

APPROVED
BY ORANGE COUNTY BOARD
OF COUNTY COMMISSIONERS

DEC 14 2010 *Gms/np*

**SECOND AMENDMENT TO
REVISED INTERLOCAL AGREEMENT**

between the

CITY of WINTER PARK, FLORIDA

and

ORANGE COUNTY, FLORIDA

regarding the

**CENTRAL FLORIDA COMMUTER RAIL
TRANSIT SYSTEM**

Approved by the City of Winter Park
City Commission
December 13, 2010

Approved by the Orange County
Board of County Commissioners
DEC 14 2010, 2010

**SECOND AMENDMENT TO
REVISED INTERLOCAL AGREEMENT**
between the
**CITY of WINTER PARK and ORANGE
COUNTY**
regarding the
**CENTRAL FLORIDA COMMUTER RAIL
TRANSIT SYSTEM**

This Second Amendment to the Revised Interlocal Agreement (“Second Amendment”) is made by and between the **City of Winter Park**, a municipality existing under the laws of the State of Florida (the “City”), and **Orange County, Florida**, a political subdivision and charter county of the State of Florida (the “County”).

* * *

WHEREAS, the City and the County previously negotiated a Revised Interlocal Agreement regarding the Central Florida Commuter Rail Transit System (hereafter “Agreement”) in order to develop a partnership for the purpose of maintaining, operating, and supporting a commuter rail station within the City; and

WHEREAS, the County approved the Agreement on July 19, 2007 and the City approved the Agreement on August 27, 2007; and

WHEREAS, the Agreement allows for amendment by agreement of both the City and County; and

WHEREAS, the City and County approved a First Amendment to the Agreement on December 10, 2007 and December 18, 2007, respectively, amending only Section 6.2(c) of the Agreement; and

WHEREAS, funding obligations for the Commuter Rail project have changed and the City and the County agree that the Agreement, as amended by the First Amendment, should again be amended to update the terms and conditions for funding the maintenance, operation and support of the commuter rail station located within the City.

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth in the Agreement, as amended by the First Amendment, the City and the County agree as follows:

1. **Recitals.** The foregoing recitals are true and form a material part of this Second Amendment.

2. **Status of Agreement, as amended by the First Amendment.** The Agreement, as amended by the First Amendment, is fully effective and binding. Except as amended herein, the Agreement, as amended by the First Amendment, shall remain in full force and effect.

3. **Article 5 of the Agreement.**

a. Article 5 of the Agreement, regarding “Financial Obligations,” is hereby amended by deleting each and every reference therein to “Fixed Guideway Bond Debt Service” consistent with the provisions of the Master Interlocal Agreement attached hereto and incorporated herein as Exhibit A. Accordingly, the parties agree and understand that the “Fixed Guideway Bond Debt Service” and the costs or expenses thereof shall not be used as a part of the formula by which either party’s financial obligation shall or may be determined.

b. Article 5, and Section 5.3(c) of the Agreement are amended to simplify the payment procedure in the event the City is responsible to pay its share of the cost for the Commuter Rail System. The County shall pay thirty percent (30%) of the City's share of the cost for the Commuter Rail System. If the City is responsible in any year to pay its share of the cost, the City shall pay seventy percent (70%) of the amount calculated in accordance with the provisions of this Agreement, and the County will be responsible to pay the remaining thirty percent (30%) of the City's share of the cost.

c. Section 5.4 of Article 5 is hereby added to the Agreement to read as follows:

Section 5.4. Non-General City Indebtedness. None of the payment obligations of the City in the Agreement, as amended, shall be or constitute a general indebtedness of the City within the meaning of any constitutional or statutory provision or limitation but shall be payable solely from legally available funds of the City derived from sources other than ad valorem taxation. The County shall not have the right to require or compel the exercise of the ad valorem taxing power of the City or taxation in any form from any property therein for payment thereof, and, subject to the provisions of paragraph 4 of this Second Amendment, which amends subsection 6.2(d), of the Agreement, the County shall not have the right to set off against any funds owed to the City's Community Redevelopment agency.

In all other respects, Article 5 remains unchanged.

4. **Section 6.2 of Article 6 of the Agreement, as amended by the First Amendment.** Article 6 of the Agreement, as amended by the First Amendment, regarding "General Provisions," is hereby amended by revising Section 6.2, regarding "Termination," by amending subsection 6.2(a) and subsection 6.2(d), and creating subsections 6.2(e), 6.2(f) and 6.2(g), to respectively read as follows:

(a) (1) This Agreement shall automatically terminate if the Master Interlocal Agreement is not executed by the parties on or before October 31, 2007.

(2) This Agreement shall automatically terminate if FDOT fails to execute an agreement with CSX for the sale and purchase of the commuter rail corridor by the same date that will cause the termination of the Commuter Rail Commission's participation for such reason.

(3) This Agreement shall automatically terminate upon the occurrence of either or both of the following:

a. Orange County terminates its participation in the Commuter Rail Commission or Commuter Rail; or

b. Commuter Rail ceases to operate for any period of time in excess of one hundred eighty (180) consecutive calendar days.

* * *

(d) The City may terminate this Agreement with 180 days notice to the County upon the occurrence of both of the following conditions:

(1) a. A dedicated funding source from non-City funds, ("Dedicated Funding Source"), to pay one hundred percent (100%) of the City's share of the cost for the Commuter Rail System (as calculated in accordance with the Agreement) has not been secured or, at any time during the term of this Agreement, if said Dedicated Funding Source is removed in whole or in part so as not to provide sufficient funds to cover one hundred percent (100%) of the City's share of cost for the Commuter Rail System; and

b. The decision to terminate is made by a majority vote of the City Commission after a duly noticed public hearing pursuant to Chapter 166, Florida Statutes. The public hearing will take place before the City issues the one hundred eighty (180) day notice called for in the next subparagraph of this Second Amendment, which amends subsection 6.2(d)(2) of the Agreement, and the City will serve notice of said public hearing to the County at least ten (10) days before said hearing.

(2) In the event the Dedicated Funding Source is insufficient to pay one hundred percent (100%) of the City's share of cost of the Commuter Rail System and the City Commission has voted to terminate for that reason, the City shall notify the County of the difference in writing, and this notice shall be a one hundred eighty (180) day notice of termination. The parties agree to meet and negotiate in good faith during the one hundred eighty (180) day notice period at a mutually acceptable time and place, and thereafter as often as is mutually deemed reasonably necessary during the one hundred eighty (180) day notice period to:

a. determine whether the scope of services can be reduced to bring the cost within the Dedicated Funding Source; or

b. agree upon an amendment to this agreement for the City to provide additional funding, which may come from any source.

If the parties cannot agree upon a reduction in scope of services or if the parties agree that the City will not provide additional funding, this Agreement, as amended, may be terminated as provided herein.

(3) Upon termination of this Agreement as set forth in this subsection and subject to a decision to do so by the Commuter Rail Commission, the City shall close the Station as a stop for commuter rail, and the City agrees and understands that the Commuter Rail System shall then cease providing services to such Station. Upon termination, except for any obligation that survives termination, the obligations of the City under the Agreement, including those at Section 5.2(b) of the Agreement, shall immediately cease. Nothing in this Agreement, including any language in this Agreement with respect to the effect of termination hereof, shall be deemed to alter or affect the title to or ownership of the structure and amenities at the rail stop, and, if this Agreement is terminated and there is a decision by the Commuter Rail Commission that the station will be closed as a stop for commuter rail, the City may use the facility for non-commuter rail purposes. Upon such termination the City hereby agrees that if a lawful demand is made by an agency of the United States Government or the State of Florida, for a repayment of some or all of the funds (including grant funds) that were provided for the construction of the commuter rail station in Winter Park, then under such circumstances the City shall indemnify and hold

harmless the County from any obligation to refund, reimburse or repay, pursuant to the terms of such grant or allocation, the subject Federal or State funds that were specifically used to construct or permit the Station and which the County has an obligation to pay back to such federal or state agency on account of such demand. Notwithstanding the foregoing, the County will allow the City to defend the County at the expense of the City with respect to such demand, if the City contends that the demand is subject to a legitimate defense or is otherwise inappropriate. However, if the City is unsuccessful in the defense against the demand for a repayment of the subject funds, then this obligation to hold harmless and indemnify shall be valid and binding upon the City of Winter Park. The obligations of the City under this subsection shall survive termination of this Agreement. It is the intention of the Parties that this indemnification provision shall be specifically limited to obligations which would not otherwise have existed had the Station not been constructed.

(4) Notwithstanding anything in this subsection to the contrary, the County may elect to fund any deficit resulting from a failure of the Dedicated Funding Source to cover one hundred percent (100%) of the City's share of cost of the Commuter Rail System from any available source other than City funds or from funds due the City, in which case this Agreement, as amended, may not be terminated by the City for such period of time as the County pays or arranges for the continuing payment of one hundred percent (100%) of the City's costs, or there is otherwise a one hundred percent (100%) Dedicated Funding Source from non-City funds and not from funds due the City. The County may dedicate as a source of payment of the City's cost of commuter rail, the same category or categories of funds due to all municipalities in the County, subject to the condition that each municipality shall contribute its pro rata share of such fund or funds for such purpose, with the effect being that the revenue source or sources shall be uniformly applied so that each municipality pays its proportionate share of each fund or funds dedicated to pay for the costs of commuter rail. This is subject further to the condition that under no circumstance will the County set off or take funds due to the City's Community Redevelopment Agency for the purpose of covering any cost of commuter rail.

(e) The parties agree that the City's financial obligation to fund commuter rail in any fiscal year, if there is no Dedicated Funding Source sufficient to cover one hundred percent (100%) of the City's costs of participation and if the City has not, for such fiscal year, terminated the Agreement because of the absence of a

one hundred percent (100%) Dedicated Funding Source, shall not exceed Three Hundred Fifty Thousand dollars (\$350,000.00) (hereinafter sometimes referred to as the "NTE" Amount) per year, subject to adjustment for inflation beginning in the first year following the expiration of the seven (7) year FDOT funding period and each year thereafter, and further subject to a prohibition against rolling-over any unused NTE Amount.

If the City has not terminated this Agreement because of the absence of a one hundred percent (100%) Dedicated Funding Source, and in such fiscal year there is a settlement of a liability claim or costs of defending or administering a liability claim such that the City's share of the costs of commuter rail, including such liability claim costs, would exceed Three Hundred Fifty Thousand dollars (\$350,000.00) during such fiscal year, then and only then the Not To Exceed Amount for such fiscal year shall be increased by an additional Two Hundred Forty-Five Thousand dollars (\$245,000.00) (subject to the requirement hereinafter provided that no portion of any unused Not To Exceed Amount in any fiscal year shall roll over into another fiscal year, nor shall any amount of the City's cost of and participation in commuter rail that exceeds the Not To Exceed Amount in any fiscal year roll over into another fiscal year). This additional amount that will be added to the Not To Exceed Amount, which is limited to years in which there are extraordinary litigation expenses or claims settlement, as defined hereinabove, and additionally the total amount shall be subject to the inflation adjustment provided in this Agreement thereafter provided.

The adjustment for inflation shall be based upon the percentage of inflation published by the United States Department of Labor for the subject year and applied to the City's actual share of the cost, but in no event shall the adjustment increase in any year exceed three percent (3%) over the City's share of the cost in the immediately preceding year. No portion of any unused Not To Exceed Amount in any fiscal year shall roll over into another fiscal year, nor shall any amount of the City's cost of participation in commuter rail that exceeds the NTE in any fiscal year roll over into another fiscal year.

(f) The failure of the City to exercise its right to terminate the Agreement in any year because there is not a one hundred percent (100%) Dedicated Funding Source sufficient to cover all of the City's share of commuter rail shall not be a waiver of the City's right at some future time to terminate if there is an absence of a one hundred percent (100%) Dedicated Funding

Source. This right to terminate is subject to the City complying with the public hearing and notice provisions provided hereinabove in this paragraph 4 of the Second Amendment, which amends subsection 6.2(d)(2) of the Agreement.

(g) Liability costs and expenses (including insurance, claims administration, costs of settlement and any other items that are costs and expenses related to claims and litigation arising out of commuter rail), are subject to and included in the Not To Exceed Amount. This provision is subject to an increase of the NTE Amount by Two Hundred Forty-Five Thousand dollars (\$245,000.00) in any fiscal year in which the City's share of the costs of commuter rail, when costs of settlement, defense or administration of a liability claim are included, exceeds Three Hundred Fifty Thousand dollars (\$350,000.00), or if there is a settlement of a liability claim in such fiscal year, as provided in Section 6.2(e) of the Agreement as amended.

The limitation imposed by the Not To Exceed Amount (including the increased amount in any year related to a liability claim), do not apply to the City's cost of defense or settlement of a lawsuit if the City is named individually as a party defendant, and where such costs are expended by the City for the purpose of the defense or settlement of such lawsuit or claim that is brought against the City as an individually named party or individually named subject of a claim.

In all other respects, Section 6.2 of Article 6 remains unchanged.

5. **Article 8 of the Agreement.** Article 8 of the Agreement, regarding "Exhibits," is hereby amended to read as follows:

Article 8. Exhibits.

The following documents are attached hereto and incorporated herein by reference as exhibits:

Exhibit A "Master Interlocal Agreement" which includes:

Appendix A Interlocal Funding Agreement for the Acquisition and Construction of the Central Florida Commuter Rail System, by and between Orange County, Osceola County, Seminole County, County of Volusia, the City of Orlando, and the Florida Department of Transportation, as amended;

Appendix B Interlocal Governance Agreement for the Creation of the Central Florida Commuter Rail Commission, by and between Orange County, Osceola County, Seminole County, County of Volusia, and the City of Orlando, as amended; and

Appendix C Interlocal Operating Agreement for the Operation of the Central Florida Commuter Rail System, by and between the Florida Department of Transportation and the Central Florida Commuter Rail Commission, as amended.

Exhibit B Preliminary Commuter Rail Cost Allocation Analysis Year of Expenditure LPA Assessment, revised June 2007.

Exhibit C Central Florida Commuter Rail Transit Station Development – Construction Estimate.

6. **New Article 10.** Article 10 is hereby added to the Agreement to read as follows:

Article 10. Intergovernmental Cooperation.

The term “Adverse Impacts from Commuter Rail” shall mean negative impacts on the City or its residents as a result of the commuter rail stop located within the City. At any time during the term of this Agreement, the City may make a determination that there are Adverse Impacts from Commuter Rail and, once such a determination is made, the City will notify the County of such Adverse Impacts from Commuter Rail in writing. Upon receipt of the City’s notice asserting Adverse Impacts from Commuter Rail, the County shall forward said notice to the Commuter Rail Commission and request the Commuter Rail Commission consider at its next reasonably available meeting options for eliminating or reducing the Adverse Impacts from Commuter Rail which are specified in the City’s notice. Solution options may include, among other things, consideration of the following options:

- (a) Allowing the City to relocate the Commuter Rail stop at its own expense;
- (b) Reducing the number of times that the commuter rail train stops in the City;
- (c) Increasing security measures;

(d) Increasing noise reduction measures and other alterations (physical and programmatic) that may substantially reduce the Adverse Impact from Commuter Rail.

(e) Modifying the number, timing, or routing of commuter rail related buses and bus traffic.

Unless the parties mutually agree to extend this deadline, the negotiations to identify options for solutions that may eliminate or reduce Adverse Impact shall be concluded within one hundred eighty (180) days following the City's notification of the County in writing of such Adverse Impacts. Except as to option (a) above (allowing the City to relocate the commuter rail stop at its own expense), if the parties identify solutions that will be at the expense of the City, the County will consider in good faith allowing some portion of the Not To Exceed Amount to be utilized for payment of the City's expenses incurred or to be incurred in ameliorating the Adverse Impact from commuter rail.

7. **Land Use.** Nothing in this Second Amendment shall be construed to amend, alter or be in derogation of any provision of Article 4 of the Agreement, and the City shall have all rights concerning its land use prerogatives as are set forth and provided for in Article 4 of the Agreement.

8. **Effective date of Second Amendment.** This Second Amendment shall take effect upon the date of approval by the City or upon the date of approval by the County, whichever date is later.

CITY OF WINTER PARK

By: City Commission

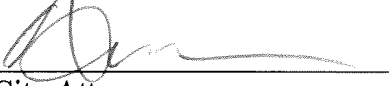
By: Kenneth W. Bradley
Kenneth W. Bradley, Mayor

Date approved: 12/13/10

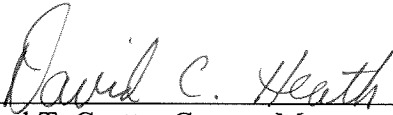
ATTEST: City Clerk

For By: Cynthia Bonham
Cynthia Bonham

Approved as to form and legality (for the use and reliance of the City):


City Attorney

ORANGE COUNTY, FLORIDA
By: Board of County Commissioners

By: 
Richard T. Crotty, County Mayor

ATTEST: Martha O. Haynie, County Comptroller
as Clerk of the Board of County Commissioners

By: 
Deputy Clerk

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