner thirty days' written notice of the intention to change, lapse or cancel same.

§18.5 – Changes in Owner's Insurance Program. Owner and Design-Builder agree to meet in good faith to discuss an amendment to this Agreement in the event the Owner's general insurance requirements for capital improvement projects change.

ARTICLE 19

SUSPENSION OF WORK

§19.1 – Suspension of Work. Owner may for any reason whatsoever suspend, in whole or in part, performance of Work and Design-Builder's performance under this Contract and any Task Order issued under this Contract. Owner's Representative shall give written notice of such suspension to Design-Builder specifying when such suspension shall be effective and the scope of the Work and the Services affected by such suspension.

§19.2 – Ceasing Performance upon Suspension. From and upon the effective date of any suspension ordered by Owner, Design-Builder shall not incur, nor permit any Subcontractor to incur, any further expense or obligations in connection with the suspended portion of the Work or the Services. From and upon the effective date of any suspension ordered by Owner, Design-Builder shall cease performing Services under this Contract, and shall cause all Subcontractors to cease performing Work, related to the suspended portion of the Work or the Services, and shall utilize its best efforts to mitigate its costs resulting from the suspension.

§19.3 – Resumption of Work after Suspension. If Owner lifts the suspension it shall do so in writing signed by Owner, and Design-Builder shall promptly resume performance of the Services and cause the Subcontractors to resume performance of the Work, unless, prior to receiving the notice to resume, Design-Builder has exercised its right of termination as provided in Paragraph 20.8 herein.

§19.4 – Claim For Costs of Suspension. In the event the suspension or termination is not caused by the failure of the Design-Builder to comply with the terms of this Contract, within twenty (20) days after either the resumption of the suspended portion of the Work or Services or the termination of this Contract by Design-Builder pursuant to Paragraph 20.8, Design-Builder shall submit an itemization of the following cost items reasonably and necessarily expended by Design-Builder as a direct result of the suspension, together with pricing or other data required by Owner's Representative:

(a) Salaries of Design-Builder's home or branch office employees, or both, but only to the extent that such employees were directly impacted by said suspension;

(b) Salaries of Design-Builder's field employees, costs of construction tools, equipment, and field office costs;

(c) Subcontract costs reasonably and unavoidably incurred on account of the suspension;

(d) Any other items directly related to the suspended part of the Services or the Work.

Design-Builder's failure to provide such itemized information within such twenty (20) day time period shall constitute a waiver of any claim to compensation relating to the suspension of Design-Builder's work under this Contract. Owner shall promptly review Design-Builder's itemization and shall issue a Change Order providing for payment to Design-Builder of such amounts, and only such amounts, listed above as may be due on account of the suspension and increasing the Guaranteed Maximum Price by like amount. In no event shall Design-Builder be entitled to lost profits, other consequential damages, delay damages or any items of damage related to or resulting from a suspension of the Services or of the Work except for those items enumerated in this Paragraph. For each day the Project is suspended, Design-Builder shall be entitled to the same number of additional days to complete the Project, *provided that* Design-Builder will not be entitled to additional compensation if suspension or termination is caused by the failure of the Design-Builder to comply with the terms of the Contract.

ARTICLE 20

TERMINATION

§20.1 – Termination for Convenience. Owner may for any reason whatsoever terminate performance of the Services, the Work, any Task Order, this contract, or any part of any of them, for Owner's convenience. Owner shall give written notice of such termination to Design-Builder specifying when termination becomes effective and the scope thereof.

§20.2 – Ceasing Performance upon Termination. From and after the effective date of any termination for convenience, Design-Builder shall not incur, nor permit any Subcontractor to incur, any further expense or obligations in connection with the terminated portion of the Work or Services. From and after the effective date of any termination for convenience, Design-Builder shall cease performance and cause the Subcontractors to cease performance, to the extent of the terminated portion of the Work or Services. In the event of termination of this Contract for convenience, Design-Builder shall terminate outstanding Subcontracts and purchase orders related to the terminated portion of the Work or Services unless directed to do otherwise in writing by Owner. Owner may direct Design-Builder to assign, and Design-Builder hereby agrees to assign Design-Builder's right, title and interest under open or terminated Subcontracts to Owner or its designee. Unless directed otherwise in writing by Owner, Design-Builder shall settle the liabilities and claims arising out of the termination of the Subcontracts. If requested in writing by Owner, Design-Builder shall vacate the Project site immediately.

§20.3 – Submission of Termination Claim. In the event of termination of all or any part of the Services, the Work or this Contract for convenience, Design-Builder shall, within ninety (90) days after the effective date of termination, submit a written notice of claim to Owner specifying the amounts due because of the termination together with costs, pricing, and other supporting documentation or data required by Owner's Representative. Design-Builder's failure to file a notice of claim within such ninety (90) day period shall constitute a waiver of any claim to compensation relating to the termination. If a proper termination claim is submitted, then Owner shall pay Design-Builder an amount derived in accordance with Paragraph 20.4 herein. Claims submitted under this Article shall not be subject to the procedure set forth for Claims in

Article 14.

§20.4 – Compensation for Termination for Convenience. As full compensation due to Design-Builder for any termination for convenience, including any amounts due to a Subcontractor on account of such termination, Owner shall, pay Design-Builder the following amounts:

(a) Reasonable costs of settling and paying claims arising out of the termination of Subcontracts or orders pursuant to the order of termination;

(b) The unpaid portion of Design-Builder's profit earned to the date of termination as determined by the terms of Paragraph 12.1 herein;

(c) If it appears that the Design-Builder would not have profited, would have sustained a loss, or that its fees would have been diminished if the entire Contract would have been completed, no fees shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss, if any, notwithstanding the provisions of subparagraph (a) and (b) of this Paragraph.

(d) The total sum to be paid the Design-Builder under this Paragraph shall not exceed the Guaranteed Maximum Price, as properly adjusted, reduced by the amounts of payments otherwise made, and shall in no event include duplication of payment.

Provided, that in no event shall Design-Builder be entitled to recover from Owner, on its own account or on behalf of a Subcontractor, lost profits or other consequential damages, whether its own or those of a Subcontractor, on account of a termination for convenience or an erroneous termination for cause, as described below.

§20.5 – Termination for Cause. If Design-Builder refuses or fails to perform its Services and duties under this contract in a timely manner, supply enough properly skilled supervisory personnel, labor or proper equipment or materials, make prompt payment to its Subcontractors, suppliers, employees, or consultants, or comply with Applicable Laws, or if Design-Builder is otherwise guilty of a material breach of any of the terms of the Contract Documents or any warranty made herein, then Owner may, after ten (10) days written notice of default, and without prejudice to any other right or remedy, terminate the Contract with Design-Builder, in whole or in part, and take possession of the Project site, the Contract Documents, Subcontracts, Project documentation in the possession of Design-Builder, and all equipment and materials at the site.

§20.6 – Erroneous Termination for Cause. In the event the Contract with Design-Builder is terminated by Owner for cause and it is subsequently determined by, a court or other tribunal of competent jurisdiction, that such termination was without cause, such termination shall thereupon be deemed a Termination for Convenience under Paragraph 20.1 and the provisions of Paragraph 20.4 regarding Convenience Compensation shall apply.

§20.7 – Completion by Owner and Survival of Obligations. Following any termination, whether for convenience or for cause and whether in whole or in part, Owner may complete the terminated portion of the Work and the Services by whatever means Owner deems most expedient. Design-Builder's obligations and all provisions of this Contract shall continue in full force and effect as to all Work or Services performed prior to the effective date of the termination and as to that portion of the Work and Services not affected by the termination.

§20.8 – Design-Builder's Right to Terminate. The Design-Builder may stop work or terminate the

Contract under the following conditions:

(a) *Public Authority*. Should the work be stopped by any public authority for a period of thirty days or more through no fault of the Design-Builder.

(b) *Owner's Action*. Should the work be stopped through act or neglect of the Owner for a period of twenty-one days or more.

(c) *Failure to Pay*. Should the Owner fail to pay the Design-Builder any approved payment within fifteen days after it is due.

In the event that Design-Builder stops the work due to any of the above events, the Design-Builder shall give seven days written notice to the Owner and recover from the Owner payment for all work executed which shall include losses sustained and reasonable profits.

ARTICLE 21

ENVIRONMENTAL CONSIDERATIONS

§21.1 – Environmental Licenses, Certifications, & Permits. Design-Builder covenants and agrees that during the term of the Contract and any extensions or renewals thereof, all of its employees, agents, representatives, and Subcontractors, if any, performing Work will have the requisite skills, licenses, certifications, training, permits and the like mandated by all applicable federal, state and local governing authorities with jurisdiction over environmental matters. Design-Builder agrees to provide to Owner's Representative evidence of compliance with the requirements of this Paragraph upon demand.

§21.2 – Environmental Laws. Design-Builder, its Subcontractors, representatives, employees, and/or agents shall comply with all federal, state, and local laws, rules, and ordinances relating to environmental protection governing the Work.

§21.3 – Termination. Design-Builder agrees that a material breach of any of the terms, conditions, and obligations of this Article would be detrimental to Owner, a material breach of this Contract and grounds for Owner's immediate termination of the Contract.

§21.4 – Application with Other Provisions. The provisions of this Article shall operate in addition to, and not in limitation of, any other obligations contained in the Contract Documents.

§21.5 – Existing Site Conditions. Notwithstanding any provision of this Contract to the contrary, Design-Builder is not assuming or otherwise agreeing to be responsible for any obligation or liability that is attributable to or caused by any subsurface soil condition that exists as of the date of this Contract and is not discovered by examination by Design-Builder during the Design Phase. Owner shall be responsible for any loss or damage resulting from any such undiscovered condition.

* * * * *

ARTICLE 22

MISCELLANEOUS

§22.1 – Design-Builder shall maintain a website accessible by the public with updates on the design and construction status for the overall Project during the term of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Design-Build Contract as of the date first above written.

DESIGN-BUILDER:

WHARTON SMITH, INC.



Signature: _____

Printed Name: Patrick J Hewitt

Title: COO-Water

Federal Tax ID Number: 59-2392802

CITY OF WINTER HAVEN, FLORIDA

BY: _____
T. Michael Stavres, City Manager

ATTEST:

BY: _____
Vanessa Castillo, MMC, City Clerk

APPROVED AS TO FORM AND CORRECTNESS:

BY: _____
Frederick J. Murphy, Jr., City Attorney

DATE: January 16, 2025

TO: Honorable Mayor and City Commissioners

VIA: T. Michael Stavres, City Manager
M.J. Carnevale, Deputy City Manager

FROM: Amanda-Jo Nicholson, Assistant to the City Manager

SUBJECT: Authorization for Travel and Training

BACKGROUND

In April 2011, the City Commission amended the City's Policy Relating to the "Travel and Training Expenses for Both Officials, Employees, and City-Sponsored Boards and Committees". As part of the amended policy, any travel and training for the City Manager and City Commissioners must be presented to the City Commission for pre-authorization prior to attending a convention, conference or training program.

In accordance with the City Commission's Policy, ratification of Commissioner Mercer's attendance at the Janaury 23, 2025 CHNEP Policy Committee Meeting (notce for this meeting was received after the January 13, 2025 City Commission meeting) and approval for her attendance at the May 22 and September 18, 2025 meetings is recommended.

Event:	Coastal & Heartland National Estuary Partnership (CHNEP) Policy Committee 2025 meetings
Dates:	January 23, 2025 May 22, 2025 Sept 18, 2025
Location:	Port Charlotte, FL
Attendees:	Commissioner Tracy Mercer

FINANCIAL IMPACT

Hotel and other travel related expenses associated with the travel and training outlined above will be accounted for within the City Commission cost center.

STRATEGIC PLAN ALIGNMENT

- Pillar: Responsible Government

- Goal: 6.2 – Engage and participate in legislative matters (State & Federal) and advocate for Home Rule and local priorities.
- Strategy: 6.2.1 – Strategically engage in local, State and national professional organizations and coalitions.

RECOMMENDATION

Staff recommends the City Commission ratify & approve the travel as outlined above.

DATE: January 16, 2025

TO: Honorable Mayor and City Commissioners

VIA: T. Michael Stavres, City Manager
M.J. Carnevale, Deputy City Manager

FROM: Amanda-Jo Nicholson, Assistant to the City Manager

SUBJECT: Authorization for Travel and Training

BACKGROUND

In April 2011, the City Commission amended the City's Policy Relating to the "Travel and Training Expenses for Both Officials, Employees, and City-Sponsored Boards and Committees". As part of the amended policy, any travel and training for the City Manager and City Commissioners must be presented to the City Commission for pre-authorization prior to attending a convention, conference or training program.

In accordance with the City Commission's Policy, authorization is requested for the following:

Event:	Polk County Day 2025
Dates:	March 11-13, 2025
Location:	Tallahassee, FL
Attendees:	Mayor Birdsong, Mayor Pro Tem Yates, Commissioners Dantzler, Mercer, and Dollison. City Manager Stavres, Deputy City Manager Carnevale, Public Affairs & Communication Director Hill.

FINANCIAL IMPACT

Hotel and other travel related expenses associated with the travel and training outlined above will be accounted for within the City Commission, City Managers & Public Affairs cost centers.

STRATEGIC PLAN ALIGNMENT

- Pillar: Responsible Government
- Goal: 6.2 – Engage and participate in legislative matters (State & Federal) and advocate for Home Rule and local priorities.
- Strategy: 6.2.1 – Strategically engage in local, State and national professional organizations and coalitions.

RECOMMENDATION

Staff recommends the City Commission approve the travel as outlined above.

DATE: January 13, 2025

TO: Honorable Mayor and City Commissioners

VIA: T. Michael Stavres, City Manager
M.J. Carnevale, Deputy City Manager
Eric Labbe, Economic Opportunity and Community Investment Director
Sean Byers, Planning Manager

FROM: Chris Young, Senior Planner

SUBJECT: Resolution R-25-04: Request by Harbor at Lake Henry, LLC to release the subdivision Performance Bond and confirming acceptance of improvements, infrastructure, and dedications in favor of the Public/City of Winter Haven for the Harbor at Lake Henry Subdivision. General Location: Subdivision is generally located south of the east intersection of Old Lucerne Park Road and Lucerne Park Road (SR-544).

BACKGROUND

The Harbor at Lake Henry, LLC requests the City Commission accept certain improvements and dedications in favor of the Public/City of Winter Haven, as noted on the plat for Harbor at Lake Henry. The subdivision consists of 36.03± acres generally located south of the east intersection of Old Lucerne Park Road and Lucerne Park Road (SR-544). The subdivision contains 179 building lots and fourteen (14) common lots. Within Harbor at Lake Henry, all water lines, sewer lines, and related infrastructure, will be owned and maintained by the City. Internal roadways are contained in 50-foot rights-of-way and will be dedicated to the City of Winter Haven. However, all stormwater drainage systems and related infrastructure will be owned and maintained by the HOA.

On August 26, 2024, the City Commission approved Resolution R-24-38 platting the Harbor at Lake Henry Subdivision; however, certain improvements were not completed at that time. In accordance with §21-395(c) of the City of Winter Haven Unified Land Development Code, the developer, Harbor at Lake Henry LLC submitted a Performance Bond issued by Great Midwest Insurance Company in the amount of $313,258.00 to guarantee completion of all required infrastructure and improvements for the subdivision. Incomplete improvements included, earthwork, sanitary sewer, potable water, stormwater management, and engineering certification. Recent inspections by staff found all incomplete improvements are now complete, and the water, wastewater, and reuse utilities along with internal road rights-of-way can now be accepted by the City. The City will not be accepting maintenance responsibility

for the stormwater drainage system and related infrastructure within this subdivision which will be the responsibility of the HOA.

STRATEGIC PLAN ALIGNMENT

This is an approval of a performance bond release for an approved subdivision plat and is not specifically defined as a goal or strategy in the Strategic Plan. However, it is generally aligned with the Economic Sustainability and Responsible Government Pillars.

FINANCIAL IMPACT

There is no direct financial impact as a result of this request.

RECOMMENDATION

Staff recommends the City Commission approve Resolution R-25-04.

ATTACHMENT

- Resolution R-25-04

Space for Recording

RESOLUTION R-24-04

A RESOLUTION CONFIRMING THE ACCEPTANCE OF CERTAIN IMPROVEMENTS, INFRASTRUCTURE, AND DEDICATIONS IN FAVOR OF THE PUBLIC/CITY OF WINTER HAVEN, FLORIDA AS NOTATED ON THAT CERTAIN PLAT ENTITLED "HARBOR AT LAKE HENRY" RECORDED IN THE OFFICE OF THE CLERK OF THE CIRCUIT COURT IN AND FOR POLK COUNTY, FLORIDA, IN PLAT BOOK 208, PAGES 29 THROUGH 32, PUBLIC RECORDS OF POLK COUNTY, FLORIDA; AND AUTHORIZING THE CITY MANAGER TO RELEASE THE PERFORMANCE BOND POSTED TO GUARANTEE COMPLETION OF REQUIRED IMPROVEMENTS AND INFRASTRUCTURE. (General Location: Subdivision is generally south of the east intersection of Old Lucerne Park Road and Lucerne Park Road (SR-544)

Whereas, that certain plat entitled "Harbor at Lake Henry" and showing the property described on Exhibit "A" attached hereto and made a part hereof, was presented to the City Commission and approved for filing on the 26th day of August, 2024, by the passage of Resolution R-24-38; and

Whereas, §21-396 of the City of Winter Haven Unified Land Development Code provides that acceptance of public improvements and dedications shall be by Resolution; and

Whereas, all required infrastructure and improvements for that Subdivision known as "Harbor at Lake Henry" have been completed in accordance with all applicable standards and specifications as determined by City staff and therefore City staff is requesting that the City of Winter Haven, Florida confirm its acceptance of the improvements and dedications in favor of the Public/City of Winter Haven, Florida as notated on the said plat and authorize the City Manager to release the Performance Bond given to secure and guarantee the completion of such improvements and infrastructure.

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

1. The City Commission having been otherwise fully advised in the premises, and having already approved said plat for filing hereby confirms its acceptance as of January 27, 2025, of the dedications in favor of the Public/City of Winter Haven as set forth on the said plat, for water; wastewater; and internal roadways as such systems have passed all

required tests, and all required certifications have been obtained, and the systems are fully operational pursuant to City standards and in accordance with Chapter 177, Florida Statutes. The City is not accepting the stormwater drainage systems and related infrastructure notated on the plat as that will remain the responsibility of the Harbor at Lake Henry Home Owners Association and/or fee-simple owners of record.

2. The City Manager is hereby authorized to release the Performance Bond issued by Great Midwest Insurance Company in the amount of $313,258.00 delivered as security for the completion of all required infrastructure and improvements in the said Subdivision and take all other actions that the City Manager deems necessary related thereto.

3. This Resolution shall take effect immediately upon passage.

INTRODUCED AND PASSED by the City Commission of the City of Winter Haven, Florida, in regular session this 27th day of January, 2025.

_____
MAYOR-COMMISSIONER
Nathaniel J. Birdsong, Jr.

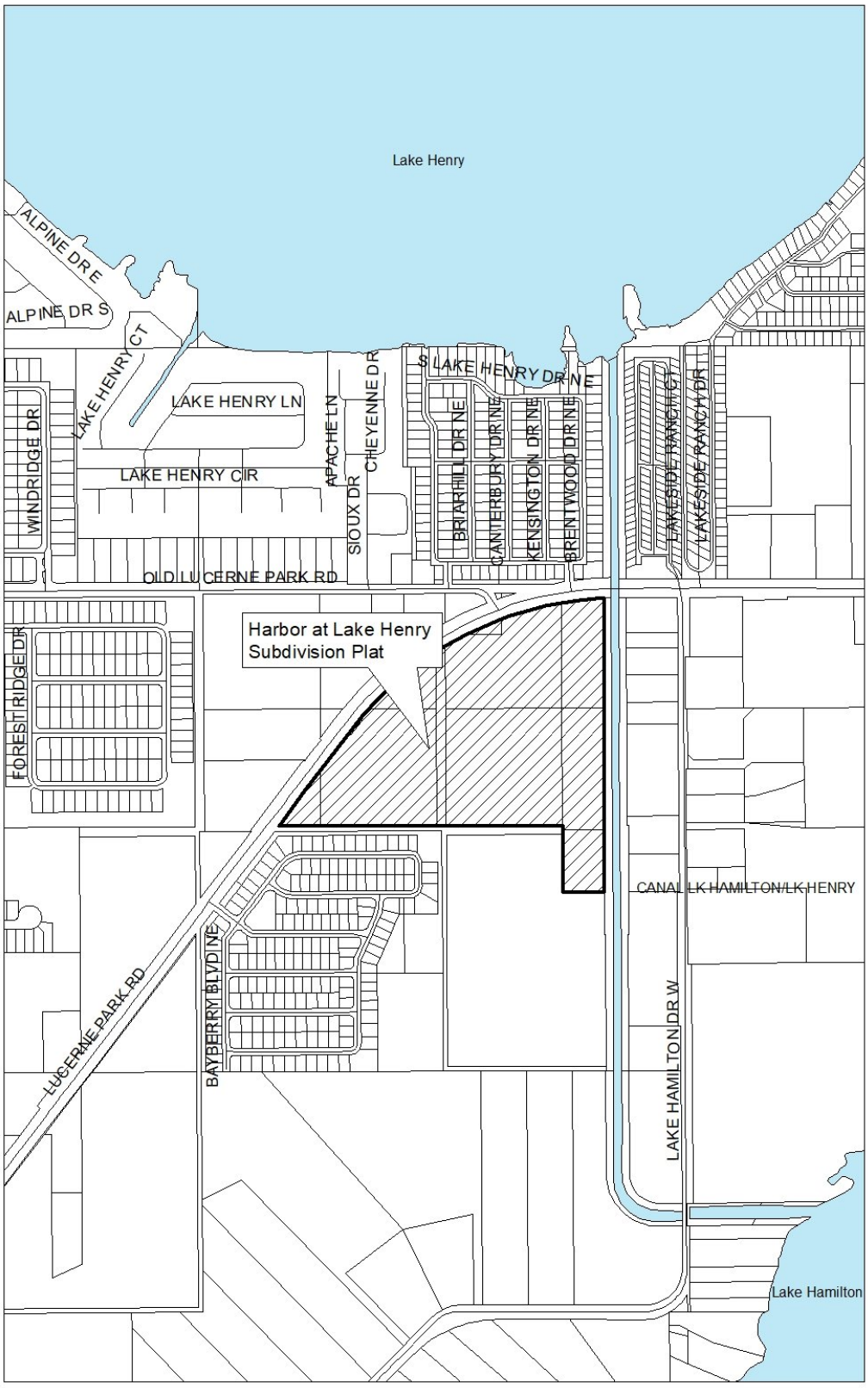
ATTEST:

_____
CITY CLERK
Vanessa Castillo, MMC

Approved as to form:

_____
CITY ATTORNEY
Frederick J. Murphy, Jr.

Exhibit “A”


Lake Henry
ALPINE DR E
ALPINE DR S
LAKE HENRY CT
LAKE HENRY LN
LAKE HENRY CIR
WINDRIDGE DR
APACHE LN
CHEYENNE DR
SIOUX DR
S LAKE HENRY DR NE
BRIARHILL DR NE
CANTERBURY DR NE
KENSINGTON DR NE
BRENTWOOD DR NE
LAKESIDE RANCH CT
LAKESIDE RANCH DR
OLD LUCERNE PARK RD
Harbor at Lake Henry
Subdivision Plat
FOREST RIDGE DR
CANAL LK HAMILTON/LK HENRY
BAYBERRY BLVD NE
LUCERNE PARK RD
LAKE HAMILTON DR W
Lake Hamilton

DATE: January 8, 2025

TO: Honorable Mayor and City Commissioners

VIA: T. Michael Stavres, City Manager
M.J. Carnevale, Deputy City Manager
Eric Labbe, Economic Opportunity and Community Investment Director

FROM: Sean Byers, Planning Manager

SUBJECT: Ordinance O-25-03: Administrative request to amend the Capital Improvements Element of the Comprehensive Plan to update the 5-year Schedule of Capital Improvements and to revise Capital Improvements Element Policies 1.1.7 and 1.1.8 relating to the adoption of the Florida Department of Transportation's and Polk County's 2024/2025 through 2028/2029 Transportation Improvement Programs and the Polk County School Board's 2024/2025 through 2028/2029 Facilities Work Program by reference.

BACKGROUND

Florida Statutes require all local governments to adopt a 5-year Schedule of Capital Improvements as part of its Comprehensive Plan. This update includes fiscal years 2024/2025 through 2028/2029, and is derived from the City's 2024/2025 Operating Budget adopted by the City Commission September 23, 2024, and projects for which grants will be sought.

The 5-year Schedule of Capital Improvements consists of items identified in the Capital Improvement Program portion of the City's Operating Budget that implement specific objectives and policies contained in the Comprehensive Plan and those future projects for which grant funding will be pursued. Per Capital Improvements Element Policy 1.1.3, only those projects with a minimum cost of $25,000 and a minimum service life of five (5) years are included.

Total capital spending for the proposed 5-year schedule is approximately $482 million. Funding is provided from a combination of general and enterprise funds, impact fees, grants, bond revenues, loans, State and County revenue sharing, and private contributions.

Policies 1.1.7 and 1.1.8 formally adopt by reference the current FDOT 5-year Work Program, the Polk County 5-year Transportation Work Program, and the 5-year work program adopted by the Polk County

School Board. Adopting these work programs is necessary to fully implement the City's concurrency management system.

FINANCIAL IMPACT/BUSINESS IMPACT STATEMENT:

There is no direct financial impact to the City with this request.

The following is submitted in order to demonstrate compliance with Chapter 2024-145, Laws of Fla. (CS/CS/SB 1628 (2024)) to the extent that such compliance is even necessary. Ordinance O-25-03 adopts the annual update to the 5-year Schedule of Capital Improvements into the 2035 Winter Haven Comprehensive Plan. There are no anticipated compliance costs associated with Ordinance O-25-03, and due to the non-regulatory nature of the proposed ordinance, no impacts to businesses are expected. There are no new charges or fees associated with Ordinance O-25-03 nor any regulatory costs or revenue accruing to the City as a result of the adoption of Ordinance O-25-03. This Ordinance will not affect any businesses operating within the City of Winter Haven.

STRATEGIC PLAN ALIGNMENT

This is an amendment to the 2035 Winter Haven Comprehensive Plan which adopts the annual update to the 5-year Schedule of Capital Improvements, and is not specifically defined as a goal or strategy in the Strategic Plan. However, it is generally aligned with the Economic Sustainability, Infrastructure, and Responsible Government Strategic Pillars.

PLANNING COMMISSION RECOMMENDATION

The Planning Commission, at its January 7, 2025 regular meeting, unanimously voted to recommend approval of this request. There were no public comments.

RECOMMENDATION

Staff recommends the City Commission approve Ordinance O-25-03.

ATTACHMENT

- Ordinance O-25-03

ORDINANCE NO. O-25-03

AN ORDINANCE AMENDING ORDINANCE 23-24 THE 2035 WINTER HAVEN COMPREHENSIVE PLAN, BY AMENDING THE SCHEDULE OF CAPITAL IMPROVEMENTS PORTION OF THE CAPITAL IMPROVEMENTS ELEMENT OF THE CITY OF WINTER HAVEN COMPREHENSIVE PLAN; REVISING CAPITAL IMPROVEMENTS ELEMENT POLICIES 1.1.7 AND 1.1.8; REPEALING ALL ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR THE ADMINISTRATIVE CORRECTION OF SCRIVENER'S ERRORS; AND PROVIDING AN EFFECTIVE DATE

WHEREAS, proposed amendments to the Capital Improvements Element of the City of Winter Haven 2035 Comprehensive Plan, have been studied, documented, advertised, and heard by the Winter Haven Planning Commission; and

WHEREAS, the City Commission of the City of Winter Haven, Florida, deems it appropriate to amend the 2035 Comprehensive Plan in order to further the public interest and the general welfare of the citizens of the City of Winter Haven; and

WHEREAS, a Business Impact Statement has been prepared to demonstrate compliance with Chapter 2024-145, Laws of Fla. (CS/CS/SB 1628 (2024)) to the extent that such compliance is even necessary.

NOW THEREFORE, BE IT ENACTED BY THE PEOPLE OF THE CITY OF WINTER HAVEN, FLORIDA, AS FOLLOWS:

1. That the Capital Improvements Element of the City of Winter Haven 2035 Comprehensive Plan is hereby amended by revising the Schedule of Capital Improvements to include Fiscal Years 2024/2025 through 2028/2029, to read as shown in Exhibit "A" which is attached hereto and made a part hereof.

2. That Capital Improvements Element Policy 1.1.7 is hereby amended to read as follows (Old language is ~~stricken through~~ and new language is <u>underlined</u>):

   Policy 1.1.7: The City shall adopt by reference, the ~~2023/2024~~ <u>2024/2025</u> through ~~2027/2028~~ <u>2028/2029</u> Florida Department of Transportation (FDOT) and Polk County Transportation Improvement Programs (TIP), as approved by the Polk Transportation Planning Organization (TPO), as part of the City's Schedule of Capital Improvements.

3. That Capital Improvements Element Policy 1.1.8 is hereby amended to read as follows (Old language is ~~stricken through~~ and new language is <u>underlined</u>):

   Policy 1.1.8: The City shall adopt by reference, the Polk County School Board's ~~2023/2024~~ <u>2024/2025</u> through ~~2027/2028~~ <u>2028/2029</u> Facilities Work Program, as approved by the Polk County School Board, as part of the City's Schedule of Capital Improvements.

4. This Ordinance shall not be codified, but the City Clerk shall retain this Ordinance as a permanent record of action taken by the City Commission.

5. All ordinances in conflict herewith are hereby repealed to the extent of any conflicts.

6. The correction of typographical and/or scrivener's errors which do not affect the intent may be authorized by the City Manager or designee, without need of public hearing, by filing a corrected or recodified copy of same with the City Clerk.

7. The effective date of this amendment to the 5-year Schedule of Capital Improvements shall be 31 days after adoption, unless the amendment is challenged pursuant to Section 163.3187(5), F.S. If challenged, the effective date of this amendment shall be the date a final order is issued by FloridaCommerce or its functional equivalent, or the Administration Commission, finding the amendment in compliance with Section 163.3184, F.S. No development orders, development permits or land use dependent on this amendment may be issued or commence before it has become effective. If a final order of noncompliance is issued by the Administration Commission, this amendment may nevertheless be made effective by adoption of a resolution affirming its effective status, a copy of the resolution shall be sent to FloridaCommerce, Bureau of Community Planning and Growth, 107 East Madison Street, Tallahassee, Florida 32399.

INTRODUCED on first reading this 27th day of January, 2025.

PASSED on second reading this 10th day of February, 2025.

CITY OF WINTER HAVEN, FLORIDA

_____
MAYOR-COMMISSIONER
Nathaniel J. Birdsong, Jr.

ATTEST:

_____
CITY CLERK
Vanessa Castillo, MMC

Approved as to form:

_____
CITY ATTORNEY
Frederick J. Murphy, Jr.

Capital Improvements Element

Schedule of Capital Improvements

Fiscal Years 2024/2025 through 2028/2029

Note: Projects contained in Years One through Three as notated in **Red** can be used to meet concurrency requirements.

PROJECT	TOTAL PROJECT COST	COMPREHENSIVE PLAN POLICY IMPLEMENTATION	LEVEL OF SERVICE STANDARD	FUNDING SOURCE	FISCAL YEAR 2024/2025	FISCAL YEAR 2025/2026	FISCAL YEAR 2026/2027	FISCAL YEAR 2027/2028	FISCAL YEAR 2028/2029	COMMENTS
TRANSPORTATION										
Multi-modal										
Avenue C, SE (First Street S to 6th Street SE)	$1,025,343	Transportation Objective 1.3, Objective 1.7, Objective 1.14, Objective 2.2, Objective 2.3; Recreation Objective 1.6	LOS D + 10%	FDOT Transportation Enhancement Grant- $806,324; Ad Valorem Taxes- $219,019		$285,000 (Design)		$740,343 (Construction)		Proposed improvements will reduce oversized lane widths of a 2-lane collector street into a corridor with an 8-foot sidewalk along the north side of the street, reconstruction of the existing 5-foot sidewalk located along the south side of the street, reducing travel lanes to 11 feet, adding defined on-street parking where space permits, landscaping, and minor drainage improvements.
Avenue D, NW	$2,000,000	Transportation Objective 1.3, Objective 1.7, Objective 1.14, Objective 2.2, Objective 2.3; Recreation Objective 1.6	LOS D + 10%	FDOT Grants (To be applied for); Ad Valorem Taxes					$2,000,000 (Design & Construction)	Avenue D, NW is a key east/west collector roadway lying immediately north of downtown. With many pedestrian oriented improvements occurring in the core of downtown along Central Avenue, Avenue D, NW is experiencing increased traffic. The 2015 Winter Haven Downtown Transportation Plan recognizes this and indicated improvements are needed along this corridor.
West Central Avenue	$435,566	Transportation Objective 1.3, Objective 1.7, Objective 1.14, Objective 2.2, Objective 2.3; Recreation Objective 1.6	LOS D + 10%	FDOT Grant- $371,366; City- $64,200			$64,200 (Design)		$371,366 (Construction)	Design and construction of sidewalk upgrades, lighting, and on-street parking along West Central Avenue between West Lake Howard Drive and Sixth Street, SW (US 17).
Cypress Gardens Blvd Corridor Vision Plan Implementation	$3,500,000	Transportation Objective 1.3, Objective 1.7, Objective 1.14, Objective 2.2, Objective 2.3; Recreation Objective 1.6	LOS D + 10%	FDOT Grants (To be applied for); Ad Valorem Taxes					$3,500,000	This will be an initial project to begin implemtation of findings identified in FDOT's 2020 Corridor Vision Plan for Cypress Gardens Boulevard between Cypress Gardens Road and Waterview Way. The end goal is to begin transforming this corridor from a rural cross-section to an urban cross-section. Initial efforts will focus on upgraded sidewalks, street lighting, and landscaping.
Eighth Street/Avenue L NW	$1,234,676	Transportation Objective 1.3, Objective 1.7, Objective 1.14, Objective 2.2, Objective 2.3; Recreation Objective 1.6	LOS D + 10%	FDOT Grants- $1,114,676; Ad Valorem Taxes; Trans Impact Fees	$120,000 (Design)		$1,114,676 (Construction			Design and construct complete street improvements to include sidewalks/multi-use path, intersection improvements, and a lane width reduction for Eighth Street, NW and Avenue L, NW between North Lake Howard Drive and Sixth Street, NW (US Highway 17)
Eighth Street SE	$1,014,377	Transportation Objective 1.3, Objective 1.7, Objective 1.14, Objective 2.2, Objective 2.3; Recreation Objective 1.6	LOS D + 10%	FDOT Grants- $894,377; Ad Valorem Taxes; Trans Impact Fees	$120,000 (Design)		$894,377 (Construction)			Design and construct complete street improvements to include sidewalks/multi-use path and intersection improvements between Cypress Gardens Blvd and Avenue K, SE)

Exhibit "A"
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Exhibit "A"

PROJECT	TOTAL PROJECT COST	COMPREHENSIVE PLAN POLICY IMPLEMENTATION	LEVEL OF SERVICE STANDARD	FUNDING SOURCE	FISCAL YEAR 2024/2025	FISCAL YEAR 2025/2026	FISCAL YEAR 2026/2027	FISCAL YEAR 2027/2028	FISCAL YEAR 2028/2029	COMMENTS
East Lake Howard Trail and Trailhead (Avenue B, NW to Lake Howard/Lake May Canal)	$675,000	Transportation Objective 1.3, Objective 1.7, Objective 1.14, Objective 2.2, Objective 2.3; Recreation Objective 1.6	NA	Ad Valorem Taxes	$100,000 (Design)	$575,000 (Construction)				Design and construction of a 3,500-foot multi-use trail and sidewalks along the eastern side of Lake Howard from Avenue B, NW to Lake Howard/Lake May Canal. This trail will provide a connection to neighborhoods in southwest Winter Haven from the Chain of Lakes Trail network. This project is identified in the Sidewalk Pedestrian Multi-modal Infrastructure Access Plan as a priority multi-use trail.
South Lake Howard Trail (15th St SW to Avenue G NW)	$750,000	Transportation Objective 1.3, Objective 1.7, Objective 1.14, Objective 2.2, Objective 2.3; Recreation Objective 1.6	NA	Congressional Appropriation- $750,000	$750,000					• (15th Street SW to Avenue C, SW): Design and construct a 3,200-foot multi-use trail along the shore of Lake Howard from 15th Street, SW to Avenue C, SW. The trail will aid in providing a connection between downtown and the Lake Howard Nature Park. This project is identified in the Sidewalk Pedestrian Multi-modal Infrastructure Access Plan as a multi-use trail. • (Avenue C, SW to Avenue G, NW): Corridor analysis for a trail connection along the western side of Lake Howard between Avenue C, SW and Avenue G, NW. The specific route for this trail has not been finalized. This project is identified in the Sidewalk Pedestrian Multi-modal Infrastructure Access Plan as a priority multi-use trail.
East Lake Martha Drive	$1,343,784	Transportation Objective 1.3, Objective 1.7, Objective 1.14, Objective 2.2, Objective 2.3; Recreation Objective 1.6	LOS D + 10%	FDOT Grant- $1,168,508; City- $175,76			$175,276 (Design)		$1,168,508 (Construction)	Design and consturction of upgraded sidewalks and crosswalks along both sides of East Lake Martha Drive between Avenue C, NE and Avenue K, NE.
Sixth Street, SW	$1,262,854	Transportation Objective 1.3, Objective 1.7, Objective 1.14, Objective 2.2, Objective 2.3; Recreation Objective 1.6	LOS D + 10%	FDOT Grants- $792,483; Ad Valorem Taxes- $470,371	$285,000 (Design)			$977,854 (Construction)		The Sixth Street, SW Complete Street improvements will convert the existing former 4-lane roadway between Avenue C, SW and Avenue G, SW into a corridor with two, 10 to 11-foot travel lanes (existing), a median/center turn lane, landscaping, rain gardens, and an 8-foot sidewalk along the eastern side of the roadway. The project will also provide 5 to 6-foot wide infill sidewalks along Avenue G, SW between Fifth Street, SW and Seventh Street, SW. This project was identified by the 2015 Winter Haven Downtown Transportation Plan.
Motor Pool Road Complete Street	$1,000,000	Transportation Objective 1.3, Objective 1.7, Objective 1.14, Objective 2.2, Objective 2.3; Recreation Objective 1.6	LOS D + 10%	Ad Valorem Taxes	$1,000,000					The Motorpool project will convert a two lane street into a multi-modal corridor connecting the Chain of Lakes Trail, Highway 17, Ave Y, NE, and Lake Conine Nature Park.
North Lake Shipp Drive Reconstruction (Avenue Q, SW to CSX RR Tracks)	$4,000,000	Transportation Objective 1.3, Objective 1.7, Objective 1.14, Objective 2.2, Objective 2.3; Recreation Objective 1.6	LOS D + 10%	Ad Valorem Taxes- $150,000; FDOT Grants (To be applied for)	150,000 (Design)				$3,850,000	A Major focus of this effort is accommodating safer pedestrian movement. Additional improvements include bicycle facilities, drainage improvements, sidewalks.

Exhibit "A"
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Exhibit "A"

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PROJECT	TOTAL PROJECT COST	COMPREHENSIVE PLAN POLICY IMPLEMENTATION	LEVEL OF SERVICE STANDARD	FUNDING SOURCE	FISCAL YEAR 2024/2025	FISCAL YEAR 2025/2026	FISCAL YEAR 2026/2027	FISCAL YEAR 2027/2028	FISCAL YEAR 2028/2029	COMMENTS
Old Helena Road Multi-use Trail	$713,094	Transportation Objective 1.3, Objective 1.7, Objective 1.14, Objective 2.2, Objective 2.3; Recreation Objective 1.6	NA	Ad Valorem Taxes; FDOT Grant- $593,094	$120,000 (Design)		$593,094 (Construction)			Design and construction of a minimum 8-foot wide, 3,800-foot long multi-use trail along Old Helena Road bewteen Legoland Way and Cypress Gardens Boulevard. This project supports concepts contained in FDOT's *2021 Cypress Gardens Boulevard Corridor Study*.
Roselawn Street SW	$1,317,725	Transportation Objective 1.3, Objective 1.7, Objective 1.14, Objective 2.2, Objective 2.3; Recreation Objective 1.6	LOS D + 10%	FDOT Grants- $1,145,848; Ad Valorem Taxes- $171,877			$171,877 (Design)		$1,145,848 (Construction)	Design and construction of complete street improvements to include sidewalks and intersection improvements from 15th Street, SW to Avenue O, SW
Third Street, NW (Avenue D, NW to S Lake Silver Dr)	$1,785,000	Transportation Objective 1.3, Objective 1.7, Objective 1.14, Objective 2.2, Objective 2.3; Recreation Objective 1.6	LOS D + 10%	FDOT Grants- $766,598; Local Funds- $1,018,402	$285,000 (Design)	$1,500,000 (Construction)				The 3rd Street NW Complete Street improvements will convert the existing roadway between Avenue D, NW and South Lake Silver Drive into a corridor with two, 10 to 11-foot travel lanes, upgraded parking, landscaping, rain gardens, and a roundabout, and improved pedestrian safety amenities.
US Highway 17 Corridor Vision Plan Implementation	$1,500,000	Transportation Objective 1.3, Objective 1.7, Objective 1.14, Objective 2.2, Objective 2.3; Recreation Objective 1.6	LOS D + 10%	FDOT Grants (To be applied for); Ad Valorem Taxes					$1,500,000	This will be an initial project to begin implementation of findings identified in FDOT's 2020 Corridor Vision Plan for US Highway 17 between Cypress Gardens Boulevard and Motor Pool Road. Focus will be on upgrading sidewalks and crosswalks, traffic calming, and addressing midblock crossing opportunities.
Neighborhood Sidewalks	$880,000	Transportation Objective 1.3, Objective 1.7, Objective 1.14, Objective 2.2, Objective 2.3; Recreation Objective 1.6	LOS D + 10%	General Fund- $560,000; DT CRA- $75,000; FV CRA- $75,000; Transportation Fund- $150,000	$250,000	$250,000	$120,000	$120,000	$120,000	Sidewalk improvement program to address ongoing sidewalk improvements, including construction of infill sidewalks thoughout the City.
Roadways										
Cypress Gardens Blvd (SR 540) Congestion Improvements (8th, 8th, and 9th Street, SE)	$2,600,000	Transportation Objective 1.3, Objective 1.7, Objective 1.14, Objective 2.2, Objective 2.3; Recreation Objective 1.6	LOS D + 10%	Ad Valorem Taxes- $2,400,000; Transportation Impact Fees- $200,000	$2,600,000					This project will address congestion and delays along Cypress Gardens Bulevard at the 6th Street, SE, 8th Street, SE, and 9th Street, SE intersections.
Logistics Parkway Extension	$1,000,000	Transportation Objective 1.3, Objective 1.7, Objective 1.14, Objective 2.2, Objective 2.3; Recreation Objective 1.6	LOS D + 10%	PRWC- $1,000,000	$1,000,000					Project will connect Pollard Road to the existing Logistics Parkway. The project will also include a multi-use trail, sidewalk, and lighting.
Roosevelt Drive Extension (Cypress Gardens Blvd to Register Rd)	$927,935	Transportation Objective 1.3, Objective 1.7, Objective 1.14, Objective 2.2, Objective 2.3; Recreation Objective 1.6	LOS D + 10%	FDOT Grants- $927,935; Ad Valorem Taxes; Trans Impact Fees	$927,935 (Construction)					Reconstruction and completion of Roosevelt Drive with sidewalks between Cypress Gardens Blvd and Register Rd. This project was identified in FDOT's *2021 Cypress Gardens Boulevard Corridor Study*.
Transportation and Sidewalk Improvement Program	$10,000,000	Transportation Objective 1.3, Objective 1.7, Objective 1.14, Objective 2.2, Objective 2.3; Recreation Objective 1.6	LOS D + 10%	Ad Valorem Taxes	$2,000,000	$2,000,000	$2,000,000	$2,000,000	$2,000,000	Re-paving and sidewalk projects City-wide.
Signalized Intersection Timing Upgrades	$70,000	Transportation Objective 1.1	LOS D + 10%	Ad Valorem Taxes	$14,000 (First St Timing)	$14,000	$14,000	$14,000	$14,000	Identified upgrades will aid in traffic flow and improve overall level of service of the roadway network.

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PROJECT	TOTAL PROJECT COST	COMPREHENSIVE PLAN POLICY IMPLEMENTATION	LEVEL OF SERVICE STANDARD	FUNDING SOURCE	FISCAL YEAR 2024/2025	FISCAL YEAR 2025/2026	FISCAL YEAR 2026/2027	FISCAL YEAR 2027/2028	FISCAL YEAR 2028/2029	COMMENTS
Airport										
Airport Commerce Park	$1,020,826	Transportation Objective 1.11	NA	City- $510,413; FDOT Funding- $510,413	$1,020,826 (Construction)					Phase I will include the construction of the necessary infrastructure to support the design and construction, including utility connections, roadway and parking system, aircraft apron and connecting taxiway of Phase I in the Northwest Development Area of the airport.
Airport Beacon & Runway 5/23 PAPI	$535,000	Transportation Objective 1.11	NA	FDOT- $428,000; City- $107,000		$535,000 (Construction)				Installation of a new beacon and PAPIs will help ensure continued reliability and increased safety for users of the airport
Airport Master Plan Update	$532,000	Transportation Objective 1.11	NA	FAA- $478,000; FDOT- $26,600; City- $26,600	$532,000					Update of the 2016 Airport Master Plan. The FAA and FDOT recommend updating the Master Plan every 7 to 10 years
Digital Remote Air Traffic Control Tower	$1,230,000	Transportation Objective 1.11	NA	FDOT- $1,230,000	$1,230,000 (Construction)					Construction of a new remote air traffic control tower to be operated from a control center located at Barlow Executive Airport.
Eastern Itinerant Aircraft Parking Apron	$950,210	Transportation Objective 1.11	NA						$950,210	Design and constructionof additional itinerant aircraft parking apron to the North Apron
Emergency Generators	$365,000	Transportation Objective 1.11	NA	FDOT- $292,000; City- $73,000	$365,000 (Construction)					Project will install three generators to power the terminal, fuel farm, and airfield lighting. This project will ensure that the airport is able to operate in times of power outages and be able to accept relief flights and refuel emergency aircraft
T-Hangar Taxi-lane Rehabilitation	$2,310,000	Transportation Objective 1.11	NA	FAA Grant- $2,079,000; FDOT Grant- $115,500; Ad Valorem Taxes- $115,500		$210,000 (Design)	$2,100,000 (Construction)			Rehabilitate existing taxilanes between t-hangar buildings located in the south quadrant of the airport. The proposed approach includes a mill and overlay of the asphalt
Runway 5 Obstruction Clearing	$1,844,000	Transportation Objective 1.11	NA	FDOT Grant- $1,475,000; City- $368,800	$1,844,000- Design and Construction					This project would remove the obstructions and bring our Runway 5 approach end back into compliance with the FDOT.
Runway 11/29 PAPIs	$225,000	Transportation Objective 1.11	NA	FDOT- $180,000; City- $45,000			$225,000 (Construction)			Addition of these navigational aids will enhance safety at airport
Taxiway E Extension	$2,401,000	Transportation Objective 1.11	NA	FAA- $2,160,000; FDOT- $120,050; City- $120,050	$210,000 (Design)	$2,191,000 (Construction)				Design and construct an extension to Taxiway E from midfield to approach end of Runway 29. The extension will help with development of the eastern quadrant of the airport
TOTAL TRANSPORTATION	$50,428,390				$14,923,761	$7,580,000	$7,472,500	$3,852,197	$16,619,932	

Exhibit "A"
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Exhibit "A"

SANITARY SEWER											
PROJECT	TOTAL PROJECT COST	COMPREHENSIVE PLAN POLICY IMPLEMENTATION	LEVEL OF SERVICE STANDARD	FUNDING SOURCE	FISCAL YEAR 2024/2025	FISCAL YEAR 2025/2026	FISCAL YEAR 2026/2027	FISCAL YEAR 2027/2028	FISCAL YEAR 2028/2029	COMMENTS
Treatment Plants										
Wastewater Treatment Plant 2	$10,100,000	Sanitary Sewer Objectives 1.1 and 1.3; Water Supply Objective 1.1	250.0 gallons /person/ day	SRF Loan- $2,600,000; Operating Revenues- $100,000; Grants- $2,500,000; WIFIA Loan- $4,900,000;		$100,000	$3,000,000	$7,000,000		Wastewater Treatment Plant 2 is reaching the end of its useful life expectancy. This project will design and construct upgrades to the plant to allow efficient operation until decommissioning.
Wastewater Treatment Plant 3	$179,907,435	Sanitary Sewer Objectives 1.1 and 1.3; Water Supply Objective 1.1	250.0 gallons /person/ day	WIFIA Loan- $87,220,000; Grant- $44,500,000; Sewer Connection Fees- $1,907,435; SRF Loan- $46,280,000;	$1,907,435	$35,000,000	$40,000,000	$52,000,000	$51,000,000	Wastewater Treatment Plant 3 is nearing its permitted capacity. Projects will design and construct improvements to allow the plant's opacity to be increased to 12.0 MGD, make process aeration improvements, addition of a fourth sand filter, and installation of clarifier covers.
Water Resource Center	$3,100,000	Water Supply Policy 1.2.8	NA	Water Connection Fees- $1,886; Revenue Bonds- $2,900,000;	$100,000	$1,500,000	$1,500,000			Design and construction of a facility to provide educational opportunities to the public regarding the natural and mechanical water cycle.
Line Extensions/Upgrades										
Harmony Master Lift Station	$1,000,000	Sanitary Sewer Objective 1.1	250.0 gallons /person/ day	SRF Loan	$1,000,000					Construction of the Harmony Master Lift Station for the transmission of effluent on the new master forcemain for the Eloise/Harmony area.
WWTP 2 Master Lift-station	$1,750,000	Sanitary Sewer Objective 1.1	250.0 gallons /person/ day	Operating Revenues	$250,000	$1,500,000				Design and construction of new lift-station to allow wastewater pumping to WWTP 3.
North Lake Shipp Drive Utility Improvements	$4,200,000	Sanitary Sewer Objective 1.1	250.0 gallons /person/ day	Sewer Connection Fees- $1,550,000; Water Connection Fees- $1,550,000; Grants- $1,100,000	$100,000	$1,100,000	$3,000,000			Design and construction of upgraded gravity lines and force-main along the North Lake Shipp Drive corridor. The upgraded line will increase capacity and improve reliability in the southwest portion of the City.
Septic to Sewer Conversions	$5,000,000	Sanitary Sewer Objective 1.3	250.0 gallons /person/ day	Grants	$1,000,000	$1,000,000	$1,000,000	$1,000,000	$1,000,000	Design,permit, and construction of wastewater infrastructure to properties presently utilizing septic systems for wastewater disposal. This project will reduce nutrient loading to nearby waterbodies.
Seventh Street SW/South Lake Shipp Drive	$5,000,000	Sanitary Sewer Objective 1.1	250.0 gallons /person/ day	Sewer Connection Fees- $4,500,000; Operating Revenues- $500,000		$1,000,000	$2,000,000	$2,000,000		Design and construction of wastewater infrastructure along Seventh Street, SW and South Lake Shipp Drive to provide service to unserved adjacent properties.
Sewer Force-main Extensions	$3,150,000	Sanitary Sewer Objective 1.1	250.0 gallons /person/ day	Sewer Connection Fees- $2,650,000; Operating Revenues- $500,000	$350,000	$650,000	$700,000	$750,000	$700,000	Design and construction of sewer force-mains throughout the City to accommodate new growth.
TOTAL SANITARY SEWER	$213,207,435				$4,707,435	$41,850,000	$51,200,000	$62,750,000	$52,700,000	

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PROJECT	TOTAL PROJECT COST	COMPREHENSIVE PLAN POLICY IMPLEMENTATION	LEVEL OF SERVICE STANDARD	FUNDING SOURCE	FISCAL YEAR 2024/2025	FISCAL YEAR 2025/2026	FISCAL YEAR 2026/2027	FISCAL YEAR 2027/2028	FISCAL YEAR 2028/2029	COMMENTS
RECLAIMED WATER										
Reuse Water Main Extensions and Connections	$4,150,000	Water Supply Objective 1.3, Objective 2.1; Potable Water Objective 1.4; Conservation Objective 1.2	NA	Grants- $2,760,000; Impact Fees- $1,240,000	$150,000	$1,000,000	$1,000,000	$1,000,000	$1,000,000	This project will provide a looped reuse system around the City for the purpose of supplying reuse water for irrigation, aquifer recharge, and wetland restoration.
ASR Wellfield	$3,000,000	Water Supply Objective 1.3, Objective 2.1; Potable Water Objective 1.4; Aquifer Recharge Objective 2.3	NA	Grants- $1,375,000; Sewer Connection Fees- $1,625,000	$3,000,000					Construction of aquifer Storage and Recovery (ASR) wells for the recharge, storage and recovery of reclaimed water, stormwater, and fresh water for future use.
Direct Potable Reuse	$2,150,000	Water Supply Objective 1.3, Objective 2.1; Potable Water Objective 1.4	NA	Grants- $1,100,000; Sewer Connection Fees- $1,050,000	$50,000	$500,000	$50,000	$50,000	$1,500,000	Design and construction of the facilities to implement direct potable water reuse.
One Water Demonstration Project	$850,000	Water Supply Objective 1.3, Objective 2.1; Potable Water Objective 1.4; Aquifer Recharge Objective 2.3	NA	Operating Revenues	$50,000	$800,000				Design and construction of a One Water reuse water recharge project.
Rapid Infiltration Basin	$2,550,000	Conservation Objective 1.2, Objective 2.3; Drainage & Aquifer Recharge Objective 2.3	NA	SWFWMD Grants- $1,175,000; Sewer Connection Fees- $1,375,000	$100,000	$1,100,000	$1,000,000	$350,000		Design and construction of a Rapid Infiltration Basin to provide recharge to the aquifer, lakes and wetlands.
WWTP 2 Reclaim Bypass	$750,000	Water Supply Objective 1.3, Objective 2.1; Potable Water Objective 1.4; Conservation Objective 1.2	NA	Reuse Payment In Lieu of Fees- $750,000	$250,000	$500,000				Design and construction of a reuse bypass main directly to WWTP 2 from the WWTP 3 reuse transmission main to ensure adequate system pressures.
CR 653 Reuse Main	$910,000	Conservation Objective 1.2, Objective 2.3; Drainage & Aquifer Recharge Objective 2.3	NA	Grants	$910,000					Design and construction of a reuse main along the CR 653 corridor to further the buildout of a looped reclaim distribution system.
TOTAL RECLAIMED WATER	**$14,360,000**				**$4,510,000**	**$3,900,000**	**$2,050,000**	**$1,400,000**	**$2,500,000**	

POTABLE WATER

PROJECT	TOTAL PROJECT COST	COMPREHENSIVE PLAN POLICY IMPLEMENTATION	LEVEL OF SERVICE STANDARD	FUNDING SOURCE	FISCAL YEAR 2024/2025	FISCAL YEAR 2025/2026	FISCAL YEAR 2026/2027	FISCAL YEAR 2027/2028	FISCAL YEAR 2028/2029	COMMENTS
Treatment Plants & Storage										
SR 60 Elevated Storage Tank	$6,250,000.00	Potable Water Objective 1.1, Objective 1.2; Water Supply Objective 1.1	275 gallons/ unit/day	Water Connection Fees- S425,000; SRF Loan- $2,700,000; WIFIA Loan- $3,125,000			$850,000	$3,200,000	$2,200,000	Design and construction of an elevated water storage tank to support distribution system pressure to meet demands of planned growth in the southern portion of the Utility Service Area
Cypresswood Water Treatment Plant	$8,300,000	Potable Water Objective 1.1, Objective 1.2; Water Supply Objective 1.1	275 gallons/ unit/day	SRF Loan	$2,500,000	$5,300,000	$500,000			Improvements will provide a new water treatment facility on the easterly portion of the Winter Haven service area.
Fairfax Water Treatment Plant	$4,750,000	Potable Water Objective 1.1, Objective 1.2; Water Supply Objective 1.1	275 gallons/ unit/day	SRF Loan- $4,500,000; Operating Revenues- $250,000	$250,000	$2,500,000	$2,000,000			Improvements will replace HSP # 4, antenna replacement, control building upgrades, and upgrade ground storage tank
Garden Grove Pump Station	$600,000	Potable Water Objective 1.1, Objective 1.2; Water Supply Objective 1.1	275 gallons/ unit/day	Water Connection Fees		$300,000	$300,000			Existing Garden Grove Water Treatment Plant will be de-commissioned and converted to a pumping station.
Inwood Water Treatment Plant	$3,800,000	Potable Water Objective 1.1, Objective 1.2; Water Supply Objective 1.1	275 gallons/ unit/day	SRF Loan- $3,500,000; Water Connection Fees- $300,000	$300,000	$3,000,000	$500,000			Plant upgrades including service pump repacements, motor control room, and electrical upgrades. This also includes replacement of HSP # 1 which increases from 300 gpm to 1,500 gpm
Pollard Road Water Treatment Plant	$13,487,424	Potable Water Objective 1.1, Objective 1.3; Water Supply Objective 1.1	275 gallons/ unit/day	SRF Loan- $10,500,000; PRWC Funding- $2,987,424	$5,000,000	$7,987,424	$500,000			Design and construction of a new water treatment plant to serve the southern portion of the Winter Haven Water Service area and in support of the ILC.
Line Extensions/Upgrades										
Auburndale/Polk Water Interconnect	$1,750,000	Potable Water Objective 1.1, Objective 1.2; Water Supply Objective 1.3, Objective 1.4	275 gallons/ unit/day	Inter-local Agreeement PRWC			$1,750,000			Project creates a potable water connection to neighboring utilities to allow for sharing future water supply and emergency supply.
Auburndale Interconnect	$1,250,000	Potable Water Objective 1.1, Objective 1.2; Water Supply Objective 1.3, Objective 1.4	Potable Water Objective 1.1, Objective 1.2; Water Supply Objective 1.3,	Water Connection Fees- S416,666; Interlocal Agreements- $833,334		$500,000	$750,000			Project creates a potable water connection to neighboring utilities to allow for sharing future water supply and emergency supply.
Cypresswood WTP Line Extensions	$4,550,000	Potable Water Objective 1.1, Objective 1.2; Water Supply Objective 1.3, Objective 1.4	Potable Water Objective 1.1, Objective 1.2; Water Supply Objective 1.3, Objective 1.4	Water Connection Fees- S745,000; Sewer Connection Fees- S755,000; Reuse Fee in Lieu of Payments- $850,000; Developer Contributions- S1,350,000; Grants- $850,000	$50,000	$2,250,000	$2,250,000			Installation of new water mains to serve the replacement Cypresswood WTP
Eagle Lake Interconnect	$100,000	Potable Water Objective 1.1, Objective 1.2; Water Supply Objective 1.3, Objective 1.4	275 gallons/ unit/day	Water Connection Fees	$100,000					Project creates a potable water connection to neighboring utilities to allow for sharing future water supply and emergency supply.

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PROJECT	TOTAL PROJECT COST	COMPREHENSIVE PLAN POLICY IMPLEMENTATION	LEVEL OF SERVICE STANDARD	FUNDING SOURCE	FISCAL YEAR 2024/2025	FISCAL YEAR 2025/2026	FISCAL YEAR 2026/2027	FISCAL YEAR 2027/2028	FISCAL YEAR 2028/2029	COMMENTS
Haines City Interconnect	$2,750,000	Potable Water Objective 1.1; Objective 1.2: Water Supply Objective 1.3. Objective 1.4	275 gallons/ unit/day	Water Connection Fees- $1,375,000; Interlocal Agreement- $1,375,000	$50,000	$2,700,000				Project creates a potable water connection to neighboring utilities to allow for sharing future water supply and emergency supply.
Lake Alfred Interconnect	$550,000	Potable Water Objective 1.1; Objective 1.2: Water Supply Objective 1.3. Objective 1.4	275 gallons/ unit/day	Grants- $183,334; Inter-local Agreement- $183,333; Water Connection Fees- $183,333		$300,000	$250,000			Project creates a potable water connection to neighboring utilities to allow for sharing future water supply and emergency supply.
Old Bartow/Lake Wales Rd Water Main	$3,290,000	Potable Water Objective 1.1; Objective 1.2: Water Supply Objective 1.3. Objective 1.4	275 gallons/ unit/day	Water Connection Fees - $2,040,000; Developer Contributions- $1,250,000	$20,000	$1,250,000	$20,000	$2,000,000		Design and construction to loop water from Logistics Parkway to CR 653 for water quality and emergency services.
Water Main Transmission Projects	$8,700,000	Potable Water Objective 1.1; Objective 1.2: Water Supply Objective 1.3. Objective 1.4	275 gallons/ unit/day	Water Connection Fees- $8,000,000; Operating Revenues- $700,000	$250,000	$2,250,000	$3,100,000	$1,600,000	$1,500,000	Design and construction of water mains in new areas of growth, existing communities, and system looping.
Winter Haven Water Facility Building Utility Extensions	$2,550,000	Potable Water Objective 1.1; Objective 1.2: Water Supply Objective 1.3. Objective 1.4	275 gallons/ unit/day	Water/Wastewater Connection Fees	$1,050,000	$1,500,000				Design and construction of water and wastewater mains along Buckeye Loop Road to serve the future Winter Haven Water Facility Building.
Water Supply Projects										
One Water Peace Creek Projects- Bradco Farms Property	$14,000,000	Water Supply Objective 1.1; Potable Water Objective 1.1	NA	WIFIA Loan- $5,625,000; Grants- $8,375,000	$1,000,000	$9,000,000	$2,000,000	$2,000,000		The Bradco Property project will consist of a wetland recharge area, and ASR well, recreational trail amenities, and a site for Utilities administration facility.
Automated Meter Infrastructure	$850,000	Water Supply Objective 1.1; Potable Water Objective 1.1	NA	Water Connection Fees	$500,000	$250,000	$100,000			Automated Meter Infrastructure will automate the City's water meter data collection. Automated meters will allow customers to view in real time water consumption, with the goal of improving conservation.
TOTAL POTABLE WATER	**$77,527,424**				**$11,070,000**	**$39,087,424**	**$14,870,000**	**$8,800,000**	**$3,700,000**	

SOLID WASTE										
PROJECT	TOTAL PROJECT COST	COMPREHENSIVE PLAN POLICY IMPLEMENTATION	LEVEL OF SERVICE STANDARD	FUNDING SOURCE	FISCAL YEAR 2024/2025	FISCAL YEAR 2025/2026	FISCAL YEAR 2026/2027	FISCAL YEAR 2027/2028	FISCAL YEAR 2028/2029	COMMENTS
Fleet Expansion	$4,725,000	Solid Waste Policy 1.1.2	4.5 Pounds/ person/day	Solid Waste Fund	$1,700,000	$1,700,000	$575,000	$375,000	$375,000	Fleet needs to expand with a new collection route (one refuse and one recycling vehicle) for every 750 homes. Additionally over the 5-year period 4 junk and brush vehicles will need to be added. Investments in additional equipment need to be made prior to homes being built as this service is expected the first week residents move in.
TOTAL SOLID WASTE	$4,725,000				$1,700,000	$1,700,000	$575,000	$375,000	$375,000	
DRAINAGE										
PROJECT	TOTAL PROJECT COST	COMPREHENSIVE PLAN POLICY IMPLEMENTATION	LEVEL OF SERVICE STANDARD	FUNDING SOURCE	FISCAL YEAR 2024/2025	FISCAL YEAR 2025/2026	FISCAL YEAR 2026/2027	FISCAL YEAR 2027/2028	FISCAL YEAR 2028/2029	COMMENTS
Rain Garden Watershed Improvement	$660,000	Drainage & Aquifer Recharge Objective 1.2, Objective 1.5, Objective 2.2, Objective 2.3; Conservation Objective 1.2, Objective 2.3	NA	Stormwater Fees- $540,000; SWFWMD Grant- $120,000	$620,000 (Construction)	$40,000 (Design)				Siting, design, and construction of swales, rain gardens, and percolation ponds throughout the City to treat stormwater and aid in aquifer recharge.
Lake Howard Watershed Enhancement	$1,460,000	Drainage & Aquifer Recharge Objective 1.2, Objective 1.5, Objective 2.2, Objective 2.3; Conservation Objective 1.2, Objective 2.3; Recreation Objective 3.1, Objective 3.2	NA	Stormwater Fees- $610,000; Local Funds- $200,000; FRDAP- $200,000; Heartland Headwaters- $450,000	$1,460,000					Design and construction for the expansion of the Lake Howard Nature Park.
Logistics Parkway Stormwater Reclamation	$4,600,000	Drainage & Aquifer Recharge Objective 1.2, Objective 1.5, Objective 2.2, Objective 2.3; Conservation Objective 1.2, Objective 2.3	NA	Sewer Connection Fees- $2,350,000; Grants- $2,250,000	$150,000	$350,000	$2,600,000	$1,500,000		Design and construction of stormwater infratructure along Logistics Parkway to capture and retain stormwater run-off for recharge of the surficial aquifer.
Stormwater Asseement & Improvement Projects	$12,569,262	Drainage & Aquifer Recharge Objective 1.2, Objective 1.5, Objective 2.2, Objective 2.3; Conservation Objective 1.2, Objective 2.3	NA	Stormwater Fees- $6,284,631; Grants- $6,284,631		$6,450,378 (Ware Ave NE Area & Ave C, SE Area)	$3,482,852 (Ave K, SE Area)	$2,636,032 (South Lake Howard Drive Area)		Series of projects to improve drainage in priority areas of the City where flooding and pollutant loading can be addressed simultaneously. The six priority areas are: Ware Avenue NE; Mirror Terrace, NW; Avenue C, SE; Avenue K, SE; High Point Avenue; and South Lake Howard Drive.
TOTAL DRAINAGE	$19,289,262				$2,230,000	$6,840,378	$6,082,852	$4,136,032	$0	
CONSERVATION										
PROJECT	TOTAL PROJECT COST	COMPREHENSIVE PLAN POLICY IMPLEMENTATION	LEVEL OF SERVICE STANDARD	FUNDING SOURCE	FISCAL YEAR 2024/2025	FISCAL YEAR 2025/2026	FISCAL YEAR 2026/2027	FISCAL YEAR 2027/2028	FISCAL YEAR 2028/2029	COMMENTS
Nature Center	$2,300,000	Conservation Objective 1.1, Objective 1.2; Potable Water Objectives 1.1 and 1.3; Water Supply Objective 1.1	NA	Grants- $40,000; WIFIA Loan- $1,107,400; Bonds- $1,152,600		$2,300,000				Design and construction of a nature center.
TOTAL CONSERVATION	$2,300,000					$2,300,000				

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RECREATION PROJECT	TOTAL PROJECT COST	COMPREHENSIVE PLAN POLICY IMPLEMENTATION	LEVEL OF SERVICE STANDARD	FUNDING SOURCE	FISCAL YEAR 2024/2025	FISCAL YEAR 2025/2026	FISCAL YEAR 2026/2027	FISCAL YEAR 2027/2028	FISCAL YEAR 2028/2029	COMMENTS
Chain of Lakes Park	$30,646,906	Recreation Objective 1.1; Objective 2.1	Ballfields 1/5000	Bond Proceeds- $3,000,000; TDC Contribution- $12,000,000; Construction Fund- $15,646,606	$24,646,906 (Construction)		$6,000,000			Renovation of 5 ballfields including drainage, fencing, lighting, spectator amenities, and support facilities.
Diamondplex	$3,000,000	Recreation Objective 1.1; Objective 2.1; Future Land Use Policy 1.5.9	Ballfields 1/5000	Ad Valorem Taxes	$1,000,000	$2,000,000				The facility was orginally constructed in 1998, and requires upgrades and replacements to the field and installation of energy efficient LED field lighting.
Lake Maude Park	$350,000	Recreation Objective 1.1; Objective 2.1; Future Land Use Policy 1.5.9	6 acres/ 1,000 residents	Impact Fees		$250,000		$100,000		LED Lighting conversion and turf upgrades
Lake Lulu Wetland Park & Trail	$2,150,000	Recreation Objective 1.1; Objective 2.1	6 acres/ 1,000 residents	Ad Valorem Taxes		$150,000 (Design)	$2,000,000 (Construction)			Nature Park and trail development to connect Harmony Trail & SE Winter Haven, Polk County owned adjacent property & COL Phase II Trails
Lions Park	$6,200,000	Recreation Objective 1.1; Objective 2.1	Playground- 1/5,000; Picnic shelter- 1/5,000	Parks & Recreation Fees	$200,000 (Park Renovation Design)	$3,000,000 (Park Renovation Construction)	$3,000,000 (Park Renovation Construction)			The City purchased the Lions Park property on the southern shore of Lake May in 2007. Evaluation of the park property has found that the park is out of date and needs renovation to include: parking, picnic areas, playground, bridges, and walkways.
Martin Luther King Park- Skate Park	$300,000	Recreation Objective 1.1; Objective 2.1	6 acres/ 1,000 residents	Parks and Recreation Fees		$200,000	$100,000			It is anticipated that within two to four years of operation, the skate park will need upgrades for obstacles and infrastructure due to use. These funds will help ensure the continued safety and enjoyment of the facility
Pickelball Courts	$2,000,000	Recreation Objective 1.1; Objective 2.1	6 acres/ 1,000 residents	Ad Valorem Taxes	$100,000 (Design)	$1,900,000 (Construction				Design and development of Pickleball facilities at various park sites and development of a Pickleball facility
"Rowdy" Gaines Olympic Pool	$2,570,000	Recreation Objective 1.1; Objective 2.1	Swimming Pool- 1/25,000	Ad Valorem Taxes	$1,970,000	$300,000	$100,000	$100,000	$100,000	General renovation and upgrades to the pool and pool deck along with the installation of additional shade sails.
Rotary Park	$605,000	Recreation Objective 1.1; Objective 2.1	6 acres/ 1,000 residents	Ad Valorem Taxes- $355,000 & Rotary Club- $250,000	$25,000	$500,000	$80,000			Construction of park improvements including: horshoe courts, building renovations and expansion in FY 2026, and site modernization.
Sertoma Park Redesign	$2,620,000	Recreation Objective 1.1; Objective 2.1	Ballfields- 1/5,000; Park land-Eacres/ 1,000 residents	Ad Valorem Taxes	$120,000		$1,500,000	$1,000,000		Renovation of facility to including parking improvements, football field, concession facilities, lighting, and spectator amenities.
Southeast Park	$15,150,000	Recreation Objective 1.1; Objective 2.1	Ballfields- 1/5,000; Park land-Eacres/ 1,000 residents	Bond Proceeds	$150,000 (Study)	$15,000,000, (Purchase Land & Develop Site				Identify, purchase land , and develop a park in southeast Winter Haven
Winter Haven Recreational and Cultural Center	$22,122,203	Recreation Objective 1.1; Objective 2.1	Basketball- 1/5,000; Swimming Pool- 1/25,000; Playground 1/5,000	Ad Valorem Taxes- $800,000; Construction Fund- $21,322,303	$21,822,203 (Complete redevelopment)	$150,000 (Library Technology)	$50,000 (Library Technology)	$50,000 (Library Technology)	$50,000 (Library Technology)	Complete renovation including branch library, technology area, ADA upgrades, updated mechanical systems, building security, building flow, and community accessibility.

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PROJECT	TOTAL PROJECT COST	COMPREHENSIVE PLAN POLICY IMPLEMENTATION	LEVEL OF SERVICE STANDARD	FUNDING SOURCE	FISCAL YEAR 2024/2025	FISCAL YEAR 2025/2026	FISCAL YEAR 2026/2027	FISCAL YEAR 2027/2028	FISCAL YEAR 2028/2029	COMMENTS
Winter Haven Senior Adult Center	$430,000	Recreation Objective 1.1, Objective 2.1	6 acres/ 1,000 residents; Playground 1/5,000	Parks and Recreation Fees	$15,000	$15,000	$150,000	$250,000		General upgrades to facility and adjoining shuffleboard courts.
Women's Club Building/ Heritage Park	$250,000	Recreation Objective 1.1, Objective 2.1	NA	Ad Valorem Taxes- $200,000; Donation- $50,000	$250,000					General improvements to preserve a historic facility constructed in 1923, including parking lot improvements, climate control, weatherproofing, and roof repairs.
Park Enhancements Program	$2,550,000	Recreation Objective 1.1, Objective 2.1	6 acres/ 1,000 residents; Playground 1/5,000	Ad Valorem Taxes	$550,000	$500,000	$500,000	$500,000	$500,000	City-wide upgrades and enhancements to park facilities.
TOTAL RECREATION	$90,944,109				$50,849,109	$23,965,000	$13,480,000	$2,000,000	$650,000	

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OTHER PROJECTS IMPLEMENTING POLICIES IN THE COMPREHENSIVE PLAN											
PROJECT	TOTAL PROJECT COST	COMPREHENSIVE PLAN POLICY IMPLEMENTATION	LEVEL OF SERVICE STANDARD	FUNDING SOURCE	FISCAL YEAR 2024/2025	FISCAL YEAR 2025/2026	FISCAL YEAR 2026/2027	FISCAL YEAR 2027/2028	FISCAL YEAR 2028/2029	COMMENTS
Building Division Remodel/Reuse of old Fire Station One	$4,000,000	Housing Goal One	NA	Building and Permitting Fees	$4,000,000					Renovation of Old Fire Station One to create a new customer-oriented space to house the Building Division
Public Safety Complex 5	$5,281,533	Future Land Use Objective 1.4	NA	Bond Proceeds	$2,164,954	$3,116,579				Design and construction of a 11,000 square foot multi-purpose public service building on City-owned property on 20th Street, NW. This facility is designed to serve the northwest portion of the City.
TOTAL OTHER	$9,281,533				$6,164,954	$3,116,579	$0	$0	$0	
TOTAL ALL ELEMENTS	$482,063,153				$96,155,259	$130,319,381	$95,730,352	$83,313,229	$76,544,932	

Note: FDOT projects, Polk County transportation projects, and Polk County School Board projects are adopted by reference by Capital Improvements Element Policies 1.1.7 and 1.1.8.

DATE: January 17, 2025

TO: Honorable Mayor and City Commissioners

VIA: T. Michael Stavres, City Manager
M.J. Carnevale, Deputy City Manager

FROM: Gary M. Hubbard, Water Department Director

SUBJECT: Ordinance O-25-06 Industrial Pretreatment

BACKGROUND

The City has a Wastewater Industrial Pretreatment Ordinance specifying the requirements, provisions, and local limits for general sewer use and pretreatment, also referred to as a Sewer Use Ordinance.

In accordance with the Florida Department of Environmental Protection's (FDEP) ongoing oversight, by way of annual audits, of municipal pretreatment programs, the City of Winter Haven is proposing revisions to its Wastewater Industrial Pretreatment Ordinance in Chapter 19 of the City's Code. These revisions, detailed in Ordinance O-25-06, stem from FDEP's March 27, 2024 audit of the Pretreatment-Fat, Oil, and Grease (FOG) division. The proposed ordinance addresses FDEP's recommendations for regulatory compliance, clarifies language, and corrects minor typographical errors. Ordinance O-25-06 has been reviewed and approved as to form by the City Attorney. Having received FDEP's preliminary approval on January 3, 2025, the City now seeks the City Commission's adoption of Ordinance O-25-06 to obtain final approval and ensure the continued effectiveness of the City's pretreatment program.

FINANCIAL IMPACT

The City of Winter Haven is required to make these changes to comply with state and federal environmental regulations set forth by the FDEP and EPA. Therefore, no business Impact estimate is needed as per the exemption in Florida Statutes, Section 166.0141(4)(c)1, and there is no financial impact to the City.

STRATEGIC PLAN ALIGNMENT

- Pillar: Environmental Stewardship
- Goal: 4.4 – Integrate the elements of the One Water philosophy to ensure a balance between water supply and nature

- Strategy 4.4.1 – Review and update relevant sections of the code to further protect and enhance water sources.

RECOMMENDATION

Staff recommends the City Commission approve Ordinance No. O-25-06 and authorize the City Manager and/or his designee to take all further necessary actions related thereto.

ATTACHMENTS

- Ordinance O-25-06
- Exhibit A- Pretreatment-FOG Chapter SUO
- Strikethrough version for reference – Pretreatment-FOG Chapter SUO

ORDINANCE NO. O-25-06

AN ORDINANCE AMENDING VARIOUS PROVISIONS OF ARTICLE III, CHAPTER 19, SECTIONS 19-68 THROUGH 19-81, OF THE CODE OF ORDINANCES OF THE CITY OF WINTER HAVEN, FLORIDA REGARDING THE CITY'S WASTEWATER SYSTEM, SPECIFICALLY THE INDUSTRIAL PRETREATMENT PROGRAM, ALSO REFERRED TO AS THE INDUSTRIAL PRETREATMENT ORDINANCE; BY INCORPORATING CHANGES MANDATED BY THE FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION AND/OR THE ENVIRONMENTAL PROTECTION AGENCY THROUGH REVISION OF THE CITY'S WASTEWATER INDUSTRIAL PRETREATMENT REGULATIONS; PROVIDING FOR CODIFICATION, THE ADMINISTRATIVE CORRECTION OF SCRIVENER'S ERRORS, SEVERABILITY, AND A REPEAL OF CONFLICTING ORDINANCES AND RESOLUTIONS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City Commission of the City of Winter Haven adopted Ordinance No. O-21-34 on August 23, 2021, revising various provisions of Sections 19-68 through 19-80 of Chapter 19, Article III of the Code of Ordinances to revise the Industrial Pretreatment Ordinance to comply with regulation changes mandated by the Florida Department of Environmental Protection, to include: updating definitions, correcting typographical errors, and adding language for new dental regulations under Section 19-81; and

WHEREAS, the City Commission of the City of Winter Haven finds that it is expedient to make further revisions of various provisions of Sections 19-68 through 19-81 of Chapter 19, Article III of the Code of Ordinances to revise the Industrial Pretreatment Ordinance to comply with new regulation changes mandated by either the Florida Department of Environmental Protection and/or the Environmental Protection Agency, to include generally: provisions dealing with pretreatment of wastewater, wastewater discharge permit eligibility, and also making scrivener's adjustments; and

WHEREAS, this Ordinance is required in order to comply with federal and/or state law or regulations promulgated and/or enforced by either the Florida Department of

Environmental Protection (FDEP) and/or the Environmental Protection Agency (EPA) and related to the City's compliance with applicable permits associated with the City's Pretreatment of Industrial Wastewater and thus in accordance with the provisions of Section 166.041(4)(c)1 of the Florida Statutes, a Business Impact Estimate is not required for this Ordinance.

NOW THEREFORE, BE IT ENACTED BY THE PEOPLE OF THE CITY OF WINTER HAVEN, FLORIDA, AS FOLLOWS:

1. The above Whereas clauses are incorporated herein as true and correct statements which form a factual and material basis for the adoption of this Ordinance.
2. Chapter 19, Article III, Sections 19-68 through 19-81 of the Code of Ordinances of the City of Winter Haven, Florida, are hereby amended to read as set forth on Exhibit "A" attached hereto and incorporated by reference. <u>Underlined</u> words are added, ~~stricken~~ words are deleted.
3. This Ordinance shall be codified and made a part of the Code of Ordinances of the City of Winter Haven. It is the intention of the City Commission that the provisions of this Ordinance shall become and be made a part of the City of Winter Haven Code of Ordinances; and that sections of this Ordinance may be renumbered or relettered and the word *Ordinance* may be changed to *section, article,* or such other appropriate word or phrase in order to accomplish such intentions; and regardless of whether such inclusion in the code is accomplished, sections of this Ordinance may be renumbered or relettered and typographical errors which do not affect the intent may be authorized by the City Manager or his/her designee without need of public hearing, by filing a corrected or recodified copy of same with the City Clerk.
4. All Ordinances or parts of Ordinances and Resolutions in conflict or inconsistent with the provisions of this Ordinance are hereby repealed but only to the extent necessary to give this Ordinance full force and effect.
5. If any provision or portion of this Ordinance is declared by any court of competent jurisdiction to be void, unconstitutional, or unenforceable, then all

remaining provisions and portions of this Ordinance shall remain in full force and effect.

6. This Ordinance shall take effect immediately upon the Florida Department of Environmental Protection's Final Approval of the revisions set forth in Exhibit "A" attached hereto and incorporated herein by reference.

INTRODUCED on first reading this 27th day of January, 2025.

PASSED on second reading this 10th day of February, 2025.

CITY OF WINTER HAVEN, FLORIDA

_____
MAYOR-COMMISSIONER

ATTEST:

_____
CITY CLERK

Approved as to form:

_____
CITY ATTORNEY

EXHIBIT “A”
to Ordinance No. O-25-06

DIVISION 2 INDUSTRIAL PRETREATMENT

Sec. 19-68. General Provisions

(a) *Short title.* This Division 2 of Article III, Chapter 19, of the Code of Ordinances of the city shall be known as the "Industrial Pretreatment Ordinance" and shall herein be referred to as the or this "ordinance".

(b) *Purpose and policy.* This ordinance sets forth uniform requirements for users of the wastewater collection and Publicly Owned Treatment Works (WWF) for the city of Winter Haven, Florida and enables the city to comply with all applicable State and Federal laws including the Clean Water Act (33 U.S.C. 1251 et seq.), and the General Pretreatment Regulations (62-625 F.A.C.). The objectives of this ordinance are:

(1) To prevent the introduction of pollutants into the WWF that will interfere with the operation of the WWF, including interference with its use or disposal of domestic wastewater residuals;

(2) To prevent the introduction of pollutants into the WWF which will pass through the WWF, inadequately treated, into receiving waters or otherwise be incompatible with the WWF;

(3) To ensure that the quality of the wastewater treatment plant sludge is maintained at a level which allows its use and disposal in compliance with applicable statutes and regulations;

(4) To protect WWF personnel who may be affected by wastewater and sludge in the course of their employment and to protect the general public;

(5) To improve the opportunity to recycle and reclaim wastewater and sludge from the WWF;

(6) To establish an equitable fee structure for users of the WWF; and

(7) To enable the city to comply with its NPDES permit conditions, sludge use and disposal requirements and any other federal or state laws to which the WWF is subject.

This ordinance shall apply to all industrial users of the WWF. The ordinance authorizes the issuance of wastewater discharge permits; authorizes monitoring, compliance and enforcement activities; establishes administrative review procedures; requires industrial user reporting; and provides for the setting of fees for the equitable distribution of costs resulting from the program established herein.

(c) *Administration.* Except as otherwise provided herein, the city manager shall administer, implement and enforce the provisions of this ordinance. Any powers granted to or duties imposed upon the city manager may be delegated by the city manager to other city personnel.

(d) *Definitions.* Unless a provision explicitly states otherwise, the following terms and phrases, as used in this ordinance, shall have the meanings hereinafter designated:

(1) *Act* or *the Act.* The Federal Water Pollution Control Act, also known as the Clean Water Act, as amended, 33 U.S.C. 1251 et seq.

(2) *Approval authority.* The appropriate regional administrator of the Department of Environmental Protection, or his/her designee.

(3) *Authorized or duly authorized representative of the user.*

a. If the user is a corporation:

1. The president, secretary, treasurer, or a vice president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation; or

2. The manager of one or more manufacturing, production, or operation facilities; provided the manager is authorized to make management decisions that govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiate and direct other comprehensive measures to assure long-term environmental compliance with environmental laws and regulations; can ensure that the necessary systems are established or actions taken to gather complete and accurate information for individual wastewater discharge permit or general permit requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

b. If the industrial user is a partnership, or sole proprietorship, a general partner or proprietor, respectively.

c. If the industrial user is a federal, state, or local governmental facility a director or highest official appointed or designated to oversee the operation and performance of the activities of the government facility, or their designee.

d. The individuals described in paragraph a.—c. above, may designate a duly authorized representative if the authorization is in writing, the authorization specifies the individual or position responsible for the overall operation of the facility from which the discharge originates or having overall responsibility for environmental matters for the company, and the written authorization is submitted to the City of Winter Haven.

(4) *Biochemical oxygen demand (BOD).* The quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure, five (5) days at 20° Centigrade expressed in terms of mass [pounds (lbs~~)~~.)] or concentration [milligrams per liter (mg/l)].

(5) *Best management practices* or *BMPs* means schedules or activities, prohibitions of practices, maintenance procedures, and other management practices to implement the prohibitions listed in section 19-69(a) and (b) [40 CFR 403.5(a)(1) and (b). BMPs include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw materials storage. [Note: BMPs also include alternative means (i.e., management plans) of complying with, or in place of certain established categorical pretreatment standards and effluent limits.]

(6) *Categorical pretreatment standard* or *categorical standard.* Any regulation containing pollutant discharge limits promulgated by the Department of Environmental Protection in accordance with Sections 307(b) and (c) of the Act (33 U.S.C. 1317) which apply to a specific category of industrial users and which appear in 40 CFR Chapter I, Subchapter N, Parts 405-471.

(7) *Categorical industrial user.* An industrial user subject to a categorical pretreatment standard or categorical standard.

(8) *Chemical oxygen demand* or *COD.* A measure of the oxygen required to oxidize all compounds, both organic and inorganic in water.

(9) *City.* The City of Winter Haven or the City Commission of Winter Haven, Florida.

(10) *Color.* The optical density at the visual ~~wave length~~ wavelength of maximum absorption, relative to distilled water. One hundred (100) percent transmittance is equivalent to zero (0.0) optical density.

(11) *Composite sample.* The sample resulting from the combination of individual wastewater samples taken at selected intervals based on an increment of either flow or time (as a last resort).

(12) *Control authority.* The city.

(13) *Daily maximum.* The highest value of all the effluent samples collected during a calendar day.

(14) *Daily maximum limit.* The maximum allowable discharge limit of a pollutant during a calendar day. Where daily maximum limits are expressed in units of mass, the daily discharge is the total mass, discharged over the course of the day. Where daily maximum limits are expressed in terms of concentration, the daily discharge is the arithmetic average measurement of the pollutant concentration derived from all measurements taken that day.

(15) *Department of Environmental Protection* or *DEP.* The Department of Environmental Protection, where appropriate, the term may also be used as a designation for the Regional Water Management Division Director or other duly authorized official of said agency.

(16) *Environmental Protection Agency* or *EPA.* The U.S. Environmental Protection Agency or, where appropriate, the Regional Water Management Division Director, the Regional Administrator, or other duly authorized official of said agency.

(17) *Existing source.* Any source of discharge, the construction or operation of which commenced prior to the publication of proposed categorical pretreatment standards which will be applicable to such source if the standard is thereafter promulgated in accordance with Section 307 of the Act.

(18) *Grab sample.* A sample which is taken from a waste stream without regard to the flow in the waste stream and over a period of time not to exceed fifteen (15) minutes.

(19) *Hazardous waste pharmaceutical* is a pharmaceutical that is a solid waste, as defined in Title 40 of the Code of Federal Regulations (40 CFR) section 261.2, and exhibits one or more characteristics identified in 40 CFR part 261 subpart C or is listed in 40 CFR part 261 subpart D.

(20) *Healthcare facility* means any person that is lawfully authorized to:

a. Provide preventative, diagnostic, therapeutic, rehabilitative, maintenance or palliative care, and counseling, service, assessment or procedure with respect to the physical or mental condition, or functional status, of a human or animal or that affects the structure or function of the human or animal body; or

b. Distribute, sell, or dispense pharmaceuticals. This definition includes, but is not limited to, wholesale distributors, third-party logistics providers that serve as forward distributors, military medical logistics facilities, hospitals, psychiatric hospitals, ambulatory surgical centers, health clinics, physicians' offices, optical and dental providers, chiropractors, long-term care facilities, ambulance services, pharmacies, long-term care pharmacies, mail-order pharmacies, retailers of pharmaceuticals, veterinary clinics, and veterinary hospitals.

Healthcare facility does not include pharmaceutical manufacturers.

(21) *Indirect discharge* or *discharge.* The introduction of (nondomestic) pollutants into the WWF from any nondomestic source regulated under Section 307(b), (c) or (d) of the Act.

(22) *Industrial user* or *user.* A source of indirect discharge.

(23) *Instantaneous maximum allowable discharge limit.* The maximum concentration (or loading) of a pollutant allowed to be discharged at any time, determined from the analysis of any discrete or composited sample collected, independent of the industrial flow rate and the duration of the sampling event.

(24) *Interference.* A discharge which alone or in conjunction with a discharge or discharges from other sources: 1) inhibits or disrupts the WWF, its treatment processes or operations or its sludge processes, use or disposal; and 2) is a cause of a violation of the city's NPDES permit or of the prevention of sewage sludge use or disposal in compliance with any of the following statutory/regulatory provisions or permits issued there under (or more stringent state or local regulations): Section 405 of the Clean Water Act (CWA); the Solid Waste Disposal Act (SWDA), including Title II commonly referred to as the Resource Conservation and Recovery Act (RCRA); any state regulations contained in any state sludge

management plan prepared pursuant to Subtitle D of the SWDA; the Clean Air Act; the Toxic Substances Control Act; and the Marine Protection, Research and Sanctuaries Act.

(25) *Local limit.* Specific discharge limits developed and enforced by the city upon industrial or commercial facilities to implement the general and specific discharge prohibitions listed in 40 CFR 403.5(a)(1) and (b). Local Limit Allocation method used is the Uniform Concentration Limit (UCL) Method.

(26) Monthly Average - The monthly average concentration is the sum of the concentrations of all daily discharges sampled and/or measured during a calendar month, divided by the number of daily discharges sampled and/or measured during such month (arithmetic mean of the daily concentration values).

(26) *Medical waste.* Isolation wastes, infectious agents, human remains, blood and blood by-products, pathological wastes, sharps, body parts, fomites, etiologic agents, contaminated bedding, surgical wastes, potentially contaminated laboratory wastes and dialysis wastes.

(27) *New source.*

a. Any building, structure, facility or installation from which there is or may be a discharge of pollutants, the construction of which commenced after the publications of proposed pretreatment standards under Section 307(c) of the CWA which will be applicable to such source if such standards are thereafter promulgated in accordance with that section, provided that:

1. The building, structure, facility or installation is constructed at a site at which no other source is located,

2. The building, structure, facility or installation totally replaces the process or production equipment that causes the discharge of pollutants at an existing source, or

3. The production or wastewaters generating process of the building, structure, facility, or installation are substantially independent of an existing source at the same site. In determining whether these are substantially independent, factors such as the extent to which the new facility is integrated with the existing plant, and the extent to which the new facility is engaged in the same general type of activity as the existing source, should be considered.

b. Construction on a site at which an existing source is located results in a modification rather than a new source if the construction does not create a new building, structure, facility, or installation meeting the criteria of section a.2. or 3., above but otherwise alters, replaces, or adds to existing process or production equipment; or

c. Construction of a new source as defined under this paragraph has commenced if the owner or operator has:

1. Begun or caused to begin as part of a continuous onsite construction program.

(i) Any placement, assembly, or installation of facilities or equipment, or

(ii) Significant site preparation work including clearing, excavation, or removal of existing buildings, structures, or facilities which is necessary for the placement, assembly, or installation of new source facilities or equipment; or

2. Entered into a binding contractual obligation for the purchase of facilities or equipment which is intended to be used in its operation within a reasonable time. Options to purchase or contracts which can be terminated or modified without substantial loss, and contracts for feasibility, engineering, and design studies do not constitute a contractual obligation under this paragraph.

(28) *Noncontact cooling water.* Water used for cooling which does not come into direct contact with any raw material intermediate product, waste product, or finished product.

(29) *Non-significant categorical user* means an industrial user that discharges one hundred (100) gallons per-day (gpd) or less of total categorical wastewater (excluding sanitary, non-contact cooling and boiler blowdown wastewater, unless specifically included in the pretreatment standard, and:

a. Has consistently complied with all applicable categorical pretreatment standards and requirements;

b. Annually submits the certification statement required in subsection 62-625.600(17), F.A.C., together with any additional information necessary to support the certification statement; and

c. Never discharges any untreated categorical process wastewater.

(30) *Pass through.* A discharge which exits the WWF into waters of the state, in quantities or concentrations which, alone or in conjunction with a discharge or discharges from other sources, is a cause of a violation of any requirement of the city's NPDES permit (including an increase in the magnitude or duration of a violation).

(31) *Person.* Any individual, partnership, co-partnership, firm, company, corporation, association, joint stock company, trust, estate, governmental entity or any other legal entity, or their legal representatives, agents or assigns; this definition including all Federal, State or local governmental entities.

(32) *pH.* A measure of the acidity or alkalinity of a substance, expressed in standard units.

(33) *Pharmaceutical* means any drug or dietary supplement for use by humans or other animals; any electronic nicotine delivery system (e.g., electronic cigarette or vaping pen); or any liquid nicotine (e-liquid) packaged for retail sale for use in electronic nicotine delivery systems (e.g., pre-filled cartridges or vials). This definition includes, but is not limited to, dietary supplements, as defined by the Federal Food, Drug and Cosmetic Act; prescription drugs, as defined by Title 21 of the Code of Federal Regulations part 203.3(y); over-the-counter drugs; homeopathic drugs; compounded drugs; investigational new drugs; pharmaceuticals remaining in non-empty containers; personal protective equipment contaminated with pharmaceuticals; and clean-up material from spills of pharmaceuticals. Pharmaceutical does not include dental amalgam or sharps

(34) *Pollutant.* Any dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, medical wastes, chemical wastes, industrial wastes, biological materials, radioactive materials, heat, wrecked or discharge equipment, rock, sand, cellar dirt, agricultural and industrial wastes, and any material that may affect the characteristics of the wastewater [i.e., pH, temperature, TSS, turbidity, color, BOD, Chemical Oxygen Demand (COD), toxicity, odor].

(35) *Prescription Pharmaceuticals.* A pharmaceutical that can only be obtained by means of a physician's prescription.

(36) *Pretreatment.* The reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater prior to or in lieu of introducing such pollutants into the WWF. This reduction or alteration can be obtained by physical, chemical or biological processes, by process changes, or by other means, except by diluting the concentration of the pollutants unless allowed by an applicable pretreatment standard.

(37) *Pretreatment program.* A program administered by a public utility that meets the criteria established in Rule 62-625.500, F.A.C.

(38) *Pretreatment requirements.* Any substantive or procedural requirement related to pretreatment, other than a pretreatment standard, imposed on an industrial user.

(39) *Pretreatment standards* or *standards.* Pretreatment standards shall mean prohibitive discharge standards, categorical pretreatment standards, and local limits.

(40) *Prohibited discharge standards* or *prohibited discharges.* Absolute prohibitions against the discharge of certain substances; these prohibitions appear in section 19-69(a) of this ordinance.

(41) *Publicly owned treatment works* or *WWF.* A "treatment works" as defined by Section 212 of the Act (33 U.S.C. 1292), which is owned by the municipality. This definition includes any devices or systems used in the collection, storage, treatment, recycling and reclamation of sewage or industrial wastes and any conveyances which convey wastewater to a treatment plant. The term also means the municipal entity having jurisdiction over the industrial users and responsibility for the operation and maintenance of the treatment works.

(42) *Responsible corporate officer* means:

a. A president, secretary, treasurer, or vice president of the corporation in charge of a principle business function, or any other person who performs similar policy or decision making functions for the corporation; or

b. The manager of one (1) or more manufacturing, production, or operation facility, provided, the manager:

1. Is authorized to make management decisions which govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations;

2. Is authorized to initiate and direct other comprehensive measures to assure long-term environmental compliance with environmental laws and regulations;

3. Can ensure the necessary systems are established or actions taken to gather complete and accurate information for control mechanism requirements;

4. Has been assigned or delegated the authority to sign documents in accordance with corporate procedures.

(43) *Reverse distributor* means any person that receives and accumulates prescription pharmaceuticals that are potentially creditable hazardous waste pharmaceuticals for the purpose of facilitating or verifying manufacturer credit. Any person, including forward distributors, third-party logistics providers, and pharmaceutical manufacturers, that process prescription pharmaceuticals for the facilitation or verification of manufacturer credit is considered a reverse distributor.

(44) *Septic tank waste.* Any sewage from holding tanks such as vessels, chemical toilets, campers, trailers, and septic tanks.

(45) *Sewage.* Human excrement and gray water (household showers, dishwashing operations, etc.).

(46) *Significant industrial user (SIU)* means, except as provided in paragraphs c. and d., below, the following:

a. Categorical users; and

b. Any other industrial user that discharges and average of twenty-five thousand (25,000) gallons per day or more of process wastewater to the WWF (excluding domestic wastewater, non-contact cooling and boiler blowdown wastewater); contributes a process waste stream which makes up five (5) percent or more of the average dry weather hydraulic or organic capacity of the treatment plant; or is designated as such by the control authority on the basis that the industrial user has a reasonable potential for adversely affecting the WWF's operation or for violating any pretreatment standard or requirement.

c. The control authority (except where the department is acting as the control authority) may determine that an industrial user subject to categorical pretreatment standards under Rule 62-625.410, F.A.C., including 40 CFR Chapter I, Subchapter N, Parts 405 through 471, is a non-significant categorical industrial user.

d. Upon a finding that an industrial user meeting the criteria in paragraph b. above has no reasonable potential for adversely affecting the WWF's operation or for violating any pretreatment standard or requirement, the control authority may at any time, on its own

initiative or in response to a petition received from an industrial user, and in accordance with paragraph 62-625.500(2)(e). F.A.C., determine that such industrial user is not a significant industrial user.

(47) *Slug load.* Any discharge at a flow rate or concentration which could cause a violation of the prohibited discharge standards in section 19-69(a) of this ordinance or any discharge of a non-routine, episodic nature, including, but not limited to, an accidental spill or a non-customary batch discharge.

(48) *Standard industrial classification (SIC) Code.* A classification pursuant to the Standard Industrial Classification Manual issued by the U.S. Office of Management and Budget.

(49) *Stormwater.* Any flow occurring during or following any form of natural precipitation, and resulting from such precipitation, including snowmelt.

(50) *Superintendent.* The city manager or the person designated by the city to supervise the operation of the WWF, and who is charged with certain duties and responsibilities by this ordinance or his/her duly authorized representative.

(51) *Suspended solids.* The total suspended matter that floats on the surface of, or is suspended in, water, wastewater, or other liquid, and which is removable by laboratory filtering.

(52) *Toxic pollutant.* One (1) of one hundred twenty-six (126) pollutants, or combination of those pollutants, listed as toxic in regulations promulgated by the EPA under the provision of Section 307 (33 U.S.C. 1317) of the Act.

(53) *Treatment plant effluent.* Any discharge of pollutants from the WWF into waters of the state.

(54) *Wastewater.* Liquid and water-carried industrial wastes, and sewage from residential dwellings, commercial buildings, industrial and manufacturing facilities, and institutions, whether treated or untreated, which are contributed to the WWF.

(55) *Wastewater facility* or *WWF.* Any facility which discharges wastes into the waters of the State or which can reasonably be expected to be a source of water pollution and includes any or all of the following; the collection and transmission system, the wastewater treatment works, the reuse or disposal system, and the residuals management facility.

Shall is mandatory; may is permissive or discretionary. The use of the singular shall be construed to include the plural and the plural shall include the singular as indicated by the context of its use.

(e) *Abbreviations.* The following abbreviations shall have the designated meanings:

- BOD—Biochemical Oxygen Demand
- CFR—Code of Federal Regulations
- COD—Chemical Oxygen Demand
- DEP—Department of Environmental Protection
- gpd—Gallons per day
- l—Liter
- mg—Milligrams
- mg/l—Milligrams per liter
- NPDES—National Pollutant Discharge Elimination System
- O& M—Operation and maintenance
- WWF—Wastewater Facility
- RCRA—Resource Conservation and Recovery Act

- SIC—Standard Industrial Classifications
- SIU—Significant Industrial User
- SWDA—Solid Waste Disposal Act (42 U.S.C. 6901, et seq.)
- TSS—Total suspended solids
- USC—United States Code

Sec. 19-69. General sewer use requirements.

(a) *Prohibited discharge standards.* No industrial user shall introduce or cause to be introduced into the WWF any pollutant or wastewater which causes pass through or interference. These general prohibitions apply to all industrial users of the WWF whether or not they are subject to categorical pretreatment standards or any other national, state or local pretreatment standards or requirement.

(b) *Specific prohibitions.* No user shall introduce or cause to be introduced into the WWF the following pollutants, substances, or wastewater:

(1) Pollutants which create a fire or explosive hazard in the municipal wastewater collection and WWF, including, but not limited to, waste streams with a closed-cup flashpoint of less than 140 degrees F using test methods specified in 40 CFR 261.21;

(2) Any wastewater having a pH less than 5.0 or more than 10.5, or otherwise causing corrosive structural damage to the WWF or equipment, or endangering city personnel. If wastewater is less than or equal to 2.0 or greater than or equal to 12.5 then wastewater is defined as hazardous waste in accordance with 40 CFR 261.22 and all discharges must cease and desist until the pH can be adjusted into non-hazardous waste range.

(3) Solid or viscous substances in amounts which will cause obstruction of the flow in the WWF resulting in interference, but in no case solids greater than 0.5 inches or 1.27 centimeter in any dimension.

(4) Any wastewater containing pollutants, including oxygen demanding pollutants (BOD, etc.), released in a discharge at a flow rate and/or pollutant concentration which, either singly or by interaction with other pollutants, will cause interference with either the WWF; or any wastewater treatment or sludge process, or which will constitute a hazard to humans or animals.

(5) Any wastewater having a temperature greater than 150° F (65° C), or which will inhibit biological activity in the treatment plant resulting in interference, but in no case wastewater which causes the temperature at the introduction into the treatment plant to exceed 104° F (40° C).

(6) Petroleum oil, non-biodegradable cutting oil, or products of mineral oil origin, in amounts that will cause interference or pass through.

(7) Any pollutants which result in the presence of toxic gases, vapors or fumes within the WWF in a quantity that may cause acute worker health and safety problems.

(8) Any trucked or hauled pollutants, except at discharge points designated by the city in accordance with section 19-70(e).

(9) Any noxious or malodorous liquids, gases, solids, or other wastewater which, either singly or by interaction with other wastes, are sufficient to create a public nuisance, a hazard to life, or to prevent entry into the sewers for maintenance and repair.

(10) Any wastewater which imparts color which cannot be removed by the treatment process, such as, but not limited to, dye wastes and vegetable tanning solutions, which consequently imparts color to the treatment plant's effluent thereby violating the city's NPDES permit. Color (in combination with turbidity) shall not cause the treatment plant effluent to reduce the depth of the compensation point

for photosynthetic activity by more than ten (10) percent from the seasonably established norm for aquatic life.

(11) Any wastewater containing any radioactive wastes or isotopes except as specifically approved by the Superintendent in compliance with applicable State or Federal regulations.

(12) Stormwater, surface water, groundwater, artesian well water, roof runoff, subsurface drainage, swimming pool drainage, condensate, deionized water, noncontact cooling water, and unpolluted industrial wastewater, unless specifically authorized by the Superintendent.

(13) Any sludges, screenings, or other residues from the pretreatment of industrial wastes.

(14) Any medical wastes, except as specifically authorized by the Superintendent in a wastewater discharge permit.

(15) Any wastewater causing, alone or in conjunction with other sources, the treatment plant's effluent to fail a toxicity test.

(16) Any wastes containing detergents, surface active agents, or other substances which may cause excessive foaming in the WWF.

(17) Any hazardous waste pharmaceuticals from healthcare facilities and reverse distributors.

(18) Limits of any discharge of fats, oils or greases of animal or vegetable origin can be found in the "industrial wastewater limitations table" incorporated by reference and adopted herein on file in the city clerk's office.

Wastes prohibited by this section shall not be processed or stored in such a manner that they could be discharged to the WWF. All floor drains located in process or materials storage areas must discharge to the industrial user's pretreatment facility before connecting with the WWF.

(c) *Federal categorical pretreatment standards.* The national categorical pretreatment standards found at 40 CFR Part 403.6, as of July 1, 2009, and 40 CFR Chapter I, Subchapter N, Parts 405-471 are hereby incorporated. When wastewater subject to a categorical pretreatment standard is mixed with wastewater not regulated by the same standard, the Superintendent shall impose an alternate limit in accordance with 40 CFR 403.6(e).

(d) *State requirements.* Any and all State pretreatment standards which may be adopted from time to time are hereby incorporated.

(e) *Specific pollutant limitations.* Pollutant limits shall be established to protect against pass through and interference. No person shall discharge wastewater containing pollutants in excess of said limits. Schedules containing specific pollutant limits, as established by ordinance shall be kept on file in the office of the city clerk. Any changes to said limits will be developed with public notice as required by 62-625.400-(3) F.A.C. Local limits will be applied at the point where the wastewater enters the publicly owned treatment works.

(f) *City's right of revision.* The city reserves the right to establish, by ordinance or in wastewater discharge permits, more stringent standards or requirements on discharges to the WWF if deemed necessary to comply with the objectives presented in section 19-68(b) of this ordinance or the general and specific prohibitions in section 19-69(a) of this ordinance.

(g) *Special agreement.* The city reserves the right to enter into special agreements with industrial users setting out special terms under which they may discharge to the WWF. In no case will a special agreement waive compliance with a pretreatment standard or requirement. However, the industrial user may request a net gross adjustment to a categorical standard in accordance with 62-625.820 F.A.C. They may also request a variance from the categorical pretreatment standard from EPA. Such a request will be approved only if the industrial user can prove that facts relating to its discharge are fundamentally different from the factors considered by EPA when establishing that pretreatment standard. An industrial user requesting a fundamentally different factor variance must comply with the procedural and substantive provisions in 62-625.700 F.A.C.

(h) *Dilution.* No industrial user shall ever increase the use of process water, or in any way attempt to dilute a discharge, as a partial or complete substitute for adequate treatment to achieve compliance with a discharge limitation unless expressly authorized by an applicable pretreatment standard or requirement. The Superintendent may impose mass limitations on industrial users which are using dilution to meet applicable pretreatment standards or requirements or in other cases when the imposition of mass limitations is appropriate.

Sec. 19-70. Pretreatment of wastewater.

(a) *Pretreatment facilities.* Industrial users shall provide necessary wastewater treatment as required to comply with this ordinance and shall achieve compliance with all categorical pretreatment standards, local limits and the prohibitions set out in section 19-69(a) above within the time limitations specified by the EPA, the state, or the city whichever is more stringent. Any facilities required to pretreat wastewater to a level acceptable to the city shall be provided, operated, and maintained at the industrial user's expense. Detailed plans showing the pretreatment facilities and operating procedures shall be submitted to the city for review, and shall be acceptable to the city before construction of the facility. The review of such plans and operating procedures will in no way relieve the industrial user from the responsibility of modifying the facility as necessary to produce an acceptable discharge to the city under the provisions of this ordinance.

(b) *Additional pretreatment measures.*

(1) Whenever deemed necessary, the Superintendent may require industrial users to restrict their discharge during peak flow periods, designate that certain wastewater be discharged only into specific sewer, relocate and/or consolidate points of discharge, separate sewage waste streams from industrial waste streams, and such other conditions as may be necessary to protect the WWF and determine the industrial user's compliance with the requirements of this ordinance.

(2) Grease, oil and sand interceptors shall be required when, in the opinion of the Superintendent, they are necessary for the proper handling of wastewater containing excessive amounts of grease and oil, or sand; except that such interceptors shall not be required for residential users. All interception units shall be of type and capacity approved by the City Engineer and shall be so located to be easily accessible for cleaning and inspection. Such interceptors shall be inspected, cleaned, and repaired regularly as needed, by the owner at his expense. Pumping manifests shall be sent by US Postal mail or electronically to the Pretreatment Coordinator.

(3) Industrial users with the potential to discharge flammable substances may be required to install and maintain an approved combustible gas detection meter.

(4) At no time shall two readings on an explosion hazard meter at the point of discharge into the WWF, or at any point in the WWF, be more than five (5) percent nor any single reading over ten (10) percent of the lower explosive limit (LEL) of the meter.

(c) *Accidental discharge/slug control plans.* The Superintendent may require any industrial user to develop and implement an accidental discharge/slug control plan. At least once every two (2) years the Superintendent shall evaluate whether each significant industrial user needs such a plan. New significant industrial users must be evaluated within one (1) year of being designated as a significant industrial user. Any industrial user required to develop and implement an accidental discharge/slug control plan shall submit a plan which addresses, at a minimum, the following:

(1) Description of discharge practices, including non-routine batch discharges.

(2) Description of stored chemicals and containment areas.

(3) Procedures for immediately notifying the WWF of any accidental or slug discharge. Such notification must also be given for any discharge which would violate any of the prohibited discharges in section 19-69(a) of this ordinance.

(4) Procedures to prevent adverse impact from any accidental or slug discharge. Such procedures include, but are not limited to, inspection and maintenance of storage areas, handling and transfer of materials, loading and unloading operations, control of plant site run-off, worker training, building of containment structures or equipment, measures for containing toxic organic pollutants (including solvents, and/or measures and equipment for emergency response).

(d) *Tenant responsibility.* Where an owner of property leases premises to any other person as a tenant under any rental or lease agreement, if either the owner or the tenant is an industrial user, either or both may be held responsible for compliance with the provisions of this ordinance.

(e) *Hauled wastewater.*

(1) Septic tank waste or wastewater from other municipalities may be accepted into the WWF at a designated receiving structure within the treatment plant area only, and at the discretion of the Superintendent, provided such wastes do not violate section 19-69 of this ordinance or any other requirements established or adopted by the city. Wastewater discharge permits for individual vehicles to use such facilities shall be on record at the City Clerk's office.

(2) The discharge of hauled industrial wastes as "industrial septage" requires prior approval and a wastewater discharge permit from the city. The Superintendent shall have authority to prohibit the disposal of such wastes, if such disposal would interfere with the treatment plant operation. Waste haulers are subject to all other sections of this ordinance.

Sec. 19-71. Wastewater discharge permit eligibility.

(a) *Wastewater survey.* When required by the Superintendent all industrial users must submit information on the nature and characteristics of their wastewater by completing a wastewater survey prior to commencing their discharge. The Superintendent is authorized to prepare a form for this purpose and may periodically require industrial users to update the survey. Failure to complete this survey shall be reasonable grounds for terminating services to the industrial user and shall be considered a violation of the ordinance.

(b) *Wastewater discharge permit requirement.*

(1) It shall be unlawful for any significant industrial user to discharge wastewater into the city's WWF without first obtaining a wastewater discharge permit from the Superintendent. Any violation of the terms and conditions of a wastewater discharge permit shall be deemed a violation of this ordinance and subjects the wastewater discharge permittee to the sanctions set out in sections 19-77 through 19-79. Obtaining a wastewater discharge permit does not relieve a permittee of its obligation to comply with all Federal and State pretreatment standards or requirements or with any other requirements of Federal, State and local law.

(2) The Superintendent may require other industrial users, including liquid waste haulers, to obtain wastewater discharge permits as necessary to carry out the purposes of this ordinance.

(c) *Wastewater discharge permitting existing connections.* Any significant industrial user which discharges industrial waste into the WWF prior to the effective date of this ordinance and who wishes to continue such discharges in the future under the conditions of the current wastewater discharge permit, shall request the Superintendent to re-issue the current wastewater discharge permit within ninety (90) days of the expiration of the said permit.

(d) *Wastewater discharge permitting new connection.* Any significant industrial user proposing to begin or recommence discharging industrial wastes into the WWF must obtain a wastewater discharge permit prior to the beginning or recommencing of such discharge. An application for this wastewater discharge permit must be filed at least ninety (90) days prior to the date upon which any discharge will begin.

(e) *Wastewater discharge permitting extra-jurisdictional industrial users.*

(1) Any existing significant industrial user located beyond the city limits, but within the Utility Service Area shall submit a wastewater discharge permit application, in accordance with section 19-71(f) below, within ninety (90) days of the effective date of this ordinance. New significant industrial users located beyond the city limits shall submit such applications to the Superintendent ninety (90) days prior to any proposed discharge into the WWF.

(2) Alternately, the Superintendent may enter into an agreement with the neighboring jurisdiction in which the significant industrial user is located to provide assistance for the implementation and enforcement of pretreatment program requirements against said industrial user.

(f) *Wastewater discharge permit.* In order to be considered for a wastewater discharge permit, all industrial users required to have a wastewater discharge permit must submit the information required by section 19-73(a)(1) of this ordinance. The city commission shall approve a form to be used as a permit application. In addition, the following information may be required:

(1) Description of activities, facilities, and plant processes on the premises, including a list of all raw materials and chemicals used or stored at the facility which are, or could accidentally or intentionally be, discharged to the WWF.

(2) Number and type of employees, hours of operation, and proposed or actual hours of operation of the pretreatment system.

(3) Each product produced by type, amount, process or processes, and rate of production.

(4) Type and amount of raw materials processed (average and maximum per day).

(5) The site plans, floor plans, mechanical and plumbing plans, and details to show all sewers, floor drains, and appurtenances by location, and elevation, and all points of discharge.

(6) Time and duration of the discharge.

(7) Any other information as may be deemed necessary by the Superintendent to evaluate the wastewater discharge permit application.

Incomplete or inaccurate applications will not be processed and will be returned to the industrial user for revision.

(g) *Application signatories and certification.* All wastewater discharge permit applications and industrial user reports must contain the following certification statement and be signed by an authorized representative of the industrial user.

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

(h) *Wastewater discharge permit decisions.* The Superintendent will evaluate the data furnished by the industrial user and may require additional information. Within thirty (30) days of receipt of a complete wastewater discharge permit application, the Superintendent will determine whether or not to issue a wastewater discharge permit. If no determination is made within this time period, the application will be deemed denied. The Superintendent may deny any application for a wastewater discharge permit.

Sec. 19-72. Wastewater discharge permit issuance process.

(a) *Wastewater discharge permit duration.* Wastewater discharge permits shall be issued for a specified time period, not to exceed five (5) years. A wastewater discharge permit may be issued for a period of less than five (5) years, at the discretion of the Superintendent. Each wastewater discharge permit will indicate a specific date upon which it will expire.

(b) *Wastewater discharge permit contents.* Wastewater discharge permits shall include such conditions as are reasonably deemed necessary by the Superintendent to prevent pass through or interference, protect the quality of the water body receiving the treatment plant's effluent, protect worker health and safety, facilitate sludge management and disposal, protect ambient air quality, and protect against damage to the WWF.

(1) Wastewater discharge permits must contain the following conditions:

a. A statement that indicates wastewater discharge permit duration, which in no event shall exceed five (5) years.

b. A statement that the wastewater discharge permit is nontransferable without prior notification to and approval from the city, and provisions for furnishing the new owner or operator with a copy of the existing wastewater discharge permit.

c. Effluent limits, including best management practices, based on applicable pretreatment standards;

d. Self-monitoring, sampling, reporting, notification, and recordkeeping requirements. These requirements shall include an identification of pollutants to be monitored, sampling location, sampling frequency, and sample type based on Federal, State, and local law.

e. Statement of applicable civil, criminal, and administrative penalties for violation of pretreatment standards and requirements, and any applicable compliance schedule. Such schedule may not extend the time for compliance beyond that required by applicable Federal, State, or local law.

(2) Wastewater discharge permits may contain, but need not be limited to, the following:

a. Limits on the average and/or maximum rate of discharge, time of discharge, and/or requirements for flow regulation and equalization.

b. Limits on the instantaneous, daily and monthly average and/or maximum concentration, mass, or other measure of identified wastewater pollutants or properties.

c. Requirements for the installation of pretreatment technology, pollution control, or construction of appropriate containment devices, designed to reduce, eliminate, or prevent the introduction of pollutants into the treatment works.

d. Accidental discharge/slug control plans. The Superintendent may require any significant industrial user to develop and implement an accidental discharge/slug control plan. At least once every two (2) years the Superintendent shall evaluate whether each significant industrial user needs such a plan. New significant industrial users must be evaluated within one (1) year of being designated as a significant industrial user. Any significant industrial user will be required to develop and implement an accidental discharge/slug control plan. Development and implementation of spill control plans or other special conditions including management practices necessary to adequately prevent accidental, unanticipated, or routine discharges.

e. Development and implementation of waste minimization plans to reduce the amount of pollutants discharged to the WWF.

f. The unit charge or schedule of industrial user charges and fees for the management of the wastewater discharged to the WWF.

g. Requirements for installation and maintenance of inspection and sampling facilities and equipment.

h. A statement that compliance with the wastewater discharge permit does not relieve the permittee of responsibility for compliance with all applicable Federal and State pretreatment standards, including those which become effective during the term of the wastewater discharge permit.

i. Other conditions as deemed appropriate by the Superintendent to ensure compliance with this ordinance, and State and Federal laws, rules, and regulations.

(c) *Wastewater discharge permit appeals.* Any person including the industrial user, may petition the city manager to reconsider the terms of a wastewater discharge permit within ten (10) days of its issuance.

(1) Failure to submit a timely petition for review shall be deemed to be a waiver of the administrative appeal.

(2) In its petition, the appealing party must indicate the wastewater discharge permit provisions objected to, the reasons for this objection, and the alternative condition, if any, it seeks to place in the wastewater discharge permit.

(3) The effectiveness of the wastewater discharge permit shall not be stayed pending the appeal.

(4) If the Superintendent fails to act within ten (10) days, a request for reconsideration shall be deemed to be denied. Decisions not to reconsider a wastewater discharge permit, not to issue a wastewater discharge permit, or not to modify a wastewater discharge permit, shall be considered final administrative action for purposes of judicial review.

(5) Aggrieved parties seeking judicial review of the final administrative wastewater discharge permit decision must do so by filing an action with the Circuit Court in and for Polk County, Florida within thirty (30) days from the date of said decision.

(d) *Wastewater discharge permit modification.* The Superintendent may modify the wastewater discharge permit for good cause including, but not limited to, the following:

(1) To incorporate any new or revised Federal, State, or local pretreatment standards or requirements.

(2) To address significant alterations or additions to the industrial user's operation, processes, or wastewater volume or character since the time of wastewater discharge permit issuance.

(3) A change in the WWF that requires either temporary or permanent reduction or elimination of the authorized discharge.

(4) Information indicating that the permitted discharge poses a threat to the city's WWF, city personnel, or the receiving waters.

(5) Violation of any terms or conditions of the wastewater discharge permit.

(6) Misrepresentations or failure to fully disclose all relevant facts in the wastewater discharge permit application or in any required reporting.

(7) Revision of or a grant of variance from categorical pretreatment standards pursuant to 62-625.700 F.A.C.

(8) To correct typographical or other errors in the wastewater discharge permit.

(9) To reflect a transfer of the facility ownership and/or operation to a new owner/operator.

This filing of a request by the permittee for a wastewater discharge permit modification does not stay any wastewater discharge permit condition.

(e) *Wastewater discharge permit transfer.* Wastewater discharge permits may be reassigned or transferred to a new owner and/or operator only if the permittee gives at least ninety (90) days advance notice to the Superintendent and the Superintendent approves the wastewater discharge permit transfer. The notice to the Superintendent must include a written certification by the new owner and/or operator which:

(1) States that the new owners and/or operator has no immediate intent to change the facility's operations and processes.

(2) Identifies the specific date on which the transfer is to occur.

(3) Acknowledges full responsibility for complying with the existing wastewater discharge permit. Failure to provide advance notice of a transfer renders the wastewater discharge permit voidable on the date of facility transfer.

(f) *Wastewater discharge permit revocation.* Wastewater discharge permits may be revoked for the following reasons:

(1) Failure to notify the city of significant changes to the wastewater prior to the changed discharge.

(2) Failure to provide prior notification to the city of changed condition pursuant to section 19-73(e).

(3) Misrepresentation or failure to fully disclose all relevant facts in the wastewater discharge permit application.

(4) Falsifying self-monitoring reports.

(5) Tampering with monitoring reports.

(6) Refusing to allow the city timely access to the facility premises and records.

(7) Failure to meet effluent limitations.

(8) Failure to pay fines.

(9) Failure to pay sewer charges.

(10) Failure to meet compliance schedules.

(11) Failure to complete a wastewater survey or the wastewater discharge permit application.

(12) Failure to provide advance notice of the transfer of a permitted facility.

(13) Violation of any pretreatment standard or requirement, or any terms of the wastewater discharge permit or the ordinance.

Wastewater discharge permits shall be voidable upon nonuse, cessation of operations, or transfer of business ownership. All wastewater discharge permits are void upon the issuance of a new wastewater discharge permit.

(g) *Wastewater discharge permit reissuance.* A significant industrial user shall apply for wastewater discharge permit reissuance by submitting a complete wastewater discharge permit application in accordance with section 19-71(f) a minimum of ninety (90) days prior to the expiration of the industrial user's existing wastewater discharge permit.

(h) *Municipal wastewater discharge permits.* In the event another municipality contributes all or a portion of its wastewater to the WWF, the WWF may require such municipality to apply for and obtain a municipal wastewater discharge permit.

(1) A municipal wastewater discharge permit application shall include:

a. A description of the quality and volume of the wastewater at the point(s) where it enters the WWF.

b. Any inventory of all industrial users discharging to the municipality.

c. Such other information as may be required by the Superintendent.

(2) A municipal wastewater discharge permit shall contain the following conditions:

a. A requirement for the municipal user to adopt a sewer use ordinance which is at least as stringent as this ordinance and local limits which are at least as stringent as those set out in section 19-69(d).

b. A requirement for the municipal user to submit a revised industrial user inventory on at least an annual basis.

c. A requirement for the municipal user to a) conduct pretreatment implementation activities including industrial user permit issuance, inspection and sampling, and enforcement; or b) authorize the WWF to take or conduct such activities on its behalf.

d. A requirement for the municipal user to provide the city with access to all information that the municipal user obtains as part of its pretreatment activities.

e. Limits on the nature, quality, and volume of the municipal user's wastewater at the point where it discharges to the WWF.

f. Requirements for monitoring the municipal user's discharge.

(3) Violation of the terms and conditions of the municipal user's wastewater discharge permit subjects the municipal user to the sanctions set out in section 19-77 through 19-79.

Sec. 19-73. Reporting requirements.

(a) *Baseline monitoring reports.*

(1) Within either one hundred eighty (180) days after the effective date of a categorical pretreatment standard, or the final administrative decision on a category determination under 62-625.410(2)(d) F.A.C., whichever is later, existing significant industrial users subject to such categorical pretreatment standards, and currently discharging to or scheduled to discharge to the WWF, shall be required to submit to the city a report which contains the information listed in paragraph (2) below. At least ninety (90) days prior to commencement of their discharge, new sources, and sources that become industrial users subsequent to the promulgation of an applicable categorical standard, shall be required to submit to the city a report which contains the information listed in paragraph (2) below. A new source shall also be required to report the method of pretreatment it intends to use to meet applicable pretreatment standards. A new source shall also give estimates of its anticipated flow and quantity of pollutants discharged.

(2) The industrial user shall submit the information required by this section including:

a. *Identifying information.* The name and address of the facility including the name and operator and owners.

b. *Wastewater discharge permit.* A list of any environmental control wastewater discharge permits held by or for the facility.

c. *Description of operations.* A brief description of the nature, average rate of production, and standard industrial classifications of the operation(s) carried out by such industrial user. This description should include a schematic process diagram which indicates points of discharge to the WWF from the regulated process.

d. *Flow management.* Information showing the measured average daily and maximum daily flow, in gallons per day, to the WWF from regulated process streams and other streams, as necessary, to allow use of the combined waste stream formula set out in 62-625.410(6) F.A.C.

e. *Measurement of pollutants.*

1. Identify the categorical pretreatment standards applicable to each regulated process and any new categorically regulated processes for existing sources.

2. Submit the results of sampling and analysis identifying the nature and concentration (and/or mass, where required by the standard or by the city) of regulated pollutants in the discharge from each regulated process. Instantaneous, daily maximum and long-term average concentrations (or mass, where required) shall be reported. The sample shall be representative of daily operations and shall be analyzed in accordance with procedures set out in section 19-73(l).

3. Instantaneous, daily maximum and long-term average concentrations, or mass, where required, shall be reported.

4. The sample shall be representative of the daily operations and shall be analyzed in accordance with the procedures set out in section 19-73(l) of this ordinance. Where the standard requires compliance with a bmp or pollution prevention alternative, the user shall submit documentation as required by the Superintendent or applicable standards to determine compliance with the standard.

5. Sampling must be performed in accordance with procedures set out in section 19-73(k).

f. *Certification.* A statement reviewed by the industrial user's authorized representative and certified by a qualified professional, indicating whether pretreatment standards are being met on a consistent basis and, if not, whether additional operation and maintenance (O & M) and/or additional pretreatment is required to meet the pretreatment standards and requirements.

g. *Compliance schedule.* If additional pretreatment and/or O & M will be required to meet the pretreatment standards, the shortest schedule by which the industrial user will provide such additional pretreatment and/or O & M. The completion date in this schedule shall not be later than the compliance date established for the applicable pretreatment standard.

h. *Signed and certified reports.* All baseline monitoring reports must be signed and certified in accordance with section 19-71(g).

(b) *Compliance schedule progress report.* The following conditions shall apply to the schedule required by 19-73(a)(2)g. The schedule shall contain progress increments in the form of dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment required for the user to meet the applicable pretreatment standards (such events include hiring an engineer, completing preliminary and final plans, executing contracts for major components, commencing and completing construction, beginning and conducting routine operation). No increment referred to above shall exceed nine (9) months. The industrial user shall submit a progress report to the Superintendent no later than fourteen (14) days following each date in the schedule and the final date of compliance including, as a minimum, whether or not it complied with the increment of progress, the reason for any delay, (and, if appropriate) the steps being taken by the industrial user to return to the established schedule. In no event shall more than nine (9) months elapse between such progress reports to the Superintendent.

(c) *Report on compliance with categorical pretreatment standard deadline.* Within ninety (90) days following the date for final compliance with applicable categorical pretreatment standards, or in the case of a new source following commencement of the introduction of wastewater into the WWF, any industrial user subject to such pretreatment standards and requirements shall submit to the city a report containing the information described in section 19-73(a)(2)d.—f. For industrial users subject to equivalent mass or concentration limits established in accordance with the procedures in 62-625.410(4) F.A.C., this report shall contain a reasonable measure of the industrial user's long-term production rate. For all other industrial users subject to categorical pretreatment standards expressed in terms of allowable pollutant discharge per unit of production (or other measure of operation), this report shall include the industrial user's actual production during the appropriate sampling period. All compliance reports must be signed in accordance with section 19-71(g).

(d) *Periodic compliance reports.*

(1) Any significant industrial user subject to a pretreatment standard shall, at a frequency determined by the Superintendent but in no case less than twice per year (in June and December), submit a report indicating the nature and concentration of pollutants in the discharge which are limited by such pretreatment standards and the measured or estimated average and maximum daily flows for the reporting period. In cases where the pretreatment standard requires compliance with a best management plan (BMP) or pollution prevention alternative, the user must submit documentation required by the Superintendent or the pretreatment standard necessary to determine the compliance

status of the user. All periodic compliance reports must be signed and certified in accordance with section 19-71(g).

When a report is required from the permittee, such report must be submitted no later than ten days after the last day of the month. Reports will be considered to be late if submitted after the due date and the facility will be in violation of their Industrial User Permit and appropriate enforcement proceedings will be initiated by the City according to the City's Industrial Pretreatment Program's "Enforcement Response Plan. "

(2) All wastewater samples must be representative of the industrial user's discharge. Wastewater monitoring and flow measurement facilities shall be properly operated, kept clean, and maintained in good working order at all times. The failure of an industrial user to keep its monitoring facility in good working order shall not be grounds for the industrial user to claim that sample results are unrepresentative of its discharge.

(3) If an industrial user subject to the reporting requirements in and of this section monitors any pollutant more frequently than required by the WWF, using the procedures prescribed in section 19-73(m) of this ordinance the results of this monitoring shall be included in the report.

(e) *Report of changed conditions.* Each industrial user is required to notify the Superintendent of any planned significant changes to the industrial user's operations or system which might alter the nature, quality or volume of its wastewater at least ninety (90) days before the change.

(1) The Superintendent may require the industrial user to submit such information as may be deemed necessary to evaluate the changed condition, including the submission of a wastewater discharge permit application under section 19-71(f).

(2) The Superintendent may issue a wastewater discharge permit under section 19-71(i) or modify an existing wastewater discharge permit under section 19-72(d).

(3) No industrial user shall implement the planned changed conditions(s) until and unless the Superintendent has responded to the industrial user's notice.

(4) For purposes of this requirement flow increases of ten (10) percent or greater, and the discharge of any previously unreported pollutants shall be deemed significant.

(f) *Reports of potential problems.*

(1) In the case of any discharge including, but not limited to, accidental discharges, discharges of a non-routine, episodic nature, a non-customary batch discharge, or a slug load which may cause potential problems for the WWF (including a violation of the prohibited discharge standards in section 19-69(a) of this ordinance), it is the responsibility of the industrial user to immediately telephone and notify the city of the incident. This notification shall include the location of discharge, type of waste, concentration and volume, if known, and corrective actions taken by the industrial user.

(2) Within five (5) days following such discharge, the industrial user shall, unless waived by the Superintendent, submit a detailed written report describing the cause(s) of the discharge and the measures to be taken by the industrial user to prevent similar future occurrences. Such notification shall not relieve the industrial user of any expense, loss, damage, or other liability which may be incurred as a result of damage to the WWF, natural resources, or any other damage to person or property; nor shall such notification relieve the industrial user of any fines, civil penalties, or other liability which may be imposed by this ordinance.

(3) Failure to notify the city of potential problem discharges shall be deemed a separate violation of this ordinance.

(4) A notice shall be permanently posted on the industrial user's bulletin board or other prominent place advising employees whom to call in the event of a discharge described in paragraph (1) above.

Employers shall ensure that all employees, who may cause or suffer such a discharge to occur, are advised of the emergency notification procedure.

(g) *Reports from non-significant industrial users.* All industrial users not subject to categorical pretreatment standards and not required to obtain a wastewater discharge permit shall provide appropriate reports to the city as the Superintendent may require.

(h) *Signatory requirements for industrial user reports.* All required reports shall have a signed certification statement as required in section 19-71(g). Reports shall be signed as follows:

(1) By a responsible corporate officer, if the industry is a corporation.

(2) By a general partner or proprietor, if the industry is a partnership or sole proprietorship respectively.

(3) By a duly authorized representative of the individual designated in paragraph (1) or (2) above.

(4) The authorization is made in writing by the individual described in paragraph (1) or (2) above.

(i) *Notice of violation/repeat sampling and reporting.* If sampling performed by an industrial user indicates a violation, the industrial user must notify the city within twenty-four (24) hours of becoming aware of the violation. The industrial user shall also repeat the sampling and analysis and submit the results of the repeat analysis to the city within thirty (30) days after becoming aware of the violation. Where the city has performed the sampling and analysis in lieu of the industrial user, the city must perform the repeat sampling and analysis unless it notifies the user of the violation and requires the user to perform the repeat analysis. Re-sampling is not required if:

(1) The city performs sampling at the industrial user at a frequency of at least once per month; or

(2) The city performs sampling at the industrial user between the time when the initial sampling was conducted and the time when the industrial user or the city receives the results of the sampling.

(j) *Notification of the discharge of hazardous waste.*

(1) Any industrial user who commences the discharge of hazardous waste shall notify the WWF, the EPA Regional Waste Management Division Director, and state hazardous waste authorities in writing of any discharge into the WWF of a substance which, if otherwise disposed of, would be a hazardous waste under 40 CFR Part 261 Subpart C. Such notification must include the name of the hazardous waste as set forth in 40 CFR Part 261 Subpart C, the EPA hazardous waste number, and the type of discharge {continuous batch, or other). If the industrial user discharges more than one hundred (100) kilograms of such waste per calendar month to the WWF, the notification shall also contain the following information to the extent such information is known and readily available to the industrial user: an identification of the hazardous constituents contained in the wastes, an estimation of the mass and concentration of such constituents in the waste stream discharge during that calendar month, and an estimation of the mass of constituents in the waste stream expected to be discharged during the following twelve (12) months. All notifications must take place no later than one hundred eighty (180) days after the discharge commences. Any notification under this paragraph need be submitted only once for each hazardous waste discharged. However, notifications of changed discharges must be submitted under section 19-73(e) above. The notification requirement in this section does not apply to pollutants already reported under the self-monitoring requirements of sections 19-73(a), 19-73(c) and 19-73(d), above.

(2) Dischargers are exempt from the requirements of paragraph (1) of this section during a calendar month in which they discharge no more than fifteen (15) kilograms of hazardous wastes, unless the wastes are acute hazardous wastes as specified in Chapter 62-730, F.A.C. Discharge of more than fifteen (15) kilograms of non-acute hazardous wastes in a calendar month, or of any quantity of acute hazardous wastes as specified in Chapter 62-730, F.A.C. requires a one-time notification. Subsequent months during which the industrial user discharges more than such quantities of any hazardous waste do not require additional notification.

(3) In the case of any new department regulations identifying additional characteristics of hazardous waste or listing any additional substance as hazardous waste, the industrial user must notify the city and the department's hazardous waste and pretreatment authorities of the discharge of such substance within ninety (90) days of the effective date of such regulations.

(4) In the case of any notification made under this subsection, the industrial user shall certify that it has a program in place to reduce the volume and toxicity of hazardous wastes generated to the degree it has determined to be economically practical.

(k) *Annual certification by non-significant categorical industrial users.* An industrial user determined to be a non-significant categorical industrial user in accordance with section 19-68(d)(19), must annually submit the following certification statement, signed in accordance with the signatory requirements in (h) above. The certification must accompany any alternative report required by the city: "Based on my inquiry of the person or persons directly responsible for managing compliance with the categorical pretreatment standards under 40 CFR [specify applicable national pretreatment standard part(s)]. I certify that, to the best of my knowledge and belief that during the period from [month, day, year] to [month, day, year]:

(1) The facility described as [industrial user name] met the definition of a non-significant categorical industrial user as described in section 19-68(d)(19).

(2) The facility complied with all applicable pretreatment standards and requirements during this reporting period; and

(3) The facility never discharged more than one hundred (100) gallons of total categorical wastewater on any given day during this reporting period. This compliance certification is based upon the following information: [documentation of basis to continue exemption]."

(l) *Analytical requirements.* All pollutant analysis, including sampling techniques, to be submitted as part of a wastewater discharge permit application or report shall be performed in accordance with the techniques prescribed in 40 CFR 136 and amendments thereto, unless otherwise specified in an applicable categorical pretreatment standard. If 40 CFR Part 136 does not contain sampling or analytical techniques for the pollutant in question or where the EPA determines that the Part 136 sampling and analytical techniques are inappropriate for the pollutant in question, sampling and analysis shall be performed by using validated analytical methods or any other applicable sampling and analytical procedures, including procedures suggested by the Superintendent or other parties approved by EPA.

(m) *Sample collection.*

(1) Except as indicated in section (2) below, the industrial user must collect wastewater samples using flow proportional composite collection techniques. In the event flow proportional sampling is unfeasible, the Superintendent may authorize the use of time proportional sampling or through a minimum of four (4) grab samples where the user demonstrates that this will provide a representative sample of the effluent being discharged. In addition, grab samples may be required to show compliance with instantaneous discharge limits. For industrial users where historical sampling data do not exist, a minimum of four (4) grab samples must be used for pH, cyanide, total phenols, oil and grease, sulfide and volatile organic compounds. All sampling activities shall be performed according to the procedures specified in "The Department of Environmental Protection Standard Operating Procedures for Field Activities," DEP-SOP-001/01, March 31, 2008.

(2) Samples for oil and grease, temperature, pH, cyanide, phenols, toxicity, sulfides, and volatile organic chemicals must be obtained using grab collection techniques.

(n) *Determination of noncompliance.* The Superintendent may use a grab sample(s) to determine noncompliance with pretreatment standards.

(o) *Recordkeeping.* Industrial users shall retain, and make available for inspection and copying, all records and information required to be retained under this ordinance. These records shall remain available for the term of the permit plus a period of three (3) years. This period shall be automatically extended for the duration of

any litigation concerning compliance with this ordinance, or where the industrial user has been specifically notified of a longer retention period by the Superintendent.

Sec. 19-74. Compliance monitoring.

(a) *Inspection and sampling.* The city shall have the right to enter the facilities of any industrial user to ascertain whether the purpose of this ordinance, and any permit or order issued hereunder, is being met and whether the industrial user is complying with all requirements thereof. Industrial users shall allow the Superintendent, or his representatives, ready access to all parts of the premises for the purposes of inspection, sampling, records examination and copying, and the performance of any additional duties.

(1) Where an industrial user has security measures in force which require the proper identification and clearance before entry into its premises, the industrial user shall make necessary arrangements with its security guards so that, upon presentation of suitable identification, personnel from the city, state, and EPA will be permitted to enter without delay, for the purposes of performing their specific responsibilities.

(2) The city, state, and EPA shall have the right to set up on the industrial user's property, or require installation of, such devices as are necessary to conduct sampling and/or metering of the user's operations.

(3) The city may require the industrial user to install monitoring equipment as necessary. The facility's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the industrial user at its own expense. All devices used to measure wastewater flow and quality shall be calibrated [periodically] to ensure their accuracy.

(4) Any temporary or permanent obstruction to safe and easy access to the industrial facility to be inspected and/or sampled shall be promptly removed by the industrial user at the written or verbal request of the Superintendent and shall not be replaced. The costs of clearing access shall be borne by the industrial user.

(5) Unreasonable delays in allowing city personnel access to the industrial user's premises shall be a violation of this ordinance.

(b) *Inspection warrants.* If the Superintendent has been refused access to a building, structure or property or any part thereof, and if the Superintendent has demonstrated probable cause to believe that there may be a violation of this ordinance or that there is a need to inspect as a part of a routine inspection program of the city designed to verify compliance with this ordinance or any permit or order issued hereunder, or to protect the overall public health, safety and welfare of the community, then the city may make application through the city attorney, to the Circuit Court in and for Polk County, Florida, for the issuance of an inspection warrant requesting the inspection of the specific location. The warrant, if issued by the circuit judge, shall specify what, if anything may be searched on the property described. Such warrant shall be served at reasonable hours by the Superintendent in the company of a uniform police officer of the city. In the event of an emergency affecting public health and safety, inspection shall be made without the issuance of a warrant.

Sec. 19-75. Confidential information.

Information and date on an industrial user obtained from reports, surveys, wastewater discharge permit applications, wastewater discharge permits, and monitoring programs, and from city inspection and sampling activities, shall be available to the public without restriction unless the industrial user specifically requests, and is able to demonstrate to the satisfaction of the city, that the release of such information would divulge information, processes or methods of production entitled to protection as trade secrets under applicable State law. When requested and demonstrated by the industrial user furnishing a report that such information should be held confidential, the portions of a report which might disclose trade secrets or secret processes shall not be made

available for inspection by the public, but shall be made available immediately upon request to governmental agencies for uses related to the NPDES program or pretreatment program, and in enforcement proceedings involving the person furnishing the report. Wastewater constituents and characteristics and other "effluent data" as defined by 40 CFR 2.302 will not be recognized as confidential information and will be available to the public without restriction.

Sec. 19-76. Publication of industrial users in significant noncompliance.

The Superintendent shall publish annually, in a newspaper of general circulation that provides meaningful public notice within the jurisdictions served by the WWF, a list of users which, at any time during the previous twelve (12) months, were in significant noncompliance with applicable pretreatment standards and requirements. The term significant noncompliance shall be applicable to all significant industrial users (or any other industrial user that violates paragraphs (c), (d) or (h) of this section) and shall mean:

(a) Chronic violations of wastewater discharge limits, defined here as those in which sixty-six (66) percent or more of wastewater measurements taken for the same pollutant parameter taken during a six-month period exceed (by any magnitude) a pretreatment standard or requirement, including instantaneous maximum allowable discharge limits as defined in section 19-68(d);

(b) Technical review criteria (TRC) violations, defined here as those in which thirty-three (33) percent or more of wastewater measurements taken for each pollutant parameters during month period equals or exceeds the product of the numeric pretreatment standard or requirement including instantaneous maximum allowable discharge limits as defined in section 19-68(d) multiplied by the applicable criteria (1.4 for BOD, TSS, fats, oil and grease, and 1.2 for all other pollutants except pH;

(c) Any other violation of a pretreatment standard or requirement (daily maximum, long-term average, instantaneous maximum allowable discharge limit, or narrative standard) that the Superintendent believes has caused, alone or in combination with other discharges, interference or pass through (including endangering the health of WWF personnel or the general public);

(d) Any discharge of pollutants that has caused imminent endangerment to the public or to the environment, or has resulted in the Superintendent's exercise of its emergency authority to halt or prevent such a discharge;

(e) Failure to meet, within ninety (90) days of the scheduled date, a compliance schedule milestone contained in a wastewater discharge permit or enforcement order for starting construction, completing construction, or attaining final compliance;

(f) Failure to provide within forty-five (45) days after the due date, any required reports, including baseline monitoring reports, reports on compliance with categorical pretreatment standard deadlines, periodic self-monitoring reports, and reports on compliance with compliance;

(g) Failure to accurately report noncompliance; or

(h) Any other violation(s) which may include a violation of best management practices which the Superintendent determines will adversely affect the operation or implementation of the local pretreatment program.

Sec. 19-77. Administrative enforcement remedies.

(a) *Notification of violation.* Whenever the Superintendent finds that any user has violated or is violating this ordinance, a wastewater discharge permit or order issued hereunder, or any other pretreatment requirement, the Superintendent or his agent may serve upon said user a written notice of violation. Within ten (10) days of the receipt of this notice, an explanation of the violation and a plan for the satisfactory correction and prevention thereof, to include specific required actions, shall be submitted by the user to the

Superintendent. Submission of this plan in no way relieves the user of liability for any violations occurring before or after receipt of the notice of violation. Nothing in this section shall limit the authority of the city to take any action, including emergency actions or any other enforcement action, without first issuing a notice of violation.

(b) *Consent orders.* The Superintendent is hereby empowered to enter into consent orders, assurances of voluntary compliance, or other similar documents establishing an agreement with any user responsible for noncompliance. Such orders will include specific action to be taken by the user to correct the noncompliance within a time period also specified by the order. Consent orders shall have the same force and effect as the administrative orders issued pursuant to sections 19-77(d) and 19-77(e) below and shall be judicially enforceable.

(c) *Show cause hearing.* The Superintendent may order any user which causes or contributes to violation(s) of this ordinance, wastewater discharge permits, or orders issued hereunder, or any other pretreatment standard or requirement, to appear before the Superintendent and show cause why a proposed enforcement action should not be taken. Notice shall be served on the user specifying the time and place for the meeting, the proposed enforcement action, the reasons for such action, and a request that the user show cause why this proposed enforcement action should not be taken. The notice of the meeting shall be served personally or by registered or certified mail (return receipt requested) at least ten (10) days prior to the hearing. Such notice may be served on any authorized representative of the user. Whether or not the user appears as ordered, immediate enforcement action may be pursued following the hearing date. A show cause hearing shall not be a prerequisite for taking any other action against the user.

(d) *Compliance orders.* When the Superintendent finds that a user has violated or continues to violate the ordinance, wastewater discharge permits or orders issued hereunder, or any other pretreatment standard or requirement, he may issue an order to the user responsible for the discharge directing that the user come into compliance within a reasonable period of time, depending on the severity of the violation. If the user does not come into compliance within the time ordered, the utility service may be discontinued until such time as the user is in compliance. Compliance orders may also contain other requirements to address the noncompliance, including additional self-monitoring, and management practices designed to minimize the amount of pollutants discharged to the sewer. A compliance order may not extend the deadline for compliance established for a Federal pretreatment standard or requirement, nor does a compliance order release the user of liability for any violation, including any continuing violation. Issuance of a compliance order shall not be a prerequisite to taking any other action against the user.

(e) *Cease and desist orders.* When the Superintendent finds that a user is violating this ordinance, the user's wastewater discharge permit, any order issued hereunder, or any other pretreatment standard or requirement, or that the user's past violations are likely to recur, the Superintendent may issue an order to the user directing it to cease and desist all such violations and directing the user to:

(1) Immediately comply with all requirements and standards.

(2) Take such appropriate remedial or preventive action as may be needed to properly address a continuing or threatened violation, including halting operations and/or terminating the discharge.

Issuance of a cease and desist order shall not be a prerequisite to taking any other action against the user.

(f) *Emergency suspensions.* The Superintendent may immediately suspend a user's discharge (after informal notice to the user) whenever such suspension is necessary in order to stop an actual or threatened discharge which reasonably appears to present or cause an imminent or substantial endangerment to the health or welfare of persons. The Superintendent may also immediately suspend a user's discharge (after notice and opportunity to respond) that threatens to interfere with the operation of the WWF, or which presents or may present an endangerment to the environment.

(1) Any user notified of a suspension of its discharge shall immediately stop or eliminate its contribution. In the event of a user's failure to immediately comply voluntarily with the suspension order, the

Superintendent shall take such steps as deemed necessary, including immediate severance of the sewer connection, to prevent or minimize damage to the WWF, its receiving stream, or endangerment to any individuals. The Superintendent shall allow the user to recommence its discharge when the user has demonstrated to the satisfaction of the city that the period of endangerment has passed, unless the termination proceedings set forth in section 19-77(g) are initiated against the user.

(2) A user that is responsible, in whole or in part, for any discharge presenting imminent endangerment shall submit a detailed written statement describing the causes of the harmful contribution and the measures taken to prevent any future occurrence to the Superintendent, prior to the date of any show cause or termination hearing under sections 19-77(c) and 19-77(g).

Nothing in this section shall be interpreted as requiring a hearing prior to any emergency suspension under this section.

(g) *Termination of discharge.* In addition to those provisions in section 19-72(f) of this ordinance, any user that violates the following conditions of this ordinance, wastewater discharge permits, or orders issued hereunder, is subject to discharge termination.

(1) Violation of wastewater discharge permit conditions.

(2) Failure to accurately report the wastewater constituents and characteristics of its discharge.

(3) Failure to report significant changes in operations or wastewater volume, constituents and characteristics prior to discharge.

(4) Refusal of reasonable access to the user's premises for the purpose of inspection, monitoring or sampling.

(5) Violation of the pretreatment standards in section 19-69 of this ordinance.

Such user will be notified of the proposed termination of its discharge and be offered an opportunity to show cause under section 19-77(c) of this ordinance why the proposed action should not be taken.

Sec. 19-78. Judicial enforcement remedies.

(a) *Injunctive relief.* Whenever a user has violated a pretreatment standard or requirement or continues to violate the provisions of this ordinance, wastewater discharge permits or orders issued hereunder, or any other pretreatment requirement, the Superintendent may petition the Circuit Court in and for Polk County, Florida, through the city's attorney for the issuance of a temporary or permanent injunction, as appropriate, which restrains or compels the specific performance of the wastewater discharge permit, order, or other requirement imposed by this ordinance on activities of the industrial user. Such other action as appropriate for legal and/or equitable relief may also be sought by the city. A petition for injunctive relief need not be filed as a prerequisite to taking any other action against a user.

(b) *Civil penalties.*

(1) The city shall be able to seek injunctive relief for noncompliance by industrial users with pretreatment standards and requirements. The city shall have the authority to seek or assess civil penalties in at least the amount of one thousand dollars ($1,000.00) a day for each violation by industrial users of pretreatment standards and requirements. In the case of a monthly or other long-term average discharge limit, penalties shall accrue for each day during the period of the violations.

(2) The city may recover reasonable attorney's fees, court costs, and other expenses associated with enforcement activities, including sampling and monitoring expenses, and the cost of any actual damages incurred by the city.

(3) In determining the amount of civil liability, the court shall take into account all relevant circumstances, including, but not limited to, the extent of harm caused by the violation, the magnitude and duration,

any economical benefit gained through the user's violation, corrective actions by the user, the compliance history of the user, and any other factor as justice requires.

(4) Filing a suit for a civil penalty shall not be a prerequisite for taking any other action against a user.

(c) *Criminal prosecution.*

(1) Any user that willfully or negligently violates any provision of this ordinance, any orders or wastewater discharge permits issued hereunder, or any other pretreatment requirement shall, upon conviction, be guilty of a misdemeanor, punishable by a fine of at least one thousand dollars ($1,000.00) per violation per day or imprisonment for not more than sixty (60) days or both.

(2) Any user that willfully or negligently introduces any substance into the WWF which causes personal injury or property damage shall, upon conviction, be guilty of a misdemeanor and be subject to a penalty of at least one thousand dollars ($1,000.00) per violation per day and/or imprisonment for not more than sixty (60) days. This penalty shall be in addition to any other cause of action for personal injury or property damage available under State law.

(3) Any user that knowingly makes any false statements, representations, or certifications in any application, record, report, plan or other documentation filed, or required to be maintained, pursuant to this ordinance, wastewater discharge permit or order, or who falsifies, tampers with or knowingly renders inaccurate any monitoring device or method required under this ordinance shall, upon conviction, be punished by a fine of not more than one thousand dollars ($1,000.00) per violation per day or imprisonment for not more than sixty (60) days or both.

(d) *Remedies nonexclusive.* The provisions in sections 19-76 through 19-78 are not exclusive remedies. The city reserves the right to take any, all, or any combination of these actions against a noncompliant user. Enforcement of pretreatment violations will generally be in accordance with the city's enforcement response plan. However, the city reserves the right to take other action against any user when the circumstances warrant. Further, the city is empowered to take more than one enforcement action against any noncompliant user. These actions may be taken concurrently.

Sec. 19-79. Affirmative defenses to discharge violations.

(a) *Upset.*

(1) For the purpose of this section "upset" means an exceptional incident in which there is unintentional and temporary noncompliance with categorical pretreatment standards because of factors beyond the reasonable control of the industrial user. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventative maintenance, or careless or improper operation.

(2) An upset shall constitute an affirmative defense to an action brought for noncompliance with categorical pretreatment standards if the requirements of paragraph (3) are met.

(3) An industrial user who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

a. An upset occurred and the industrial user can identify the cause(s) or the upset.

b. The facility was at the time being operated in a prudent and workmanlike manner and in compliance with applicable operation and maintenance procedures.

c. The industrial user has submitted the following information to the WWF and treatment plant operator within twenty-four (24) hours of becoming aware of the upset [if this information is provided orally, a written submission must be provided within five (5) days]:

(i) A description of the indirect discharge and cause of noncompliance.

(ii) The period of noncompliance, including exact dates and items or, if not corrected, the anticipated time the noncompliance is expected to continue.

(iii) Steps being taken and/or planned to reduce, eliminate and prevent recurrence of the noncompliance.

(4) In any enforcement proceeding, the industrial user seeking to establish the occurrence of an upset shall have the burden of proof.

(5) Industrial users will have the opportunity for a judicial determination on any claim of upset only in an enforcement action brought for noncompliance with categorical pretreatment standards.

(6) The industrial user shall control production of all discharges to the extent necessary to maintain compliance with categorical pretreatment standards upon reduction, loss, or failure of its treatment facility until the facility is restored or an alternative method of treatment is provided. This requirement applies in the situation where, among other things, the primary source of power of the treatment facility is reduced, lost or fails.

(b) *General/specific prohibitions.* An industrial user shall have an affirmative defense to an enforcement action brought against it for noncompliance with the general and specific prohibitions in section 19-69 (a) of this ordinance if it can prove that it does not know or have reason to know that its discharge, along or in conjunction with discharges from other sources, would cause pass through or interference and that either: (a) a local limit exists for each pollutant discharged and the industrial user was in compliance with each limit directly prior to, and during, the pass through or interference, or (b) no local limit exists, but the discharge did not change substantially in nature or constituents from the user's prior discharge when the city was regularly in compliance with its NPDES permit, and in the case of interference, was in compliance with applicable sludge uses or disposal requirements.

(c) *Bypass.*

(1) For the purpose of this section.

(i) "Bypass" means the intentional diversion of waste streams from any portion of an industrial user's treatment facility.

(ii) "Severe property damage" means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

(2) An industrial user may allow any bypass to occur which does not cause pretreatment standards or requirements to be violated, but only if it also is for essential maintenance or assure efficient operation. These bypasses are not subject to the provision of paragraphs (3) and (4) of this [sub]section.

(3) Bypass notifications.

(i) If an industrial user knows in advance of the need for a bypass, it shall submit prior notice to the Superintendent, at least ten (10) days before the date of the bypass if possible.

(ii) An industrial user shall submit oral notice of an unanticipated bypass that exceeds applicable pretreatment standards to the WWF within twenty-four (24) hours from the time it becomes aware of the bypass. A written submission shall also be provided within five (5) days of the time the industrial user becomes aware of the bypass. The written submission shall contain a description of the bypass and its cause; the duration of the bypass, including exact dates and times, and, if the bypass has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the bypass. The WWF Superintendent may waive the written report on a case-by-case basis if the oral report has been received within twenty-four (24) hours.

(4) Bypass is prohibited, and the WWF may take action against an industrial user for bypass, unless;

a. Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage.

b. There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventative maintenance; and

c. The industrial user submitted notices as required under paragraph (2) of this [sub]section.

1. The Superintendent may approve and anticipate bypass, after considering its adverse effects, if the Superintendent determines that it will meet the three conditions listed in paragraph (4)a.—c. of this [sub]section.

Sec. 19-80. Charges, fees and billing procedure.

(a) The city shall establish a uniform schedule of charges and fees to provide for the reimbursement of costs to the city for the treatment of industrial wastewater. This schedule of charges and fees shall be enacted and modified by ordinance adopted by the city commissioners of the City of Winter Haven, Florida. This schedule shall not be codified, but shall be on file in the city clerk's office.

(b) Where the premises are served by city utilities, any fees and changes pursuant to this ordinance shall be added to and made a part of a consolidated utility billing.

(c) Where city utilities are not used, said fees and charges shall be charged to and collected from the user. Bills rendered pursuant to this provision shall be considered delinquent if not paid by the date specified on this bill. Said delinquency shall be considered as a violation of the provisions of this ordinance and the wastewater permit and may be considered for enforcement proceedings pursuant to the applicable enforcement provisions of this ordinance. For purposes of such delinquencies, the city may avail itself of the remedies set forth in Part I of Chapter 159, Florida Statutes, the "Revenue Bond Act of 1953" (the "Act"), which provides that the city has a lien on all lands or premises served by any water and/or sewer system for service charges for such facilities until paid, which liens are prior to all other liens on such lands or premises except the lien of state, county, and municipal taxes; and such lien(s) are on a parity with the lien of state, county and municipal taxes. Pursuant to the Act and the city's home rule power(s), the city imposes liens on all properties served by the utility system for unpaid utility service fees and/or user charges, the enforcement of such service charges (including the assessment of the city's legal costs in enforcing any such liens).

(d) The provisions set forth in this section 19-80 are not exclusive remedies. The city reserves the right to take any, all, or a combination of legal and/or equitable action(s) against a noncompliant and/or delinquent user which may include, but shall not be limited to, the city's right and ability to discontinue utility service(s) for nonpayment and requiring all charges, fees (including attorneys' fees and costs), interest and penalties be paid-in-full prior to restoring such utility service(s); and the city's right and ability to foreclose any lien(s) created by and/or arising out of the Act in the manner provided by the Laws of Florida for the foreclosure of mortgages on real property.

Sec. 19-81. Requirements for dental facilities that remove or replace amalgam fillings.

(a) Definitions. For the purpose of this section the following words and phrases shall be as defined herein.

(1) *Amalgam separator* is a device that employs filtration, settlement, centrifugation, or ion exchange to remove amalgam and its metal constituents from a dental office vacuum system before it discharges to the sewer.

(2) *Amalgam waste* means and includes non-contact amalgam (amalgam scrap that has not been in contact with the patient); contact amalgam (including, but not limited to, extracted teeth containing amalgam); amalgam sludge captured by chairside straps, vacuum pump filters, screens, and other amalgam trapping devices; used amalgam capsules; and leaking or unusable amalgam capsules.

(3) *ANSI/ADA Standard No. 108* is the American National Standards Institute and American Dentistry association standard for amalgam separators.

(4) *Existing source* is any facility subject to this section whose first discharge to the sewer collection system occurred on or before July 14, 2017.

(5) *ISO 11143* is the International Organization for Standardization's standard for amalgam separators.

(6) *New source* is any facility subject to this section whose first discharge to the sewer system occurs after July 14, 2017 and must comply immediately upon commencement of discharge.

(b) All owners and operators of dental facilities that remove or place amalgam fillings shall comply with the following reporting and waste management practices:

(1) For existing sources, the One-Time Compliance Report is due no later than ninety (90) days after receipt of notification from the city to comply with the requirements of this Ordinance or no later than ninety (90) days after transfer of ownership.

(2) For new sources, the One-Time Compliance Report is due within ninety (90) days of the start of discharge to the sewer collection system.

(3) No person shall rinse chairside traps, vacuum screens, or amalgam separators equipment in a sink or other connection to the sanitary sewer.

(4) Owners and operators of dental facilities shall ensure that all staff members who handle amalgam waste are trained in the proper handling, management and disposal of mercury-containing material and fixer-containing solutions and shall maintain training records that shall be available for inspection by the superintendent or designee during normal business hours.

(5) Amalgam waste shall be stored and managed in accordance with the instructions of the recycler or hauler of such materials.

(6) Bleach and other chlorine-containing disinfectants shall not be used to disinfect the vacuum line system.

(7) The use of bulk mercury is prohibited. Only pre-capsulated dental amalgam is permitted.

(c) All owners and operators of dental vacuum suction systems, except as set forth in subsections (d) and (e) of this section, shall comply with the following:

(1) An ISO 11143 or ANSI/ADA Standard No. 108 certified amalgam separator or equivalent device shall be installed for each dental vacuum suction system on or before July 14, 2020; provided, however, that all dental facilities that are newly constructed on and after the effective date of this ordinance shall include an installed ISO 11143 or ANSI/ADA Standard No. 108 certified amalgam separator device. The installed device must be ISO 11143 or ANSI/ADA Standard No. 108 certified as capable of removing a minimum of ninety-five (95) percent of amalgam. The amalgam separator system shall be certified at flow rates comparable to the flow rate of the actual vacuum suction system operation. Neither the separator device nor the related plumbing shall include an automatic flow bypass. For facilities that require an amalgam separator that exceeds the practical capacity of ISO 11143 test methodology, a non-certified separator will be accepted provided that smaller units from the same manufacturer and the same technology are ISO-certified.

(2) Proof of certification and installation records shall be submitted to the superintendent within thirty (30) days of installation.

(3) Amalgam separators shall be maintained in accordance with manufacturer's recommendations. Installation, certification, and maintenance records shall be available for immediate inspection upon request therefor by the superintendent or designee during normal business hours. Records shall be maintained for a minimum of three (3) years.

(d) Facilities with vacuum suction systems that meet all the following conditions may apply to the superintendent for an exemption to the requirements of subsection (c) of this section:

(1) The system is a dry vacuum pump system with an air-water separator.

(2) The sedimentation tank is non-bottom draining, with the drain above the anticipated maximum level of accumulated sludge.

(3) Evidence of regular pump outs by a licensed hauler (a minimum of one (1) year, or more often if either directed by the manufacturer or necessary to keep solids from exiting through the drain) is maintained and open to inspection by the superintendent during normal business hours.

(4) The system has no direct discharge pipe to the sewer on the bottom of the sedimentation tank.

An owner or operator whose facility meets conditions (1) through (4) may apply for this exemption by written letter to the superintendent. The superintendent or designee will review the system, and if the exemption is approved, shall provide a written letter of exemption.

An exemption obtained pursuant to this subsection (d) shall expire upon installation of a new vacuum system. Upon expiration of the exemption, the facility shall comply with subsection (c) of this section before commencing further operation.

(e) Dental dischargers that exclusively practice one or more of the following specialties are not subject to the requirements of this section: (1) Orthodontics; (2) Periodontics; (3) Oral and maxillofacial surgery; (4) Radiology; (5) Oral pathology or oral medicine; (6) Endodontistry and prosthodontistry.

(f) Dental practices that do not place dental amalgam, and do not remove amalgam except in limited emergency or unplanned, unanticipated circumstances, are exempt from the requirements of this part, provided the dental practice:

(1) Submits the following statement to the city, signed by a responsible corporate officer, general partner, proprietor, or a duly authorized representative by the applicable compliance identified in section 19-81(b):

"This facility is a dental discharger subject to this rule and does not place or remove dental amalgam except in limited emergency or unplanned, unanticipated circumstances. I am a responsible corporate officer, a general partner or proprietor (if the facility is a partnership or sole proprietorship), or a duly authorized representative in accordance with the requirements of § 403.12 (l) of the above named dental facility, and certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.";

(2) Removes dental amalgam for limited emergency or unplanned, unanticipated circumstances, less than ten (10) times per year and no more than 1% of dental procedures; and

(3) The dental practice notifies the (city/county/utility/authority) of any changes affecting the applicability of this certification.

(g) Disposal of hauled wastewater from dental facilities to the sanitary sewer must be in accordance with section 19-70(e) and section 19-69, and may be subject to industrial pretreatment requirements.

DIVISION 2 INDUSTRIAL PRETREATMENT

Sec. 19-68. General ~~provisions~~ Provisions

(a) *Short title.* This Division 2 of Article III, Chapter 19, of the Code of Ordinances of the city shall be known as the "Industrial Pretreatment Ordinance" and shall herein be referred to as the or this "ordinance".

(b) *Purpose and policy.* This ordinance sets forth uniform requirements for users of the wastewater collection and Publicly Owned Treatment Works (WWF) for the city of Winter Haven, Florida and enables the city to comply with all applicable State and Federal laws including the Clean Water Act (33 U.S.C. 1251 et seq.), and the General Pretreatment Regulations (62-625 F.A.C.). The objectives of this ordinance are:

(1) To prevent the introduction of pollutants into the WWF that will interfere with the operation of the WWF, including interference with its use or disposal of domestic wastewater residuals;

(2) To prevent the introduction of pollutants into the WWF which will pass through the WWF, inadequately treated, into receiving waters or otherwise be incompatible with the WWF;

(3) To ensure that the quality of the wastewater treatment plant sludge is maintained at a level which allows its use and disposal in compliance with applicable statutes and regulations;

(4) To protect WWF personnel who may be affected by wastewater and sludge in the course of their employment and to protect the general public;

(5) To improve the opportunity to recycle and reclaim wastewater and sludge from the WWF;

(6) To establish an equitable fee structure for users of the WWF; and

(7) To enable the city to comply with its NPDES permit conditions, sludge use and disposal requirements and any other federal or state laws to which the WWF is subject.

This ordinance shall apply to all industrial users of the WWF. The ordinance authorizes the issuance of wastewater discharge permits; authorizes monitoring, compliance and enforcement activities; establishes administrative review procedures; requires industrial user reporting; and provides for the setting of fees for the equitable distribution of costs resulting from the program established herein.

(c) *Administration.* Except as otherwise provided herein, the city manager shall administer, implement and enforce the provisions of this ordinance. Any powers granted to or duties imposed upon the city manager may be delegated by the city manager to other city personnel.

(d) *Definitions.* Unless a provision explicitly states otherwise, the following terms and phrases, as used in this ordinance, shall have the meanings hereinafter designated:

(1) *Act* or *the Act.* The Federal Water Pollution Control Act, also known as the Clean Water Act, as amended, 33 U.S.C. 1251 et seq.

(2) *Approval authority.* The appropriate regional administrator of the Department of Environmental Protection, or his/her designee.

(3) *Authorized or duly authorized representative of the user.*

a. If the user is a corporation:

1. The president, secretary, treasurer, or a vice president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation; or

2. The manager of one or more manufacturing, production, or operation facilities; provided the manager is authorized to make management decisions that govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiate and direct other comprehensive measures to assure long-term environmental compliance with environmental laws and regulations; can ensure that the necessary systems are established or actions taken to gather complete and accurate information for individual wastewater discharge permit or general permit requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

b. If the industrial user is a partnership, or sole proprietorship, a general partner or proprietor, respectively.

c. If the industrial user is a federal, state, or local governmental facility a director or highest official appointed or designated to oversee the operation and performance of the activities of the government facility, or their designee.

d. The individuals described in paragraph a.—c. above, may designate a duly authorized representative if the authorization is in writing, the authorization specifies the individual or position responsible for the overall operation of the facility from which the discharge originates or having overall responsibility for environmental matters for the company, and the written authorization is submitted to the City of Winter Haven.

(4) *Biochemical oxygen demand (BOD).* The quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure, five (5) days at 20° Centigrade expressed in terms of mass [pounds (lbs~~}~~.)] or concentration [milligrams per liter (mg/l)].

(5) *Best management practices* or *BMPs* means schedules or activities, prohibitions of practices, maintenance procedures, and other management practices to implement the prohibitions listed in section 19-69(a) and (b) [40 CFR 403.5(a)(1) and (b). BMPs include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw materials storage. [Note: BMPs also include alternative means (i.e., management plans) of complying with, or in place of certain established categorical pretreatment standards and effluent limits.]

(6) *Categorical pretreatment standard* or *categorical standard.* Any regulation containing pollutant discharge limits promulgated by the Department of Environmental Protection in accordance with Sections 307(b) and (c) of the Act (33 U.S.C. 1317) which apply to a specific category of industrial users and which appear in 40 CFR Chapter I, Subchapter N, Parts 405-471.

(7) *Categorical industrial user.* An industrial user subject to a categorical pretreatment standard or categorical standard.

(8) *Chemical oxygen demand* or *COD.* A measure of the oxygen required to oxidize all compounds, both organic and inorganic in water.

(9) *City.* The City of Winter Haven or the City Commission of Winter Haven, Florida.

(10) *Color.* The optical density at the visual ~~wave length~~ wavelength of maximum absorption, relative to distilled water. One hundred (100) percent transmittance is equivalent to zero (0.0) optical density.

(11) *Composite sample.* The sample resulting from the combination of individual wastewater samples taken at selected intervals based on an increment of either flow or time (as a last resort).

(12) *Control authority.* The city.

(13) *Daily maximum.* The highest value of all the effluent samples collected during a calendar day.

(14) *Daily maximum limit.* The maximum allowable discharge limit of a pollutant during a calendar day. Where daily maximum limits are expressed in units of mass, the daily discharge is the total mass, discharged over the course of the day. Where daily maximum limits are expressed in terms of concentration, the daily discharge is the arithmetic average measurement of the pollutant concentration derived from all measurements taken that day.

(15) *Department of Environmental Protection* or *DEP.* The Department of Environmental Protection, where appropriate, the term may also be used as a designation for the Regional Water Management Division Director or other duly authorized official of said agency.

(16) *Environmental Protection Agency* or *EPA.* The U.S. Environmental Protection Agency or, where appropriate, the Regional Water Management Division Director, the Regional Administrator, or other duly authorized official of said agency.

(17) *Existing source.* Any source of discharge, the construction or operation of which commenced prior to the publication of proposed categorical pretreatment standards which will be applicable to such source if the standard is thereafter promulgated in accordance with Section 307 of the Act.

(18) *Grab sample.* A sample which is taken from a waste stream without regard to the flow in the waste stream and over a period of time not to exceed fifteen (15) minutes.

(19) *Hazardous waste pharmaceutical* is a pharmaceutical that is a solid waste, as defined in Title 40 of the Code of Federal Regulations (40 CFR) section 261.2, and exhibits one or more characteristics identified in 40 CFR part 261 subpart C or is listed in 40 CFR part 261 subpart D.

(20) *Healthcare facility* means any person that is lawfully authorized to:

a. Provide preventative, diagnostic, therapeutic, rehabilitative, maintenance or palliative care, and counseling, service, assessment or procedure with respect to the physical or mental condition, or functional status, of a human or animal or that affects the structure or function of the human or animal body; or

b. Distribute, sell, or dispense pharmaceuticals. This definition includes, but is not limited to, wholesale distributors, third-party logistics providers that serve as forward distributors, military medical logistics facilities, hospitals, psychiatric hospitals, ambulatory surgical centers, health clinics, physicians' offices, optical and dental providers, chiropractors, long-term care facilities, ambulance services, pharmacies, long-term care pharmacies, mail-order pharmacies, retailers of pharmaceuticals, veterinary clinics, and veterinary hospitals.

Healthcare facility does not include pharmaceutical manufacturers.

(21) *Indirect discharge* or *discharge.* The introduction of (nondomestic) pollutants into the WWF from any nondomestic source regulated under Section 307(b), (c) or (d) of the Act.

(22) *Industrial user* or *user.* A source of indirect discharge.

(23) *Instantaneous maximum allowable discharge limit.* The maximum concentration (or loading) of a pollutant allowed to be discharged at any time, determined from the analysis of any discrete or composited sample collected, independent of the industrial flow rate and the duration of the sampling event.

(24) *Interference.* A discharge which alone or in conjunction with a discharge or discharges from other sources: 1) inhibits or disrupts the WWF, its treatment processes or operations or its sludge processes, use or disposal; and 2) is a cause of a violation of the city's NPDES permit or of the prevention of sewage sludge use or disposal in compliance with any of the following statutory/regulatory provisions or permits issued there under (or more stringent state or local regulations): Section 405 of the Clean Water Act (CWA); the Solid Waste Disposal Act (SWDA), including Title II commonly referred to as the Resource Conservation and Recovery Act (RCRA); any state regulations contained in any state sludge

management plan prepared pursuant to Subtitle D of the SWDA; the Clean Air Act; the Toxic Substances Control Act; and the Marine Protection, Research and Sanctuaries Act.

(25) *Local limit.* Specific discharge limits developed and enforced by the city upon industrial or commercial facilities to implement the general and specific discharge prohibitions listed in 40 CFR 403.5(a)(1) and (b). Local Limit Allocation method used is the Uniform Concentration Limit (UCL) Method.

(26) Monthly Average - The monthly average concentration is the sum of the concentrations of all daily discharges sampled and/or measured during a calendar month, divided by the number of daily discharges sampled and/or measured during such month (arithmetic mean of the daily concentration values).

(26) *Medical waste.* Isolation wastes, infectious agents, human remains, blood and blood by-products, pathological wastes, sharps, body parts, fomites, etiologic agents, contaminated bedding, surgical wastes, potentially contaminated laboratory wastes and dialysis wastes.

(27) *New source.*

a. Any building, structure, facility or installation from which there is or may be a discharge of pollutants, the construction of which commenced after the publications of proposed pretreatment standards under Section 307(c) of the CWA which will be applicable to such source if such standards are thereafter promulgated in accordance with that section, provided that:

1. The building, structure, facility or installation is constructed at a site at which no other source is located,

2. The building, structure, facility or installation totally replaces the process or production equipment that causes the discharge of pollutants at an existing source, or

3. The production or ~~wastewater~~ wastewaters generating process of the building, structure, facility, or installation are substantially independent of an existing source at the same site. In determining whether these are substantially independent, factors such as the extent to which the new facility is integrated with the existing plant, and the extent to which the new facility is engaged in the same general type of activity as the existing source, should be considered.

b. Construction on a site at which an existing source is located results in a modification rather than a new source if the construction does not create a new building, structure, facility, or installation meeting the criteria of section a.2. or 3., above but otherwise alters, replaces, or adds to existing process or production equipment; or

c. Construction of a new source as defined under this paragraph has commenced if the owner or operator has:

1. Begun or caused to begin as part of a continuous onsite construction program.

(i) Any placement, assembly, or installation of facilities or equipment, or

(ii) Significant site preparation work including clearing, excavation, or removal of existing buildings, structures, or facilities which is necessary for the placement, assembly, or installation of new source facilities or equipment; or

2. Entered into a binding contractual obligation for the purchase of facilities or equipment which is intended to be used in its operation within a reasonable time. Options to purchase or contracts which can be terminated or modified without substantial loss, and contracts for feasibility, engineering, and design studies do not constitute a contractual obligation under this paragraph.

(28) *Noncontact cooling water.* Water used for cooling which does not come into direct contact with any raw material intermediate product, waste product, or finished product.

(29) *Non-significant categorical user* means an industrial user that discharges one hundred (100) gallons per-day (gpd) or less of total categorical wastewater (excluding sanitary, non-contact cooling and boiler blowdown wastewater, unless specifically included in the pretreatment standard, and:

a. Has consistently complied with all applicable categorical pretreatment standards and requirements;

b. Annually submits the certification statement required in subsection 62-625.600(17), F.A.C., together with any additional information necessary to support the certification statement; and

c. Never discharges any untreated categorical process wastewater.

(30) *Pass through.* A discharge which exits the WWF into waters of the state, in quantities or concentrations which, alone or in conjunction with a discharge or discharges from other sources, is a cause of a violation of any requirement of the city's NPDES permit (including an increase in the magnitude or duration of a violation).

(31) *Person.* Any individual, partnership, co-partnership, firm, company, corporation, association, joint stock company, trust, estate, governmental entity or any other legal entity, or their legal representatives, agents or assigns; this definition including all Federal, State or local governmental entities.

(32) *pH.* A measure of the acidity or alkalinity of a substance, expressed in standard units.

(33) *Pharmaceutical* means any drug or dietary supplement for use by humans or other animals; any electronic nicotine delivery system (e.g., electronic cigarette or vaping pen); or any liquid nicotine (e-liquid) packaged for retail sale for use in electronic nicotine delivery systems (e.g., pre-filled cartridges or vials). This definition includes, but is not limited to, dietary supplements, as defined by the Federal Food, Drug and Cosmetic Act; prescription drugs, as defined by Title 21 of the Code of Federal Regulations part 203.3(y); over-the-counter drugs; homeopathic drugs; compounded drugs; investigational new drugs; pharmaceuticals remaining in non-empty containers; personal protective equipment contaminated with pharmaceuticals; and clean-up material from spills of pharmaceuticals. Pharmaceutical does not include dental amalgam or sharps

(34) *Pollutant.* Any dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, medical wastes, chemical wastes, industrial wastes, biological materials, radioactive materials, heat, wrecked or discharge equipment, rock, sand, cellar dirt, agricultural and industrial wastes, and any material that may affect the characteristics of the wastewater [i.e., pH, temperature, TSS, turbidity, color, BOD, Chemical Oxygen Demand (COD), toxicity, odor].

(35) *Prescription Pharmaceuticals.* A pharmaceutical that can only be obtained by means of a physician's prescription.

(36) *Pretreatment.* The reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater prior to or in lieu of introducing such pollutants into the WWF. This reduction or alteration can be obtained by physical, chemical or biological processes, by process changes, or by other means, except by diluting the concentration of the pollutants unless allowed by an applicable pretreatment standard.

(37) *Pretreatment program.* A program administered by a public utility that meets the criteria established in Rule 62-625.500, F.A.C.

(38) *Pretreatment requirements.* Any substantive or procedural requirement related to pretreatment, other than a pretreatment standard, imposed on an industrial user.

(39) *Pretreatment standards* or *standards.* Pretreatment standards shall mean prohibitive discharge standards, categorical pretreatment standards, and local limits.

(40) *Prohibited discharge standards* or *prohibited discharges.* Absolute prohibitions against the discharge of certain substances; these prohibitions appear in section 19-69(a) of this ordinance.

(41) *Publicly owned treatment works* or *WWF.* A "treatment works" as defined by Section 212 of the Act (33 U.S.C. 1292), which is owned by the municipality. This definition includes any devices or systems used in the collection, storage, treatment, recycling and reclamation of sewage or industrial wastes and any conveyances which convey wastewater to a treatment plant. The term also means the municipal entity having jurisdiction over the industrial users and responsibility for the operation and maintenance of the treatment works.

(42) *Responsible corporate officer* means:

a. A president, secretary, treasurer, or vice president of the corporation in charge of a principle business function, or any other person who performs similar policy or decision making functions for the corporation; or

b. The manager of one (1) or more manufacturing, production, or operation facility, provided, the manager:

1. Is authorized to make management decisions which govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations;

2. Is authorized to initiate and direct other comprehensive measures to assure long-term environmental compliance with environmental laws and regulations;

3. Can ensure the necessary systems are established or actions taken to gather complete and accurate information for control mechanism requirements;

4. Has been assigned or delegated the authority to sign documents in accordance with corporate procedures.

(43) *Reverse distributor* means any person that receives and accumulates prescription pharmaceuticals that are potentially creditable hazardous waste pharmaceuticals for the purpose of facilitating or verifying manufacturer credit. Any person, including forward distributors, third-party logistics providers, and pharmaceutical manufacturers, that process prescription pharmaceuticals for the facilitation or verification of manufacturer credit is considered a reverse distributor.

(44) *Septic tank waste.* Any sewage from holding tanks such as vessels, chemical toilets, campers, trailers, and septic tanks.

(45) *Sewage.* Human excrement and gray water (household showers, dishwashing operations, etc.).

(46) *Significant industrial user (SIU)* means, except as provided in paragraphs c. and d., below, the following:

a. Categorical users; and

b. Any other industrial user that discharges and average of twenty-five thousand (25,000) gallons per day or more of process wastewater to the WWF (excluding domestic wastewater, non-contact cooling and boiler blowdown wastewater); contributes a process waste stream which makes up five (5) percent or more of the average dry weather hydraulic or organic capacity of the treatment plant; or is designated as such by the control authority on the basis that the industrial user has a reasonable potential for adversely affecting the WWF's operation or for violating any pretreatment standard or requirement.

c. The control authority (except where the department is acting as the control authority) may determine that an industrial user subject to categorical pretreatment standards under Rule 62-625.410, F.A.C., including 40 CFR Chapter I, Subchapter N, Parts 405 through 471, is a non-significant categorical industrial user.

d. Upon a finding that an industrial user meeting the criteria in paragraph b. above has no reasonable potential for adversely affecting the WWF's operation or for violating any pretreatment standard or requirement, the control authority may at any time, on its own

initiative or in response to a petition received from an industrial user, and in accordance with paragraph 62-625.500(2)(e). F.A.C., determine that such industrial user is not a significant industrial user.

(47) *Slug load.* Any discharge at a flow rate or concentration which could cause a violation of the prohibited discharge standards in section 19-69(a) of this ordinance or any discharge of a non-routine, episodic nature, including, but not limited to, an accidental spill or a non-customary batch discharge.

(48) *Standard industrial classification (SIC) Code.* A classification pursuant to the Standard Industrial Classification Manual issued by the U.S. Office of Management and Budget.

(49) *Stormwater.* Any flow occurring during or following any form of natural precipitation, and resulting from such precipitation, including snowmelt.

(50) *Superintendent.* The city manager or the person designated by the city to supervise the operation of the WWF, and who is charged with certain duties and responsibilities by this ordinance or his/her duly authorized representative.

(51) *Suspended solids.* The total suspended matter that floats on the surface of, or is suspended in, water, wastewater, or other liquid, and which is removable by laboratory filtering.

(52) *Toxic pollutant.* One (1) of one hundred twenty-six (126) pollutants, or combination of those pollutants, listed as toxic in regulations promulgated by the EPA under the provision of Section 307 (33 U.S.C. 1317) of the Act.

(53) *Treatment plant effluent.* Any discharge of pollutants from the WWF into waters of the state.

(54) *Wastewater.* Liquid and water-carried industrial wastes, and sewage from residential dwellings, commercial buildings, industrial and manufacturing facilities, and institutions, whether treated or untreated, which are contributed to the WWF.

(55) *Wastewater facility* or *WWF.* Any facility which discharges wastes into the waters of the State or which can reasonably be expected to be a source of water pollution and includes any or all of the following; the collection and transmission system, the wastewater treatment works, the reuse or disposal system, and the residuals management facility.

Shall is mandatory; may is permissive or discretionary. The use of the singular shall be construed to include the plural and the plural shall include the singular as indicated by the context of its use.

(e) *Abbreviations.* The following abbreviations shall have the designated meanings:

- BOD—Biochemical Oxygen Demand
- CFR—Code of Federal Regulations
- COD—Chemical Oxygen Demand
- DEP—Department of Environmental Protection
- gpd—Gallons per day
- l—Liter
- mg—Milligrams
- mg/l—Milligrams per liter
- NPDES—National Pollutant Discharge Elimination System
- O& M—Operation and maintenance
- WWF—Wastewater Facility
- RCRA—Resource Conservation and Recovery Act

- SIC—Standard Industrial Classifications
- SIU—Significant Industrial User
- SWDA—Solid Waste Disposal Act (42 U.S.C. 6901, et seq.)
- TSS—Total suspended solids
- USC—United States Code

Sec. 19-69. General sewer use requirements.

(a) *Prohibited discharge standards.* No industrial user shall introduce or cause to be introduced into the WWF any pollutant or wastewater which causes pass through or interference. These general prohibitions apply to all industrial users of the WWF whether or not they are subject to categorical pretreatment standards or any other national, state or local pretreatment standards or requirement.

(b) *Specific prohibitions.* No user shall introduce or cause to be introduced into the WWF the following pollutants, substances, or wastewater:

(1) Pollutants which create a fire or explosive hazard in the municipal wastewater collection and WWF, including, but not limited to, waste streams with a closed-cup flashpoint of less than 140 degrees F using test methods specified in 40 CFR 261.21;

(2) Any wastewater having a pH less than 5.0 or more than 10.5, or otherwise causing corrosive structural damage to the WWF or equipment, or endangering city personnel. If wastewater is less than or equal to 2.0 or greater than or equal to 12.5 then wastewater is defined as hazardous waste in accordance with 40 CFR 261.22 and all discharges must cease and desist until the pH can be adjusted into non-hazardous waste range.

(3) Solid or viscous substances in amounts which will cause obstruction of the flow in the WWF resulting in interference, but in no case solids greater than 0.5 inches or 1.27 centimeter in any dimension.

(4) Any wastewater containing pollutants, including oxygen demanding pollutants (BOD, etc.), released in a discharge at a flow rate and/or pollutant concentration which, either singly or by interaction with other pollutants, will cause interference with either the WWF; or any wastewater treatment or sludge process, or which will constitute a hazard to humans or animals.

(5) Any wastewater having a temperature greater than 150° F (65° C), or which will inhibit biological activity in the treatment plant resulting in interference, but in no case wastewater which causes the temperature at the introduction into the treatment plant to exceed 104° F (40° C).

(6) Petroleum oil, non-biodegradable cutting oil, or products of mineral oil origin, in amounts that will cause interference or pass through.

(7) Any pollutants which result in the presence of toxic gases, vapors or fumes within the WWF in a quantity that may cause acute worker health and safety problems.

(8) Any trucked or hauled pollutants, except at discharge points designated by the city in accordance with section 19-70(e).

(9) Any noxious or malodorous liquids, gases, solids, or other wastewater which, either singly or by interaction with other wastes, are sufficient to create a public nuisance, a hazard to life, or to prevent entry into the sewers for maintenance and repair.

(10) Any wastewater which imparts color which cannot be removed by the treatment process, such as, but not limited to, dye wastes and vegetable tanning solutions, which consequently imparts color to the treatment plant's effluent thereby violating the city's NPDES permit. Color (in combination with turbidity) shall not cause the treatment plant effluent to reduce the depth of the compensation point

for photosynthetic activity by more than ten (10) percent from the seasonably established norm for aquatic life.

(11) Any wastewater containing any radioactive wastes or isotopes except as specifically approved by the Superintendent in compliance with applicable State or Federal regulations.

(12) Stormwater, surface water, groundwater, artesian well water, roof runoff, subsurface drainage, swimming pool drainage, condensate, deionized water, noncontact cooling water, and unpolluted industrial wastewater, unless specifically authorized by the Superintendent.

(13) Any sludges, screenings, or other residues from the pretreatment of industrial wastes.

(14) Any medical wastes, except as specifically authorized by the Superintendent in a wastewater discharge permit.

(15) Any wastewater causing, alone or in conjunction with other sources, the treatment plant's effluent to fail a toxicity test.

(16) Any wastes containing detergents, surface active agents, or other substances which may cause excessive foaming in the WWF.

(17) Any hazardous waste pharmaceuticals from healthcare facilities and reverse distributors.

(18) Limits of any discharge of fats, oils or greases of animal or vegetable origin can be found in the "industrial wastewater limitations table" incorporated by reference and adopted herein on file in the city clerk's office.

Wastes prohibited by this section shall not be processed or stored in such a manner that they could be discharged to the WWF. All floor drains located in process or materials storage areas must discharge to the industrial user's pretreatment facility before connecting with the WWF.

(c) *Federal categorical pretreatment standards.* The national categorical pretreatment standards found at 40 CFR Part 403.6, as of July 1, 2009, and 40 CFR Chapter I, Subchapter N, Parts 405-471 are hereby incorporated. When wastewater subject to a categorical pretreatment standard is mixed with wastewater not regulated by the same standard, the Superintendent shall impose an alternate limit in accordance with 40 CFR 403.6(e).

(d) *State requirements.* Any and all State pretreatment standards which may be adopted from time to time are hereby incorporated.

(e) *Specific pollutant limitations.* Pollutant limits shall be established to protect against pass through and interference. No person shall discharge wastewater containing pollutants in excess of said limits. Schedules containing specific pollutant limits, as established by ordinance shall be kept on file in the office of the city clerk. Any changes to said limits will be developed with public notice as required by 62-625.400-(3) F.A.C. Local limits will be applied at the point where the wastewater enters the ~~publically~~publicly owned treatment works.

(f) *City's right of revision.* The city reserves the right to establish, by ordinance or in wastewater discharge permits, more stringent standards or requirements on discharges to the WWF if deemed necessary to comply with the objectives presented in section 19-68(b) of this ordinance or the general and specific prohibitions in section 19-69(a) of this ordinance.

(g) *Special agreement.* The city reserves the right to enter into special agreements with industrial users setting out special terms under which they may discharge to the WWF. In no case will a special agreement waive compliance with a pretreatment standard or requirement. However, the industrial user may request a net gross adjustment to a categorical standard in accordance with 62-625.820 F.A.C. They may also request a variance from the categorical pretreatment standard from EPA. Such a request will be approved only if the industrial user can prove that facts relating to its discharge are fundamentally different from the factors considered by EPA when establishing that pretreatment standard. An industrial user requesting a

fundamentally different factor variance must comply with the procedural and substantive provisions in 62-625.700 F.A.C.

(h) *Dilution.* No industrial user shall ever increase the use of process water, or in any way attempt to dilute a discharge, as a partial or complete substitute for adequate treatment to achieve compliance with a discharge limitation unless expressly authorized by an applicable pretreatment standard or requirement. The Superintendent may impose mass limitations on industrial users which are using dilution to meet applicable pretreatment standards or requirements or in other cases when the imposition of mass limitations is appropriate.

Sec. 19-70. Pretreatment of wastewater.

(a) *Pretreatment facilities.* Industrial users shall provide necessary wastewater treatment as required to comply with this ordinance and shall achieve compliance with all categorical pretreatment standards, local limits and the prohibitions set out in section 19-69(a) above within the time limitations specified by the EPA, the state, or the city whichever is more stringent. Any facilities required to pretreat wastewater to a level acceptable to the city shall be provided, operated, and maintained at the industrial user's expense. Detailed plans showing the pretreatment facilities and operating procedures shall be submitted to the city for review, and shall be acceptable to the city before construction of the facility. The review of such plans and operating procedures will in no way relieve the industrial user from the responsibility of modifying the facility as necessary to produce an acceptable discharge to the city under the provisions of this ordinance.

(b) *Additional pretreatment measures.*

(1) Whenever deemed necessary, the Superintendent may require industrial users to restrict their discharge during peak flow periods, designate that certain wastewater be discharged only into specific sewer, relocate and/or consolidate points of discharge, separate sewage ~~wastestreams~~ waste streams from industrial ~~wastestreams~~waste streams, and such other conditions as may be necessary to protect the WWF and determine the industrial user's compliance with the requirements of this ordinance.

(2) Grease, oil and sand interceptors shall be required~~provided~~ when, in the opinion of the Superintendent, they are necessary for the proper handling of wastewater containing excessive amounts of grease and oil, or sand; except that such interceptors shall not be required for residential users. All interception units shall be of type and capacity approved by the City Engineer~~Superintendent~~ and shall be so located to be easily accessible for cleaning and inspection. Such interceptors shall be inspected, cleaned, and repaired regularly as needed, by the owner at his expense. Pumping manifests shall be sent by US Postal mail or electronically to the Pretreatment Coordinator.

(3) Industrial users with the potential to discharge flammable substances may be required to install and maintain an approved combustible gas detection meter.

(4) At no time shall two readings on an explosion hazard meter at the point of discharge into the WWF, or at any point in the WWF, be more than five (5) percent nor any single reading over ten (10) percent of the lower explosive limit (LEL) of the meter.

(c) *Accidental discharge/slug control plans.* The Superintendent may require any industrial user to develop and implement an accidental discharge/slug control plan. At least once every two (2) years the Superintendent shall evaluate whether each significant industrial user needs such a plan. New significant industrial users must be evaluated within one (1) year of being designated as a significant industrial user. Any industrial user required to develop and implement an accidental discharge/slug control plan shall submit a plan which addresses, at a minimum, the following:

(1) Description of discharge practices, including non-routine batch discharges.

(2) Description of stored chemicals and containment areas.

(3) Procedures for immediately notifying the WWF of any accidental or slug discharge. Such notification must also be given for any discharge which would violate any of the prohibited discharges in section 19-69(a) of this ordinance.

(4) Procedures to prevent adverse impact from any accidental or slug discharge. Such procedures include, but are not limited to, inspection and maintenance of storage areas, handling and transfer of materials, loading and unloading operations, control of plant site run-off, worker training, building of containment structures or equipment, measures for containing toxic organic pollutants (including solvents, and/or measures and equipment for emergency response).

(d) *Tenant responsibility.* Where an owner of property leases premises to any other person as a tenant under any rental or lease agreement, if either the owner or the tenant is an industrial user, either or both may be held responsible for compliance with the provisions of this ordinance.

(e) *Hauled wastewater.*

(1) Septic tank waste or wastewater from other municipalities may be accepted into the WWF at a designated receiving structure within the treatment plant area only, and at the discretion of ~~such times as are established by~~ the Superintendent, provided such wastes do not violate section 19-69 of this ordinance or any other requirements established or adopted by the city. Wastewater discharge permits and appropriate fees for individual vehicles to use such facilities shall be on record at the City Clerk's office~~issued by the Superintendent~~.

(2) The discharge of hauled industrial wastes as "industrial septage" requires prior approval and a wastewater discharge permit from the city. The Superintendent shall have authority to prohibit the disposal of such wastes, if such disposal would interfere with the treatment plant operation. Waste haulers are subject to all other sections of this ordinance.

Sec. 19-71. Wastewater discharge permit eligibility.

(a) *Wastewater survey.* When required by the Superintendent all industrial users must submit information on the nature and characteristics of their wastewater by completing a wastewater survey prior to commencing their discharge. The Superintendent is authorized to prepare a form for this purpose and may periodically require industrial users to update the survey. Failure to complete this survey shall be reasonable grounds for terminating services to the industrial user and shall be considered a violation of the ordinance.

(b) *Wastewater discharge permit requirement.*

(1) It shall be unlawful for any significant industrial user to discharge wastewater into the city's WWF without first obtaining a wastewater discharge permit from the Superintendent. Any violation of the terms and conditions of a wastewater discharge permit shall be deemed a violation of this ordinance and subjects the wastewater discharge permittee to the sanctions set out in sections 19-77 through 19-79. Obtaining a wastewater discharge permit does not relieve a permittee of its obligation to comply with all Federal and State pretreatment standards or requirements or with any other requirements of Federal, State and local law.

(2) The Superintendent may require other industrial users, including liquid waste haulers, to obtain wastewater discharge permits as necessary to carry out the purposes of this ordinance.

(c) *Wastewater discharge permitting existing connections.* Any significant industrial user which discharges industrial waste into the WWF prior to the effective date of this ordinance and who wishes to continue such discharges in the future under the conditions of the current wastewater discharge permit, shall request the Superintendent to re-issue the current wastewater discharge permit within ninety (90) days of the expiration of the said permit~~after said date, apply to the city for a wastewater discharge permit in accordance with section 19-71(f) below and shall not cause or allow discharges to the WWF to continue after one hundred eighty (180) days of the effective date of this ordinance except in accordance with a wastewater discharge permit issued by the Superintendent~~.

(d) *Wastewater discharge permitting new connection.* Any significant industrial user proposing to begin or recommence discharging industrial wastes into the WWF must obtain a wastewater discharge permit prior to the beginning or recommencing of such discharge. An application for this wastewater discharge permit must be filed at least ninety (90) days prior to the date upon which any discharge will begin.

(e) *Wastewater discharge permitting extra-jurisdictional industrial users.*

(1) Any existing significant industrial user located beyond the city limits, but within the Utility Service Area shall submit a wastewater discharge permit application, in accordance with section 19-71(f) below, within ninety (90) days of the effective date of this ordinance. New significant industrial users located beyond the city limits shall submit such applications to the Superintendent ninety (90) days prior to any proposed discharge into the WWF.

(2) Alternately, the Superintendent may enter into an agreement with the neighboring jurisdiction in which the significant industrial user is located to provide assistance for the implementation and enforcement of pretreatment program requirements against said industrial user.

(f) *Wastewater discharge permit.* In order to be considered for a wastewater discharge permit, all industrial users required to have a wastewater discharge permit must submit the information required by section 19-73(a)(1) of this ordinance. The city commission shall approve a form to be used as a permit application. In addition, the following information may be required:

(1) Description of activities, facilities, and plant processes on the premises, including a list of all raw materials and chemicals used or stored at the facility which are, or could accidentally or intentionally be, discharged to the WWF.

(2) Number and type of employees, hours of operation, and proposed or actual hours of operation of the pretreatment system.

(3) Each product produced by type, amount, process or processes, and rate of production.

(4) Type and amount of raw materials processed (average and maximum per day).

(5) The site plans, floor plans, mechanical and plumbing plans, and details to show all sewers, floor drains, and appurtenances by location, and elevation, and all points of discharge.

(6) Time and duration of the discharge.

(7) Any other information as may be deemed necessary by the Superintendent to evaluate the wastewater discharge permit application.

Incomplete or inaccurate applications will not be processed and will be returned to the industrial user for revision.

(g) *Application signatories and certification.* All wastewater discharge permit applications and industrial user reports must contain the following certification statement and be signed by an authorized representative of the industrial user.

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

(h) *Wastewater discharge permit decisions.* The Superintendent will evaluate the data furnished by the industrial user and may require additional information. Within thirty (30) days of receipt of a complete wastewater discharge permit application, the Superintendent will determine whether or not to issue a wastewater discharge permit. If no determination is made within this time period, the application will be deemed denied. The Superintendent may deny any application for a wastewater discharge permit.

Sec. 19-72. Wastewater discharge permit issuance process.

(a) *Wastewater discharge permit duration.* Wastewater discharge permits shall be issued for a specified time period, not to exceed five (5) years. A wastewater discharge permit may be issued for a period of less than five (5) years, at the discretion of the Superintendent. Each wastewater discharge permit will indicate a specific date upon which it will expire.

(b) *Wastewater discharge permit contents.* Wastewater discharge permits shall include such conditions as are reasonably deemed necessary by the Superintendent to prevent pass through or interference, protect the quality of the water body receiving the treatment plant's effluent, protect worker health and safety, facilitate sludge management and disposal, protect ambient air quality, and protect against damage to the WWF.

(1) Wastewater discharge permits must contain the following conditions:

a. A statement that indicates wastewater discharge permit duration, which in no event shall exceed five (5) years.

b. A statement that the wastewater discharge permit is nontransferable without prior notification to and approval from the city, and provisions for furnishing the new owner or operator with a copy of the existing wastewater discharge permit.

c. Effluent limits, including best management practices, based on applicable pretreatment standards;

d. Self-monitoring, sampling, reporting, notification, and recordkeeping requirements. These requirements shall include an identification of pollutants to be monitored, sampling location, sampling frequency, and sample type based on Federal, State, and local law.

e. Statement of applicable civil, criminal, and administrative penalties for violation of pretreatment standards and requirements, and any applicable compliance schedule. Such schedule may not extend the time for compliance beyond that required by applicable Federal, State, or local law.

(2) Wastewater discharge permits may contain, but need not be limited to, the following:

a. Limits on the average and/or maximum rate of discharge, time of discharge, and/or requirements for flow regulation and equalization.

b. Limits on the instantaneous, daily and monthly average and/or maximum concentration, mass, or other measure of identified wastewater pollutants or properties.

c. Requirements for the installation of pretreatment technology, pollution control, or construction of appropriate containment devices, designed to reduce, eliminate, or prevent the introduction of pollutants into the treatment works.

d. Accidental discharge/slug control plans. The Superintendent may require any significant industrial user to develop and implement an accidental discharge/slug control plan. At least once every two (2) years the Superintendent shall evaluate whether each significant industrial user needs such a plan. New significant industrial users must be evaluated within one (1) year of being designated as a significant industrial user. Any significant industrial user will be required to develop and implement an accidental discharge/slug control plan. Development and implementation of spill control plans or other special conditions including management practices necessary to adequately prevent accidental, unanticipated, or routine discharges.

e. Development and implementation of waste minimization plans to reduce the amount of pollutants discharged to the WWF.

f. The unit charge or schedule of industrial user charges and fees for the management of the wastewater discharged to the WWF.

g. Requirements for installation and maintenance of inspection and sampling facilities and equipment.

h. A statement that compliance with the wastewater discharge permit does not relieve the permittee of responsibility for compliance with all applicable Federal and State pretreatment standards, including those which become effective during the term of the wastewater discharge permit.

i. Other conditions as deemed appropriate by the Superintendent to ensure compliance with this ordinance, and State and Federal laws, rules, and regulations.

(c) *Wastewater discharge permit appeals.* Any person including the industrial user, may petition the city manager to reconsider the terms of a wastewater discharge permit within ten (10) days of its issuance.

(1) Failure to submit a timely petition for~~far~~ review shall be deemed to be a waiver of the administrative appeal.

(2) In its petition, the appealing party must indicate the wastewater discharge permit provisions objected to, the reasons for this objection, and the alternative condition, if any, it seeks to place in the wastewater discharge permit.

(3) The effectiveness of the wastewater discharge permit shall not be stayed pending the appeal.

(4) If the Superintendent fails to act within ten (10) days, a request for reconsideration shall be deemed to be denied. Decisions not to reconsider a wastewater discharge permit, not to issue a wastewater discharge permit, or not to modify a wastewater discharge permit, shall be considered final administrative action for purposes of judicial review.

(5) Aggrieved parties seeking judicial review of the final administrative wastewater discharge permit decision must do so by filing an action with the Circuit Court in and for Polk County, Florida within thirty (30) days from the date of said decision.

(d) *Wastewater discharge permit modification.* The Superintendent may modify the wastewater discharge permit for good cause including, but not limited to, the following:

(1) To incorporate any new or revised Federal, State, or local pretreatment standards or requirements.

(2) To address significant alterations or additions to the industrial user's operation, processes, or wastewater volume or character since the time of wastewater discharge permit issuance.

(3) A change in the WWF that requires either temporary or permanent reduction or elimination of the authorized discharge.

(4) Information indicating that the permitted discharge poses a threat to the city's WWF, city personnel, or the receiving waters.

(5) Violation of any terms or conditions of the wastewater discharge permit.

(6) Misrepresentations or failure to fully disclose all relevant facts in the wastewater discharge permit application or in any required reporting.

(7) Revision of or a grant of variance from categorical pretreatment standards pursuant to 62-625.700 F.A.C.

(8) To correct typographical or other errors in the wastewater discharge permit.

(9) To reflect a transfer of the facility ownership and/or operation to a new owner/operator.

This filing of a request by the permittee for a wastewater discharge permit modification does not stay any wastewater discharge permit condition.

(e) *Wastewater discharge permit transfer.* Wastewater discharge permits may be reassigned or transferred to a new owner and/or operator only if the permittee gives at least ninety (90) days advance notice to the

Superintendent and the Superintendent approves the wastewater discharge permit transfer. The notice to the Superintendent must include a written certification by the new owner and/or operator which:

(1) States that the new owners and/or operator has no immediate intent to change the facility's operations and processes.

(2) Identifies the specific date on which the transfer is to occur.

(3) Acknowledges full responsibility for complying with the existing wastewater discharge permit. Failure to provide advance notice of a transfer renders the wastewater discharge permit voidable on the date of facility transfer.

(f) *Wastewater discharge permit revocation.* Wastewater discharge permits may be revoked for the following reasons:

(1) Failure to notify the city of significant changes to the wastewater prior to the changed discharge.

(2) Failure to provide prior notification to the city of changed condition pursuant to section 19-73(e).

(3) Misrepresentation or failure to fully disclose all relevant facts in the wastewater discharge permit application.

(4) Falsifying self-monitoring reports.

(5) Tampering with monitoring reports.

(6) Refusing to allow the city timely access to the facility premises and records.

(7) Failure to meet effluent limitations.

(8) Failure to pay fines.

(9) Failure to pay sewer charges.

(10) Failure to meet compliance schedules.

(11) Failure to complete a wastewater survey or the wastewater discharge permit application.

(12) Failure to provide advance notice of the transfer of a permitted facility.

(13) Violation of any pretreatment standard or requirement, or any terms of the wastewater discharge permit or the ordinance.

Wastewater discharge permits shall be voidable upon nonuse, cessation of operations, or transfer of business ownership. All wastewater discharge permits are void upon the issuance of a new wastewater discharge permit.

(g) *Wastewater discharge permit reissuance.* A significant industrial user shall apply for wastewater discharge permit reissuance by submitting a complete wastewater discharge permit application in accordance with section 19-71(f) a minimum of ninety (90) days prior to the expiration of the industrial user's existing wastewater discharge permit.

(h) *Municipal wastewater discharge permits.* In the event another municipality contributes all or a portion of its wastewater to the WWF, the WWF may require such municipality to apply for and obtain a municipal wastewater discharge permit.

(1) A municipal wastewater discharge permit application shall include:

a. A description of the quality and volume of the wastewater at the point(s) where it enters the WWF.

b. Any inventory of all industrial users discharging to the municipality.

c. Such other information as may be required by the Superintendent.

(2) A municipal wastewater discharge permit shall contain the following conditions:

a. A requirement for the municipal user to adopt a sewer use ordinance which is at least as stringent as this ordinance and local limits which are at least as stringent as those set out in section 19-69(d).

b. A requirement for the municipal user to submit a revised industrial user inventory on at least an annual basis.

c. A requirement for the municipal user to a) conduct pretreatment implementation activities including industrial user permit issuance, inspection and sampling, and enforcement; or b) authorize the WWF to take or conduct such activities on its behalf.

d. A requirement for the municipal user to provide the city with access to all information that the municipal user obtains as part of its pretreatment activities.

e. Limits on the nature, quality, and volume of the municipal user's wastewater at the point where it discharges to the WWF.

f. Requirements for monitoring the municipal user's discharge.

(3) Violation of the terms and conditions of the municipal user's wastewater discharge permit subjects the municipal user to the sanctions set out in section 19-77 through 19-79.

Sec. 19-73. Reporting requirements.

(a) *Baseline monitoring reports.*

(1) Within either one hundred eighty (180) days after the effective date of a categorical pretreatment standard, or the final administrative decision on a category determination under 62-625.410(2)(d) F.A.C., whichever is later, existing significant industrial users subject to such categorical pretreatment standards, and currently discharging to or scheduled to discharge to the WWF, shall be required to submit to the city a report which contains the information listed in paragraph (2) below. At least ninety (90) days prior to commencement of their discharge, new sources, and sources that become industrial users subsequent to the promulgation of an applicable categorical standard, shall be required to submit to the city a report which contains the information listed in paragraph (2) below. A new source shall also be required to report the method of pretreatment it intends to use to meet applicable pretreatment standards. A new source shall also give estimates of its anticipated flow and quantity of pollutants discharged.

(2) The industrial user shall submit the information required by this section including:

a. *Identifying information.* The name and address of the facility including the name and operator and owners.

b. *Wastewater discharge permit.* A list of any environmental control wastewater discharge permits held by or for the facility.

c. *Description of operations.* A brief description of the nature, average rate of production, and standard industrial classifications of the operation(s) carried out by such industrial user. This description should include a schematic process diagram which indicates points of discharge to the WWF from the regulated process.

d. *Flow management.* Information showing the measured average daily and maximum daily flow, in gallons per day, to the WWF from regulated process streams and other streams, as necessary, to allow use of the combined waste stream formula set out in 62-625.410(6) F.A.C.

e. *Measurement of pollutants.*

1. Identify the categorical pretreatment standards applicable to each regulated process and any new categorically regulated processes for existing sources.

2. Submit the results of sampling and analysis identifying the nature and concentration (and/or mass, where required by the standard or by the city) of regulated pollutants in the discharge from each regulated process. Instantaneous, daily maximum and long-term average concentrations (or mass, where required) shall be reported. The sample shall be representative of daily operations and shall be analyzed in accordance with procedures set out in section 19-73(l).

3. Instantaneous, daily maximum and long-term average concentrations, or mass, where required, shall be reported.

4. The sample shall be representative of the daily operations and shall be analyzed in accordance with the procedures set out in section 19-73(l) of this ordinance. Where the standard requires compliance with a bmp or pollution prevention alternative, the user shall submit documentation as required by the Superintendent or applicable standards to determine compliance with the standard.

5. Sampling must be performed in accordance with procedures set out in section 19-73(k).

f. *Certification.* A statement reviewed by the industrial user's authorized representative and certified by a qualified professional, indicating whether pretreatment standards are being met on a consistent basis and, if not, whether additional operation and maintenance (O & M) and/or additional pretreatment is required to meet the pretreatment standards and requirements.

g. *Compliance schedule.* If additional pretreatment and/or O & M will be required to meet the pretreatment standards, the shortest schedule by which the industrial user will provide such additional pretreatment and/or O & M. The completion date in this schedule shall not be later than the compliance date established for the applicable pretreatment standard.

h. *Signed and certified reports.* All baseline monitoring reports must be signed and certified in accordance with section 19-71(g).

(b) *Compliance schedule progress report.* The following conditions shall apply to the schedule required by 19-73(a)(2)g. The schedule shall contain progress increments in the form of dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment required for the user to meet the applicable pretreatment standards (such events include hiring an engineer, completing preliminary and final plans, executing contracts for major components, commencing and completing construction, beginning and conducting routine operation). No increment referred to above shall exceed nine (9) months. The industrial user shall submit a progress report to the Superintendent no later than fourteen (14) days following each date in the schedule and the final date of compliance including, as a minimum, whether or not it complied with the increment of progress, the reason for any delay, (and, if appropriate) the steps being taken by the industrial user to return to the established schedule. In no event shall more than nine (9) months elapse between such progress reports to the Superintendent.

(c) *Report on compliance with categorical pretreatment standard deadline.* Within ninety (90) days following the date for final compliance with applicable categorical pretreatment standards, or in the case of a new source following commencement of the introduction of wastewater into the WWF, any industrial user subject to such pretreatment standards and requirements shall submit to the city a report containing the information described in section 19-73(a)(2)d.—f. For industrial users subject to equivalent mass or concentration limits established in accordance with the procedures in 62-625.410(4) F.A.C., this report shall contain a reasonable measure of the industrial user's long-term production rate. For all other industrial users subject to categorical pretreatment standards expressed in terms of allowable pollutant discharge per unit of production (or other measure of operation), this report shall include the industrial user's actual production during the appropriate sampling period. All compliance reports must be signed in accordance with section 19-71(g).

(d) *Periodic compliance reports.*

(1) Any significant industrial user subject to a pretreatment standard shall, at a frequency determined by the Superintendent but in no case less than twice per year (in June and December), submit a report indicating the nature and concentration of pollutants in the discharge which are limited by such pretreatment standards and the measured or estimated average and maximum daily flows for the reporting period. In cases where the pretreatment standard requires compliance with a best management plan (BMP) or pollution prevention alternative, the user must submit documentation required by the Superintendent or the pretreatment standard necessary to determine the compliance status of the user. All periodic compliance reports must be signed and certified in accordance with section 19-71(g).

When a report is required from the permittee, such report must be submitted no later than ten days after the last day of the month. Reports will be considered to be late if submitted after the due date and the facility will be in violation of their Industrial User Permit and appropriate enforcement proceedings will be initiated by the City according to the City's Industrial Pretreatment Program's "Enforcement Response Plan. "

(2) All wastewater samples must be representative of the industrial user's discharge. Wastewater monitoring and flow measurement facilities shall be properly operated, kept clean, and maintained in good working order at all times. The failure of an industrial user to keep its monitoring facility in good working order shall not be grounds for the industrial user to claim that sample results are unrepresentative of its discharge.

(3) If an industrial user subject to the reporting requirements in and of this section monitors any pollutant more frequently than required by the WWF, using the procedures prescribed in section 19-73(m) of this ordinance the results of this monitoring shall be included in the report.

(e) *Report of changed conditions.* Each industrial user is required to notify the Superintendent of any planned significant changes to the industrial user's operations or system which might alter the nature, quality or volume of its wastewater at least ninety (90) days before the change.

(1) The Superintendent may require the industrial user to submit such information as may be deemed necessary to evaluate the changed condition, including the submission of a wastewater discharge permit application under section 19-71(f).

(2) The Superintendent may issue a wastewater discharge permit under section 19-71(i) or modify an existing wastewater discharge permit under section 19-72(d).

(3) No industrial user shall implement the planned changed conditions(s) until and unless the Superintendent has responded to the industrial user's notice.

(4) For purposes of this requirement flow increases of ten (10) percent or greater, and the discharge of any previously unreported pollutants shall be deemed significant.

(f) *Reports of potential problems.*

(1) In the case of any discharge including, but not limited to, accidental discharges, discharges of a non-routine, episodic nature, a non-customary batch discharge, or a slug load which may cause potential problems for the WWF (including a violation of the prohibited discharge standards in section 19-69(a) of this ordinance), it is the responsibility of the industrial user to immediately telephone and notify the city of the incident. This notification shall include the location of discharge, type of waste, concentration and volume, if known, and corrective actions taken by the industrial user.

(2) Within five (5) days following such discharge, the industrial user shall, unless waived by the Superintendent, submit a detailed written report describing the cause(s) of the discharge and the measures to be taken by the industrial user to prevent similar future occurrences. Such notification shall not relieve the industrial user of any expense, loss, damage, or other liability which may be incurred as a result of damage to the WWF, natural resources, or any other damage to person or

property; nor shall such notification relieve the industrial user of any fines, civil penalties, or other liability which may be imposed by this ordinance.

(3) Failure to notify the city of potential problem discharges shall be deemed a separate violation of this ordinance.

(4) A notice shall be permanently posted on the industrial user's bulletin board or other prominent place advising employees whom to call in the event of a discharge described in paragraph (1) above. Employers shall ensure that all employees, who may cause or suffer such a discharge to occur, are advised of the emergency notification procedure.

(g) *Reports from non-significant industrial users.* All industrial users not subject to categorical pretreatment standards and not required to obtain a wastewater discharge permit shall provide appropriate reports to the city as the Superintendent may require.

(h) *Signatory requirements for industrial user reports.* All required reports shall have a signed certification statement as required in section 19-71(g). Reports shall be signed as follows:

(1) By a responsible corporate officer, if the industry is a corporation.

(2) By a general partner or proprietor, if the industry is a partnership or sole proprietorship respectively.

(3) By a duly authorized representative of the individual designated in paragraph (1) or (2) above.

(4) The authorization is made in writing by the individual described in paragraph (1) or (2) above.

(i) *Notice of violation/repeat sampling and reporting.* If sampling performed by an industrial user indicates a violation, the industrial user must notify the city within twenty-four (24) hours of becoming aware of the violation. The industrial user shall also repeat the sampling and analysis and submit the results of the repeat analysis to the city within thirty (30) days after becoming aware of the violation. Where the city has performed the sampling and analysis in lieu of the industrial user, the city must perform the repeat sampling and analysis unless it notifies the user of the violation and requires the user to perform the repeat analysis. Re-sampling is not required if:

(1) The city performs sampling at the industrial user at a frequency of at least once per month; or

(2) The city performs sampling at the industrial user between the time when the initial sampling was conducted and the time when the industrial user or the city receives the results of the sampling.

(j) *Notification of the discharge of hazardous waste.*

(1) Any industrial user who commences the discharge of hazardous waste shall notify the WWF, the EPA Regional Waste Management Division Director, and state hazardous waste authorities in writing of any discharge into the WWF of a substance which, if otherwise disposed of, would be a hazardous waste under 40 CFR Part 261 Subpart C. Such notification must include the name of the hazardous waste as set forth in 40 CFR Part 261 Subpart C, the EPA hazardous waste number, and the type of discharge {continuous batch, or other). If the industrial user discharges more than one hundred (100) kilograms of such waste per calendar month to the WWF, the notification shall also contain the following information to the extent such information is known and readily available to the industrial user: an identification of the hazardous constituents contained in the wastes, an estimation of the mass and concentration of such constituents in the waste stream discharge during that calendar month, and an estimation of the mass of constituents in the waste stream expected to be discharged during the following twelve (12) months. All notifications must take place no later than one hundred eighty (180) days after the discharge commences. Any notification under this paragraph need be submitted only once for each hazardous waste discharged. However, notifications of changed discharges must be submitted under section 19-73(e) above. The notification requirement in this section does not apply to pollutants already reported under the self-monitoring requirements of sections 19-73(a), 19-73(c) and 19-73(d), above.

(2) Dischargers are exempt from the requirements of paragraph (1) of this section during a calendar month in which they discharge no more than fifteen (15) kilograms of hazardous wastes, unless the wastes are acute hazardous wastes as specified in Chapter 62-730, F.A.C. Discharge of more than fifteen (15) kilograms of non-acute hazardous wastes in a calendar month, or of any quantity of acute hazardous wastes as specified in Chapter 62-730, F.A.C. requires a one-time notification. Subsequent months during which the industrial user discharges more than such quantities of any hazardous waste do not require additional notification.

(3) In the case of any new department regulations identifying additional characteristics of hazardous waste or listing any additional substance as hazardous waste, the industrial user must notify the city and the department's hazardous waste and pretreatment authorities of the discharge of such substance within ninety (90) days of the effective date of such regulations.

(4) In the case of any notification made under this subsection, the industrial user shall certify that it has a program in place to reduce the volume and toxicity of hazardous wastes generated to the degree it has determined to be economically practical.

(k) *Annual certification by non-significant categorical industrial users.* An industrial user determined to be a non-significant categorical industrial user in accordance with section 19-68(d)(19), must annually submit the following certification statement, signed in accordance with the signatory requirements in (h) above. The certification must accompany any alternative report required by the city: "Based on my inquiry of the person or persons directly responsible for managing compliance with the categorical pretreatment standards under 40 CFR [specify applicable national pretreatment standard part(s)]. I certify that, to the best of my knowledge and belief that during the period from [month, day, year] to [month, day, year]:

(1) The facility described as [industrial user name] met the definition of a non-significant categorical industrial user as described in section 19-68(d)(19).

(2) The facility complied with all applicable pretreatment standards and requirements during this reporting period; and

(3) The facility never discharged more than one hundred (100) gallons of total categorical wastewater on any given day during this reporting period. This compliance certification is based upon the following information: [documentation of basis to continue exemption]."

(l) *Analytical requirements.* All pollutant analysis, including sampling techniques, to be submitted as part of a wastewater discharge permit application or report shall be performed in accordance with the techniques prescribed in 40 CFR 136 and amendments thereto, unless otherwise specified in an applicable categorical pretreatment standard. If 40 CFR Part 136 does not contain sampling or analytical techniques for the pollutant in question or where the EPA determines that the Part 136 sampling and analytical techniques are inappropriate for the pollutant in question, sampling and analysis shall be performed by using validated analytical methods or any other applicable sampling and analytical procedures, including procedures suggested by the Superintendent or other parties approved by EPA.

(m) *Sample collection.*

(1) Except as indicated in section (2) below, the industrial user must collect wastewater samples using flow proportional composite collection techniques. In the event flow proportional sampling is unfeasible, the Superintendent may authorize the use of time proportional sampling or through a minimum of four (4) grab samples where the user demonstrates that this will provide a representative sample of the effluent being discharged. In addition, grab samples may be required to show compliance with instantaneous discharge limits. For industrial users where historical sampling data do not exist, a minimum of four (4) grab samples must be used for pH, cyanide, total phenols, oil and grease, sulfide and volatile organic compounds. All sampling activities shall be performed according to the procedures specified in "The Department of Environmental Protection Standard Operating Procedures for Field Activities," DEP-SOP-001/01, March 31, 2008.

(2) Samples for oil and grease, temperature, pH, cyanide, phenols, toxicity, sulfides, and volatile organic chemicals must be obtained using grab collection techniques.

(n) *Determination of noncompliance.* The Superintendent may use a grab sample(s) to determine noncompliance with pretreatment standards.

(o) *Recordkeeping.* Industrial users shall retain, and make available for inspection and copying, all records and information required to be retained under this ordinance. These records shall remain available for the term of the permit plus a period of three (3) years. This period shall be automatically extended for the duration of any litigation concerning compliance with this ordinance, or where the industrial user has been specifically notified of a longer retention period by the Superintendent.

Sec. 19-74. Compliance monitoring.

(a) *Inspection and sampling.* The city shall have the right to enter the facilities of any industrial user to ascertain whether the purpose of this ordinance, and any permit or order issued hereunder, is being met and whether the industrial user is complying with all requirements thereof. Industrial users shall allow the Superintendent, or his representatives, ready access to all parts of the premises for the purposes of inspection, sampling, records examination and copying, and the performance of any additional duties.

(1) Where an industrial user has security measures in force which require the proper identification and clearance before entry into its premises, the industrial user shall make necessary arrangements with its security guards so that, upon presentation of suitable identification, personnel from the city, state, and EPA will be permitted to enter without delay, for the purposes of performing their specific responsibilities.

(2) The city, state, and EPA shall have the right to set up on the industrial user's property, or require installation of, such devices as are necessary to conduct sampling and/or metering of the user's operations.

(3) The city may require the industrial user to install monitoring equipment as necessary. The facility's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the industrial user at its own expense. All devices used to measure wastewater flow and quality shall be calibrated [periodically] to ensure their accuracy.

(4) Any temporary or permanent obstruction to safe and easy access to the industrial facility to be inspected and/or sampled shall be promptly removed by the industrial user at the written or verbal request of the Superintendent and shall not be replaced. The costs of clearing access shall be borne by the industrial user.

(5) Unreasonable delays in allowing city personnel access to the industrial user's premises shall be a violation of this ordinance.

(b) *Inspection warrants.* If the Superintendent has been refused access to a building, structure or property or any part thereof, and if the Superintendent has demonstrated probable cause to believe that there may be a violation of this ordinance or that there is a need to inspect as a part of a routine inspection program of the city designed to verify compliance with this ordinance or any permit or order issued hereunder, or to protect the overall public health, safety and welfare of the community, then the city may make application through the city attorney, to the Circuit Court in and for Polk County, Florida, for the issuance of an inspection warrant requesting the inspection of the specific location. The warrant, if issued by the circuit judge, shall specify what, if anything may be searched on the property described. Such warrant shall be served at reasonable hours by the Superintendent in the company of a uniform police officer of the city. In the event of an emergency affecting public health and safety, inspection shall be made without the issuance of a warrant.

Sec. 19-75. Confidential information.

Information and date on an industrial user obtained from reports, surveys, wastewater discharge permit applications, wastewater discharge permits, and monitoring programs, and from city inspection and sampling activities, shall be available to the public without restriction unless the industrial user specifically requests, and is able to demonstrate to the satisfaction of the city, that the release of such information would divulge information, processes or methods of production entitled to protection as trade secrets under applicable State law. When requested and demonstrated by the industrial user furnishing a report that such information should be held confidential, the portions of a report which might disclose trade secrets or secret processes shall not be made available for inspection by the public, but shall be made available immediately upon request to governmental agencies for uses related to the NPDES program or pretreatment program, and in enforcement proceedings involving the person furnishing the report. Wastewater constituents and characteristics and other "effluent data" as defined by 40 CFR 2.302 will not be recognized as confidential information and will be available to the public without restriction.

Sec. 19-76. Publication of industrial users in significant noncompliance.

The Superintendent shall publish annually, in a newspaper of general circulation that provides meaningful public notice within the jurisdictions served by the WWF, a list of users which, at any time during the previous twelve (12) months, were in significant noncompliance with applicable pretreatment standards and requirements. The term significant noncompliance shall be applicable to all significant industrial users (or any other industrial user that violates paragraphs (c), (d) or (h) of this section) and shall mean:

(a) Chronic violations of wastewater discharge limits, defined here as those in which sixty-six (66) percent or more of wastewater measurements taken for the same pollutant parameter taken during a six-month period exceed (by any magnitude) a pretreatment standard or requirement, including instantaneous maximum allowable discharge limits as defined in section 19-68(d);

(b) Technical review criteria (TRC) violations, defined here as those in which thirty-three (33) percent or more of wastewater measurements taken for each pollutant parameters during month period equals or exceeds the product of the numeric pretreatment standard or requirement including instantaneous maximum allowable discharge limits as defined in section 19-68(d) multiplied by the applicable criteria (1.4 for BOD, TSS, fats, oil and grease, and 1.2 for all other pollutants except pH;

(c) Any other violation of a pretreatment standard or requirement (daily maximum, long-term average, instantaneous maximum allowable discharge limit, or narrative standard) that the Superintendent believes has caused, alone or in combination with other discharges, interference or pass through (including endangering the health of WWF personnel or the general public);

(d) Any discharge of pollutants that has caused imminent endangerment to the public or to the environment, or has resulted in the Superintendent's exercise of its emergency authority to halt or prevent such a discharge;

(e) Failure to meet, within ninety (90) days of the scheduled date, a compliance schedule milestone contained in a wastewater discharge permit or enforcement order for starting construction, completing construction, or attaining final compliance;

(f) Failure to provide within forty-five (45) days after the due date, any required reports, including baseline monitoring reports, reports on compliance with categorical pretreatment standard deadlines, periodic self-monitoring reports, and reports on compliance with compliance;

(g) Failure to accurately report noncompliance; or

(h) Any other violation(s) which may include a violation of best management practices which the Superintendent determines will adversely affect the operation or implementation of the local pretreatment program.

Sec. 19-77. Administrative enforcement remedies.

(a) *Notification of violation.* Whenever the Superintendent finds that any user has violated or is violating this ordinance, a wastewater discharge permit or order issued hereunder, or any other pretreatment requirement, the Superintendent or his agent may serve upon said user a written notice of violation. Within ten (10) days of the receipt of this notice, an explanation of the violation and a plan for the satisfactory correction and prevention thereof, to include specific required actions, shall be submitted by the user to the Superintendent. Submission of this plan in no way relieves the user of liability for any violations occurring before or after receipt of the notice of violation. Nothing in this section shall limit the authority of the city to take any action, including emergency actions or any other enforcement action, without first issuing a notice of violation.

(b) *Consent orders.* The Superintendent is hereby empowered to enter into consent orders, assurances of voluntary compliance, or other similar documents establishing an agreement with any user responsible for noncompliance. Such orders will include specific action to be taken by the user to correct the noncompliance within a time period also specified by the order. Consent orders shall have the same force and effect as the administrative orders issued pursuant to sections 19-77(d) and 19-77(e) below and shall be judicially enforceable.

(c) *Show cause hearing.* The Superintendent may order any user which causes or contributes to violation(s) of this ordinance, wastewater discharge permits, or orders issued hereunder, or any other pretreatment standard or requirement, to appear before the Superintendent and show cause why a proposed enforcement action should not be taken. Notice shall be served on the user specifying the time and place for the meeting, the proposed enforcement action, the reasons for such action, and a request that the user show cause why this proposed enforcement action should not be taken. The notice of the meeting shall be served personally or by registered or certified mail (return receipt requested) at least ten (10) days prior to the hearing. Such notice may be served on any authorized representative of the user. Whether or not the user appears as ordered, immediate enforcement action may be pursued following the hearing date. A show cause hearing shall not be a prerequisite for taking any other action against the user.

(d) *Compliance orders.* When the Superintendent finds that a user has violated or continues to violate the ordinance, wastewater discharge permits or orders issued hereunder, or any other pretreatment standard or requirement, he may issue an order to the user responsible for the discharge directing that the user come into compliance within a reasonable period of time, depending on the severity of the violation. If the user does not come into compliance within the time ordered, the utility service may be discontinued until such time as the user is in compliance. Compliance orders may also contain other requirements to address the noncompliance, including additional self-monitoring, and management practices designed to minimize the amount of pollutants discharged to the sewer. A compliance order may not extend the deadline for compliance established for a Federal pretreatment standard or requirement, nor does a compliance order release the user of liability for any violation, including any continuing violation. Issuance of a compliance order shall not be a prerequisite to taking any other action against the user.

(e) *Cease and desist orders.* When the Superintendent finds that a user is violating this ordinance, the user's wastewater discharge permit, any order issued hereunder, or any other pretreatment standard or requirement, or that the user's past violations are likely to recur, the Superintendent may issue an order to the user directing it to cease and desist all such violations and directing the user to:

(1) Immediately comply with all requirements and standards.

(2) Take such appropriate remedial or preventive action as may be needed to properly address a continuing or threatened violation, including halting operations and/or terminating the discharge.

Issuance of a cease and desist order shall not be a prerequisite to taking any other action against the user.

(f) *Emergency suspensions.* The Superintendent may immediately suspend a user's discharge (after informal notice to the user) whenever such suspension is necessary in order to stop an actual or threatened discharge which reasonably appears to present or cause an imminent or substantial endangerment to the health or welfare of persons. The Superintendent may also immediately suspend a user's discharge (after notice and opportunity to respond) that threatens to interfere with the operation of the WWF, or which presents or may present an endangerment to the environment.

(1) Any user notified of a suspension of its discharge shall immediately stop or eliminate its contribution. In the event of a user's failure to immediately comply voluntarily with the suspension order, the Superintendent shall take such steps as deemed necessary, including immediate severance of the sewer connection, to prevent or minimize damage to the WWF, its receiving stream, or endangerment to any individuals. The Superintendent shall allow the user to recommence its discharge when the user has demonstrated to the satisfaction of the city that the period of endangerment has passed, unless the termination proceedings set forth in section 19-77(g) are initiated against the user.

(2) A user that is responsible, in whole or in part, for any discharge presenting imminent endangerment shall submit a detailed written statement describing the causes of the harmful contribution and the measures taken to prevent any future occurrence to the Superintendent, prior to the date of any show cause or termination hearing under sections 19-77(c) and 19-77(g).

Nothing in this section shall be interpreted as requiring a hearing prior to any emergency suspension under this section.

(g) *Termination of discharge.* In addition to those provisions in section 19-72(f) of this ordinance, any user that violates the following conditions of this ordinance, wastewater discharge permits, or orders issued hereunder, is subject to discharge termination.

(1) Violation of wastewater discharge permit conditions.

(2) Failure to accurately report the wastewater constituents and characteristics of its discharge.

(3) Failure to report significant changes in operations or wastewater volume, constituents and characteristics prior to discharge.

(4) Refusal of reasonable access to the user's premises for the purpose of inspection, monitoring or sampling.

(5) Violation of the pretreatment standards in section 19-69 of this ordinance.

Such user will be notified of the proposed termination of its discharge and be offered an opportunity to show cause under section 19-77(c) of this ordinance why the proposed action should not be taken.

Sec. 19-78. Judicial enforcement remedies.

(a) *Injunctive relief.* Whenever a user has violated a pretreatment standard or requirement or continues to violate the provisions of this ordinance, wastewater discharge permits or orders issued hereunder, or any other pretreatment requirement, the Superintendent may petition the Circuit Court in and for Polk County, Florida, through the city's attorney for the issuance of a temporary or permanent injunction, as appropriate, which restrains or compels the specific performance of the wastewater discharge permit, order, or other requirement imposed by this ordinance on activities of the industrial user. Such other action as appropriate for legal and/or equitable relief may also be sought by the city. A petition for injunctive relief need not be filed as a prerequisite to taking any other action against a user.

(b) *Civil penalties.*

(1) The city shall be able to seek injunctive relief for noncompliance by industrial users with pretreatment standards and requirements. The city shall have the authority to seek or assess civil penalties in at least the amount of one thousand dollars ($1,000.00) a day for each violation by industrial users of pretreatment standards and requirements. In the case of a monthly or other long-term average discharge limit, penalties shall accrue for each day during the period of the violations.

(2) The city may recover reasonable attorney's fees, court costs, and other expenses associated with enforcement activities, including sampling and monitoring expenses, and the cost of any actual damages incurred by the city.

(3) In determining the amount of civil liability, the court shall take into account all relevant circumstances, including, but not limited to, the extent of harm caused by the violation, the magnitude and duration, any economical benefit gained through the user's violation, corrective actions by the user, the compliance history of the user, and any other factor as justice requires.

(4) Filing a suit for a civil penalty shall not be a prerequisite for taking any other action against a user.

(c) *Criminal prosecution.*

(1) Any user that willfully or negligently violates any provision of this ordinance, any orders or wastewater discharge permits issued hereunder, or any other pretreatment requirement shall, upon conviction, be guilty of a misdemeanor, punishable by a fine of at least one thousand dollars ($1,000.00) per violation per day or imprisonment for not more than sixty (60) days or both.

(2) Any user that willfully or negligently introduces any substance into the WWF which causes personal injury or property damage shall, upon conviction, be guilty of a misdemeanor and be subject to a penalty of at least one thousand dollars ($1,000.00) per violation per day and/or imprisonment for not more than sixty (60) days. This penalty shall be in addition to any other cause of action for personal injury or property damage available under State law.

(3) Any user that knowingly makes any false statements, representations, or certifications in any application, record, report, plan or other documentation filed, or required to be maintained, pursuant to this ordinance, wastewater discharge permit or order, or who falsifies, tampers with or knowingly renders inaccurate any monitoring device or method required under this ordinance shall, upon conviction, be punished by a fine of not more than one thousand dollars ($1,000.00) per violation per day or imprisonment for not more than sixty (60) days or both.

(d) *Remedies nonexclusive.* The provisions in sections 19-76 through 19-78 are not exclusive remedies. The city reserves the right to take any, all, or any combination of these actions against a noncompliant user. Enforcement of pretreatment violations will generally be in accordance with the city's enforcement response plan. However, the city reserves the right to take other action against any user when the circumstances warrant. Further, the city is empowered to take more than one enforcement action against any noncompliant user. These actions may be taken concurrently.

Sec. 19-79. Affirmative defenses to discharge violations.

(a) *Upset.*

(1) For the purpose of this section "upset" means an exceptional incident in which there is unintentional and temporary noncompliance with categorical pretreatment standards because of factors beyond the reasonable control of the industrial user. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventative maintenance, or careless or improper operation.

(2) An upset shall constitute an affirmative defense to an action brought for noncompliance with categorical pretreatment standards if the requirements of paragraph (3) are met.

(3) An industrial user who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

a. An upset occurred and the industrial user can identify the cause(s) or the upset.

b. The facility was at the time being operated in a prudent and workmanlike manner and in compliance with applicable operation and maintenance procedures.

c. The industrial user has submitted the following information to the WWF and treatment plant operator within twenty-four (24) hours of becoming aware of the upset [if this information is provided orally, a written submission must be provided within five (5) days]:

(i) A description of the indirect discharge and cause of noncompliance.

(ii) The period of noncompliance, including exact dates and items or, if not corrected, the anticipated time the noncompliance is expected to continue.

(iii) Steps being taken and/or planned to reduce, eliminate and prevent recurrence of the noncompliance.

(4) In any enforcement proceeding, the industrial user seeking to establish the occurrence of an upset shall have the burden of proof.

(5) Industrial users will have the opportunity for a judicial determination on any claim of upset only in an enforcement action brought for noncompliance with categorical pretreatment standards.

(6) The industrial user shall control production of all discharges to the extent necessary to maintain compliance with categorical pretreatment standards upon reduction, loss, or failure of its treatment facility until the facility is restored or an alternative method of treatment is provided. This requirement applies in the situation where, among other things, the primary source of power of the treatment facility is reduced, lost or fails.

(b) *General/specific prohibitions.* An industrial user shall have an affirmative defense to an enforcement action brought against it for noncompliance with the general and specific prohibitions in section 19-69 (a) of this ordinance if it can prove that it does not know or have reason to know that its discharge, along or in conjunction with discharges from other sources, would cause pass through or interference and that either: (a) a local limit exists for each pollutant discharged and the industrial user was in compliance with each limit directly prior to, and during, the pass through or interference, or (b) no local limit exists, but the discharge did not change substantially in nature or constituents from the user's prior discharge when the city was regularly in compliance with its NPDES permit, and in the case of interference, was in compliance with applicable sludge uses or disposal requirements.

(c) *Bypass.*

(1) For the purpose of this section.

(i) "Bypass" means the intentional diversion of waste streams from any portion of an industrial user's treatment facility.

(ii) "Severe property damage" means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

(2) An industrial user may allow any bypass to occur which does not cause pretreatment standards or requirements to be violated, but only if it also is for essential maintenance or assure efficient operation. These bypasses are not subject to the provision of paragraphs (3) and (4) of this [sub]section.

(3) Bypass notifications.

(i) If an industrial user knows in advance of the need for a bypass, it shall submit prior notice to the Superintendent, at least ten (10) days before the date of the bypass if possible.

(ii) An industrial user shall submit oral notice of an unanticipated bypass that exceeds applicable pretreatment standards to the WWF within twenty-four (24) hours from the time it becomes aware of the bypass. A written submission shall also be provided within five (5) days of the time the industrial user becomes aware of the bypass. The written submission shall contain a description of the bypass and its cause; the duration of the bypass, including exact dates and times, and, if the bypass has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the bypass. The WWF Superintendent may waive the written report on a case-by-case basis if the oral report has been received within twenty-four (24) hours.

(4) Bypass is prohibited, and the WWF may take action against an industrial user for bypass, unless;

a. Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage.

b. There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventative maintenance; and

c. The industrial user submitted notices as required under paragraph (2) of this [sub]section.

1. The Superintendent may approve and anticipate bypass, after considering its adverse effects, if the Superintendent determines that it will meet the three conditions listed in paragraph (4)a.—c. of this [sub]section.

Sec. 19-80. Charges, fees and billing procedure.

(a) The city shall establish a uniform schedule of charges and fees to provide for the reimbursement of costs to the city for the treatment of industrial wastewater. This schedule of charges and fees shall be enacted and modified by ordinance adopted by the city commissioners of the City of Winter Haven, Florida. This schedule shall not be codified, but shall be on file in the city clerk's office.

(b) Where the premises are served by city utilities, any fees and changes pursuant to this ordinance shall be added to and made a part of a consolidated utility billing.

(c) Where city utilities are not used, said fees and charges shall be charged to and collected from the user. Bills rendered pursuant to this provision shall be considered delinquent if not paid by the date specified on this bill. Said delinquency shall be considered as a violation of the provisions of this ordinance and the wastewater permit and may be considered for enforcement proceedings pursuant to the applicable enforcement provisions of this ordinance. For purposes of such delinquencies, the city may avail itself of the remedies set forth in Part I of Chapter 159, Florida Statutes, the "Revenue Bond Act of 1953" (the "Act"), which provides that the city has a lien on all lands or premises served by any water and/or sewer system for service charges for such facilities until paid, which liens are prior to all other liens on such lands or premises except the lien of state, county, and municipal taxes; and such lien(s) are on a parity with the lien of state, county and municipal taxes. Pursuant to the Act and the city's home rule power(s), the city imposes liens on all properties served by the utility system for unpaid utility service fees and/or user charges, the enforcement of such service charges (including the assessment of the city's legal costs in enforcing any such liens).

(d) The provisions set forth in this section 19-80 are not exclusive remedies. The city reserves the right to take any, all, or a combination of legal and/or equitable action(s) against a noncompliant and/or delinquent user which may include, but shall not be limited to, the city's right and ability to discontinue utility service(s) for nonpayment and requiring all charges, fees (including attorneys' fees and costs), interest and penalties be paid-in-full prior to restoring such utility service(s); and the city's right and ability to foreclose any lien(s) created by and/or arising out of the Act in the manner provided by the Laws of Florida for the foreclosure of mortgages on real property.

Sec. 19-81. Requirements for dental facilities that remove or replace amalgam fillings.

(a) Definitions. For the purpose of this section the following words and phrases shall be as defined herein.

(1) *Amalgam separator* is a device that employs filtration, settlement, centrifugation, or ion exchange to remove amalgam and its metal constituents from a dental office vacuum system before it discharges to the sewer.

(2) *Amalgam waste* means and includes non-contact amalgam (amalgam scrap that has not been in contact with the patient); contact amalgam (including, but not limited to, extracted teeth containing amalgam); amalgam sludge captured by chairside straps, vacuum pump filters, screens, and other amalgam trapping devices; used amalgam capsules; and leaking or unusable amalgam capsules.

(3) *ANSI/ADA Standard No. 108* is the American National Standards Institute and American Dentistry association standard for amalgam separators.

(4) *Existing source* is any facility subject to this section whose first discharge to the sewer collection system occurred on or before July 14, 2017.

(5) *ISO 11143* is the International Organization for Standardization's standard for amalgam separators.

(6) *New source* is any facility subject to this section whose first discharge to the sewer system occurs after July 14, 2017 and must comply immediately upon commencement of discharge.

(b) All owners and operators of dental facilities that remove or place amalgam fillings shall comply with the following reporting and waste management practices:

(1) For existing sources, the One-Time Compliance Report is due no later than ninety (90) days after receipt of notification from the city to comply with the requirements of this Ordinance or no later than ninety (90) days after transfer of ownership.

(2) For new sources, the One-Time Compliance Report is due within ninety (90) days of the start of discharge to the sewer collection system.

(3) No person shall rinse chairside traps, vacuum screens, or amalgam separators equipment in a sink or other connection to the sanitary sewer.

(4) Owners and operators of dental facilities shall ensure that all staff members who handle amalgam waste are trained in the proper handling, management and disposal of mercury-containing material and fixer-containing solutions and shall maintain training records that shall be available for inspection by the superintendent or designee during normal business hours.

(5) Amalgam waste shall be stored and managed in accordance with the instructions of the recycler or hauler of such materials.

(6) Bleach and other chlorine-containing disinfectants shall not be used to disinfect the vacuum line system.

(7) The use of bulk mercury is prohibited. Only pre-capsulated dental amalgam is permitted.

(c) All owners and operators of dental vacuum suction systems, except as set forth in subsections (d) and (e) of this section, shall comply with the following:

(1) An ISO 11143 or ANSI/ADA Standard No. 108 certified amalgam separator or equivalent device shall be installed for each dental vacuum suction system on or before July 14, 2020; provided, however, that all dental facilities that are newly constructed on and after the effective date of this ordinance shall include an installed ISO 11143 or ANSI/ADA Standard No. 108 certified amalgam separator device. The installed device must be ISO 11143 or ANSI/ADA Standard No. 108 certified as capable of removing a minimum of ninety-five (95) percent of amalgam. The amalgam separator system shall be certified at flow rates comparable to the flow rate of the actual vacuum suction system operation. Neither the separator device nor the related plumbing shall include an automatic flow bypass. For facilities that require an amalgam separator that exceeds the practical capacity of ISO 11143 test methodology, a non-certified separator will be accepted provided that smaller units from the same manufacturer and the same technology are ISO-certified.

(2) Proof of certification and installation records shall be submitted to the superintendent within thirty (30) days of installation.

(3) Amalgam separators shall be maintained in accordance with manufacturer's recommendations. Installation, certification, and maintenance records shall be available for immediate inspection upon request therefor by the superintendent or designee during normal business hours. Records shall be maintained for a minimum of three (3) years.

(d) Facilities with vacuum suction systems that meet all the following conditions may apply to the superintendent for an exemption to the requirements of subsection (c) of this section:

(1) The system is a dry vacuum pump system with an air-water separator.

(2) The sedimentation tank is non-bottom draining, with the drain above the anticipated maximum level of accumulated sludge.

(3) Evidence of regular pump outs by a licensed hauler (a minimum of one (1) year, or more often if either directed by the manufacturer or necessary to keep solids from exiting through the drain) is maintained and open to inspection by the superintendent during normal business hours.

(4) The system has no direct discharge pipe to the sewer on the bottom of the sedimentation tank.

An owner or operator whose facility meets conditions (1) through (4) may apply for this exemption by written letter to the superintendent. The superintendent or designee will review the system, and if the exemption is approved, shall provide a written letter of exemption.

An exemption obtained pursuant to this subsection (d) shall expire upon installation of a new vacuum system. Upon expiration of the exemption, the facility shall comply with subsection (c) of this section before commencing further operation.

(e) Dental dischargers that exclusively practice one or more of the following specialties are not subject to the requirements of this section: (1) Orthodontics; (2) Periodontics; (3) Oral and maxillofacial surgery; (4) Radiology; (5) Oral pathology or oral medicine; (6) Endodontistry and prosthodontistry.

(f) Dental practices that do not place dental amalgam, and do not remove amalgam except in limited emergency or unplanned, unanticipated circumstances, are exempt from the requirements of this part, provided the dental practice:

(1) Submits the following statement to the city, signed by a responsible corporate officer, general partner, proprietor, or a duly authorized representative by the applicable compliance identified in section 19-81(b):

"This facility is a dental discharger subject to this rule and does not place or remove dental amalgam except in limited emergency or unplanned, unanticipated circumstances. I am a responsible corporate officer, a general partner or proprietor (if the facility is a partnership or sole proprietorship), or a duly authorized representative in accordance with the requirements of § 403.12 (l) of the above named dental facility, and certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.";

(2) Removes dental amalgam for limited emergency or unplanned, unanticipated circumstances, less than ten (10) times per year and no more than 1% of dental procedures; and

(3) The dental practice notifies the (city/county/utility/authority) of any changes affecting the applicability of this certification.

(g) Disposal of hauled wastewater from dental facilities to the sanitary sewer must be in accordance with section 19-70(e) and section 19-69, and may be subject to industrial pretreatment requirements.

DATE: January 13, 2025

TO: Honorable Mayor and City Commissioners

VIA: T. Michael Stavres, City Manager
M.J. Carnevale, Deputy City Manager

FROM: C.J. Scott, Chief Financial Officer

SUBJECT: Ordinance O-25-07 an Ordinance Amending O-23-54 appropriating funds for Fiscal Year ending September 30, 2024

BACKGROUND

Per F.S. 166.241, the City Commission may amend its budget by ordinance to appropriate and expend funds that were not anticipated in the approved budget. In July of fiscal year 2023, the City implemented encumbrance of purchase orders for better management of resources, transparency, and fiscal accountability. Encumbrance roll forwards occur when these commitments are carried forward from one fiscal period to the next. Due to the encumbrance roll forwards from the previous fiscal year (2023), adjustments to the fiscal year 2024 budget are required. These adjustments are necessary to accurately reflect the remaining funds available after accounting for these commitments.

Exhibit A reflects outstanding encumbered purchase orders that were brought forward to fiscal year 2024.

FINANCIAL IMPACT

The General Fund and Airport fund reflect a budget increase of $250,482 and $238,440, respectively, offset by encumbrances in the same amount for the respective funds.

STRATEGIC PLAN ALIGNMENT

- Pillar: Responsible Government
- Goal: 6.1 – Exemplify fiscal accountability and resiliency.
- Strategy: 6.1.1 – Enhance fiscal communication via implementation and distribution of a Budget Book, Budget in Brief, Popular Annual Financial Report

RECOMMENDATION

Staff recommends the City Commission approve Ordinance O-25-07 approving a budget amendment for the encumbered purchase order roll forwards.

ATTACHMENTS

Ordinance O-25-07
Exhibit A

ORDINANCE NO. O-25-07

AN ORDINANCE AMENDING ORDINANCE NO. O-23-54 APPROPRIATION OF FUNDS FOR DEFRAYING THE EXPENSES OF THE MUNICIPAL GOVERNMENT OF THE CITY OF WINTER HAVEN FOR THE FISCAL YEAR COMMENCING OCTOBER 1, 2023; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Winter Haven's prior fiscal year ended on September 30, 2023; and

WHEREAS, encumbered purchase orders were brought forward to fiscal year 2024; and

WHEREAS, proper accounting procedures require that payment for the goods and/or services requested under encumbered purchase orders be reflected in the City's 2024 fiscal year budget; and

WHEREAS, the roll forward of encumbered purchase orders is not reflected in the original budget process; therefore it is necessary for the City Commission to amend the budget for fiscal year 2023-24; and

WHEREAS, Florida Statutes 166.241, provides that the City Commission may amend its budget by ordinance to appropriate and expend funds from a source not anticipated in the City's approved budget; and

NOW THEREFORE, BE IT ENACTED BY THE PEOPLE OF THE CITY OF WINTER HAVEN, FLORIDA, AS FOLLOWS:

1. The budget for the City of Winter Haven for the fiscal year 2023-24 is hereby amended as set forth on Exhibit A attached hereto and incorporated herein by reference. Exhibit A reflects the General Fund and Airport Funds that are amended to reflect encumbered purchase orders.
2. This Ordinance shall be effective upon second reading nunc pro tunc to September 30, 2024.

INTRODUCED on first reading this 27th day of January 2025.

PASSED on second reading this 10th day of February 2025.

CITY OF WINTER HAVEN, FLORIDA

_____
MAYOR-COMMISSIONER
Nathaniel J. Birdsong, Jr.

ATTEST:

_____
CITY CLERK
Vanessa Castillo, MMC

Approved as to form:

_____
CITY ATTORNEY
Frederick J. Murphy, Jr.

Exhibit A

Fund	Dept.	Dept Title	Account	Account Name	Amount
001	103	City Manager	3404	Contract Svc. - Other	5,000
001	103	City Manager	5402	IT Subscriptions	1,751
001	312	Parks & Grounds	3404	Contract Svc. - Other	189,419
001	312	Parks & Grounds	6402	Machinery & Equipment	10,713
001	711	Activity Fields	6402	Machinery & Equipment	9,999
001	401	Streets	6301	Other Capital Improvements	33,600
				Total General Fund	250,482
106	410	Airport	6301	Other Capital Improvements	55,259
106	410	Airport	6311	Professional Svc - Capitalized	95,781
106	410	Airport	6402	Machinery & Equipment	87,400
				Total Airport Fund	238,440

DATE: January 10, 2025

TO: Honorable Mayor and City Commissioners

VIA: T. Michael Stavres, City Manager
M.J. Carnevale, Deputy City Manager
Eric Labbe, Economic Opportunity & Community Investment Director

FROM: Cedric Cox, Economic Opportunity & Community Investment Assistant Director

SUBJECT: RFQ-24-38: Design Build Services for the Redevelopment of the Old Fire Station Number One – Award to Whitehead Construction (Winter Haven, FL)

BACKGROUND:

On August 21, 2024, the City issued Request for Qualifications (RFQ) 24-38 seeking submittals from qualified design build firms interested in providing design and construction services for redevelopment of the City's former Fire Station Number One. The purpose for redevelopment is to construct new City of Winter Haven Building Division administrative offices that will better serve the citizens given the City's recent and projected growth. A response deadline of October 9, 2024 was set with four proposals received meeting all specifications for qualification.

On December 10, 2024 the City's Selection Committee met to discuss, score, and develop a recommendation to the City Commission for their consideration. The submittals were ranked in order of preference after evaluating each firm's statements of qualifications and performance data on file. The Committee chose to forego presentations/interviews and selected the unanimously top-ranked firm, Whitehead Construction. A Recommendation of Award was posted December 10, 2024 with no protest received in response.

FINANCIAL IMPACT:

The City has approximately $7,000,000 set aside in the Construction Fund for the construction of Building Division facilities. These funds were transferred from the Building Fund to the Construction Fund as a result of a change to F.S. 553.80 prohibiting the City's Building Fund from carrying forward an amount that exceeds the 4 year rolling average of its operating budget.

STRATEGIC PLAN ALIGNMENT

The reconstruction of old Fire Station Number One into new administrative space for the Building Division is not specifically defined as a goal or strategy within the Strategic Plan. However, it is aligned with the Responsible Government Strategic Pillar.

RECOMMENDATION:

Staff recommends the City Commission award RFQ-24-38 to Whitehead Construction and authorize the City Manager to negotiate design build services and to take all actions necessary and incidental thereto.

ATTACHMENTS:

- RFQ-24-38 Proposal Tabulation
- RFQ-24-38 Recommendation of Award

RFQ-24-38
December 10, 2024
City of Winter Haven
Tabulation of Proposals

Design Build -
Redevelopment of Old FS #1

Firms Submitting Proposals

Whitehead Construction
Winter Haven, FL

In Association with:
The Lunz Group
Carter/Kaye Engineering
Catalyst Design Group
Fullone Structural Group

Create Building Company LLC
St. Petersburg, FL

In Association with:
Wannemacher Jensen Architects
BBM Structural
SGM Engineering
Pennoni

Firms Submitting Proposals

Cork Howard Construction Company
Marietta, GA

In Association with:
LDDBlueline Architects
Kimley Horn Engineers
Basepoint Surveying
CMTA Engineers
Sykes Structural Engineer

Bergman KPRS, LLC.
Brea, CA

In Association with:
Bryan Karsky
CK Architects

Prepared by: Bethany Owen

Date: December 10, 2024

City of Winter Haven
Financial Services

DECEMBER 10, 2024

To: All firms submitting proposals for RFQ-24-38 Design Build Services for the Redevelopment of the Old Fire Station #1

Attention Proposing Firms -

The City of Winter Haven's Professional Services Committee met to short-list and ranked the responding organization's proposals in the following order, with the #1 ranked team, Whitehead Construction, being recommended for award:

1 – Whitehead Construction, Inc. – Winter Haven, FL
2 – Create Building Co, LLC – St. Pete, FL
3 – Cork Howard Construction Co – Marietta, GA
4 – Bergman KPRS – Brea, CA

If you have any questions, do not hesitate to contact us at procurement@mywinterhaven.com.

Sincerely,
CITY OF WINTER HAVEN

Bethany Owen

Bethany Owen
PROCUREMENT MANAGER

Procurement/Financial Services
500 Third Street
Winter Haven, FL 33881

DATE: January 16, 2025

TO: Honorable Mayor and City Commissioners

FROM: T. Michael Stavres, City Manager

SUBJECT: Recommendation for Grant & Aid Application Review Committee (GAARC) new member and reappointment of existing four existing members

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BACKGROUND

On May 9, 2022, the City Commission approved Resolution R-22-19 creating and establishing the Grant & Aid Application Review Committee (GAARC). At the same time, the City Commission appointed the initial five (5) citizen members to serve a 3-year term. Upon the resignation of Mr. Alex Cam following his election to office in Auburndale, Ms. Melinda Kalogridis was recommended by Commissioner Mercer and subsequently appointed to the GAARC by the City Commission in early 2024.

In October 2024, the current members of the GAARC, Tina Summerlin, Abdurrahim Al-khatib, Alex Santiago, and Melinda Kalogridis indicated that they wished to serve a second 3-year term. Dr. Steve Negley noted that with regrets he would not be available to serve a second term.

Dr. Negley had been nominated for the GAARC by Commissioner JP Powell. Commissioner Powell was succeeded by Commissioner Clifton E. Dollison. Commissioner Dollison has nominated Dr. Barbara Jones to serve on the GAARC, thereby filling the seat vacated by Dr. Negley. Dr. Jones has completed an Application to Serve on a City Board/Committee and this has been filed with the City Clerk.

FINANCIAL IMPACT

There is no financial impact.

STRATEGIC PLAN ALIGNMENT

- This is a routine action associated with normal operations of the City not specifically defined as a goal or strategy within the Strategic Plan. However, it is aligned with the Responsible Government Strategic & Quality of Life Pillars.

RECOMMENDATION

Staff recommends the City Commission appoint Dr. Barbara Jones and reappoint Tina Summerlin, Abdurrahim Al-khatib, Alex Santiago, and Melinda Kalogridis for a 3- year term to the Grant & Aid

Application Review Committee, commencing calendar year 2025 for review of Grant & Aid Applications for Fiscal Year 2025/2026. Terms will all expire in calendar year 2027.

ATTACHMENT

- Application to Serve on a City Board/Committee – Dr. Barbara Jones.

WINTER HAVEN

*The Chain of Lakes **City***

BOARD/COMMITTEE APPOINTMENT INFORMATION

Board(s) or Committee(s) Desired:
1) Grants Committee

2)

3)

Name:

Dr. Barbara W. Jones

Address: (Home & Office)

2413 Melrose ST
Winter Haven, FL
33881

Phone: (Cell).

863 604-1615

Employer:

Florida Connections Academy

Position:
Counselor

(Email)
drbwj03@gmail.com

Please answer the following:
(First) Barbara
(Middle) W.
(Office) Jones

(Fax)

Years/Months:

Check (✓) one:

Are you a city of Winter Haven resident?

X Yes
No

Are you a registered voter?

X Yes
No

Do you own property in Winter Haven?

X Yes
No

Are you currently serving on a City Board/Committee?

Yes
X No

Have you ever served on a City Board/Committee?

X Yes
No

If yes, when and which Board(s)/Committee(s)?

Florence Villa CRA

Are you a city employee?
NO

Yes

No

How long have you lived in Winter Haven?
Years/Months: Over 65 years-

Please state your reason for **wanting** to **serve** on **a City** Board(s)/Committee(s):

As a lifelong resident of Winter Haven, I take great pride in contributing to my community by utilizing my skills to connect residents with organizations that offer essential services. The collaboration between the City of Winter Haven government and dedicated organizations focused on enhancing the quality of life for our residents proves beneficial for all involved. I am privileged to participate in this important initiative.

Describe your background and qualifications for **the** Board(s)/Committee**(s)** to **which you seek appointment?**

I possess a strong background in crafting effective grants and proposals. In my role as a school and district administrator, I successfully identified and authored grants to secure resources and services for various school improvement projects. My efforts have led to the successful acquisition of state grants, enabling my organization to function as an educational supplemental service provider, offering reading and math tutoring across multiple counties.

Furthermore, I have successfully written grants for the Department of Education that funded transportation, summer enrichment programs, and remedial services for students at my school. As a doctoral candidate, I also conducted research and effectively presented my findings, culminating in the attainment of my doctorate degree. My extensive experience in grant writing and evaluation positions me well to contribute meaningfully to the City of Winter Haven grants committee.

Are there any potential conflicts, which would make it difficult for you to render objective judgment on questions, which come before the Board(s)/Committee(s) to which you seek appointment?
I am not aware of any potential conflicts that would interfere with my serving on this committee.

REFERENCE:

Name
Mrs.

Seretha
Tinsely

Address

2705 Country Club Rd N Winter Haven, Fl 33881

Phone
(863) 299-7177

Florida Statute the City of Winter Haven to apply a conditioned security-criminal background investigation and fingerprint requirement to all new and incumbent City appointees provided an ordinance and not mere policy is in place. Florida Statute 435.04 sets forth the means by which legally allowed level 2 background security checks and employment screenings with fingerprinting may be conducted.

1). *Signature* ***required if NOT*** *submitting* ***electronically:***

Barbara W. Jones

Date: January 21, 2025

PLEASE EMAIL, MAIL, FAX, or DROP OFF THE COMPLETED APPLICATION TO: Vanessa Castillo, MMC, City Clerk
The City of Winter Haven
P.O. Box 2277, Winter Haven, FL 33883-2277 451 Third St., NW, Winter Haven, FL 33881
Office: 863.291.5627 Fax: 863.298-5293
vcastillo@mywinterhaven.com