

Minutes For:

**Orlando City Council
Monday, March 19, 2018
2:00 P.M.**



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|--------------------------|--------------------------|--------------------------|---------------------|--------------------------|--------------------------|--------------------------|
| <u>District 1</u> | <u>District 2</u> | <u>District 3</u> | <u>Mayor</u> | <u>District 4</u> | <u>District 5</u> | <u>District 6</u> |
| Jim Gray | Tony Ortiz | Robert F. Stuart | Buddy Dyer | Patty Sheehan | Regina I. Hill | Samuel B. Ings |

Opening

On Monday, March 19, 2018, the Orlando City Council met in regular session in Temporary City Council Chambers on the first floor of City Hall. Mayor Dyer welcomed those in attendance and introduced the invocation and pledge of allegiance.

Invocation

The invocation was delivered by Priest Acharya Ashok Shukla, Hindu Society of Central Florida, 1994 Lake Drive, Casselberry, Florida.

Pledge of Allegiance

The pledge of allegiance was led by Commissioner Samuel B. Ings.

Call to Order

Mayor Dyer officially called the meeting to order at 2:07 P.M. City Clerk Denise Aldridge called the roll and announced there was a quorum.

Present:

Mayor Buddy Dyer
Commissioner Jim Gray, District 1
Commissioner Tony Ortiz, District 2
Commissioner Robert F. Stuart, District 3
Commissioner Patty Sheehan, District 4
Commissioner Samuel B. Ings, District 6
Chief Assistant City Attorney Kyle Shephard
City Clerk Denise Aldridge
City Clerk Aide Elizabeth Davidson
Police Officers Eddie Rosado, James Patterson and Landon Thomas, Sergeants-at-Arms

*Commissioner Regina I. Hill - absent

Minutes

Commissioner Patty Sheehan moved and Commissioner Tony Ortiz seconded a motion to waive the reading of the February 26, 2018 Agenda Review and City Council meeting minutes and accept the minutes

as written, and vote carried *6-0 with minutes approved as written.

Mayor's Update

Puerto Rico Mission Trip

Mayor Dyer noted that Commissioner Regina I. Hill is not in attendance at today's meeting and announced that she, together with Commissioner Tony Ortiz, who will be traveling to Puerto Rico later today, will join 32 students from the City's youth programs during their spring break to perform various service projects assisting with Puerto Rico's Hurricane Maria recovery efforts. Mayor Dyer stated that some of the participating youth are experiencing their first travel experience on this service project.

Sustainability Campaign Launch/Earth Hour

Mayor Dyer announced that Orlando is kicking off Earth Month a little early this year by joining more than 180 countries all over the world to participate in Earth Hour on Saturday, March 24, 2018 from 8:30 P.M. to 9:30 P.M. During that hour, the City will turn off the lights to the Lake Eola fountain and non-essential lights in City-owned buildings to raise awareness about energy conservation and climate change. For more information, visit <http://www.cityoforlando.net/greenworks/spring-into-sustainability/>.

Orlando Sound Bites

Mayor Dyer announced that coming up next month is the City's newest signature event, Orlando Sound Bites. This free festival on the East Lawn of Lake Eola Park is a combination of Orlando's hip culinary scene and live indie outlaw country music. The City will host headlining band "The Cadillac Three" alongside two great local acts, "The Sh-Booms" and "Sean Holcomb." Orlando Sound Bites kicks off at 5:00 P.M. on Saturday, April 7, 2018. For more information, visit <http://www.cityoforlando.net/soundbites/>.

Agenda Item G-1 – Mennello Museum Third Amendment to the Loan and Gift Agreement

Mayor Dyer announced that, as the result of a generous donation from Michael A. Mennello, and in honor of Marilyn L. Mennello, the Mennello Museum of American Art will add several world-renowned American works of art to greatly enhance the collection of the museum, including 14 paintings and five sculptures permanently gifted and an additional 20 works loaned long-term. This donation also includes two legacy gifts, including a \$1 million dollar gift and annual funding commitments from The Michael A. and The Honorable Marilyn Logsdon Mennello Foundation to further support the work of the museum. Mayor Dyer expressed his deep appreciation on behalf of the City of Orlando, and personally thanked Mr. Michael Mennello for the countless contributions to the City's arts community and for entrusting the City with continuing the Mennello legacy for generations to come. Mayor Dyer also recognized members of the Friends of The Mennello Museum of American Art attending today's meeting. Mr. Mennello thanked the City for its commitment to the arts and for accepting this gift for many to enjoy.

Agenda Item B-12 – Seventh Amendment to Purchase and Sale Agreement for the Disposition of Lakeside Village and Bordeaux I & II Apartment Complexes to Ability Mercy, LLC for Redevelopment

Mayor Dyer stated that this agenda item will approve changes to the Purchase and Sale Agreement to allow the City to close on the sale of land to Ability Housing for an apartment complex and community center at 1740, 1742 and 1770 Mercy Drive. When the project is complete, the development will bring 166 new multi-family units to the area with 50% of the housing slated for permanent supportive housing for the chronically homeless. Mayor Dyer introduced President and CEO of Ability Housing Shannon Nazworth and thanked Ability Housing for partnering with the City to increase the inventory of affordable housing in Orlando.

Agenda Item B-5 – Approval of Ranking and Authority to Negotiate for Professional Engineering Services for the City of Orlando Bicycle Plan Update, RQS18-0092

Mayor Dyer stated that through the development and implementation of the City's Bicycle Plan in 2008, the City has been able to make strategic investments, including expanding a trail network, creating more bike

lanes, establishing a bike share program and opening a mountain bike park. In order to continue the success in building a safer and more convenient transportation network, the City will be embarking on a comprehensive update to its Bicycle Plan.

At approximately 2:13 P.M. Mayor Dyer recognized students from Valencia College and University of Central Florida attending today's City Council meeting during Spring Break.

Consent Agenda

Commissioner Jim Gray declared a conflict on Ordinance/1st Read #3 (Ordinance No. 2018-20 rezoning certain land generally located south of Concord Street, west of North Bumby Avenue, east of North Hillside Avenue and north of Mount Vernon Street and comprised of 0.42 acres of land, more or less, as the Planned Development District; providing a development plan and special land development regulations of the Planned Development District (544 N Bumby PD, ZON2017-10006) (Economic Development), filed Form 8B Memorandum of Voting Conflict with the City Clerk and stated he will abstain from a vote on this item. Commissioner Patty Sheehan moved and Commissioner Robert F. Stuart seconded a motion to approve the consent agenda, and vote carried *6-0 that the consent agenda be approved as follows:

(A) Mayor

(1) Approving Meeting Minutes and Approving Changes to Policies and Procedures - City Operations Committee Meeting – March 12, 2018. Approved, filed and documentary **#180319A01**.

(2) Confirming Citizen Advisory Board Appointments/Reappointments. Confirmed, filed and documentary **#180319A02**.

(B) Business and Financial Services

(1) Approving Establishment of an Auditor Selection Committee for the Selection Process of a Firm to Provide Annual External Financial Audit Services. Approved, filed and documentary **#180319B01**.

(2) Approving Award to Aumiller Pools LLC and Electro-Mechanic Industries, Inc. (d/b/a Vermana) for Resurfacing of Pools, IFB18-0150. Approved, filed and documentary **#180319B02**.

(3) Approving Award to Amano McGann, Inc. for Security Cameras at 55W Garage, IFB18-0203. Approved, filed and documentary **#180319B03**.

(4) Approving Increase to Contract Amount with Engineered Spray Solutions, LLC for SprayRoq Protective Lining for Existing Sewer Manholes and Stormwater Structures, C18-0108. Approved, filed and documentary **#180319B04**.

(5) Approving Ranking and Authority to Negotiate for Professional Engineering Services for City of Orlando Bicycle Plan Update. Approved, filed and documentary **#180319B05**.

(6) Approving Contract with H.J. High Construction for Design Services for Fire Station 9, RFP17-0404. Approved, filed and documentary **#180319B06**.

(7) Approving Use of National Joint Powers Alliance (NJPA) Contract with United Rentals (North America), Inc. and US Communities Contract with Herc Rentals for the Lease of Various Heavy Equipment, C18-0285. Approved, filed and documentary **#180319B07**.

(8) Approving Use of GSA Schedule 70 Contract #GS-35F-014R for the purchase of Getac Rugged Mobile Computers from PCN Strategies Inc., C18-0246. Approved, filed and documentary **#180319B08**.

(9) Approving Use of GSA Schedule 70 Contract #GS-35F-0143R for the purchase of In-vehicle Mobile Computer Docking Stations from PCN Strategies Inc., C18-0256. Approved, filed and documentary **#180319B09**.

(10) Approving 2018 Restrictive Covenant for Cultural Facility Grant at the Orlando Science Center. Approved, filed and documentary **#180319B10**.

(11) Approving State Revolving Fund Loan Agreement WW480440. Approved, filed and documentary **#180319B11**.

(12) Approving Seventh Amendment to Purchase and Sale Agreement for the disposition of Lakeside Village and Bordeaux I & II Apartment Complexes to Ability Mercy, LLC for Redevelopment. Approved, filed and documentary **#180319B12**.

(13) Approving Resolution Authorizing the Issuance of the Capital Improvement Refunding Special Revenue Bond, Series 2018A. Approved, filed and documentary **#180319B13**.

(14) Approving Change Order to the contract for City Hall Audio/Visual System with The Integration Factory, RFP18-0050. Approved, filed and documentary **#180319B14**.

(C) Economic Development

(1) Approving Renewal of Employment Agreement for Plans Examiner I - Building - Contract - Harold Watson. Approved, filed and documentary **#180319C01**.

(2) Approving Renewal of Employment Agreement for Plans Examiner I - Mechanical - Contract - Augustine Swift. Approved, filed and documentary **#180319C02**.

(3) Approving Renewal of Employment Agreement Construction Inspector I - Building - Dana Foster. Approved, filed and documentary **#180319C03**.

(4) Approving Renewal of Employment Agreement Construction Inspector I - Mechanical - Jeffrey Moore. Approved, filed and documentary **#180319C04**.

(5) DELETED

(6) Approving Renewal of Employment Agreement for Permit Technician I Contract - Rosemary Culhane. Approved, filed and documentary **#180319C06**.

(7) Approving Renewal of Employment Agreement for Permit Technician I Contract - Ashley Williams. Approved, filed and documentary **#180319C07**.

(8) Approving Employment Agreement for Permit Technician I Contract - Angela Smith. Approved, filed and documentary **#180319C08**.

(9) Approving Employment Agreement for Permit Technician I Part Time - Contract - Mayra Colon. Approved, filed and documentary **#180319C09**.

(10) Accepting Meeting Minutes and Approving the Actions of the Southeast Town Design Review Committee (SETDRC) – February 8, 2018. Accepted meeting minutes and approved the actions of the Southeast Town Design Review Committee (SETDRC) at its February 8, 2018 meeting, filed and documentary **#180319C10**.

(11) Accepting Meeting Minutes and Approving the Actions of the Municipal Planning Board (MPB) – February 20, 2018 EXCEPT the following item which has been DEFERRED: MPL2017-10026 Contractor's Business Park, 2140 N. John Young Pkwy. Accepted meeting minutes and approved the actions of the Municipal Planning Board (MPB) at its February 20, 2018 meeting EXCEPT the following item which has been DEFERRED: MPL2017-10026 Contractor's Business Park, 2140 N. John Young Pkwy., filed and documentary **#180319C11**.

(12) Accepting Meeting Minutes and Approving the Actions of the Appearance Review Board (ARB) – February 15, 2018. Accepted meeting minutes and approved the actions of the Appearance Review Board (ARB) at its February 15, 2018 meeting, filed and documentary **#180319C12**.

(13) Accepting Meeting Minutes and Approving the Actions of the Board of Zoning Adjustment (BZA) – February 27, 2018 EXCEPT the following item which has been APPEALED: Item #8 – 826 N. Westmoreland Dr. (VAR2018-10006). Accepted meeting minutes and approved the actions of the Board of Zoning Adjustment (BZA) at its February 27, 2018 meeting EXCEPT the following item which has been APPEALED: Item #8 – 826 N. Westmoreland Dr. (VAR2018-10006), filed and documentary **#180319C13**.

(14) Adopting Ruby Tuesday, Inc. Qualified Target Industry Tax Refund Resolution Amending a Resolution. Adopted, filed and documentary **#180319C14**.

(15) Adopting Club Trust, LLC d/b/a staySky Vacation Club Qualified Target Industry Tax Refund Resolution Amending a Resolution. Adopted, filed and documentary **#180319C15**.

(16) Approving Small Business Facade Program Agreement between Po Palo, LLC d/b/a Stasio's Italian Deli & Market and the City of Orlando - 210 North Bumby Avenue. Approved, filed and documentary **#180319C16**.

(17) Approving Targeted Revitalization Site Redevelopment Pilot Program. Approved, filed and documentary **#180319C17**.

(18) Approving a Final Minor Plat titled New Hampshire Formosa. Approved, filed and documentary **#180319C18**.

(19) Approving a Final Major Subdivision Plat titled Alexan Audubon Park. Approved, filed and documentary **#180319C19**.

(20) Approving a Final Minor Plat titled Walgreens - Conway and Curry Ford. Approved, filed and documentary **#180319C20**.

(21) Approving a Final Minor Subdivision Plat titled South Orange Storage. Approved, filed and

documentary **#180319C21**.

(D) Families, Parks and Recreation

(1) Approving Orlando Utilities Commission Lighting Agreements for City Park located at Laureate Park. Approved, filed and documentary **#180319D01**.

(2) Approving Orlando Utilities Commission Lighting Agreements for City Park at Orlando International Airport East Airfield. Approved, filed and documentary **#180319D02**.

(3) Approving Parking Agreement between Nona Adventure Park, LLC and City of Orlando. Approved, filed and documentary **#180319D03**.

(4) Approving Facility Use Agreement with Central Florida Boy Scouts of America, Inc. Approved, filed and documentary **#180319D04**.

(5) Approving Memorandum of Understanding between National Recreation and Park Association and City of Orlando for "Meet Me at the Park" Grant. Approved, filed and documentary **#180319D05**.

(6) Approving Amendment to Lake Lorna Doone Parking Revenue Agreement. Approved, filed and documentary **#180319D06**.

(E) Fire

(1) Adopting Orlando Fire Department 2018-2022 Strategic Plan. Adopted, filed and documentary **#180319E01**.

(2) Adopting Orlando Fire Department Standards of Cover and Community Risk Assessment. Adopted, filed and documentary **#180319E02**.

(F) Housing

(1) Approving Lien Satisfactions - Grand Ave. Economic Community Development Corp. and Timberleaf Apartments Ltd. Approved, filed and documentary **#180319F01**.

(G) Orlando Venues

(1) Approving Mennello Museum Third Amendment to the Loan and Gift Agreement. Approved, filed and documentary **#180319G01**.

(H) Police

(1) Approving FY 2018 Central Florida High Intensity Drug Trafficking Areas (HIDTA) Grant. Approved, filed and documentary **#180319H01**.

(2) Approving Voluntary Cooperation and Operational Assistance Mutual Aid Agreement – Lake County Sheriff's Office. Approved, filed and documentary **#180319H02**.

(3) Approving the following permits: SPEC9796673, "Yoga in the Dark", Lake Eola Park, Sat. 3/24/18; SPEC4915846, "Ven a Comer Mexican Food Festival", Gaston Edwards Park, Sat. 3/24/18; SPEC6310815, "Arab Fest", Lake Eola Park, Sun. 3/25/18; SPEC7580691, "Blankets and Baskets Jazz & RnB Festival, L. Claudia Allen Park, Sun. 3/25/18; SPEC0226002, "The Big Bounce America", Bill Frederick Park at Turkey Lake, Fri-Sat, 3/30-4/1/18; SPEC5395001, "CPNA Annual Easter Egg Hunt", Albert Park, Sat. 3/31/18; SPEC3560354, "Easter Sunrise Service", Lake Baldwin Park, Sun. 4/1/18; SPEC3711106, "Orlando Sound Bites", Lake Eola Park, Sat. 4/7/18; SPEC2066431, "OCBA Law Day 5K", Harbor Park and surrounding area, Sat. 4/7/18; SPEC0180361, "TPD Classic Car Show", Eola Dr. bet. Central Blvd. & Church St., Sat. 4/7/18; SPEC8254588, "Spring Fiesta in the Park", Lake Eola Park, Sat/Sun., 4/7-4/8/18; SPEC6458574, "IOA Corporate 5K", Lake Eola Park and surrounding area, Thur. 4/12/18; SPEC8777608, "Beard in Baldwin", New Broad St. bet. Jake St. & Prospect Av., Harbor Park, Sat. 4/14/18; SPEC7843432, "CFNL Lone Sailor/Wounded Warrior 5K", Blue Jacket Park, Sat. 4/14/18; SPEC9002374, "Charly Reynolds' EP Album Release Party", Lake Eola Park, Sat. 4/14/18; SPEC5263587, "Earth Day Fair", City Hall Plaza, 400 S. Orange Av., Fri. 4/20/18; SPEC6822148, "Great Strides Orlando", Harbor Park, Sat. 4/21/18; SPEC5384481, "OFD Easter Egg Hunt", Orlando Loch Haven Cultural Park, Sat. 3/31/18; SPEC0332571, "FSRA Central Districts Regatta", Bill Frederick Park at Turkey Lake, Sat/Sun., 4/7-4/8/18. Approved, filed and documentary **#180319H03**.

(I) Public Works

(1) Approving Contract between the City of Orlando and the Florida Department of Corrections for Maintenance and Landscaping Services. Approved, filed and documentary **#180319I01**.

(2) DELETED

(3) Approving Reclaimed Water Easement Agreement between Landport Land Holding, LLC and City of Orlando. Approved, filed and documentary **#180319I03**.

(J) Transportation

(1) Approving Renewal of Employment Agreement – Civil Engineer II - Yaminel Reyes Albino. Approved, filed and documentary **#180319J01**.

(K) Other

(1) Approving Specific Items Approved by the Greater Orlando Aviation Authority (GOAA) at its February 21, 2018 Meeting. Approved, filed and documentary **#180319K01**.

(2) Approving First Amendment to Stormwater Drainage Easement between Greater Orlando Aviation Authority (GOAA), Orange County, and the City of Orlando. Approved, filed and documentary **#180319K02**.

(3) Adopting Resolution Approving Greater Orlando Aviation Authority (GOAA) Master Trust Indenture and Taxable Revenue Note Series 2018. Adopted, filed and documentary **#180319K03**.

At approximately 2:33 P.M. Mayor Dyer recessed the City Council meeting and convened the Community Redevelopment Agency (CRA) meeting.

4. Community Redevelopment Agency (CRA)

(1) Accepting Community Redevelopment Agency Advisory Board (CRAAB) meeting minutes of January 24, 2018. Commissioner Patty Sheehan moved and Commissioner Robert F. Stuart seconded a motion to accept the meeting minutes, and the CRA voted *6-0 to accept the meeting minutes and for filing by the City Clerk, filed and documentary **#180319401**.

(2) Approving Community Redevelopment Agency (CRA) meeting minutes of February 12, 2018. Commissioner Robert F. Stuart moved and Commissioner Patty Sheehan seconded a motion to approve the meeting minutes, and the CRA voted *6-0 to approve the meeting minutes and accept for filing by the City Clerk, filed and documentary **#180319402**.

(3) Approving Community Redevelopment Agency (CRA) meeting minutes of February 26, 2018. Commissioner Patty Sheehan moved and Commissioner Robert F. Stuart seconded a motion to approve the meeting minutes, and the CRA voted *6-0 to approve the meeting minutes and accept for filing by the City Clerk, filed and documentary **#180319403**.

At approximately 2:34 P.M. Mayor Dyer adjourned the Community Redevelopment Agency (CRA) meeting and reconvened the City Council meeting.

5. Neighborhood Improvement District - Board of Directors – no agenda items.

6. OPEB Trust - Board of Trustees – no agenda items.

7. New Business/Hearings – no agenda items.

8. New Business

(1) Hearing of Appeal by J Malever Construction Company on the Recommendation for Award to Gregori Construction Inc. for Leu Gardens Stormwater Improvements, IFB18-0057. Mayor Dyer stated that the appellant in this case is J Malever Construction Company ("Malever") and the appellee is the City of Orlando ("City"). Mayor Dyer stated that the hearing will begin with background from the City's Chief Procurement Officer (CPO) David Billingsley, who will be given 10 minutes to present the City's side, followed by Appellant Malever given 10 minutes to present its side, followed by 10 minutes for interested parties to respond. City staff will be given time for response, followed by public comments, questions and Commissioners comments. City CPO Billingsley began by presenting background information, followed by the City's Contract Compliance Officer III Byron Raysor providing information on the Minority and Women's Business Enterprise (M/WBE). Assistant City Attorney (ACA) Alison Brackins outlined the issues on appeal and the City's position on those issues. At the close of the City's presentation, Ms. Brackins reserved the remaining time from the initial 10 minutes for rebuttal by the City. A copy of the City's presentation is included as supplemental papers to these minutes. Mayor Dyer called on Appellant Malever to present and President Cary Malever introduced himself to City Council, provided background information on several City projects the company has completed and introduced the company's attorney, Alexander B. Cvercko. A copy of Malever's Appeal of the Chief Financial Officer's Decision and Request for Hearing filed on February 14, 2018, together with a copy of Request for Waiver filed by Gregori, were provided to City Council members and the City Clerk. A copy of each is included as supplemental papers to these minutes. Following Mr. Cvercko's argument that Gregori Construction, Inc. ("Gregori") was not a responsive bidder and that the bid should be rejected, Mayor Dyer called on Gregori for comment and

Andrew Gregori responded to Malever's comments. Mayor Dyer called on City staff for rebuttal and Ms. Brackins and the City's Minority Business Enterprise (MBE) Division Manager Janeiro Coulter responded. Questions and comments from City Council were taken. Mayor Dyer asked if there was any public comment on this item and no one appeared to comment. Commissioner Patty Sheehan moved and Commissioner Samuel B. Ings seconded a motion to deny the appeal by Malever. City Council voted *6-0 to deny the appeal.

(2) Approving Award of Contract to Gregori Construction, Inc. for Leu Gardens Stormwater Improvement, IFB18-0057. Commissioner Patty Sheehan moved and Commissioner Samuel B. Ings seconded a motion to award a contract to Gregori Construction, Inc. for Leu Gardens Stormwater Improvement, IFB18-0057. Mayor Dyer asked if there was any public comment on this item and the following person appeared for comment: Cary Malever, on behalf of J Malever Construction Company, spoke in opposition to the award. Questions and comments from City Council were taken. City Council voted *6-0 to approve the award of contract to Gregori Construction Company, approved, filed and documentary #180319802.

9. Hearings – no agenda items.

10. Hearings/Emergency Ordinances – no agenda items.

11. Hearings/Ordinances/1st Reading

(1) City Clerk Denise Aldridge presented Ordinance No. 2018-18 abandoning an Unnamed Alley on the north side of Agnes Street (ABN2017-10005) (Economic Development) (District 4). Commissioner Patty Sheehan moved and Commissioner Robert F. Stuart seconded a motion to approve the ordinance on 1st reading. Mayor Dyer asked if there was any public comment on this item and no one appeared to comment. City Council voted *6-0 to approve the ordinance.

(2) City Clerk Denise Aldridge presented Ordinance No. 2018-22 amending the Growth Management Plan to change the Future Land Use Map for a portion of the 514 acre site from Office-Medium Intensity and Urban Activity Center to Industrial and from Industrial to Office-Low Intensity Future Land Use; and amending Future Land Use Subarea Policy S.39.4 to revise the development program for land generally located west and east of the SR 417 and north and south of LeeVista Boulevard (Beltway Commerce Center) (Economic Development). Commissioner Jim Gray moved and Commissioner Tony Ortiz seconded a motion to approve the ordinance on 1st reading. Mayor Dyer asked if there was any public comment on this item and no one appeared to comment. City Council voted *6-0 to approve the ordinance.

12. Hearings/Ordinances/2nd Reading

(1) City Clerk Denise Aldridge presented Ordinance No. 2018-2 amending Future Land Use Subarea Policy S.14.13, creating Future Land Use Subarea Policies S.13.8 and S.14.17 and amending the boundary between Subareas 7 and 14; in accordance with the new Virginia Drive Special Plan Overlay District (Virginia Drive SP) (Economic Development). Commissioner Robert F. Stuart moved and Commissioner Tony Ortiz seconded a motion to adopt the ordinance on 2nd reading. Mayor Dyer opened the public hearing and no one appeared to comment. Mayor Dyer closed the public hearing and City Council voted *6-0 to adopt the ordinance, filed and documentary #1803191201.

(2) City Clerk Denise Aldridge presented Ordinance No. 2018-14 amending the Downtown Sports and Entertainment District Planned Development Zoning District to add approximately 0.61 acres of land generally located at the southeast corner of South Division Avenue and West Central Boulevard; providing Special Land Development Regulations; providing for amendment of the City's Official Zoning Map.

Commissioner Patty Sheehan moved and Commissioner Samuel B. Ings seconded a motion that the ordinance be adopted on 2nd reading. Mayor Dyer opened the public hearing and no one appeared to comment. Mayor Dyer closed the public hearing and City Council voted *6-0 to adopt the ordinance, filed and documentary #1803191202.

(3) City Clerk Denise Aldridge presented Ordinance No. 2018-15 amending the Future Land Use designation from Industrial to Public Recreational and Institutional and amending the zoning from I-G to Public (Prosperitas Leadership Academy Charter HS) (Economic Development). Commissioner Samuel B. Ings moved and Commissioner Patty Sheehan seconded a motion to adopt the ordinance on 2nd reading. Mayor Dyer opened the public hearing and no one appeared to comment. Mayor Dyer closed the public hearing and City Council voted *6-0 to adopt the ordinance, filed and documentary #1803191203.

13. Ordinances/1st Reading

(1) City Clerk Denise Aldridge presented Ordinance No. 2018-17 amending the Lake Nona Planned Development to allow alternative setback standards for Parcel 7 for development of property generally located north of the Orange-Osceola county line, south of Dowden Road, east of Boggy Creek Road, and west of Narcoossee Road (Economic Development). Commissioner Jim Gray moved and Commissioner Patty Sheehan seconded a motion that the ordinance be approved on 1st reading. Mayor Dyer asked if there was any public comment on this item and no one appeared to comment. City Council voted *6-0 to approve the ordinance.

(2) City Clerk Denise Aldridge presented Ordinance No. 2018-19 granting Fomento de Contrucciones y Contratas, Inc. (FCC SA), a non-exclusive franchise to provide roll-off container collection and disposal of solid waste within the City Of Orlando. Commissioner Samuel B. Ings moved and Commissioner Patty Sheehan seconded a motion that the ordinance be approved on 1st reading. Mayor Dyer asked if there was any public comment on this item and no one appeared to comment. City Council voted *6-0 to approve the ordinance.

(3) City Clerk Denise Aldridge presented Ordinance No. 2018-20 rezoning certain land generally located south of Concord Street, west of North Bumby Avenue, east of North Hillside Avenue and north of Mount Vernon Street and comprised of 0.42 acres of land, more or less, as the Planned Development District; providing a development plan and special land development regulations of the Planned Development District (544 N Bumby PD, ZON2017-10006) (Economic Development). Commissioner Patty Sheehan moved and Commissioner Samuel B. Ings seconded a motion that the ordinance be approved on 1st reading. Mayor Dyer asked if there was any public comment on this item and no one appeared to comment. City Council voted *5-0 to approve the ordinance, noting that Commissioner Jim Gray declared a conflict on this item, filed Form 8B Memorandum of Voting Conflict with the City Clerk and abstained from a vote.

(4) City Clerk Denise Aldridge presented Ordinance No. 2018-21 relating to Disorderly Conduct; amending Chapter 43, Section 43.06 of the Code of the City of Orlando, Florida. Commissioner Patty Sheehan moved and Commissioner Robert F. Stuart seconded a motion to approve the ordinance. Mayor Dyer stated that Emergency Ordinance No. 2018-16 adopted on February 26, 2018 remains in effect and that this ordinance (Ordinance No. 2018-21) is created to allow for two readings and public input. Mayor Dyer called on Chief Assistant City Attorney Kyle Shephard for clarification. Mayor Dyer asked if there was any public comment on this item and no one appeared to comment. City Council voted *6-0 to approve the ordinance.

(5) City Clerk Denise Aldridge presented Ordinance No. 2018-23 amending the Planned Development

Zoning District Regulations for approximately 4.88 acres of land generally located at the northwestern corner of Kuhl Avenue and West Gore Street, south of Ernestine Street and east of Lucerne Terrace; providing an amended legal description, development plan, and special land development regulations of the Planned Development District (Orlando Health Team Member Planned Development) (Economic Development). Commissioner Patty Sheehan moved and Commissioner Robert F. Stuart seconded a motion that the ordinance be approved on 1st reading. Mayor Dyer asked if there was any public comment on this item and no one appeared to comment. City Council voted *6-0 to approve the ordinance.

14. Ordinances/2nd Reading – no agenda items.

15. Appeals – no agenda items.

16. Quasi-Judicial Hearings – no agenda items.

17. Unfinished Business – no agenda items.

18. For Information Only

(1) Meeting minutes of the Families, Parks and Recreation Advisory Board - January 18, 2018. Accepted meeting minutes for information only and for filing by the City Clerk, filed and documentary **#1803191801.**

(2) Meeting minutes of the Building and Fire Code Board of Appeals - March 2, 2018. Accepted meeting minutes for information only and for filing by the City Clerk, filed and documentary **#1803191802.**

(3) Revised Certification Board Rules - M/WBE Certification Board. Accepted for information only and for filing by the City Clerk, filed and documentary **#1803191803.**

(4) Citizen Advisory Board Annual Report - Downtown Development Board. Accepted for information only and for filing by the City Clerk, filed and documentary **#1803191804.**

(5) Meeting minutes of the Board Review Committee - February 8, 2018. Accepted meeting minutes for information only and for filing by the City Clerk, filed and documentary **#1803191805.**

(6) Meeting minutes of the Board Review Committee - February 9, 2018. Accepted meeting minutes for information only and for filing by the City Clerk, filed and documentary **#1803191806.**

(7) Meeting minutes of the Board Review Committee - February 14, 2018. Accepted meeting minutes for information only and for filing by the City Clerk, filed and documentary **#1803191807.**

(8) Meeting minutes of the Risk Management Committee - February 7, 2018. Accepted meeting minutes for information only and for filing by the City Clerk, filed and documentary **#1803191808.**

At approximately 3:44 P.M. the official scheduled City business on the March 19, 2018 City Council Agenda was concluded.

At approximately 3:45 P.M. Commissioner Tony Ortiz left the meeting.

19. General Appearances

Doug Zabin, appearing on behalf of the Orlando Professional Firefighters, spoke to City Council with an update on a fire in downtown Orlando on March 18, 2018 and also spoke on Item E-1 Orlando Fire Department 2018-2022 Strategic Plan, Goal #7.

Eric Rollings, appearing on his own behalf, spoke to City Council about reviewing and strengthening the City's tree ordinance.

Pending – no agenda items.

Adjournment

There being no further business to come before City Council on Monday, March 19, 2018, Mayor Buddy Dyer adjourned the meeting at 3:55 P.M.



Mayor Buddy Dyer

City Clerk Denise Aldridge

FORM 8B MEMORANDUM OF VOTING CONFLICT FOR COUNTY, MUNICIPAL, AND OTHER LOCAL PUBLIC OFFICERS

| | |
|---|---|
| LAST NAME-FIRST NAME-MIDDLE NAME <div style="font-size: 1.2em; font-family: cursive;">GRAY, JAMES W.</div> | NAME OF BOARD, COUNCIL, COMMISSION, AUTHORITY, OR COMMITTEE <div style="font-size: 1.2em; font-family: cursive;">ORLANDO City Council</div> |
| MAILING ADDRESS <div style="font-size: 1.2em; font-family: cursive;">300 S. ORANGE AVE.</div> | THE BOARD, COUNCIL, COMMISSION, AUTHORITY OR COMMITTEE ON WHICH I SERVE IS A UNIT OF: <div style="display: flex; justify-content: space-around; align-items: center;"> <input checked="" type="checkbox"/> CITY <input type="checkbox"/> COUNTY <input type="checkbox"/> OTHER LOCAL AGENCY </div> |
| CITY <div style="font-size: 1.2em; font-family: cursive;">ORLANDO</div> | COUNTY <div style="font-size: 1.2em; font-family: cursive;">ORANGE</div> |
| DATE ON WHICH VOTE OCCURRED <div style="font-size: 1.2em; font-family: cursive;">3-19-2018</div> | NAME OF POLITICAL SUBDIVISION: <div style="font-size: 1.2em; font-family: cursive;">CITY COUNCIL AGENDA/CITY COMMISSION</div> |
| | MY POSITION IS: <div style="display: flex; justify-content: space-around; align-items: center;"> <input checked="" type="checkbox"/> ELECTIVE <input type="checkbox"/> APPOINTIVE </div> |

WHO MUST FILE FORM 8B

This form is for use by any person serving at the county, city, or other local level of government on an appointed or elected board, council, commission, authority, or committee. It applies equally to members of advisory and non-advisory bodies who are presented with a voting conflict of interest under Section 112.3143, Florida Statutes.

Your responsibilities under the law when faced with voting on a measure in which you have a conflict of interest will vary greatly depending on whether you hold an elective or appointive position. For this reason, please pay close attention to the instructions on this form before completing the reverse side and filing the form.

INSTRUCTIONS FOR COMPLIANCE WITH SECTION 112.3143, FLORIDA STATUTES

A person holding elective or appointive county, municipal, or other local public office **MUST ABSTAIN** from voting on a measure which inures to his or her special private gain or loss. Each elected or appointed local officer also is prohibited from knowingly voting on a measure which inures to the special gain or loss of a principal (other than a government agency) by whom he or she is retained (including the parent organization or subsidiary of a corporate principal by which he or she is retained); to the special private gain or loss of a relative; or to the special private gain or loss of a business associate. Commissioners of community redevelopment agencies under Sec. 163.356 or 163.357, F.S., and officers of independent special tax districts elected on a one-acre, one-vote basis are not prohibited from voting in that capacity.

For purposes of this law, a "relative" includes only the officer's father, mother, son, daughter, husband, wife, brother, sister, father-in-law, mother-in-law, son-in-law, and daughter-in-law. A "business associate" means any person or entity engaged in or carrying on a business enterprise with the officer as a partner, joint venturer, coowner of property, or corporate shareholder (where the shares of the corporation are not listed on any national or regional stock exchange).

ELECTED OFFICERS:

In addition to abstaining from voting in the situations described above, you must disclose the conflict:

PRIOR TO THE VOTE BEING TAKEN by publicly stating to the assembly the nature of your interest in the measure on which you are abstaining from voting; and

WITHIN 15 DAYS AFTER THE VOTE OCCURS by completing and filing this form with the person responsible for recording the minutes of the meeting, who should incorporate the form in the minutes.

APPOINTED OFFICERS:

Although you must abstain from voting in the situations described above, you otherwise may participate in these matters. However, you must disclose the nature of the conflict before making any attempt to influence the decision, whether orally or in writing and whether made by you or at your direction.

IF YOU INTEND TO MAKE ANY ATTEMPT TO INFLUENCE THE DECISION PRIOR TO THE MEETING AT WHICH THE VOTE WILL BE TAKEN:

You must complete and file this form (before making any attempt to influence the decision) with the person responsible for recording the minutes of the meeting, who will incorporate the form in the minutes. (Continued on other side)

• A copy of the form must be provided immediately to the other members of the agency.

• The form must be read publicly at the next meeting after the form is filed.

IF YOU MAKE NO ATTEMPT TO INFLUENCE THE DECISION EXCEPT BY DISCUSSION AT THE MEETING:

• You must disclose orally the nature of your conflict in the measure before participating.

• You must complete the form and file it within 15 days after the vote occurs with the person responsible for recording the minutes of the meeting, who must incorporate the form in the minutes. A copy of the form must be provided immediately to the other members of the agency, and the form must be read publicly at the next meeting after the form is filed.

DISCLOSURE OF LOCAL OFFICER'S INTEREST

I, JAMES GRAY, hereby disclose that on MARCH 19, 2018.

(a) A measure came or will come before my agency which (check one)

☐ Inured to my special private gain or loss;

☒ Inured to the special gain or loss of my business associate, MARK KINCHLA;

☐ Inured to the special gain or loss of my relative, _____;

☐ Inured to the special gain or loss of _____, by
Whom I am retained; or

☐ Inured to the special gain or loss of _____, which
Is the parent organization or subsidiary of a principal which has retained me.

(b) The measure before my agency and the nature of my conflicting interest in the measure is as follows:

ORDINANCES - 1ST READ # 2018 - 20 - LAND REZONING

I AM ABSTAINING FROM VOTING ON THIS ISSUE. WHILE I
HAVE NO DIRECT INVOLVEMENT/INVESTMENT IN THIS PROPERTY,
MR. KINCHLA IS A CURRENT BUSINESS PARTNER IN OTHER
VENTURES.

Date Filed

3-19-2018

Signature

James Gray

NOTICE: UNDER PROVISIONS OF FLORIDA STATUTES §112.317, A FAILURE TO MAKE ANY REQUIRED DISCLOSURE CONSTITUTES GROUNDS FOR AND MAY BE PUNISHED BY ONE OR MORE OF THE FOLLOWING: IMPEACHMENT, REMOVAL OR SUSPENSION FROM OFFICE OR EMPLOYMENT, DEMOTION, REDUCTION IN SALARY, REPRIMAND, OR A CIVIL PENALTY NOT TO EXCEED \$10,000.

**Leu Gardens Stormwater Improvements,
IFB18-0057**

**Appeal by J. Malever Construction
Company on the Recommendation for
Award to Gregori Construction Inc.**

**Leu Gardens Stormwater
Improvements**

IFB18-0057

- Drainage and stormwater improvements project within Leu Gardens and along Forest Avenue.
- The improvements will include the construction of a 66-inch reinforced concrete pipe from Forest Avenue through Leu Gardens to Lake Rowena. The project also involves the conversion of an existing dry retention pond within the Leu Gardens grounds into an exfiltration trench system with an outfall to Lake Rowena.

**Leu Gardens Stormwater
Improvements**

IFB18-0057

- November 13, 2017: IFB issued
- December 14, 2017: Bid due date
- January 11, 2018: Notice of Intended Action posted to Award to lowest responsive and responsible bidder
 - Gregori Construction, Inc. ("Gregori")

**Leu Gardens Stormwater
Improvements**

- January 12, 2018: Protest received from J. Malever Construction, supplemental letter
January 19, 2018
- February 2, 2018: Chief Procurement Officer ("CPO") provided written decision denying protest
- February 7, 2018: J. Malever Construction appealed decision of Chief Procurement Officer
- February 12, 2018: Chief Financial Officer provided written decision denying appeal
- February 14, 2018: J. Malever Construction appealed decision of Chief Financial Officer

Leu Gardens Stormwater
Improvements

Issues on Appeal

- Two Issues on Appeal relating to the M/WBE Documentation provided at the time of bid submittal:
 1. Whether Gregori was responsive to the bid documents with submission of their M/WBE Letter of Intent, which is required at bid submittal.
 2. Whether the bid specification allowing a bidder an additional five (5) day timeframe to provide M/WBE subcontractor participation gives the low bidder an unfair and competitive advantage.

Leu Gardens Stormwater
Improvements

IFB18-0057

- Minority & Women Business Enterprise Program
 - Program is intended to increase the opportunity for minority and women-owned firms to participate in City procurement and ensure equal contracting opportunities for Minority and Women Business Enterprises (M/WBE)
 - Program was implemented in 1983 (35 Years)
- City Code, Chapter 57, Article II & III Establishes M/WBE Program Goals for Construction Bids:
 - 18% MBE Subcontracting Participation goals
 - 6% WBE Subcontracting Participation goals

Leu Gardens Stormwater
Improvements

IFB18-0057

- On a Construction Bid Solicitation, as provided for in Supplementary Conditions, Section 3, Part II, number 8 (00800-5), the MBE Coordinator may provide an extension of no more than five business days when a Contractor fails to meet the goals but has sufficiently complied with good faith efforts.

After a construction bid solicitation opening, the Minority Business Enterprise/Blueprint Division conducts the following review:

- Evaluate the M/WBE information that is submitted by all bidders. (i.e., Letters of Intent, Good Faith Documentation)
- Validate and verify M/WBE information submitted by all bidders
- Create a M/WBE summary of information submitted by all bidders
- Make recommendation for approval or non approval of the apparent low bidder
- Draft a M/WBE memorandum and forward to the project manager and Procurement contract administrator



Leu Gardens Stormwater
Improvements

IFB18-0057

- Issue #1: Was Gregori a responsive bidder:
 - As required by the solicitation as set forth in the Supplemental Conditions, a Letter of Intent, providing a list of the Contractor's proposed M/WBE subcontractors is to be provided at the time of bid opening and evidence of good faith efforts shall be submitted at bid opening if the bidder does not meet either or both of the MBE and WBE goals.

LETTER OF INTENT

["Instructions"] Contractor shall place the following on their letterhead, executed by their authorized agent. The Contractor shall submit this Letter AT BID OPENING listing any and all MBE/WBE subcontractors obtained by the Contractor.

In the event a Contractor fails to meet the MBE/WBE percentage goals as required by the attached documents, the Contractor shall complete and submit this Letter of Intent and shall provide evidence of a good faith effort as required by the "City of Orlando Construction Contract Bid Specifications Minority and Women-Owned Enterprise Participation" AT BID OPENING. Once the bids are opened, the Letter of Intent must be signed by the MBE/WBEs and returned to the MBE Office no later than two days after bid opening.

Dear MBE Coordinator:

I, _____, have entered into an agreement(s) with the following Minority
(Name of Contractor)
and/or Women-Owned Business Enterprise(s) to do the following work for the listed total contract amounts:

| | |
|-----------------|---------------------|
| 1) _____ | (MBE/WBE) |
| (Scope of Work) | (Subcontract Price) |

(NOTE: Extend list for additional MBE/WBE(s) as needed)

The total percentage of the Contract being performed by MBEs _____%
The total percentage of the Contract being performed by WBEs _____%

The total dollar amount of contracts being performed by MBEs \$ _____
The total dollar amount of contracts being performed by WBEs \$ _____

I understand that I shall not be allowed to substitute or change MBE/WBE Subcontractors nor their scope of work nor the percentage of work performed by them without the express prior approval of the MBE Coordinator.

[] I was unable to meet the MBE and/or WBE goals on the project. My "good faith" effort documentation is attached to this letter.

Under penalty of perjury, I declare that I have read the foregoing and the facts stated in it are true. (Failure to answer the above questions honestly may result in criminal prosecution for a felony of the third degree as provided for in Section 92.525(3) Florida Statutes.)

Authorized Agent of Contractor (must be signed) _____

Date _____

Authorized Agent of MBE/WBE
(must be signed within two (2) days after bid opening)

Date _____



In reviewing Gregori's supplied Letter of Intent, the City evaluated the following and found that it substantially complied with the specification requirements:

- Submitted on their firm letterhead
- Submitted at time of bid submittal.
- Good Faith Documentation was attached and provided the "penalty of perjury" statement that was signed on each page of the good faith documentation.
- The fact that the City's exact form was not utilized was deemed to be a minor irregularity as the form did not affect price, thus deemed Gregori in compliance.
 - *Case law showing that public policy against throwing out for minor technical reasons (Overstreet Paving Company v. State of Florida, Dept. of Transp. (608 So.2d 851 (Fla.App. 2 Dist. 1992))*
- Gregori also submitted the sign and sworn "Affidavit of Present and Future Compliance with the City of Orlando M/WBE Ordinance."



Leu Gardens Stormwater Improvements

IFB18-0057

- Issue #2: Whether the bid specification allowing a bidder an additional five (5) day timeframe to provide M/WBE subcontractor participation gives the low bidder an unfair and competitive advantage
- The City evaluated Gregori's Good faith Documentation to substantiate whether Gregori had sufficiently complied with the good faith documentation. The review included, but was not limited to the following:
 - That Gregori solicited several M/WBE firms prior to bid opening.
 - That Gregori provided documentation showing that they utilized the City's certified M/WBE directory to solicit subcontractors.
 - That Gregori identified the subcontractors' lines of work that they intend to utilize.
 - That Gregori demonstrated the portions of the work to be performed by the M/WBE firms were feasible.

**Leu Gardens Stormwater
Improvements**

IFB18-0057

- Based upon the good faith documentation received, Gregori was given an additional five (5) days extension to ensure that Gregori made a good faith effort to comply with the City's subcontracting participation goals.
- This has consistently been the City's practice with the program over the past 30 years and all bidders were afforded the same opportunity as set forth in the Bid specifications.
- At the end of this extension, Gregori was able to exceed the City's goals with an overall 25.4% M/WBE Subcontractor participation.
- Meet the program objectives.
- At no time was the original low bid price changed and did not impact the overall pricing to the City.

**Leu Gardens Stormwater
Improvements**

IFB18-0057

- The time to have protested the City's procedure regarding the additional 5 day timeframe would have been 7 days after the issuance of the solicitation, per City Code Section 7.900(D)(1).
- As such, the City believes this issue is untimely to be heard on this appeal, but nevertheless feels that the City has been fair and consistent in our process of affording the additional timeframe if the letter of intent and good faith documentation has been met by a bidder.
- Gregori substantially complied with IFB18-0057 solicitation documents and therefore was deemed as a responsive and responsible low bidder.

Council has the discretion to:

- Deny the Appeal; or
- Uphold the Appeal; or
- Reject all bids and cancel the solicitation.

- Recommended Action: Deny the Appeal and in the accompanied New Business companion item to award to Gregori Construction.



Leu Gardens Stormwater
Improvements

IFB18-0057

• **Case Law:**

- In *Intercontinental Properties, Inc. v. State of Florida Department of Health and Rehabilitative Services*, 606 So.2d 380 (3rd DCA 1992), a party protesting the award of a government contract to the low bidder must be prepared to show not only that the low bid was *deficient*, but also that the protester's own bid does not suffer from the same deficiency. The Letter of Intent provided by J. Malever was incomplete as it was missing the percentages related to each M/WBE subcontractor on the form; thus an additional 5 day M/WBE review period would have been initiated for J. Malever, in this case as was done with Gregori.

**Leu Gardens Stormwater
Improvements**

Issue on Appeal

Questions??

- Presented by:
 - David Billingsley, Chief Procurement Officer
 - Janeiro Coulter, Minority Business Enterprise/Blueprint Division Manager
 - Byron Rayser, Contract Compliance, Minority Business Enterprise/Blueprint Division
 - Alison Brackins, Assistant City Attorney



Attorneys at Law

PHONE: 904-821-8700 FAX: 888-477-3412

Alexander B. Cvercko, Esq.
alex@cverckolaw.com

M. Alex Williams, Esq.
awilliams@cverckolaw.com

February 14, 2018

VIA EMAIL: denise.alderidge@cityoforlando.net
AND FED EX TRACKING NO.: 7714 8475 7195

Denise Alderidge
City Clerk
City Hall
400 South Orange Avenue
Orlando, FL 32801

**Appeal of the Chief Financial Officer's Decision
and Request for Hearing**

RE: J. Malever Construction Company
Appeal of the Chief Financial Officer's Decision
Bid Protest for Solicitation No.: IFB18-0057 Solicitation Title: Leu Gardens Stormwater
Improvement
CV No.: 114.001

Dear Ms. Alderidge:

This Firm is in receipt of the decision reached by Christopher McCullion ("McCullion"), Chief Financial Officer, in which McCullion has denied J. Malever Construction Company's ("Malever") Bid Protest for Solicitation No.: IFB18-0057, Solicitation Title: Leu Gardens Stormwater Improvement ("Solicitation").

Accordingly, this appeal of the Chief Financial Officers decision ("Appeal") is being filed on behalf of J. Malever Construction Company in accordance with § 7.900(H) of Orlando, Florida-Code and Ordinances and this Appeal meets all requirements set forth in § 7.900 of Orlando, Florida-Code and Ordinances. Malever request a hearing to be scheduled for an oral presentation before the City Council in which J. Malever will present an oral argument in support of rejecting the bid submitted by Gregori Construction, Inc. ("Gregori") as non- responsive, as laid out in the below.

Upon review of the public records received for the above referenced bid submitted by Gregori, it is clear and unequivocal that Gregori's bid was not responsive for two reasons. First, the bid package was incomplete and failed to include the required MBE/WBE documentation at the time of bid opening. A copy of the required form is enclosed and labeled **Exhibit "A"**. Note the bidder, required in the document, must list MBE/WBE subcontractors and is sworn to, under penalties of perjury, meaning lying in the form carries criminal ramifications. Rather, Gregori submitted an unsworn letter from Andrew M. Gregori, basically stating that he tried his best to meet the MBE/WBE requirements but no one returned his phone call. This letter was not sworn to nor was the statement made under oath. A copy of the letter is enclosed and labeled **Exhibit "B"**. Accordingly, the bid is materially non-responsive due to Gregori's failure to submit the required form sworn to under penalties of perjury. Second, the untimely documentation provided failed to provide sufficient good faith by failing to meet the City of Orlando's MBE/WBE requirements.

Each defect alone provides an unfair advantage to Gregori as they are in a no lose situation relative to other bidders. If the City had simply overlooked the required MBE/WBE requirements, Gregori's bid would be accepted without complying with the bid or MBE/WBE requirements. Furthermore, there is no evidence that Gregori could not meet the MBE/WBE requirements and there are in fact, at this time, sufficient MBE/WBE's to meet the City of Orlando's requirements. Finally, if called upon after winning the bid, Gregori is then in an advantageous negotiation position being able to guarantee the MBE/WBE work if they agreed to Gregori's pricing. This is not only a competitive advantage at bid time, but gives Gregori a superior advantage to negotiate down MBE/WBE companies to the MBE/WBE's detriment. The City certainly does not want to disadvantage the very group it is trying to assist by conducting its procurement in this way and rewarding contractors that fail to follow the procedures..

The bid documents specifically required Gregori to submit the required MBE/WBE documentation prior to or at bid opening. Gregori failed to comply with this requirement. The Solicitation required:

ALL BIDDERS SHALL SUBMIT A LETTER OF INTENT (SEE ARTICLE 3 OF THE SUPPLEMENTARY CONDITIONS SECTION 00800 FOR LETTER OF INTENT FORM) AT THE TIME OF BID OPENING WHICH LISTS ANY AND ALL MBE/WBE SUBCONTRACTORS WHICH THE BIDDER INTENDS TO USE ON THIS PROJECT. IN THE EVENT A BIDDER DOES NOT MEET EITHER OR BOTH THE MBE OR WBE PERCENTAGE GOALS REQUIRED, THE BIDDER SHALL SUBMIT AT BID OPENING, IN ADDITION TO THE LETTER OF INTENT, EVIDENCE OF A GOOD FAITH EFFORT TO ACHIEVE THE GOALS, AS REQUIRED BY THE "CITY OF ORLANDO CONSTRUCTION CONTRACT BID SPECIFICATIONS MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISE PARTICIPATION" IN THE SUPPLEMENTARY CONDITIONS.

The Solicitation further states:

City of Orlando Minority & Women-Owned Business Enterprise Ordinance and Veteran Business Enterprise (VBE) program

The CONTRACTOR shall be required to comply with the City of Orlando's Minority & Women-Owned Business Enterprise Ordinance (Chapter 57) and Veteran Business Enterprise (VBE) program (Chapter 7). The Supplementary Conditions establish requirements which must be achieved by the CONTRACTOR; certain required actions must be taken at least 10 days prior to bidding. The MBE/WBE Letters of Intent (see form in Supplementary Conditions) must be provided at the time of bid opening. If either or both the MBE/WBE goals are not met, MBE/WBE "good faith" documentation must also be provided at the time of bid opening. The VBE Participation form is provided in the Supplementary Conditions

The Solicitation clearly requires the submission of MBE/WBE Letter of Intent, under penalties of perjury at the time of bid opening. It is now clear that Gregori failed to abide by the terms of the specific requirements with regards to the submission of MBE/WBE participation at the time of bid opening. This provided a substantial unfair competitive advantage to Gregori by allowing it to make a lower bid without the MBE/WBE participation. Gregori's bid is therefore materially non-responsive to the Solicitation and must be rejected. The City does not have the authority to accept bids that are non-responsive. See Harry Pepper & Associates, Inc. v. The City of Cape Coral, 352 So.2d 1190 (Fla.. 2nd DCA 1977). A copy is enclosed and labeled **Exhibit "C"**.


Furthermore, Gregori's good faith letter fails to be sufficient. Gregori failed to substantially comply with the requirements as there are sufficient MBE/WBE's available for the proposed scope of work to meet the City of Orlando's requirement. Because Gregori submitted a materially incomplete and non-responsive bid package and materially failed to comport to the MBE/WBE requirements, Gregori should not be awarded the contract for the Project. Furthermore, the only alternatives for the City is to reject the non-responsive bid and award the contract to the next lowest bidder or to re-advertise for new bids.

The actions of Gregori have provided Gregori a materially unfair advantage in extra time to supplement their bid package that none of the other bidding contractors were afforded and a materially advantageous negotiating position for Gregori over MBE/WBE companies. The bid as submitted was non-responsive and a direct violation of the City's bidding process and the rules set forth by the City of Orlando Code of Ordinances.

Deeming the Gregori bid as responsive sets a dangerous precedent for the City and for MBE/WBE's. This will encourage bidders to not fill out the MBE/WBE Form in advance, provide a similar nebulous letter, bid without MBE/WBE participation, and then after being the low bidder, go negotiate with MBE/WBE's and have them conform to their pricing and if they do not, there would be an excuse that the MBE/WBE's were not competitive and would not be used. This certainly is not the spirit of the program, but is apparently the one being proffered by the City if the Gregori bid is determined responsive.

For the reasons set forth herein, the City of Orlando should reject Gregori's non-responsive bid and either award the bid to the next lowest bidder or reopen the bid and advertise for new bids.

Sincerely,



Alexander B. Cvercko

Enclosures

cc: Cary J. Malever (via email)

LETTER OF INTENT

[*Instructions* Contractor shall place the following on their letterhead, executed by their authorized agent. The Contractor shall submit this Letter AT BID OPENING, listing any and all MBE/WBE subcontracts obtained by the Contractor.

In the event a Contractor fails to meet the MBE/WBE percentage goals as required by the attached documents, the Contractor shall complete and submit this Letter of Intent and shall provide evidence of a good faith effort as required by the "City of Orlando Construction Contract Bid Specifications Minority and Women-Owned Enterprise Participation," AT BID OPENING. Once the bids are opened, the Letter of Intent must be signed by the MBE/WBEs and returned to the MBE Office no later than two days after bid opening.]

Dear MBE Coordinator:

I _____ have entered into an agreement(s) with the following Minority
(Name of Contractor)
and/or Women-Owned Business Enterprise(s) to do the following work for the listed, total contract amounts.

1) _____
(MBE/WBE)

(Scope of Work)

(Subcontract Price)

(NOTE: Extend list for additional MBE/WBE(s) as needed)

The total percentage of the Contract being performed by MBEs _____ %
The total percentage of the Contract being performed by WBEs _____ %

The total dollar amount of contracts being performed by MBEs \$ _____
The total dollar amount of contracts being performed by WBEs \$ _____

I understand that I shall not be allowed to substitute or change MBE/WBE Subcontractors nor their scope of work nor the percentage of work performed by them, without the express prior approval of the MBE Coordinator.

☐ **I was unable to meet the MBE and/or WBE goals on the project. My "good faith" effort documentation is attached to this letter.**

Under penalty of perjury, I declare that I have read the foregoing and the facts stated in it are true. (Failure to answer the above questions honestly may result in criminal prosecution for a felony of the third degree as provided for in Section 92.525(3) Florida Statutes.)

Authorized Agent of Contractor (must be signed)

Date

Authorized Agent of MBE/WBE
(must be signed within two (2) days after bid opening)

Date

Exhibit "A"



3950 South Street, Titusville, FL 32780
Ph: (724) 353-1322 / Fx: (724) 353-2486
www.gregori-inc.com

CGC 1512990 CGC 1225399

City of Orlando
400 South Orange Ave.
Orlando, FL 32801
ATTN: Mr. David Billingsley

December 14, 2017

Project: IFB18-0057
Leu Gardens Stormwater Improvement
Letter of Intent

Dear Mr. Billingsley,

As required, I am submitting this letter of intent with my company's bid for the subject project. While I did personally solicit subcontract and supply solicitations from MBE/WBE/SDVOB companies, I received very little overall, and no positive pricing response. I am aware of and very much in favor of the City of Orlando's MBE/WBE/SDVOB participation goals. Please understand that it our efforts to include MBE/WBE/SDVOB companies for participation on this project, should it be awarded to Gregori Construction Inc., will continue after award and through the completion of the project. It was our intent prior to submission of this bid to procure the following services/supplies from MBE/WBE/SDVOB companies:

- Aggregates & trucking
- Drainage system materials (pipe, structures)
- StormTech exfiltration system
- Fence and gates

Although we were not able to secure MBE/WBE/SDVOB participation for these items prior to the submission of our bid, it is our intent to do so prior to the start of work should we be awarded this project.

Thank you for your understanding.

Sincerely,

Andrew M. Gregori

Vice President

Exhibit "B"

352 So.2d 1190
District Court of Appeal of
Florida, Second District.

HARRY PEPPER & ASSOCIATES,
INC., et al., Appellants,

v.

The CITY OF CAPE CORAL, Florida,
et al., and Gulf Contracting, Inc.,
a Florida Corporation, Appellees.

No. 76-1708.

|

Nov. 9, 1977.

|

Rehearings Denied Dec.
16, 1977 and Jan. 5, 1978.

Synopsis

Second lowest bidder for city's water treatment plant construction project brought action for an injunction preventing city from contracting with lowest bidder, for writ of prohibition and for other relief. The Circuit Court, Lee County, Thomas W. Shands, J., granted city's motion for directed verdict, and plaintiff-bidder appealed. The District Court of Appeal, Second District, held that city did not have authority to accept lowest bidder's bid, which, at time of its submission, was facially nonconforming in regard to brand of pumps to be installed but which was amended, prior to acceptance, to conform to the specifications as stated in the original proposal.

Reversed and remanded with directions.

Attorneys and Law Firms

*1191 Philip T. Weinstein of Cunningham & Weinstein, Miami, and Henderson, Franklin, Starnes & Holt, Fort Myers, for appellants.

Richard V. S. Roosa of Pavese, Shields, Garner, Haverfield & Kluttz, Cape Coral, for appellees City and individual council members.

Daryl J. Brown of Rosin, Abel, Band, Rosin & Brown, Sarasota, for appellee Gulf Contracting, Inc.

Opinion

PER CURIAM.

The issue in this case is whether a city has legal authority to accept a bid which, at the time of its submission, is facially nonconforming as to acceptable materials and components, but which is subsequently amended, prior to acceptance, to conform to the specifications as stated in the original proposal. The trial court, in essence, held that it had such authority. We disagree and reverse.

Appellee City desired to build a water treatment plant, and in March 1976 caused to be published the necessary advertisement for bids.¹ The advertisement for bids contained the following provision:

Prebid submitted by manufacturers whose equipment has not been specified is required. The Engineer's written approval of that equipment must be obtained for that equipment to be authorized for inclusion in the Bid Documents' Equipment Schedule or project work.

The instructions to bidders contained, inter alia, the following condition:

1) The Contract will be awarded to the lowest responsible bidder complying with the conditions of the Advertisement, Instructions to Bidders, General and Special Conditions, Drawings and Specifications provided such bid is reasonable and provided it is to the interest of the Owner to accept it.

*1192 Since a major component of the water plant required the use of expensive and powerful pumps, the specifications for the bids said the following about the various types of pumps to be used:

Exhibit "C"

As a point of information, this project has been designated based on the use of (pumps) . . . as manufactured by Johnson Pump Company; FMC Corporation, Peerless Pump Division; or equal.

Each bid required the bidder to specify the manufacturer of the pumps that he proposed to supply under his bid.²

After receipt of the bids, it was determined that the lowest bidder was appellee Gulf Contracting (Gulf), and the next lowest bidder was appellant Pepper & Associates (Pepper). However, Gulf's bid listed a brand of pumps, Aurora, which all parties agree would not be acceptable to the City. After the discovery of this nonconformity Smallwood, an engineer in the engineering firm retained by the City, contacted an officer of Gulf and asked him to write a letter amending Gulf's bid so it would conform to the bid specifications. A short time later Gulf submitted a letter saying that it would comply with the bid specifications as to the pumps. Smallwood then recommended that Gulf's bid be accepted.

At a city council meeting on May 28, 1976, appellant Pepper's representatives appeared before the city council and contended that the proposed award on Gulf's amended bid was unlawful. The city council then directed the city attorney to report to it on June 3 as to its legal rights with respect to this matter.

At the meeting on June 3, the City, acting on the recommendation of its project engineer and the advice of its attorney, accepted the lower bid of Gulf.

Appellant Pepper then filed a complaint for a temporary injunction to prevent the City from contracting with Gulf. Following a hearing the trial court denied the request for temporary injunction.

Thereafter Pepper filed an amended complaint for injunction, writ of prohibition, and other relief. A hearing was held on the matter. At the close of

Pepper's evidence the City moved for a directed verdict. The trial court granted this motion and thereby denied the injunction. The court then entered its final judgment denying all relief to Pepper, from which this appeal was taken.

The purpose of the bidding process, as asserted in the early landmark case of *Wester v. Belote*, 103 Fla. 976, 138 So. 721, 723-24 (1931), is:

(T)o protect the public against collusive contracts; to secure fair competition upon equal terms to all bidders; to remove not only collusion but temptation for collusion and opportunity for gain at public expense; to close all avenues to favoritism and fraud in its various forms; to secure the best values for the county at the lowest possible expense; and to afford an equal advantage to all desiring to do business with the county, by affording an opportunity for an exact comparison of bids.

See also, 26 Fla.Jur., Public Works and Contracts, Section 14 (1959).

[1] From the above quote it is apparent that the entire scheme of bidding on public projects is to insure the sanctity of the competitive atmosphere prior to and after the actual letting of the contract. In order to insure this desired competitiveness, a bidder cannot be permitted to change his bid after the bids have been opened, except to cure minor irregularities. 10 E. McQuillin, *Municipal Corporations*, Section 29.68 (Rev.Ed.1966); 64 Am.Jur.2d, *Public Works and Contracts*, Section 59 (1972); Annot., 65 A.L.R. 835 (1930).

[2] Looking to the specific facts in this case it is clear that prior to the awarding of the contract on June 3 the City was aware of the nonconforming nature of Gulf's bid. *1193 The test for measuring whether a deviation in a bid is sufficiently material to destroy its competitive character is whether the variation affects the amount of the bid by giving the bidder an advantage or benefit not enjoyed

by the other bidders. 64 Am.Jur.2d, Public Works and Contracts, Section 59 (1972). Here, there is no doubt that the difference between the conforming and nonconforming pumps was material, yet Gulf was permitted to modify its bid. Further, the inclusion of the nonconforming pumps was an advantage not enjoyed by other bidders, who were required to specify only approved equipment.

[3] No one suggests that Gulf could have been required to perform the contract with conforming pumps, as its bid specifically stated that it would use Aurora, the nonconforming pumps. Therefore, Gulf had everything to gain and nothing to lose. After everyone else's bids were opened, Gulf was in a position to decide whether it wanted the job bad enough to incur the additional expense of supplying conforming pumps.

In *City of Opa-Locka v. Trustees of Plumbing Industry Promotion Fund*, 193 So.2d 29 (Fla.3d DCA 1966), the appellee sought to bid on a contract to install certain sanitary sewer services for the City of Opa-Locka. As a condition precedent to any bid being filed, a bidding party had to have a certificate of competency from Dade County. Following submission of bids it was discovered that the appellee had submitted the lowest bid but did not possess the required certificate. The trial court enjoined the City from recognizing appellee's bid. In affirming the trial court, our sister court stated, "If the City may in its discretion waive this section it would be conducive to favoritism by allowing some bidders to qualify after their bids are accepted . . ." 193 So.2d at 32.

Though the facts of *Opa-Locka* and this case are dissimilar, in both instances the municipal authority permitted the bidder to bring his bid into conformance with the specifications after the bids were opened. Our sister court did not approve of this procedure, nor can we.

The Supreme Court of Minnesota put the applicable proposition well in *Coller v. City of Saint Paul*, 223 Minn. 376, 26 N.W.2d 835, 842 (1947):

If officials charged with the letting of public contracts should be permitted in their

discretion to permit bids to be changed after they have been received and opened, it would open the door to the abuses which it is the purpose of the requirements of competitive bidding to prevent and suppress.

See also, *Application of Glen Truck Sales & Service, Inc.*, 31 Misc.2d 1027, 220 N.Y.S.2d 939 (Sup.Ct.1961).

Faced with Gulf's substantially nonconforming bid, the City had but two proper alternatives: to award the contract to the next lowest bidder who met the specifications, or to reject all bids and readvertise for new ones. The City exceeded its authority by allowing Gulf to bring its bid into conformity with the specifications and then accepting it.

Reversed.

HOBSON, Acting C. J., and GRIMES and SCHEB, JJ., concur.

ON PETITION FOR REHEARING

PER CURIAM.

[4] Upon petition for rehearing by appellee Gulf Contracting, Inc. our attention is called to the fact that in our initial opinion we reversed the judgment of the trial court without directions. Appellee correctly points out that this would be construed as returning this cause to the trial court just as if the reversed order had never been made. *Bock v. Bock*, 311 So.2d 684 (Fla. 2d DCA 1975). As noted in our opinion, the judgment appealed from was a directed verdict entered in favor of the city at the close of appellants' evidence. At that point the trial court denied injunctive relief and entered final judgment against appellants.

Our opinion is hereby amended to remand this cause to the trial court with direction to afford appellees an opportunity to *1194 present evidence on the issues involved. See *Cape Coral*

Bank v. Kinney, 321 So.2d 597 (Fla. 2d DCA 1975);
otherwise, the petition for rehearing is denied.

All Citations

352 So.2d 1190

HOBSON, Acting C. J., and GRIMES and
SCHEB, JJ., concur.

Footnotes

- 1 The only legal requirement for bidding cited to the court was that of Ordinance No. 2-13 which provides in relevant part:
Sec. 2-13. AUTHORIZATION FOR EXPENDITURE OF CITY FUNDS. * * * When a single lease or purchase of equipment, goods, supplies, merchandise, facilities, etc., involving the expenditure of funds of more than fifteen hundred dollars (\$1,500.00) within a fiscal year, advertising for bids or the receiving of bids is mandatory.
- 2 The instructions also contained other conditions requiring approval of the Engineer's Manager of Plant Design before any substitution in the specified equipment could be made. Any approval sought under this condition was required to be requested no later than 10 days prior to the time of bidding or after.

End of Document

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Request for Waiver

1. Statement of Basis for Waiver Request:

Gregori Construction Inc. is requesting a waiver of the City's MBE and WBE goals (18% and 6%, respectively). We are requesting approval for participation levels of 17.14% MBE and 2.42% WBE (see **Attachment A** for our commitment details). Our basis for this request is as follows:

- a. For MBE participation we have solicited participation in this project from City of Orlando-approved MBE firms whose services (as listed in the City's downloadable Excel file) match items of work and/or supply required for this project. When their pricing is applied at the levels of work or material supply needed for this project's work items, the total MBE involvement calculates to 17.14% of our total bid.
- b. For WBE participation we have also solicited participation in this project from City of Orlando-approved WBE firms whose services (as listed in the City's downloadable Excel file) match items of work and/or supply required for this project. The number of WBE firms whose services apply to the work items required for this project, however, is much smaller than the number of MBE firms. To increase our WBE participation, where an MBE firm and a WBE firm provided pricing for the same work items, we committed to the WBE firm, regardless of each firm's price. Still, there were fewer opportunities for WBE involvement in this project based on the project's scope and items of work included.

Upon award and commencement of construction of this project we will continue searching for contracting and supply opportunities for both MBE and WBE firms.

2. Publications in Which M/WBE Participation Solicitations Were Included:

In addition to contacting M/WBE firms directly to solicit participation in this project, we specifically solicit M/WBE participation on our company's website at <http://gregori-inc.com/> on our "Active Bids" page. In addition, we appear as planholders for this project in the following:

- a. City of Orlando VendorLink Website
- b. Dodge Reports (www.construction.com)
- c. Construction Journal



3. Dates of Publication in the Preceding:

- a. Gregori Construction Inc. Website: 12/01/2017
- b. City of Orlando VendorLink: 11/13/2017
- c. Dodge Reports: 11/13/2017
- d. Construction Journal: 11/13/2017

4. Listing of M/WBE Firms from City of Orlando Directory that Were Contacted
See Attachment B

5. Copies of Correspondence Soliciting M/WBE Participation

See **Attachment C**. Please note that this is a sample of the request that was sent to each of the firms listed in **Attachment B**. Dates on which the requests were sent are also listed in **Attachment B**.

6. Copies of Correspondence Received from M/WBE Firms

As of bid time Gregori Construction Inc. had only received pricing from B & L Construction of the M/WBE firms we had contacted (See **Attachment D**).

7. Manner in Which Contract Documents Were Made Available

Per Attachment B, contract documents were made available through Gregori Construction Inc.'s website, through the City's VendorLink website, and via e-mail from Gregori Construction Inc.'s office.

8. Negotiations Between Gregori Construction Inc. and Potential M/WBE Firms
N/A

9. Documentation of Other Contracts Utilizing M/WBE Firms

See Attachment E

| Project # | Project | Owner | Status |
|-----------|-----------------------------|----------------|----------------|
| 1 | Valkaria Rd. Sidewalk | Brevard County | Ongoing |
| 2 | SR 417 -Curry Ford Rd. Ramp | CF Expressway | Fin. July 2017 |
| 3 | Hansel Pond Improvements | Orange County | Ongoing |

10. Additional Information Relevant to Waiver Request

Contrary to what was shown on our bid documents, Gregori Construction Inc. had never intended proposing 0% M/WBE participation in this project. Our inclusion of paperwork leading to that intention is only due to my (Andrew Gregori) misunderstanding of the required M/WBE commitment paperwork. As the letter included in our bid stated, and as supported by the attached fully executed M/WBE commitment letters, Gregori Construction Inc. understands the vital importance of providing construction and supply opportunities to M/WBE businesses. We have a long history of working with and mentoring M/WBE companies and very much welcome the opportunity to do so again.

11. Gregori Construction Contact Regarding this Waiver

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321-593-9103 Office
724-822-3705 Mobile

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