



agenda

April 25, 2013 @ 5:30 p.m.

City Commission Chambers
401 S. Park Ave. 2nd Floor

CRA advisory board

1 administrative items

- A. Approval of the Work Session Minutes from 01/29/13
- B. Approval of the Formal Meeting Minutes from 01/31/13
- C. Approval of the Work Session Minutes from 02/26/13

2 action items

- A. Winter in the Park Ice Rink funding approval

3 informational items

- A. Presentation regarding surplus land along Blake Street

4 new business items

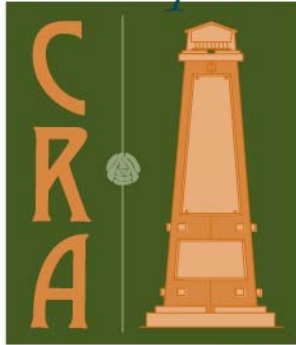
5 adjournment items

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."

winter park



community
redevelopment
agency

agenda item

meeting date April 25, 2013

item type ☒ Administrative
☐ Action
☐ Information

approved by ☐ City Manager
☐ City Attorney
☒ N/A

CRA advisory board

Subject: Item 1A, 1B, & 1C

Approval of the January 29, 2013 work session minutes.
Approval of the January 31, 2013 board meeting minutes.
Approval of the February 26, 2013 work session minutes.

motion | recommendation

Approval of the minutes as attached.

Background

N/A

alternatives | other considerations

N/A

fiscal impact

N/A

strategic objective

N/A

**CITY OF WINTER PARK
CRA ADVISORY BOARD WORK SESSION**

**Regular Meeting
12:00 p.m.**

**January 29, 2013
City Hall – Chapman Room**

MINUTES

Chairman Hal George called the meeting to order at 12:05 p.m. in the Chapman Room.

BOARD MEMBERS PRESENT: Hal George, Daniel Butts, Susan Lawrence, John Dowd, Alan Thompson, and Max Remer.

BOARD MEMBERS ABSENT: Paul Saint-Pierre, Joe Terranova.

STAFF MEMBERS PRESENT: Dori Stone, Peter Moore, Craig O’Neil

ACTION ITEMS

A. Notice to Dispose Proposals for 845 New England Ave.:

Dori Stone, Economic Development/CRA Director asked the Board if they had any questions since this item had been previously discussed in two worksessions. The Board had no additional comments.

B. Budget Reallocation Request:

Mr. Moore explained that staff would be recommending the reallocation of \$13,000 from the already funded Bus Shelter Improvement project account to provide \$10,000 in matching funds to a streetscape improvement for E. Welbourne and an additional \$3,000 to the Welbourne Ave Nursery to restore them to a level of funding more in-line with past years.

The Board discussed the items amongst themselves.

There was no further business. Meeting adjourned at 1:10 p.m.

**CITY OF WINTER PARK
COMMUNITY REDEVELOPMENT ADVISORY BOARD**

**Regular Meeting
5:30 p.m.**

**January 31, 2013
City Hall – Commission Chambers**

MINUTES

Chairman Hal George called the meeting to order at 5:30 p.m. in the City Commission Chambers.

BOARD MEMBERS PRESENT: Hal George, Daniel Butts, Susan Lawrence, John Dowd, Alan Thompson, and Max Remer.

BOARD MEMBERS ABSENT: Joe Terranova, and Paul Saint-Pierre

STAFF MEMBERS PRESENT: Dori Stone, Peter Moore

APPROVAL OF MINUTES

Motion made by John Dowd, seconded by Alan Thompson, to approve the 11/13/12 worksession minutes, the 11/15/12 meeting minutes, and the 12/17/12 worksession minutes, of the Board. Motion carried unanimously with a 6-0 vote.

ACTION ITEMS

A. Notice to Dispose Proposals for 845 New England Ave.:

Dori Stone, Economic Development/CRA Director asked the Board if they had any further issue they wished to discuss regarding this action item and reminded them that this project followed the process laid out over the last 9 years; starting with the acquisition of the property for affordable housing, the memorandum of understanding designating this property for the Hannibal Square Community Land Trust (HSCLT), and the notice to dispose process for which the HSCLT was the only applicant.

Motion made by Susan Lawrence, seconded by John Dowd, to recommend that the property be transferred to the HSCLT in accordance with the Notice to Dispose and MOU.

Hal George opened the discussion for public comment. There was no public comment.

Motion passed unanimously with a 6-0 vote.

B. Budget Reallocation Request:

Mr. Moore introduced the item and explained that a few years ago the CRA allocated funds to promote the building of new bus shelters in partnership with Lynx. To-date approximately 25 shelters have been completed throughout the city. Staff has reached out to Lynx and has determined that there is no short term need for funding from the CRA for new shelters. During the FY 2012-13 budget process and approval, \$6,000 was allocated from bus shelters to support the match for Popcorn Flicks leaving approximately \$13,000 in available funds. Staff is proposing to take \$3,000 and restore Welbourne Nursery's grant funding for this fiscal year to \$5,000 (\$2,000 already provided for in approved budget). The remaining \$10,000 will go toward a match to private funding for improvements to E. Welbourne Ave.

Mr. Moore stated that in March of 2012, at the request of the owners of the restaurant Cocina 214, the Morse Genius Foundation, the Edyth Bush Foundation, and Battaglia Group, staff met to discuss the

possibilities of making a street improvement to E. Welbourne Ave. from Park to Knowles. Staff explained that this project was not currently being contemplated and that funding for new streetscapes was extremely limited and not available for new projects. Representatives of the organizations asked staff to see what a potential streetscape would cost and then determine if some sort of assessment could be split amongst the parties to complete the work.

Public Works designed a streetscape plan that included undergrounding the electric lines, installing decorative lighting with flower pots, replacing the sidewalks, adding landscaping, and contemplating street bricking versus resurfacing with asphalt. Public Works indicated that there was money allocated to resurface the road anyway so that they would be willing to cover the expense of that work or provide the city's anticipated cost as a credit toward street bricking. Additionally Public Works also agreed to cover approximately \$11,000 in sidewalk replacement as many of the panels are in need of replacement. The cost of improving the street under the asphalt scenario is approximately \$30,000 whereas the cost with bricking is approximately \$60,000. Due to limited funds staff is suggesting treating the improvement like a business façade improvement and complete the project through partnership with the CRA contributing \$10,000 to either scenario and allowing the property owners to contribute the remainder.

The Board asked for clarification regarding the source of funds and Mr. Moore explained that they would not be using reserves, as it has not been the practice of the Board to use reserves, but cancelling funds set aside for bus shelters to fund these two items. Mr. Moore explained that representatives of the property owners and tenant on Welbourne were here to speak on the item.

Ms. Lambrine Macejewski, owner of Cocina 214 urged the board to consider allocating the additional \$15,000 to cover the cost of bricking the street versus resurfacing with asphalt. She cited their community involvement, employment of 55 persons, the need for safety, and desire to make Welbourne look like the rest of the downtown as reasons to consider the upgrade.

Mr. Dick Strauss, with the Morse Genius Foundation also urged the Board to consider spending the extra money to do the bricking.

Daniel Butts explained some of the history of his company's involvement in the discussions and recused himself as a voting member due to his conflict of representing a property owner that would benefit from the streetscape being completed.

The Board discussed the timing of the project and whether a delay could allow more funds to become available after the new TIF revenue estimates are received the end of May. The Board discussed their willingness to review this item again if, and when, the budget figures come in positive for next year.

Motion made by Alan Thompson, seconded by Max Remer, to approve reallocating \$10,000 from the bus shelter account to the E. Welbourne Streetscape project. Motion carried unanimously with a 5-0 vote, with Mr. Daniel Butts recusing himself.

Motion made by John Dowd, seconded by Alan Thompson, to approve reallocating \$3,000 from the bus shelter account to the Welbourne Ave. Day Nursery. Motion carried unanimously with a 6-0 vote.

There was no further business. Meeting adjourned at 5:58 p.m.

**CITY OF WINTER PARK
COMMUNITY REDEVELOPMENT ADVISORY BOARD**

**Work Session
12:00 pm**

**February 26, 2013
Chapman Room, City Hall**

MINUTES

Chairman, Hal George, called the meeting to order at 12:07 pm.

BOARD MEMBERS PRESENT: Hal George, John Dowd, Alan Thompson

BOARD MEMBERS ABSENT: Susan Lawrence, Joe Terranova, Daniel Butts, Paul St. Pierre, Max Remer

STAFF MEMBERS PRESENT: Dori Stone, Peter Moore, David Buchheit, Laura Neudorffer, Craig O'Neil

No agenda items were being presented to the Board Members.

Introduction of new staff members was stated by Dori Stone and each new member gave a brief overview of their background.

Laura Neudorffer, CRA Coordinator, introduced herself to the Board stating she had transferred over to the CRA after being in Code Compliance for five years and in the Staffing Industry prior to joining the City of Winter Park.

David Buchheit, CRA Manager, introduced himself to the Board stating he had joined the City of Winter Park after several years of CRA Experience in Collier and Seminole Counties. David worked in Seminole County for one year and with Collier County for 6 years.

Board Appointment and Expirations were briefly discussed along with the need to begin work on the Strategic Plan. Dori will be exploring options for the current Board in regards to the Strategic Plan.

Areas of interest to the CRA, including 17-92 & Lee Rd., were pointed out and discussed. Several projects and programs were put on hold and Dori would like to discuss them with the Board and work toward bringing those programs and projects back into the works.

Peter gave a brief overview of the Winter in the Park outcome as far as revenue stating it appears that the City made about \$4000.00 in 2012. Board Members felt the event was well publicized this year. The event had a 20% increase in attendance in 2012. There was a total of 750 attendees on one particular Saturday which is a great turnout.

Board Members mentioned being able to include the merchants more in the future and make it more beneficial for them in hope of increasing their input for the event.

Meeting adjourned at 1:30 p.m.



meeting date April 25, 2013

item type ☐ Administrative
☒ Action
☐ Information

approved by ☐ City Manager
☐ City Attorney
☒ N/A

CRA advisory board

subject : Item 2A

Winter in the Park – Holiday Ice Rink 2013

motion | recommendation

Staff recommends approving and forward funding the 5th annual 2013 Winter in the Park ice skating event with \$190,000 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 four 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 17,000 skaters, a 20% 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 95% of visitor surveys expressing delight or satisfaction of the event.

Staff is proposing to start the event November 15, 2013 and end on January 5, 2014 and the event will be managed by Magic Ice USA the operator for the last three years' events and owned by a Winter Park resident. A draft of the contract that will go to the City Commission at the May 14, 2012 meeting has been attached for information purposes.

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.

alternatives | other considerations

Discontinue the event.

fiscal impact

The event costs about \$190,000 in upfront expenses and last year broke even. Staff has incorporated a \$0 net as part of its budgeting process for the FY 2014 year but anticipates the event to continue to grow in both attendance and sponsorship. This approval allows staff to budget the item and begin necessary advance work prior to CRA budget approval.

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 2012

A Winter Park Holiday Tradition



Overview

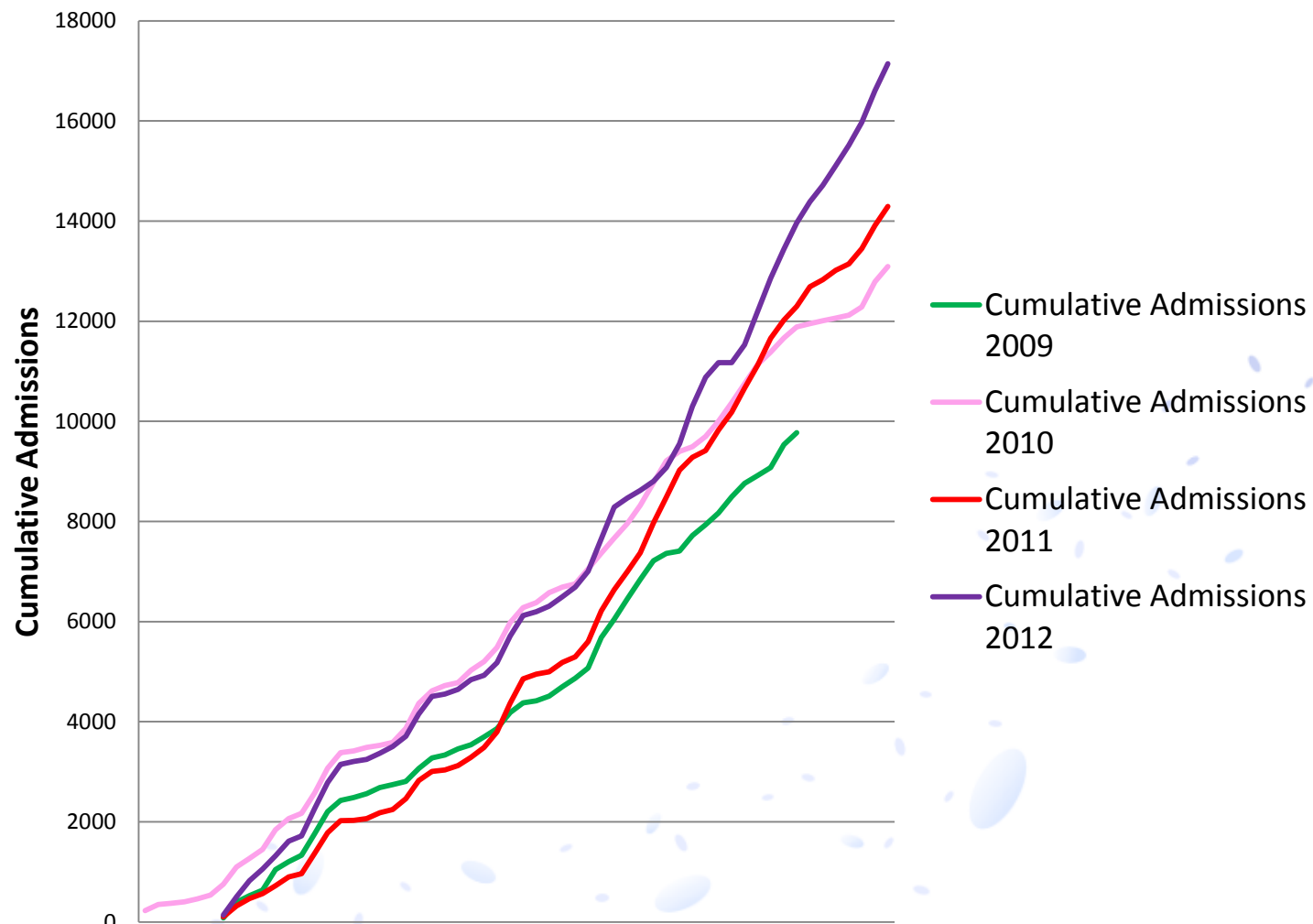
- Total Skaters : 17,141
 - 20% increase over prior year
- Event is managed by Magic Ice USA
- Over \$50,000 in sponsorship
- Economic Impact
 - Between \$193,000 - \$383,000 in direct spending downtown in downtown businesses



Financial Results

Revenue & Expenditures	Actual
Skating, Merchandise, and Private Party Sales (less sales tax)	\$ 146,316
Sponsorship & Concession Sales	\$ 54,003
Total Expenditures	\$ 190,924
Actual Profit/Loss	\$ 9,395

Attendance Graph



Sponsors

- \$50,003 in Sponsorships
 - Winter Park Memorial Hospital - \$10,000
 - Ruth's Hospitality Group - \$10,000
 - Rollins College - \$5,000
 - CenturyLink - \$5,000
 - Dasher board sponsors - \$20,003
- In-Kind Sponsors
 - Radio: Mix 105.1 & Sunny 105.9
 - Orlando Sentinel
 - Local Channel 6



Orlando Sentinel

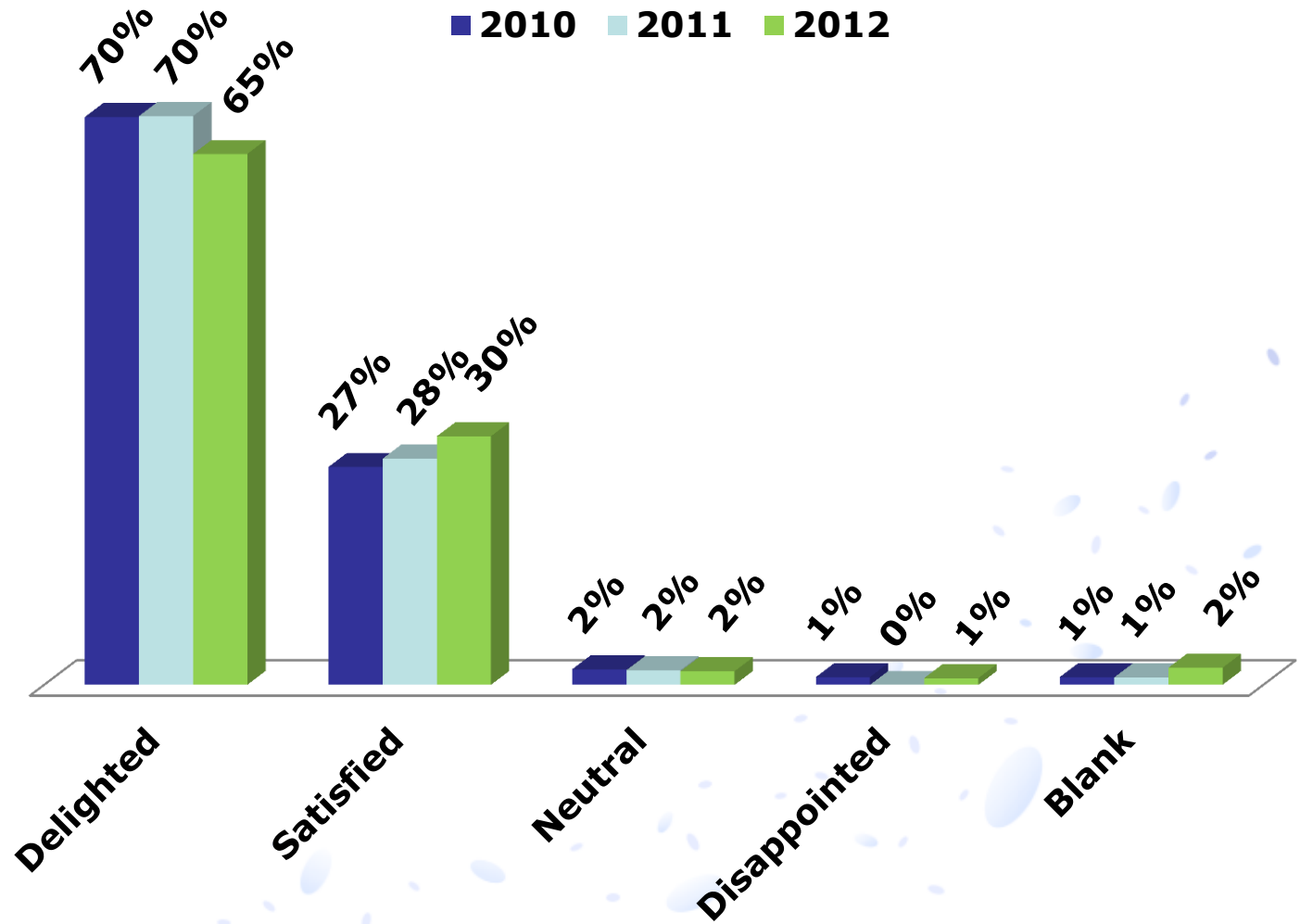


Skater Surveys

- Demographics of responders
 - 73% Female
 - Income levels
 - 55% above 75K
 - Ethnicity
 - 73% Caucasian
 - 14% Hispanic
 - 6% African American
 - 4% Asian
- Key Results
 - 44% new to the event
 - 95.4% Delighted or Satisfied with the event
 - 95% planned to shop or dine downtown



Feelings about the Visit





Recommendations for 2013

- Expand local merchant participation options
- Promote programs and sponsors at POS
- Increase special event nights
- Improve the look and feel of the event
- Provide handicap and valet parking
- Manage Groupon release dates



Looking Forward

- Continued organic growth in attendance
 - 5% to 10% per year
- Increases in sponsorship funding
- Maintaining a 7 week schedule of 1 week prior to Thanksgiving through 1st week of January.

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

THIS EQUIPMENT RENTAL AND MANAGEMENT AGREEMENT ("Agreement") is entered into this ____ day of _____, 2013 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 15, 2013 through January 5, 2014. 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 54'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 9, 2013 to January 11, 2014, 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 16, 2012 through January 6, 2013. 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 9, 2013.
- 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 _____, 2013.

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____, 2013, 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.



agenda item

meeting date April 25, 2013

item type ☐ Administrative
☐ Action
☒ Information

approved by ☐ City Manager
☐ City Attorney
☒ N/A

CRA advisory board

subject : Item 3a

Presentation on Blake Yard Surplus Property

motion | recommendation

N/A

background

Mr. Forest Michael is a resident of Winter Park and has a proposal and presentation regarding city-owned property located on Blake Street which is within the CRA. The attached proposal highlights Mr. Michael's interest in the property.

alternatives | other considerations

N/A

fiscal impact

N/A

strategic objective

N/A

**CITY LAND SURPLUS
& SUNRAIL TRAIL INTRODUCTION TO THE CRA ADVISORY BOARD**

(NOT approved for internet posting)

DATE: April 12, 2013

TO: **CRA Advisory Board and Staff**
City of Winter Park, Florida

FROM: F. Michael, neighboring W. Comstock Avenue property owner
P.O. Box 3431, Winter Park, FL 32790, michaelplanning@gmail.com

SUBJECTS: 1. Request not to surplus City land (City Utility Yard) on W. Comstock
2. Introduction to the SunRail Trail proposal

Dear Advisory Board and Staff,

Thank you for allowing this introductory presentation by a neighboring property owner within the CRA District, both of which help to cure the "Blight" per the CRA Plan and public safety:

1. REQUEST TO NOT SURPLUS – (Please consider providing a letter to the City Commission to allow this property to be considered for a cul-de-sac, public parking and a small park)

This is a request from a neighboring property owner (358 West Comstock Avenue) for the City's consideration, to NOT surplus the existing City property currently used as a utility yard, and previously used as a public works yard. This proposes the property for public use, particularly for the low income neighborhood.

HARDSHIP – BLAKE CLOSURE – As you may know Blake Street (Owned by FDOT) is being closed by FDOT for mandated railroad and motorist safety. Closure eliminates circulation, isolating residents and turning West Comstock into a dead end "avenue."

- a. The proposal is only on existing City land and can be constructed now before Blake Street is closed, and when funding is obtained.
- b. **Design proposed** – the attached design is concept and will be refined with city staff and local resident involvement. The Parks Board will also review this future design.
FUNDING – Provided by future grants to be determined following design acceptance.

2. SUNRAIL TRAIL PROPOSAL – To be introduced during the presentation.

ATTACHED:

1. Letter to City Commission with attached Comstock Circle plan
2. SunRailTrail draft concept approach

1.

Letter to City Commission
with attached **Comstock Circle** plan

Subject: **City Utility Lot, Blake St.: (Staff recommendations to surplus/trade)**

To: **Honorable Mayor Kenneth Bradley and the Winter Park City Commission**
for the City Commission February 25, 2013

From: F. Michael, 358 W. Comstock Avenue (Neighbor and landowner)

Position: **Opposed** to the subject property surplus/trade

1. **Public parking** – up to 15 public spaces (**15 spaces @ \$12,000 = \$180,000 value**) can be added when Blake is closed, the on-street 15 spaces will be lost and the subject lot can provide needed parking for:

- a. **Area commercial** (**PR's, Keke's, SR 426/Fairbanks Ave.**, etc., businesses).
- b. **Farmer's Market** and **City Hall** and **City Welcome Center** parking.
- c. **Winter Park Art Festival** and **Holiday Parade** parking, and **other events** parking.

(Note: all of these increase the City's tax base indirectly)

2. **A Hannibal Square Neighborhood asset:** this subject property has long detracted (50 +) from the Hannibal Square Neighborhood and it is now in a position to give something back – including:

- a. **Cul-de-sac – when Blake is closed, West Comstock will become a dead end.**
 - The subject property can provide a circular turn around at the railroad, **instead of negatively impacting** West Comstock Avenue properties.
- b. **Neighborhood community garden – to help resolve the “blighted” conditions as noted in the CRA PLAN,** 5-10 raised vegetable plots are requested by neighborhood property owners.
 - This will provide **NEW AND EXISTING** residents with a greater sense of neighborhood as well.

3. **Concept Sketch of Cul-de-sac (NEXT PAGE)**

COMSTOCK GARDEN CIRCLE

- Keeps a community blank, but circulation (With Market Street); doesn't let the long- "blighted" (Per CRA Plan), crime-ridden Comstock become a dead end avenue
- New garden plots for low income neighbors
- Public parking spaces for the Farmer's Market, Welcome Center and commerce and all, meters to pay for garden upkeep
- Recycle stormwater in a cistern for the garden

FARMER'S MARKET



WEST LYMAN

New CUL-DE-SAC

15 New public spaces
(15 spaces @ \$12,000 = **\$180,000 value**)

Blake Street is on railroad right-of-way and is being closed for rail safety

AVENUE

COMSTOCK GARDEN CIRCLE

- City land and prevents "blight" /CRA Plan
- Prevents dead end at West Comstock and more crime
- Subsistence low income food source with stormwater recycling
- Attractive views from the passenger trains

APPROACH (From an adjacent neighbor)

PARKING - support the Farmer's Market, Welcome Center, local commerce, and City Hall parking needs, and
RESIDENTS - support low income residents with neighborhood subsistence garden plots

Converting to a 4-Way Intersection

AVENUE

CITY HALL Block

City Public Works

Comstock Garden Circle

Hannibal Square Neighborhood

"Diverse sustainability for all local residents"



MICHAEL, PLANNING OF FLORIDA
michaelplanningof.com
FLA 00000761 10/1/2009

Water Park (located on the west side of the main station) and the Winter Park 2008 Train Station
Main Station

REVISION 10/1/2009 - UPDATED FEBRUARY 2015 - THIS IS A PRELIMINARY PLAN AND IS NOT FOR RELEASE WITHOUT PERMITTING. copyright, all rights reserved. This plan was prepared by P. Michael, an adjacent resident.

NEW YORK AVENUE

Proposed SunRail *Trail* introduction

SunRailTrail - Letter of Introduction

Date: April 2013

To: City of Winter Park leaders, residents and the public

From: Forest Michael, Principal, Michael Planning

Subject: Introducing the proposed SunRailTrail Network



This is a general letter of introduction for your consideration for a safer bicycle and pedestrian approach, in preparation since 2009.

This approach is being “floated” to the general public to help determine the level of interest prior to a possible presentation to the City of Winter Park Mayor and Commissioners. This initial approach is mainly within the CRA District and is designed to connect neighborhoods to downtown and SunRail.

All comments are welcomed and will positively affect the design and level of safety for bicyclists and pedestrians. *Safer bicycle routes also result in safer automobile routes.*



“Metro Orlando Area experiences ~ **730 pedestrian injuries and 45 fatalities every year.** “ “From 2000 to 2009, there were **557 pedestrians killed while walking.**”

Following the introductory presentations, and if the Commission wishes to proceed, then we could begin “testing the waters” with FDOT and others for State and Federal funding.

Highlights:

- **Commission leadership:** this approach is entirely dependent upon the Mayor and City Commission reviewing and accepting *it in the future* as a desirable addition to Winter Park’s infrastructure to benefit our residents and business owners.
- **Funding:** the network approach aligns with the north-south SunRail route and also has an east-west route proposed generally near SR 426. Aligning with the State’s corridors places us in a better position to achieve State and Federal funding (Some transit, some bicycle and some highway) with a minimum of local dollars, for safer routes to and from the neighborhoods.
- **Testing the waters:** the approach has been presented at advertised meetings of the Bicycle and Pedestrian Advisory Board, and the Keep Winter Park Beautiful and Sustainable Board, and to some City Staff members. A short walk was held recently to generally see what the level of interest might be, “testing the waters”, prior to a commission presentation.
- **Approach:** this approach is initially called the SunRailTrail Network. There is not a similar network in Winter Park (Built) except for our individual trail called the Cady Way, and some

SunRail Trail - Letter of Introduction

good public works on Pennsylvania Avenue. Many other improvements have been made as well for safer crossings and connections by the Public Works and Parks departments.

- **Simplicity:** the approach is a *simple network*, proposed to connect our neighborhoods with the Central Business District and Station, for commerce and SunRail ridership and importantly, adding convenient and safer bicycling and walking routes for residents.
- **Commerce:** most of our commercial areas are connected with the network, as well as cultural and civic facilities. The West Orange Trail has brought much economic gain to Winter Garden.
- **Safety:** the network is initially designed to be about 95% - 98% completely off of the State's rail corridor, yet generally parallel with it on the north-south segment. It will be designed to optimize bicycle and pedestrian safety, and commuting, using tried and true methodologies.
- **Neighborhoods:** the network approach is proposed to connect with each neighborhood but if a neighborhood does not want a connection, then it can be separate.

With our metro area being one of the most deadly in the US for bicycles and pedestrians, this approach offers a chance to quickly plan the simple "network" (Compared with the full Winter Park system); and get it built with the momentum of the SunRail project, and related political emphasis (Florida and Federal).

This is a proprietary private business approach and is not proposed as a study exercise; or an exercise to plan and design a huge city-wide bicycle system.

I would like to speak (and walk the possible route) with anyone interested in this potential for our residents and businesses, to hear your thoughts on better bicycle and pedestrian safety.

Respectfully,

Forest Michael, Bicycle and Pedestrian Facilities Planner