



**REGULAR CITY COMMISSION MEETING
WORKSHOP
451 Third Street, NW
Winter Haven, Florida 33881
Monday, March 14, 2011
6:30 PM**

1. **CALL TO ORDER**
2. **INVOCATION** - None
3. **PLEDGE OF ALLEGIANCE** - None
4. **PRESENTATION** - None
5. **ROLL CALL** Dorothy Johnson, City Clerk
6. **MINUTES**

February 28, 2011 Regular City Commission Workshop
February 28, 2011 Regular City Commission Meeting
7. **ORDINANCES - SECOND READING - PUBLIC HEARING** - None
8. **CONSENT AGENDA** - None
9. **REQUEST TO BE HEARD FROM GENERAL PUBLIC** - None
10. **RESOLUTION** - None
11. **ORDINANCE - FIRST READING**
 - A. **Ordinance O-11-05** - Administrative request to revise Chapter 18, Article II of the Code of Ordinances, relating to Timed Parking Spaces and Timed Parking Zones
12. **NEW BUSINESS**
 - A. Agreement between the City of Winter Haven and Polk County Board of County Commissioners for RussMatt Baseball Collegiate Spring Training
 - B. Chain of Lakes – Agreement for Sale - Landings WH Partners, LLC (Fact Sheet and Contract will follow)

13. **ADJOURNMENT**

NOTE: Individuals may provide comments during Commission Work Sessions when recognized by the Mayor subject to the same time limit imposed during regular meetings.

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



**REGULAR CITY COMMISSION MEETING
451 Third Street, NW
Winter Haven, Florida 33881
Monday, March 14, 2011
7:30 PM**

1. **CALL TO ORDER**
2. **INVOCATION** Rodger Armstead, Lt. Col., Chaplain, U.S. Army Retired
Winter Haven Hospital
3. **PLEDGE OF ALLEGIANCE** Dorothy Johnson, City Clerk
4. **PRESENTATION**
 - A. American Red Cross Month Proclamation
Chad Magnuson, Polk County Chapter Executive
5. **ROLL CALL** Dorothy Johnson, City Clerk
6. **MINUTES**

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7. **ORDINANCES - SECOND READING - PUBLIC HEARING** - None
8. **CONSENT AGENDA** - None
9. **REQUEST TO BE HEARD FROM GENERAL PUBLIC** - None
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 - A. **Ordinance O-11-05** - Administrative request to revise Chapter 18, Article II of the Code of Ordinances, relating to Timed Parking Spaces and Timed Parking Zones
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13. **CITY COMMISSIONERS/LIAISON REPORTS**

A. **City Commissioners**

Jamie Beckett

Affordable Housing Advisory Committee
Airport Advisory Committee
Polk Transit Authority (PTA)*
Tourist Development Council *
Winter Haven Area Transit*

Nat Birdsong

Board of Adjustment
General Pension
Lakes Advisory
Transportation Planning Organization (TPO)*

Steven Hunnicutt

Fire Pension
Police Pension
Winter Haven Area Transit *
Transportation Planning Organization (TPO)*

JP Powell

Central Florida Regional Planning Council *
Library Board
Planning Commission
Ridge League of Cities *
Urban Forestry Advisory Committee

Jeff Potter

Main Street
Risk Management
Tourist Development Council Sports & Special Events
Transportation Planning Organization (TPO)*
Winter Haven Housing Authority

*OTHER AGENCIES

B. **City Attorney**

C. **City Manager**

D. **Assistant to the City Manager**

E. **City Clerk**

14. **DEVELOPMENTS OF NOTE**

15. **EMERGENCY MATTERS NOT RECEIVED FOR THE AGENDA**

16. **COMMENTS FROM THE AUDIENCE**

Regular City Commission Meeting
March 14, 2011


17. **ADJOURNMENT**

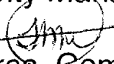
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CITY OF WINTER HAVEN FACT SHEET
CITY COMMISSION MEETING
February 28, 2011

DATE: February 15, 2011

TO: Honorable Mayor and City Commissioners

VIA: Dale L. Smith, City Manager 

FROM: T. Michael Stavres, Community Services Department Director 

SUBJECT: Ordinance O-11-05: Administrative request to revise Chapter 18, Article II of the Code of Ordinances, relating to Timed Parking Spaces and Timed Parking Zones

BACKGROUND:

Chapter 18, Article II of the Winter Haven Code of Ordinances was established to regulate the parking of vehicles on, adjacent to and within City streets, sidewalks and other public places. In addition to designating where and for how long vehicles may be parked, the ordinance addresses the procedures for enforcement by the Police Department and the amount of fines, tickets and penalties.

The present ordinance was originally codified in 1959. Over the past 52 years, society's dependence and reliance on personal vehicles has expanded exponentially. The presence of personal vehicles in the downtown core of the City is no exception to this expansion. As a result, some of the most frequent complaints addressed by staff relate directly to parking including general availability, timed parking spaces, and/or enforcement.

In late 2009, staff evaluated the existing parking scheme of the downtown core area. With the assistance of Main Street Winter Haven, staff met with downtown merchants to identify specific parking-related issues and determine what changes could positively impact the current conflicts. Some of the more favorable changes as supported by the merchants include:

- Increase timed parking spaces from 2-hours to 3-hours;
- Creation of Timed Parking Zones to minimize the opportunity for persons to simply move their vehicle to another space within the immediate block/area; and
- Increase the fine for illegal parking from \$5.00 to \$10.00 for each of the four initial offenses within a 12-month period and establish a fine of \$25.00 for each additional violation thereafter.

Ordinance O-11-05 revises Section 18, Article II of the City of Winter Haven Code of Ordinances to allow for the implementation of the aforementioned changes. Furthermore,

the ordinance as revised authorizes the City Manager or his/her designee to establish timed parking spaces and zones and to lease individual parking spaces in City-owned lots, as in his/her judgment may be necessary.

Without question, the construction of the new City-owned parking garage downtown will impact current parking practices and issues. It is staff's intent to only implement the change in fines and duration for parking at this time and where appropriate. The other revisions noted will be implemented as needed over time taking into consideration the impact of the parking garage.

The revised ordinance has been reviewed and approved by the City Attorney and the Chief of Police.

RECOMMENDATION:

Staff recommends the City Commission approve Ordinance O-11-05.

ATTACHMENT:

Ordinance O-11-46

ORDINANCE NO. O-11-05

AN ORDINANCE AMENDING CHAPTER 18, ARTICLE II, DIVISION 2 OF THE CODE OF ORDINANCES OF THE CITY OF WINTER HAVEN, FLORIDA RELATING TO TIMED PARKING SPACES AND TIMED PARKING ZONES; PARKING WITHIN MARKED SPACES; TIME AND DAYS FOR PARKING; PARKING TICKETS, FINES AND PENALTIES; WIPING OFF OR CONCEALING CHALK PARKING MARKS ON TIRES; REPEALING ALL ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR SEVERABILITY AND FOR AN EFFECTIVE DATE

WHEREAS, the City Commission of the City of Winter Haven finds and determines that timed parking spaces and timed parking zones are necessary for the purpose of, and in such numbers and at such places as to provide for the regulation, control, safety and inspection of parking of vehicles within the City of Winter Haven, Florida; and

WHEREAS, the City Commission of the City of Winter Haven finds and determines that additional penalties are necessary for parking violations; and

WHEREAS, the City Commission of the City of Winter Haven deems it appropriate to regulate timed parking spaces and timed parking zones and to impose parking fines to further the public interest and the general welfare of the citizens and residents of the City of Winter Haven.

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

1. That Chapter 18, Article II, Division 2 of the Code of Ordinances of the City of Winter Haven, Florida, is hereby amended to revise the following conditions (deleted language struck out; new language underlined):

DIVISION 2. PARKING ZONES

Sec. 18-51. Definitions.

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Park or Parking shall mean the standing of a vehicle, whether occupied or not, except when standing temporarily for the purpose of and while actually engaged in loading or unloading merchandise or passengers as may be permitted under this section.

Parking zones shall mean portions of the streets described and established by the ~~city commission~~ City Manager or his/her designee and those public facilities maintained, operated and/or associated with the City through inter-local agreement as zones within which the parking of vehicles shall be controlled, regulated, and inspected in accordance with the provisions of this division.

Roadway means that portion of a street between the regularly established curblines.

Sidewalk means that portion of a street between the curblines and the adjacent property lines.

Street means every way set apart for public travel except alleyways, bridle paths and footpaths.

Vehicle means a conveyance propelled by motor power.

Timed parking zones shall mean portions of streets and/or parking lots within a certain geographic area and designated by particular color or other means in which time limits are established for parking within that designated area.

Sec. 18-53. Timed parking spaces and timed parking zones; designation by city manager.

(a) The City Manager or his/her designee is hereby authorized and directed to designate timed parking spaces and timed parking zones within the parking zones hereby established by the City Commission for the purpose of, and in such numbers and at such places as in his/her judgment may be necessary to the regulation, control, safety and inspection of the parking of vehicles therein, including the reservation of loading zones for commercial vehicles. Said parking zones are described in the "Zoned Parking" diagram ("Zoned Parking") attached

hereto and incorporated by reference. The City Manager is further authorized to amend and/or revise such parking zones as he/she deems necessary and appropriate. A copy of the current diagram shall be kept on file and available for public inspection in the City Clerk's Office during the hours of 8 a.m. and 5 p.m., Monday through Friday, except on observed holidays.

(b) The City Manager or his/her designee is hereby authorized to lease individual parking spaces, at his/her discretion, in City- owned parking lots facilities on a year-to-year basis for ~~seventy-two dollars (\$72.00)~~ per year, provided that no more than ten (10) percent of any all-day parking facility shall be so leased and that the leases shall not exceed one (1) year in length. A fee schedule specific to the annual lease of individual parking spaces in city-owned parking facilities shall be kept on file in the City Clerk's Office. The City Manager is hereby authorized to make annual adjustments to the fee schedule based on market conditions, maintenance costs and availability of said spaces. Adjustments to the fee schedule will take effect October 1 of each year. Any vehicle parked in a leased space without authorization shall be fined ten dollars (\$10.00) for the first offense and twenty-five dollars (\$25.00) for the second and all subsequent offenses, all fines payable to the Police Department. In addition, the unauthorized vehicle may be towed by an authorized towing company to the city a designated impound yard and charged all administrative and towing fees. Vehicles so towed shall be restored to the registered vehicle owner upon payment of towing, storage and administrative fees. A Police hold shall be placed on the vehicle pending payment of all administrative fees and fines.

(c) Upon proper authorization by the city commission The City Manager or his/her designee is hereby authorized to issue a specified number of all-day permits which shall be valid for a specified time period. The City Manager shall develop a procedure that avoids the abuse of such permits.

(d) The City Manager or his/her designee is hereby authorized and directed to designate timed parking spaces within the parking zones as more specifically depicted in the "Zoned Parking" diagram referenced herein and on file with the City Clerk's office. This designation shall include the hours of enforcement.

(e) The City Manager or his/her designee shall cause the erection of signs

designating the time limits for parking. The erection of these signs shall be considered reasonable notice for such parking limitations.

Sec. 18-54. Parking spaces to be marked; parking within space required.

The City Manager shall have lines or markings painted upon the curb, street or space and/or signs erected designating each time parking space and each vehicle parking within such time parking space shall park within such lines or markings. It shall be unlawful to park any vehicle across any such line or marking, or to park a vehicle in such a position that it shall not be entirely within the space designated by such lines or markings.

Sec. 18-55. Legal parking; time and days.

(a) ~~It shall be unlawful for any person to cause, allow, permit, or suffer any vehicle registered in his name or operated or controlled by him to be within a time parking zone or space for more than one hundred twenty (120) consecutive minutes between the hours of 8:00 a.m. and 6:00 p.m. on Mondays, Tuesdays, Wednesdays, Thursdays, Fridays and Saturdays.~~ It shall be unlawful for any person to cause, allow or permit a vehicle registered in his/her name or controlled by him/her to be parked within a timed parking zone beyond the posted time limitation designated by the City Manager or his/her designee. A separate notice of violation for overtime parking shall be issued for each time period during which a violation occurs between the hours of 8:00 a.m. and 5:00 p.m. on Mondays, Tuesdays, Wednesdays, Thursdays and Fridays.

(b) Persons conducting or sponsoring events in the downtown business district are authorized to request an exemption from this requirement. Upon a finding by the ~~city commission~~ the City Manager or his/her designee that the event will provide special benefit to the city citizens, the ~~commission~~ City Manager or his/her designee may ~~by resolution~~ authorize a waiver of these requirements to allow all-day parking and ~~direct the City Manager to issue permits~~ allowing such parking.

Sec. 18-56. Duties of Chief of Police; parking ticket; fines.

It shall be the duty of the Chief of Police or his/her designee, under the direction of the City Manager, to keep account of all violations of Sections 18-54 through 18-55 and other applicable sections of this Code of Ordinances.

(1) ~~He~~ The Chief of Police or his/her designee shall keep a daily record of each vehicle which has been parked in violation of any of the provisions of this division, the date and hour of each violation, the make and the state license number of such vehicle, and any other facts, ~~a knowledge of which is necessary~~ to for a thorough understanding of the circumstances attending such violation.

(2) ~~He~~ The Chief of Police or his/her designee shall attach to such vehicle a notice stating that it has been parked in violation of Sections 18-54 through 18-55 and other applicable sections of this Division, and instructing the owner or operator to report to the Police Department in regard to such violation. ~~The owner or operator shall have until 5:00 p.m. of the second business day following the day such notice(s) was attached to such vehicle to pay the police department in full satisfaction of such violation, the sum of five dollars (\$5.00). After 5:00 p.m. of the second business day following the day when such notice was attached to such vehicle, but not later than ten (10) days following the attachment of such notice, the owner or operator may pay the police department, in full satisfaction of such violation, the sum of ten dollars (\$10.00).~~

(3) Penalties.

(a) First through fourth violation in a twelve-month period. The owner or operator shall have until 5:00 p.m. of the fifth business day following the day such notice(s) was attached to such vehicle to pay the Police Department in full satisfaction of such violation, the sum of ten dollars (\$10.00). After 5:00 p.m. of the fifth business day following the day when such notice was attached to such vehicle, but not later than ten (10) days following the attachment of such notice, the owner or operator shall pay the Police Department, in full satisfaction of such violation, the sum of fifteen dollars (\$15.00). If the owner or operator chooses to contest the notice of violation, the owner or operator must contact the Police Department Record Division within the ten day period and request a court hearing. If the owner or operator fails to pay the fine or contact the Police

Department Record Division within the ten-day (10) period, the Police Department is hereby authorized to deliver the violation to the Clerk of the County Court for formal prosecution. The notice shall contain directions as to the procedure for paying the fine or obtaining a hearing.

(b) *In excess of four violations in a twelve-month period.* A violation of the overtime parking regulations contained in this section shall be subject to a fine in the amount of twenty-five dollars (\$25.00) for each violation in excess of four (4) violations in a twelve-month period if paid by 5:00 p.m. of the fifth business day following the day such notice(s) was attached to such vehicle. After 5:00 p.m. of the fifth business day following the day when such notice was attached to such vehicle, but not later than ten (10) days following the attachment of such notice, the owner or operator shall pay the Police Department, in full satisfaction of such violation, the sum of fifty dollars (\$50.00). If the owner or operator chooses to contest the notice of violation, the owner or operator must contact the Police Department Record Division within the ten (10) day period and request a court hearing. If the owner or operator fails to pay the fine or contact the Police Department Record Division within the ten day period, the Police Department is hereby authorized to deliver the violation to the Clerk of the County Court for formal prosecution. The notice shall contain directions as to the procedure for paying the fine or obtaining a hearing.

(c) *Waiver of fine.* Any fine that may be assessed in the enforcement of the provisions of this section may be waived for extraordinary or extenuating circumstances as determined by the Chief of Police or his/her designee. A copy of the notice of violation and a written explanation of the reason for the waiver shall be filed with the official records of the City Clerk prior to the close of business on the next normal business day after granting the waiver.

Sec. 18-57. Wiping off, concealing chalk parking marks on tires.

It shall be unlawful for any person to wipe off, conceal, cover, or otherwise remove a chalk parking mark placed upon the tire of any vehicle by the traffic enforcement officer. Any violator of this section shall pay a fine of one hundred dollars (\$100.00) to the

Police Department.

Severability.

If any section, phrase, sentence, or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

Codification, Inclusion In Code, and Scrivener's Errors.

It is the intention of the City Commission that the provisions of this ordinance shall become and be made a part of the City of Winter Haven Code of Ordinances; and that sections of this ordinance may be renumbered or relettered and the word *ordinance* may be changed to *section*, *article*, or such other appropriate word or phrase in order to accomplish such intentions; and regardless of whether such inclusion in the code is accomplished, sections of this ordinance may be renumbered or relettered and typographical errors which do not affect the intent may be authorized by the City Manager or his/her designee without need of public hearing, by filing a corrected or recodified copy of same with the City Clerk.

Conflict.

All ordinances or parts of ordinances which are in conflict with this ordinance are hereby repealed, to the extent necessary to alleviate the conflict, but shall continue in effect insofar as they are not in conflict herewith, unless repeal of the conflicting portion destroys the overall intent and effect of any of the conflicting ordinances, in which case those ordinances so affected shall be hereby repealed in their entirety.

Remainder of this page left blank intentionally

Effective Date:

This Ordinance shall take effect immediately upon final passage.

INTRODUCED on first reading this _____ day of _____, 2011.

PASSED on second reading this _____ day of _____, 2011.

ATTEST:

CITY CLERK

Approved as to form:



CITY ATTORNEY

12A

**CITY OF WINTER HAVEN FACT SHEET
CITY COMMISSION MEETING
March 14, 2011**

DATE: February 14, 2011

TO: Honorable Mayor and City Commissioners

VIA: Dale L. Smith, City Manager 
T. Michael Stavres, Community Services Department Director 

FROM: Travis Edwards, Leisure Services Division Director

SUBJECT: Agreement between the City of Winter Haven and Polk County Board of County Commissioners for RussMatt Baseball Collegiate Spring Training

BACKGROUND:

In 2007, staff and Polk County Tourism and Sports Marketing (PCTSM) coordinated on an opportunity to host a collegiate level spring training event at Chain of Lakes Park upon expiration/termination of the Use Agreement with the Cleveland Indians. With assistance from PCTSM, staff negotiated a Use Agreement with RussMatt, LLC for such a program that began in February 2009 and had a term of two (2) years.

At the January 11, 2010 City Commission Meeting, the Commission approved a separate Recruitment and Marketing Agreement with PCTSM. This Agreement addressed funding needed for improvements to the lower field practice areas, created an opportunity for sponsorship packages, and increased marketing/recruitment efforts to attract events to Chain of Lakes Park. In addition, the Agreement stipulated that as a result of the Marketing/Recruitment Agreement that the Use Agreement would be extended an additional three (3) years through February 15, 2014. The subsequent Use Agreement is summarized below.

- The term of the Agreement is for three (3) years with one (1) additional five (5) year term extension available.
- The Agreement allows PCTSM use of Chain of Lakes Park and/or other facilities as designated by the City from the third Friday in February through the first Saturday in April annually during each year of the Term of the Agreement.
- PCTSM represents to the City that RussMatt Baseball has the experience, skill and authority necessary to perform the services outlined in the Use Agreement.
- All scheduling, event management (excluding field and building maintenance crews), concessions/merchandizing, gate attendants, security personnel and other necessary workers are the responsibility of the County.

- Payment of rental fees and any taxes attributable for their use are the responsibility of the County.
- The City is responsible for providing the venue and field/facility maintenance.
- In executing the Agreement the County and the City do not intend and in no way waive their respective constitutional and statutory right to sovereign immunity. Accordingly, nothing stated in the Agreement shall be interpreted or construed as (i) a waiver of the parties' sovereign immunity; (ii) an extension of the limited waiver of each parties' sovereign immunity as stated in Section 768.28, Florida Statutes; (iii) a waiver of any requirement or condition stated in Section 768.28, Florida Statutes; or (iv) either party's consent to be sued. Any claims asserted against either party must comply with the procedures stated in Section 768.28, Florida Statutes.
- Either party may terminate the Agreement, with or without cause, by giving 60 days written notice to the other party.

The Agreement has been reviewed by the City Attorney and incorporates his comments where appropriate.

RECOMMENDATION:

Staff recommends the City Commission approve the Agreement between the City and Polk County Board of County Commissioners for RussMatt Collegiate Spring Training Baseball.

ATTACHMENT:

Use Agreement Between the City of Winter Haven, Florida and Polk County, Florida

**USE AGREEMENT BY AND BETWEEN
THE CITY OF WINTER HAVEN, FLORIDA AND POLK COUNTY, FLORIDA**

THIS USE AGREEMENT (the "Agreement") is made and entered into as of the Effective Date, as that term is defined in Section IX L, below, by and between **POLK COUNTY, FLORIDA**, a political subdivision of the State of Florida, by and through its Board of County Commissioners (the "**County**") and the **CITY OF WINTER HAVEN, FLORIDA**, a Florida Municipal Corporation (the "**City**"); each singularly a "**party**" and together, "**the parties**," to this Agreement with reference to the following facts and subject to the following terms and conditions.

WITNESSETH

WHEREAS, the City owns and maintains certain real property located at 500 Cletus Allen Boulevard, Winter Haven, Florida, commonly known as Chain of Lakes Park to include Chain of Lakes Stadium, five practice fields, one practice infield, batting tunnels, portable batting cages, locker rooms/clubhouses, concession facilities and other baseball related buildings, are hereinafter collectively referred to as the "**Complex**"; and

WHEREAS, the City maintains other recreational facilities that could be utilized for sporting events including but not limited to the activities contemplated hereunder; and

WHEREAS, the County, by and through its Tourism & Sports Marketing Division (the "**PCTSM**") promotes tourism and economic development within Polk County; and

WHEREAS, the County and the City have entered into an Agreement dated January 11, 2010 whereby the County, through PCTSM, serves as the lead marketing organization that promotes sporting events held at the Complex; and

WHEREAS, the County, through PCTSM, has entered into a separate Agreement with David E. Barnard, the owner and operator of RussMatt Baseball, to hold a college spring break baseball tournament (the "**Event**") at the Complex beginning no earlier than the third Friday of February and ending no later than the first Sunday in April of each calendar year commencing on or about February 18, 2011 and continuing through calendar year 2014 with one (1) additional five (5) year term extension available upon terms agreed upon by the parties; and

WHEREAS, the County desires to engage the City to perform hereinafter described services in conjunction with the Event; and

WHEREAS, the City desires to provide use of the Complex to PCTSM subject to the terms and conditions hereinafter set forth;

NOW, THEREFORE, in consideration of the mutual covenants and obligations contained herein, the parties agree as follows:

I. TERM OF THE AGREEMENT. The initial term of the Agreement shall be for a time period commencing February 18, 2011, and continuing through April 6, 2014, the "Termination Date," unless earlier terminated under the terms of this Agreement. At any time on or before June 1, 2014, the parties may extend the Term of the Agreement for one (1) additional five (5) year extension term upon their execution of a written agreement to do so. Unless otherwise provided in their extension agreement, the extended term shall have the same terms and conditions stated in this Agreement. The initial term and any extended term of this Agreement are collectively, the "Term" of the Agreement. The City shall commence all services required of the City of Winter Haven pursuant to this Agreement on or before the Effective Date, and shall complete the same on or before the date or dates required by this Agreement.

II. PCTSM REPRESENTATIONS. PCTSM hereby represents to the City that (i) to the best of PCTSM's knowledge, RussMatt Baseball has the experience, skill and authority necessary to perform the services and otherwise to comply with the County's obligations set forth herein that may be assigned to RussMatt Baseball (all such assigned services and obligations the "Assigned Services"); (ii) PCTSM will monitor RussMatt Baseball's performance of its Assigned Services to ensure that RussMatt Baseball complies with all applicable federal, state and local laws, rules and regulations, codes statutes and ordinances and orders of any governmental or regulatory authority; (iii) PCTSM will require RussMatt Baseball to obtain all licenses and permits required to perform the Assigned Services; (iv) PCTSM will require that any material or work product provided by RussMatt Baseball with respect to the Event shall not infringe upon any patent, trademark, or copyright, or otherwise violate the rights of any person, firm or corporation; (v) PCTSM will require RussMatt Baseball to obtain all necessary consents, permissions or releases, and to timely make all payments to third parties that may be required for RussMatt Baseball to provide the Assigned Services; and (vi) to the best of PCTSM's knowledge, there is no actual or potential conflict of interest between the Assigned Services to be performed by RussMatt Baseball with respect to the Event, and RussMatt Baseball's family, business, financial or other interest.

All personal property used by RussMatt Baseball in conjunction with services rendered shall remain RussMatt Baseball property, and shall be used by RussMatt Baseball at RussMatt Baseball's sole risk. The City shall not be responsible for any loss of (including theft), or damage to, any of RussMatt Baseball's personal property.

III. COUNTY RESPONSIBILITIES. The County, through PCTSM shall perform or shall cause the following responsibilities pertaining to the Event to be timely

performed, whether by its staff or by the assignment of certain responsibilities as Assigned Services to RussMatt Baseball.

- A. Schedule.** PCTSM shall provide a schedule of games, practices and intended building uses to the Complex manager and/or other City designee two weeks in advance of the start of the Event and to inform the Complex manager and/or other City designee in a prompt manner when changes are made to the schedule as a result of weather or other unforeseen circumstances. PCTSM will allow sufficient time, on a daily/weekly basis and between games, for routine maintenance of Complex fields and/or other facilities used herein.
- B. Event Management.** PCTSM will provide all Event management personnel needed to manage the Event except field and building maintenance crews. PCTSM Event management personnel will include ticket takers, concession workers, public address announcers, scoreboard operators, site directors, security personnel and other necessary workers. PCTSM will be responsible for the daily custodial care and cleaning of locker rooms / clubhouse and office spaces. The City shall provide all necessary field and building maintenance crews for the Event as further described in Section IV B, below.
- C. Concessions/Merchandizing.** PCTSM shall operate and shall retain all revenue from the Event concessions and merchandizing and will be responsible for maintenance and clean-up of all equipment associated with concessions and merchandizing operations for the Event. All concession and merchandizing equipment, if not owned by the City, will be removed from the Complex within two weeks after the end of the Event each year.

PCTSM understands that the sale of alcoholic beverages is permitted pursuant to Section 15-286 of the Winter Haven Code of Ordinances, whereby the City Manager may permit and control the sale of beer at City facilities and may also withdraw the approval at any time, in his sole discretion. PCTSM also understands that alcoholic beverage advertising shall only be permitted on a temporary basis, during those portions of the Event at which beer is sold.

In the event PCTSM desires to sell beer for the approved event, PCTSM shall be responsible for acquiring all necessary permits relative to such sale.

- D. Admission Charge.** PCTSM retains the right at its sole discretion to charge admission for the Event. If PCTSM charges admission, it shall retain all gate proceeds and all other admission proceeds it collects.
- E. Field Rental and Other Fees.** PCTSM shall pay all field and facility use fees required under this Agreement including, but not limited, to those set forth in

Section IV C of this Agreement within sixty (60) days after the date PCTSM receives an invoice for such fees.

- F. **Taxes.** PCTSM shall be responsible for paying and reporting any and all taxes attributable to and/or assessed as a result of its operations under the terms of this Agreement including, but not limited, to sales tax, use taxes, assessments, and all similar such taxes and assessments, fire service, and/or trash collection charges assessed or imposed on the premises as a consequence of holding the Event. PCTSM shall pay the City full amount of any such taxes on or before sixty (60) days after the date that the City delivers notice to PCTSM concerning such taxes, assessments, and charges.

IV. **CITY RESPONSIBILITIES.** The City shall have the following responsibilities pertaining to the Event.

- A. **Venue.** The City shall allow PCTSM use of those portions of the Complex, or other comparable City facilities appropriate for conducting the Event as may be designated by the City, that are necessary to fulfill the Event requirements stated in the schedule delivered to the City pursuant to Section III A, above, from the third Friday in February through the first Saturday in April annually during each year of the Term of the Agreement. The City may grant one or more third parties the right to use other portions of the Complex (or other appropriate facility) that are not being utilized for the Event if (i) the rights granted to the third parties are not inconsistent with the use rights the City has granted to PCTSM hereunder; and (ii) the third parties exercise of their respective use rights shall not interfere with the conduct of the Event.

- B. **Complex/Facility Maintenance.** The City shall maintain the stadium, auxiliary baseball fields, baseball practice infield, scoreboards, public address system, portable roll out batting cages and batting tunnels at the Complex if actually used for any sporting events to the high quality standards that the City has established in its sole discretion. All ordinary Complex and facility maintenance expenses during the Term of the Agreement will be the sole financial responsibility of the City. The City further agrees to line the batter's box and baselines, drag the infield and repair mound holes before each game played during the Event. Should the City determine that the fields at the Complex or at any other supporting facility are unplayable due to rain, wind, mechanical malfunction or other act of nature or man, then as soon as the weather or mechanical malfunction is no longer effecting the playing surface the City, at its sole expense, shall undertake all reasonable efforts, including the use of chemical drying agents, spike drags and water pumps, to make the fields at the Complex playable as determined by the City.

- C. **Rental Fee Structure.** The City hereby sets the following fee structure for the Event to be paid by PCTSM in accordance with the terms defined in Section III E, above.

- i. **Stadium Game Fees:** \$210 per day from 8:00A.M. to 11:00P.M. or \$70 per game, whichever is the smallest dollar amount. An additional fee of \$90/per hour will be charged for those games requiring artificial lighting.
- ii. **Auxiliary Field Game Fees:** \$210 per day per field from 8:00A.M. until dark, or \$70 per game, whichever is the smallest dollar amount.
- iii. **Auxiliary Field Practice Fees:** \$10 per hour for all Event practices on auxiliary fields. No practices will be held in the stadium.
- iv. **Building Fees:** (the smaller of the dollar amounts listed for each item apply)

Minor League Administration	\$400 per week/ \$ 80 per day
Minor League Clubhouse	\$750 per week/ \$150 per day
Covered Batting Cages	\$350 per week/ \$ 70 per day
Concessions Areas	\$500 per week/ \$100 per day
Stadium/Seating Area Cleaning	\$300 per week/ \$ 60 per day

Plus any or all taxes and/or assessments should they be or become attributable as a result of the above fees and use by PCTSM.

D. Refunds. Rental fees associated with Event games and practices scheduled but not started will not be charged. Rental fees associated with Event games and practices started but not completed will be charged in full by the City in accordance with the payment schedule set forth in Section III E of this Agreement.

V. DEFAULT; REMEDY; LIMITS OF LIABILITY

- A. If either party materially defaults in its obligations under this Agreement, then the non-defaulting party shall have the right to (i) immediately terminate this Agreement by delivering written notice to the defaulting party, and (ii) seek payment or reimbursement for any funds expended and services provided in accordance with this Agreement which remain unpaid as of the date the Agreement is terminated .
- B. To the limited extent specified under Section 768.28, Florida Statutes, the County may be responsible for (i) monetary damages for bodily injury or death to any person, and (ii) monetary damages for the injury or loss of personal property, that are caused by the negligent or wrongful act or omission of a County employee who is acting within the scope of the employee's office or employment.
- C. To the limited extent specified under Section 768.28, Florida Statutes, the City may be responsible for (i) monetary damages for bodily injury or death to any person, and (ii) monetary damages for the injury or loss of personal

property, that are caused by the negligent or wrongful act or omission of a City employee who is acting within the scope of the employee's office or employment.

D. The parties confirm their intent that that the foregoing provisions of this Section V do not require one party to (i) indemnify or to insure the other party for the other party's negligence, or (ii) to assume any liability for the other party's negligence.

E. In their executing this Agreement the County and the City do not intend and in no way waive their respective constitutional and statutory rights to sovereign immunity. Accordingly, nothing stated in this Section V or in any other provision of this Agreement shall be interpreted or construed as (i) a waiver of the parties' sovereign immunity; (ii) an extension of the limited waiver of each parties' sovereign immunity as stated in Section 768.28, Florida Statutes; (iii) a waiver of any requirement or condition stated in Section 768.28, Florida Statutes; or (iv) either party's consent to be sued. Any claims asserted against either party must comply with the procedures stated in Section 768.28, Florida Statutes

VI. SUSPENSION OR TERMINATION. Either party may terminate this Agreement, with or without cause, by giving 60 days prior written notice to the other party.

VII. COUNTERPARTS/FACSIMILE/INTERNET EXECUTION. The original and one or more copies of this Agreement may be executed by one or more of the parties hereto, in which event, all such executed copies shall have the same force and effect as the executed original and all of such counterparts, taken together, shall have the effect of the fully executed original. Further, the parties to this Agreement agree that the transmittal of signatures or of signed copies of this Agreement via facsimile machine or the internet constitutes good and valid execution respecting this Agreement and is legally binding upon the parties.

VIII. INSURANCE: PCTSM shall maintain or shall cause RussMatt Baseball to maintain in full effect throughout the Term of the Agreement, Commercial General Liability, Property Damage, Worker's Compensation, Automobile Liability and other coverage deemed necessary by the City. The initial requirements will be as follows:

Comprehensive General Liability	
Bodily Injury	\$1,000,000 each occurrence
Property Damage	\$1,000,000 each occurrence
Worker's Compensation	Florida Statutory Limit
Automobile Liability	
Bodily Injury	\$1,000,000 each occurrence

Property Damage

\$1,000,000 each occurrence

PCTSM shall provide or shall cause RussMatt Baseball to provide the City with certificates of insurance listing the City of Winter Haven, Florida as an additional insured. The City shall be notified, in writing, thirty (30) days in advance of any lapse, cessation and/or termination of any required insurance called for under this Agreement.

IX. MISCELLANEOUS PROVISIONS.

A. Use of Coca-Cola Company Products. PCTSM understands and acknowledges that this Agreement is subject and subordinate to an agreement reached between the City and the Coca-Cola Company for use of Coca-Cola products at City facilities to include the Complex. Accordingly, PCTSM shall only utilize Coca-Cola products with respect to beverages sold at City facilities utilized hereunder. This restriction shall not apply to non-carbonated related beverages such as lemonade, ice tea, coffee, powdered sports drinks, etc. In the event the current beverage agreement between the City and Coca-Cola Company is terminated and a subsequent agreement is executed with a separate beverage provider, PCTSM will be notified in writing no less than thirty (30) days prior to the commencement of the new beverage agreement and will be required to honor the same.

B. Independent Contractor. It is understood and agreed that PCTSM is acting as an independent contractor and not as an employee of the City in performance of the services described in this Agreement, although the City shall have the right to make recommendations concerning the procedures employed by PCTSM in performing services for the Event. Nothing herein contained shall be deemed to create an agency relationship between PCTSM and the City.

C. Severability. If any section, subsection, sentence, clause, phrase, or portion of this Agreement is for any reason held invalid or unconstitutional by any Court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holdings shall not affect the validity of the remaining portions herein.

D. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. Venue for any actions arising out of this Agreement shall be in the State Courts in and for Polk County, Florida.

E. Notice. Unless otherwise expressed herein, notice as required under this Agreement shall be deemed delivered when (1) mailed by first class certified mail, postage prepaid; or (2) delivered by national courier service to the address delivered below. Each party may change its designee by providing

written notice to the other party, but each party may only designate one entity to receive notice.

Notice to the County shall be sent to:

Polk County Tourism & Sports Marketing
Attention: Mark Jackson
2701 Lake Myrtle Park Rd.
Auburndale, FL 33823

Notice to City shall be sent to:

City of Winter Haven
Attention: Dale L. Smith, City Manager
P.O. Box 2277
451 Third Street, N.W. (33881)
Winter Haven, Florida 33883-2277

With a copy to:

(which shall not constitute notice)
Frederick J. Murphy, Jr., Esquire
City Attorney
Boswell & Dunlap LLP
Post Office Drawer 30
245 South Central Avenue (33830)
Bartow, Florida 33831-0030

(which shall not constitute notice)
City of Winter Haven
T. Michael Stavres, Director of Community Services
P.O. Box 2277
451 Third Street, N.W. (33881)
Winter Haven, Florida 33883-2277

F. Amendments. The covenants, terms and provisions contained herein may only be amended, altered and/or modified upon express written consent of both of the parties hereto.

G. Headings. The headings in this Agreement are intended for convenience of reference only and do not define or limit the scope or meaning of any provision of this Agreement.

H. Entire Agreement. The terms and conditions of this Agreement constitute the entire Agreement between the parties hereto with respect to the subject matter of this Agreement, and supersede all previous communications, representations or agreements, either oral or written, between the parties

relating to such subject matter. No change, alteration or modification of this Agreement shall be effective unless made in writing and signed by both parties hereto. If any provision of this Agreement is deemed to be invalid, it shall be considered deleted here from and shall not invalidate the remaining provisions.

- I. **Non-Assignability of Agreement.** The Agreement or any interest therein or part thereof, shall not be assigned, whether by operation of law or otherwise, nor shall any part thereof be subcontracted, without the written prior consent of the City first having been obtained. By execution of this Agreement the City approves the County and PCTSM's assignment of all or a portion of the County's Responsibilities stated in Section III, above, to RussMatt Baseball provided that for each year of the Agreement the County delivers advance written notice to the City confirming an assignment of the Assigned Services. The County shall remain liable and responsible to the City for the performance of all such Assigned Services notwithstanding any such assignment to RussMatt Baseball.

- J. **Failure to Conduct Event.** Based upon its agreement with RussMatt Baseball, the County intends that the Event will be conducted each year during the Term of the Agreement. However, this Agreement does not obligate or require the County to conduct the Event. Accordingly, the County shall not be in default of this Agreement if the Event is not conducted each year of the Term. If for any reason the Event cannot be conducted during any year of the Agreement Term, then the County shall immediately notify the City who shall then be released from its obligation to provide the County and PCTSM use of the Complex and other City facilities for the particular year that the Event is not conducted.

- K. **Force Majeure.** Each party shall be temporarily excused from the performance of its duties and obligations hereunder if an Event of Force Majeure directly or indirectly causes its nonperformance. Within five (5) days after the occurrence of an Event of Force Majeure, the affected party shall deliver written notice to the other party describing the event in reasonably sufficient detail and how the event has precluded the affected party from performing its obligations hereunder. The affected party's obligations, so far as those obligations are affected by the Event of Force Majeure, shall be temporarily suspended during, but no longer than, the continuance of the Event of Force Majeure and for a reasonable time thereafter as may be required for the affected party to return to normal business operations. If excused from performing any obligations under this Agreement due to the occurrence of an Event of Force Majeure, the affected party shall promptly, diligently, and in good faith take all reasonable action required for it to be able to commence or resume performance of its obligations under this Agreement. During any such time period the affected party shall keep the other party duly

notified of all such actions required for it to be able to commence or resume performance of its obligations under this Agreement.

L. Effective Date. The Effective Date of this Agreement shall be the date that the later of the parties executes the Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the Effective Date herein after set forth.

CITY OF WINTER HAVEN, FLORIDA

Witness:

Signature Date

Signature Date

Title

ATTEST:
RICHARD WEISS
CLERK OF THE BOARD

POLK COUNTY, a political
subdivision of the State of Florida

By: _____
Deputy Clerk

By: _____
Edwin V. Smith, Chairman
Board of County Commissioners

Date Signed By Chairman _____

Reviewed as to form and legal sufficiency:

County Attorney's Office Date