



Orange County Government

Orange County
Administration Center
201 S Rosalind Ave.
Orlando, FL 32801-1393

Legislation Text

File #: 26-0188, **Version:** 1

Interoffice Memorandum

DATE: January 21, 2026

TO: Mayor Jerry L. Demings and County Commissioners

THROUGH: N/A

FROM: Joseph C. Kunkel, P.E., Director, Public Works Department

CONTACT: Roads and Drainage Division

PHONE: (407) 836-7871

DIVISION: Roads and Drainage Division

ACTION REQUESTED:

Approval and execution of Settlement Agreement by and between Orange County, Florida and April Holtzman regarding the installation of live oak trees on Lincoln Avenue landscape area across from the Holtzman property. District 1. (Roads and Drainage Division)

PROJECT: N/A

PURPOSE:

The County and April Holtzman desire to enter into this agreement for the purpose of resolving the Tree Dispute and are motivated by a desire to avoid costs, time, and uncertainty associated with potential litigation and to arrive at a fair and reasonable agreement to resolve their dispute.

The County Attorney's Office has reviewed the Agreement and found the Agreement acceptable as to form.

BUDGET: N/A

BCC Mtg. Date: February 10, 2026

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT ("Agreement") is made and entered into on this 15 day of December 2025, by and between ORANGE COUNTY, FLORIDA ("County"), and APRIL HOLTZMAN ("Holtzman").

RECITALS:

WHEREAS, Holtzman is the owner of certain real property located at 4815 Lincoln Avenue in the Hunters Estates subdivision ("Holtzman Property"); and

WHEREAS, pursuant to the First Amendment to Declaration of Restrictions for Kensington Park, a copy of which is recorded at Book 5691, Page 4830 of the Official Records of Orange County, Florida ("First Amendment to Declaration"), Kensington Park Homeowners' Association, Inc. ("Association"), is responsible for maintaining the landscape area along Lincoln Avenue ("Lincoln Avenue Landscape Area") required pursuant to the County's development approval of the Kensington Park Planned Unit Development ("Kensington Park PUD"); and

WHEREAS, on or about February 27, 2023, and in response to a complaint originating from the Association, the County's contractor removed three 20+ year old live oak trees and a mature pine tree from within the Lincoln Avenue Landscape Area across from the Holtzman Property; and

WHEREAS, Holtzman filed objections with the County and the Association asserting that the February 27 removal of the oak trees violated the First Amendment to Declaration and the rights granted thereunder to residents in the Hunters Estates subdivision, including Holtzman, as well as the development conditions for the Kensington Park PUD ("Tree Dispute"); and

WHEREAS, subsequent to Holtzman's filing of her objections, representatives for the County, the Association, and Holtzman met on site to inspect the Lincoln Avenue Landscape Area and discuss potential options to amicably resolve the Tree Dispute; and

WHEREAS, since the site visit, the County and Holtzman, by and through their counsel, have continued to explore settlement options to amicably resolve the Tree Dispute as between themselves; and

WHEREAS, the County and Holtzman desire to enter into this Agreement for the purpose of resolving the Tree Dispute as between themselves and are motivated by a desire to avoid the costs, time, and uncertainty associated with potential litigation and to arrive at a fair and reasonable agreement to resolve their dispute.

NOW, THEREFORE, in consideration of the terms and mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the County and Holtzman (collectively, the "Parties") intending to be legally bound, agree as follows:

1. **Recitals**. The above-referenced recitals are true and correct and are hereby incorporated into this Agreement for all purposes.

2. **Terms of Agreement**. In connection with the Parties' mutual execution of this Agreement and the covenants and terms herein, the Parties agree as follows:

A. The County, at its sole expense, shall pay for the purchase, delivery and installation of three (3) 670-gallon seeding live oak trees from the tree farm selected by Holtzman – Cherry Lake Tree Farm ("Cherry Lake") or equivalent tree farm if Cherry Lake is unable to do the work – to replace the mature trees removed from the Lincoln Avenue Landscaped Area. The County shall not be responsible for any additional expenses other than the foregoing cost for the purchase, delivery and installation of the three (3) replacement live oaks and pine bark chips/mulch, including, but not limited to, any costs for warranting that the three (3) replacement live oaks survive after planting.

B. The County shall cause such replacement trees to be purchased, delivered, and installed on or before March 31, 2026, so that the trees are installed and take root well in advance of the 2026 hurricane season. Cherry Lake's arborist, or another arborist acceptable to the Parties, will decide exactly where the three (3) replacement live oaks shall be planted, with the intent being, to the greatest extent possible, to plant them in a manner so as not to be visually inconsistent with the row of existing live oaks in the Lincoln Avenue Landscape Area and to minimize the likelihood of the root system of the trees from damaging the pavement of Lincoln Avenue as the trees grow and mature.

C. If in the future any portion of the root system of one or more of the live oaks damages the paved portion of Lincoln Avenue or creates an unsafe condition for vehicular traffic (e.g., uplifted or cracked pavement), the County reserves the right to take whatever action it deems necessary to protect and repair the paved road, which is part of the public right-of-way, including removing the intrusive/invasive root(s), or removing part of the root system, or, as a last resort, removing the tree itself, and in the latter event, the County will not be responsible for purchasing or planting another replacement tree, or for the cost thereof.

3. **Authority**. Each Party represents and warrants, with respect to itself, that the execution and delivery of this Agreement has been authorized by all necessary action of each Party, and that this Agreement constitutes the legal, valid, and binding agreement of each Party, enforceable in accordance with its terms. It is expressly understood and agreed that this Agreement

shall not become binding upon the County unless and until the Orange County Board of County Commissioners approves this Agreement at a public meeting, as is required by Florida law.

4. **Governing Law; Venue.** This Agreement shall be construed, interpreted, enforced, and governed in accordance with the laws of the State of Florida. Venue for any action arising out of or related to this Agreement shall be in the Ninth Judicial Circuit Court in and for Orange County, Florida.

5. **Binding Effect.** This Agreement shall be binding upon and shall inure to the benefit of the respective successors, heirs, assigns, bankruptcy trustees, representatives, affiliates, officers, directors, partners, members, and joint venturers of the Parties

6. **Non-Waiver.** Failure by the County or Holtzman to insist upon the strict performance of any of the terms, conditions, or provisions of this Agreement shall not be deemed to be a waiver of such terms, conditions, and provisions, and the County and Holtzman, notwithstanding such failure, shall have the right hereafter to insist upon the strict performance of any or all such terms and conditions of this Agreement as set forth herein.

7. **Mutual Releases.** The Parties hereby waive and release, acquit, satisfy, and forever discharge each other from any and all claims, counterclaims, defenses, actions, causes of action, suits, controversies, agreements, promises, and demands whatsoever which each Party had or now has, in law or in equity, for, upon, or by reason of any claim raised or which could have been raised by either Party in the Tree Dispute as of the Effective Date of this Agreement. In addition, and without waiving the generality of the foregoing, the Parties covenant with and warrant to each other that there exist no claims, counterclaims, defenses, objections, offsets, or claims of offsets against each other regarding any claim raised by either Party in the Tree Dispute that are not included in and covered by this Agreement. The mutual releases set forth in this provision do not apply to any rights granted by or arising from this Agreement, nor do they apply to any future events that occur or arise after the Effective Date of this Agreement. In addition, nothing in these mutual releases shall be construed, interpreted, or applied as waiving or releasing any claims Holtzman may have against the Association involving or arising from the Tree Dispute.

8. **Construction; Headings.** The Parties acknowledge that they participated in the negotiation and drafting of the terms of this Agreement and acknowledge that no provision shall be strictly construed against one party or the other based solely on draftsmanship. The Parties have entered into this Agreement without duress, coercion, or under undue influence of any kind, and are motivated by a desire to avoid the costs and time associated with litigation and to arrive at a fair and reasonable agreement regarding the Tree Dispute. The Parties acknowledge that they have been represented by counsel in connection with the negotiation of the terms of this Agreement and that they enter into this Agreement freely and voluntarily, and only after consultation with their respective counsel. All descriptive headings in this Agreement are inserted for convenience only, and shall neither affect the construction or interpretation hereof, nor add or subtract from the meaning of the contents of each section.

9. **Interpretation.** This Agreement shall be read and interpreted in such a manner as to give all provisions their ordinary and customary meaning, and all words, terms, and phrases not otherwise specifically defined by a capitalized term or otherwise shall have the same meaning and interpretation as customarily used among lay persons. The terms “hereby,” “hereof,” “herein,” “hereto,” “hereunder,” and any similar terms refer to this Agreement in its entirety and not solely to the particular section or paragraph in which the term is used. All words, terms, and phrases specifically defined by a capitalized term shall apply throughout this Agreement in its entirety and not solely to the section or paragraph in which the term is used. In construing this Agreement, the singular shall be held to include the plural, the plural shall include the singular, and the use of any gender shall include every other and all genders.

10. **Entire Agreement; Amendments.** This Agreement represents the entire understanding and agreement between the Parties with respect to the Tree Dispute. No representations have been made, either express or implied by the Parties, other than those expressly set forth in this Agreement. This Agreement or any part hereof may not be changed, amended, waived, discharged, or terminated except by an instrument in writing, executed by all Parties.

11. **Enforcement; Remedies.** The Parties shall have all equitable and legal remedies available under Florida law to enforce the terms and conditions of this Agreement, and the terms of this Agreement shall be specifically enforceable in court, except that Orange County shall not be liable for any costs, attorney’s fees, expenses, or damages and any remedy against Orange County is limited to an injunction to enforce its obligation to pay for the purchase and installation of trees as set forth in Sections 2.A and B above.

12. **Severability.** If any part of this Agreement is found invalid or unenforceable by any court of competent jurisdiction, such invalidity or unenforceability shall not affect the other parts of this Agreement if the rights and obligations of the Parties contained therein are not materially prejudiced and if the intentions of the Parties can continue to be effectuated. To that end, this Agreement is declared severable.

13. **Disclaimer of Third-Party Beneficiaries.** This Agreement is solely for the benefit of the Parties and no right or cause of action shall accrue by reason hereof to, or for the benefit of, any third party not a formal party hereto, other than as expressly stated herein. Nothing in this Agreement, expressed or implied, is intended or shall be construed to confer upon or give any other third person or entity any right, remedy, or claim under or by reason of this Agreement or any provisions or conditions hereof, other than as expressly stated herein.

14. **Purpose of this Agreement; Not Establishing Precedent.** By entering into this Agreement, the Parties do not admit any liability whatsoever to the other, or to any other person, arising out of any claims asserted, or that could have been asserted, in the Tree Dispute, and expressly deny any and all such liability. The Parties acknowledge and agree that this Agreement is not intended by any Party to be construed, and shall not be construed, as an admission by any Party of any liability or violation of any law, statute, ordinance, regulation, or other legal duty of any nature whatsoever. Rather, this Agreement is for the compromise of potential and disputed

claims, involving both fact and law, and the Parties enter into this Agreement in a spirit of cooperation for the purpose of avoiding litigation and in recognition of the desire for the speedy and reasonable resolution of the Parties' dispute. The acceptance of proposals for purposes of this Agreement is part of a negotiated settlement affecting many factual and legal issues and is not an endorsement of, and does not establish precedent for, the use of these proposals in any other circumstances.

15. **Attorneys' Fees; Costs.** The Parties expressly agree to bear the fees and costs of their respective counsel, experts, and consultants in the Tree Dispute and in the preparation of this Agreement.

16. **Notices.** All notices and other communications required hereunder shall be in writing and shall be delivered personally, or by registered or certified mail, return receipt requested, postage prepaid, or by Federal Express, or other nationally recognized overnight commercial delivery service, fees prepaid for next day delivery. Such notices shall be deemed to have been received: (i) upon delivery, if personally delivered; (ii) upon the earlier of actual receipt or the third day after mailing, if mailed by registered or certified United States mail, return receipt requested, postage prepaid; and (iii) upon the earlier of actual receipt or the next business day if sent by Federal Express or other nationally recognized overnight commercial delivery service, if fees are prepaid for next day delivery. The addresses for delivery of such notices shall be as follows:

(a) To Holtzman:

April Holtzman
4815 Lincoln Ave.
Orlando, Florida 32819

With a copy to:

S. Brent Spain, Esquire
Theriaque & Spain
1809 Edgewater Drive
Orlando, Florida 32804

(b) To the County:

Orange County, Florida
c/o County Administrator
201 S. Rosalind Ave., 5th Floor
Orlando, Florida 32801

With a copy to:

Deputy County Attorney
Orange County Administration Building
201 S. Rosalind Avenue, 3rd Floor
Orlando, Florida 32801

or to such other address as any party hereto shall from time to time designate to the other party by notice in writing as herein provided.

17. **Counterparts**. This Agreement may be executed in counterparts, each of which shall be deemed to be an original and need not be signed by more than one of the Parties and all of which shall constitute one and the same agreement. The Parties further agree that each Party shall execute and deliver all other appropriate supplemental agreements and other instruments, and take any other action necessary to make this Agreement fully and legally effective, binding, and enforceable as between them and as against third parties.

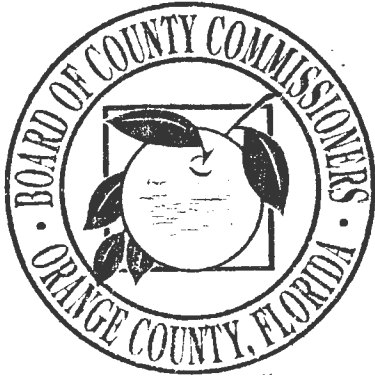
18. **Effective Date**. This Agreement shall become effective upon the date of execution by the last of the Parties (“Effective Date”).

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

19. **WAIVER OF JURY TRIAL.** THE PARTIES HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVE ANY RIGHT TO A JURY TRIAL WITH RESPECT TO ANY CLAIMS ARISING IN CONNECTION WITH THIS AGREEMENT.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed in a manner sufficient to bind them as set forth herein.

ORANGE COUNTY, FLORIDA



By: Board of County Commissioners

By: *Bryan W. Brooks*
for JERRY L. DEMINGS
Orange County Mayor

Date: 10 February 2026
Address: 201 S. Rosalind Avenue, 5th floor,
Orlando, Florida 32801

ATTEST: Phil Diamond, CPA, County Comptroller
As Clerk of the Board of County Commissioners

By: *Roberta Merca*
for DEPUTY CLERK

WITNESSES

APRIL HOLTZMAN

Joseph Loumaire
Print Name: Joseph Loumaire
Print Address: 768 Dr. Phillip Blvd
Orlando FL 32819

By: *April Holtzman*
Print Name: April Holtzman
Date: 12-15-2025
Address: 4815 Lincoln Ave., Orlando, Florida 32819

Jan LaBerna
Print Name: Jan LaBerna
Print Address: 7682 Dr. Phillip Blvd
Orlando, FL 32819

STATE OF FLORIDA

COUNTY OF ORANGE

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this 15th day of December 2025, by April Holtzman. Said person is personally known to me or has produced FL Driver's Lic. as identification.

(NOTARY SEAL)

SEM B. CHERY
Notary Public; State of Florida
Print Name: SEM B. CHERY
My Commission Expires: 10-03-2026

