



# CITY COUNCIL AGENDA ITEM

REQUESTED COUNCIL MEETING DATE 11/6/07

**SUBJECT:** Resolution No. 07-112 – ICI - 441 acre

**DEPARTMENT:**

**RECOMMENDED MOTION:**

Authorize the Mayor and City Manager to enter into a contract to acquire a 441 acre tract of the Stanaki property located east of I-95, south of Spruce Creek, north of Pioneer Trail, contingent upon the final sale of bonds, grants from Florida Community Trust, Volusia County, and St. Johns River Water Management District, and to approve a resolution transferring mitigation credits reserved for City projects and making them available to the private sector, approval of our Corps of Engineers Wetland Mitigation Bank, and expansion of our Gopher Tortoise Bank.

**SUMMARY:**

The City has been negotiating with the current owner of the Stanaki PUD. This property, if acquired, would become part of the Spruce Creek Preserve. The contract provides for the acquisition of 441 acres of property. Additionally, the acquisition price includes funds so that the developer can purchase Corps of Engineers Wetland Mitigation credits, State Wetland Mitigation credits, and Gopher Tortoise relocation sites. The current owner would have the right to purchase these credits from the City's bank or from another. The mitigation will be used for the development on the west side. The contract is contingent upon the City receiving grant funds from several agencies as well as certain technical items related to the City's mitigation bank. Staff recommends approval.

**ATTACHMENTS:**  Ordinance  Resolution  Budget Resolution

Other  Support Documents/Contracts Available for Review in Manager's Office

<b>DEPARTMENT HEAD</b>	Signed	Date
<b>FINANCE DEPARTMENT</b>	Approved as to Budget Requirements	Date
<b>CITY ATTORNEY</b>	Approved as to Form and Legality	Date 10.31.07
<b>CITY MANAGER</b>	Approved Agenda Item For:	11/6/07

**COUNCIL ACTION:**  Approved as Recommended  Disapproved  Tabled Indefinitely  
 Continued to Date Certain  Approved with Modification:

RESOLUTION NO. 07-112

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA, APPROVING A CONTRACT FOR SALE AND PURCHASE OF REAL PROPERTY LOCATED EAST OF I-95, SOUTH OF SPRUCE CREEK, NORTH OF PIONEER TRAIL; AUTHORIZING EXECUTION OF SAID CONTRACT; AUTHORIZING THE MAYOR AND CITY MANAGER TO EXECUTE CLOSING DOCUMENTS; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, MHK of Volusia County, Inc. desires to sell and the City desires to buy a parcel of real property located consisting of approximately 440 acres as described in the Contract for Sale and Purchase, attached hereto as Exhibit 1 and incorporated herein by reference; and

WHEREAS, the City plans that the property will become part of the Spruce Creek Preserve; and

WHEREAS, the City Council has reviewed the Contract for Sale and Purchase, a copy of which is attached hereto as Exhibit 1, and has determined that it is fair and equitable and that it is in the best interest of the City of Port Orange and the citizens thereof to enter into the Contract.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA:

Section 1. The Contract for Sale and Purchase, attached hereto as Exhibit 1, is approved. The Mayor and City Manager are authorized to execute such additional documents as may be necessary to effectuate the intent of this resolution and to otherwise proceed to close the transaction and acquire title to the property on behalf of the City of Port Orange.

(RES. NO. 07-112)

Section 2. This resolution shall take effect immediately upon adoption.

\_\_\_\_\_  
MAYOR ALLEN GREEN

ATTEST:

\_\_\_\_\_  
Kenneth W. Parker, City Manager

Adopted on the      day of

Reviewed and Approved:

  
\_\_\_\_\_  
City Attorney

C:\Legal\RES\mhk sale to copo 441 acres (stanaki).wpd



**AGREEMENT FOR PURCHASE AND SALE**

This Agreement made between **MHK of Volusia County, Inc.**, a Florida corporation (hereinafter referred to as "**Seller**"), and **City of Port Orange, Florida**, a Florida municipal corporation, whose address is: Attention City Manager, 1000 City Center Circle, Port Orange, Florida 32129 (hereinafter referred to as "**Buyer**");

**WITNESSETH:**

In consideration of the mutual promises hereinafter set forth, Seller and Buyer mutually agree as follows:

1. Seller agrees to sell and convey and Buyer agrees to purchase and acquire all that certain tract and parcel of land located in the County of Volusia, and State of Florida, consisting of approximately Four Hundred Forty (440) acres+/-, which parcel is more particularly described in Exhibit "A" annexed hereto and made a part hereof (the "Premises") and shall be legally described by a registered surveyor, at the Buyer's expense.
2. The purchase price ("**Total Purchase Price**") which Buyer agrees to pay and Seller agrees to accept for the 440-acre Premises is the sum of Ten Million Eight Hundred Nineteen Thousand Six Hundred and 00/100 Dollars (\$10,819,600.00) which shall be payable as follows:
  - (a) Within ten (10) days following City Council approval of this Agreement, Buyer shall pay the sum of Two Thousand Dollars (\$2,000.00) (the "Initial Deposit") to be held in trust by Columbia Title Research Corporation, 200 Forest Lake Boulevard, Daytona Beach, FL 32119 (hereinafter referred to as "Escrowee" or "Escrow Agent") receipt whereof is acknowledged hereinafter, and to be held and disbursed as hereinafter provided.
  - (b) Within three (3) days following the end of the Inspection Period (as defined in Paragraph 3) if Buyer has not provided Seller with timely written notice of termination, then Buyer shall deposit the sum of One Hundred Thousand Dollars (\$100,000.00) (the "Additional Deposit") to the Escrow Agent. The Initial Deposit and the

Additional Deposit are collectively referred to as the Deposit. Upon delivery of the Additional Deposit, the Deposit will be nonrefundable to Buyer except upon a default of Seller as set forth herein.

- (c) On the closing of title, not less than the balance of the Total Purchase Price, less the Deposit by wire transfer, which amount when taken by wire transfer, which amount when taken together with the sum paid pursuant to subdivisions (a) and (b) of this **Paragraph 2** (plus or minus prorations) shall constitute the Total Purchase Price.
3. The Premises are sold and are to be conveyed subject to the conditions of title and other matters set forth in **Exhibit "B"** ("**Permitted Exceptions**") annexed hereto and made a part hereof and such other matters as may be accepted by Buyer.

Buyer will obtain, and deliver a copy to Seller, at Buyer's expense on or before November 23, 2007, at Buyer's sole cost and expense, a title insurance commitment issued by Columbia Title Research Corporation and First American Title Insurance Agency, (along with copies of all exception documents), agreeing to issue to Buyer upon recording of the deed conveying the Premises to Buyer or its assigns an owner's ALTA marketability title insurance policy in the amount of the Total Purchase Price, insuring the title of Buyer to the Premises, subject only to those conditions of title and other matters shown on **Exhibit "B"** attached hereto. If the title commitment shows any exception other than those shown in **Exhibit "B"**, Buyer shall have until November 30, 2007 (the "Inspection Period") to terminate this Agreement by delivering written notice to Seller whereby all deposits and accrued interest will be returned to Buyer. If Buyer fails to deliver such termination notice, then any exceptions shall be deemed a Permitted Exception and Buyer agrees to accept the title and conveyance subject to the exception(s). Buyer may at its expense obtain a survey of the Premises by November 23, 2007 and any valid survey objection (i.e. affecting marketability) of which Buyer shall notify Seller within the Inspection Period shall be treated as a title defect and shall constitute a Permitted Exception unless Buyer delivers written notice of termination on or before the end of the Inspection Period.

4. If on or before the end of the Inspection Period, Buyer shall have rightfully elected to cancel and terminate this Agreement pursuant to such rights granted herein by giving Seller and Escrowee notice thereof in accordance with the provisions hereof, Seller shall, promptly upon receipt of any such notice of cancellation and termination be deemed to have authorized Escrowee to, and Escrowee shall, except as hereinafter conditioned, promptly pay to Buyer the Deposit and this Agreement shall thereupon be terminated except as to matters

which are expressly declared herein to survive the closing or termination hereof.

5. The deed to the Premises shall (a) be in the usual form of Special Warranty Deed; (b) be duly executed and acknowledged by Seller so as to convey to Buyer the title to the Premises free and clear of all liens, encumbrances and other conditions of title other than the Permitted Exceptions and such other matters accepted by Buyer; and, (c) be in recordable form. Buyer shall pay the documentary stamp charges, transfer or excise taxes with respect to the conveyance of the Premises to Buyer and the consummation of the transaction contemplated hereby. Buyer shall pay for the recording of the Deed.
6. Except as otherwise provided herein, the closing of title shall take place at 10:00 o'clock A.M. on or before December 15, 2007 except as otherwise extended in this Agreement. The closing of title shall take place at Columbia Title Research Corporation, or at such other place in Volusia County as Seller may designate upon notice given to Buyer and Escrowee not later than seven (7) days prior to the Closing Date.

At the closing, Seller agrees to furnish an affidavit of title, in a form sufficient for the title company to delete the "gap," mechanics liens and parties in possession exceptions from the title insurance commitment. Buyer agrees to give an affidavit to negate mechanic's liens relating to Buyer's activities on the Premises between the Effective Date and the closing if requested by Seller. Seller is not a "foreign person" as defined in Section 1445 of the Internal Revenue Code of 1986, to which the withholding requirements of the Foreign Investment in Real Property Tax Act of 1980, as amended.

7. All notices, consents, approvals, waivers and elections which any party shall be required or shall desire to take or give under this Agreement shall be in writing and shall be sufficiently made or given only when sent by fax and/or (a) Federal Express or similar overnight service or (b) mailed by certified mail, return receipt requested, addressed (a) to Buyer: Kenneth W. Parker, City Manager, 1000 City Center Circle, Port Orange, Florida 32129; Facsimile number: 386-506-5508, with a copy to Margaret T. Roberts, City Attorney, 1000 City Center Circle, Port Orange, Florida 32129; Facsimile number: 386-506-5530 (b) to Escrowee: Columbia Title Research Corporation, 200 Forest Lake Boulevard, Daytona Beach, Florida 32119 and (c) to Seller: Mori Hosseini, President, 2379 Beville Road, Daytona Beach, Florida 32119 with a copy to J. Andrew Hagan, Esq., General Counsel, 2379 Beville Road, Daytona Beach, Florida 32119, Facsimile number 386-760-0470, or to such other address as any party hereto shall designate by like notice given to the other parties hereto. Except as herein specifically provided, notices, consents, approvals, waivers and elections properly given or made as aforesaid shall be deemed to have been given and

received on the third business day following the date of the mailing thereof as aforesaid and on the first business day subsequent to dispatch by Federal Express or other reputable overnight courier service or upon confirmation of transmission if sent by facsimile.

8. Escrowee in receiving funds or equivalent is authorized and agrees by acceptance of them to deposit them promptly, hold same in escrow and subject to clearance, disburse them in accordance with terms and conditions of Agreement. Failure of clearance of funds shall not excuse Buyer's performance. If in doubt as to Escrowee's duties or liabilities under the provisions of Agreement, Escrowee may, at Escrowee's option continue to hold the subject matter of the escrow until the parties mutually agree to its disbursements, or until a judgment of a court of competent jurisdiction shall determine the rights of the parties or Escrowee may deposit with the clerk of the Circuit Court of Volusia County, Florida. Upon notifying all parties concerned of such action, all liability on the part of Escrowee shall fully terminate, except to the extent of accounting for any items previously delivered out of escrow. Any suit between Buyer and Seller where Escrowee is made a party because of acting as Escrowee hereunder, or in any suit wherein Escrowee interpleads the subject matter of the escrow, Escrowee shall recover reasonable attorneys' fees and costs incurred with the fees and costs to be charged and assessed as court costs in favor of the prevailing party. Parties agree that Escrowee shall not be liable to any party or person for misdelivery to Buyer or Seller of items subject to this escrow, unless such misdelivery is due to willful breach of Agreement or gross negligence of Escrowee.
9. Mitigation Credits. The Buyer owns and operates a wetland mitigation bank that has been approved by applicable state agencies and, pending approval by applicable federal permitting agencies, for the issuance of mitigation credits under the Uniform Mitigation Assessment Method ("UMAM"). Buyer agrees to sell to Seller state wetland mitigation credits (UMAM credits) and federal wetland mitigation credits (UMAM credits), upon availability, as needed to permit the Woodhaven West project. It is estimated that up to 39 state UMAM credits and up to 40 federal UMAM credits will be needed. These shall be sold on December 15, 2007, or as otherwise agreed upon by the parties, in accordance with the City Council rates effective October 1, 2007. Additionally, 192 gopher tortoise relocations will be accepted from the Woodhaven West project site in which gopher tortoise relocations will be at no cost to Seller. A copy of the City rate schedule in effect as of October 1, 2007 is attached as **Exhibit "C"**.
10. This Agreement supersedes all other letters of intent, agreements and understandings of every character of the parties and the parties' agents, employees and entities owned or controlled by them and comprises the entire

agreement among them. This Agreement may not be changed except in writing, signed by the parties. No waiver of any rights or obligations hereunder shall be deemed to have occurred unless in writing signed by the party against whom such waiver is asserted and no waiver shall be deemed a waiver of any other or subsequent rights or obligations.

11. Words used herein in the singular shall include the plural and words in the masculine shall include words in the feminine or neuter gender where the text of this Agreement so requires.
12. Buyer, at Buyer's expense, shall have the right within the Inspection Period, to conduct an environmental audit and inspection of the Premises. The environmental audit and inspection report shall be certified to the Buyer. In the event the environmental audit detects the presence of any hazardous materials on the Premises, Buyer, at its sole option, may elect to terminate this Agreement by the end of the Inspection Period and neither party shall have any further obligations under this Agreement. For purposes of this Agreement, "hazardous materials" shall mean any hazardous or toxic substance, material or waste of any kind or any other substance that is regulated by any federal, state or local environmental laws, statutes, ordinances, rules, regulations, restrictions or orders relating to liability or standards of conduct. Buyer or Buyer's agent, at Buyer's sole expense, shall have the right to inspect the Premises to determine whether, in Buyer's sole discretion, the Premises is suitable for Buyers' intended use for preservation and passive recreational facilities. Such inspection may include but shall not be limited to engineering and feasibility studies. Buyer and its agents and representatives shall be entitled to enter upon the Premises to perform such acts as are reasonably necessary for inspection, soil tests, examination, and land-use planning of the Premises prior to Closing. If the Premises is determined to be unsuitable, Buyer may terminate this Agreement by giving written notice to Seller of such termination on or before the end of the Inspection Period. Within ten (10) calendar days of the delivery of the notice of termination to the Escrow Agent, the Escrow Agent shall return the Deposit to the Buyer and the parties hereto shall be relieved of all further obligations hereunder. Buyer shall cause all persons or entities furnishing materials or services in connection with the inspection rights granted hereunder to be promptly paid and Buyer shall not allow the filing of any construction liens against the Premises in connection with the inspection permitted hereunder. In the event that Buyer fails to purchase the Premises for any reason whatsoever, Buyer, will repair any damage to the Premises caused by Buyer's exercise of the inspection rights granted under this Section.
13. Assessments and taxes shall be adjusted, apportioned and allowed as of the Closing Date with full discount taken. Certified, confirmed and ratified special



assessment liens as of date of closing (and not as of Effective Date) are to be paid by Seller. Pending liens for all governmental assessments as of date of closing shall be assumed by Buyer, provided, however, that if the improvement has been substantially completed and installed as of Effective Date, such pending lien shall be considered as certified, confirmed or ratified and Seller shall, at closing, be charged an amount equal to the last estimate by the public body of assessment for the improvement.

14. In the event that Buyer shall fail to perform its obligations hereunder and such failure is through no fault or failure of Seller to comply with its obligations hereunder, Seller shall notify the Buyer and Escrowee in writing and, as and for its sole and exclusive remedies (except as to termination rights under **Paragraph 15**), shall have the right to terminate this Agreement and to receive from Escrowee, as full and complete liquidated damages, the Deposit, plus any interest accrued thereon. In the event of the termination of this Agreement as aforesaid, Escrowee shall promptly remit to Seller the Deposit, plus any interest accrued thereon. Seller may sue to recover any deposit required herein not timely made as provided herein.
15. In the event Seller shall fail to perform its obligations hereunder and such failure is through no fault or failure of Buyer to comply with its obligations hereunder, Buyer shall notify the Seller and Escrowee in writing and, as and for its sole and exclusive remedies, shall have the right to terminate this Agreement and to receive from Escrowee, as full and complete liquidated damages, the Deposit, plus any interest accrued thereon. In the event of the termination of this Agreement as aforesaid, Escrowee shall promptly remit to Buyer the Deposit, together with interest accrued thereon. Buyer may sue to recover any deposit required herein not timely made as provided herein.
16. The terms, covenants and conditions of this Agreement shall be binding upon and inure to the benefit of, the parties hereto and their respective heirs, successors and assigns.
17. Buyer may assign this Agreement, without the prior written consent of Seller.
18. The "**Effective Date**" of the Agreement shall be the date the last party signs it and that all conditions and contingencies have been satisfied and the fact of said compliance with the conditions and contingencies is communicated in writing to the party first to sign.
19. Time is of the essence of this Agreement.
20. In the event there is any litigation involving the terms of this Agreement or their

enforcement, then the prevailing party shall be entitled to reasonable attorneys' fees and costs both on the trial and appellate level. This Agreement shall be governed by the laws of the State of Florida. The exclusive venue for any litigation arising out of this Agreement shall be Volusia County, Florida.

21. At Closing, Seller shall deliver to Buyer an affidavit stating, under penalty of perjury, Seller's U.S. taxpayer identification number and that Seller is not a foreign person within the meaning of Section 1445 of the Internal Revenue Code. The purpose of this affidavit to assure Buyer that the withholding of taxes by Buyer is not required by Section 1445 upon Seller's disposition of the Property, and such certification shall be in form prescribed by said Section or regulations promulgated pursuant thereto. If Seller does not deliver such an affidavit to Buyer within five (5) days prior to Closing, or if Buyer has actual knowledge or receives notice that the affidavit is false, then, in either such event, Buyer shall be entitled to withhold from Seller an amount equal to ten percent (10%) of the Purchase Price, which amount Buyer shall report and pay over to the Internal Revenue Service within ten (10) days after Closing as required by the Internal Revenue Code or regulations promulgated pursuant thereto.
22. This Agreement is contingent upon adoption of a resolution for appropriation of the funding and adoption of a resolution amending the mitigation bank policies necessary to fulfill this Agreement by the City Council and approval and execution of this Agreement by the Mayor and the City Manger on behalf of the City Council, all of which shall be complete on or before November 6~~13~~, 2007. If the contingencies of this paragraph are not met by November 30, 2007, then either party may terminate this Agreement by providing written notice to the other party and the Escrow Agent, and upon such notice the Escrow Agent shall return the deposit to Buyer and no party shall have any further duty or obligation to the other with respect to this Agreement except with respect to those provisions which survive termination.
23. This Agreement is contingent upon the consummation and closing of the transactions contemplated in that certain Agreement for Purchase and Sale between Seller and Buyer of even date herewith for the acquisition of approximately 41.448 acres, a copy of which is attached hereto as Exhibit "DB" (the "41.448 Acre Agreement"). It is the intent of the parties that both Agreements close simultaneously. If the 41.448 Acre Agreement is terminated prior to closing, then either party shall have the right to terminate this Agreement by providing written notice to the other party and the Escrow Agent, and upon such notice the Escrow Agent shall return the deposit to Buyer and no party shall have any further duty or obligation to the other with respect to this Agreement except with respect to those provisions which survive termination

24. This Agreement may be executed in any number of identical counterparts, any or all of which may contain the signatures of fewer than all of the parties but all of which shall be taken together as a single instrument.

IN WITNESS WHEREOF, Seller and Buyer have hereunto set their hands and seals, as of the day and year indicated below.

Signed, sealed and delivered  
in the presence of:

**BUYER:**

**City of Port Orange, Florida**

\_\_\_\_\_  
*Printed Name:*

By: \_\_\_\_\_  
Allen Green, Mayor

\_\_\_\_\_  
*Printed Name:*

Attest:

\_\_\_\_\_  
Kenneth W. Parker, City Manager

Date: \_\_\_\_\_, 20\_\_.

**SELLER:**

**MHK of Volusia County, Inc.**

\_\_\_\_\_  
*Printed Name:*

By: \_\_\_\_\_  
Morteza Hosseini-Kargar  
Its: President

Attest:

\_\_\_\_\_  
*Printed Name:*

By: \_\_\_\_\_  
Charlene B. Irland  
Its: Vice President

Date: \_\_\_\_\_, 20\_\_.

Agreed to this \_\_\_\_ day of \_\_\_\_\_, 200\_\_ as to the obligations of Escrowee under this Agreement.

ESCROW AGENT (Escrowee):

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
*Printed Name:*

By: \_\_\_\_\_  
Its: \_\_\_\_\_

\_\_\_\_\_  
*Printed Name:*

Date: \_\_\_\_\_, 20\_\_.

Witnesses As to Escrowee

**EXHIBIT "A"**

**Premises**

A part of the following described parcels:

Parcel Nos. 6329-00-00-0056  
6332-00-00-0020  
6333-00-00-0090  
7304-00-00-0110 (north part of)  
And such other parcels for the total of 440 acres

NOTE: The legal description is to be provided by a registered surveyor.

**EXHIBIT "B"**

**Permitted Exceptions**

2. Stanaki Planned Unit Development Master Development Agreement recorded June 26, 1997 in Official Records Book 4213, Page 1610, and amended December 28, 2001 in Official Records Book 4794, Page 4301.
3. Those matters disclosed on the survey prepared by Sliger & Associates dated May 31, 2007.
4. Drainage Easement, as set forth in Deed Book 578, Page 318.
5. Easement to Florida Power & Light Company, as set forth in Deed Book 228, Page 343 (as to the South Parcel).
6. Florida Gas Transmission Co. Easement, as set forth in Official Records Book 619, Page 570.
7. Subject to any portion, also, the rights of others, in and to the use of Martin Dairy Road, as set out, established, or used, which may lie within insured premises.
8. Subject to any portion, also, the rights of others, in and to the use of Turnbull Bay Road, as set out, established, or used, which may lie within insured premises.
9. Any billboards and any leases for same, and any right to maintain or gain access to said billboards, executed prior to the ownership of the Stanaki Partnership

NOTE: The recording information contained herein refers to the Public Records of Volusia County, Florida, unless otherwise specified.