

THE TOWN OF
Windermere



MAYOR AND COUNCIL OF THE TOWN OF WINDERMERE

Agenda

Mayor Jim O'Brien
Council Members
Robert McKinley
Andy Williams
Chris Sapp
Bill Martini
Liz Andert

Agenda

July 14, 2020
6:00 PM

MEETING TO BE HELD VIRTUALLY ON ZOOM

Join Zoom Meeting

<https://zoom.us/j/93860568258?pwd=bnR0bFBpS1JaSTIFcWJTMjVWZHpkZz09>

Meeting ID: 938 6056 8258
Password: 510435

One tap mobile

+13017158592,,93860568258# US (Germantown)
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Dial by your location

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Meeting ID: 938 6056 8258

Find your local number: <https://zoom.us/j/abldq02YK>

PLEASE NOTE: IN ACCORDANCE WITH F.S. 286.26: Person with disabilities needing assistance to participate in any such proceeding should contact the Office of the Town Clerk at least 48 hours beforehand at (407) 876-2563

Pursuant to Resolution No. 2005-12 adopted on December 13, 2005, the following Civility Code shall govern all proceedings before the Town of Windermere Town Council:

1. All electronic devices, including cell phones and pagers, shall be either turned off or otherwise silenced.
2. Prolonged conversations shall be conducted outside Council meeting hall.
3. Whistling, heckling, gesturing, loud conversations, or other disruptive behavior is prohibited.
4. Only those individuals who have signed the speaker list and/or who have been recognized by the Mayor (or Chair) may address comments to the Council.
5. Comments at public hearings shall be limited to the subject being considered by the Council.
6. Comments at Open Forums shall be directed to Town issues.
7. All public comments shall avoid personal attacks and abusive language
8. No person attending a Town Council meeting is to harass, annoy, or otherwise disturb any other person in the room.

Any member of the public whose behavior is disruptive and violates the Town of Windermere Civility Code is subject to removal from the Town Council meeting by an officer and such other actions as may be appropriate. **PLEASE NOTE:** IN ACCORDANCE WITH F.S. 286.0105: Any person who desires to appeal any decision at this meeting will need a record of this proceeding. For this, such person may need to ensure that a verbatim record of such proceeding is made which includes the

AGENDA

- THE MEETING IS CALLED TO ORDER BY THE MAYOR
- FLAG SALUTE
- INVOCATION

1. OPEN FORUM/PUBLIC COMMENT (3 Minute Limit)

- a. Please email dburkhalter@town.windermere.fl.us prior to 5pm on July 13, 2020 to sign up
- b. Prior to meeting please state name, address and topic within chat box

2. SPECIAL PRESENTATION/PROCLAMATIONS/AWARDS

- a. Windermere Mayoral Proclamation Designating the Month of July as Windermere Staff Appreciation Month. (Attachment-Mayor O'Brien to Present)

3. TIMED ITEMS AND PUBLIC HEARING

- a. ORDINANCE NO. 2020-02 (DUKE Franchise Agreement Extension)

AN ORDINANCE GRANTING TO DUKE ENERGY FLORIDA, LLC d/b/a DUKE ENERGY, AN ELECTRIC UTILITY RIGHTS-OF-WAY UTILIZATION FRANCHISE; PRESCRIBING THE TERMS AND CONDITIONS RELATED TO THE OCCUPANCY OF MUNICIPAL STREETS AND RIGHTS-OF-WAY IN THE TOWN OF WINDERMERE, FLORIDA, FOR THE PURPOSE OF PROVIDING ELECTRIC SERVICE; PROVIDING FOR SEVERABILITY OF PROVISIONS; PROVIDING AN EFFECTIVE DATE.

- b. ORDINANCE NO. 2020-03 (SFWMD Water Shortage Ordinance)

AN ORDINANCE OF THE TOWN OF WINDERMERE, FLORIDA PERTAINING TO WATER CONSERVATION; REPEALING AND REPLACING SECTION 5.03.04 OF ARTICLE V OF THE TOWN'S LAND DEVELOPMENT CODE TO PROVIDE AN UPDATED WATER SHORTAGE PLAN CONSISTENT WITH THE REQUIREMENTS OF THE SOUTH FLORIDA WATER MANAGEMENT DISTRICT; PROVIDING THE INTENT AND PURPOSE; PROVIDING DEFINITIONS; PROVIDING FOR APPLICABILITY; PROVIDING FOR THE DECLARATION OF WATER SHORTAGE OR WATER SHORTAGE EMERGENCY; PROVIDING FOR VARIANCES; PROVIDING FOR ENFORCEMENT; PROVIDING FOR PENALTIES; PROVIDING FOR CODIFICATION; PROVIDING FOR THE REPEAL OF ALL CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

- c. ORDINANCE NO. 2020-04 (SFWMD Water Conservation Ordinance)

AN ORDINANCE OF THE TOWN OF WINDERMERE, FLORIDA PERTAINING TO WATER CONSERVATION; REPEALING AND REPLACING ARTICLE XIV OF THE TOWN'S LAND DEVELOPMENT CODE TITLED "WATER CONSERVATION RULES" TO PROVIDE FOR UPDATED WATER CONSERVATION RULES CONSISTENT WITH THE REQUIREMENTS OF THE SOUTH FLORIDA WATER MANAGEMENT DISTRICT AND TO BE TITLED "WATER CONSERVATION; YEAR-ROUND LANDSCAPE IRRIGATION MEASURES; VARIANCES; ENFORCEMENT; PENALTIES"; PROVIDING THE INTENT AND PURPOSE; PROVIDING DEFINITIONS; PROVIDING FOR APPLICABILITY; PROVIDING FOR THE DECLARATION OF A WATER SHORTAGE OR WATER SHORTAGE EMERGENCY; PROVIDING FOR VARIANCES; PROVIDING FOR ENFORCEMENT; PROVIDING FOR PENALTIES; PROVIDING FOR CODIFICATION; PROVIDING FOR THE REPEAL OF ALL CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

4. CONSENT AGENDA

- a. Windermere Wine & Dine Donation to Legacy Foundation Leadership for "Sunshine Project" \$19,000 (Attachments-Staff Recommends Retro Active Approval)
- b. Computer Business Consultants: Town of Windermere Temporary Move" Quote # CP 000464-1 \$17,325 (Attachments-Staff Recommends Retro Active Approval)
- c. Windermere Pavilion Concept Plan (Attachments-DRB Recommends Approval 5-1, LRP Recommends Approval. Board Option)

5. NEW BUSINESS

a. MINUTES

- i. Town Council Meeting Minutes June 9, 2020 (Attachments-Staff Recommends Approval)
- ii. Town Council Workshop Meeting Minutes June 23, 2020 (Attachments-Staff Recommends Approval)

b. RESOLUTIONS/ORDINANCES FOR APPROVAL/FIRST READING

- i. ORDINANCE NO. 2020-05 (Conduct in Town Parks and Recreation Areas)

AN ORDINANCE OF THE TOWN OF WINDERMERE, FLORIDA ADDING A NEW ARTICLE III TO CHAPTER 22 OF THE TOWN'S CODE OF ORDINANCES TO BE ENTITLED "CONDUCT IN TOWN PARK AND RECREATION AREAS"; PROVIDING DEFINITIONS; PROHIBITING ALCOHOLIC BEVERAGES IN OR ON ANY PUBLIC PROPERTY, PUBLIC RECREATION AREA, OR PUBLIC PARK UNLESS AUTHORIZED BY THE TOWN COUNCIL PURSUANT TO SECTION 8-93 OF THE TOWN'S CODE OF ORDINANCES; AUTHORIZING THE INSPECTION OF CONTAINERS FOR ALCOHOLIC BEVERAGES, PROVIDING THE INSPECTION PROCEDURE AND PROVIDING FOR CONFISCATION; PROVIDING FOR RATIFICATION, SEVERABILITY, CODIFICATION AND AN EFFECTIVE DATE.

c. CONTRACTS & AGREEMENTS

- i. Kimley Horn & Associates: National Pollutant Discharge Elimination System \$29,895 (NPDES) Permit Services 2021 (Attachments-Staff Recommends Approval)

d. FINANCIAL

e. OTHER ITEMS FOR CONSIDERATION:

6. MAYOR & COUNCIL LIAISON REPORTS

- a. MAYOR O'BRIEN
- b. COUNCILMAN MCKINLEY
- c. COUNCILMAN WILLIAMS
- d. COUNCILMAN SAPP
- e. COUNCILMAN MARTINI
- f. COUNCILMEMBER ANDERT

7. STAFF REPORTS

- a. TOWN MANAGER ROBERT SMITH
- b. TOWN ATTORNEY TOM WILKES
- c. POLICE CHIEF DAVE OGDEN
- d. PUBLIC WORKS DIRECTOR SCOTT BROWN

8. ADJOURN

- **REPORTS: NO ACTION REQUIRED**
- **FILED ITEMS**



**WINDERMERE MAYORAL PROCLAMATION DESIGNATING THE MONTH OF JULY AS
WINDERMERE TOWN STAFF APPRECIATION MONTH**

WHEREAS: The Town of Windermere takes great pride in being a community that serves its residents and is fortunate to have men and women who choose a profession that serves our community; and

WHEREAS: Our Town staff is comprised of individuals who work to make our town a better place to live and Windermere's staff has worked to improve the lives of not only Windermere's residents, but all of those who surround us, and those who travel through our Town; and

WHEREAS: Our Town staff has worked on numerous projects improving traffic and pedestrian safety, as well as storm water initiatives, which protect the Butler Chain of Lakes; and

WHEREAS: In addition to all of these projects, the Town of Windermere has continued to make customer service its number one priority, while at the same time, maintaining one of the lowest tax millage rates in Orange County, year after year; and

WHEREAS: The Town of Windermere is the community it is through the work of our Town staff and their commitment and dedication. Windermere, and all of Central Florida's quality of life, is greatly enhanced by these men and women who choose to serve the residents of the Town of Windermere;

NOW, THEREFORE, I, Jim O'Brien, Mayor of the Town of Windermere, do hereby declare July, 2020 as Windermere Town Staff Appreciation Month and extend the sincere appreciation and gratitude of not only the residents and elected officials of Windermere, but for all of those almost 20,000 people who travel through our town every work day and do not take the time to realize that their travels are made safer and better through the work of Windermere's town staff.

Dated this 14th day of July, 2020.

**Jim O'Brien, Mayor
Town of Windermere**



EXECUTIVE SUMMARY

SUBJECT: ORDINANCE NO. 2020-02 DUKE Franchise Agreement Extension

REQUESTED ACTION: First Reading

Work Session (Report Only)

DATE OF MEETING: 7/14/2020

Regular Meeting

Special Meeting

CONTRACT: N/A

Vendor/Entity: _____

Effective Date: _____

Termination Date: _____

Managing Division / Dept: _____

BUDGET IMPACT:

Annual

FUNDING SOURCE: _____

Capital

EXPENDITURE ACCOUNT: _____

N/A

HISTORY/FACTS/ISSUES:

Mayor & Council,

The Franchise Agreement between DUKE and the Town of Windermere is set to expire on September 30, 2021. A franchise agreement is a negotiated contract between the Town and an electric service provider that grants the utility the right to serve customers in the Town's jurisdiction and use of right of ways. The previous agreement was for 30 years and this attached agreement is for a 20-year term. The benefit for entering into this agreement one year early is that the old algorithm for calculating franchise revenues is antiquated. The new agreement corrects this issue and the Town should realize an additional revenue of \$3,500 a month.

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ORDINANCE NO. 2020-02

AN ORDINANCE GRANTING TO DUKE ENERGY FLORIDA, LLC d/b/a DUKE ENERGY, AN ELECTRIC UTILITY RIGHTS-OF-WAY UTILIZATION FRANCHISE; PRESCRIBING THE TERMS AND CONDITIONS RELATED TO THE OCCUPANCY OF MUNICIPAL STREETS AND RIGHTS-OF-WAY IN THE TOWN OF WINDERMERE, FLORIDA, FOR THE PURPOSE OF PROVIDING ELECTRIC SERVICE; PROVIDING FOR SEVERABILITY OF PROVISIONS; PROVIDING AN EFFECTIVE DATE.

BE IT ENACTED BY THE PEOPLE OF THE TOWN OF WINDERMERE:

SECTION 1 – Findings. The Town Council previously approved and granted a 30-year electric utility rights-of-way utilization franchise to Florida Power Corporation pursuant to Ordinance #91-7. The Town Council deems that a continued franchise relationship with Duke Energy Florida, LLC, (formerly known as Florida Power Corporation), is in the best interest of its citizens, and deems it necessary, desirable and in the interest of its citizens to establish by ordinance a Rights-of-Way utilization franchise (sometimes referred to herein as the “Franchise”) granting Duke Energy Florida, LLC, permission to occupy the Rights-of-Way in the Town of Windermere, Florida, for the purpose of providing electric services.

SECTION 2 - Short Title. This ordinance shall be known and may be cited as the “Duke Energy Rights-of-Way Utilization Franchise.”

SECTION 3 – Definitions. For the purposes of this ordinance, the following terms, phrases, words, and their derivatives shall have the meaning given herein. When not inconsistent with the context, words in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word “shall” is always mandatory and not merely permissive.

(A) “Adversely Affected” – For the Company, a loss of one percent (1%) of Base Revenues within the corporate Town limits due to Retail Wheeling. For the Town, a loss of one percent (1%) of franchise fees due to Retail Wheeling.

(B) “Base Revenues” – All Company’s revenues from the retail sale of electricity, net of customer credits, to residential, commercial and industrial customers, and Town sponsored street lighting all within the corporate limits of the Town.

(C) “Company” or “Grantee” – Duke Energy Florida, LLC d/b/a Duke Energy, its successors and assigns.

(D) “Town” or “Grantor” – The Town of Windermere, Florida.

(E) “Electric Energy Provider” – Every legal entity or association of any kind (including their lessees, trustees or receivers), including any unit of state, federal or local government (including Town herein), which owns, maintains, or operates an electric generation,

48 transmission, or distribution system or facilities, or which otherwise provides, arranges for, or
49 supplies electricity or electric energy to the public, or which supplies electricity to itself utilizing
50 Company's distribution or other facilities. Without limitation or the foregoing, "Electric Energy
51 Provider" shall also include every Electric Utility, electric power marketer or electric power
52 aggregator. It shall also include every entity providing such services as metering, customer
53 billing, payment collection and processing, and customer information and data processing.

54
55 (F) "Electric Utility" -- Shall have the meaning set out in Section 366.02(2), *Florida*
56 *Statutes* (2019), and shall also include every electric "Public Utility" as defined in Section
57 366.02(1), *Florida Statutes* (2019). "Electric Utility" shall further include every investor owned,
58 municipally or governmentally owned, or cooperatively owned electric utility (including their
59 lessees, trustees or receivers), which owns, maintains, or operates an electric generation,
60 transmission, or distribution system in any State or County.

61
62 (G) "Electric Utility System" – An electric power system installed and operated in the
63 Franchise Area in accordance with the provisions of the Florida Public Service Commission
64 establishing technical standards, service areas, tariffs and operating standards, which shall
65 include but not to limited to electric light, heat, power and energy facilities, and a generation,
66 transmission, and distribution system, with such extensions thereof and additions hereto as shall
67 hereafter be made.

68
69 (H) "Franchise Area" – That area for which Company provides electric utility service
70 within the corporate Town limits of the Town.

71
72 (I) "Facilities" – conduits, cables, poles, wires, street lighting, supports and such
73 other structures, appurtenances or accessories as may be reasonably necessary for the
74 construction, maintenance and operation of an electric generation, transmission and distribution
75 system, including information, telecommunication, and video transmission used solely for the
76 provision of electric service.

77
78 (J) "Person" – Any person, firm, partnership, association, corporation, company or
79 organization of any kind.

80
81 (K) "Public Service Commission" – The Florida Public Service Commission.

82
83 (L) "Rights-of-Way" – All of the public streets, alleys, highways, waterways,
84 easements, bridges, sidewalks and parks, and any other public ways or places owned by the
85 Town, as they now exist or may be hereafter constructed, opened, laid out or extended within the
86 present limits of the Town, or in such territory as may hereafter be added to, consolidated or
87 annexed to the Town.

88
89 (M) "Retail Wheeling" – A customer/supplier arrangement whereby an Electric
90 Energy Provider utilizes transmission and/or distribution facilities of Company to make energy
91 sales directly to an end use customer located within the Franchise Area.

92
93 **SECTION 4 - Grant of Authority.**

94 (A) This grant of authority is limited to the provision by Company to have, maintain,

95 or place its Facilities within the Rights-of-Way for its electric utility services. Accordingly, the
96 Town hereby grants to the Company, its successors and assigns the non-exclusive right,
97 authority, and franchise to lay, erect, construct, maintain, repair and operate its Facilities in,
98 under, upon, over and across the present and future Rights-of-Way, as they now exist or may be
99 hereafter constructed, opened, laid out or extended within the present limits of the Town,
100 provided that all portions of the same shall conform to accepted industry standards, including but
101 not limited, to the National Electrical Safety Code. Nothing in this Ordinance shall require
102 Grantee to remove, de-energize, or cease using any poles, wires, or other things or Facilities
103 identified hereinabove that were in place under previous ordinances or permits prior to the
104 Effective Date of this Ordinance, regardless of whether such poles, wires or other Facilities are
105 located outside “Rights-of-Way” as defined herein. Nor shall anything in this Ordinance prohibit
106 Company from performing upgrades, replacements, maintenance or servicing of such poles,
107 wires, or other Facilities after the Effective Date of this Ordinance. Rather, all such preexisting
108 poles, wires, or other Facilities shall be authorized under this Ordinance. Because this Franchise
109 is intended to grant Company the unrestricted right to place its Facilities within the Rights-of-
110 Way, the Town expressly acknowledges and agrees that Company shall not be required to apply
111 for, obtain, or pay for permits to construct, operate, maintain, or remove its Facilities within the
112 Rights-of-Way.

113 (B) Annexation or Contraction.

114 Town represents that as of the date of the adoption of this Ordinance, it has provided
115 Company with accurate information for all residential, commercial and industrial customers and
116 Town sponsored street lighting that are within the Franchise Area. Company shall be
117 responsible for remitting the Franchise Fee only to service and billing addresses identified as
118 being within the Franchise Area as of the date of this Ordinance. However, Town and Company
119 agree that the Franchise Area is subject to expansion or reduction by annexation and contraction
120 of municipal boundaries. If Town approves any Franchise Area expansion or reduction by
121 annexation or contraction, Town shall provide written notice to Company’s Annexation
122 Coordinator, at the address provided below, within sixty (60) days of such approval and this
123 Franchise shall automatically extend to include any such annexed areas.

124 Additionally, within sixty (60) days of any such annexation or contraction, Town shall
125 provide to Company an updated list containing the new or removed street names, known street
126 name aliases, street addresses, street address number ranges, applicable directional and zip codes
127 associated with each street name, all zip codes assigned to geographic areas located entirely
128 within the Town (including zip codes assigned to post office boxes), all post office box number
129 ranges and the town names and zip codes associated therewith. For a range of street address
130 numbers located within Town which consists only of odd or even street numbers, the list must
131 specify whether the street numbers in the range are odd or even. Subject to the first paragraph,
132 Company shall be responsible for remitting the Franchise Fee only to service and billing
133 addresses identified as being within the Franchise Area contained in the lists which include all
134 the required elements in this subsection.

135 The lists shall be provided by email, except that, if a list is available on another medium,
136 the Town shall, upon request, furnish the list on such medium in addition to or in lieu of the

137 emailed lists. The municipality shall be responsible for updating the lists as changes occur and
138 for furnishing this information to the Company.

139
140 All notices of annexation or contraction and address listings shall be addressed to the
141 Annexation Coordinator as follows with the address subject to change:
142

143 Duke Energy
144 Tax Team DT02-V
145 9700 David Taylor Drive
146 Charlotte NC 28262
147 And by email to: TaxTeam@duke-energy.com
148

149 Company must revise its payments due to any expansion or reduction by annexation
150 within a reasonable time after Company has received such notice and updated list from Town,
151 but no later than sixty (60) days after receipt of notice and the list. Town understands and
152 affirmatively acknowledges that the Company will exclusively rely upon the Town to provide
153 timely and accurate information to the Company regarding any such annexations or contractions,
154 and that failure to do so will impair, inhibit, and/or preclude the Company's ability to revise any
155 payments due to the Town that are impacted by such annexations or contractions. Further, Town
156 acknowledges that if such information is not timely furnished to Company as required herein,
157 any related obligation to collect payments shall be suspended during the period of delay.
158

159 (C) Use of the Rights-of-Way. During the term of the Franchise granted herein
160 Company shall be the sole Electric Utility allowed to use and occupy the Rights-of-Way;
161 provided, however, the Company's right to use and occupy Rights-of-Way for the purposes
162 herein set forth shall be non-exclusive as to entities not engaged in the provision of electric
163 energy service, and the Town reserves the right to grant to others the right to utilize the Rights-
164 of-Way, to any person at any time during the period of this Franchise so long as such grant does
165 not create an unsafe condition or unreasonably conflict with the rights granted to Company
166 herein. In addition to any other rights and/or remedies Company may have under this Ordinance
167 or at law or in equity, should Town permit an Electric Utility other than Company to use and
168 occupy the Rights-of-Way, Town agrees that Company shall be entitled to injunctive relief.
169

170 **SECTION 5 - Notice of Acceptance and Term of Franchise.**

171 (A) This ordinance shall become effective upon being legally passed and
172 adopted ("Effective Date") by the Town Council; and it is further agreed that Grantee shall
173 accept this Franchise as of the date of the passage and adoption by the Town Council and shall
174 signify its acceptance in writing within thirty (30) days after the Town Council's approval of this
175 ordinance by filing its written acceptance with the Town Clerk. If Grantee fails to accept this
176 franchise within thirty (30) days of its date of passage and adoption, then this Ordinance shall be
177 null and void, and of no force and effect of any kind.
178

179 (B) Commencing on the Effective Date, the term of the Franchise granted herein shall
180 be for a period of twenty (20) years. Thereafter, the Franchise granted by this Ordinance will
181 renew automatically for up to two (2) successive five (5) year periods, unless either party

182 provides the other with written notice of its intent to forego automatic renewal at least twelve
183 (12) months prior to the date of the automatic renewal.

184
185 (C) If the Franchise expires without the parties entering a new franchise agreement,
186 then Company shall have the right to decrease the percentage of Company's Base Revenues
187 collected and paid to the Town under this Franchise by two percent (2%) beginning on the first
188 anniversary of the expiration of the Franchise and by an additional two percent (2%) on the
189 second anniversary of the expiration of the Franchise; provided that the percentage of
190 Company's Base Revenues collected and paid to the Town pursuant to this Franchise shall not be
191 reduced to less than two percent (2%) of Company's Base Revenues in any case. If Company
192 determines at the time of expiration of this Franchise that the parties are actively engaged in
193 good faith negotiations and making substantial progress toward the execution of a new franchise
194 agreement, Company may elect in its discretion to waive, delay, or abate the payment reductions
195 permitted under this Section 5(C).

196
197 **SECTION 6 - Payment to Town.**

198 (A) Effective the first day of the second month beginning after the Effective Date of
199 this ordinance, Town shall be entitled to receive from Company a monthly franchise amount that
200 will equal six percent (6%) of Company's Base Revenues (the "Franchise Fee") for the
201 preceding month, which amount shall be the total compensation due Town y for any and all
202 rights, authority and privileges granted by this Franchise, including compensation for any
203 required permits, parking fees, or any other fee or cost related to the rights granted hereunder.
204 Any franchise amounts that will be paid to the Town will be collected by the Company from
205 Company's customers in the Franchise Area and passed through to the Town in the manner
206 described herein. The Town expressly acknowledges that no additional or other amounts shall
207 be due or remitted by Company for the exercise of its rights granted hereunder.

208
209 Payment shall be made to Town for each month no later than the twentieth (20th) day of
210 the following month. The monthly payment shall be made by wire transfer. Any monthly
211 payment or any portion thereof made twenty (20) days after the due date without good cause
212 shall be subject to interest at the rate of ten percent (10%) per annum.

213
214 (B) Only disputed amounts shall be allowed to be withheld by Company, and any
215 such amount shall not accrue any interest during the pendency of any such dispute.

216
217 (C) The Town acknowledges that all classifications and categories of retail customers
218 of Company shall be subject to the payment of the Franchise Fee due hereunder.

219
220 **SECTION 7 - Favored Nations.**

221 (A) In the event Grantee shall hereafter accept an electric utility franchise ordinance
222 from any municipality providing for the payment of a franchise fee in excess of that provided for
223 in Section 6 above, Grantee shall notify Grantor, and Grantor reserves the right to amend this
224 Franchise to increase the franchise fee payable under this ordinance to no more than the greater
225 franchise fee that Grantee has agreed to pay to such other municipality. Grantee's obligation to
226 pay such greater franchise fee to Grantor shall apply prospectively beginning with the next
227 monthly franchise fee payment following Grantor's timely notice of its exercise of its amendment
228 right to which Grantee may collect such increased fee from its customers. Grantee's failure to

229 notify Grantor of such additional payments does not limit Grantor's right to amend to require
230 such additional franchise fees.

231
232 (B) It is the intent and agreement of Grantor and Grantee that should applicable laws
233 change to expressly prohibit Company from being the sole Electric Utility allowed to use and
234 occupy the Rights-of-Way, Grantee shall not be required to pay Grantor a franchise fee under
235 Section 6 of a percentage greater than that paid to Grantor by any other Electric Utility or
236 Electric Energy Provider utilizing Grantor's Rights-of-Way on such Electric Utility's or Electric
237 Energy Provider's revenues attributable to services that are the same or substantially the same as
238 those performed by Grantee. It is further the intent and agreement of Grantor and Grantee that
239 Grantee should not be placed at a competitive disadvantage by the payments required by Section
240 6 of this Ordinance in the event other Electric Utilities or Electric Energy Providers provide
241 services in competition with Grantee without utilizing Grantor's Rights-of-Way.

242
243 (C) In the event applicable laws change to expressly prohibit Company from being the
244 sole Electric Utility allowed to use and occupy the Rights-of-Way, and if Grantor imposes a
245 lesser fee, or no fee, or is unable to impose a fee on another Electric Utility or Electric Energy
246 Provider providing or seeking to provide services in competition with Grantee to customers
247 within Grantor's municipal boundaries, whether utilizing Grantor's Rights-of-Way or not
248 utilizing Grantor's Rights-of-Way, Grantee's fee under Section 6 for such services shall be
249 automatically reduced to the lesser fee charged the other Electric Utility or Electric Energy
250 Provider (or to zero (0), if no fee is charged such other Electric Utility or Electric Energy
251 Provider). In all events, Town shall not grant more favorable treatment to other Electric Energy
252 Providers than is granted to Company under this ordinance, it being the intent of the parties that
253 no future provider of electric service, be it generation, transmission or distribution service, to
254 customers within the corporate limits of Town shall be given a competitive advantage over
255 Company.

256
257 **SECTION 8 - Grantor Rights.**

258 The right is hereby reserved to the Town to adopt such regulations as it shall find
259 necessary in the exercise of its police power, provided that such regulations, by ordinance or
260 otherwise, shall be reasonable, and shall not be in conflict with the laws of the State of Florida or
261 the lawful regulations of any state agency possessing the power to regulate the activities of the
262 Company, or conflict with or otherwise interfere with the benefits conferred on the Company
263 hereunder. In the event of a conflict between this Franchise Agreement and any other ordinance
264 or regulation adopted by the Town or actions (or inactions) of the Town relating to Company's
265 rights to perform work in and/or occupancy of the Rights-of-Way as permitted hereunder, the
266 rights under this Franchise Agreement shall govern and control. In the event of such conflict, the
267 Town and Company agree to work together in good faith to address and resolve such conflict;
268 provided, however, that Company shall be permitted to continue to exercise the rights granted
269 herein during the resolution of any conflict.

270
271 **SECTION 9 - Work in Rights-of-Way.**

272 The Company is hereby granted the right, authority and privilege to perform all necessary
273 work and excavations in said Rights-of-Way of the Town related to its Facilities and necessary
274 or incidental to carrying out such rights and obligations as permitted hereunder. The Company
275 shall have the right to fasten and to stretch and lay along the lines of said poles, conduits, pipes

276 and cables necessary for transmitting and conveying the electric current to be used in the
277 Company's business, together with all the rights and privileges necessary or convenient for the
278 full use including the right to trim, cut, remove and keep clear all trees and limbs near or along
279 Company's Facilities that may in any way endanger the proper operation or access of same.
280 Moreover, the Company shall have the right to construct, erect, operate and maintain within the
281 Town an electric system consisting of its Facilities for carrying on the Company's business;
282 provided that, in accomplishing these purposes, the streets of said Town shall not be
283 unnecessarily obstructed for an unreasonable amount of time and work in connection therewith
284 shall be done and carried on in conformity with such reasonable rules, standards, regulations and
285 local ordinances with reference thereto as may be adopted by the Town for the protection of the
286 public and which are not in conflict with or otherwise interfere with the benefits conferred on the
287 Company hereunder.

288

289 **SECTION 10 – Indemnification.**

290 (A) The acceptance of this Franchise by Company shall be deemed an agreement on
291 the part of Company to indemnify Town and hold it harmless from and against any and all
292 claims for bodily injury or property damage resulting in direct damages, claims, expenses,
293 reasonable attorneys' fees (including appellate fees) and costs to the Town, provided that such
294 claims are caused by the negligence or willful misconduct of Company, its contractors and
295 agents in the construction, repair, operation, or maintenance of its electric utility Facilities
296 hereunder. Company shall not be required to indemnify and hold harmless Town for any
297 damages, claims, expenses, reasonable attorneys' fees and costs arising out of or resulting from
298 the negligence or willful misconduct of Town, its employees, contractors and/or agents. In no
299 event shall Company be liable to Town for any consequential, incidental, punitive, exemplary,
300 multiple, or indirect damages, lost profits or other business interruption damages, by statute, in
301 tort (including negligence or strict liability), in contract, or under any indemnity provision or
302 otherwise.

303

304 (B) Company shall maintain throughout the term of this Franchise sufficient financial
305 resources to provide self-insurance insuring Town and Company with regard to all damages set
306 forth in Section 10 (A) in the minimum amounts of:

- 307 (i) \$1,000,000 for bodily injury or death to a person;
308 \$3,000,000 for bodily injury or death resulting from any one accident.
309 (ii) \$50,000 for property damage resulting from any one accident.
310 (iii) \$1,000,000 for all other types of liability.

311

312 (C) Town acknowledges that Company provides its own liability insurance (self-
313 insured).

314

315 **SECTION 11 - Records and Reports.**

316 (A) Company Rules and Regulations. The following documents shall be available to
317 Town upon Town's reasonable request: copies of rules, regulations, and procedures adopted by
318 Company that relate to Company's use of Town's Rights-of-Way.

319

320 (B) Accounting. Company shall use the system of accounts and the form of books,
321 accounts, records, and memoranda prescribed by the Florida Public Service Commission or such

322 other applicable governing agency having jurisdiction over Company as determined by
323 Company.

324
325 (C) Reports. Company will submit monthly a statement of its estimated Base
326 Revenues for the period on which such payment is based. The acceptance of any statement or
327 payment shall not prevent the Town from asserting that the amount paid is not the amount due,
328 or from recovering any deficit by any lawful proceeding, including interest to be applied at the
329 rate set forth in Section 6 (A).

330
331 (D) Availability of Records and Reports. Company shall supply information that
332 Town or its representatives may from time to time reasonably request relative to the calculation
333 of franchise fees, subject to the Company's obligation to keep certain records confidential. Such
334 records shall, on written request of Town, be open for examination and audit by Town and
335 Town's representatives at Company's headquarters in St. Petersburg, Florida, during ordinary
336 business hours and such records shall be retained by Company for a period of three (3) years.

337
338 (E) Audit. Town may require, upon prior written notice and during Company's
339 normal business hours, an audit of Company's books related to this Agreement not more than
340 once every three (3) years and then only for the preceding three (3) years. Company will
341 reimburse Town's audit costs if the audit identifies errors in Company's franchise Base Revenues
342 of five percent (5%) or more for the period audited. If an underpayment of franchise fees has
343 occurred due to the Company's error, interest will be calculated at the rate of ten percent (10%)
344 per annum. Both the underpayment and interest shall be paid within ninety (90) days from
345 completion of the audit.

346
347 (F) Customer Report. In addition to Town's obligations in Section 4 (B), within
348 ninety (90) days of the Effective Date of this Agreement, Town shall provide to Company a
349 report in a format acceptable to Company setting forth a list containing the new or removed
350 street names, known street name aliases, street addresses, street address number ranges,
351 applicable directional and zip codes associated with each street name and annually thereafter a
352 report identifying any changes to the address listing provided the previous year. For a range of
353 street address numbers located within Town which consists only of odd or even street numbers,
354 the list must specify whether the street numbers in the range are odd or even.

355
356 **SECTION 12 - Retail Wheeling**. In the event the appropriate governmental authorities authorize
357 Retail Wheeling, then either party, if Adversely Affected thereby, may reopen this ordinance upon
358 thirty (30) days written notice to the other for the sole purpose of addressing the Franchise Fee
359 payments between Company and the Town. If the parties are unable to agree within ninety (90)
360 days of reopening, either party may declare an impasse and may file an action in the Circuit Court in
361 Orange County, Florida for declaratory relief as to the proper Franchise Fee in light of Retail
362 Wheeling.

363

364 **SECTION 13 – Severability.** Should any section or provision of this Franchise ordinance or
365 any portion thereof, the deletion of which would not adversely affect the receipt of any material
366 benefits or, substantially increase the burden of any party hereunder, be declared by a court of
367 competent jurisdiction to be invalid, such decision shall not affect the validity of the remainder,
368 as a whole or any part thereof, other than the part declared to be invalid. In the event of any such
369 partial invalidity, Town and Company shall meet and negotiate in good faith to obtain a
370 replacement provision that is in compliance with the judicial authority’s decision.

371
372 **SECTION 14 - Governing Law and Venue.**

373 (A) This Franchise ordinance shall be construed and interpreted according to the laws
374 of the State of Florida.

375
376 (B) In the event that any legal proceeding is brought to enforce the terms of this
377 Franchise, the same shall be brought in the appropriate state court in Orange County, Florida, or,
378 if a federal claim, in the U.S. District Court in and for the Middle District of Florida, Orlando
379 Division.

380
381 **SECTION 15 – Merger.** This Franchise agreement is the full, complete and entire
382 understanding and agreements of the parties as to its subject matter, and the written terms
383 supersede all prior contemporaneous representations, discussions, negotiations, understanding
384 and agreements relating to the subject matter of this agreement. The parties shall not be bound or
385 liable for any statement, prior negotiations, correspondence, representation, promise, draft
386 agreements, inducements, or other understanding of any kind or nature not set forth or provided
387 herein.

388
389 **SECTION 16 – Notices.** Except in exigent circumstances, all notices by either Town or
390 Company to the other shall be made by depositing such notice in the United States Mail,
391 Certified Mail return receipt requested or by recognized commercial delivery, e.g. FedEx, UPS
392 or DHL or facsimile. Any notice served by certified mail return receipt shall be deemed
393 delivered five (5) days after the date of such deposit in the United States mail unless otherwise
394 provided. Any notice given by facsimile is deemed received by next Business Day. “Business
395 Day” for purposes of this section shall mean Monday through Friday, with Saturday, Sunday and
396 Town and Company observed holidays excepted. All notices shall be addressed as follows:

397
398 To Town: To Company:
399 Town Manager Duke Energy
400 Town of Windermere Government & Community Relations Dept.
401 614 Main St 299 1st Street North – FL163
402 Windermere, FL 34786 St. Petersburg, FL 33701
403 Phone: (407) 876-2563 x 5324 Phone:(727) 820-5474
404 Facsimile: (407) 876-0103 Facsimile: (727) 820-5715
405

406 **SECTION 17 - Non-Waiver Provision.** The failure of either party to insist in any one or more
407 instances upon the strict performance of any one or more of the terms or provisions of this
408 Franchise shall not be construed as a waiver or relinquishment for the future of any such term or
409 provision, and the same shall continue in full force and effect. No waiver or relinquishment shall

410 be deemed to have been made by either party unless said waiver or relinquishment is in writing
411 and signed by the parties.

412
413 **SECTION 18 - Repealer and Superseding Provision.** This ordinance shall supersede, as to the
414 rights, privileges and obligations between Town and Company, all ordinances and parts of
415 ordinances in conflict with the terms of this ordinance. Ordinance No. 91-7 and any amendments
416 thereto, are hereby deemed null and void and/or repealed upon the effective date of this
417 ordinance and none of the provisions of such repealed Ordinance No. 91-7 and any amendments
418 thereto shall have any further force and effect.

419
420 **SECTION 19 - Dispute Resolution.** The parties to this Franchise agree that it is in each of their
421 respective best interests to avoid costly litigation as a means of resolving disputes which may
422 arise hereunder. Accordingly, the parties agree that prior to pursuing their available legal
423 remedies they will meet in an attempt to resolve any differences. If such informal effort is
424 unsuccessful, then the Parties may exercise any of their available legal remedies.

425
426 **APPROVED AND ADOPTED** by the Town Council of the Town of Windermere on the ____
427 day of _____, 2020.

428
429 Town of Windermere, Florida
430 By: Town Council

431
432 By: _____
433 Jim O'Brien, Mayor

434
435
436 Attest:

437
438
439 _____
440 Dorothy Burkhalter, MMC, FCRM
441 Town Clerk

442
443 First Reading: June 9, 2020
444 Advertised:
445 Second Reading:

446
447
448 Approved as to form and legality
449 for the use and reliance of the
450 Windermere, Florida, only.

451
452
453 _____
454 Heather M. Ramos, Town Attorney

455

456

457

458

459 Catherine Stempien, State President

460 Duke Energy Florida, LLC

1 **WHEREAS**, Rule 40E-21.421, F.A.C., seeks the cooperation and assistance of state,
2 county, and municipal governmental officials, law enforcement officials, and police officers in
3 the enforcement of the water shortage plan or any issued water shortage orders.

4 **WHEREAS**, Rule 40E-21.421, F.A.C., authorizes and encourages counties and
5 municipalities throughout the District’s jurisdiction to adopt ordinances which provide for local
6 enforcement of the water shortage plan or any issued water shortage orders.

7 **WHEREAS**, it is the desire of the Town Council of the Town of Windermere to adopt
8 such an Ordinance in accordance with Rule 40E-21.421, F.A.C.

9 **WHEREAS**, the Town Council of the Town of Windermere finds and declares that the
10 adoption of this Ordinance is in the public interest of the community.

11 **BE IT ENACTED BY THE PEOPLE OF THE TOWN OF WINDERMERE:**

12
13 **SECTION 1. REPEAL AND REPLACEMENT.** Section 5.03.04 of Article V of the Town’s
14 Land Development Code is hereby repealed and replaced with the language in Sections 2
15 through 8, below.

16 **SECTION 2. INTENT AND PURPOSE.** It is the intent and purpose of this Ordinance to
17 protect the water resources of the Town of Windermere from the harmful effects of
18 overutilization during periods of water shortage by assisting the District in the implementation of
19 its water shortage plan, or issued water shortage orders, under Chapter 40E-21, F.A.C.

20 **SECTION 3. DEFINITIONS.** For the purpose of this Ordinance, the following terms,
21 phrases, words, and their derivatives shall have the meaning listed below. When not inconsistent
22 with the context, words used in the present tense include the future, words in the plural include
23 the singular, and words in the singular include the plural. The word “shall” is always mandatory
24 and not merely directory.

1 (1) “District” means the South Florida Water Management District, a government
2 entity created under Chapter 373, Florida Statutes.

3 (2) “Law Enforcement Officials” means Town of Windmerere Police Officer, Code
4 Enforcement Officer, or other official designated by the Town Manager.

5 (3) “User” means any person, individual, firm, association, organization, partnership,
6 business trust, corporation, company, agent, employee or other legal entity whether natural or
7 artificial, the United States of America, and the State and all political subdivisions, regions,
8 districts, municipalities, and public agencies thereof, which directly or indirectly takes water
9 from the water resource, including uses from private or public utility systems, uses under water
10 use permits issued pursuant to Chapter 40E-2, F.A.C., or uses from individual wells or pumps.

11 (4) “Water Resource” means any and all water on or beneath the surface of the
12 ground, including natural or artificial water courses, lakes, ponds, or diffused surface water, and
13 water percolating, standing, or flowing beneath the surface of the ground.

14 (5) “Water Shortage” means when the District determines there is the possibility that
15 insufficient water will be available to meet the present and anticipated needs of the users, or
16 when conditions are such as to require temporary reduction in total use within a particular area to
17 protect water resources from serious harm.

18 (6) “Water Shortage Emergency” means when the District has determined that the
19 provisions listed in Part II of Chapter 40E-21, F.A.C., are not sufficient to protect the public
20 health, safety, or welfare, the health of animals, fish, or aquatic life, a public water supply, or
21 commercial, industrial, agricultural, recreational, or other reasonable beneficial uses.

22 **SECTION 4. APPLICABILITY.** The provisions of this Ordinance shall apply to each
23 user, as defined in Section 3(3), using the water resource, as defined in Section 3(4), within the

1 geographical areas subject to the water shortage condition or water shortage emergency, as
2 defined in Section 3(6), as determined by the District, whether from publicly or privately-owned
3 water utility systems, private wells, or private connections with surface water bodies. This
4 Section shall not apply to users using reclaimed water or saltwater.

5 **SECTION 5. DECLARATION OF WATER SHORTAGE OR WATER SHORTAGE**
6 **EMERGENCY**
7

8 (1) A declaration of a water shortage condition and/or water shortage emergency in
9 accordance with Part II of Chapter 40E-21, F.A.C., within all or parts of the Town of
10 Windermere by the District's Governing Board or Executive Director, shall invoke the
11 provisions of this Ordinance.

12 (2) A water shortage, as defined in Section 3(5), or water shortage emergency order
13 shall supersede mandatory year-round water irrigation measures until the more restrictive
14 measure is rescinded by the District.

15 (3) Upon the District issuing a water shortage order, all water use restrictions or other
16 measures adopted by the District applicable to Town of Windermere, or any portion thereof,
17 shall be subject to enforcement action by the Town of Windermere officials pursuant to Section
18 7 of this Ordinance. Any violation of Chapter 40E-21, F.A.C., or any order issued pursuant
19 thereto, shall be a violation of this Ordinance.

20 **SECTION 6. VARIANCES.** The Town of Windermere recognizes all variances issued by
21 the District pursuant to Rule 40E-21.275, F.A.C.

22 **SECTION 7. ENFORCEMENT.** The Town of Windermere authorizes law enforcement
23 officials having jurisdiction in the area governed by this Ordinance to enforce the provisions of
24 this Ordinance. In addition, the Town Manager may delegate this Ordinance's enforcement
25 responsibility to agencies and departments within the Town of Windermere government.

1 **SECTION 8. PENALTIES.**

2 (1) Violation of any provision of this Ordinance shall be subject to the following
3 penalties:

- 4 a. First violation, a written warning.
- 5 b. Second violation, a fine not to exceed \$25.00.
- 6 c. Subsequent violations, a fine not to exceed \$500.00.

7
8 (2) Each day a violation of this Ordinance occurs shall be a separate offense. Law
9 enforcement officials, and others as delegated, may provide violators with no more than one (1)
10 written warning. In addition to civil penalties the Town of Windermere may take any other
11 appropriate legal action, including but not limited to injunctive action to enforce the provisions
12 of this Ordinance.

13 **SECTION 9. CODIFICATION.** The provisions of this Ordinance shall become and be
14 made a part of the Town’s Code of Ordinances and that the sections of this Ordinance may be
15 renumbered or re-lettered and the word “ordinance” may be changed to “section,” “article,” or
16 such other appropriate word or phrase to accomplish such intentions.

17 **SECTION 10. REPEAL OF CONFLICTING ORDINANCES.** Any ordinances or
18 regulations in conflict with this Ordinance are hereby repealed to the extent of the conflict in
19 favor of this Ordinance.

20 **SECTION 11. SEVERABILITY.** If any Section, subsection, sentence, clause, or phrase of
21 this Ordinance is held to be invalid or unconstitutional, by any court of competent jurisdiction,
22 then said holding shall in no way affect the validity of the remaining portions of this Ordinance.

23 **SECTION 12. EFFECTIVE DATE.** This Ordinance shall take effect immediately upon
24 adoption.

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22

APPROVED AND ADOPTED by the Town Council of the Town of Windermere on the ____ day of _____, 2020.

Town of Windermere, Florida
By: Town Council

By: _____
Jim O'Brien, Mayor

Attest:

Dorothy Burkhalter, MMC, FCRM
Town Clerk

First Reading: June 9, 2020
Advertised:
Second Reading:

1 **SECTION 1. REPEAL AND REPLACEMENT.** Sections 37-601 through 37-605 of Article
2 XIV of the Town Land Development Code titled “WATER CONSERVATION RULES” are
3 hereby repealed and replaced with the language in Section 2, below.

4 **SECTION 2. APPROVAL OF ARTICLE XIV.** Article XIV of the Town Land Development
5 Code shall hereby read as follows:

6 **WATER CONSERVATION; YEAR-ROUND LANDSCAPE IRRIGATION MEASURES;
7 VARIANCES; ENFORCEMENT; PENALTIES**

8
9 **Section 37-601. - Intent and purpose**

10
11 It is the intent and purpose of this Article to implement procedures to protect the water resources
12 of the Town of Windermere and to promote water conservation through the efficient use of
13 landscape irrigation and consistency with the South Florida Water Management District’s
14 mandatory year-round landscape irrigation conservation measures under Chapter 40E-24, Florida
15 Administrative Code, (F.A.C.). This Article will increase water use efficiency; prevent and
16 curtail wasteful irrigation practices by providing mandatory landscape irrigation conservation
17 measures; and prohibit the operation of irrigation systems in a manner causing water to be
18 wasted.

19
20 **Section 37-602. – Definitions.** For the purpose of this Article, the following terms, phrases,
21 words and their derivatives shall have the meaning listed below. When not inconsistent with the
22 context, words used in the present tense also include the future, and words used in the singular
23 also include the plural. The word “shall” is always mandatory and not merely directory.

- 24
25 (1) “Address” means the “house number” (a numeric or alphanumeric designation) that,
26 together with the street name, describes the physical location of a specific property. This
27 includes “rural route” numbers, but excludes post office box numbers. If a lot number in
28 a mobile home park or similar community is used by the U.S. Postal Service to determine
29 a delivery location, the lot number shall be the property’s address. If a lot number in a
30 mobile home park or similar residential community is not used by the U.S. Postal Service
31 (e.g., the park manager sorts incoming mail delivered to the community’s address), then
32 the community’s main address shall be the property’s address. If a property has no
33 address, it shall be considered “even-numbered.”
34
35 (2) “Athletic Play Area” means all golf course fairways, tees, roughs, greens, and other
36 athletic play surfaces; including, football, baseball, soccer, polo, tennis, lawn bowling
37 fields, and rodeo, equestrian and livestock arenas.
38
39 (3) “Consumptive Use Permit” (CUP) means a permit issued pursuant to Chapter 40E-2,
40 F.A.C., authorizing the consumptive use of water.
41

- 1 (4) “District” means the South Florida Water Management District, a government entity
2 created under Chapter 373, Florida Statutes.
3
- 4 (5) “Even-Numbered Address” means an address ending in the number 0, 2, 4, 6 or 8; rights-
5 of-way or other locations with no address; or the letters A-M.
6
- 7 (6) “Existing Landscaping” means any landscaping which has been planted in the ground for
8 more than ninety (90) days.
9
- 10 (7) “Landscaping” means shrubbery, trees, lawns, sod, grass, ground covers, plants, vines,
11 ornamental gardens, and such other flora not intended for resale, which are situated in
12 such diverse locations as residential landscapes, recreation areas, cemeteries, public,
13 commercial, and industrial establishments, public medians, and rights-of-way, except
14 athletic play areas.
15
- 16 (8) “Landscape Irrigation” means the outside watering of shrubbery, trees, lawns, sod, grass,
17 ground covers, plants, vines, ornamental gardens, and such other flora not intended for
18 resale, which are planted and are situated in such diverse locations as residential
19 landscapes, recreation areas, cemeteries, public, commercial, and industrial
20 establishments, public medians, and rights-of-way, except athletic play areas.
21
- 22 (9) “Law Enforcement Official(s)” means Town of Windermere Police Officer, Code
23 Enforcement Officer, or other official as designated by the Town Manager.
24
- 25 (10) “Low Volume Hand Watering” means the watering of landscape by one person, with one
26 hose, fitted with a self-canceling or automatic shutoff nozzle.
27
- 28 (11) “Low Volume Irrigation” means the use of equipment and devices specifically designed
29 to allow the volume of water delivered to be limited to a level consistent with the water
30 requirement of the plant being irrigated, and to allow that water to be placed with a high
31 degree of efficiency in the root zone of the plant. The term also includes water used in
32 mist houses and similar establishments for plant propagation. Overhead irrigation and
33 flood irrigation are not included.
34
- 35 (12) “Micro-irrigation” means the application of small quantities of water on or below the soil
36 surface as drops or tiny streams of spray through emitter or applicators placed along a
37 water delivery line. Micro-irrigation includes a number of methods or concepts such as
38 bubbler, drip, trickle, mist or micro-spray, and subsurface irrigation.
39
- 40 (13) “New Landscaping” means any landscaping which has been planted and established for
41 ninety (90) days or less.
42
- 43 (14) “Odd-Numbered Address” means an address ending in the number 1, 3, 5, 7 or 9; or the
44 letters N-Z.
45

- 1 (15) “Reclaimed Water” means wastewater that has received at least secondary treatment, and
2 basic disinfection and is reused after flowing out of a wastewater treatment facility as
3 defined by Rule 62-40.210, F.A.C.
4
- 5 (16) “User” means any person, individual, firm, association, organization, partnership,
6 business trust, corporation, company, agent, employee or other legal entity, whether
7 natural or artificial, the United States of America, and the State and all political
8 subdivisions, regions, districts, municipalities, and public agencies thereof, which directly
9 or indirectly takes water from the water resource, including uses from private or public
10 utility systems, uses under water use permits issued pursuant to Chapter 40E-2, F.A.C., or
11 uses from individual wells or pumps.
12
- 13 (17) “Wasteful and unnecessary” means allowing water to be dispersed without any practical
14 purpose to the water use; for example, excessive landscape irrigation, leaving an
15 unattended hose on a driveway with water flowing, allowing water to be dispersed in a
16 grossly inefficient manner, regardless of the type of water use; for example, allowing
17 landscape irrigation water to unnecessarily fall onto pavement, sidewalks and other
18 impervious surfaces; or allowing water flow through a broken or malfunctioning water
19 delivery or landscape irrigation system.
20
- 21 (18) “Water Resource” means any and all water on or beneath the surface of the ground,
22 including natural or artificial watercourses, lakes, ponds, or diffused surface water, and
23 water percolating, standing, or flowing beneath the surface of the ground.
24
- 25 (19) “Water Shortage” means when the District determines there is the possibility that
26 insufficient water will be available to meet the present and anticipated needs of the users,
27 or when conditions are such as to require a temporary reduction in total use within a
28 particular area to protect water resources from serious harm. A water shortage usually
29 occurs due to drought.
30
- 31 (20) “Water Shortage Emergency” means when the District determines the provisions listed in
32 Part II of Chapter 40E-21, F.A.C., are not sufficient to protect the public health, safety, or
33 welfare; the health of animals, fish, or aquatic life; a public water supply; or commercial,
34 industrial, agricultural, recreational, or other reasonable-beneficial uses.
35

36 **Section 37-603.- Application**

37
38 The provisions of this Article shall apply to each user providing landscape irrigation from all
39 water resources within the boundaries of the Town of Windermere. The provisions of this Article
40 shall not apply to athletic play areas or agricultural operations (including nurseries), and
41 irrigation accomplished using reclaimed water or saltwater.
42

43 Declaration of a water shortage condition and/or water shortage emergency within all or parts of
44 the Town of Windermere by the District’s Governing Board or Executive Director shall
45 supersede this Article for the duration of the applicable declaration, in accordance with

1 Ordinance No. 2020-03.

2
3 Such a declaration would apply to all users using the water resource within the geographical
4 areas subject to a water shortage or water shortage emergency, as determined by the District,
5 whether from public or privately-owned water utility systems, private wells or private
6 connections with surface water bodies, but shall not apply to users using reclaimed water or
7 saltwater.

8
9 **Section 37-604. - Year-Round Permanent Landscape Irrigation Measures**

10
11 The following requirements or exceptions shall apply to all users, unless otherwise specified.

- 12
13 (1) Landscape irrigation shall be prohibited daily between the hours of 10:00 a.m. and 4:00
14 p.m., except as provided below.
15
16 (2) Irrigation of existing landscaping shall comply with the following provisions:
17
18 a. Even-numbered addresses and rights-of-way, or other locations without an address,
19 may accomplish necessary landscape irrigation only on Thursdays, and/or Sundays.
20
21 b. Odd-numbered addresses may accomplish necessary landscape irrigation only on
22 Wednesdays, and/or Saturdays.
23
24 (3) Irrigation of new landscaping shall comply with the following provisions:
25
26 a. New landscaping may be irrigated once on the day it is installed without regard to
27 the listed watering days and times. Irrigation of the soil immediately prior to the
28 installation of the new landscaping is allowed without regard to the listed watering
29 days and times.
30
31 b. A ninety day establishment period begins on the day new landscaping is installed.
32 The new landscaping shall be installed within a reasonable time from the date of
33 purchase, which may be demonstrated with a dated receipt or invoice.
34
35 c. Irrigation of new landscaping which has been in place for thirty days or less may be
36 accomplished on Monday, Tuesday, Wednesday, Thursday, Saturday, and/or
37 Sunday.
38
39 d. Irrigation of new landscaping which has been in place for thirty-one to ninety days
40 may be accomplished on Monday, Wednesday, Thursday, and/or Saturday.
41
42 e. Irrigation of the new landscaping is limited to areas containing only the new
43 landscaping. An entire zone of an irrigation system shall only be utilized for
44 landscape irrigation under this Article if the zone in question is for an area that
45 contains at least fifty percent new landscaping. If a zone contains less than fifty
46 percent new landscaping, or if the new landscaping is in an area that will not

1 typically be irrigated by an irrigation system, only the individual new plantings are
2 eligible for additional irrigation. Targeted watering may be accomplished by low
3 volume hand watering, or any appropriate method which isolates and waters only
4 the new landscaping.
5

6 (4) Irrigation systems may be operated outside restricted days and/or times for cleaning,
7 maintenance, and repair with an attendant on-site in the area being tested. Landscape
8 irrigation systems may routinely be operated for such purposes no more than once per
9 week, and the run time for any one test should not exceed ten minutes per zone.
10

11 (5) Landscape irrigation for the purpose of watering-in fertilizers, insecticides, pesticides,
12 fungicides, and herbicides, where such watering-in is required by the manufacturer, or by
13 federal, state or local law, shall be allowed under the following conditions:
14

- 15 a. Such watering-in shall be limited to one application in the absence of specific
16 alternative instructions from the manufacturer; and
17
- 18 b. Such watering-in shall be accomplished during normal watering days and times
19 listed above unless a professional licensed applicator has posted a temporary sign
20 containing the date of application and the date(s) of needed watering-in activity.
21

22 (6) Any plant material may be watered using low volume irrigation, micro-irrigation, low
23 volume hand watering methods, rain barrels, cisterns, or other similar rain-harvesting
24 devices without regard to the listed watering days or times.
25

26 (7) In addition to the specific listed measures, all wasteful and unnecessary water use is
27 prohibited.
28

29 (8) In the event the District imposes restrictions on landscape irrigation for new and existing
30 installations which are more restrictive than those imposed by this Article, such as under
31 the declaration of a water shortage or water shortage emergency, the more restrictive
32 regulations shall apply for the applicable duration of the more restrictive regulations.
33

34 (9) It shall be the duty of each user to keep informed as to the landscape irrigation
35 conservation measures within this Article, which affect each particular water use.
36

37 **Section 37-605. - Additional Measures.** Any user who purchases and installs an automatic
38 landscape irrigation system shall properly install, maintain, and operate technology that inhibits
39 or interrupts operation of the system during periods of sufficient moisture in accordance with
40 Section 373.62, Florida Statutes and this Article.
41

42 **Section 37-606. - Variance Relief**
43

44 (1) Any user affected by this Article may apply for a variance to the Town Manager, or their
45 designee. A variance from specific day or days identified in this Article may be granted if
46 strict application of the restrictions would lead to unreasonable or unfair result, provided

1 the applicant demonstrates with particularity that compliance with the schedule will result
2 in substantial economic, health, or other hardship on the applicant, or those the applicant
3 serves. Relief may be granted only upon a demonstration that such hardship exists, is
4 peculiar to the person or the affected property, is not self-imposed, and further
5 demonstrates that granting the variance would be consistent with the general intent and
6 purpose of this Article.
7

8 (2) Examples of circumstances for a variance include, but are not limited to:

- 9
- 10 a. Two (2) or more properties which share a common source of water;
 - 11
 - 12 b. A public or private water system experiencing or anticipating distribution problems;
 - 13
 - 14 c. A user maintains an irrigation system that uses soil moisture sensors or weather-
15 based irrigation controllers; or
 - 16
 - 17 d. Where a contiguous property is divided into different zones, a variance may be
18 granted so that each zone may be irrigated on days different than other zones of the
19 property.
20

21 However, no single zone may be irrigated more than two days per week.
22

23 (3) Upon receipt of an application for variance from the requirements of this Article, the
24 Town Manager or designee shall render a decision on the variance within ten business
25 days. Denials of variance relief may be appealed to the Town Council within ten business
26 days of the user's receipt of the notice of denial. Any notice of denial or subsequent
27 appeal shall be sent by certified mail, return receipt requested.
28

29 (4) A variance application and/or granting a variance under provisions of this Article shall
30 operate prospectively, shall not stay or abate the enforcement of the provisions of this
31 Article, and shall not affect any prior or pending enforcement actions against the affected
32 person that have been initiated pursuant to the provisions of this Article.
33

34 (5) If a variance is granted, the user shall be required to post a notice at each parcel to which
35 the variance pertains.
36

37 (6) A variance is invalid if it has expired or if the user or its agent violates the terms of the
38 variance.
39

40 (7) Recognition of District Variances. The Town of Windermere recognizes and adopts all
41 irrigation variances or waivers issued by the District.
42

43 **Section 37-607. – Enforcement.** Every law enforcement official having jurisdiction in the area
44 governed by this Article shall, in connection with all other duties imposed by law, diligently
45 enforce the provisions of this Article by issuance of a citation, summons, or notice to appear in
46 county court, or by filing an action in civil court for injunctive relief. The Town Manger may

1 also delegate enforcement responsibility for this Article to other departments of the Town
2 government in the service areas governed by this Article, in accordance with state and local law.

3
4 **Section 37-608. – Penalties.** Any user who violates any provision of this Article shall also be
5 subject to the Town of Windermere remedies as authorized by Section 5.03.04 of Article V as
6 may be amended, or as otherwise then allowed by law.

7
8 (1) Wasteful and unnecessary water use violations that are irreparable or irreversible in
9 nature which shall include without limitations, a broken irrigation system and/or water
10 pipe that allows water to flow from a broken sprinkler head, outdoor faucet, or other
11 malfunctioning plumbing or irrigation system component, or other water system
12 malfunction that continuously disperses a high quantity of water, shall be subject to code
13 enforcement special magistrate actions as provided in the Town’s Code of Ordinance and
14 Land Development Code.

15
16 (2) Each day a violation occurs is a separate offense. The Town of Windermere, in addition
17 to code enforcement special magistrate actions or criminal sanctions, may take any other
18 appropriate legal action, including, emergency injunctive action.

19
20 (3) Notice of alleged violations shall be provided to the alleged violator by a local law
21 enforcement official(s), code inspector or any other person designated by the Town
22 Manager, by certified mail, return receipt requested, to the owner of the property in
23 question at the address listed with the tax collector's office for tax notices, or property
24 appraiser’s records. If notice is provided by certified mail and returned unclaimed or
25 refused, notice may be provided by posting same in a conspicuous location at the subject
26 property.

27
28 **SECTION 3. CODIFICATION.** The provisions of this Ordinance shall become and be
29 made a part of the Town’s Code of Ordinances and that the sections of this Ordinance may be
30 renumbered or re-lettered and the word “ordinance” may be changed to “section,” “article,” or
31 such other appropriate word or phrase to accomplish such intentions.

32 **SECTION 4. REPEAL OF CONFLICTING ORDINANCES.** Any ordinances or
33 regulations in conflict with this Ordinance are hereby repealed to the extent of the conflict in
34 favor of this Ordinance.

35 **SECTION 5. SEVERABILITY.** If any Section, subsection, sentence, clause, or phrase of
36 this Ordinance is held to be invalid or unconstitutional, by any court of competent jurisdiction,
37 then said holding shall in no way affect the validity of the remaining portions of this Ordinance.

1 **SECTION 6.** **EFFECTIVE DATE.** This Ordinance shall take effect immediately upon
2 adoption.

3 **APPROVED AND ADOPTED** by the Town Council of the Town of Windermere on
4 the ____ day of _____, 2020.

5 Town of Windermere, Florida
6 By: Town Council

7
8
9 By: _____
10 Jim O'Brien, Mayor

11
12
13 Attest:

14
15
16 _____
17 Dorothy Burkhalter, MMC, FCRM
18 Town Clerk

19
20 First Reading: June 9, 2020
21 Advertised:
22 Second Reading:
23

THE TOWN OF
Windermere



EXECUTIVE SUMMARY

SUBJECT: Windermere Wine & Dine Donation to Legacy Foundation Leadership for
"Sunshine Project" \$19,000

REQUESTED ACTION: Staff Recommends Retro Active Approval

Work Session (Report Only) **DATE OF MEETING:** 7/14/20
 Regular Meeting Special Meeting

CONTRACT: N/A Vendor/Entity: _____
Effective Date: _____ Termination Date: _____
Managing Division / Dept: _____

BUDGET IMPACT: \$19,000
 Annual **FUNDING SOURCE:** General Fund: Windermere Wine & Dine
 Capital **EXPENDITURE ACCOUNT:** General Fund: Windermere Wine & Dine
 N/A

HISTORY/FACTS/ISSUES:

Mayor & Council,

Town Staff would ask for retro active approval of the above quote proposed by the Windermere Wine & Dine Committee. The intent was to have this up for consideration at this meeting, however OCPS required that 50% of the cost be deposited prior to July 8, 2020 in order for the project to proceed.



Mr. Douglas Guthrie, Principal
Windermere High School
5523 Winter Garden Vineland Road
Windermere, FL 34786

Dear Mr. Guthrie,

It was a pleasure meeting with you and your Legacy Foundation leadership recently to discuss the needs of Windermere High School.

The mission of Windermere Wine & Dine's committee is to give back to our local community and our larger community, Central Florida, in ways that enhances the quality of life for our families and children.

We feel your 'Sunshade Project' meets those criteria to give your students a safe place to enjoy their lunch and a little respite away from the stresses of student life. We also realize the budget constraints that Orange County Public Schools has and that there are not enough dollars to do everything we would like for our children's education.

Windermere Wine & Dine is very pleased to inform you we would like to fully fund your 'Sunshade Project' with a grant in the amount of \$19,000.00.

Once the school has formal approval from OCPS, a signed B-14, and a signed contract from an approved vendor, we will issue a check made out to Windermere High School.

Principals and teachers are our unsung heroes.

Thank you for your dedication and hard work guiding our future generation.

Warm Regards,

CT Allen, Founder & Event Chair
Windermere Wine & Dine



Date: 8/22/2019
 Quoted By: Playtopia Direct
 For: Wolverine Legacy Fund
 Contact: David Terry
 City, State, Zip:
 Email: wlelegacypres@aol.com
 Phone: 315-450-0518
 Fax:
 Other:

Playtopia, Inc.
 FOB /Ship to: 217 Murphy Ave.
 Ferguson, KY 42533
 www.playtopia.com
 PH:844.543.7529

Shaded 19,000

Windermere High School			MSRP	Extended
Payment Terms: 50% with order. Outstanding balance is due 30 days from date of install.				
Item Number	QTY	Description		
RD244008IG	1	24' x 40 - 8' Height -IG install - w/glide release - Hip rectangular shade	\$7,612.50	\$7,612.50
ENGINEER	1	Signed & Sealed Engineered Drawings for shade	\$675.00	\$675.00
INSTALLATION	1	Installation of the above	\$9,600.00	\$9,600.00
PERMIT	1	Price to permit project: actual permit fees determined by municipality and billed on final invoice.	\$750.00	\$750.00
166-1281	20	48" Expanded Metal Octagonal Table - frame/black	\$805.00	\$16,100.00
			SUBTOTAL	\$34,737.50
			TAX	EXEMPT
			FREIGHT	\$2,365.00
			DISCOUNT	(\$500.00)
				\$36,602.50

Payment Terms: 50% with order. Outstanding balance due 30 days from install.

Pricing: Firm for 30 days from date on this quotation.

Taxes: State and local taxes added unless exemption certificate is provided.

Exclusions: Unless previously discussed and agreed to by all parties. Sitework and landscaping; security of equipment (onsite at night); drainage.

Permits are not included in cost, unless specifically listed. Adding permits to job will increase it's completion length (due to permit process at municipality). It is expected that owner will provide approved site plans of the area for the permit office if required, and will help and assist in securing of all required approvals before assembly of equipment can begin.

Installation Terms: Installation shall be by Certified Installer. If playground equipment, installer will be CPSI Certified.

Playtopia will be responsible scheduling and coordination with the installer, unless otherwise discussed. Site should be level and allow for unrestricted access of trucks and machinery. Customer shall be responsible for unknown conditions such as buried utilities, tree stumps, rock, or any concealed materials or conditions that may result in additional labor costs. Customer will be billed hourly or per job for any additional costs that were not previously included.

Freight Quotes: Are specific to the zip code specified. Changes made to the destination will likely affect the cost of the freight charges and the final balance will be adjusted accordingly. Playtopia will be happy to supply owner with a 2-day notice of the time your shipment will be ready so they may independently arrange shipping and pick up with a freight carrier of their choice. However, equipment not picked up within 5 days will be handled on a hold and bill basis. LTL rates are valid for 24 hours and dedicated rates are valid for 30 days from dated of freight quote.

Quotation prepared by: Marlee Jacquette

To accept this quotation, sign here and return: _____

THANK YOU FOR YOUR BUSINESS!

THE TOWN OF
Windermere



EXECUTIVE SUMMARY

SUBJECT: **Computer Business Consultants: Town of Windermere Temporary Move: Quote # CP 000464-1**

REQUESTED ACTION: **Staff Recommends Retro Approval**

Work Session (Report Only) **DATE OF MEETING:** 7/14/20
 Regular Meeting Special Meeting

CONTRACT: N/A Vendor/Entity: _____
Effective Date: _____ Termination Date: _____
Managing Division / Dept: _____

BUDGET IMPACT: \$9,570 & \$7,755 Total \$17,325
 Annual **FUNDING SOURCE:** General Fund
 Capital **EXPENDITURE ACCOUNT:** _____
 N/A

HISTORY/FACTS/ISSUES:

Mayor & Council,

Town Staff would request retro active approval of the above-mentioned quote. Computer Business (CB) has been the Town's IT Consultants for over 3 years. CB reviewed the temporary facility site with HJ High, John Fitzgibbon (Town Consultant) and Town Staff. The quote was approved in order to stay on schedule for the move of both PD and Town Admin to the temporary facilities.

Town of Windermere Temporary Move

Quote # CP-000464-1

Prepared for:

Town of Windermere

Prepared by:

Clinton A. Pownall

Tuesday, June 16, 2020

Town of Windermere
Robert Smith
614 Main Street
Windermere, FL 34786
rsmith@town.windermere.fl.us

Dear Robert,

Attached is our pricing for the Town of Windermere IT equipment move and ISP setup. The Scope of Work outlines the services specified in this document. If there are requests outside the scope you will be notified ahead of time to obtain approval.

I will call you to go over the proposal. In the interim if you have any questions please feel free to contact me.

Sincerely,



Clinton A. Pownall

Computer Business Consultants, Inc.

Services	Qty
<p>Services to be Performed</p> <ol style="list-style-type: none"> Coordinate with the Town of Windermere's Internet providers to setup Internet at the 2 temporary locations. <ul style="list-style-type: none"> Coordinate with current Fiber provider, Spectrum, to move Internet connections for both Admin and the Police Department or setup new service for parallel connections. Provide a seamless cut-over with minimal downtime. Setup Internet connectivity at temporary locations. Re-establish secure connections from Police Department's temporary location to FDLE and Winter Garden. <p>Pricing from Computer Business does not include ISP transition or setup costs. Computer Business will provide all ISP cost options to Town Administration for review.</p> Move essential networking equipment, firewall, and servers for both Admin & the Police Department. <ul style="list-style-type: none"> Take inventory of all listed IT equipment. Gracefully shutdown devices, dismount items from existing location, secure for transport. Transport items to temporary locations. <p>Does not include physical moving of End-User Workstations, Printers, Security Systems, DVR/Camera Systems, or Voice/Telephones Systems.</p> Setup computers and IT infrastructure to Admin and Police Department's temporary locations. <ul style="list-style-type: none"> Networking Equipment WiFi Firewall VPN Connectivity Servers Desktop/Laptop Workstations Printers <p>Does not include installation of Voice/Telephones, Security Systems, and DVR & Camera Systems.</p> 	<p>1</p>

Pricing PD	Price	Qty	Ext. Price
<p>Police Department</p> <p>1. Coordinate with the Town of Windermere's Internet providers to setup Internet at temporary location.</p> <p>Pricing from Computer Business does not include ISP transition or setup costs. Computer Business will provide all ISP cost options to Town Administration for review.</p> <p>Labor:</p> <ul style="list-style-type: none"> - Coordinate with ISP to move or setup new Internet connectivity. - Provide a seamless cut-over with minimal downtime. - Setup Internet connectivity at temporary location. <p>2. Move & setup essential networking equipment, firewall, and servers for temporary location.</p> <p>Equipment to move: Networking Equipment, Firewall, Servers, Server Rack. Does not include End-User Workstations, Printers, Security Systems, DVR/Camera Systems, or Voice/Telephones Systems.</p> <p>Equipment to setup: Networking Equipment, Firewall, VPN Connectivity, Servers, Desktop/Laptop Workstations, Printers. Does not include installation of Voice/Telephones, Security Systems, and DVR & Camera Systems.</p> <p>Labor:</p> <ul style="list-style-type: none"> - Site Preparation - Disassemble Server Room - Firewall, Server, NAS, Switch, UPS, FinderServer, Rack - Move of Server & Network Equipment- - Reassemble Equipment - FDLE Secure Connection Reconfiguration - Connection of Server and Network - Winter Garden Secure Connection Reconfiguration - Finder Server Configuration - Connectivity of workstations - Update Documentation - Testing and Follow-up <p>3. Miscellaneous Network Patch CAT6 Cables</p>	\$9,570.00	1	\$9,570.00
		Subtotal:	\$9,570.00

Pricing Admin	Price	Qty	Ext. Price
<p>Administration</p> <p>1. Coordinate with the Town of Windermere's Internet providers to setup Internet at temporary location.</p> <p>Pricing from Computer Business does not include ISP transition or setup costs. Computer Business will provide all ISP cost options to Town Administration for review.</p> <p>Labor:</p> <ul style="list-style-type: none"> - Coordinate with ISP to move or setup new Internet connectivity. - Provide a seamless cut-over with minimal downtime. - Setup Internet connectivity at temporary location. <p>2. Move & setup essential networking equipment, firewall, and servers for temporary location.</p> <p>Equipment to move: Networking Equipment, Firewall, Servers, WiFi. Does not include End-User Workstations, Printers, Security Systems, DVR/Camera Systems, or Voice/Telephones Systems.</p> <p>Equipment to setup: Networking Equipment, Firewall, VPN Connectivity, Servers, Desktop/Laptop Workstations, WiFi, and Printers. Does not include installation of Voice/Telephones, Security Systems, and DVR & Camera Systems.</p> <p>Labor:</p> <ul style="list-style-type: none"> - Site Preparation - Disassemble Server - Move of Server & Network Equipment - Firewall, Server, NAS, Switch, UPS, WiFi APs/Controller - Reassemble Equipment - Move of Server & Network Equipment - Connection of Server and Network - Move & Setup WiFi - Connectivity of workstations - Update Documentation - Testing and Follow-up <p>3. Miscellaneous Network Patch CAT6 Cables</p>	\$7,755.00	1	\$7,755.00
	Subtotal:		\$7,755.00

Town of Windermere Temporary Move



Prepared by:

Computer Business Consultants, Inc.

Clinton A. Pownall

407-654-5600

Clinton@ComputerBusiness.com

Prepared for:

Town of Windermere

614 Main Street

Windermere, FL 34786

Robert Smith

(407) 876-2563

rsmith@town.windermere.fl.us

Quote Information:

Quote #: CP-000464

Version: 1

Date: 06/16/2020

Expiration: 07/07/2020

One-Time Charges	Amount
Pricing PD	\$9,570.00
Pricing Admin	\$7,755.00
Total:	\$17,325.00

The attached Terms of Agreement shall become a binding Agreement ("Agreement") by and between **Computer Business Consultants, Inc.**, a Florida Corporation, (hereinafter "Computer Business") of 940 West Oakland Ave, Suite A-8, Oakland FL 34787 and **Town of Windermere** (hereinafter "Client") of 614 Main Street , Windermere, FL 34786 upon execution and delivery of the entire agreement as provided in the attached Terms of Agreement.

The parties below hereby acknowledge that they have read this Agreement, and understand it, and that this Agreement is the complete and exclusive statement of Agreement between the parties and that it supersedes all prior proposals and agreements, oral and/or written, and any other communications between the parties relating to the subject matter of this agreement, and agree to bind by its terms and conditions.

The effective date of this Agreement shall be upon execution hereof by Client and acceptance hereof by an authorized representative of Computer Business.

Computer Business Consultants, Inc.

Town of Windermere

Signature: 

Name: Clinton Pownall

Date: 06/16/2020

Signature: 

Name: Robert Smith

Initials: RS

Date: 6/16/2020 1:20:11 PM

IP Address: 67.9.96.130

Email Address: rsmith@town.windermere.fl.us

PO Number:

Terms of Agreement

- A. INTRODUCTION:** This General Terms of Agreement, by Computer Business Consultants, Inc, of 940 West Oakland Ave, Suite A-8, Oakland, FL 34787, and your organization, ("Client"), is effective on the date set forth in the referencing Agreement Proposal and specifies the terms and conditions agreed between the Parties as a foundation for their relationship.
- B. DEFINITIONS:**
1. "Agreement" means this Master Agreement, the applicable Addendum and applicable Schedule, and any document incorporated expressly therein by reference.
 2. "Parties" means individually and or collectively Computer Business and/or the Client.
 3. "Schedule" means a signed mutually agreed ordering document such as a Computer Business order quote or statement of work for the specific Computer Business Services.
 4. "Term" means, with respect to each Schedule, the period during which the Computer Business Service is provided, licensed or granted.
- C. CONFIDENTIALITY:** Client recognizes as part of the normal services by Computer Business, Computer Business will, from time-to-time, obtain Client privileged, confidential, and processes, ("Information"), which is valuable, special, and unique to Client. In consideration for the disclosure of such Information, Computer Business agree it will not at any time or in any matter, either directly, or indirectly, use any Client Information for Computer Business' own benefit, or divulge, disclose, or communicate, in any manner, any Information to any third party, without prior written consent of Client. Computer Business will protect and treat all Information as confidential.
- D. CLIENT RESPONSIBILITIES**
1. **WORK SPACE ALLOCATION:** Client will provide Computer Business with working space and facilities, including but not limited to heat, light, ventilation, electric current, electrical outlets, and telephone lines for use by Computer Business service personnel and with such storage space for spare parts and service equipment as may be reasonably required. Client will provide such facilities free of charge within a reasonable distance to the equipment.
 2. **SUPPORT COMMUNICATIONS MEDIA AND EQUIPMENT:** Client will be responsible and pay for the procurement, installation, and maintenance of all non-Computer Business communications media and equipment, including but not limited to the Internet expense for remote access.
 3. **ONSITE AND REMOTE ACCESS:** Client agrees to grant access to Computer Business at all times. Client will provide Computer Business, at no charge, access to and use of any covered equipment and supporting peripheral devices which in Computer Business opinion are necessary to enable the performance of service under this Agreement. Computer Business may access Client equipment either remotely via the Internet, a modem, or when onsite. Client shall provide the ability of Computer Business to access either remotely or onsite and acknowledges that failure to do so by Client will prevent Computer Business from being able to fulfill its obligations under this agreement.
- To assure the Client a high level of service, the following restrictions apply to the use of the remote access setup by Computer Business for support:
1. If remote Internet access is used the supported remote access equipment must be accessible through the Internet at all times. Client will maintain a constant Internet connection and will notify Computer Business in the event the Client Internet connection is no longer present.
- E. INDEMNITY:** Computer Business shall remain forever exempt from any claims, losses, injuries or damages incurred and can only be held liable only when such claims occur as a result of negligence or willful misconduct of Computer Business or one of its employees.
- F. SERVICE HOURS:** Computer Business will receive the Client Problem Reporting via telephone from 8:00 a.m. to 5:00 p.m. Eastern Standard Time, Monday through Friday, excluding holidays, and will provide on-site service from 8:00 a.m. to 5:00 p.m. EST, Monday through Friday, excluding holidays. Extended service is available at overtime rates.
- G. DAMAGES LIMITATION:** Client agrees that Computer Business shall not be liable for any damages or losses sustained by client for loss of business, lost opportunities, or other damages whether consequential, special, indirect, direct or incidental as a result of a violation of any term or condition of this agreement by Computer Business.
- H. EMPLOYEES AND REPRESENTATIVES:** Client will not, without the prior written consent of Computer Business, hire or otherwise engage a person who is then, or who had at any time during the previous twelve (12) months been, an employee of, independent contractor for or associated with Computer Business.
- I. OUTSIDE CONTRACTORS:** Computer Business, at its expense, may employ outside contractors as it deems appropriate to carry out this agreement. Computer Business will be responsible for paying such outside contractors, expenses, taxes, and insurance attributable to such outside contractors. Computer Business shall be responsible for the actions of such contractors subject to Section E under this agreement.
- J. OTHER CLIENTS:** Computer Business retains the right to perform services for other clients.
- K. COURTS:** Venue for any action to enforce this Agreement shall be in Orange County, Florida.
- L. ATTORNEY'S FEES:** In the event of litigation arising out of any of the terms or provisions of this Agreement, the prevailing party shall be entitled to recover all costs and expenses incurred, including reasonable attorney's fees at all trial and at all appellate levels.

- M. FEES and CHARGES:** Client agrees to pay Computer Business the fees on the commencement of this agreement and thereafter to pay Computer Business in accordance with the frequency of the fees on the first day of fees are due. After thirty (30) days an 18% finance charge will be applied to any outstanding balances.
- N. TAXES:** Client agrees to pay any and all taxes, duties and similar charges, exclusive of Computer Business net income taxes, now in force or enacted in the future, that are levied upon the goods or services Computer Business provides under this Agreement. If Computer Business is required to collect and pay any such taxes during the term of this Agreement or afterwards, then the Client agrees that Computer Business may increase its charges to the Client by such amount and Client agrees to pay such invoices in full. If applicable, Client will provide to Computer Business documentation clearly defining its tax exempt status.
- O. NOTICES:** All notices required to be given by either party under this Agreement will be in writing, address in the beginning of this Agreement, or using established email addresses, or at such address as either party may from time to time have designated by written notice to the other. All notices shall be deemed to have been given on the date such notice is sent to the other party.
- P. USE OF NAME:** Computer Business and Client herein agree to permit the occasional use of each other's Name as well as reference to this agreement in their respective promotional and public relations efforts. All such use will be only in a manner positive to the other party.
- Q. EXTRAORDINARY CIRCUMSTANCES:** Computer Business shall not be responsible for failure to fulfill, or delay in fulfilling its obligations under this Agreement due to causes beyond its control.
- R. INTEREST:** Any sums not paid when due under this agreement shall accrue the highest interest rate allowable by law, except as otherwise stated in this agreement.
- S. INVALID PROVISIONS:** In case one or more of the provisions contained in this Agreement shall be unenforceable in any respect under any applicable statute, then such provision shall be considered inoperable to the extent of such enforceability and the remainder of this Agreement shall continue in full force and effect. The parties hereto agree to replace any such invalid or unenforceable provision with a new provision which has the most nearly similar permissible economic or other effect.
- T. CONFLICTING PROVISIONS:** Revisions and interlineations initialed by both parties, shall supersede any pre-printed provisions of this Agreement. Any provision of the Proposal is inconsistent with the pre-printed provisions of this Agreement, the Proposal shall control.
- U. ASSIGNMENT:** Client may transfer to another party all of Client's rights and obligations under this Agreement, but only with the written consent of an authorized representative of Computer Business, and if the party to whom Client transfers such rights and obligations agrees in advance to the terms and conditions of this Agreement, executes a new legal binding Agreement, constructed at the cost incurred by Client, and remits the Agreement to Computer Business. Client is solely responsible for fees incurred in the construction of the new Agreement. Notwithstanding the foregoing, Client will not transfer Client's rights and obligations under this Agreement to a person or entity located in any country which U.S. copyrights are not enforceable. Any purported transfer except as provided for herein shall be null and void.
- V. MODIFICATIONS:** No modification or amendment of this Agreement will be binding unless in writing and duly executed by the Client.
- W. REIMBURSEMENT OF TRAVEL EXPENSES:** If applicable, all expenses such as transportation, lodging, meals etc. will be billed at the per diem rate of \$280 per day. Destination and return travel expenses, such as airfare, will be at actual costs plus the hourly rate during travel. **A travel expense estimate will be prepared and quoted prior to travel. This estimate is due prior to travel commences.** Actual travel expenses will be reconciled within 14 days of completion of installation, at which time a reimbursement check or an invoice for any additional funds owed will be sent by Computer Business to Client.
- X. INTEGRATION:** This Agreement is the entire Agreement of the parties and supersedes all prior or contemporaneous understandings and agreements, whether oral or written, with respect to the matters, which are the subject of this Agreement. There are no understandings, representations or inducements, oral or written, relied upon by either party in entering into this agreement other than those expressly set forth herein. Computer Business, except as set forth herein, makes no guarantee, representation or warranty including, without limitation, any implied warranty of merchantability or fitness for purpose. Computer Business is released for all loss, damage or expense which may occur prior to, contemporaneously with or subsequent to the execution of this agreement due to the improper operation or non-operation of the Equipment and should there arise any liability on the part of the Company for economic losses, personal injury or property damage which is in connection with, arises out of war from, results from, is related to, or is a consequence of the active or passive sole, joint or several negligence of any kind or degree of Computer Business including, without limitation, acts, errors or omissions which occur prior to, contemporaneously with or subsequent to the execution of this agreement, or breach of this agreement, or any claim brought in product or strict liability, subrogation, contribution or indemnification, whether in contract, tort or equity, including without limitation, any general, direct, special, incidental, exemplary, punitive, statutory or consequential damages, irrespective of cause, such liability shall be limited to the maximum sum of \$1000 and liability shall be exclusive of such amendment, change or modification is sought.

Town of Windermere

614 Main Street Windermere, FL 34786
Office: (407) 876-2563 Fax: (407) 876-0103

Mayor

JIM O'BRIEN



Town Manager
ROBERT SMITH

Clerk
DOROTHY BURKHALTER

TO: Mayor and Town Council

FROM: Brad Cornelius, AICP, Contracted Town Planner

DATE: June 8, 2020

RE: Proposed Town Event Pavilion

The following information regarding the proposed Town Event Pavilion was provided by Town Councilmember Chris Sapp.

The Downtown Business Committee (DBC) has discussed for many years a permanent structure to support the events that they host on an annual and monthly basis. These events include 12 food trucks nights, a growing craft beer fest, movie nights, and at the time, an art festival. There was also discussion about doing events like a "Symphony Under the Stars" or similar events and further expansion of current events. Thousands of dollars are spent every year on staging and equipment.

Parallel to these conversations, Windermere Rotary approached the Town about donating a gazebo to the Town of Windermere for Rotary's 50th Anniversary. As the Windermere Rotary host and participate in many events throughout the year by serving food, their idea included a concession stand. Furthermore, some of their events have use for a stage.

In efforts for the DBC and the Windermere Rotary to work together to come up with a mutually benefiting (including other committees and residents) design, a Windermere Pavilion Committee was created with the following members:

- John Fitzgibbon (Chair): Long Range Planning
- Stephen Withers (Secretary): Resident
- Scott Brown: Public Works
- Mathew Matin: Downtown Business Committee
- Byron Sutton: Rotary Club of Windermere
- Chris Sapp: Town Council

This committee was tasked with creating a multi-use event pavilion concept that would not only support Rotary and DBC needs, but give valuable use to other events, committees and residents. The committee approved program is as follows:

- Functional “stage” space for events.
- Fits with the Town Masterplan for Town Hall site
- Replace existing “Community” Room’s toilets. (Community Building needs to be replaced,)
- Pavilion with three sides to project sound away from houses to west.
- Possible enclosed forth side.
- Concession stand to serve Town events.
- Storage to accompany building.

This will be a capital improvement project but will rely on donated funds and not rely on Town public funds.

The attached RFP was subsequently sent out, and the committee received three (3) written proposals. One of the proposals was by HuntonBrady (HB), which included a competitive resume, but priced at \$0.00. In lieu of an actual cost, (\$5,000-\$6,500), the Town would include a plaque somewhere on the building recognizing Fred Prior. The committee and Town Council ultimately approved HB's proposal.

HB came up with several designs and floor plans. The committee narrowed it down to 2 designs and 1 floor plan. The floor plan was also approved by building/zoning in regard to meeting code (restrooms and ADA). The difference between the 2 exterior elevations is a roof design change with Option 1 being a scaled down roof line and a likely lower cost for construction.

The options were only sent to the Long Range Planning Committee (LRP) for review, as the DBC is currently on a hiatus. LRP recommended approval of the floor plan and Option 2. Option 2 was chosen as the LRP preferred the roof-line design and the Town should not "settle" due to cost.

Before going to a public workshop, Town Council directed the design to go in front of the DRB for comment and/or recommendation.

The DRB reviewed the proposed design for the Town Event Pavilion at their May 19, 2020, meeting. The DRB recommended approval of the Town Event Pavilion with the following conditions:

1. Approve Option 2 at the location proposed in the plan; and
2. A conceptual cost estimate prepared prior to moving forward with the project.

The motion with conditions passed by a vote of 5-1. The draft meeting minutes of the May 19, 2020, DRB meeting is attached for the Town Council’s information.

TOWN OF WINDERMERE

Development Review Board Meeting Minutes

May 19, 2020

Present were Board Members; Norma Sutton, William Yeager, Stephen Withers, Molly Rose, Jennifer Roper, and Peter Fleck. Town Manager Robert Smith, Liaison Bill Martini, Town Planner Brad Cornelius, and Town Clerk Dorothy Burkhalter were also present. Chair Frank Chase was absent.

Other attendees were Council member Chris Sapp, and John Fitzgibbon

Acting Chair Withers called the meeting to order at 6:30pm. He then led everyone in the Pledge of Allegiance.

1. OPEN FORUM/PUBLIC COMMENTS:

No public comments were made.

2. NEW BUSINESS:

a. MINUTES:

i. February 18, 2020 Meeting Minutes

Member Roper made a motion to approve the February 18, 2020 meeting minutes. Member Yeager seconded the motion. Sutton – aye, Yeager – aye, Withers – aye, Roper – aye, Rose – aye, and Fleck – aye. Motion carried 6-0. Discussion was made regarding Acting Chair Withers reading into the record Form 8B Conflict Voting from the previous meeting in February regarding the Town facilities. Clerk Burkhalter stated that due to the current event and this being the first virtual meeting, Acting Chair Withers could read the statement at the next DRB meeting.

b. GENERAL ITEMS FOR CONSIDERATION:

i. Proposed Town Event Pavilion

Acting Chair Withers turned the floor over to Mr. Brad Cornelius and Mr. John Fitzgibbon. Mr. Fitzgibbon deferred to Council member Chris Sapp for a brief presentation. Member Sapp explained that prior to being on the Town Council he was the Chair of the Downtown Business Committee for a number of years. He further explained that while he was on that Committee, discussion was made regarding a pavilion or a type of a structure to assist the Town with all the functions/events that go on. Member Sapp then commented on the proposed location and functionalities of the proposed pavilion. He further explained how this idea and sub-committee has come forward. Member Sapp then turned the floor over to Mr. Fitzgibbon. Mr. Fitzgibbon reviewed the two concepts and proposed floor plans/designs. He then opened the floor for discussion. Discussion was made regarding the height, length, elevations, square footage, size, cost, location, uses, materials being used, funding sources, trees, the basketball courts, parking and the overall style. Acting Chair Withers stated that the Downtown Business Committee and the Windermere Rotary will be handling the funding. Mr. Fitzgibbon commented on the step by step phase/process. Member Sutton stated that Mr. Sutton has been working with and will continue to work with Hunton Brady which their work has been

TOWN OF WINDERMERE

Development Review Board Meeting Minutes

May 19, 2020

done pro-bono. Manager Smith that a recommendation from this Board to the Town Council is needed. Member Sapp commented that the Long-Range Planning Committee as reviewed the concepts as well. Mr. Fitzgibbon commented that one concept is cost effective and one is more enhanced. Member Roper stated that she has concerns with the pavilion style and the need for matching the town square look. Member Rose stated she has concern with the budget. She then stated that HVAC is needed in the restrooms. Member Roper stated that electrical is going to be needed as well. Mr. Fitzgibbon stated that an option needed to be selected so that further research can be done if the project will be viable or not. Member Roper stated that she like the concept but it needs to match the square. Member Yeager questioned the timeline. Manager Smith stated that the pavilion would not be constructed until the new town facilities are built and the temporary structure is removed. Further discussion followed. Member Yeager stated for the record, "I think from reading the letter that Brad sent out, the first rendering that's shown in our packages is actually is option two which was recommended by the Long-Range Planning, not one." Mr. Fitzgibbon stated that Member Yeager was correct. Member Fleck questioned the width of the roof and what it is made out of. Mr. Fitzgibbon stated this is a concept and details will come later. Mr. Fleck stated that he is concerned with the wind load and the current designs. He stated that maintenance and structural components are a concern. Member Fleck made a motion to recommend approval of the option 2. Member Sutton seconded the motion. Member Sapp stated that the general location needed to be added in the motion. Member Fleck amended his motion to include recommending approval of the current location on the proposed plan. Member Rose seconded the amendment. Discussion of cost estimate was made. Member Rose modified the original motion to recommend that a conceptual estimate be provided before they do anything further on this project. Member Roper seconded the motion. Some discussion followed. Member Roper stated that her vote is not due to the idea or location, it is a concern of overpowering the Town Hall and not being in the same style. Roll call vote was as follows: Sutton – aye, Yeager - aye, Wither – aye, Roper – no, Rose – aye, and Fleck – aye. Motion carried 5-1.

4. ADJOURN:

Member Roper made a motion to adjourn. Member Rose seconded the motion. All were in favor

The meeting adjourned at 7:23pm.

Dorothy Burkhalter, Town Clerk

Frank Chase, Chair

Windermere Pavilion Committee

February 12, 2019

Request for Proposal for Design Service

Town of Windermere, Events Pavilion

Proposal for concept package including concept location plan, elevation and colored rendering. This package will be used for gaining Town approvals and for Fund Raising by the Rotary Club of Windermere and the Downtown Business Committee.

Scope of Work

Build an open-air pavilion for the citizens of Windermere

Function of structure to house outdoor events including:

- Concerts and other music performances
- Outdoor presentation
- Movie Night back drop
- Concession Stand to serve Town events
- Public Toilets
- Storage

Location on Town Hall Square (Main Street between 5th and 6th Avenues) to replace "Community Room" in north west corner of square facing Town Hall and Main Street utilizing the existing basketball courts for audience seating.

Size to be determined but anticipating a stage to host 40 musicians.

Other Considerations include preservation of as many existing trees as possible and location of septic field. The character should fit with the residential scale of the Town and be compatible with the architecture of the Town Hall and Library which also occupy the square.

Scope of Service

Provide a concept design for the pavilion to meet the functions and considerations listed above.

Scope of service to be completed in two phases.

1. Phase One shall be to provide a plan and elevation(s) to the Windermere Pavilion Committee, Town Council and Town Staff for the purposes of reviewing the potential look and feel of the pavilion and to obtain estimated cost of the structure.

Windermere Pavilion Committee

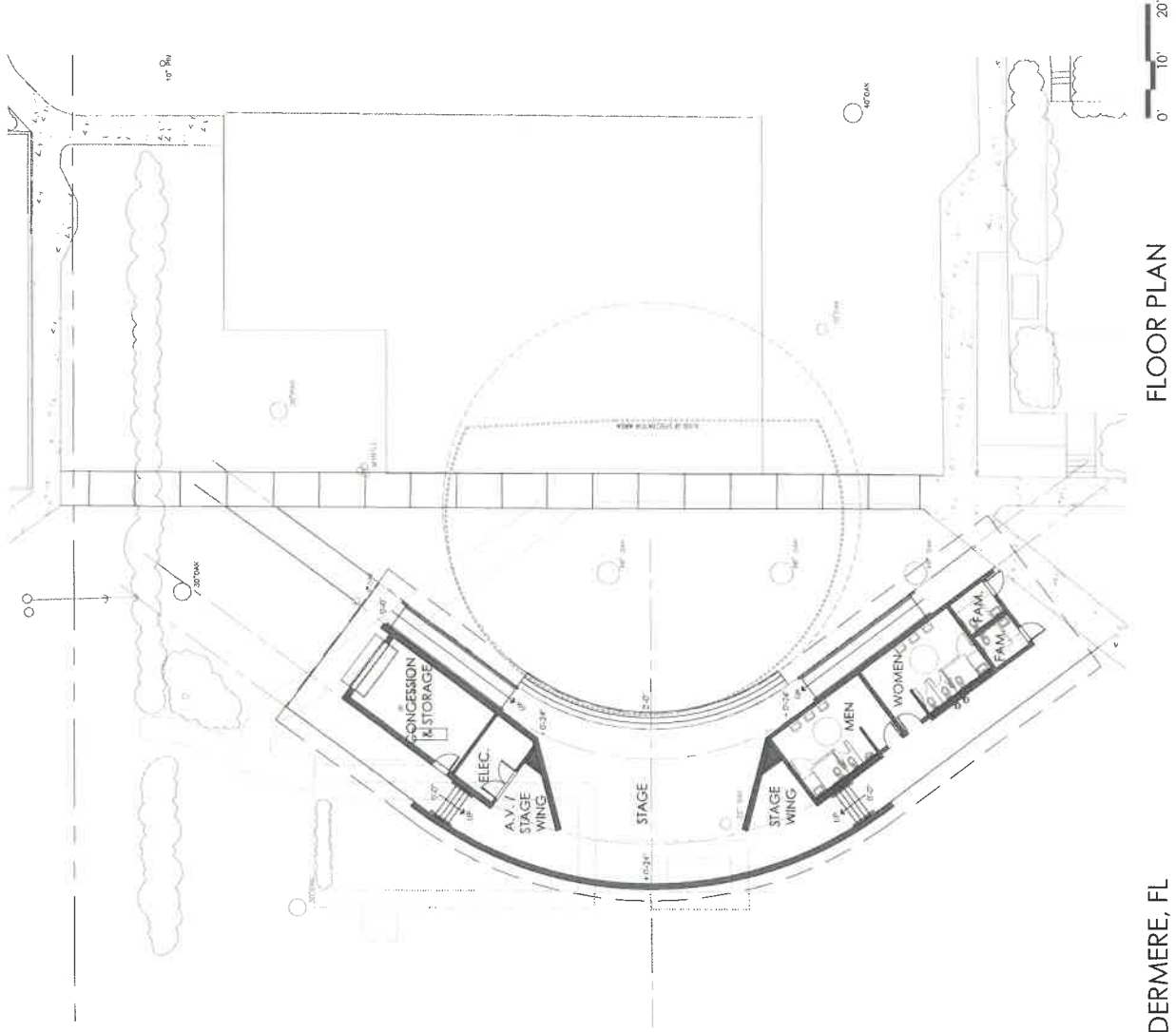
2. Phase Two shall be to have prepared a colored rendering to present to the Town Citizens for approval and to be used in fund raising efforts.

Schedule to be determined however fund raising efforts are anticipated to start in June of 2019.

Committee

John Fitzgibbon, Chair jpfds@cfl.rr.com 407-876-0129
Stephen Withers, Secretary sewarch@hotmail.com 321-945-2501
Chris Sapp, Town Council csapp@town.windermere.fl.us 407-574-1002
Robert Smith, Town Manager rsmith@town.windermere.fl.us 407-876-2563
Scott Brown, Director of Public Works sbrown@town.windermere.fl.us
Matthew Matin, DBC MattSellsOrlando@gmail.com 321-948-5857
Byron Sutton, Rotary Club of Windermere byronksutton@outlook.com
407-257-1806

Prepared by Stephen Withers and John Fitzgibbon.



FLOOR PLAN



3D VIEW - OPTION 2



WINDERMERE PAVILION | WINDERMERE, FL

10.30.19



3D VIEW



WINDERMERE PAVILION | WINDERMERE, FL

02.27.20

TOWN OF WINDERMERE

Town Council Meeting Minutes
(3rd Virtual Meeting Covid-19)

June 9, 2020

CALL TO ORDER:

Present were Mayor Jim O'Brien, Council Members Bill Martini, Bob McKinley, Andy Williams, Chris Sapp, and Liz Andert. Town Attorney Heather Ramos, Town Manager Robert Smith, Police Chief Dave Ogden, Public Works Director Scott Brown, and Town Clerk Dorothy Burkhalter were also present.

Mayor O'Brien called the meeting to order at 6:01pm and stated all Council members were present.

Mayor O'Brien then requested a moment of recognition.

1. OPEN FORUM/PUBLIC COMMENT (3 Minute Limit)

Mayor O'Brien stated that an email was received for the open forum. He then turned the floor over to Manager Smith. Manager Smith read the email comments for the record. They were, "Has our city council and police department ever reviewed the task force findings for effective 21st century policing developed during the Obama administration? If we did review, did we adopt any of the findings? If we did not review, can we commit to reviewing the report and implementing as applicable?" No further comments were made.

2. SPECIAL PRESENTATION/PROCLAMATIONS/AWARDS

NONE

3. NEW BUSINESS

a. Minutes

i. Town Council Meeting Minutes May 12, 2020

Member Sapp made a motion to approve the May 12, 2020 Town Council meeting minutes as presented. Member Williams second the motion. Roll call vote was as follows: Andert – aye, Sapp – aye, Williams – aye, McKinley – aye, and Martini – aye. Motion carried 5-0.

b. Resolutions/Ordinances for Approval/First Reading

ORDINANCE NO. 2020-02

AN ORDINANCE GRANTING TO DUKE ENERGY FLORIDA, LLC d/b/a DUKE ENERGY, AN ELECTRIC UTILITY RIGHTS-OF-WAY UTILIZATION FRANCHISE; PRESCRIBING THE TERMS AND CONDITIONS RELATED TO THE OCCUPANCY OF MUNICIPAL STREETS AND RIGHTS-OF-WAY IN THE TOWN OF WINDERMERE, FLORIDA, FOR THE PURPOSE OF PROVIDING ELECTRIC SERVICE; PROVIDING FOR SEVERABILITY OF PROVISIONS; PROVIDING AN EFFECTIVE DATE.

ORDINANCE NO. 2020-03

AN ORDINANCE OF THE TOWN OF WINDERMERE, FLORIDA PERTAINING TO WATER CONSERVATION; REPEALING AND REPLACING SECTION 5.03.04 OF ARTICLE V OF THE TOWN'S LAND DEVELOPMENT CODE TO PROVIDE AN UPDATED WATER SHORTAGE PLAN CONSISTENT WITH THE REQUIREMENTS OF THE SOUTH

TOWN OF WINDERMERE

Town Council Meeting Minutes
(3rd Virtual Meeting Covid-19)

June 9, 2020

FLORIDA WATER MANAGEMENT DISTRICT; PROVIDING THE INTENT AND PURPOSE; PROVIDING DEFINITIONS; PROVIDING FOR APPLICABILITY; PROVIDING FOR THE DECLARATION OF WATER SHORTAGE OR WATER SHORTAGE EMERGENCY; PROVIDING FOR VARIANCES; PROVIDING FOR ENFORCEMENT; PROVIDING FOR PENALTIES; PROVIDING FOR CODIFICATION; PROVIDING FOR THE REPEAL OF ALL CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

ORDINANCE NO. 2020-04

AN ORDINANCE OF THE TOWN OF WINDERMERE, FLORIDA PERTAINING TO WATER CONSERVATION; REPEALING AND REPLACING ARTICLE XIV OF THE TOWN'S LAND DEVELOPMENT CODE TITLED "WATER CONSERVATION RULES" TO PROVIDE FOR UPDATED WATER CONSERVATION RULES CONSISTENT WITH THE REQUIREMENTS OF THE SOUTH FLORIDA WATER MANAGEMENT DISTRICT AND TO BE TITLED "WATER CONSERVATION; YEAR-ROUND LANDSCAPE IRRIGATION MEASURES; VARIANCES; ENFORCEMENT; PENALTIES"; PROVIDING THE INTENT AND PURPOSE; PROVIDING DEFINITIONS; PROVIDING FOR APPLICABILITY; PROVIDING FOR THE DECLARATION OF A WATER SHORTAGE OR WATER SHORTAGE EMERGENCY; PROVIDING FOR VARIANCES; PROVIDING FOR ENFORCEMENT; PROVIDING FOR PENALTIES; PROVIDING FOR CODIFICATION; PROVIDING FOR THE REPEAL OF ALL CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

Mayor O'Brien read the titles of proposed Ordinances 2020-02, 2020-03, and 2020-04 for the record. He then stated that the second reading/public hearing will be held at the July Town Council meeting.

c. Contracts & Agreements

NONE

d. Financial

NONE

e. Other items for consideration

i. **Town of Windermere Annual Pancake Breakfast**

Mayor O'Brien stated that conversation has been made regarding the annual pancake breakfast and the current pandemic. Consensus of the Town Council is to move forward with the pancake breakfast and if it needs to be canceled closer to the event, it can be.

TOWN OF WINDERMERE

**Town Council Meeting Minutes
(3rd Virtual Meeting Covid-19)**

June 9, 2020

ii. Garage Sales Restriction

Manager Smith commented that due to Phase Two Re-Opening of the State, questions regarding garage sales have been made. Consensus of the Town Council is to allow garage sale permits to be issued.

4. MAYOR & COUNCIL LIAISON REPORTS:

Mayor O'Brien opened the floor to the Town Council for any reports. Member McKinley commented on the upcoming Parks and Recreation Committee meeting. Member Williams stated that the Historical Preservation Board has not been meeting due to the Pandemic but are looking forward to meeting again. Member Sapp reported the LRP will be meeting in a few weeks. He also stated that the Project Meeting notes were included in the packet. Member Martini reported that the DRB will be meeting on June 16th. He then thanked the Chief and the WPD for all their assistance with the Seniors Parade. Mayor O'Brien also thanked all who participated in the acknowledgment of the graduating Seniors. Discussion was made regarding the banner and the positive feedback. Member Andert commented on the WAYS Committee, the Downtown Business Committee and the business directory on the website, the Butler Chain Advisory Board upcoming meeting, and the upcoming Tree Board meeting. Mayor O'Brien thanked staff for their creativity during this pandemic. He then thanked Chief Ogden for his early outreach to public regarding the current policing issues in the country.

7. STAFF REPORTS:

a. TOWN MANAGER ROBERT SMITH – Mr. Smith reported on the CARES Act reimbursements, the last virtual Town Hall residents meeting, the after action questionnaire, the graduation parade and banner, the upcoming meetings/workshops, the proposed budget and workshops, auctioning of current town items preparing for the move, and the new Windermere App,

b. TOWN ATTORNEY HEATHER RAMOS – Ms. Ramos commented on the Phase Two reopening plan. She stated that the meeting criteria is set to expire June 30th. Ms. Ramos stated she will keep all advised should there be a change. Some discussion followed regarding future meetings.

c. POLICE CHIEF DAVE OGDEN – Chief Ogden reported on current conditions and meetings, that Officer King has completed his training, the current curfew that has been lifted, off duty details, the monthly report, and future events.

d. PUBLIC WORKS DIRECTOR SCOTT BROWN – Director Brown commented on the effective virtual Town Hall meetings. He then reported on the continuing projects and reports, current rains and road repairs, and new signage.

8. ADJOURN:

Mayor O'Brien adjourned the meeting at 6:42 pm.

Dorothy Burkhalter, MMC, FCRM
Town Clerk

Jim O'Brien, Mayor

TOWN OF WINDERMERE

Town Council Workshop Minutes

June 23, 2020

CALL TO ORDER:

Present were Mayor Jim O’Brien, Council Members Bill Martini, Bob McKinley, Andy Williams, Chris Sapp, and Liz Andert. Town Manager Robert Smith, Public Works Director Scott Brown, and Town Clerk Dorothy Burkhalter were also present.

Mayor O’Brien called the workshop to order at 6:00pm.

1. OPEN FORUM/PUBLIC COMMENT:

Manager Smith stated that he received an email from CT Allen, organizer for the Wine and Dine. He further stated that due to the current pandemic and increases, the 2021 Wine and Dine event will be postponed to a later date.

2. SPECIAL PRESENTATION:

None

3. NEW BUSINESS:

e. Other items for consideration

i. Windermere Pavilion

Mayor O’Brien introduced this item. He then turned the floor over to Mr. John Fitzgibbon. Mr. Fitzgibbon commented on past meetings that were held that has led up to the proposed pavilion plans. He stated that this is a conceptual plan. Mr. Fitzgibbon commented that the plan can be altered to what the Town would like to see. He then commented that funding would be donation based. Mr. Fitzgibbon opened the floor for questions and/or comments. Manager Smith questioned where the funding would come from. Mr. Fitzgibbon stated that the property would be from the Town, and funding donations raised by the Downtown Business Committee and the Windermere Rotary. Discussion followed regarding funding/donations, a fundraising plan, materials, design, location, ADA access, security, recognition of donors, conditional use restrictions with donors, resident input, and electrical/ restrooms. Mayor O’Brien commented on the need to have an accurate financial plan for each phase. Discussion was made regarding naming of the pavilion in the event that there is a single donor for the pavilion. The name of the pavilion will be discussed by the Town Council at a later date. Consensus of the Town Council is to move forward with the proposed pavilion. Member Sapp stated that this item will be brought before the Town Council in a regular meeting instead of a workshop.

4. MAYOR & COUNCIL LIAISON REPORTS

Mayor O’Brien commented on the current pandemic and the upcoming pancake breakfast. He stated with the concern of rising cases, the Town should cancel the pancake breakfast. Manager Smith stated he had concerns with the social distancing for the staff as well as the volunteers. He then commented on his concerns with the possible number of those attending. Consensus of the Town Council is to cancel the pancake breakfast this year due to covid-19.

5. STAFF REPORTS

Manager Smith reported on the temporary Town facilities, the 2020/2021 Budget, Fernwood Park, Bird Island, updated Covid numbers, and the Tree Board meeting.

6. ADJOURN

There being no further comments, Mayor O’Brien adjourned the workshop at 6:52pm.

Dorothy Burkhalter, MMC, FCRM
Town Clerk

Jim O’Brien, Mayor



EXECUTIVE SUMMARY

SUBJECT: ORDINANCE NO. 2020-05 (Conduct in Town Parks and Recreation Areas)

REQUESTED ACTION: Board Option: First Reading

Work Session (Report Only) **DATE OF MEETING:** 7/14/2020
 Regular Meeting Special Meeting

CONTRACT: N/A Vendor/Entity: _____
Effective Date: _____ Termination Date: _____
Managing Division / Dept: _____

BUDGET IMPACT: Additional Signage
 Annual **FUNDING SOURCE:** _____
 Capital **EXPENDITURE ACCOUNT:** _____
 N/A

HISTORY/FACTS/ISSUES:

Mayor & Council,

It has been well documented that various parks within the Town of Windermere have had a history of being pick up points for boaters and others for the purposes of distributing and consuming alcoholic beverages on the lakes or within the parks. This Ordinance revises current Town Codes to prohibit alcoholic beverages in or on public property, public recreation areas and public parks unless otherwise authorized and approved by Town Council.

Ordinance 2015-05 adds to the Parks and Recreation Section of the Code of Ordinances. Specifically pertaining to the possession of alcoholic beverages within the Town's parks. Police Officers will now be allowed to conduct inspections looking for alcoholic beverages.

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ORDINANCE NO. 2020-05

AN ORDINANCE OF THE TOWN OF WINDERMERE, FLORIDA ADDING A NEW ARTICLE III TO CHAPTER 22 OF THE TOWN’S CODE OF ORDINANCES TO BE ENTITLED “CONDUCT IN TOWN PARK AND RECREATION AREAS”; PROVIDING DEFINITIONS; PROHIBITING ALCOHOLIC BEVERAGES IN OR ON ANY PUBLIC PROPERTY, PUBLIC RECREATION AREA, OR PUBLIC PARK UNLESS AUTHORIZED BY THE TOWN COUNCIL PURSUANT TO SECTION 8-93 OF THE TOWN’S CODE OF ORDINANCES; AUTHORIZING THE INSPECTION OF CONTAINERS FOR ALCOHOLIC BEVERAGES, PROVIDING THE INSPECTION PROCEDURE AND PROVIDING FOR CONFISCATION; PROVIDING FOR RATIFICATION, SEVERABILITY, CODIFICATION AND AN EFFECTIVE DATE.

BE IT ENACTED BY THE PEOPLE OF THE TOWN OF WINDERMERE:

Section 1. Legislative Findings. For the health, safety and welfare of its residents, the Town Council finds it necessary to prohibit alcoholic beverages in or on public property, public recreation areas and public parks unless otherwise authorized and approved by the Town Council.

Section 2. Approval of Revisions to the Town’s Code of Ordinances. A new Article III to be entitled “Conduct in Town Park and Recreation Areas” is hereby added to Chapter 22 of the Town’s Code of Ordinances as follows:

ARTICLE III. – CONDUCT IN TOWN PARK AND RECREATION AREAS

Sec. 22-45. Alcoholic beverages prohibited – Generally.

- (a) *Definition of alcoholic beverage.* For purposes of this section, “alcoholic beverage” shall mean all beverages containing more than one percent of alcohol by weight and shall include intoxicating beverages as defined herein. “Intoxicating beverages” shall mean all liquors, wines and beers containing more than three and two-tenths percent of alcohol by weight. In all prosecutions for violations of this section, the manufacturer’s label on the beverage container shall be prima facie evidence that the substance in such container was and is an alcoholic beverage as defined in this section.
- (b) *Prohibition.* Except as provided in Sec. 8-93, it shall be unlawful for any person to purchase, sell or offer for sale, have in his possession or consume any alcoholic beverages, as defined in this section, in or on any public property, public recreation area or public park within the incorporated areas of the town.
- (c) *Removal from premises.* Any person violating subsection (b) of this section may be ordered by a law enforcement officer or other person having authority to enforce this

47 section to leave the premises of the public property, public recreation area or public
48 park in which the violation occurs.

49
50 (d) *Enforcement*. Provisions of this section may be enforced by any person having the
51 authority to enforce town ordinances.

52
53 (e) *Penalties*. Violations of this section shall be as provided in Sec. 1-12.

54
55 **Sec. 22-46. - Inspection of containers brought into parks; consent to search.**

56
57 (a) *Definitions*. The following terms are hereby defined for the purpose of this section:

58
59 (1) *Enforcement officer* means any town law enforcement officer or uniformed town
60 park employee.

61 (2) *Container* means any cooler, portable icebox, carrier, luggage, can, bottle, bag or
62 box which may reasonably be used to contain alcoholic beverages.

63 (3) *Alcoholic beverage* is defined in the same fashion as that term is defined in Sec.
64 22-45.

65
66 (b) *Notice of consent to inspection*. There shall be posted at each entrance to any parking
67 areas adjacent to and at each entrance to any town park a sign which shall state in
68 such fashion as to be easily read from a distance of three feet by a person of average
69 eyesight, the following:

70
71 **Alcoholic Beverages Prohibited**

72 **Consent to Inspection**

73 Every person entering this park, upon request by an enforcement officer, shall
74 exhibit the contents of any container which may contain an alcoholic beverage.

75 Compliance with such a request is a condition of entry to this park.

76 **Town of Windermere Code Sec. 22-46**

77
78 (c) *Inspection procedure*. Any enforcement officer may demand of any person seeking
79 entrance to or present in any town park that such person exhibit the contents of any
80 container in his possession, custody or control for the sole purpose of inspecting such
81 container for the presence of alcoholic beverages. Any person refusing to consent to
82 such inspection of a container in his possession, custody or control shall be denied
83 admittance to a town park. If such person is present in a town park at the time a
84 demand for such inspection is made and refuses to consent to such inspection, such
85 person shall be ordered to leave the park immediately. Should such person refuse to
86 leave, such person shall be deemed in violation of this section and shall be punished
87 in the manner provided in Sec. 1-12.

88
89 (d) *Confiscation*. Should an enforcement officer observe a container over which no
90 person apparently has possession, custody or control, then such officer may take such
91 container into his possession and deliver it to the Town Manager or his designee, to

92 hold until claimed and properly identified, at which time such container shall be
93 subject to an alcoholic beverage inspection and the claimant of the container may be
94 cited for a violation of this section if the container is found to contain an alcoholic
95 beverage.
96

97 **Section 3. Ratification of Signs.** All signs in existence on the adoption date of this Ordinance
98 that comply with the provisions of Sec. 22-46 are hereby ratified and shall be considered to be in
99 compliance with this section.
100

101 **Section 4. Inclusion in the Code.** It is the intent of the Town Council that the provisions of this
102 Ordinance shall become and be made a part of the Town’s Land Development Code and that the
103 sections of this Ordinance may be renumbered or re-lettered and the word “ordinance” may be
104 changed to “section,” “article,” or such other appropriate word or phrase to accomplish such
105 intentions.
106

107 **Section 5. Severability.** If any section, sentence, clause or phrase of the Ordinance is held to be
108 invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no
109 way affect the validity of the remaining portions of this Ordinance.
110

111 **Section 6. Effective Date.** This Ordinance shall become effective immediately upon its
112 enactment.
113

114 **APPROVED AND ADOPTED** by the Town Council of the Town of Windermere on the ____
115 day of _____, 2020.
116
117
118

119 Town of Windermere, Florida
120 By: Town Council
121
122
123

124 By: _____
125 Jim O’Brien, Mayor
126
127
128

129 Attest:
130
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134 _____
135 Dorothy Burkhalter, MMC, FCRM
136 Town Clerk
137

137 First Reading:

138 Second Reading:
139



INDIVIDUAL PROJECT ORDER NUMBER ____

July 8, 2020

Describing a specific agreement between Kimley-Horn and Associates, Inc. (Kimley-Horn), and The Town of Windermere (the Client or the Town) in accordance with the terms of the Master Agreement for Continuing Professional Services dated May 15, 2019, which is incorporated herein by reference.

Identification of Project:

Project: National Pollutant Discharge Elimination System (NPDES) Permit Services 2021

Client: Town of Windermere

Project Understanding:

This Individual Purchase Order (IPO) identifies the scope, schedule, and fee for engineering services to assist the Town in managing its NPDES Permit. The duration of this IPO will be for Year 2 of the NPDES Permit. It is anticipated that future IPO's (to be authorized separately) will cover Year 3 and Year 4 services, including the Year 4 Annual Report. Kimley-Horn will provide engineering services as described below.

Specific Scope of Basic Services:

Task 1 – NPDES Permit Annual Report

NPDES Permit ID Number FLR04E063: Cycle 4, Year 2 Annual Report

- **The Year 2 Annual Report should cover the 12-month period from May 3, 2020 through May 2, 2021 and is due by November 2, 2021.**

Kimley-Horn will assist the Town in the completion of the National Pollutant Discharge Elimination System Phase II Permit Annual Report for the reporting year of May 3, 2020 through May 3, 2021. This task includes reporting related stormwater information as required by the permit annual report form using information provided by the Town, correspondence with Town staff, and up to one (1) in-person meeting requested by the Town. The Town will provide information requested by Kimley-Horn at least one (1) month prior to report deadline of November 2, 2021 set forth by the Permit issued by the Florida Department of Environmental Protection. Kimley-Horn will complete the report and provide the Town with an electronic (PDF) copy by email for review prior to submission to the FDEP. This task does not include any Request for Additional Information (RAIs) or audit responses.

Task 2 – NPDES Training Sessions

Kimley-Horn will prepare and conduct two (2) in person training sessions for Town staff. The training material developed by Kimley-Horn in the previous year will be updated based on one (1) round of comments from the Town.

Project Deliverables:

- NPDES Year 2 Annual Report
- NPDES training material update

Additional Services if required:

The following services are not included in this IPO, but may be performed if authorized by the Town. Payment for these additional services will be agreed upon prior to their performance.

- Respond to RAIs or audits
- Additional training sessions
- Quarterly Gazette Articles
- Progress meetings
- Future year (beyond 12-months) meetings and Annual Reports

Information Provided By Client:

The Town will provide the following information, upon which Kimley-Horn can rely:

- All information needed to complete the NPDES Phase II Permit Year 2 Annual Report

Schedule:

Tasks 1-2 are anticipated to be completed within 365 calendar days of notice to proceed.

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Method of Compensation:

Kimley-Horn will perform the services in Tasks 1-2 for a lump sum fee of \$12,215 inclusive of expenses. A breakdown of fee by task is provided in the table below.

Task	Fee
Task 1: NPDES Permit Annual Report	\$7,915
Task 2: NPDES Training Sessions	\$4,300

Lump sum and hourly fees will be invoiced monthly based upon the overall percentage of services performed. Payment will be due within 25 days of your receipt of the invoice.

ACCEPTED:

THE TOWN OF WINDERMERE, FLORIDA

KIMLEY-HORN AND ASSOCIATES, INC.

BY: _____

BY:  _____
Hao T. Chau, PE

TITLE: _____

TITLE: Assistant Secretary _____

DATE: _____

DATE: 07/08/2020 _____



July 8, 2020

KIMLEY-HORN AND ASSOCIATES, INC.

Project: IPO ____ - NPDES Permit Services 2021

Client: Town of Windermere

Summary of Fees and Charges

PROJECT LABOR	Hours	Lump Sum
Project: IPO ____ - NPDES Permit Services 2021	77.0	\$ 12,215.00
1. NPDES Permit Annual Report	53.0	7,915.00
2. NPDES Training Sessions	24.0	4,300.00
SUBTOTAL KIMLEY-HORN LABOR FEES:	77.0	\$ 12,215.00
Subconsultant:		\$ -
Total Subconsultant		\$ -
GRAND TOTAL FEES AND CHARGES:		\$ 12,215.00

