



Legislation Text

File #: 26-0191, **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: Eduardo Avellaneda, P.E., Manager

PHONE: (407) 836-7871

DIVISION: Roads and Drainage Division

ACTION REQUESTED:

Approval and execution of Settlement Agreement by and between Orange County, Florida and Kensington Park Homeowners' Association regarding the installation of live oak trees on Lincoln Avenue, in the right-of-way adjacent to Kensington Park up to Sunset Drive. District 1. (Roads and Drainage Division)

PROJECT: N/A

PURPOSE:

The County and the Kensington Park Homeowners' Association 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 the 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

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (“Agreement”) is made and entered into on this day of February 10, 2026, by and between ORANGE COUNTY, FLORIDA (“County”) and KENSINGTON PARK HOMEOWNERS’ ASSOCIATION, INC. (“Association”) (together the “Parties”).

RECITALS:

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”), the Association is responsible for maintaining the landscape area along Lincoln Avenue in the right of way adjacent to Kensington Park up to Sunset Dr. (“Lincoln Avenue Landscape Area”); and

WHEREAS, on or about February 27, 2023, the County’s contractor removed three 20+ year old live oak trees and a mature pine tree from within the Lincoln Avenue Landscape Area; creating a dispute between the Parties (the “Tree Dispute”); and

WHEREAS, the County and Association seek to facilitate the replacement of the trees; and

WHEREAS, the County and the Association desire to enter into this Agreement for the purpose of resolving the Tree Dispute 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 the Association, (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 Cherry Lake Tree Farm (“Cherry Lake”) to replace the mature trees removed from the Lincoln Avenue Landscaped Area. The preliminary estimate for the three (3) replacement live oaks is approximately \$17,000.00. 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 or any expense for additional landscaping being installed by the Association pursuant to the terms of this Agreement.
- B. The County shall cause such replacement trees to be purchased, delivered, and installed no later than ninety (90) days after the end of Florida’s 2025-hurricane season. Cherry Lake’s arborist, or another arborist acceptable to all the Parties, will decide exactly where Cherry Lake should plant the three (3) replacement live oaks with the intent being, to minimize the likelihood of the root system of the trees from damaging the pavement of Lincoln Avenue or the nearby wall owned by the Association 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.
- D. The Association shall hold the County harmless and indemnify the County for any bodily injury or property damage that may be caused by the three (3) replacement live oaks installed pursuant to this Agreement in the Lincoln Avenue Landscape Area.
- E. The Association, at its sole expense, shall be responsible for maintaining and irrigating the three (3) replacement live oaks, pursuant to best management practices and consistent with the Association’s current responsibilities pursuant to the First Amendment to Declaration.

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 the Association 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 or the Association, 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 any Party in the Tree Dispute as of the Effective Date of this Agreement.

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, B, and C 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:

(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

(c) To the Association:

Kensington Park Homeowners' Association, Inc.
c/o Association President
1801 Cook Ave.
Orlando, Florida 32806

With a copy to:

Charles Eldredge, Esquire
Larsen Slaten, PLLC
4700 Millenia Blvd. Suite 500
Orlando, Florida 32839

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").

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: *Jerry L. Demings*
for JERRY L. DEMINGS
for Orange County Mayor

Date: *10 February 2026*

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

By: *Phil Diamond*
for DEPUTY CLERK

WITNESSES

Amy Hilde
Print Name: Amy Hilde

Rachel Purvis
Print Name: Rachel Purvis

KENSINGTON PARK HOMEOWNERS' ASSOCIATION, INC, a Florida not-for-profit corporation,

By: Dave Merriman

Print Name: Dave Merriman

Title: President KPHOA

Date: May 8, 2025

STATE OF FLORIDA

COUNTY OF ORANGE

The foregoing instrument was acknowledged before me by means of [] physical presence or [] online notarization, this 8 day of May, 2025, by Dave Merriman as President of Kensington Park Homeowners' Association, Inc., a Florida not-for-profit corporation, on behalf of said entity. Said person [] is personally known to me or [] has produced _____ as identification.

(NOTARY SEAL)

Stacy Taylor
Notary Public, State of Florida
Print Name: Stacy Taylor
My Commission Expires: 11/9/25

