

winter park



agenda

August 25, 2014 @ 2:00 p.m.

City Hall Commission Chambers
401 S. Park Ave. • Winter Park, Florida

CRA board

1 administrative items

- a. Approval of Minutes from May 12, 2014

2 action items

- a. Approval of CRA Budget for FY 14-15
- b. Approval of the Park Avenue Kiosks
- c. Approval of the 2014-15 Winter in the Park

3 informational items

4 new business items

5 adjournment

appeals & assistance

"If a person decides to appeal any decision made by the Commission with respect to any matter considered at such meeting or hearing, he/she will need a record of the proceedings, and that, for such purpose, he/she may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based." (F. S. 286.0105).

"Persons with disabilities needing assistance to participate in any of these proceedings should contact the City Clerk's Office (407-599-3277) at least 48 hours in advance of the meeting."

COMMUNITY REDEVELOPMENT AGENCY
May 12, 2014

The meeting of the Community Redevelopment Agency was called to order by Mayor Kenneth Bradley at 2:31 p.m. in the Commission Chambers, 401 Park Avenue South, Winter Park, Florida.

Members present:

Mayor Kenneth Bradley
Commissioner Steven Leary
Commissioner Sarah Sprinkel
Commissioner Carolyn Cooper
Commissioner Tom McMacken
Orange County Representative Frank DeToma

Also present:

City Manager Randy Knight
Deputy City Clerk Michelle Bernstein
CRA Director Dori Stone
CRA Manager David Buchheit
CRA Attorney Larry Brown

1. Administrative Items

Motion made by Representative DeToma to approve the minutes of August 26, 2013; seconded by Commissioner McMacken and approved by acclamation with a 6-0 vote.

2. Action Items

A. Time extension of the CRA

RESOLUTION NO. 0015-14: A RESOLUTION OF THE COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF WINTER PARK, FLORIDA, RELATING TO COMMUNITY REDEVELOPMENT; APPROVING AN UPDATE TO THE REDEVELOPMENT PLAN OF THE WINTER PARK COMMUNITY REDEVELOPMENT AGENCY, CONTINGENT UPON APPROVAL OF A TIME EXTENSION BY THE ORANGE COUNTY BOARD OF COUNTY COMMISSIONERS, CONSISTENT WITH SECTIONS 163.361 AND 163.362, FLORIDA STATUTES, AND PROVIDING FOR AN EFFECTIVE DATE.

City Manager Randy Knight explained that the City was approached by Rollins College and a local resident that owns a minor league baseball team about the possibility of building a joint-use stadium and relocating the team to Winter Park. The City contracted a consultant to perform an economic impact of approximately \$6 million to the community.

On February 24, 2014 the Commission authorized staff to move forward with exploration of that opportunity to see if a location can be found and a deal can be reached that would make sense for the community. Staff has negotiated a tentative deal to jointly build the stadium at the current Alford Stadium/Harper Shepherd Field site owned by Rollins College.

City Manager Knight noted that there are four major components of the capital funding and each has its own approval process and timeframe. One of those components, an approximate \$5 million CRA Bond issue, requires an extension of

the life of the CRA by five years. In order to stay on track to meet the August target decision date, the City needs to ask the County for that extension now.

City Manager Knight explained that an extension requires approval by the CRA Agency and the City Commission. The extension request would then be presented to the Orange County Board of County Commissioners for consideration. If approved by the County, said extension would only happen if the stadium is ultimately approved and constructed. If the stadium is not approved by the City or any of the other partners or if any of the funding sources do not come to fruition and the stadium cannot be built, the extension of the CRA would not happen.

City Manager Knight provided a brief summarization of the project, the amenities and the potential funding sources including the new market tax credit program, how it works and the incentives.

CRA Director Dori Stone addressed questions related to the overall benefits to Winter Park residents, economic development opportunities, potential revenues, debt service, baseball season schedule, and parking garage maintenance costs. Upon questioning, City Manager Knight provided an estimated timeframe for the entire process.

Motion made by Mayor Bradley to approve the request to extend the CRA to Orange County based on the Resolution presented; seconded by Commissioner Sprinkel.

Joe Terranova, 151 N. Virginia Avenue, spoke in favor of the resolution.

Donna Colado, 327 Beloit Avenue, asked if the resolution would need to also be approved by the Commission. City Manager Knight said yes.

Upon a roll call vote, Mayor Bradley and Commissioners Leary, Sprinkel, and McMacken and Representative DeToma voted yes. Commissioner Cooper voted no. The motion carried with a 5-1 vote.

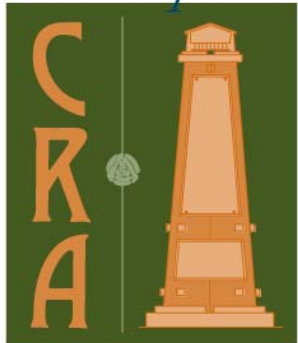
The CRA Agency meeting adjourned at 3:11 p.m.

Chairman Kenneth W. Bradley

ATTEST:

City Clerk Cynthia S. Bonham

winter park



community
redevelopment
agency

agenda item

meeting date	August 25, 2014	approved by	<input type="checkbox"/> City Manager
item type	<input type="checkbox"/> Administrative		<input type="checkbox"/> City Attorney
	<input checked="" type="checkbox"/> Action		<input type="checkbox"/> N/A
	<input type="checkbox"/> Information		<input checked="" type="checkbox"/> Advisory Board
		final vote	

CRA board

Subject: Item 2A

CRA Budget Update and Proposed Budget FY 2015

motion | recommendation

Approve the proposed FY 2015 budget as presented.

background

FY 2014 Budget Update:

The Tax Increment Finance (TIF) revenue is projected to increase by \$286,957. This shows a continuation of the market rebound that started last year. Due to the continued growth of our TIF revenue the CRA has continued all existing programs and is beginning new projects.

Actual expenditures and revenues for FY14 are expected to be in-line with budgeted estimates by the fiscal year-end.

Tax Base:

Our tax base is continuing to grow, due to increased real estate market growth. The forward estimates from Orange County show that TIF revenue will increase from \$2.1 million to \$2.4 million, or about 8.75%. This is an improvement over last year's increase of 6.5% and shows the improved growth of the market.

FY 2015 Proposed Budget:

Staff has proposed a budget that maintains all debt service payments, supports operations, fulfills all contracts, and continues operation of existing programs. Staff anticipates future growth to the TIF as the economy and real estate market continues to improve.

Budget Highlights:

- Grants:
 - o Business Façade Matching
 - o Housing Rehab

- Programs and Events Funding:
 - o Summer Youth Enrichment Program
 - o Popcorn Flicks
 - o Heritage Center Operations
 - o Community Center Programs
 - o Welbourne Nursery Program
 - o St. Patrick's Day Parade
- Projects:
 - o Winter in the Park
 - o Parking Garage Maintenance
 - o Signs and Wayfinding - Kiosks
 - o Morse Blvd Bricking (from train tracks to New York Avenue)

Projects:

Currently nearly \$1 million in project balances will roll forward to this upcoming fiscal year to complete projects that are already funded or underway.

Housing Rehab:

Staff worked to complete the outstanding waiting list from 2012. The wait list has been completed and currently there is \$27K that will roll forward to continue the Housing Rehab program for next year.

Business Façade:

The Business Façade program has been reinstated to assist businesses. The program has assisted approximately 50 businesses in the past 6 years.

Winter in the Park: \$225,000

This ice skating event was approved by the CRA advisory board to continue. The proposed budget built in a break even for the event in 2014.

(For a complete line item budget and summary of the CRA's revenues and expenses since 2012, see the attached line item budget.)

alternatives | other considerations

N/A

fiscal impact

See background commentary above.

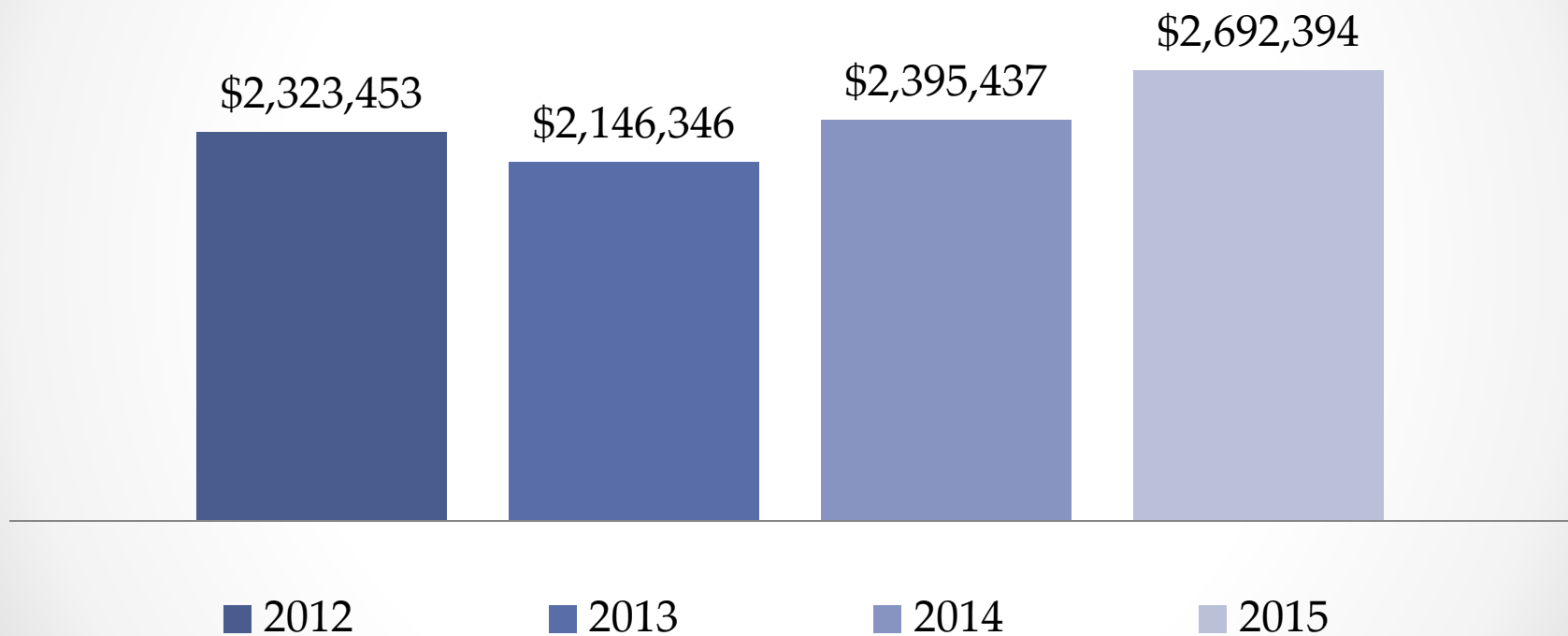
strategic objective

N/A

FY 2015 Budget

Proposed & Presented by:
Winter Park CRA Staff
August 25, 2015

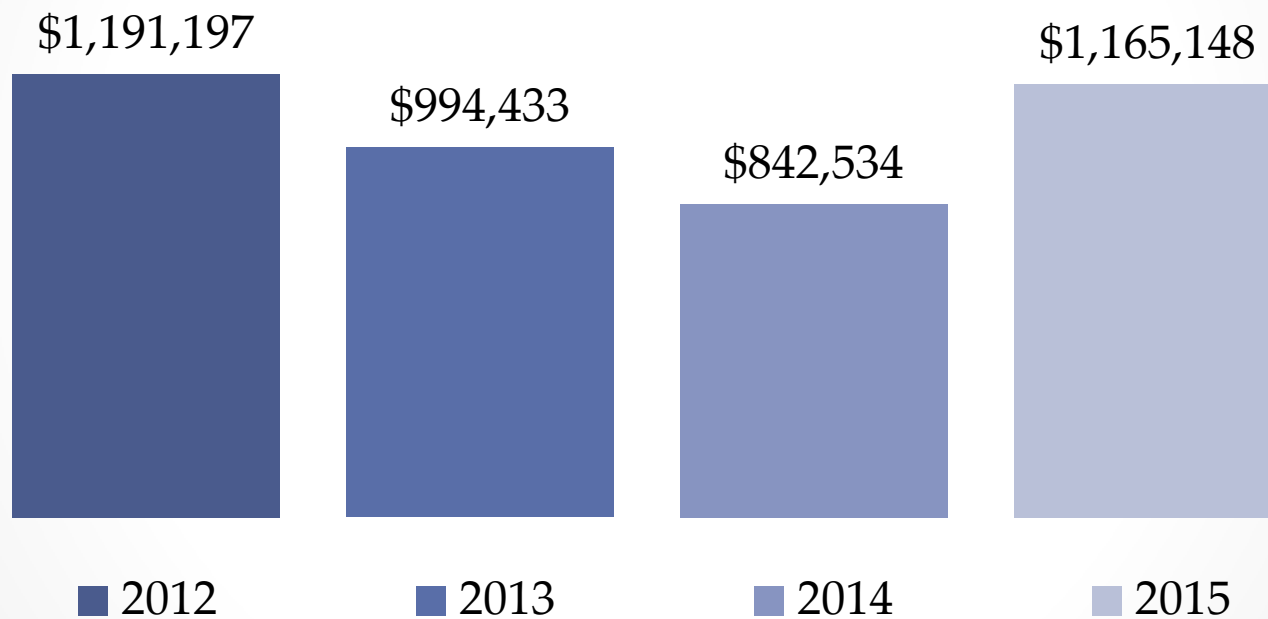
Revenue



Revenue

Revenue	2015 Budget
TIF	\$2,417,394
Investments	\$20,000
Miscellaneous	\$255,000
Total	\$2,692,394

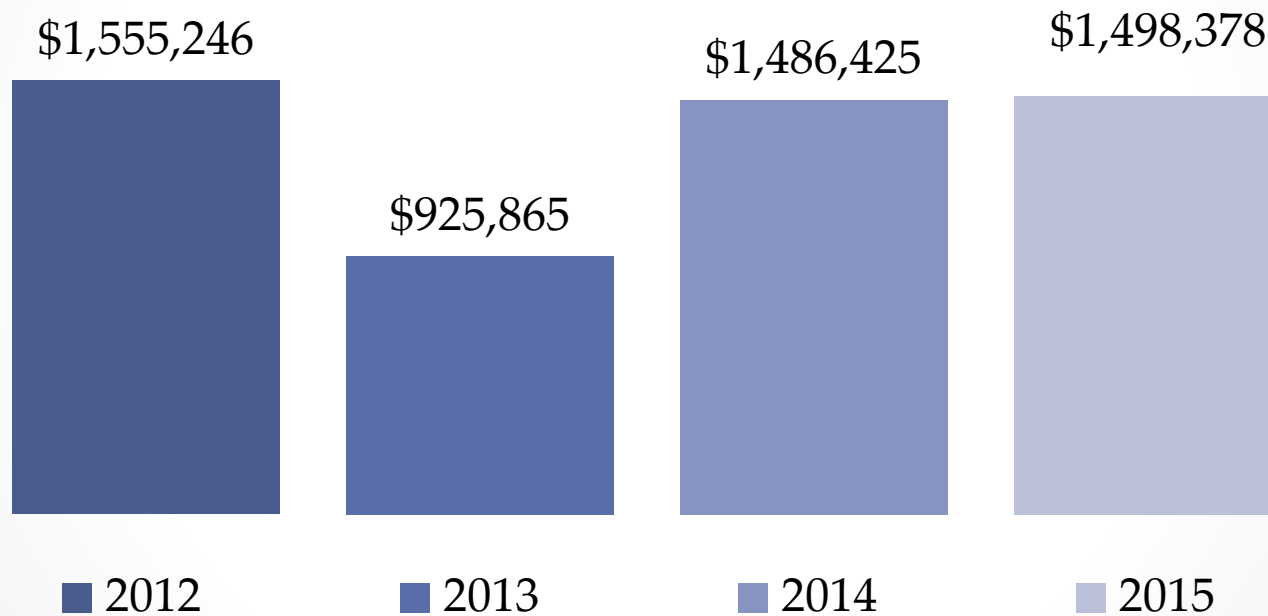
Expenses



Expenditures

Expenditures	2015 Budget
Personnel	\$298,246
General Operating	\$77,004
Contractual Service	\$80,000
Reimbursement to City	\$45,905
Transfer to other funds	\$3,993
Community Programs	\$95,000
Organizational Support	\$15,000
Parking Garage Maintenance	\$90,000
CRA Projects	\$460,000
Total	\$1,165,148

Debt Service

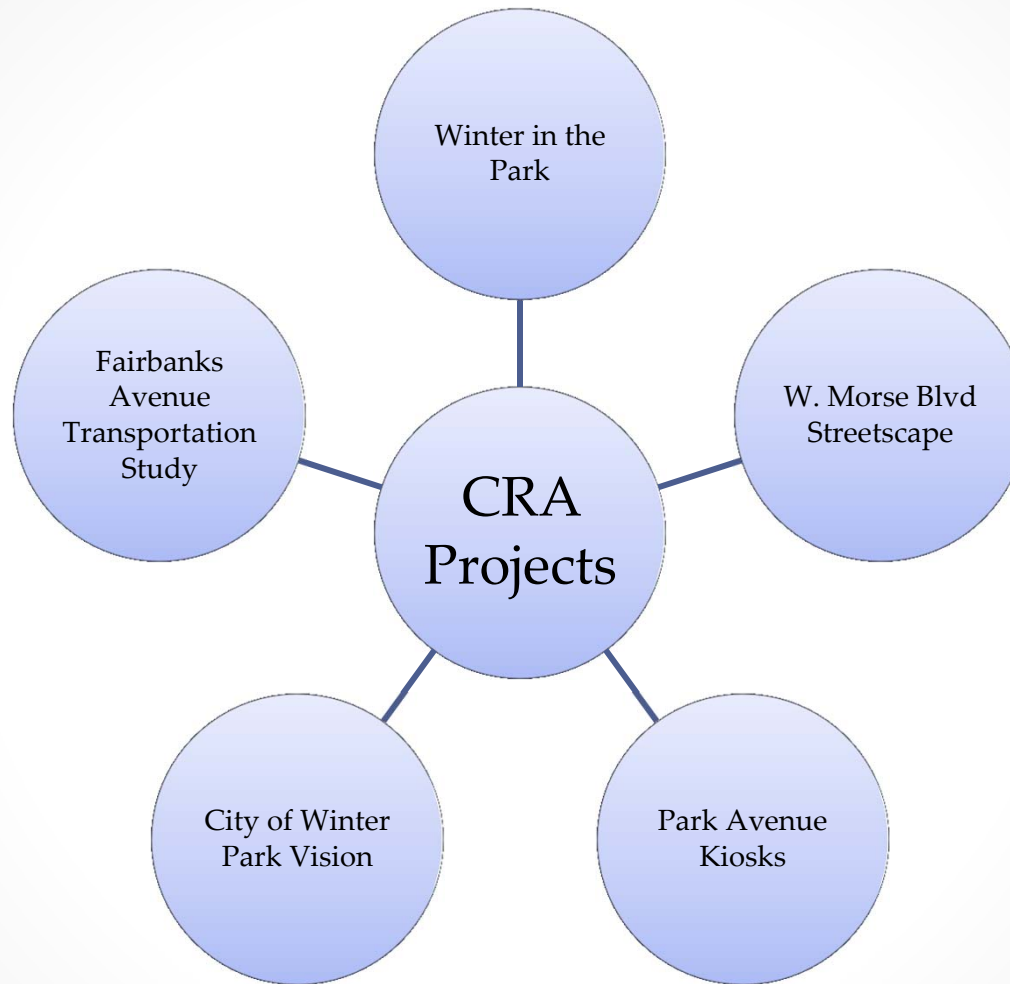


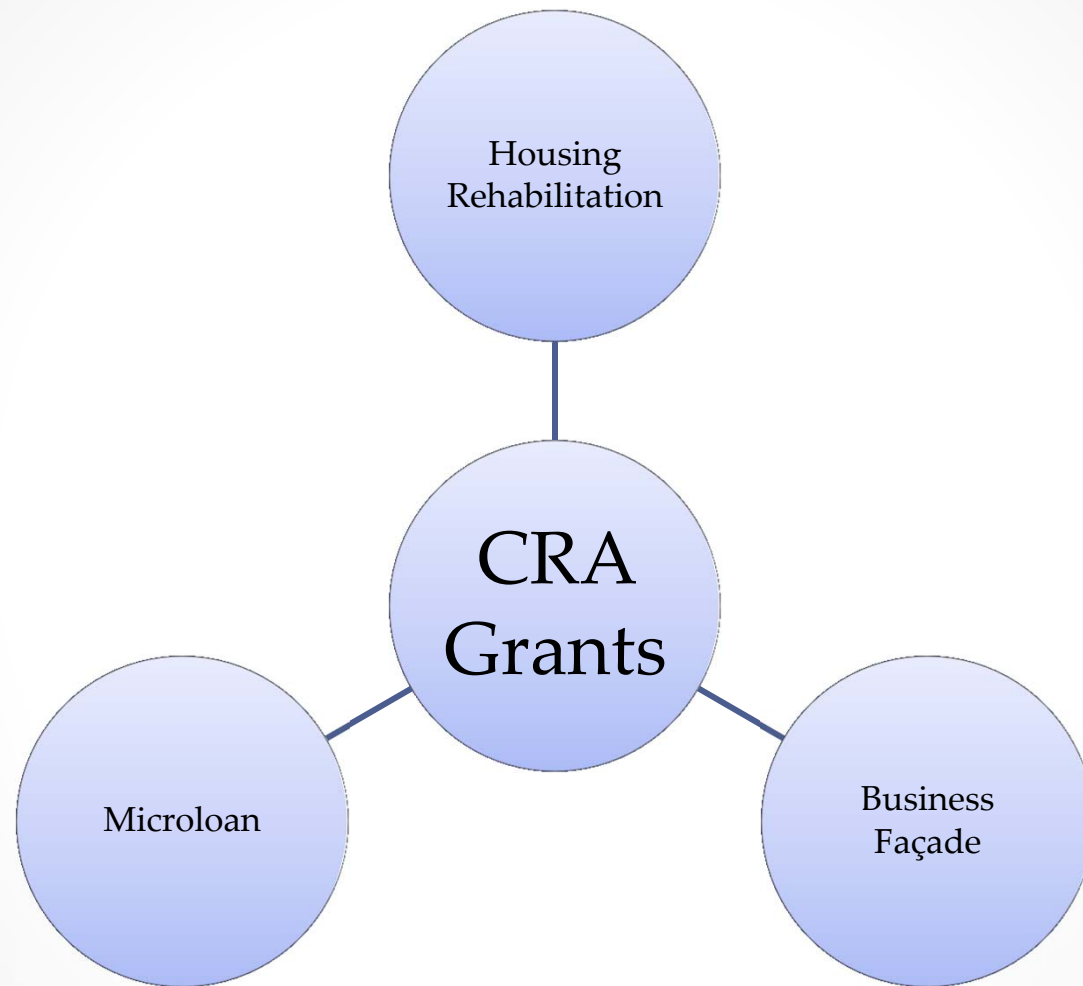
Debt Service

Debt Service	2015 Budget
Principal	\$1,055,000
Interest	\$443,378
Total	\$1,498,378

FY 2015 Totals

Totals	2015 Budget
Revenue	\$2,692,394
Expenditures	\$1,165,148
Debt Service	\$1,498,378
Net	\$28,868







Questions



City of Winter Park Community Redevelopment Fund
Multi-Year Actual and Budget Summary
FY 12 - FY 15

Revenues

TIF Revenue	2012 ACTUAL	2013 ACTUAL	2014 BUDGET	2015 BUDGET
Ad Valorem Taxes	1,003,087	961,467	1,022,445	1,160,162
From County for CRA	1,087,015	1,041,912	1,107,992	1,257,232
Total	2,090,102	2,003,379	2,130,437	2,417,394

Investment Revenue	2012 ACTUAL	2013 ACTUAL	2014 BUDGET	2015 BUDGET
CHECKING AND SAVINGS	-1,156	-1,964	0	0
INVESTMENT PORTFOLIO	63,605	-75,923	40,000	20,000
BANKFIRST SRB ACCOUNT	311	190	0	0
STATE INVESTMENT BOARD	5	2	0	0
Total	62,765	-77,695	40,000	20,000

Misc. Revenue	2012 ACTUAL	2013 ACTUAL	2014 BUDGET	2015 BUDGET
Winter in the Park	170,586	205,358	195,000	225,000
Other Misc. Revenue		15,304	30,000	30,000
Total	170,586	220,662	225,000	255,000

<u>Total Revenue</u>	2,323,453	2,146,346	2,395,437	2,692,394
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Operational Expenses

Personnel	2012 ACTUAL	2013 ACTUAL	2014 BUDGET	2015 BUDGET
REGULAR WAGES	233,107	194,130	186,278	228,859
PART TIME/TEMPORARY WAGES	-	15,012	29,256	-
OVERTIME WAGES	-	41	-	-
FICA TAXES	16,609	15,232	15,964	16,518
PENSION	16,756	5,513	13,499	16,282
ICMA CITY CONTRIBUTION	3,883	2,871	2,300	3,772
GROUP HEALTH/DENTAL	24,570	28,945	18,828	31,260
LIFE INSURANCE	505	418	405	499
AD&D INSURANCE	56	46	45	55
DISABILITY INSURANCE	562	464	450	554
WORKER'S COMPENSATION	427	384	402	411
UNEMPLOYMENT COMPENSATION	30	27	30	36
Total	296,505	263,083	267,457	298,246

Operational Expenses

General Operating	2012 ACTUAL	2013 ACTUAL	2014 BUDGET	2015 BUDGET
TRAVEL & TRAINING	3,826	2,076	6,000	8,000
TELEPHONE - EQUIP CHGS	1,846	1,581	2,016	1,047
CELL PHONES/BEEPERS	2,430	2,074	1,800	2,400
POSTAGE & FREIGHT	340	195	1,000	1,000
GENERAL LIABILITY	8,291	8,166	8,639	9,377
RISK MGMT OPERATIONS	1,055	1,096	1,189	1,149
OTHER INSURANCE	-	-	7,700	8,231
CITY ATTORNEY	29,997	20,006	20,000	20,000
PRINTING & BINDING	2,510	1,406	4,000	4,000
COPIER	2,650	3,281	3,599	3,600
PROMOTIONAL ACTIVITIES	4,616	1,941	5,000	5,000
GENERAL OPERATING SUPPLY	5,897	11,053	7,000	7,000
EQUIPMENT UNDER \$1,000	489	3,056	2,500	2,500
BOOKS & PERIODICALS	133	-	200	200
MEMBERSHIPS	2,257	1,245	3,500	3,500
FURNITURE	-	3,325	-	-
Total	66,337	60,501	74,143	77,004

Operational Expenses

Contractual Services	2012 ACTUAL	2013 ACTUAL	2014 BUDGET	2015 BUDGET
CONTRACTUAL SERVICE	8,970	49,798	20,000	80,000
Indirect Costs	2012 ACTUAL	2013 ACTUAL	2014 BUDGET	2015 BUDGET
REIMB ADMIN TO GEN FUND	31,600		25,000	45,905
Transfer to other Funds	2012 ACTUAL	2013 ACTUAL	2014 BUDGET	2015 BUDGET
Transfer to Capital Projects	-	203,561	22,934	3,993
Total	403,412	576,943	409,534	505,148

Community Initiatives

Community Programs	2012 ACTUAL	2013 ACTUAL	2014 BUDGET	2015 BUDGET
SUMMER YOUTH EMPLOYMENT	17,507	-	15,000	15,000
HERITAGE CENTER OPERATION	35,000	30,000	30,000	40,000
COMMUNITY CENTER PROGRAMS	40,413	27,078	40,000	40,000
UNITY HERITAGE FESTIVAL	7,761	4,884	-	-
Total	100,681	61,962	85,000	95,000

Organizational Support	2012 ACTUAL	2013 ACTUAL	2014 BUDGET	2015 BUDGET
WELBOURNE NURSERY	4,500	5,000	5,000	7,000
ENZIAN THEATRE	12,000	12,000	6,000	6,000
ST. PATRICK'S DAY PARADE	1,168	1,630	2,000	2,000
Total	17,668	18,630	13,000	15,000

Capital Maintenance

	2012 ACTUAL	2013 ACTUAL	2014 BUDGET	2015 BUDGET
PARKING GARAGE MAINT.	70,141	85,178	90,000	90,000

CRA Projects

Project Name	2012 ACTUAL	2013 ACTUAL	2014 BUDGET	2015 BUDGET
HOUSING REHAB. ASSISTANCE	47,724	20,000	-	20,000
ORANGE AVENUE IMPROVEMENT	2,840	-	-	
DENNING DR INT. IMPROVE	3,533	-	-	
FAIRBANKS ENHANCEMENT	1,442	-	-	
COMMUNITY CENTER	226,327	3,919	-	
BUSINESS FACADE MATCH PRG	11,175	10,000	50,000	25,000
COMMUTER RAIL MATCH	4,078	-		
CENTRAL PARK LOT B	4,497	-		
WEST MEADOW ICE RINK	181,334	198,001	195,000	225,000
E. MORSE BLVD STREETScape	15,101	-		
W. MORSE BLVD STREETScape	2,402	-		100,000
PARK AVE. STRATEGIC PLAN	31,286	-		
NEW ENG-SHADY PK TO CAPEN	14,592	-		
QUALIFIED TARGET IND PROG	19,800	19,800		
SIGNS AND WAYFINDING PJT	33,164	-		90,000
Total	599,295	251,720	245,000	460,000

Total Expenditures

	2012 ACTUAL	2013 ACTUAL	2014 BUDGET	2015 BUDGET
Personnel	296,505	263,083	267,457	298,246
General Operating	66,337	60,501	74,143	77,004
Contractual Services	8,970	49,798	20,000	80,000
Indirect Costs	31,600	0	25,000	45,905
Transfer to other funds	0	203,561	22,934	3,993
Community Programs	100,681	61,962	85,000	95,000
Organizational Support	17,668	18,630	13,000	15,000
Parking Garage Maintenance	70,141	85,178	90,000	90,000
CRA Projects	599,295	251,720	245,000	460,000
Total	1,191,197	994,433	842,534	1,165,148

Debt Service

Principal	2012 ACTUAL	2013 ACTUAL	2014 BUDGET	2015 BUDGET
CRA LOAN #67	150,000	-	-	
CRA LOAN #83	140,000	-	-	
2005-1 LOAN	35,516	-	-	
2005-2 LOAN	71,718	-	-	
2006 LOAN	100,000	100,000	105,000	110,000
COMMUNITY CENTER LOAN	375,000	390,000	410,000	430,000
CRA NOTE, SERIES 2012		-	495,000	515,000
Total	872,234	490,000	1,010,000	1,055,000

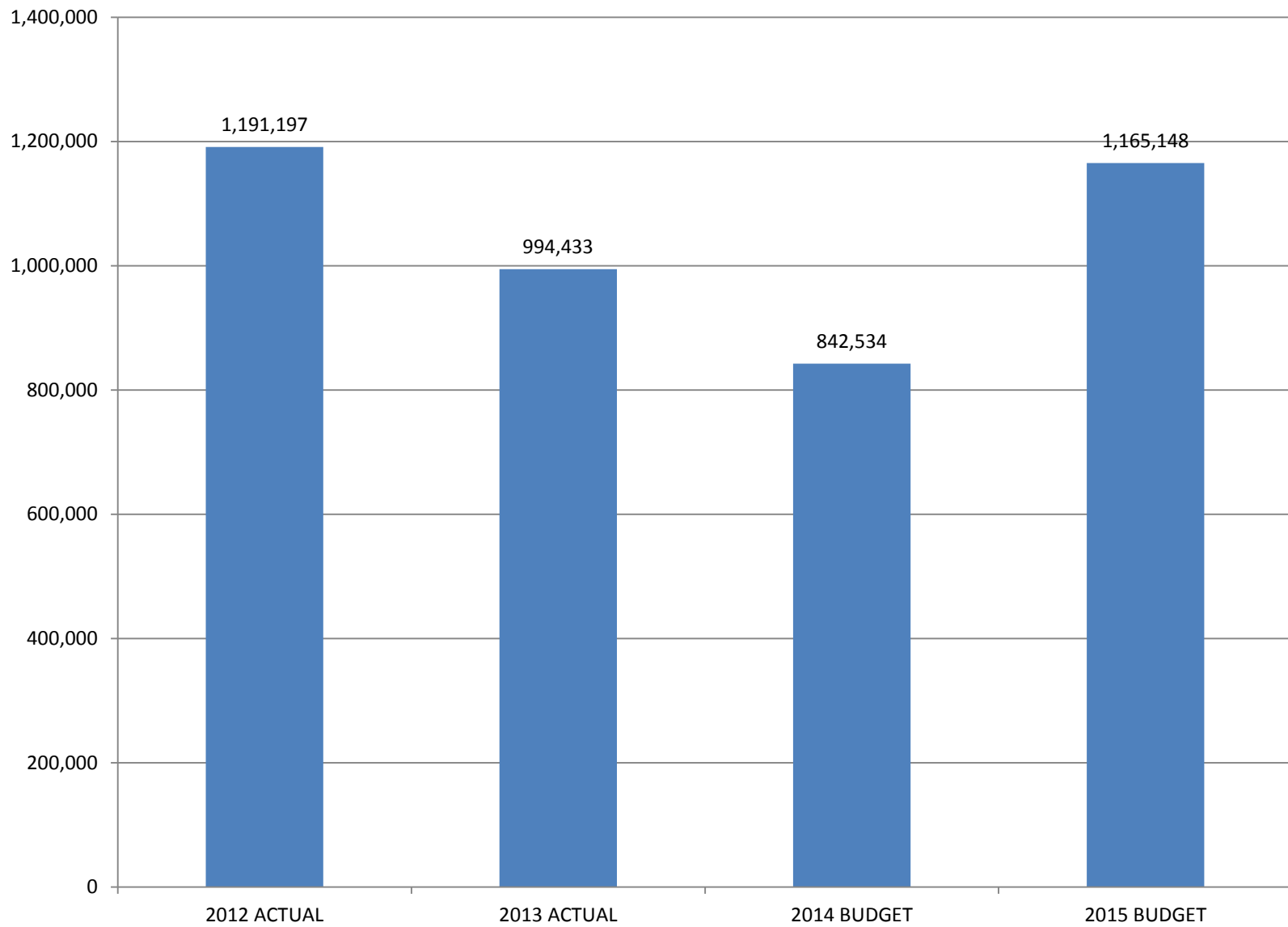
Interest	2012 ACTUAL	2013 ACTUAL	2014 BUDGET	2015 BUDGET
CRA LOAN #67	84,342	-	-	-
CRA LOAN #83	77,694	-	-	-
2005-1 LOAN	25,660	-	-	-
2005-2 LOAN	87,845	-	-	-
2006 LOAN	67,103	50,008	59,225	55,044
COMMUNITY CENTER LOAN	340,368	323,232	305,312	286,496
CRA NOTE, SERIES 2012		62,625	111,888	101,838
Total	683,012	435,865	476,425	443,378

<u>Total Debt Service</u>	1,555,246	925,865	1,486,425	1,498,378
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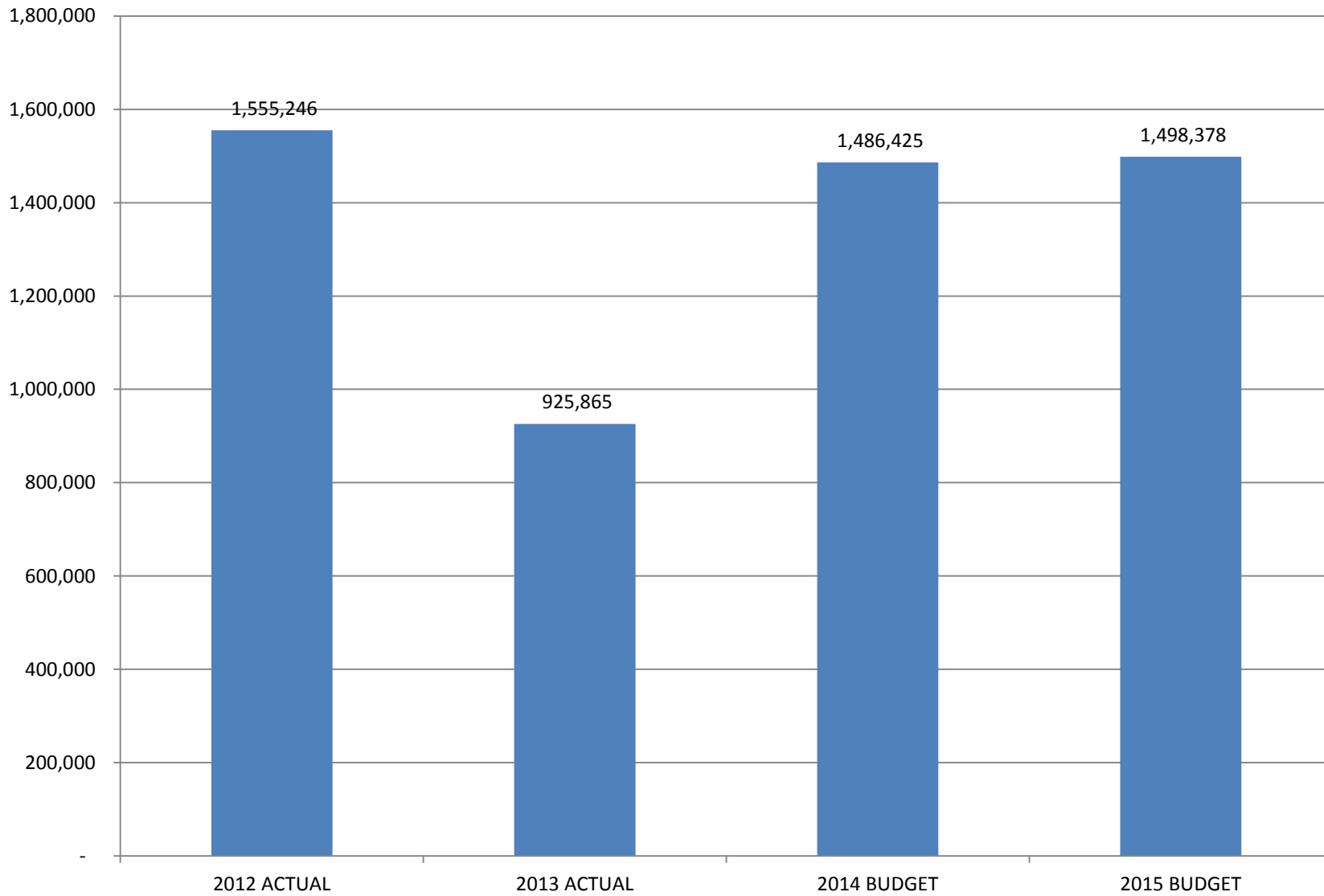
Net Operating Gain/Loss

	2012 ACTUAL	2013 ACTUAL	2014 BUDGET	2015 BUDGET
Total Revenue	2,323,453	2,146,346	2,395,437	2,692,394
Total Expenses	1,191,197	994,433	842,534	1,165,148
Total Debt Service	1,555,246	925,865	1,486,425	1,498,378
Total	-422,990	226,048	66,478	28,868

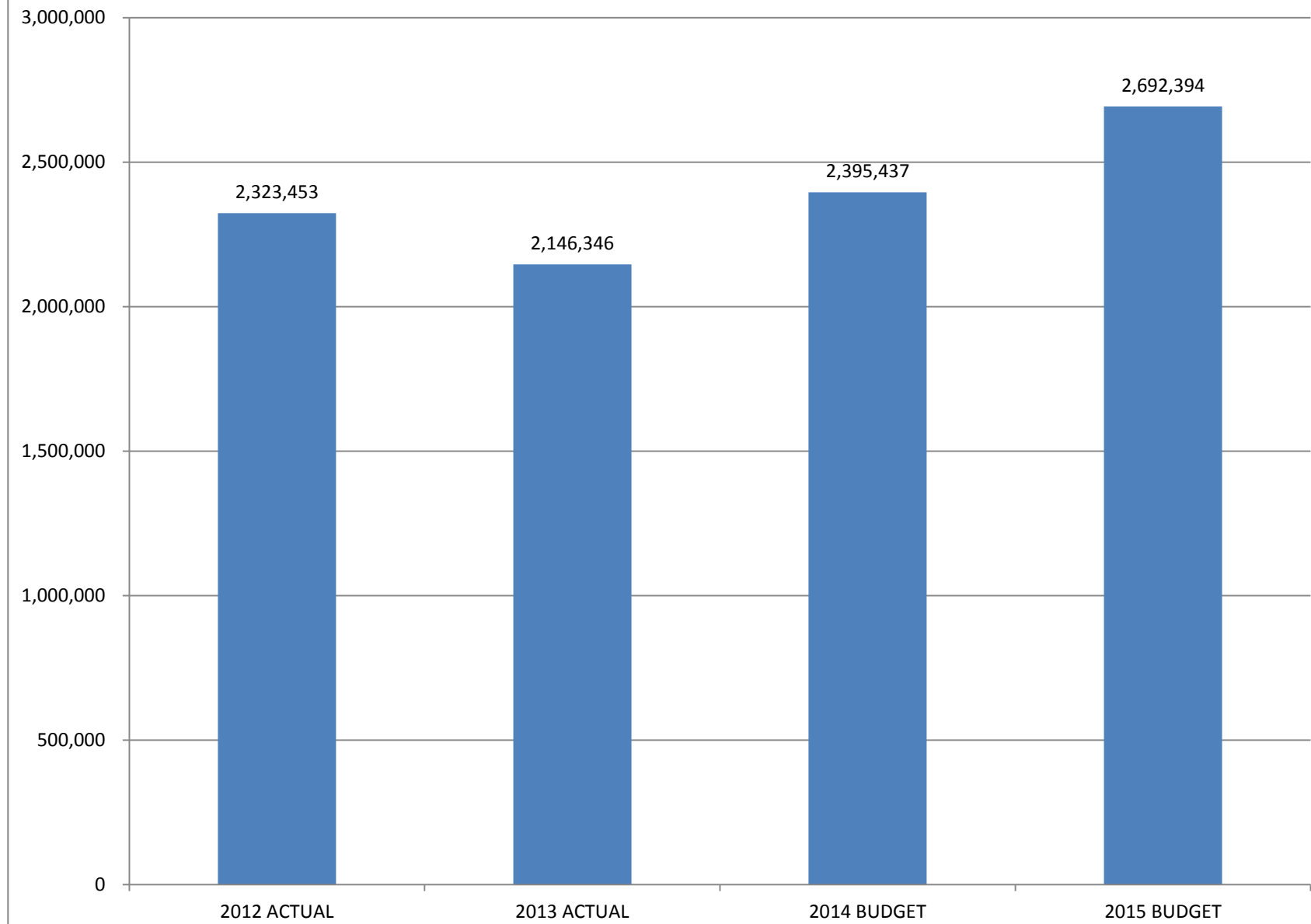
Expenses



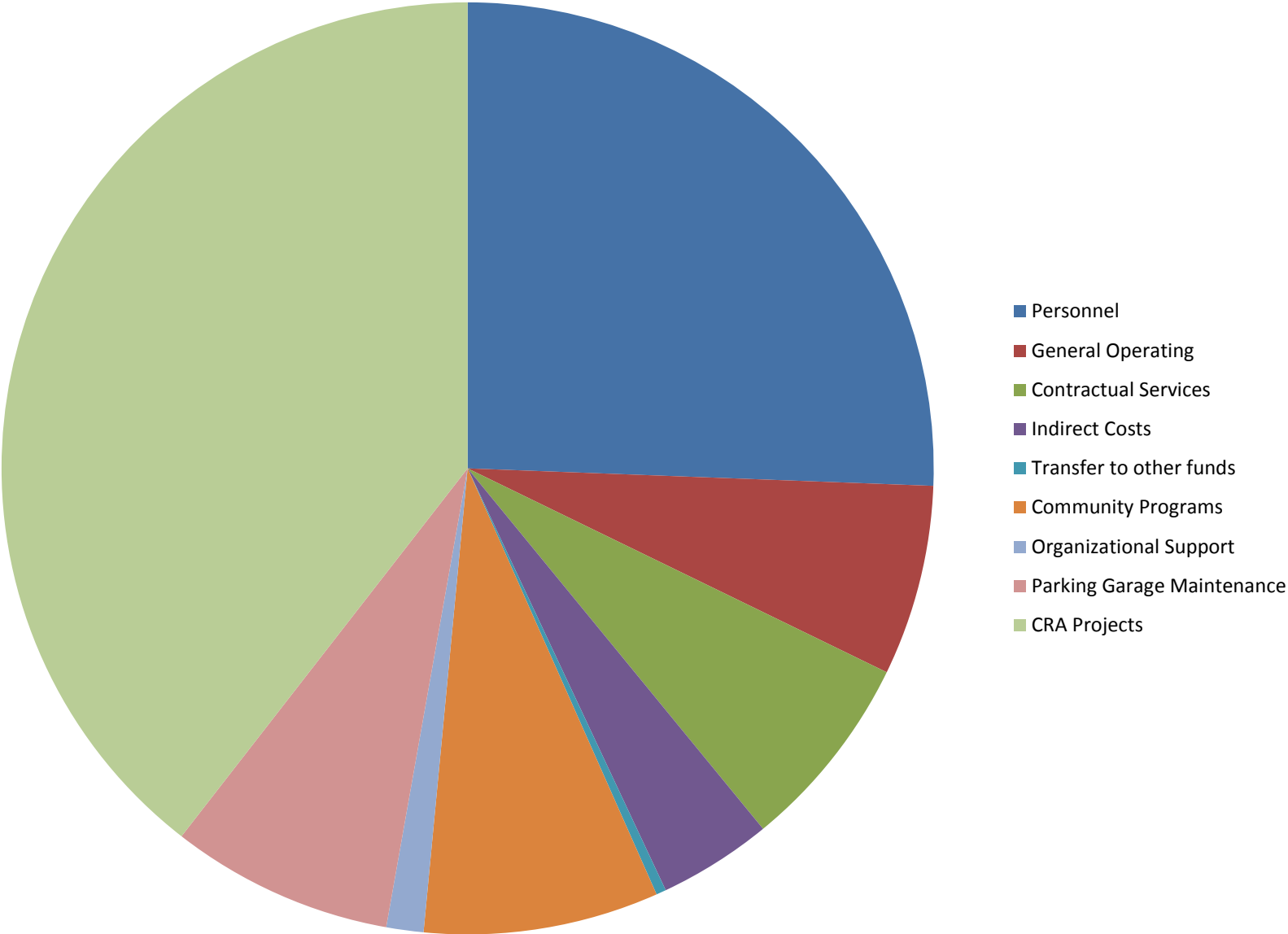
Debt Service



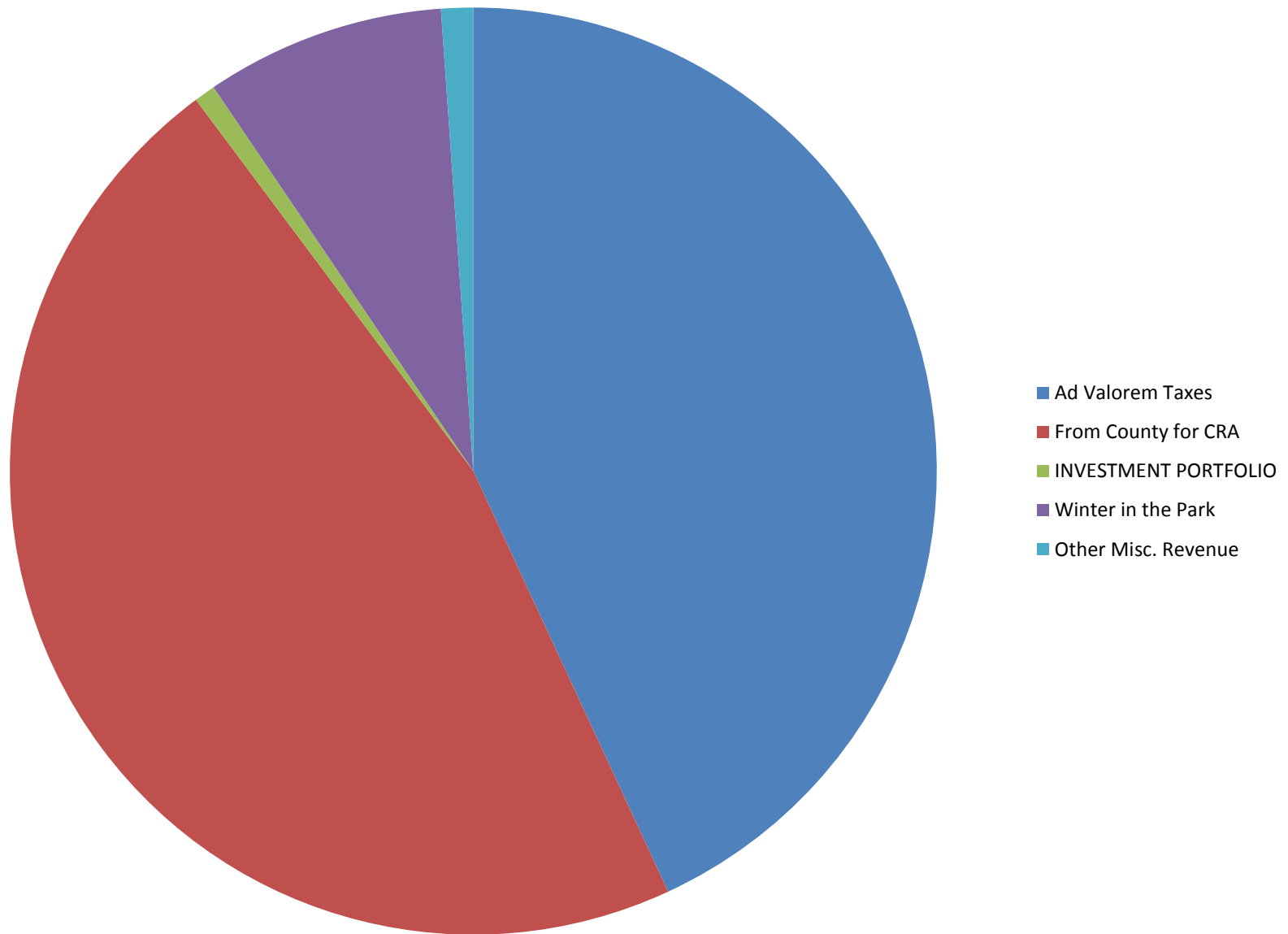
Revenue



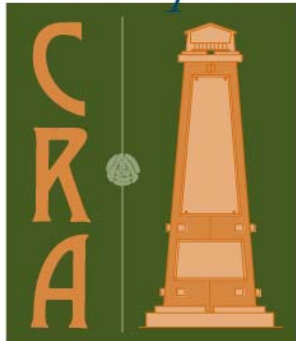
2015 Expenses



2015 Revenue



winter park



community
redevelopment
agency

agenda item

meeting date	August 25, 2014	approved by	<input type="checkbox"/> City Manager
item type	<input type="checkbox"/> Administrative		<input type="checkbox"/> City Attorney
	<input checked="" type="checkbox"/> Action		<input type="checkbox"/> N/A
	<input type="checkbox"/> Information		<input checked="" type="checkbox"/> Advisory Board
		final vote	6-0

CRA board

subject : Item 2B

Signs & Way-finding

motion | recommendation

Staff recommends approving and funding the upgrade of two kiosks on Park Avenue and funding it from the CRA Signs & Way-finding account.

background

For several years Park Avenue had two freestanding informational kiosks. One is located near City Hall, and the other is located near the middle of Central Park. The kiosks in their current state do not allow the easy distribution and updating of information.

To keep the distribution of information up to date staff is recommending that the kiosk be replaced with digital kiosks. The digital kiosks would utilize two 47" screens. Based upon industry experts this size is ideal for the Park Avenue pedestrian environment. It will be interactive for up close use and be large enough for promoting use. One side of the kiosk will be interactive on one side and passive (for promoting) on the other side.

Staff has worked with AlivePromo, a vendor that specializes in custom kiosks designs, to provide design options. AlivePromo has provided information for a custom designed kiosk created specifically for Winter Park. The information is provided in you backup material.

Total cost for two custom designed kiosks to be installed is:

Design cost	\$7,500.00 (a one-time expense)
Content and Programming	\$4,000.00 (a one-time expense)
Fixture	\$63,800.00 each
Delivery & Placement	\$3,250.00 each
Total Installation Cost	\$145,600.00

Staff is proposing to have the kiosks installed prior to January 1, 2015.

alternatives | other considerations

Don't purchase or install the kiosks.

fiscal impact

The project has an estimated cost of \$145,600.

strategic objective

Promotes a vibrant and healthy downtown by supporting events that build community, add to quality of life, and increase investment in the downtown core.



Digital Kiosk Proposal CK.1

Prepared for: David Buchheit
Manager/Economic Development/CRA
City of Winter Park
401 Park Ave. South
Winter Park, FL. 32789
cityofwinterpark.org
p: 407.599.3695
f: 407.691.6594

Prepared by: Sam Rogers

August 14, 2014

Budget - Outdoor Kiosk CK.1

The following is a proposal to execute the design, fabrication, technology and content. Scope and discovery of new project details may impact eventual cost. **PADS and ELECTRICAL/DATA CABLE RUNS ARE TO BE COMPLETED BY CLIENT.**

47" LCD with high-bright integration with touch foil technology on external fixture glass. This will be a one design fixture to work in all possible locations within the City of Winter Park.

Technology and Software Configuration	QTY	Unit Price	Cost
Double Sided (one side interactive the other non-interactive) — System includes (2) 47" High-bright screens to be outdoors. Includes (1) touch foil interactive technology that will apply to the exterior fixture glass in fixture noted below. (2) AP 550-processor, AlivePromo AlivePulse™ software configuration - Installed into TBD Fixture. Interactive side to face pedestrian sidewalk area(s) and non-interactive side to face street or other space(s). Three year mfg. warranty on equipment. The above requires a client-provided pad for each sign to mount to.	1	\$28,900.00	\$28,900.00
Fixture C.1	QTY	Unit Price	Cost
Design - One time final CADs for Winter Park specific fixture. CK.1	1	\$7,500.00	\$7,500.00
Fabrication and Materials A.1 - Final design is to be limited to stay within the budget noted at right. Includes tempered glass specifications.	1	\$34,900.00	\$34,900.00
Content and Programming	QTY	Unit Price	Cost
One time Programming and Creative - Templates, content integration, tenant programming, and more. Includes way-finding navigation to up to 10 major areas. Creative will be monitored to be sure we stay within the budget noted at right. Includes on-screen survey capability.	1	\$4,000.00	\$4,000.00
Optional Data Collection Module - tracks touches & provides reporting to allow for City of Winter Park to be able to see how often someone touches the directory and how deep they go into the program. Actual design will determine final cost. Add \$3,500			
(1) iPads included for management to view content and manage content	1	\$0.00	\$0.00
Delivery, Placement and Support	QTY	Unit Price	Cost
Shipping, Delivery and placement on pads per client direction. Client to provide Pads, power source and internet connection.	1	\$3,250.00	\$3,250.00
Monthly SLA Subscription and warranty maintenance agreement, remote control and monitoring by AlivePromo, Inc. \$125.00 per month per kiosk. Weather and news modules are \$10 per kiosk per month per module.			
	TTL		\$78,550.00

Each additional Kiosk: \$67,050

PAYMENT TERMS FOR EQUIPMENT: At the time of signing of this Agreement, Buyer shall make a down payment of 50% of the total cost for the hardware and services purchased hereunder, with the balance of the full purchase price to be paid in full to AlivePromo prior to initial shipment by AlivePromo based upon the pricing then applicable for the configuration and nature of equipment and services described in the order as then existing. Charges for additions or changes to equipment and or services ordered shall be invoiced as made, with all invoices due upon receipt. To all pricing to the Buyer shall be added all shipping and transportation costs and applicable taxes. All invoices not paid within ten (21) days of receipt shall bear interest at 1.5% per month or such lower rate as is the highest permissible rate under applicable law.

INSTALLATION: AlivePromo offers equipment installation services with the base allowance included in the purchase price as indicated above. All actual installation expenses in excess of this allowance shall be Buyer's obligation to pay immediately upon invoice. Installation shall be coordinated by Buyer with AlivePromo upon reasonable advance notice to AlivePromo of the desired installation date and following delivery to Buyer of the necessary equipment and completion by Buyer of the initial promotional content to be displayed.

TERM AND PAYMENT TERMS FOR ALIVEPROMO SERVICES: Unless otherwise expressly agreed to in writing, the initial term of the service portion of this contract shall be 36 months, commencing on the date of installation of the hardware. The service contract shall continue thereafter for additional 6 month terms (each an "Extended Term"), unless terminated by either AlivePromo or the Buyer by written notice received by the other at least 90 days prior to the end of the initial term or an extended term. A separate service fee shall be due and payable for each DDP System processor serviced by AlivePromo. Payment for the service fees shall be made in monthly installments beginning with the first monthly installment at or prior to delivery of the related DDP System equipment. Payment of each monthly installment shall be due at least 10 days prior to commencement of the next month of the term of this Agreement. All service fees not paid within 10 days of the due date shall bear interest at 1.5% per month or such lower rate as the highest permissible rate under applicable law.

APPLICABLE SALES TAX: All federal, state and local taxes are for Buyer's account and are due in addition to the prices quoted in this Agreement. Buyer shall establish exemption from any taxes and indemnify AlivePromo if such information is incorrect. AlivePromo is not currently registered to collect sales tax except in the State of Minnesota, and believes it is not required to do so under existing law. Buyer acknowledges that it will pay any "Use Tax" associated with said purchase. Should a state other than Minnesota determine that a sales tax should have been collected from Buyer and remitted by AlivePromo for products sold to or delivered or used by Buyer, Buyer agrees to reimburse Seller for said sales tax within 30 days of invoice by AlivePromo.

RISK OF LOSS: The equipment sold hereunder is provided F.O.B. point of shipment and risk of loss shall pass to Buyer upon tender of delivery to the carrier.

WARRANTY: AlivePromo will pass on to Buyer the warranty of the equipment manufacturer, which shall be subject to that manufacturer's terms. **AlivePromo makes no warranty of any nature, express or implied, whether statutory or otherwise, including any implied warranty of merchantability or fitness for a particular purpose.**

CONFIDENTIAL INFORMATION; NO LICENSE: Buyer agrees that it will maintain as confidential, the proprietary information provided to it by AlivePromo and not permit disclosure to others without AlivePromo's prior written consent. Proprietary information of AlivePromo includes, but is not limited to, the elements of design of equipment supplied by AlivePromo and all software supplied by AlivePromo. The sale of equipment and/or delivery of services by AlivePromo does not constitute a license, implied or otherwise, for the use of any patents or know-how of others or of AlivePromo.

INDEMNIFICATION: AlivePromo makes no representation and has no responsibility for the content or effectiveness of any displays on the equipment sold hereunder to Buyer and Buyer hereby indemnifies and holds harmless AlivePromo and its agents, representatives and employees against any and all suits, actions, legal or administrative proceedings, claims, demands, damages, liabilities, interest, attorney's fees, costs and expenses arising from or in any way associated with Buyer's use of the equipment or services furnished hereunder including, but not limited to, the content of any displays on such equipment.

FORCE MAJEURE: AlivePromo shall not be liable for any delays in the delivery of goods or services, due in whole to in part, directly or indirectly, to fire, act of God, strike, shortage of materials, suppliers of components, upgrading of technology, delays of carriers, embargo, government order or directive, or any other circumstance beyond AlivePromo's reasonable control.

NONWAIVER OF DEFAULT: Each shipment and service made under this contract shall be treated as a specific transaction, but in the event of any default or breach by Buyer, AlivePromo may decline to make further shipments or perform services without in any way affecting its rights under this contract. If, despite any default or breach by Buyer, AlivePromo elects to continue to make shipments or perform services, its actions shall not constitute a waiver of any default or breach by Buyer or in any way affect AlivePromo's legal remedies for such default or breach.

LIMITATION OF LIABILITY: In no event shall AlivePromo be liable for consequential, incidental, special or indirect damages of any kind, including, but not limited to, lost profits, increased costs of operation, financing costs, costs of rental equipment or delay. Said limitation shall apply regardless of whether a claim is asserted under a theory of negligence, strict liability, breach of contract or indemnity.

ATTORNEY'S FEES: In addition to any other remedies provided by law, Buyer shall be liable for attorney's fees and litigation expenses, which AlivePromo reasonably incurs to enforce, interpret or collect damages due to Buyer's default or breach of this Agreement, or otherwise under any of the terms of this Agreement.

Continued on next page.

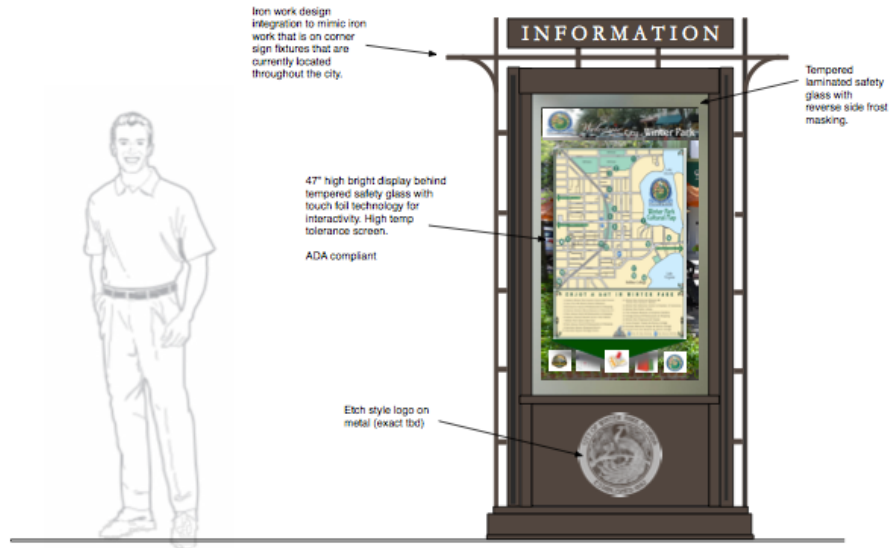
APPLICABLE LAW; DISPUTES: This Agreement shall be governed by and construed in accordance with the internal laws (and not the laws of conflicts) of the State of Minnesota. Any disputes arising under this Agreement shall be resolved, if not sooner settled, by a court of competent jurisdiction located in Hennepin County, Minnesota, U.S.A. and Buyer hereby irrevocable submits to the jurisdiction of such court.

Acceptance

Name (signature) _____ Title _____

Print name _____ Date _____

Winter Park Outdoor Kiosk CK.1



winter park



community
redevelopment
agency

agenda item

meeting date	August 25, 2014	approved by	<input type="checkbox"/> City Manager
item type	<input type="checkbox"/> Administrative		<input type="checkbox"/> City Attorney
	<input checked="" type="checkbox"/> Action		<input type="checkbox"/> N/A
	<input type="checkbox"/> Information		<input checked="" type="checkbox"/> Advisory Board
		final vote	6-0

CRA board

subject : Item 2C

Winter in the Park – Holiday Ice Rink 2014

motion | recommendation

Approve and forward funding the 6th annual Winter in the Park ice skating event with \$225,000 from CRA reserves.

background

Following the survey efforts of America's Research Group which indicated a desire for more "family friendly" events in the downtown area, the Winter in the Park Ice Rink event was developed.

For five years the CRA of Winter Park has funded this event which provides residents and visitors a vibrant and unique opportunity to visit and shop in Winter Park's downtown core during the crucial holiday season. Last year's event brought in over 19,000 skaters, a 17% increase over the prior year and resulted in over a quarter million dollars in spending in downtown shops and restaurants.

Skater surveys were completed as part of the event and provided valuable feedback as to the quality of the event, demographics of the participants, and impact on downtown businesses. Overwhelmingly visitor and merchant surveys support the continued tradition of the Winter in the Park event. Over 97% of visitor surveys expressing delight or satisfaction of the event.

Staff is proposing to start the event November 14, 2014 and end on January 11, 2015 and the event will be managed by Magic Ice USA the operator for the past five years' events and owned by a Winter Park resident.

Staff has reached out to last year's sponsors and is working to confirm their support for this upcoming year. Most of last year's sponsors have indicated interest in continuing.

The CRA Advisory Board commented on the fact that the ice rink has become financially self-sufficient after five years and brings more people into the downtown area. The CRA Advisory

Board approved the ice rink funding by a unanimous vote.

alternatives | other considerations

Discontinue the event.

fiscal impact

The event costs about \$225,000 in upfront expenses and has broken even the past two years. Staff has incorporated \$0 net as part of its budgeting process for the FY 2015 year but anticipates the event to continue to grow in both attendance and sponsorship.

strategic objective

Promotes a vibrant and healthy downtown by supporting events that build community, add to quality of life, and increase investment in the downtown core.

Winter in the Park 2013



Event Summary & Survey Results February 2014

Department of Economic Development/CRA



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Event Summary

The 5th annual Winter in the Park Holiday Ice Skating Rink brought back the popular family friendly event to the downtown core of Winter Park, setting the city apart as an appealing shopping destination during the crucial holiday season. This year's event saw the greatest growth in attendance (14%) and was a financially successful year with revenues exceeding the costs of hosting the event. In addition to creating a positive return the event continued to put dollars into the hands of local businesses in the downtown core as attendees skated, shopped and dined on the Avenue. Funded by the Community Redevelopment Agency and City of Winter Park, the 2013 event saw improvements in attendance and financial performance.

Event Details

Total Skaters in Attendance: 19,482 vs. 17,141; up 14% over same period last year.

Total Revenues: \$192,886.75

Total Expenditures: \$191,710.53

Net Profit: approximately +\$1,176.22

Notes on Revenues

When planning this event it was forecasted that the worst case scenario would be a loss of \$15,000 to a best case of breaking even. Revenues for the best case scenario were based on continued organic growth and maintaining the major sponsors. Both of these goals were reached and exceeded. The event continues to see strong demand among the core Central Florida markets.

Notes on Expenditures

Expenditures saw an increase this year due to increased cost in a few categories. Marketing expenses increased to allow for the placement of two billboards advertising the event. Pass-through labor costs to Magic Ice increased due to the increased business at the event and greater need for more staff to manage customers. Lighting and Décor increased due to the addition of more decorations at the event.

Survey Results

Survey Methodology

The survey¹ was administered by employees of Magic Ice over the event period from November 15th through January 5th. A total of 122 responses were gathered from visitors surveyed at random. The respondents were heads of households for visiting participants with an implied household size of approximately 4 persons.²

Key Findings

- 19,482 skaters a 14% increase over the prior year.
- 35% of respondents were new to the event this year, indicating a continued growth in awareness.
- 37% of all respondents came from Winter Park or Maitland zip codes.
- 98% of respondents were Delighted or Satisfied with the event.
- 75.8% found pricing of the event to be reasonable.
- 94% were Delighted or Satisfied with event staff.
- 14% learned of the event through Friends and Family, 17% from Drive-bys, while the Orlando Sentinel (7%), Winter Park Observer (10%), City Website (8%), and Groupon (11%) drew the highest awareness among paid and sponsored advertisements.
- 85% of respondents planned to Shop or Dine while visiting the event.

Economic Impact

Over 80% of visitors to the Winter in the Park event planned to shop or dine while at the event. This creates a topline estimate of nearly \$400,000 in direct planned purchases. This provides proof that downtown Winter Park is a perfect fit for the event visitor. With a total event attendance of approximately 25,000 this implies that Winter in the Park adds nearly 400 shoppers each day in the downtown during the event. This equates to a direct economic impact for local businesses.

Visitor Experience

The visitor response to quality of event is still overwhelmingly favorable. Over 98% rated their feelings of the event as Satisfied or Delighted. 85% felt the ticket pricing was reasonable, and 95% were Satisfied or Delighted with the event staff.

¹ See Attached Appendix B – Winter in the Park Survey

² Based on the number of people stated to be in the party of the survey respondent.

Marketing & Special Events

This year the event was heavily promoted through partnerships with radio and TV as well as print media. The CRA spent \$22,741.12 in marketing and building awareness for the event. With over half of the year's attendees being new to the event, this seems to have been effective in drawing new people. Additionally the rink collected nearly 300 buckslips (\$1 off coupons) from paying skaters which highlight efforts to distribute coupons through local grocery stores, outlets, civic facilities, and local businesses and over 500 \$2 off coupons from Orlando Sentinel ads. The data gathered from this year's marketing efforts will further allow refinement in how dollars can be best expended for subsequent events.

Summary & Recommendations

Opportunities for growth still remain especially on weeknights while school is still in session. Working with the schools allowed those low demand evenings to receive an extra boost. But, though busy (one Saturday had over 870 skaters), is still not at capacity on weekend nights.

The 2013 Winter in the Park event continued similar organic growth when compared with prior years. Expectations for future growth should be tempered to the 5% - 10% level as the event matures. The financial stability of the event this year is the result in increased attendance. Conversations with major sponsors have been very favorable and indicate room to grow in future years. The success of securing Winter Park Village as well as continued support from Winter Park Memorial Hospital, Ruth's Hospitality Group, the Winter Park Chamber of commerce, and Rollins College enabled the event to maintain sponsor revenues.

Overall the word of mouth feedback to city staff has been extremely positive and staff is currently working with merchants to continue to find ways to promote the downtown. The future year outlook seems positive with event costs holding steady and revenues continuing to climb. With over almost 1/3 million in direct investment into the downtown staff feels that the event was a success that set Winter Park apart during the holidays and created a positive family friendly atmosphere for residents and guests.

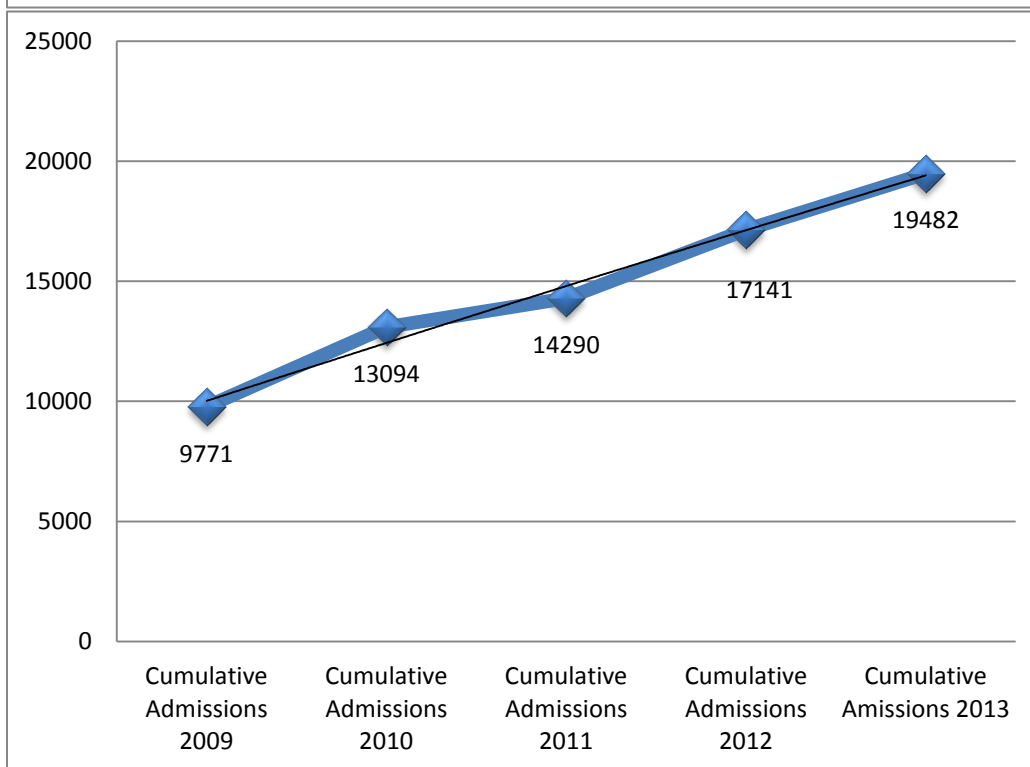
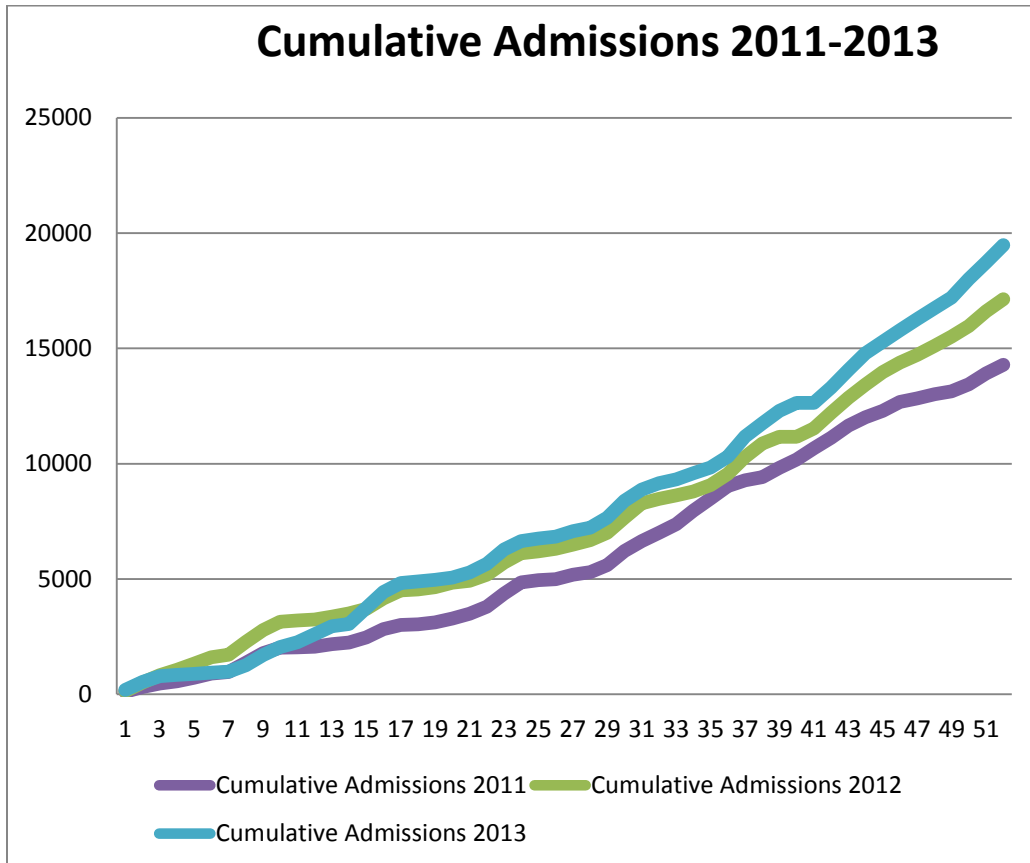
For future consideration staff suggests the following:

Promotion of programs and sponsors by Magic Ice staff. Improvement was made in passing out promotional materials to customers. Staff is currently working on developing a sponsor branded "grab bag" that could include promotional items for downtown venues as well as information about sponsors.

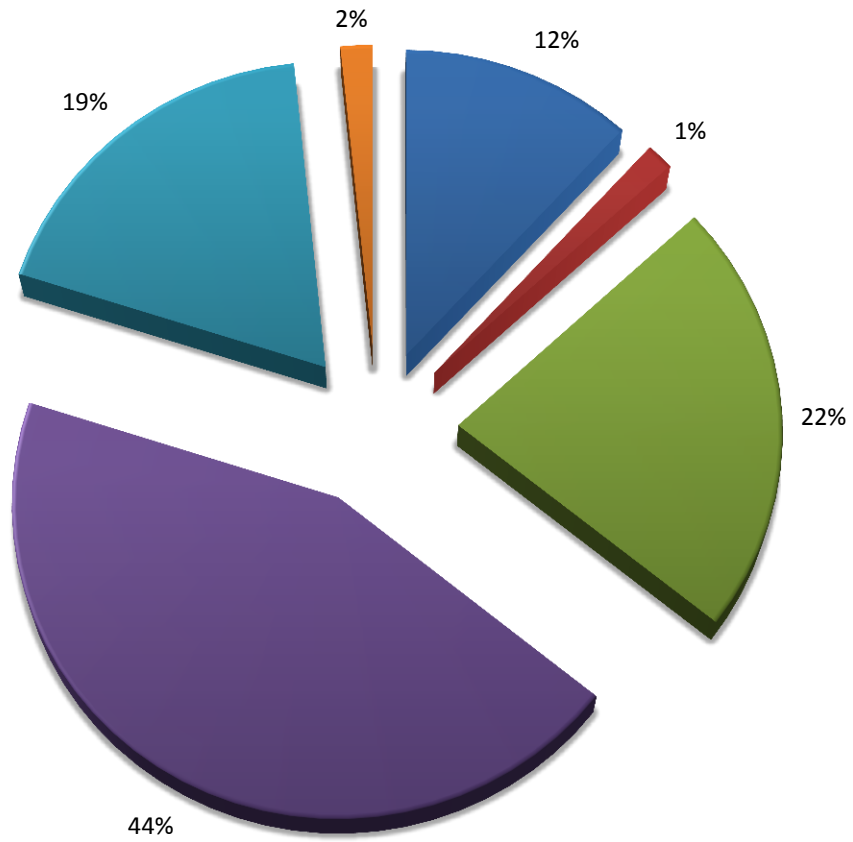
Lack of special event nights. The weekday nights while school is still in session are the slowest times for the event. Next year the continued addition of vibrant events needs to be started in advance to take advantage of the growth opportunity for those slower nights. Possible events could include non-profit fundraisers, disco nights, and more special performances.

Expand Event Offerings. Questions regarding expanded event activities were asked of survey respondents and many comments were received regarding expanding activities for younger kids that may not be able or interested in ice skating. Comments included, a movie area, ice slide, snow, Santa Claus, games for kids, train rides, holiday areas, raffles/contests, and bounce house to name a few. Additional comments also included adding live music, dance nights, DJ, larger ice rink, beer/wine, and roller skating. While staff does not endorse roller skating on ice with alcohol, some of the comments may present opportunities to better expand the offerings of the rink, capture a larger share of wallet, and improve the customer experience.

Appendix A –Graphs



Expenses



■ Marketing ■ Lighting & Décor ■ Site Work ■ Rink Rental ■ Labor ■ Merchandise

Appendix B – Winter in the Park Survey

We'd like your opinion

PLEASE RETURN COMPLETED SURVEY TO THE TICKET BOOTH FOR YOUR COMPLIMENTARY
TICKET. GOOD AT YOUR NEXT VISIT TO WINTER IN THE PARK!

1. WHAT IS YOUR ZIP CODE? _____

2. DID YOU ATTEND THIS EVENT LAST YEAR? ☐ YES ☐ NO

3. How do you feel about your visit?

- ☐ Delighted
- ☐ Satisfied
- ☐ Neutral
- ☐ Disappointed

4. Did you feel the ticket price
was:

- ☐ Too low
- ☐ Reasonable
- ☐ Too high

5. How would you rate the event
staff?

- ☐ Delighted
- ☐ Satisfied
- ☐ Neutral
- ☐ Disappointed

6. HOW DID YOU HEAR ABOUT THIS EVENT? (SELECT ALL THAT APPLY)

Newspapers:

- ☐ Winter Park/Maitland
Observer
- ☐ Orlando Sentinel
- ☐ Park Press
- ☐ Orwin Manor Newsletter
- ☐ Sweetwater Newsletter
- ☐ Baldwin Park Living
- ☐ Community Paper (College
Park)
- ☐ Other

Newsletters & Online:

- ☐ Winter Park Home
- ☐ Winter Park Lifestyle
- ☐ Facebook
- ☐ Twitter
- ☐ City's Website
- ☐ Other

Other:

- ☐ TV
- ☐ Radio
- ☐ Drive By
- ☐ Friends/Family
- ☐ Bus Benches/Banners
- ☐ Utility Bill
- ☐ Press Releases
- ☐ Other

7. HOW MANY PEOPLE WERE IN YOUR PARTY? _____

8. HOW MANY PEOPLE WITHIN YOUR PARTY WERE SKATERS? _____

9. DO YOU PLAN TO SHOP AND/OR DINE IN WINTER PARK TODAY?

10. WHAT OTHER ACTIVITIES WOULD YOU LIKE TO SEE HAPPENING AT THIS EVENT?

ADDITIONAL COMMENTS

**WINTER PARK HOLIDAY ON ICE
EQUIPMENT RENTAL AND MANAGEMENT AGREEMENT**

THIS EQUIPMENT RENTAL AND MANAGEMENT AGREEMENT ("Agreement") is entered into this ____ day of _____, 2014 by and between **Magic Ice USA, Inc.**, a Florida corporation ("Magic") whose address is 10364 SW 128 Terrace, Miami, Florida 33176, and the **City of Winter Park**, a Florida municipal corporation ("City") whose address is 401 Park Avenue South, Winter Park, Florida 32789.

WITNESSETH:

WHEREAS, the City desires to install a tented ice rink in Central Park for the Winter Holiday Season; and

WHEREAS, Magic represents and warrants that it has the expertise and ability to install, and remove a temporary ice skating rink and to safely and reasonably operate and maintain the temporary ice skating rink under the terms and conditions stated herein; and

THEREFORE, in consideration of the mutual promises and benefits contained herein, the adequacy and receipt of which is acknowledged by both parties to this Agreement, Magic and City agree as follows:

1. **Recitals.** The foregoing recitals are true and correct and are hereby expressly incorporated into this Agreement.
2. **Scope of Services – Generally Provided by Magic.**
 - a. Magic shall provide to City all of the Equipment and personnel that are necessary to install, maintain, operate, manage, and remove a temporary tented ice skating rink in the West Meadow of Central Park located on New York Avenue, as more specifically described hereunder. Said rink shall be operated during the holiday season from November 21, 2014 through January 11, 2015. The rink management services shall be as provided on **Exhibit "A,"** which is attached hereto and incorporated herein by this reference.
 - b. Magic shall take sole and absolute responsibility of managing, operating, and maintaining the ice rink on a daily basis and will provide general liability insurance coverage, as more specifically provided herein, to protect against any damages and indemnification claims arising out of, or related to the managing, maintenance and operation of the ice skating rink.
3. **Equipment Provided by Magic.** The ice Equipment rental which shall be provided by Magic under this Agreement shall include, but not be limited to:
 - a. A 60'x76' ice rink pumping grid, including all header piping and plumbing transmission piping from the rink to the refrigerator system, which shall not be located more than 50 feet from the rink.

- b. 200 horsepower air-cooled refrigeration system and pump; suitable for making ice.
- c. Ice maintenance tools.
- d. Insulation and/or vapor barriers.
- e. Module dasher board and railing system.
- f. Secondary refrigerant cooling liquid.
- g. Ice painting equipment and supplies.
- h. A minimum of 300 pairs of rental skates of various sizes.
- i. 500 square feet of rubber flooring.
- j. Transformer to convert from 480 volt/250 amp to 208 volt/1000 amp.

(collectively "Equipment"). City acknowledges the Equipment being leased pursuant to this Agreement may be used Equipment. However, at all times, Magic represents and warrants that the Equipment shall be in good working order and shall operate and perform for its intended purpose.

4. **Additional Services Provided by Magic.** Magic will also provide the following services:

- a. Except as otherwise provided herein, all tools, supplies and Equipment necessary for installation and removal of the Equipment.
- b. Magic shall provide training to any employees or contractors hired to maintain and operate the ice rink.
- c. All transportation and freight to and from installation site.
- d. Professional installation supervisor.
- e. Professional refrigeration technician at installation and as needed to make any repairs.
- f. Laborers to assist with installation and removal, which is estimated to take approximately six (6) days for installation and six (6) days for removal.
- g. Travel expenses for all out-of-town professional personnel for installation and removal.
- h. Day-to-day professional management of the ice rink.
- i. Day-to-day operating personnel.

5. **Items Provided by City.** City, at City's expense, is required to provide the following at site prior to installation of the Equipment;

- a. Connection to a power source to achieve continuous three-phase, 208-volt, 1000 amp, electric capacity for connection to refrigeration system.
- b. Access to 110-volt power for tools etc.
- c. Electrician at site during installation to make all electrical connections to refrigeration unit.
- d. Refrigeration system designated location in the closest position to the rink possible; however, no more than 50 feet from the rink.
- e. Protection of the hoses from the rink to the refrigeration unit via wood frame enclosure or other protection reasonably acceptable to Magic.
- f. Graphic or cosmetic enhancement of the ice skating rink, if desired.
- g. A wood-frame cover and trim boards over the header manifold along one end of the rink in order to protect header manifold.

- h. All equipment needed to unload, position, and load Equipment at site, including without limitation a 5,000 lb capacity forklift on site during installation and removal periods, an operator for the same (if required by union agreement) and any other equipment reasonably required by Magic.
- i. Access to the site suitable for use by tractor and trailer in order to install and remove equipment.
- j. Adjacent parking for technicians and supervisors during installation and removal periods.
- k. Water supply adjacent to the site.
- l. Safety equipment to include without limitation first aide, traffic cones, and barricades as needed.
- m. Any local permits and licenses required to install and/or operate the facilities.
- n. Ticket and skating booth, if desired.
- o. Any and all warming or convenience tents, if desired.
- p. All appropriate signage.
- q. All appropriate adjacent amenities to complete the facility including without limitations skate change deck, benches, rubber floor coverings in addition to what Magic provides (if necessary), outdoor carpeting, containment around rink facilities via picket fences, etc.
- r. Ambient lighting, special effects lighting, if desired, sound system, public address system.
- s. Operational items, which include but are not limited to first aid kit, cash control, janitorial, etc.
- t. Security for skates and all other equipment on site.
- u. City shall provide manpower, as specified in this Agreement, for unloading Equipment, positioning Equipment at site and loading Equipment for removal; and for providing all equipment necessary to accomplish the same.
- v. A laser leveled site on which to install the ice rink, via sandbox or platform.

6. **Term; Installation; Hours of Operation.** The term of the rental is from November 8, 2014 to January 17, 2015, which includes an anticipated period of six (6) days for installation and six (6) days for removal. Hours during which installation and removal of equipment may occur will be restricted to 8 a.m. to 9 p.m. to reduce neighborhood disturbances. Operational days shall be November 14, 2014 through January 11, 2015. Unless otherwise mutually agreeable between the parties in writing, the ice rink will be open to the public from 3 p.m. to 9 p.m., Monday through Thursday; 3 p.m. to 10 p.m. on Friday; 10 a.m. to 10 p.m., on Saturday; and 12 p.m. to 8 p.m. on Sundays. Use of the ice rink will be scheduled to coincide with City sponsored special events occurring in Central Park and on Park Avenue including, but not limited to, tree lighting and holiday parade. Additional hours may also be scheduled to accommodate special rentals and private parties and events, as well as extended skating hours during school holidays. While Magic will use reasonable efforts to install and remove within the time period above-stated, unforeseen problems and mechanical difficulties may delay the actual times of installation. Magic represents and warrants that they will

attempt to correct all delays as quickly as possible; however, Magic will not be liable for any damages for delay in installation and removal. Furthermore, during the period of actual operation of the ice skating rink, temperature and humidity may affect the condition of the ice and mechanical problems may affect the Equipment and usability of the rink. Magic will diligently repair said conditions and cure such problems as quickly as possible; however, Magic is not liable for delays or for periods of time in which the rink is not suitable for skating due to weather or mechanical problems. However, in the event the rink is not suitable for skating on any particular day due to Magic's negligence, Magic agrees that the rental term shall be extended one day for each day that the rink is not suitable for skating at no additional cost to the City, provided the rental terms shall not be extended by more than three additional days unless mutually agreed to by the parties in writing.

7. **Responsibility for Equipment; Repairs.**

- a. Magic shall be responsible for the Equipment at all times during the term of this Agreement, except if the Equipment must be repaired due to the negligence of or misuse by City or City's employees. As such, Magic is responsible to repair the Equipment on an as needed basis unless the repair is necessary due to a cause for which City is responsible, in which event, Magic may seek reimbursement from the City for any incurred charges to repair the Equipment.
- b. City further understands that in the event repair to Equipment is needed, that Magic would be sending repair technicians from a different location, which can cause additional delay. To the extent that Equipment repairs are needed because of the misuse of the Equipment by the City or due to the negligence of the City, the City will be responsible to provide lodging at a clean, medium priced hotel in close proximity to the rink site for technicians during repair periods, provided an overnight stay is necessary in the Winter Park area to timely accomplish the repairs. However, in the event that repairs are necessary because of equipment malfunction or improper performance that is due to circumstances not caused by City, its employees, agents, representatives, customers or the public, or that are the result of equipment defects or non-maintenance related failures, Magic shall be responsible for lodging of its repair technicians.

8. **Removal of Equipment.** Removal of the Equipment shall be completed no later than ten (10) days following the conclusion of the rental period set forth in paragraph 6. Both parties will make every good faith effort to facilitate the removal of equipment in a timely manner.

9. **Compensation.** For the Equipment and personnel provided by Magic that are necessary to install, maintain, operate, manage, and remove the temporary tented ice skating pursuant to this Agreement, City shall compensate Magic a total of \$84,750.00, together with all applicable sales use and other taxes (if any), payable on progressive installment payment terms as follows:

- a. Upon delivery of a proper invoice to the City by Magic, 95% of the Equipment rental and management services charges (\$80,512.50) shall be due and payable at such time the Equipment has been delivered to the ice rink site. Magic will use its best efforts and endeavor to deliver the Equipment on or about November 08, 2014.
- b. The remaining 5% of the Equipment rental and management services charges (\$4,237.50) shall be due and payable in full upon Magic completing performance under this Agreement and completely removing all the Equipment after the rental term has been completed. If Magic fails to complete performance under this Agreement, the remaining payment shall be prorated based on the actual services provided by Magic, subject to any deduction for Equipment removal costs. In addition, if non-performance includes Magic's failure to complete the removal of the Equipment in accordance with the terms of this Agreement, the City may, at its sole discretion and after prior written notice to Magic, use the remaining funds to remove and store the Equipment until such time Magic retrieves the Equipment from the City. However, under no circumstances shall this paragraph be construed as requiring the City to remove and store the Equipment or come out-of-pocket to remove and store the Equipment.
- c. If at the conclusion of the term of this Agreement, the City determines that it has earned a net profit from the operation of the ice skating rink, with revenues collected by the City exceeding all City expenses including, but not limited to, rental fees, grass replacement, structure and facility rental, overhead, decorating, labor and applicable sales taxes, the City agrees to pay Magic one hundred percent (100%) of the City's net profit up to a maximum amount of \$4,000. All net profits earned by the City which exceed \$4,000 shall be retained by the City.
- d. The personnel costs for the day-to-day operation of the temporary ice rink, other than the on-site Manager and any employees or employee time dedicated to the operations of the concession area, shall be paid by the City. Magic shall pay the personnel costs and subsequently invoice the City on a bi-weekly basis for the actual costs plus payroll processing costs. The payroll costs shall be reasonable in the local employment market and subject to the express prior approval of the City. Said approval shall not be unreasonably withheld by the City.
- e. No other compensation shall be paid to Magic by City other than the amount stated in this paragraph.
- f. All monies that are required to be paid under this Agreement to Magic are payable to Magic Ice USA, Inc. by check at 10364 SW 128 Terrace, Miami, FL 33176.

10. **Use of Equipment.** The parties agree that they will not use, operate, maintain, or store the Equipment improperly, carelessly or in violation of any applicable law or regulation or for any purpose other than for the operation of an ice skating rink on the site designated in this Agreement.
11. **Relocation or Removal of Equipment.** Except as provided in Paragraph 9b, City shall not relocate or remove the Equipment without the consent of Magic, which consent may be withheld for any or no reason. However, in the event of emergency, City shall have the right to relocate or remove the Equipment pursuant to its inherent police powers under Chapter 166, Florida Statutes.
12. **Sublease or Alteration of Equipment Prohibited.** City shall not sublease the Equipment, permit the use of the Equipment by any one other than City, alter or modify Equipment, place any accessories on the Equipment except as authorized hereunder, assign its rights or obligations under this Agreement, or change the use or location of the Equipment without the prior written consent of the Magic, which consent may be withheld for any or no reason.
13. **Magic's Right of Entry.** Magic shall have the right to enter the site occupied by the Equipment and inspect and repair the Equipment with reasonable notice to the City to the extent required to ensure that the Equipment is operating as intended under this Agreement.
14. **Loss or Damage of Equipment Due to City.** City shall be liable to Magic for all loss and damage to the Equipment, at its actual cash value, only to the extent that any loss or damage is attributable to the negligence or willful acts or omissions of City, its employees, agents or representatives.
15. **Indemnity and Hold Harmless.** To the extent permitted by Florida law, each party shall indemnify, defend and hold the other party, including their respective employees, officers, and contractors, harmless against and from any and all claims, lawsuits, losses, damages, injuries (including death), attorney's fees, expenses, liabilities or penalties which arise from, and out of, the negligent or willful acts or omissions of their own employees, officers or contractors and their respective performance under this Agreement.
16. **Insurance Requirement – Magic.** Magic agrees, at its own expense, to secure and maintain a commercial general liability insurance policy in an aggregate amount of not less than one million dollars (\$1,000,000.00), one million dollars (\$1,000,000.00) per occurrence, insuring against any and all liability arising out of the operation and use of the Equipment and/or property on which the Equipment is located. Said insurance shall be written on an occurrence basis, with an insurance company duly licensed in Florida and acceptable to City. City shall be named as an additional insured on the policy of insurance. The policy shall contain an endorsement that it cannot be cancelled without providing City at least ten days prior notice of cancellation. Magic shall provide City evidence of insurance prior to shipment of Equipment. A breach of Magic's obligation to

furnish insurance pursuant to this Agreement is a material breach of this Agreement.

17. **Insurance Requirement – City.** City shall also provide property insurance insuring the Equipment against loss or damage from fire, theft, vandalism, malicious mischief, and other risks of loss, customarily insured against in such policies. Said policies shall be for actual cash value and written on an occurrence basis with an insurance company duly licensed in Florida and acceptable to Magic. Magic shall be named as both a loss payee and an additional insured on such policy. City shall provide Magic evidence of insurance prior to shipment of Equipment. A breach of City's obligation to furnish insurance pursuant to this Agreement is a material breach entitling Magic to immediate possession of the Equipment, and in which event, the entire rental charges for the Equipment and services to be provided pursuant to this Agreement are considered earned in full, and the balance of the rental charges for the Equipment and services immediately due and payable in full.
18. **Site Topography.** Magic acknowledges that it is familiar with the topography of the proposed site set forth in this Agreement, that it has inspected said site, and that it represents and warrants, based on its past experiences, that the site is suitable for installing and operating the tented ice rink required hereunder.
19. **Taxes.** To the extent that City is not exempt, City shall pay all sales and use tax, personal property taxes, license fees, registration fees, which may now or hereinafter be imposed upon the possession, lease or use of the Equipment for the term of this Agreement.
20. **Title to Equipment.** Title to and ownership of the Equipment is and shall at all times remain with Magic and City shall have no right, title or interest therein or thereto except the right of possession and use of the Equipment pursuant to the terms of this Agreement.
21. **City Responsibilities Regarding Equipment.**
 - a. City shall not remove or deface any of the Equipment nor remove any marking or serial number on the Equipment. However, it is understood that City shall be permitted to install sponsorship dasher boards.
 - b. City shall keep the Equipment free and clear of all levies, liens, security interests and encumbrance of any nature or kind and shall promptly remove the same. Failure to take immediate steps to remove any such levy, liens, security interests or encumbrance, shall constitute a material breach of this Agreement giving the Magic the right to immediate possession of the Equipment, and in which event, the entire rental charges for the Equipment and services to be provided pursuant to this Agreement shall be considered earned in full, and the balance of the rental charges for the Equipment and services immediately due and payable in full.

22. **Non-compete.** The Parties acknowledge that:
- a. This Agreement is for City's legitimate business and proprietary interests of operating a temporary ice-skating rink.
 - b. To protect City's legitimate business and proprietary interests, Magic agrees that it will not provide the same or similar temporary ice rink services to any other governmental or private entity, within an eight (8) mile radius from the outer perimeter of the ice skating rink site, without the prior express, written approval of City.
 - c. The term of this non-compete agreement shall coincide with the term of this Agreement, and any subsequent options to renew this Agreement.
 - d. Should City exercise one or more of the options to renew this Agreement as set forth in Paragraph 23, such renewal shall not constitute an extension of this non-compete provision, but instead shall constitute a re-negotiated new and separate non-compete provision for the term of each particular exercised option to renew.
23. **Renewal Option.** The City shall, at its discretion, have the right to exercise three (3) options to renew this Agreement under the same terms by providing written notice to Magic; except, however, the operational dates set forth in paragraph 6 will be adjusted to reflect the upcoming Thanksgiving and New Years Day holiday. Said renewal notice shall be provided by the City no later than May 31st following the previous year's performance by Magic and shall set forth date adjustments for the upcoming holiday.
24. **Sovereign Immunity.** Notwithstanding any other provision set forth in this Agreement, nothing contained in this Agreement shall be construed as a waiver of City's right to sovereign immunity under section 768.28, Florida Statutes, or other limitations imposed on City's potential liability under state or federal law. As such, City shall not be liable under this Agreement for punitive damages or interest for the period before judgment. Further, City shall not be liable for any claim or judgment, or portion thereof, to any one person for more than one hundred thousand dollars (\$100,000.00), or any claim or judgment, or portion thereof, which, when totaled with all other claims or judgments paid by the State or its agencies and subdivisions arising out of the same incident or occurrence, exceeds the sum of two hundred thousand dollars (\$200,000.00). This paragraph shall survive termination of this Agreement.
25. **Force Majeure.** Any delay or failure of either party in the performance of its required obligations hereunder shall be excused if and to the extent caused by acts of God; fire; flood; windstorm; terrorism, explosion; riot; war; sabotage; strikes; extraordinary breakdown of or damage to City's affiliates' generating plants, their equipment, or facilities; court injunction or order; federal and/or state law or regulation; order by any regulatory agency; or cause or causes beyond the reasonable control of the party affected; provided that prompt notice of such delay

is given by such party to the other and each of the parties hereunto shall be diligent in attempting to remove such cause or causes. If any circumstance of Force Majeure remains in effect for thirty (30) days, either party may terminate this Agreement.

26. **Public Records.** Magic agrees that all documents, transactions, writings, papers, letters, tapes, photographs, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to this Agreement or in connection with the funds expended under the terms of this Agreement are considered public records pursuant to Chapter 119, Florida Statutes and Magic agrees to comply with all applicable public access and retention requirements of such records.
27. **Default/Breach; Opportunity to Cure.** Notwithstanding any other provision set forth in this Agreement, should either party desire to declare the other party in default or breach of any term or condition of this Agreement, the non-defaulting party shall provide the defaulting party a written notice of default. The written notice shall, at a minimum, state with particularity the nature of the default or breach, the manner in which the default or breach can be cured, and a reasonable time period of not less than five (5) days, excluding weekends and legal holidays, in which the default must be cured. No action may be taken in a court of law on the basis that a breach of this Agreement has occurred until such time as the requirements of this paragraph have been satisfied.
28. **Attorney's Fees.** Should either party bring an action to enforce any of the terms of this Agreement, the prevailing party shall be entitled to recover from the non-prevailing party the costs and expenses of such action including, but not limited to, reasonable attorney's fees, whether at settlement, trial or on appeal.
29. **City Revenues, Merchandise, and Sponsorships.** The parties acknowledge and agree that City shall have the right to charge public admission for the use of the ice rink, sell merchandise, and obtain dasher board and other sponsors related to the ice rink. All fees collected for admission, merchandise sales, and sponsorships of any kind shall be considered in their entirety as revenues of City. Magic hereby waives any right or claim to said revenues. To the extent Magic collects any of these revenues on City's behalf, Magic agrees to promptly pay all collected revenues to City and shall provide City with a full accounting of said revenues.
30. **Snack Bar/Concession Sales.**
 - (a) The parties agree that there will be one concession area at the ice rink which shall be open for business during the operational hours set forth in section 6 of this Agreement. Magic will provide all equipment, counter/set-up space, and signage required to display, prepare, serve, and sell concession items. In addition, Magic shall be responsible for obtaining all necessary state and local licenses to operate the concession area, and shall be responsible for training all workers who will be operating the concession area in accordance with all legal requirements.

Magic will also pay all labor costs associated with operating the concession area and will provide electric power necessary to operate the concession area.

(b) With respect to the sale of food and drink items at the concession area, Magic agrees to pay the City \$4,000 for the right to operate concessions at the ice rink event. The first payment installment of \$2,000 shall be paid by Magic at such time the City makes payment to Magic under paragraph 9(a) of this Agreement and the second installment of \$2,000 shall be paid by Magic at such time the City makes payment to Magic under paragraph 9(b) of this Agreement. All revenues and loss associated with the sale of food and drinks items will solely be the responsibility of Magic. Magic will keep a written accounting of all costs, revenues, and profits associated with the sale of food and drink items. The written accounting of profits/loss shall be provided to the City no later than three (3) business days following the conclusion of the operation of the ice rink.

(c) The food and drink menu items sold at the concession area shall be exclusively provided as required by this section of the Agreement. The pricing of the menu items will be mutually agreed upon between the City and Magic.

31. **Miscellaneous Provisions.**

- a. If any provision of this Agreement is deemed unenforceable, this Agreement shall survive absent said unenforceable provision.
- b. Any waiver of any breach of any provision of this Agreement shall not constitute or operate as a waiver of any further breach of such provision or of any other provision of this Agreement, nor shall any failure to enforce any provision of this Agreement operate as a waiver of such provision or any other provision of this Agreement.
- c. Magic and City acknowledge that this Agreement was entered into in Orange County, Florida and that the site of services is in Winter Park, Orange County, Florida.
- d. Magic and City agree that this Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Florida, without giving effect to any conflicts of law principles.
- e. The parties agree that venue shall be exclusively in Orange County, Florida, for all state court actions or disputes which arise out of or based upon this Agreement, and in Orlando, Florida for all federal court actions or disputes which arise out of or are based upon this Agreement.
- f. Neither Magic nor City shall be considered an agent or employee of the other party for any purpose whatsoever. For purposes of this Agreement, Magic shall be considered an independent contractor while performing services under this Agreement.

- g. No agreement varying or extending the warranties, remedies, or obligations contained in this Agreement will be binding upon Magic or City unless in writing and signed by a duly authorized officer of Magic or City.
- h. Under no circumstances shall Magic be held liable for any special, indirect, incidental or consequential damages unless said damages are the result of Magic's negligence, or willful acts or omissions of Magic, Magic's employees, agents, assigns, or subcontractors.
- i. The parties hereby agree that acts of God, power failures, acts of terrorism and/or vandalism, as well as temperature and humidity ("Acts") may cause the melting of the ice surface or portions thereof, and Magic and City shall not be responsible for any such conditions or loss of use of the ice skating rink or Equipment due to such Acts.
- j. No change, modification, amendment or waiver of any of the terms or conditions of this Agreement shall be binding unless made in writing and duly executed by all parties hereto.
- k. This Agreement constitutes the entire understanding and final agreement between the parties. This Agreement is the complete and exclusive expression of the parties' agreement on the matters contained in this Agreement. All prior and contemporaneous statements, purchase orders, agreements, negotiations and representations between the parties are expressly merged into and superceded by this Agreement.
- l. This Agreement shall be binding and inure to the benefit of the Magic and the City. There are no third parties that are intended to be beneficiaries under this Agreement.
- m. This Agreement may be signed in counterparts, with facsimile transmitted signatures being deemed an original, and all of which when signed by the respective parties when taken together will constitute the full and final agreement of the parties hereto.
- o. This Agreement is only effective and enforceable against the City if this Agreement is approved by the City Commission of Winter Park.

Dated this ____ day of _____, 2014.

MAGIC:
MAGIC ICE USA, INC.

CITY:
CITY OF WINTER PARK, FLORIDA

By:_____
Byron J. Sharp, President

By:_____
Kenneth Bradley, Mayor

STATE OF FLORIDA
COUNTY OF _____

Attest:

The foregoing instrument was
acknowledged before me this _ day
of____, 2014, by Byron J. Sharp,
[] who is personally known
to me or [] who has produced
as identification.

Cindy Bonham, City Clerk

NOTARY PUBLIC, State of Florida
My commission expires:_____

EXHIBIT “A”

OUTDOOR TEMPORARY ICE SKATING RINK MANAGEMENT

Magic’s management and day-to-day operation service includes a fully trained manager supported by a Magic Ice USA, Inc. management home office team that shall professionally service the seasonal temporary ice rink project, which shall include the following:

- Fully trained ice rink manager with responsibility for day-to-day operations.
- Provide all travel and living quarters for the on-site manager.
- Develop and implement business operational procedures.
- Work with Pay-Chex pay-roll preparation company to provide full and accurate payroll for ice rink general employees and personnel.
- Help to establish proper disclaimer wristbands, flyers, free passes. Include wristband sponsor name and logo on wristbands. Cost of including sponsor on wristband will be billed to the City and reimbursed to Magic.
- Help to establish general rate information signage.
- Provide assistance in proper outfitting and startup of ice rink project.
- Provide assistance in outfitting employee’s uniforms.
- Hiring and, if necessary, firing of general employees.
- Training of all general employees.
- Maintaining and cleaning of skate rental areas, office, etc.
- Responsibility for depositing daily receipts to a Magic bank account and accurate income and expense reporting to City. Magic will then be responsible for reporting on a weekly basis the cash and credit cards that were deposited for that week and cutting a check in that reported amount each week to City. Credit card fees will be billed to City on a monthly basis once Magic receives the credit card statement.
- Establish customer credit card acceptance account and daily control and credit card batching out for accurate accounting and record keeping. Credit card account will be in Magic’s name and all monies deposited into Magic’s account will then be reported in the weekly amount to City.
- Clean and maintain dasher boards and all ice rink Equipment.
- Establish safety measures and oversee risk management procedures.
- Operate your ice surface, ice edger and other ice maintenance equipment.
- Maintain ice surface integrity and safe ice surface for skating.
- Oversee and operate skate sharpening equipment for customer and rental skate maintenance.
- Maintain safe ice skating environment through all weather conditions.
- Organize music selection and assure proper family friendly music.
- Establish proper loudspeaker announcements to assist in risk management and minimize liability claims.
- Provide general liability insurance coverage protection as required by the City. Insurance coverage will expressly list the City of Winter Park as an additional insured.
- Immediately notify the City of all claims, take and maintain incident reports and handle all liability claims and issues, and provide City with timely appraisal reports of said claims and issues.
- Ice rink business procedures development and implementation.
- Insure proper record keeping in all areas of the ice rink operation.
- Magic’s management team and hired rink employees will operate the rink based on hours of operation as determined by City.
- Magic will provide day-to-day operating personnel and will bill the City for payroll costs on a bi-weekly basis.