



city commission agenda

Regular Meeting Commission Chamber

July 22, 2013

3:30 p.m.

Work Session immediately
following the regular meeting

commissioners				mayor	commissioners			
seat 1	Steven Leary	seat 2	Sarah Sprinkel	Kenneth W. Bradley	seat 3	Carolyn Cooper	seat 4	Tom McMacken

welcome

Welcome to the City of Winter Park City Commission meeting. The agenda for regularly scheduled Commission meetings is posted in City Hall the Tuesday before the meeting. Agendas and all backup material supporting each agenda item are available in the City Clerk's office or on the city's Web site at www.cityofwinterpark.org.

meeting procedures

Persons desiring to address the Commission MUST fill out and provide to the City Clerk a yellow "Request to Speak" form located by the door. After being recognized by the Mayor, persons are asked to come forward and speak from the podium, state their name and address, and direct all remarks to the Commission as a body and not to individual members of the Commission, staff or audience.

Comments at the end of the meeting under New Business are limited to three (3) minutes. The yellow light indicator will remind you that you have one (1) minute left to sum up. Large groups are asked to name a spokesperson. This period of time is for comments and not for questions directed to the Commission or staff for immediate answer. Questions directed to the City Commission will be referred to staff and should be answered by staff within a reasonable period of time following the date of the meeting. Order and decorum will be preserved at all meetings. Personal, impertinent or slanderous remarks are not permitted. Thank you for participating in your city government.

1	Meeting Called to Order	
2	Invocation Reverend Talia Raymond, First Congregational Church Pledge of Allegiance	
3	Approval of Agenda	
4	Citizens Budget Comments	
5	Mayor's Report a. Employee of the Quarter – Randy Jones, Foreman of Water & Wastewater Division	5 minutes
6	City Manager's Report	Projected Time
7	City Attorney's Report	Projected Time
8	Non-Action Items a. May 2013 Financial Report	Projected Time 10 minutes

9	Citizen Comments 5 p.m. or soon thereafter (if the meeting ends earlier than 5:00 p.m., the citizen comments will be at the end of the meeting) (Three (3) minutes are allowed for each speaker; not to exceed a total of 30 minutes for this portion of the meeting)
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10	Consent Agenda	Projected Time
	<ul style="list-style-type: none"> a. Approve the minutes of 7/8/13. b. Approve the following purchases, contract, task order and change orders: <ul style="list-style-type: none"> 1. Blanket Purchase Order to Wheeled Coach for the purchase of Fire Rescue Vehicles and Other Fleet Equipment piggybacking Florida Sheriff's Association Contract 11-10-1202; not to exceed \$204,000 (FY13 vehicle replacement fund); 2. Advanced Purchase Order to Wheeled Coach for the purchase of Fire Rescue Vehicles and Other Fleet Equipment piggybacking Florida Sheriff's Association Contract 11-10-1202; not to exceed \$190,000 (FY14 advance approval) contingent on adoption of budget to take advantage of preparing both vehicles at same time 3. Blanket Purchase Order to The Davey Tree Expert Co. for FY13 Professional Services, utility vegetation management; \$250,000. 4. Blanket Purchase Order to Duke Energy for bulk power supply; \$9,000,000.00. 5. Authorize the Mayor to execute a new agreement to the extended warranty program with Trane U.S. Inc. for additional equipment; \$24,088. 6. Change Order No. 2, Masci General Contractor, Inc. for the Fairbanks Avenue Roadway and Wastewater System Improvements Project; \$154,028.14 and an extension of contract time of 35 days. 7. Task Order 2011-01 for CH2M HILL Amendment #1 Fairbanks Avenue Roadway and Wastewater System Improvements services during construction; \$263,491.00. 	5 minutes

11	Action Items Requiring Discussion	Projected Time
	<ul style="list-style-type: none"> a. Budget discussion and set the tentative millage rate. b. Power Purchase Agreement with Clean FootPrint, LLC. 	20 minutes 20 minutes

12	Public Hearings	Projected Time
	<ul style="list-style-type: none"> a. <u>Request of Mr. Phil Kean:</u> <ul style="list-style-type: none"> - To alter the exterior architectural style of the project for the conditional use permit granted to the Ye Olde Bric Condominium property at 125 S. Interlachen Avenue to permit the redevelopment of the property and the construction of a four story, six unit residential condominium building of 23,500 square feet in size with underground parking on the property zoned R-4. b. Ordinance – Repealing obsolete provisions and amending Chapter 98, Traffic and Vehicles, Article VI, Traffic Light Safety Act, of the City code to implement Chapter 2013-160, Laws of Florida; providing for local hearing officer consistent with general law (1) 	20 minutes 10 minutes

- c. **Ordinance** - Amending Section 2-107(e), Administrative Fines; Costs of Repair; Liens, of Chapter 2, Administration, repealing the clause declaring that code enforcement liens take priority over other liens (1)
- d. **Ordinance** - Annexing the right-of-way of Aloma Avenue from 2015 Aloma Avenue east to the City limits and the right-of-way of Balfour Drive from Amsden Road south to the City limits (2)
- e. - **Ordinance** - Authorizing the conveyance of the City owned property at 645 Symonds Avenue in exchange for the property located at 813 W. New England Avenue (2)
- Approve the contribution to Habitat for Humanity of Winter Park/Maitland, Inc. of the building lot at 813 W. New England Avenue

10 minutes

5 minutes

10 minutes

13 City Commission Reports

Projected Time

- a. Commissioner Leary
- b. Commissioner Sprinkel
- c. Commissioner Cooper
- d. Commissioner McMacken
- e. Mayor Bradley

10 minutes each

PLEASE NOTE:

A work session will be held immediately following this meeting to discuss the public/private partnership on the Rachel D. Murrah Civic Center parking site.

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."



city commission city manager's report

item type

City Manager's Report

meeting date

July 22, 2013

Below are issues of interest to the Commission and community that are currently being worked on by staff, but do not currently require action on the Commission agenda. These items are being tracked to provide the Commission and community the most up to date information regarding the status of the various issues. The City Manager will be happy to answer questions or provide additional updates at the meeting.

issue	update	date
Lee Road Median Update	Revised permit documents for palm trees submitted and currently under review. Permit expected in July.	July 2013
Fairbanks Improvement Project	<p>Contract has been awarded to Masci General Contractor, Inc.</p> <p>Progress Energy continuing to study transmission/distribution lines between I-4 and 17-92. FDOT has approved funding for PEF project engineering. PEF and FDOT have executed the engineering agreement.</p> <p>Preliminary paving meetings have been held.</p> <p>Project website has been set up at www.cityofwinterpark.org/fairbanks</p>	<p><u>Construction Project</u> <u>On schedule</u> <u>Communication Notices</u></p> <ul style="list-style-type: none"> • Force main work complete. • Jackson lift station is largely complete. • Gravity sewer is complete. • Streetlight conduit and pole foundations are complete. • Decorative lights installed. • Mast arm foundations and poles complete. • Contractor lateral work complete. Sidewalk repairs complete. • Paving scheduled to start week of July 22nd
Tree Team Updates	Individual educational sessions with City Commission are complete.	Completed.
Wayfinding Signs	All non-FDOT wayfinding signs are installed. Permitting of the FDOT signs continues. Old signs are being removed.	All available locations have been installed.
ULI Fairbanks Avenue TAP	Staff has contracted with Marilyn Crotty to facilitate the work session. Staff has sent out invitations for a day long workshop at the Winter Park Civic Center. Attendance is limited to 50 stakeholders.	July 23, 2013
Post Office Discussions	Work session with Congressman Mica held on April 15, 2013. Staff to develop a plan based on information revealed at meeting.	
Organizational Support	Will be discussed along with proposed FY14 budget and adoption process.	September 2013

Lakemont/Mizell Manhole Replacement	Lakemont will be closed starting July 8 for approximately 14 days to make sanitary sewer repairs. Drivers and emergency vehicles will be detoured. All emergency responders/hospital/transportation services have been notified. Work progressing - on schedule.	July 8 through July 22
Utility Billing/Recurring credit cards	Implementation of the electronic bill presentment and payment system with PSN has been completed. This system allows our customers to schedule recurring bill payments using a credit card, checking or savings account. Credit card options have been expanded to allow use of a Discover card. Further information regarding the capabilities of the new system are available on the City's website under What's New - Utility Services goes green and offers easy options.	Complete
Amtrak/SunRail Station	Floor slab and walls constructed. Roof trusses and decking being constructed.	Building complete December 2013 SunRail complete May 2014
Quiet Zones	FDOT consultant still reviewing concept plans. Field meeting scheduled July 23-July 24	July 2013
Wholesale Power Supply	Power supply portfolio approved by Commission 6/24. Contract negotiations with suppliers are underway.	August 12, 2013
Territory/CR-3 Negotiations	Ongoing discussions with Progress Energy/Duke	August/September 2013
New Hope Baptist Church Project	They have resubmitted their request for status change as a Religious Exempt child Care Facility which takes about 2-3 weeks to receive new license number for DCF. After that is received, DCF will come and review their compliance with its standards for health, safety and sanitation of their facilities. They will then receive the green light to open. They have received power to both portables. Pastor's daughter is pursuing DCF licensing. Safety barrier remains in place and is checked regularly.	Fall of 2013 (per Pastor)
Martin Luther King, Jr. Park	Pond expansion started on July 8 and will take four weeks to complete.	Completion - August 2013

Once projects have been resolved, they will remain on the list for one additional meeting to share the resolution with the public and then be removed.

Financial Report

For the Month of May (67% of fiscal year lapsed)

Fiscal Year 2013

General Fund

Below is an analysis of the General Fund revenues:

	Adjusted Budget	Projected Variance	Comments
Property taxes	14,174,500	0	
Franchise fees	1,103,800	(18,000)	Largest negative variance is electric franchise fee revenues due to lower sales of kWh
Utility taxes	6,768,216	(90,000)	Big negatives are electric utility tax due to lower sales of kWh and communication services tax
Occupational licenses	472,000	0	
Building permits	1,450,500	500,000	Increased construction activity has improved fee permit revenues
Other licenses & permits	21,500	0	
Intergovernmental	6,069,928	100,000	Sales tax revenue has improved nicely in recent months
Charges for services	5,010,068	225,000	Fire inspection fee revenues are up as a result of the increased construction activity and ambulance transport revenues have also improved
Fines and forfeitures	1,397,600	(40,000)	Traffic fines are a bit less than expected (\$130,000) and red light traffic camera revenues are expected to be about \$90,000 better than our revised budget
Miscellaneous	683,381	(600,000)	The City invests money in excess of immediate needs in fixed income government bonds. Discussion by the Federal Open Market Committee about "the gradual approach to the end of monetary easing" has driven yields up in the market. Higher market yields mean the market value of fixed income bonds we already own go down. We follow a "buy and hold" investment strategy so we do not expect to actually lose any money at all on our investments. As they approach maturity their market value will go up to equal the par value of the bond. In the meantime, we are experienced "unrealized" losses as we adjust the value of our portfolio to its estimated market value each month.
Transfers from other funds	8,475,392	35,000	Increases in electric fuel cost recovery rates should improve our electric franchise fee equivalent revenues
	45,626,885	112,000	

Staff will continue to monitor both revenues and expenditures as we approach the end of the fiscal year.

Community Redevelopment Agency Fund

The CRA was credited with tax increment revenue from both the City and County in December. The decrease in comparison to the prior year is due to the 2.05% decrease in valuation.

Planning and Development expenses appear ahead of budget but this is due to some work already having been completed for the full fiscal year such as the ice rink. Costs are expected to be within budget for the fiscal year.

The large debt service expenditure and debt proceeds revenue are from the refunding of the 2003-1, 2003-2, 2005-1 and 2005-2 CRA revenue notes. This refunding is expected to result in annual savings of approximately \$60,000 without extending the maturity of the debt.

Water and Sewer Fund

Water sales in terms of thousands of gallons are down about 4.5% in comparison to the prior year.

Revenues in total are projected to be on track with budget. Sewer revenues will exceed the budget estimate and water revenues will be short of the annual estimate.

Projections for annual sales in both dollars and gallons take into consideration the seasonality of water usage trends.

Bottom line for the eight months ended May 31 is a positive \$1,151,988 and debt service coverage is projected to be a very strong 1.98 for the fiscal year.

Electric Services Fund

Electric sales in kWh are projected to be about 15M short of our original estimate. The total projection of 415,595,755 is very close to our final total for the previous fiscal year of 413,795,957.

The benefits of our favorable bulk purchase contracts are evident throughout this report. Our cost of purchasing electricity declined from \$0.0815/kWh in FY 2010 to \$0.0553 in FY 2012.

Both fuel revenues and fuel expenses show a decline as a result of lower natural gas prices. We endeavor to keep fuel costs at breakeven for our customers. In May 2009, the City Commission approved a policy providing for quarterly adjustments to fuel rates to keep them as close to costs as possible. This report shows those costs and revenues have been fairly consistent beginning with FY 2010. Fuel cost recovery rates were adjusted upward effective April 1, 2013 to keep pace with fuel costs.

Annualized sales in terms of both kWh and dollars take into consideration the seasonality of electric sales.

Bottom line for the eight months ended May 31 is a positive \$1,098,821. The bottom line would be stronger except fuel costs were under recovered from October to May by about \$530,000. Fuel cost recovery rates were again on July 1 and this will help bring our revenues more in line with our costs.

Debt service coverage is projected to be 2.71 for the fiscal year. Actual debt service coverage should be better as the higher fuel cost recovery rates increase revenues over the next few months.

The City of Winter Park, Florida
Monthly Financial Report - Budget vs. Actual
General Fund
Fiscal YTD May 31, 2013 and 2012
67% of the Fiscal Year Lapsed

Fiscal YTD May 31, 2013							Fiscal YTD May 31, 2012			
Actual			Budget				Actual	Budget		
YTD	YTD %	Original Annual	Adjusted Annual *	Prorated Adj. Annual	Variance from Prorated Adj. Annual		YTD	Adjusted Annual	Prorated Adj. Annual	Variance from Prorated Adj. Annual
Revenues:										
Property Tax	\$ 13,417,723	142%	\$ 14,174,500	\$ 14,174,500	\$ 9,449,667	\$ 3,968,056	\$ 13,287,606	\$ 14,265,000	\$ 9,510,001	\$ 3,777,605
Franchise Fees	626,130	85%	1,103,800	1,103,800	735,867	(109,737)	619,599	1,132,500	755,000	(135,401)
Utility Taxes	3,885,941	86%	7,048,216	6,768,216	4,512,144	(626,203)	3,760,374	6,717,000	4,478,000	(717,626)
Occupational Licenses	470,238	149%	472,000	472,000	314,667	155,571	456,741	459,500	306,333	150,408
Building Permits	1,162,500	120%	1,340,500	1,450,500	967,000	195,500	1,343,678	1,249,050	832,700	510,978
Other Licenses & Permits	19,550	136%	21,500	21,500	14,333	5,217	18,075	21,000	14,000	4,075
Intergovernmental	3,257,131	80%	6,179,928	6,069,928	4,046,619	(789,488)	3,308,340	6,118,315	4,078,877	(770,537)
Charges for Services	3,518,985	105%	5,010,068	5,010,068	3,340,045	178,940	3,289,323	4,939,600	3,293,067	(3,744)
Fines and Forfeitures	904,995	97%	1,287,600	1,397,600	931,733	(26,738)	570,755	1,030,200	686,800	(116,045)
Miscellaneous	135,826	30%	683,381	683,381	455,587	(319,761)	363,153	556,457	370,971	(7,818)
Fund Balance	-	-	-	616,788	411,192	(411,192)	-	642,911	428,607	(428,607)
Total Revenues	27,399,019	109%	37,321,493	37,768,281	25,178,854	2,220,165	27,017,644	37,131,533	24,754,356	2,263,288
Expenditures:										
City Commission	14,244	89%	24,077	24,077	16,051	1,807	19,983	22,376	14,917	(5,066)
Legal Services - City Attorney	176,953	110%	240,236	240,236	160,157	(16,796)	148,196	240,236	160,157	11,961
Legal Services - Other	1,040	3%	60,000	60,000	40,000	38,960	80,574	110,000	73,333	(7,241)
Lobbyists	65,043	83%	118,000	118,000	78,667	13,624	77,665	116,000	77,333	(332)
City Management	330,241	99%	501,161	501,383	334,255	4,014	303,729	487,729	325,153	21,424
Budget and Performance Measurement	39,170	0%	-	-	-	(39,170)	-	-	-	-
City Clerk	126,470	93%	237,843	203,145	135,430	8,960	121,727	214,071	142,714	20,987
Communications Dept.	283,492	92%	461,681	463,895	309,263	25,771	253,329	443,574	295,716	42,387
Information Technology Services	761,477	92%	1,212,642	1,241,789	827,859	66,382	834,093	1,343,592	895,728	61,635
Finance	551,851	100%	830,673	831,058	554,039	2,188	520,683	808,588	539,059	18,376
Human Resources	157,500	94%	249,430	250,789	167,193	9,693	167,912	285,245	190,163	22,251
Purchasing	152,388	102%	211,301	225,011	150,007	(2,381)	83,731	206,965	137,977	54,246
Planning & Community Development	306,484	78%	575,441	592,782	395,188	88,704	357,871	643,641	429,094	71,223
Building	636,080	95%	1,375,881	1,002,095	668,063	31,983	804,092	1,292,765	861,843	57,751
Economic Development	36,328	26%	100,000	211,398	140,932	104,604	16,000	163,402	108,935	92,935
Public Works	4,455,723	96%	6,804,278	6,942,130	4,628,087	172,364	4,443,215	6,931,798	4,621,199	177,984
Police	7,958,045	94%	12,739,143	12,717,307	8,478,205	520,160	7,193,129	11,901,252	7,934,168	741,039
Fire	6,905,297	102%	9,858,414	10,118,777	6,745,851	(159,446)	5,919,462	9,351,829	6,234,553	315,091
Parks & Recreation	4,424,743	96%	6,576,086	6,879,703	4,586,469	161,726	3,985,875	6,586,218	4,390,812	404,937
Organizational Support	1,152,420	113%	1,536,560	1,536,560	1,024,373	(128,047)	1,053,474	1,550,212	1,033,475	(19,999)
Non-Departmental	-	-	224,000	150,000	100,000	100,000	-	197,000	131,333	131,333
Total Expenditures	28,534,989	97%	43,936,847	44,310,135	29,540,089	1,005,100	26,384,740	42,896,493	28,597,662	2,212,922
Revenues Over/(Under)										
Expenditures	(1,135,970)	26%	(6,615,354)	(6,541,854)	(4,361,235)	3,225,265	632,904	(5,764,960)	(3,843,306)	4,476,210
Operating transfers in	5,533,963	98%	8,655,392	8,475,392	5,650,261	(116,298)	5,234,458	8,432,000	5,621,333	(386,875)
Operating transfers out	(1,253,525)	97%	(2,040,038)	(1,933,538)	(1,289,025)	35,500	(1,644,360)	(2,466,540)	(1,644,360)	-
Other Financing Sources/(Uses)	4,280,438	98%	6,615,354	6,541,854	4,361,236	(80,798)	3,590,098	5,965,460	3,976,973	(386,875)
Total Revenues Over										
Expenditures	\$ 3,144,468		\$ -	\$ -	\$ 1	\$ 3,144,467	\$ 4,223,002	\$ 200,500	\$ 133,667	\$ 4,089,335

* As adjusted through May 31, 2013

The City of Winter Park, Florida
Monthly Financial Report - Budget vs. Actual
Community Redevelopment Fund
Fiscal YTD May 31, 2013 and 2012
67% of the Fiscal Year Lapsed

	Fiscal YTD May 31, 2013						Fiscal YTD May 31, 2012			
	Actual		Budget				Actual	Budget		
	YTD	YTD %	Original Annual	Adjusted Annual *	Prorated Adj. Annual	Variance from Prorated Adj. Annual	YTD	Adjusted Annual	Prorated Adj. Annual	Variance from Prorated Adj. Annual
Revenues:										
Property Tax	\$ 2,003,379	148%	\$ 2,024,000	\$ 2,024,000	\$ 1,349,333	\$ 654,046	\$ 2,090,103	2,107,423	\$ 1,404,949	\$ 685,154
Intergovernmental	-	0%	-	-	-	-	-	-	-	-
Charges for services	205,357	0%	175,940	175,940	117,293	88,064	139,393	162,000	108,000	31,393
Miscellaneous	(24,672)	-146%	25,300	25,300	16,867	(41,539)	66,631	25,000	16,667	49,964
Fund Balance	-	0%	37,478	55,845	37,230	(37,230)	-	1,039,263	692,842	(692,842)
Total Revenues	2,184,064	144%	2,262,718	2,281,085	1,520,723	663,341	2,296,127	3,333,686	2,222,458	73,669
Expenditures:										
Planning and Development	600,560	123%	715,435	733,802	489,201	(111,359)	363,241	605,283	403,522	40,281
Capital Projects	-	0%	-	-	-	-	543,156	1,145,980	763,987	220,831
Debt service	7,030,607	682%	1,547,283	1,547,283	1,031,522	(5,999,085)	1,223,913	1,550,823	1,033,882	(190,031)
Total Expenditures	7,631,167	502%	2,262,718	2,281,085	1,520,723	(6,110,444)	2,130,310	3,302,086	2,201,391	71,081
Revenues Over/(Under) Expenditures	(5,447,103)	100%	-	-	-	(5,447,103)	165,817	31,600	21,067	144,750
Debt proceeds	5,870,000	-	-	-	-	5,870,000	-	-	-	-
Operating transfers out	-	0%	-	-	-	-	(21,067)	(31,600)	(21,067)	-
Other Financing Sources/(Uses)	5,870,000	0%	-	-	-	5,870,000	(21,067)	(31,600)	(21,067)	-
Total Revenues Over/(Under) Expenditures	\$ 422,897		\$ -	\$ -	\$ -	\$ 422,897	\$ 144,750	-	\$ -	\$ 144,750

* As adjusted through May 31, 2013

WINTER PARK WATER AND WASTEWATER METRICS
May 31, 2013

	FY 2013				FY 2012	
	FY 2013 YTD	FY 2013 Annualized	FY 2013 Budget	Projected Variance from Budget	FY 2012 YTD	FY 2012 in Total
<u>Operating Performance:</u>						
Sales (in thousands of gallons)						
Inside City	1,368,768	2,082,873	1,972,529	110,344	1,403,662	2,186,360
Outside City	928,123	1,412,338	1,424,105	(11,767)	999,350	1,472,560
Total	2,296,890	3,495,211	3,396,634	98,577	2,403,012	3,658,920
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Operating revenues: ¹						
Sewer - inside city limits	\$ 4,335,423	\$ 6,406,476	\$ 6,008,000	\$ 398,476	4,439,789	6,628,333
Sewer - outside city limits	4,749,346	7,165,363	6,595,000	570,363	4,863,206	7,337,342
Water - inside city limits	4,618,265	7,175,680	8,047,000	(871,320)	4,667,288	7,264,552
Water - outside city limits	3,511,073	5,174,683	5,558,000	(383,317)	3,233,827	4,890,304
Other operating revenues	931,793	1,397,690	1,197,000	200,690	945,038	1,396,248
Total operating revenues	18,145,900	27,319,892	27,405,000	(85,108)	18,149,148	27,516,779
Operating expenses:						
General and administration	1,024,925	1,537,388	1,681,263	143,876	923,028	1,716,877
Operations	7,141,016	10,711,524	12,221,999	1,510,475	7,255,175	11,322,930
Facility agreements	2,106,943	3,160,415	3,412,000	251,586	1,858,104	3,480,709
Total operating expenses	10,272,884	15,409,326	17,315,262	1,905,936	10,036,307	16,520,516
Operating income (loss)	7,873,016	11,910,566	10,089,738	1,820,828	8,112,841	10,996,263
Other sources (uses):						
Investment earnings	(120,414)	(180,621)	166,850	(347,471)	201,419	184,401
Miscellaneous revenue	6,432	9,648	-	9,648	7,153	7,253
Transfer to Renewal and Replacement Fund	(1,335,014)	(2,002,521)	(2,002,830)	309	(1,230,517)	(1,846,020)
Transfer to General Fund	(1,276,067)	(1,914,102)	(1,914,100)	(2)	(1,233,067)	(1,849,600)
Transfer to Capital Projects Fund	(47,333)	(70,998.50)	(71,000)	2	(44,331)	(66,496)
Debt service sinking fund deposits	(3,948,632)	(5,923,086)	(5,867,532)	(55,554)	(3,870,626)	(5,844,526)
Total other sources (uses)	(6,721,028)	(10,081,680)	(9,688,612)	(393,068)	(6,169,969)	(9,414,988)
Net increase (decrease) in funds	\$ <u>1,151,988</u>	\$ <u>1,828,886</u>	\$ <u>401,126</u>	\$ <u>1,427,760</u>	<u>1,942,872</u>	<u>1,581,275</u>
Debt service coverage	1.96	1.98				1.91

¹The City implemented adjustments to water (increasing) and wastewater (decreasing) effective December 1, 2012

Sewer Impact Fees

	Beginning Balance	Additions	Deductions	Ending Balance
Beginning balance - 10/01/2012	3,281,868			3,281,868
Sewer impact fee revenues		365,927		365,927
Investment earnings		(27,151)		(27,151)
Sewer extension work at Ravadauge			(108,614)	(108,614)
Other sewer main extension work			(67,914)	(67,914)
Ending balance - 05/31/2013	3,281,868	338,776	(176,528)	3,444,116

Water Impact Fees

	Beginning Balance	Additions	Deductions	Ending Balance
Beginning balance - 10/01/2012	2,656,637			2,656,637
Water impact fee revenues		178,396		178,396
Investment earnings		(20,728)		(20,728)
Water extension work at Ravadauge			(185,713)	(185,713)
Ending balance - 05/31/2013	2,656,637	157,668	(185,713)	2,628,592

Renewal and Replacement Fund

	Beginning Balance	Additions	Deductions	Ending Balance
Beginning balance - 10/01/2012	591,342			591,342
R&R transfer		1,335,014		1,335,014
Investment earnings		(4,498)		(4,498)
Upgrade water mains			(659,883)	(659,883)
Upgrade sewer mains			(315,289)	(315,289)
Rehab sewer manholes			(14,277)	(14,277)
Short line sewer rehab projects			(117,885)	(117,885)
Sewer main extensions			(4,869)	(4,869)
Lift station upgrades and repairs			(68,788)	(68,788)
Utility patch crew work			(183,369)	(183,369)
Ending balance - 05/31/2013	591,342	1,330,516	(1,364,360)	557,498

WINTER PARK ELECTRIC UTILITY METRICS

May 31, 2013

Variance

from

Budget

WINTER PARK ELECTRIC UTILITY METRICS

May 31, 2013

Variance

from

Budget

FY'13
YTD

FY'13
Annualized

FY'13
Budget

FY'12
YTD

FY'12

FY'11

FY'10

FY'09

FY'08

Technical Performance

Cash Balance (borrowed from pooled cash)

685,696

2,838,999

(2,589,592)

(8,096,129)

(10,106,320)

(11,118,569)

Notes

Fiscal Years run from October to September; FY'13 is 10/1/12 to 9/30/13

SAIDI is System Average Interruption Duration Index (12-month rolling sum)

MAIFI is Momentary Average Interruption Frequency Index (12-month rolling sum)

REGULAR MEETING OF THE CITY COMMISSION

July 8, 2013

The meeting of the Winter Park City Commission was called to order by Mayor Kenneth Bradley at 3:33 p.m. in the Commission Chambers, 401 Park Avenue South, Winter Park, Florida. The invocation was provided by Building Director George Wiggins, followed by the Pledge of Allegiance.

Members present:

Mayor Kenneth Bradley
Commissioner Steven Leary
Commissioner Sarah Sprinkel
Commissioner Carolyn Cooper
Commissioner Tom McMacken

Also present:

City Manager Randy Knight
City Attorney Bill Reischmann
Deputy City Clerk Michelle Bernstein
City Clerk Cynthia Bonham

Approval of the agenda

City Manager Randy Knight advised that Public Hearing item 'e' has been postponed to another meeting per the applicant.

Motion made by Commissioner McMacken to approve the agenda as presented with this one change; seconded by Commissioner Cooper and approved by acclamation with a 5-0 vote.

Mayor's Report

a. Recognition of Robert Ross – Art in Chambers

Mayor Bradley introduced local artist Robert Ross and thanked him for displaying his art work in the Commission Chambers for public viewing.

b. Recognition of Diane Culpepper (Bright House Networks) as she retires

Mayor Bradley recognized the retirement of Diane Culpepper, Vice President of Public Relations at Bright House Networks. He presented Ms. Culpepper with a plaque as a token of appreciation for her commitment to our community.

Mayor Bradley thanked City Manager Knight and staff for the great July 4th event.

City Manager's Report:

a. Capen House update

City Manager Knight said he understands that there is a group who is working diligently on the overall plans to relocate the house and that a proposal was submitted today to the owners of the home for review and evaluation. To date, the owners have not pulled their demolition permit. City Manager Knight noted that the

City is eager and willing to help in any way that we can to expedite the process and that he will keep them informed.

- b. Schedule a work session to discuss public/private partnership on the Rachel D. Murrah Civic Center parking site

City Manager Knight announced that there is a proposal being worked on to acquire and redevelop the Mt. Vernon Inn site and part of the proposal includes the request to construct a joint use parking garage on the City's Rachel D. Murrah Civic Center property. Prior to the issuance of a city wide notice, City Manager Knight felt that the Commission should be given an opportunity to hear the proposal and decide if they agree or disagree on the concept that City land could be used for the project.

Discussion ensued regarding calendar availability. The City Clerk was directed to coordinate and schedule a mutual date/time for a one hour work session and if one or more cannot attend, individual briefings may need to be scheduled. The request was acknowledged.

City Attorney's Report

Commissioner Cooper addressed the lack of a procedure relative to applicant master planning approval and the need to clarify the procedures. She stated that over the next month she would like to **understand the extent of the City's** commitment relative to **an applicant's** master plan; how we process them; what our procedures are, and if there are none, what they should be; and the extent of our legal obligation. Attorney Reischmann acknowledged the request.

Non-Action Item

- a. Budget presentation

City Manager Knight provided a PowerPoint presentation on the 2014 budget. The presentation included management reports, revenues, budget summary, program budgets, legislative and general administration, internal service funds, capital improvement plan and cash reserves. City Manager Knight answered questions and noted that if the Commission requires additional information after the August 15 work session he would be happy to brief them individually upon request.

Mayor Bradley suggested that they use the same format as last year where City Manager Knight provided the Commissioners with a budget item list so that each of them could provide their input on items they believe are priorities. The line items that receive consensus are then brought forward to the budget hearing and voted on. The Commissioners were directed to submit their list to the City Manager no later than August 19 so they can be included in the agenda packet. City Manager Knight acknowledged and said the list will be sent out shortly. By acclamation, the procedure above was agreed upon.

City Manager Knight requested the Commission to direct all budget related questions to him via email and he will distribute the response to all members of the Commission.

Commissioner Cooper requested the following information be provided: the analysis of the pension contributions, the 10 year pro forma, the annual change in the parks acquisition fund and the tree preservation fund, park land per resident count, breakdown of capital improvements to the Mead Gardens line item, policy decision on the **City's financial contributions to** Ravaudage and the extent of participation, who is going to be responsible for the maintenance of the right-of-way of canopy trees (residents or City) and the potential funding commitment for electric undergrounding.

Mayor Bradley requested that the following changes be made to the FY 2014 budget schedule: Receive public input and Commission discussion on August 12 and August 26; add the due date of August 19 for the Commission to submit their budget suggestions/adjustments; and add the budget work session scheduled for August 15. City Manager Knight acknowledged the request.

Public comments (5:00 p.m.)

Nancy Shutts, 2010 Brandywine Drive, requested that during **this year's budget** discussion they include a process to increase the compensation for the Mayor and Commissioners salaries.

Patrick Chapin, Winter Park Chamber of Commerce, mentioned that the Chamber is **hosting "Good Morning Winter Park" on Friday at 8:00 a.m.** The Alford Inn representatives will be presenting an update on their project and encouraged everyone to attend.

Consent Agenda

- a. Approve the minutes of 6/24/13. – **PULLED FOR DISCUSSION, SEE BELOW**
- b. Approve the following purchases and contract:
 1. PR 152580 to Heart Utilities of Jacksonville for undergrounding of electric; \$70,887.17.
 2. Purchase of a new shuttle bus for the Community Center from Duval Ford; \$59,994.00. – **PULLED FOR DISCUSSION, SEE BELOW**
 3. Purchase for replacement storage area network for end of life equipment from CDW-G; \$147,484.00.
 4. Contract for Trane U.S., Inc. to update Trane Tracer air conditioner control system; \$11,597.89.
- c. Approve the administrative costs of \$250 to cover the costs associated with the implementation of a red light camera hearing program. – **PULLED FOR DISCUSSION, SEE BELOW**

Motion made by Commissioner McMacken to approve Consent Agenda items 'b.1' and 'b.3-4'; seconded by Commissioner Sprinkel and approved unanimously with a 5-0 vote.

Consent Agenda Item 'a' – Approve the minutes of 6/24/13:

Commissioner Cooper referenced page 17, third sentence and requested to add "controlling commercial use of our lakes." **Motion made by Commissioner Cooper to approve Consent Agenda item 'a' as amended above; seconded by Commissioner Sprinkel and approved unanimously with a 5-0 vote.**

Consent Agenda Item 'b.2' - Purchase of a new shuttle bus for the Community Center from Duval Ford; \$59,994.00.

In response to an inquiry, City Manager Knight and Assistant Parks and Recreation Director Ronnie Moore explained that the Community Center uses the bus to transport seniors and youth to the various off site programs. Also, local non-profit organizations lease the bus for their events and it is also used for the Lake Killarney Elementary School bus program.

Motion made by Commissioner Leary to approve Consent Agenda item 'b.2'; seconded by Commissioner Cooper and approved unanimously with a 5-0 vote.

Consent Agenda Item 'c' - Approve the administrative costs of \$250 to cover the costs associated with the implementation of a red light camera hearing program.

In response to an inquiry, Police Chief Brett Railey explained that due to recent legislation, individual municipalities are now required to set up their own court hearing program. He provided detailed information regarding the total court cost associated with the current appeal process and the difference in fees if the City were to handle the appeal process. Chief Railey answered questions related to the approximate number of people who contest red light citations and the benefits of traffic safety programs, including red light cameras.

Motion made by Commissioner Leary that the cost would be \$137.00 and that it be reviewed in 6 months of activity with data to make sure our costs are fully covered; seconded by Commissioner McMacken. Chief Railey asked for clarity regarding the data to be provided. Mayor Bradley suggested that it include financial data, personnel costs, and hard and soft costs. **The motion was approved unanimously with a 5-0 vote.**

Action Items Requiring Discussion

a. Historical Preservation Review Process

Mayor Bradley provided a brief overview regarding his recommendations that were submitted to the City Clerk's office for inclusion in this agenda packet.

Motion made by Mayor Bradley to move the process that is in our packet for discussion (attached); seconded by Commissioner Leary.

Senior Planner Lindsey Hayes answered questions relative to the current process for outbound communications with property owners to encourage historic designation.

Commissioner McMacken explained that he will not be voting in favor of this because this should be a bottom up process and not a top down process. He would prefer to have the recommendations come from a board rather than the Commission as they previously discussed.

Motion amended by Commissioner Cooper to delete everything except item 'e'. Motion failed for lack of a second. Commissioner Cooper felt that we should not be benchmarking the cities nor provide a firm timeline in a short period of time; and now that this information has been brought to her attention she does not feel comfortable supporting this.

No public comments were made.

Upon a roll call vote, Mayor Bradley and Commissioners Leary and Sprinkel, voted yes. Commissioners Cooper and McMacken voted no. The motion carried with a 3-2 vote.

Public Hearings:

- a. AN ORDINANCE OF THE CITY OF WINTER PARK, FLORIDA AMENDING WITHIN THE CHARTER LAWS OF THE CITY OF WINTER PARK, SECTION 1.02, "CORPORATE LIMITS DESCRIBED" SO AS TO ANNEX THE RIGHT-OF-WAY OF ALOMA AVENUE FROM 2015 ALOMA AVENUE EAST TO THE CITY LIMITS AND THE RIGHT-OF-WAY OF BALFOUR DRIVE FROM AMSDEN ROAD SOUTH TO THE CITY LIMITS, MORE PARTICULARLY DESCRIBED HEREIN. First Reading

Attorney Reischmann read the ordinance by title.

Planning Director Jeff Briggs explained that this ordinance would annex that portion of the Aloma Avenue right-of-way from 2015 Aloma Avenue (Mellow Mushroom) out east to the city limits (at the CVS Pharmacy). He explained that years ago the City annexed down from the north and up from the south and never included the Aloma right-of-way. This will eliminate the confusion in this section of Aloma Avenue and also for a tiny section of Balfour Drive where the same condition exists for the

Police and Fire Departments because when they get called to accidents in this section of Aloma they have to get the Orange County Sheriff's Office or the Highway Patrol to take over since it is not in the City limits.

Motion made by Commissioner Leary to accept the ordinance on first reading; seconded by Commissioner Sprinkel. No public comments were made. **Upon a roll call vote, Mayor Bradley and Commissioners Leary, Sprinkel, Cooper and McMacken voted yes. The motion carried with a 5-0 vote.**

- b. AN ORDINANCE OF THE CITY OF WINTER PARK, FLORIDA, AUTHORIZING THE CONVEYANCE OF THE CITY OWNED PROPERTY LOCATED AT 645 SYMONDS AVENUE, WINTER PARK, FLORIDA, IN EXCHANGE FOR THE PROPERTY LOCATED AT 813 W. NEW ENGLAND AVENUE, SUBJECT TO MINIMUM REQUIREMENTS AS SET FORTH HEREIN; PROVIDING FOR CONFLICTS AND AN EFFECTIVE DATE. First Reading

Attorney Reischmann read the ordinance by title.

Planning Director Jeff Briggs explained that on May 13, 2013 the Commission approved the request of CRDI LLC (Dan Bellows) to exchange or swap the City owned lot at 645 Symonds Avenue for his lot at 813 W. New England Avenue. An ordinance is required for the City to sell (or swap) City owned land. Under the terms approved by the Commission, the applicant pays all of the closing costs.

Motion made by Commissioner Sprinkel to accept the ordinance on first reading; seconded by Commissioner Cooper. No public comments were made. **Upon a roll call vote, Mayor Bradley and Commissioners Leary, Sprinkel, Cooper and McMacken voted yes. The motion carried with a 5-0 vote.**

- c. ORDINANCE NO. 2929-13: AN ORDINANCE OF THE CITY OF WINTER PARK, FLORIDA, AMENDING SECTION 1-7, GENERAL PENALTY; CONTINUING VIOLATIONS, OF CHAPTER 1, GENERAL PROVISIONS, ARTICLE I, IN GENERAL, TO AMEND THE PENALTY FOR VIOLATING MUNICIPAL ORDINANCES TO COMPLY WITH STATE LAW; PROVIDING FOR SEVERABILITY, CODIFICATION, CONFLICTS AND AN EFFECTIVE DATE. Second Reading

Attorney Reischmann read the ordinance by title.

Motion made by Commissioner Leary to adopt the ordinance; seconded by Commissioner Sprinkel. No public comments were made. **Upon a roll call vote, Mayor Bradley and Commissioners Leary, Sprinkel, Cooper and McMacken voted yes. The motion carried with a 5-0 vote.**

- d. ORDINANCE NO. 2930-13: AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF WINTER PARK, FLORIDA, RENAMING THAT PORTION OF LOCH LOMOND DRIVE BETWEEN GLENWOOD DRIVE AND MIZELL AVENUE AS NORTH EDINBURGH DRIVE AND RENAMING THAT SECTION OF EDINBURGH DRIVE BETWEEN MIZELL AVENUE AND DUNDEE DRIVE AS

SOUTH EDINBURGH DRIVE; PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE
Second Reading

Attorney Reischmann read the ordinance by title.

Motion made by Commissioner Cooper to adopt the ordinance; seconded by Commissioner Sprinkel. No public comments were made. **Upon a roll call vote, Mayor Bradley and Commissioners Leary, Sprinkel, Cooper and McMacken voted yes. The motion carried with a 5-0 vote.**

- e. Request of the Winter Park Hospital: Final approval of the plans for the parking garage as approved in the Winter Park Hospital master plan.

This item has been postponed to another meeting per the applicant.

City Commission Reports:

- a. Commissioner Leary – No items.
- b. Commissioner Sprinkel

Commissioner Sprinkel will be hosting the coffee talk this Thursday at 8:00 a.m. in the Winter Park Welcome Center and encouraged everyone to attend.

Upon request, Traffic Engineer Butch Margraf and Water/Wastewater Director Dave Zusi provided a briefing regarding the traffic rerouting due to Lakemont Avenue being closed for the sewer rehab project.

- c. Commissioner Cooper

Commissioner Cooper asked for support to instruct staff to take a look at what other cities have in their codes relative to parking garages. She believes that other cities have a lot more information than we do and felt it would be advantageous to seek this information for possible further action. There was a consensus for staff to work on this and provide a follow up report on their findings.

Commissioner Cooper welcomed Marlow's Tavern to the City.

Commissioner Cooper mentioned that the Florida League of Cities had a great presentation on crime prevention through land use codes and land planning and that she passed the information on to City staff.

- d. Commissioner McMacken

Commissioner McMacken thanked everyone involved for putting on a great 4th of July celebration.

e. Mayor Bradley

Mayor Bradley advised that the Winter Park Public Library issued a new change in their check out policy.

Upon request, Planning Director Jeff Briggs advised that the consultant will be submitting a draft report on the comprehensive plan review within next month.

Mayor Bradley mentioned that other local cities are involved in a program called "Lynx on Demand". He is interested in the process and asked for support to ask City Manager Knight to understand the current process; if Winter Park needs to be involved; and/or bring a report back to the Commission if this is something that we could/should be involved in, as well as different alternatives if we think there is a need or demand. There was a consensus to have the City Manager move forward with this task. City Manager Knight acknowledged.

The meeting adjourned at 5:41 p.m.

Mayor Kenneth W. Bradley

ATTEST:

City Clerk Cynthia S. Bonham

HISTORICAL PRESERVATION REVIEW PROCESS:

City of Winter Park, Florida

Proposed and Presented at the Winter Park City Commission July 8, 2013

GOALS:

Determine current inventory of historic properties, review City historic preservation ordinances and recommend goals or changes to achieve preservation.

PROCESS:

A. Inventory all current City wide historic assets through a new or updated historic survey (e.g. homes, buildings, properties etc.).

1. Utilize outside consultation if necessary.
2. Determination of historic assets by accepted Florida and National standards.
3. Inventory current City, State or National registry designations and determine current % of eligible properties preserved either by public or private auspices.

B. City staff will summarize the differences / benefits / distinctions between any current City ordinances / designations or National designations including preservation, demolition etc.. Also, summarize the differences between "district" versus "specific property" designations. City staff to present this summary to the Historic Preservation Board first then the City Commission by August 15, 2013.

C. Review current Winter Park historic preservation ordinances, policies and incentives:

1. **Benchmark** to key municipalities including:
 - Orlando, Florida
 - Maitland, Florida
 - Longwood, Florida
 - Orange County, Florida
 - Sarasota, Florida
 - Coral Gables, Florida
 - St. Augustine, Florida
 - Savannah, Georgia
 - Charleston, South Carolina
2. Benchmark targeted designations to actual preservation both by public and private preservation efforts in key municipalities.

3. **Determine from Winter Park property owners** the number of voluntary City / National designations along with their reasons for designating or not designating under either criteria since the enactment of current Winter Park ordinances (circa 2001). Determine property owner's awareness of current ordinances and benefits.

4. **Study the business model** and success of private preservation in Winter Park e.g. Friends of Casa Feliz etc.

D. The Historic Preservation Board, after seeking appropriate public input, will recommend to the City Commission the City wide goal for % of properties eligible for historic designation designated with time frames. Recommend goals for both public and private preservation.

E. The Historic Preservation Board, after seeking appropriate public input, will recommend to the City Commission any necessary changes to existing ordinances, policies or incentives to accomplish the City wide goal of historic designation and preservation.

Any recommendations to ordinances, policies or incentives will be referred to the City's Planning and Zoning Board (ordinances) and Economic Development Advisory Board (incentives) for their review and input of any impacts before the City Commission reviews the final recommendations.

F. This review process should be substantially complete by October 15, 2013.



city commission agenda item

item type	Consent Agenda	meeting date	July 22, 2013
prepared by	Purchasing Division	approved by	<input checked="" type="checkbox"/> City Manager <input type="checkbox"/> City Attorney <input type="checkbox"/> N/A
department			
division			
board approval	<input type="checkbox"/> yes <input type="checkbox"/> no <input checked="" type="checkbox"/> N/A		final vote

Purchases over \$50,000

	vendor	item background	fiscal impact	motion recommendation
1.	Wheeled Coach	Piggybacking the Florida Sheriff's Association contract 11-10-1202 for Fire Rescue Vehicles & Other Fleet Equipment	Total expenditure included in approved FY13 vehicle replacement fund. Amount not to exceed \$204,000.00	Commission approve Blanket Purchase Order to Wheeled Coach for the purchase.
The Florida Sheriff's Association utilized a formal solicitation process to award this contract. The contract term expires December 31, 2013.				
2.	Wheeled Coach	Piggybacking the Florida Sheriff's Association contract 11-10-1202 for Fire Rescue Vehicles & Other Fleet Equipment	Total expenditure included in vehicle replacement fund FY14 Amount not to exceed \$190,000.00	Commission approve advanced purchase order contingent on adoption of budget to take advantage of preparing both vehicles at same time.
The Florida Sheriff's Association utilized a formal solicitation process to award this contract. The contract term expires December 31, 2013.				
3.	The Davey Tree Expert Co.	Blanket Purchase Order for Professional Services Utility Vegetation Management	Total expenditure included in approved FY13 budget. Amount: \$250,000.00	Commission approve Blanket Purchase Order to The Davey Tree Expert Co. for FY13 Professional Services
This purchase will be made utilizing ITN-6-2013. The City commission approved award of ITN-6-2013 on May 13, 2013. This Blanket Purchase Order will expire September 30, 2013.				
4.	Duke Energy	Blanket Purchase Order for Bulk Power Supply	Total expenditure included in approved FY13 budget. Amount: \$9,000,000.00	Commission approve Blanket Purchase Order to Duke Energy.
This purchase will be made utilizing ITN-33-2010. The City commission approved award of ITN-33-2010 on October 10, 2011. This Blanket Purchase Order will expire September 30, 2013.				

Contracts

	vendor	item background	fiscal impact	motion recommendation
5.	Trane U.S. Inc.	Add addition equipment to the Extended Warranty Program.	Total expenditure included in approved FY13 budget. Amount: \$24,088.00	Commission authorize Mayor to execute new agreement.
Please note that Code Section 2-188 (c) (2) requires Commission approval of a contract that requires the City to hold harmless a private party. Trane is currently insisting upon the City indemnifying it in paragraph 8 of Trane's terms and conditions. Otherwise, because of the amount of the contract, section 2-188 would allow the Mayor of City Manager to sign it.				
6.	Masci General Contractor, Inc.	Change Order No. 2 for Fairbanks Ave. Roadway & Wastewater System Improvements Project	Total expenditure included in approved FY13 budget contingency. Amount: \$154,028.14 and an extension of contract time of 35 days	Commission approval of Change Order No. 2 to the Fairbanks Ave. Roadway and Wastewater System Improvements construction contract.
Change order will be funded within existing project contingency.				
7.	CH2M HILL	Task Order 2011-01 Amendment 1 Fairbanks Ave. Roadway & Wastewater System Improvements services during construction	Total expenditure included in approved FY13 budget. Amount: \$263,491	Commission approval of Task Order 2011-01 Amendment 1



city commission agenda item

item type	Action Requiring Discussion	meeting date	July 22, 2013
prepared by	Peter Moore	approved by	<input checked="" type="checkbox"/> City Manager
department	Finance		<input type="checkbox"/> City Attorney
division	n/a		<input type="checkbox"/> N/A
board approval	<input type="checkbox"/> yes <input type="checkbox"/> no <input checked="" type="checkbox"/> N/A		final vote

subject – budget discussion & set tentative millage rate

The Commission must adopt and submit the tentative millage rate to the Property Appraiser by August 2, 2013. **This is the rate the Property Appraiser will use in preparing the "Notice of Proposed Property Taxes" to all property owners in August 2013.** Once the tentative millage rate is set, it may not be exceeded unless an extensive notification to property owners is undertaken. The final millage can be lower than the tentative millage without additional notification requirements.

motion | recommendation

Adopt a tentative operating millage rate of 4.0923 mills. Voted debt service millages of .1004 and .2092 mills are required to service debt on the General Obligation Bonds, Series 2004 (Golf Course bonds) and Series 2011 (Public Safety Complex bonds), respectively.

background

The proposed budget presented to the Commission on July 8 was based on keeping the current operating millage at 4.0923 mills.

alternatives | other considerations

If the Commission chooses, it can increase property tax revenue as follows:

Action	Vote	Rate	Revenue
Rolled-back millage rate	Simple majority	3.9393	\$14.1M
Current millage rate	Simple majority	4.0923	\$14.7M
Adjusted rolled back rate - Maximum millage rate allowed with simple majority	Simple majority	5.4941	\$20.0M
Up to 10% above adjusted rolled-back rate	Super majority (four votes)	6.0435	\$22.1M
More than 10% above the adjusted rolled-back rate and up to 10 mills	Unanimous vote	6.0436 – 10.0	\$3.6M for each mill added

fiscal impact

An increase in the millage rate of one tenth of one mill increases property tax revenue by about \$357,000.

strategic objective

The current millage rate of 4.0923 mills will allow the City to have a budget that meets the goals presented in the proposed budget.



city commission agenda item

item type	Action Items Requiring Discussion	meeting date	July 8, 2013
prepared by department division	Jerry Warren, Director Electric Department	approved by	<input checked="" type="checkbox"/> City Manager <input checked="" type="checkbox"/> City Attorney <input type="checkbox"/> N/A
board approval	<input checked="" type="checkbox"/> yes <input type="checkbox"/> no <input type="checkbox"/> N/A 6-0 final vote		

subject

Winter Park Electric Power Supply

motion | recommendation

Authorize the Mayor to execute a Power Purchase Agreement with Clean FootPrint, LLC.

background

At its June 24 meeting, the City Commission approved a go forward power supply portfolio which consists of two must take power supply resources: 10 MW from Covanta Energy and 10 MW from the City of Gainesville Regional Utilities (GRU). Additionally the approved power supply portfolio included approximately 22 MW of contract capacity from Florida Power & Light company (FPL) during 2014, and approximately 18.5 MW of all requirements power supply from the Orlando Utilities Commission (OUC), **which will be delivered via a future distribution interconnection with the City of Winter Park's primary distribution.** The recommended power supply portfolio included the installation of a 2.25 MW of solar photovoltaic **to be installed in a canopy configuration at the City's Central Public Works compound located north of Howell Branch Rd.** Under the solar Power Purchase agreement, the City will be obligated to purchase the output of the facility at a fixed price of 6.5¢/kWh for 25 years.

At the 24th meeting a number of commissioners expressed reservations about the solar component due to its long term nature which, **although is beneficial for the City's electric customers,** may create constraints for the future use of the central facility/land that may be unacceptable to the City. Staff has discussed/negotiated with Clean Footprint and offers the following as proposed solutions to those concerns.

- 1) The 2.4 MW facility was reduced to 2.25 MW and reconfigured to shift the facility further north, **away from the more marketable segments of the City's 30 acre site** (i.e. the higher elevation segments of the property bordering the businesses on Howell Branch Rd.
- 2) Clean Footprint has offered the City the option to purchase the facility at any point following the **6th year of operation with 180 days' notice at a price equal to the greater of fair market value or the termination amount contained in Exhibit A, Schedule 4 of the Agreement.**
- 3) Clean Footprint has offered a restructured agreement that has an initial 10 year term with 5 year renewable terms. The City can give 180 day notice prior to the expiration of any term to discontinue the contract and have the facility removed. Under this option, the City is obligated to reimburse the Provider its reasonable costs to remove, not to exceed \$1/watt.

- 4) Additionally, at the end of any of the terms, the contract would allow the City to relocate portions of the canopy solar project at its own expense to accommodate any future needs that the city may have for site development and/or reconfiguration of the Public Works compound.

Taken together, staff believes that these accommodations appropriately address the concerns raised by the City Commission at its June 24 meeting.

Fiscal impact

If the project is substantially completed by year end, Clean Footprint will be able to take advantage of accelerated depreciation and offer solar energy at a fixed price of 6.5¢/kWh for 25 years. A delay in the approval of the Clean Footprint contract would result in the price of the power being increased to 7.5¢/kWh (15%). The 2.25 MW solar project offered by Clean Footprint provides the city with a cost effective and small scale solar PV project that can be incorporated into the balance of the City's power supply portfolio without adversely affecting retail rates.

Legal review

At the time this agenda item was finalized for inclusion in the Agenda packet, legal review as to form and legality had not been completed. Changes to the major terms and conditions are not expected. Any changes required by the City Attorney will be provided to the City Commission prior to the City Commission meeting.

Attachments: Central Site Plan Showing Recommended Solar Canopy Project
POWER PURCHASE AGREEMENT – CLEAN FOOTPRINT, LLC

Public Works Compound - 2.25 MW



POWER PURCHASE AGREEMENT

THIS POWER PURCHASE AGREEMENT ("Agreement") is made and entered into as of this ____ day of _____ 201__ (the "Effective Date"), between Clean Footprint, LLC ("Provider"), and CITY OF WINTER PARK ("City"), a municipal corporation organized and existing under the laws of the State of Florida ("Purchaser"; and, together with Provider, each, a "Party" and together, the "Parties").

WITNESSETH:

WHEREAS, Purchaser desires to procure electric capacity and energy from renewable energy sources;

WHEREAS, Provider intends to construct, own, and operate 1 (number) distributed photovoltaic generation facility totaling 2.25 Megawatts of DC nameplate capacity located on certain properties located within the City's service territory ("System");

WHEREAS, Purchaser desires to purchase the electric energy output from the System; and;

WHEREAS, in connection with the Solar Services (as defined hereafter), Provider desires to sell and deliver, and Purchaser desires to purchase and receive, all of the System Output Rights pursuant to the terms and conditions set forth in this Agreement.

NOW THEREFORE, in consideration of the mutual promises set forth below, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. DEFINITIONS.

1.1 Definitions. In addition to other terms specifically defined elsewhere in the Agreement, where capitalized, the following words and phrases are defined as follows:

"Actual Monthly Production" means the amount of electrical energy delivered to Purchaser as recorded by Purchaser's metering equipment installed at the Delivery Point and operated as part of the System during each calendar month of the Term, pursuant to Section 5.2 of the Agreement.

"Affiliate" means, with respect to any Person, any other Person directly or indirectly controlling, controlled by or under common control with such first Person. For the purposes of this definition, "control" and its derivatives mean, with respect to any Person, the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by agreement or otherwise.

"Agreement" means this Power Purchase Agreement and all exhibits, schedules, appendices and attachments thereto.

“Applicable Law” means with respect to this Agreement any constitutional provision, law, statute, rule regulation, ordinance, treaty, order, decree, judgment, consent or requirement of any Governmental Authority having jurisdiction over this Agreement.

“Bankruptcy Event” means with respect to a Party (or other Person, as applicable) that either:

(i) such Party has (A) applied for or consented to the appointment of, or the taking of possession by, a receiver, custodian, trustee or liquidator of itself or of all or a substantial part of its property; (B) admitted in writing its inability, or is generally unable, to pay its debts as such debts become due; (C) made a general assignment for the benefit of its creditors; (D) commenced a voluntary case under any bankruptcy law; (E) filed a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding up, or composition or readjustment of debts; (F) failed to controvert in a timely and appropriate manner, or acquiesce in writing to, any petition filed against such Party in an involuntary case under any bankruptcy law; or (G) taken any corporate or other action for the purpose of effecting any of the foregoing; or

(ii) a proceeding or case has been commenced without the application or consent of such Party in any court of competent jurisdiction seeking (A) its liquidation, reorganization, dissolution or winding-up or the composition or readjustment of debts or, (B) the appointment of a trustee, receiver, custodian, liquidator or the like of such Party under any bankruptcy law, and such proceeding or case shall continue undefended, or any order, judgment or decree approving or ordering any of the foregoing shall be entered and continue unstayed and in effect for a period of sixty (60) days.

“Business Day” means any day other than Saturday, Sunday or any other day on which commercial banking institutions in the State of Florida are required or authorized by Applicable Law to be closed for business.

“Commercial Operation” means the date on which Provider shall have demonstrated to the reasonable satisfaction of Purchaser that all of the following have occurred: (a) construction, installation and interconnection of the System has been completed in accordance with the Agreement and the System possesses all the characteristics, and satisfies all of the output and other Purchaser requirements, set forth in the Agreement; (b) the System has successfully completed all testing required by Section 4.3; (c) Provider has obtained all Governmental Approvals required for the construction, operation and maintenance of the System in accordance with the Agreement.

“Commercial Operation Date” means that date the System achieves Commercial Operation.

“Covenants, Conditions and Restrictions” or “CCR” means those requirements or limitations related to the Premises, including the requirements or limitations set forth in the

Premises License or other instrument, if applicable, or by any Governmental Authority, having the authority to impose restrictions.

“Delivery Point” means the Provider’s side of the Purchaser’s installed disconnect switch and metering equipment to be supplied and installed by the Purchaser to be located within 100 feet of the System and is the point at which energy is delivered from the System to Purchaser. The design of the system and interconnection with the Winter Park distribution system shall comply with IEEE 1547: Standard for Interconnecting Distributed Resources with Electric Power Systems

“Early Termination Date” means any date on which the Agreement terminates other than by reason of expiration of the then applicable Term.

“Early Termination Fee” means the fee payable by Purchaser to Provider only under the occurrence of the circumstances described Sections 3.2 or 12.2 of this Agreement.

“Environmental Attributes” shall mean any and all of the benefits from the environmental characteristics of the System that are attributable to renewable energy, including without limitation, credits towards achieving local, state, national or international renewable portfolio standards, greenhouse gas or emission reductions, credits, offsets, allowances or benefits; actual SO₂, NO_x, CO₂, CO, Carbon, VOC, mercury, and other emissions avoided, carbon trading credits, renewable energy credits or certificates, emission reduction credits, any other emission reductions, credits, offsets, allowances or benefits, green tags, tradable renewable credits and Green-e® products. Title to all Environmental Attributes associated with the System, whether now existing or hereinafter created, will be, and shall remain, the property of Provider.

“Design Capacity” has the meaning set forth in Section 6.2 of the Agreement.

“Expiration Date” means the date on which the Agreement terminates by reason of expiration of the then applicable Term.

“Fair Market Value” means, with respect to any asset, the price that would be negotiated in an arm’s-length, free market transaction, for cash, between an informed, willing seller and an informed, willing buyer, neither of whom is under compulsion to complete the transaction. Fair Market Value of the System will be determined pursuant to Section 3.4 of this Agreement.

“Finance Documents” means the agreements, documents and instruments setting forth the terms and conditions pursuant to which the Financing Party has provided financing to Provider with respect to the System.

“Financing Party” means, as applicable (i) any Person from whom Provider (or an Affiliate of Provider) leases the System, or (ii) any Person who has or will make a loan to or otherwise provide financing to Provider (or an Affiliate of Provider) with respect to the System.

“Governmental Approval” means any approval, consent, franchise, permit, certificate, resolution, concession, license, or authorization, including any amendment or condition of the same, issued by or on behalf of any applicable Governmental Authority.

“Governmental Authority” means any federal, state, regional, county, town, city, or municipal government, whether domestic or foreign, or any department, agency, bureau, or other administrative, regulatory or judicial body of any such government.

“Guaranteed Commercial Operation Date” means nine (9) months after the Effective Date of this Agreement.

“Indemnified Persons” means the Purchaser Indemnified Parties, as set forth in Section 17.1 of this Agreement.

“Installation Work” means the equipping, construction, installation and interconnection of the System and the start-up, testing, commissioning and acceptance (but not the operation and maintenance after such construction and installation is Substantially Complete and the System has achieved Commercial Operation) thereof, all performed by or for Provider at the Premises as set forth in Section 4.1 of this Agreement.

“Losses” means all losses, liabilities, claims, demands, judgments, awards, damages, interest, fines, fees, penalties, costs and expenses (including all attorneys’ fees and expenses and other costs and expenses incurred in defending any claims.

“MWh Rate” means the price per MWh set forth in this Agreement.

“O&M Agreement” means any agreement, contract or arrangement pursuant to which Provider obtains, procures or receives System operating services, and (as applicable) supplies, parts or equipment necessary, used or useful in the operation, maintenance or repair of the System.

“Option Price” has the meaning set forth in Section 3.3 of this Agreement.

“Output Rights” means the firm and exclusive right to receive at the Delivery Point all electric energy produced by the System, but does not include the Environmental Attributes or Solar Incentives.

“Party” or “Parties” has the meaning set forth in the preamble hereof.

“Person” means an individual, partnership, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association, joint venture, firm, or other entity, or a Governmental Authority and includes each of the Parties and their Affiliates.

“Premises” means each separate location within the City on which Provider has a license or lease to install the system, as more fully described in Exhibit A – Schedule 1 hereto.

“Premises License” means the agreements by and between Provider and the City pursuant to which the City will license or provide certain properties for the sole purpose for Provider to

install, operate and maintain the System(s) thereon, as more fully described in Exhibit A – Schedule 8 hereto.

“Production Guarantee” has the meaning set forth in Section 6.5 of this Agreement.

“Project Agreements” means all agreements, contracts, purchase orders or other documents setting forth terms and conditions for procurement or furnishing of goods or services in connection with the design, installation, operation, maintenance or repair of the System.

“Provider Default” has the meaning set forth in Section 12.1(a) of this Agreement.

“Prudent Utility Practices” means any of the practices, methods and acts engaged in or approved by a significant portion of the applicable segments of the electric utility industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result of the lowest reasonable cost consistent with good business practices, reliability, safety and expedition. Prudent Utility Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to be a generally accepted and consistently adhered to practice, method, or act.

“Purchase Date” means such Business Day that occurs on the date that is ninety one (91) days after each successive annual anniversary of the Commercial Operation Date (or next Business Day thereafter), provided, however, that no Purchase Date shall occur prior to such date that is five (5) years and ninety one (91) days after the Commercial Operation Date.

“Purchase Option” means the right of Purchaser to acquire the System and other System assets, rights, and properties, pursuant to Section 3.2 of the Agreement.

“Purchaser Default” has the meaning set forth in Section 12.2(a) of this Agreement.

“Purchaser Indemnified Parties” has the meaning set forth in Section 17.1 of this Agreement.

“Solar Incentives” means any accelerated depreciation, production tax credits, investment tax credits, cash grants in lieu of tax credits, and any other federal, state or local tax credits or incentives available to owners of photovoltaic systems, whether now existing or newly created during the Term.

“Solar Services” means the energy Output Rights of the System.

“Solar Services Payment” has the meaning set forth in Section 7.1 of this Agreement.

“Stated Rate” means a rate per annum equal to the lesser of the three (3) month LIBOR rate published in the Wall Street Journal on the date preceding a default or the maximum rate allowed by Applicable Law.

“Substantial Completion” has the meaning set forth in Section 4.4 of this Agreement.

“System” means the integrated assembly of photovoltaic panels, mounting assemblies, inverters, converters, metering, lighting fixtures, step-up transformers, ballasts, disconnects, combiners, switches, wiring devices and wiring purchased, designed, permitted and installed by Provider on the Premises (but excluding the Premises itself) and all software, intellectual property rights necessary to operate the System, manuals, construction and installation documents, Governmental Approvals, Environmental Attributes, warranties and guarantees.

“System Operations” means the Provider’s operation, maintenance and repair of the System and the Premises performed in accordance with the requirements of the Agreement.

“Test Energy” means energy produced by the System and delivered to Purchaser prior to the Commercial Operation Date.

“Utility Agreements” means any contracts or agreements with respect to the System to which Provider is a party setting forth terms for the furnishing, providing, delivery or receipt of utility services necessary, used or useful for the System Operations.

2. HEADINGS AND INTERPRETATION

2.1 Interpretation. The captions or headings in this Agreement are strictly for convenience and shall not be considered in interpreting the Agreement. Words in the Agreement that impart the singular connotation shall be interpreted as plural, and words that impart the plural connotation shall be interpreted as singular, as the identity of the parties or objects referred to may require. The words “include”, “includes”, and “including” mean include, includes, and including “without limitation” and “without limitation by specification.” The words “hereof”, “herein”, and “hereunder” and words of similar import refer to the Agreement as a whole and not to any particular provision of the Agreement. Except as the context otherwise indicates, all references to “Articles” and “Sections” refer to Articles and Sections of the Agreement. If an obligation falls due on a non-Business Day, performance of such obligation shall be due on the next Business Day thereafter.

3. TERM AND TERMINATION.

3.1 Term.

The Total Term of the Agreement shall commence on the Effective Date and shall continue for twenty-five (25) years from the date that the System has achieved Commercial Operation. The Initial Term shall commence on the Effective Date and shall continue for ten (10) years from the date that the System has achieved Commercial Operation, unless and until terminated earlier pursuant to the provisions of this Agreement. No later than one hundred and eighty (180) days prior to the end of the Initial Term, Purchaser may, by written notice to Provider, terminate the

Agreement and exercise its options under Section 3.2 of this Agreement. If Purchaser fails to notify Provider it is exercising its right to terminate the Agreement pursuant to this Section, the Agreement will renew for an additional five (5) year term ("Renewal Term"). No later than one hundred and eighty (180) days prior to the end of any Renewal Term, Purchaser may, by written notice to Provider, terminate the Agreement and exercise its options under Section 3.2 of this Agreement. If Purchaser fails to notify Provider it is exercising its right to terminate the Agreement at the end of any Renewal Term, the Agreement will renew for an additional five (5) year Renewal Term. The Total Term of this Agreement is comprised of the Initial Term and three (3) Renewal Terms.

3.2 Purchaser's Options. Upon expiration of this Agreement or termination by either Party pursuant to this section, Purchaser may choose one of the following options:

- (a) Removal and Relocation of System. Provider shall remove the System from the Premises by a mutually convenient date but in no case later than one hundred eighty (180) days after such expiration or termination, subject to Purchaser's reimbursement of Provider's reasonable costs of removal (not to exceed \$1/watt DC). Purchaser shall provide Provider with reasonable access to perform such activities. Provider may relocate the Generating Facility to an alternate location on the Premises at the sole discretion of the Purchaser subject to Purchaser's reimbursement of Provider's costs of relocation. Should Purchaser elect to have Provider relocate all or a portion of the Generation Facility to an alternate location on the Premises then this Agreement will remain in full and binding effect.
- (b) Purchase of System. After the expiration of six (6) years from the Commercial Operation Date, Purchaser may purchase the System free and clear of all Liens, and any and all other assets, property, documents, data, rights and title required, used or useful to own, operate, maintain and repair the System, for a purchase price (the "Option Price") equal to the greater of (a) the Fair Market Value of the System as of the Purchase Date, or (b) the Early Termination Fee as of the Purchase Date, as specified in Column 2 of Exhibit A, Schedule 4 of the Agreement (the "Purchase Option"). To exercise the Purchase Option, Purchaser shall, not less than one hundred and eighty (180) days prior to the proposed Purchase Date, provide written notice to Provider of Purchaser's intent to exercise the Purchase Option to purchase the System on such Purchase Date. Within thirty (30) days of receipt of Purchaser's notice, Provider shall specify the Option Price, and Purchaser shall then have a period of thirty (30) days after notification to confirm or retract its decision to exercise the Purchase Option or, if the Option Price is equal to the Fair Market Value of the System, to dispute the determination of the Fair Market Value of the System. In the event Purchaser confirms its exercise of the Purchase Option in writing to Provider (whether before or after any determination of the Fair Market Value determined pursuant to Section 3.3), (i) the Parties will set a closing date to execute and deliver, and Provider shall cause the Financing Parties to execute and deliver all documents necessary or appropriate to (A) cause all right, title and interest in or to the System and related assets, properties and rights to be delivered and pass to Purchaser on the Purchase Date, free and clear of any Liens; and (B) assign any or all Utility Agreements and Project Agreements requested by Purchaser and deliver any and all other System assets, properties or rights and contractor, supplier and vendor

warranties for the System to Purchaser, (ii) Provider will deliver to Purchaser all documents and records relating to the installation, operation, maintenance and repairs of the System, (iii) Provider will assist Purchaser with obtaining or accomplishing the transfer of any required Governmental Approvals, Environmental Attributes, or third party consents, waivers or approvals, and (iv) Purchaser will pay the Option Price to Provider on the Purchase Date, such payment to be made in accordance with any previous written instructions delivered to Purchaser by Provider or a Financing Party, as applicable, for payments under the Agreement. Each Party shall bear its respective fees, costs and expenses incurred in connection with such transaction. Until the close of the sale of the System and all related assets, rights and properties, all risk of loss of the System shall be borne by Provider. Upon final transfer of the System and payment of the Option Price, in each case as described in the preceding sentence, the Agreement shall terminate automatically. For the avoidance of doubt, payment of the Option Price shall be in lieu of and instead of any Early Termination Fee. In the event Purchaser retracts its exercise of, or does not timely confirm, the purchase option, the provisions of the Agreement shall be applicable as if the Purchaser had not exercised any option to purchase the System for that period of time.

3.3 Determination of Fair Market Value. The Fair Market Value of the System is to be determined by the Parties and include any liabilities associated with the System at the time of purchase. If the Option Price indicated by Provider in accordance with Section 3.2 is equal to the Fair Market Value (as determined by Provider) and Purchaser disputes such stated Fair Market Value within thirty (30) days of receipt of such notice from Provider, then the Parties shall mutually select an independent appraiser with relevant experience and expertise which shall include experience in the bulk power supply market in the State of Florida. Such appraiser shall act reasonably and in good faith to determine Fair Market Value and shall set forth such determination in a written opinion delivered to the Parties. The valuation made by the appraiser shall be binding upon the Parties in the absence of fraud or manifest error. Upon Purchaser's receipt of such written opinion, Purchaser shall then have a period of thirty (30) days to confirm or retract its decision to exercise the Purchase Option. The costs of the appraisal shall be borne equally by the Parties.

3.4 Purchaser's Right to Terminate the Agreement. In the event that, prior to Provider's commencement of the Installation Work, there is a material adverse change in any Applicable Law in effect as of the Effective Date that would materially adversely affect the ability of a Party to perform its obligations under the Agreement, then the affected Party shall promptly notify the other Party and (i) the Parties shall negotiate in good faith to amend the Agreement to address such events or circumstances, and (ii) if the Parties have not reached agreement on such amendments within a thirty (30) day period, Purchaser shall have the unilateral right to terminate the Agreement, in which case neither Party shall have any liability to the other, including no Purchaser liability for the Early Termination fee, except for any such liabilities that may have accrued prior to such termination pursuant to the express terms of the Agreement.

4. CONSTRUCTION, INSTALLATION AND TESTING OF SYSTEM.

4.1 Installation Work. Provider will design, procure, supply and erect the grid-interconnected, solar electric (PV) systems at the Premises described in Exhibit A – Schedule 1. Provider is responsible for all labor, services, permits, equipment, tools, materials and supplies,

turnkey design, permitting equipping, installation, construction, operation, maintenance, repair, replacement and reaching Substantial Completion at its cost, risk and expense in accordance with the Agreement, Governmental Approvals and Applicable Law. Purchaser shall have the right to review all construction plans and designs, including, without limitation, engineering evaluations of the impact of the System prior to finalization. Provider shall diligently perform the Installation Work to completion. Purchaser will supply and install the disconnect switch and metering equipment within 100 feet of the System. Purchaser will purchase any and all Solar Services delivered to the Delivery Point on a monthly basis.

4.2 Approvals; Permits. Purchaser shall obtain all necessary Governmental Approvals, including but not limited to those related to any Governmental Authority, and any waivers, approvals or releases required pursuant to any applicable CCR required to provide the Solar Services under this Agreement. If any applicable Governmental Authority does not provide the necessary Governmental Approvals for reasons not attributable to the failure of Provider to timely prepare and seek approval of applications in accordance with Applicable Law, Prudent Utility Practice or the requirements of the Agreement, either Party may, at such Party's option, immediately terminate the Agreement subsequent to such notification from such Governmental Authority that the application for Governmental Approvals has not been accepted or permits have been denied. Upon termination by Purchaser, Purchaser shall have no liability including no liability for payment of the Early Termination Fee. The failure of Provider to obtain any required Governmental Approval shall not constitute a Provider Default unless such failure arises out of or results from the breach by Provider of its obligations under the Agreement.

4.3 System Acceptance Testing

- (a) Provider shall conduct acceptance and interim testing of the System in accordance with the Agreement, Prudent Utility Practice, the methods, acts, guidelines, standards and criteria reasonably accepted or followed by photovoltaic solar system integrators in the United States and any requirement of the Purchaser and any Governmental Authority with jurisdiction. Until the Commercial Operation Date, Provider shall make Test Energy available to Purchaser at the Delivery Point as provided in Section 6.1.
- (b) If the results of such acceptance testing indicate that the System is (i) capable of generating electric energy for eight (8) continuous hours, and (ii) generates a minimum of 80% of the Design Capacity on average during such eight (8) continuous hours using such instruments and meters as have been installed or utilized for such purposes in accordance with Prudent Utility Practice, and the System has been approved for interconnected operation by the Purchaser, then Provider shall send a written notice to Purchaser to that effect and certifying the compliance with and achievement of the other requirements of Commercial Operation, and the date of such notice shall be the "Commercial Operation Date."
- (c) Provider shall provide Purchaser not less than five (5) Business Days prior written notice of all testing of the System and allow Purchaser and its designees to be present at testing and have access to test data for review.

- (d) If Provider has not achieved the Commercial Operation Date within ninety (90) days after the Guaranteed Commercial Operation Date, Purchaser shall have the right to terminate the Agreement without any liability for the Early Termination fee, except for any such liabilities that may have accrued prior to such termination pursuant to the express terms of the Agreement.

4.4 Substantial Completion. For purposes of this Agreement Substantial Completion occurs when Provider has designed, permitted, financed and procured all necessary components and that they are delivered to the site. Substantial Completion does not require the installation or erection of the System or connection to the Delivery Point.

5. SYSTEM OPERATIONS.

5.1 Provider as Owner and Operator. The System will be owned by Provider or Provider's Financing Party and will be operated and maintained by Provider, with the exceptions as noted below, in accordance with Applicable Law, Prudent Utility Practices, the Premises License and any interconnection requirements of the Purchaser and, as necessary, repaired by Provider, all at its sole cost and expense. Provider will perform all necessary operation and maintenance services including but not limited to panel cleaning, upkeep of data acquisition and monitoring systems, upkeep of the System, critical and non-critical repairs, warranty enforcement and defective equipment replacement.

5.2 Metering.

- (a) Purchaser shall provide, install and maintain a utility billing grade megawatt-hour (MWh) meter in accordance with Prudent Utility Practice for the measurement of electrical energy provided by the System to Purchaser at the Delivery Point. Provider may elect to install backup metering. All metering devices used to provide data for the computation of payments shall be sealed and only Purchaser shall break the seal when such metering devices are to be inspected and tested or adjusted in accordance with this section.
- (b) Net electric energy delivered under the Agreement during any hour shall be deemed to be equal to the energy measured by the metering equipment (in MWh) at the Delivery Point during such hour rounded to the nearest thousandth of a MWh.
- (c) Purchaser shall perform or cause to be performed, the maintenance, testing and calibration of all Delivery Point meters in accordance with Prudent Utility Practices, no less than once per calendar year. Purchaser shall use reasonable best efforts to give Provider at least thirty (30) days, but not less than five (5) Business Days, prior notice of any maintenance and testing and calibration of the metering equipment, and Provider shall have the right to have its representative present to witness and verify the performance of such maintenance and testing and calibration. In order for such maintenance, testing and calibration of the metering equipment to be deemed complete and accurate, both Parties must agree with the results of

the maintenance and testing and calibration. In the event the Parties do not agree, the Parties shall retain a mutually agreeable independent expert, the cost of which shall be borne equally by the Parties, to resolve the disagreement. The determination of the independent expert as to the correct maintenance, testing, calibration and accuracy of the metering equipment shall be in writing and accepted by the Parties as final.

- (d) If the metering equipment is found to be inaccurate by one-fifth of one percent (0.2%) or less as provided under the ANSI C-12 standards, then any previous recordings of the metering equipment shall be deemed accurate, but Purchaser shall use reasonable best efforts to adjust such meter as soon as practicable. In the event that the metering equipment is found to be inaccurate by more than one-fifth of one percent (0.2%), the meter readings for the period of inaccuracy and associated billings shall be adjusted as far as can be reasonably ascertained by Purchaser from the best available data, subject to review and approval by Provider, which shall not be unreasonably withheld. If the period of the inaccuracy cannot be ascertained reasonably, any such adjustment shall be for a period equal to one-half (1/2) of the time elapsed since the preceding test.

5.3 Malfunctions and Emergencies.

- (a) Malfunctions. Purchaser and Provider each shall notify the other within twenty-four (24) hours following the discovery of any material malfunction in the operation of the System or of the discovery of an abnormal interruption in the supply of Solar Services. Provider shall promptly take all action necessary or appropriate to expeditiously and safely correct or repair any malfunction and restore full supply of Solar Services.
- (b) Emergencies. Provider and Purchaser each shall notify the other Party upon the discovery of an emergency condition in or affecting the System or the Purchaser's system. An "emergency condition" means a condition that reasonably could be expected to pose an imminent and material risk to human health, property, the Premises, the environment, the System or the Purchaser's system. Such emergency notices shall be provided in accordance with the Agreement. If an emergency condition exists, Provider shall promptly dispatch the appropriate personnel immediately and cause them to perform the necessary repairs to the System or other appropriate corrective action to the System in an expeditious and safe manner.
- (c) Personnel. For routine and emergency repairs, communications between the Parties shall be directed to the Persons listed in the Agreement. Provider and Purchaser shall each designate personnel and establish procedures such that each Party may provide and receive notice of emergency conditions, as contemplated in Section 5.3(b), requiring

Provider's repair, corrective action or alteration at all times, twenty-four (24) hours per day, including weekends and holidays

6. DELIVERY OF SOLAR SERVICES.

6.1 Purchase Requirement. Purchaser agrees to purchase one hundred (100%) percent of the Solar Services generated by the System and delivered by Provider to Purchaser at the Delivery Point during the Term, subject to Section 6.2. Provider shall make available to Purchaser and Purchaser shall purchase the Test Energy at \$45 per MWh. Test Energy will be delivered to the Delivery Point and billed on a per MWh basis using the billing meter reading. Purchaser shall have no obligation to accept electricity generated at any other facility, system or project. Title and risk of loss of all energy shall pass to Purchaser upon delivery to the Delivery Point. The Solar Services shall be billed on a per MWh basis using the billing meter reading as set forth in this Agreement.

6.2 Design Capacity. The annual estimate of Solar Services on a MWh basis with respect to the System for any given year as determined pursuant to this Section shall be the "Design Capacity."

6.3 Environmental Attributes, Output Rights and Solar Incentives. Purchaser's right to and interest in Solar Services generated by or associated with the generation of electricity by the System includes only the Output Rights, and does not include the Environmental Attributes or the Solar Incentives. Provider shall, at the request of Purchaser, execute and cause the Financing Parties to execute any document or agreement reasonably necessary to fulfill the intent of the Parties with respect to Purchaser's priority, right, title and interest in and use and benefit of, the Output Rights. Environmental Attributes and Solar Incentives shall be owned by Provider or Provider's Financing Party for the duration of the System's operating life. Purchaser disclaims any right to receive the Environmental Attributes or Solar Incentives based upon the installation of the System at the Premises unless Purchaser acquires all or a portion of the System, and each Party shall, at the request of the other Party, execute any document or agreement, and Provider shall cause the Finance Parties to execute or deliver any document or agreement reasonably necessary to fulfill the intent of this Section 6.3.

6.4 Title to System. Throughout the Term, Provider or Provider's Financing Party shall be the legal and beneficial owner of the System at all times, and the System shall remain the personal property of Provider or Provider's Financing Party and shall not be deemed attached to or be deemed a part of, or fixture to, the Premises subject to the Purchase Option. The System shall at all times retain the legal status of personal property as defined under Article 9 of the Uniform Commercial Code. Provider covenants that it will reasonably support Purchaser in its efforts to publish, file or record notice in the appropriate state or local offices Purchaser's Purchase Option and right to and interest in all associated Solar Services.

6.5 Production Guarantee. Provider shall produce at the System and deliver to Purchaser at the Delivery Point no less than eighty (80%) percent of the Design Capacity of the System as measured over each successive one (1) calendar-year period. This calculation shall be made on the basis of actual System output delivered to the Delivery Point as measured monthly by the billing meters. If the Production Guarantee is not met and cannot be met in any contract year after the first anniversary of the Commercial Operation Date, Purchaser may terminate the

Agreement for cause and without any obligation to pay or credit Provider the amount of an Early Termination Fee or any other amount.

7. PRICE AND PAYMENT.

7.1 Consideration. Subject to Sections 6.2, 7.3 and 7.4, Purchaser shall pay to Provider a monthly payment (the “Solar Services Payment”) in arrears for the Solar Services produced by the System during each calendar month of the Term and delivered to the Delivery Point equal to the product of (x) the Actual Monthly Production for the System for the relevant month multiplied by (y) the MWh Rate.

7.2 Payment. Provider shall invoice Purchaser on or about the first day of each month (each, an “Invoice Date”), commencing on the first Invoice Date to occur after the Commercial Operation Date, for the Solar Services Payment in respect of such prior month. The last invoice shall include production only through the Expiration Date or date of early termination of the Agreement.

7.3 Time of Payment. A Party shall pay all undisputed amounts due hereunder within thirty (30) days after the date of receipt of the applicable invoice.

7.4 Method of Payment. A Party shall make all payments under the Agreement by electronic funds transfer (automated clearing house ACH) in immediately available funds to the account designated by the receiving Party from time to time. All payments that are not paid when due shall bear interest accruing from the date becoming past due until paid in full at a rate equal to the Stated Rate. Payments are subject to setoffs of any amounts owed by Provider to Purchaser hereunder and may be adjusted within two (2) years of any invoice date as a result of the results of the testing and calibration of meters or an audit conducted by a Party.

7.5 Disputed Payments. If a dispute arises with respect to any invoice issued by Provider to Purchaser, Purchaser may withhold the disputed amount and Purchaser shall not be deemed in default under the Agreement and the Parties shall not suspend the performance of their respective obligations hereunder, including payment of undisputed amounts owed hereunder. Provider will within five (5) days of notification of a disputed amount agree to a meeting to discuss such disputed amount. If an amount disputed by Purchaser is paid and is subsequently deemed to have been not due pursuant to the applicable invoice, interest shall accrue at the Stated Rate on such amount from the date paid to Provider until the date paid back to Purchaser. If any Provider payment has not been received by Purchaser by the invoice due date, Purchaser may offset the disputed amount plus the Stated Rate against the current invoice and future invoices issued by Provider to Purchaser.

7.6 Expiration of Offer. The 2013 MWh Rate specified in Exhibit A Schedule 3 applies only if the Effective Date is on or before July 31st, 2013. If the Effective Date is after July 31st, 2013 then the 2014 MWh Rate specified in Exhibit A Schedule 3 applies.

8. COVENANTS.

8.1 Provider’s Covenants. Provider covenants and agrees to the following:

- (a) System Condition. Provider shall take all actions required to ensure that the System is capable of producing and providing Solar Services and is installed, operated, maintained and removed from the Premises in accordance with Applicable Law, Prudent Utility Practice and the Agreement, including the Production Guarantee.
- (b) Governmental Approvals. While performing or providing the Installation Work, Solar Services, System Operations, System decommissioning and Premises restoration, Provider shall obtain and maintain and secure all Governmental Approvals required to be obtained and maintained and secured by Provider to enable Provider to perform such obligations and shall perform all such work and activities related thereto in accordance with Applicable Law, Prudent Utility Practice, the interconnection requirements of the Purchaser and the Premises License. Provider shall provide prompt notice to Purchaser of any breach, violation or non-compliance with the requirements thereof.
- (c) Health and Safety. Provider shall provide the Installation Work, Solar Services, System Operations, System decommissioning and Premises restoration in accordance with all Applicable Laws.
- (d) Liens. Other than a Financing Party's security interest in or ownership of the System pledged, granted or conveyed pursuant to the terms of the Finance Documents (which shall acknowledge the Purchase Option granted herein and Purchaser's priority, right, title and interest in and to the Solar Services and other products and services generated by or associated with the operation of the System) as communicated by Provider to Purchaser, Provider shall not cause, create, incur, assume or suffer to exist any mortgage, pledge, lien (including mechanics', labor or materialman's lien in each case to the extent such Lien arises from or is related to Provider's performance or non-performance of its obligations hereunder), charge, security interest, encumbrance or claim of any nature ("Liens") on or with respect to the System, the Solar Services or the Premises or any interest therein, including the Purchase Option. The indebtedness secured by such security interest or the amounts payable by Provider to purchase or otherwise acquire the System and the associated System assets, rights and property free and clear of any Liens shall at no time exceed the amount payable by Purchaser for the System on a Purchase Date upon exercise of the Purchase Option. If Provider breaches its covenants or obligations under this Section, it shall (i) promptly notify Purchaser in writing, (ii) promptly cause such Lien to be discharged and released of record without cost to Purchaser, and (iii) defend and indemnify Purchaser against all costs and expenses (including reasonable attorneys' fees and expenses and court costs at trial and on appeal) incurred in discharging and releasing such Lien.

8.2 Purchaser's Covenants. Purchaser covenants and agrees as follows:

- (a) Liens. Purchaser shall not directly or indirectly cause, create, incur, assume or suffer to exist any Liens arising by or through Purchaser on or with respect to the System or any interest therein except those created hereby or arising hereunder related to Solar Services or the Purchase Option. If Purchaser breaches its obligations under this Section, it shall immediately notify Provider in writing, shall promptly cause such Lien to be discharged and released of record without cost to Provider, and shall indemnify Provider against all costs and expenses (including reasonable attorneys' fees and court costs at trial and on appeal) incurred in discharging and releasing such Lien.
- (b) Consents and Approvals. Purchaser shall use reasonable efforts to obtain, in a timely manner, any Governmental Approvals identified by Provider in writing that are required of Purchaser to carry out its obligations under the Agreement. Purchaser shall deliver to Provider copies of said Governmental Approvals.

9. REPRESENTATIONS & WARRANTIES.

9.1 Representations and Warranties Relating to Agreement Validity. In addition to any other representations and warranties contained in the Agreement, each Party represents and warrants to the other as of the Effective Date that:

- (a) it is duly organized and validly existing and in good standing in the jurisdiction of its organization;
- (b) it has the full right and authority to enter into, execute, deliver, and perform its obligations under the Agreement;
- (c) it has taken all requisite corporate or other action, as applicable, to approve the execution, delivery, and performance of the Agreement;
- (d) the Agreement constitutes its legal, valid and binding obligation enforceable against such Party in accordance with its terms, except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, and other similar laws now or hereafter in effect relating to creditors' rights generally;
- (e) there is no litigation, action, proceeding or investigation pending or, to the best of its knowledge, threatened before any court or other Governmental Authority by, against, affecting or involving any of its business or assets that could reasonably be expected to adversely affect its ability to carry out the transactions contemplated herein; and
- (f) its execution and performance of the Agreement and the transactions contemplated hereby do not, to the best of its knowledge, constitute a breach of any term or provision of, or a default under, (i) any contract or agreement to which it or any of its Affiliates is a party or by which it or

any of its Affiliates or its or their property is bound, (ii) its organizational documents, or (iii) any Applicable Laws.

9.2 Representations Regarding Security Interest. Purchaser has been advised by Provider that part of the collateral securing the financial arrangements for the System may be the granting of a security interest (the “Lender Security Interest”) in the System and Provider’s rights under the Agreement to the Financing Parties. In connection therewith, Provider represents and warrants as follows:

- (a) Provider has provided to Purchaser accurate and complete information regarding terms and conditions of the Finance Documents requested by Purchaser;
- (b) Purchaser’s right to and interest in the Solar Services is not subject to any Lien other than the Lender Security Interest;
- (c) Provider shall not secure any obligation or indebtedness by the Lender Security Interest in an amount that exceeds the amount payable by Purchaser for the System upon exercise of the Purchase Option.

9.3 EXCLUSION OF WARRANTIES. EXCEPT AS EXPRESSLY SET FORTH IN THE WARRANTIES AND GUARANTEES SET FORTH IN THE AGREEMENT, THE INSTALLATION WORK, SYSTEM OPERATIONS, AND SOLAR SERVICES PROVIDED BY PROVIDER TO PURCHASER PURSUANT TO THE AGREEMENT SHALL NOT BE THE SUBJECT OF ANY OTHER WARRANTY TO PURCHASER OR ANY OTHER PERSON, WHETHER EXPRESS, IMPLIED OR STATUTORY, AND PROVIDER DISCLAIMS ANY OTHER WARRANTY AS TO THE INSTALLATION, DESIGN, DESCRIPTION, QUALITY, MERCHANTABILITY, COMPLETENESS, USEFUL LIFE, FUTURE ECONOMIC VIABILITY, OR FITNESS FOR ANY PARTICULAR PURPOSE OF THE SYSTEM, THE SOLAR SERVICES OR ANY OTHER SERVICE PROVIDED HEREUNDER OR DESCRIBED HEREIN, OR AS TO ANY OTHER MATTER, ALL OF WHICH ARE EXPRESSLY DISCLAIMED BY PROVIDER. PURCHASER MAKES NO REPRESENTATION OR WARRANTY OTHER THAN THOSE EXPRESSLY SET FORTH IN THE AGREEMENT AND DISCLAIMS ANY AND ALL OTHER REPRESENTATIONS AND WARRANTIES.

10. TAXES AND GOVERNMENTAL FEES.

Provider shall be responsible for any taxes, assessments, fees and any other charges related to the Solar Services, the Installation Services or the System Operations and (unless Purchaser exercises its purchase option under Article 2) the ownership, financing, operation, maintenance and removal of the System and the Premises restoration.

11. FORCE MAJEURE.

11.1 Definition. “Force Majeure Event” means any act or event that prevents the affected Party from performing its obligations in accordance with the Agreement, if such act or event is

beyond the reasonable control, and not the result of the fault or negligence, of the affected Party and such Party is unable to prevent, avoid or overcome such act or event with the exercise of due diligence (including the expenditure of reasonable sums). Subject to the foregoing conditions, "Force Majeure Event" shall include without limitation the following acts or events: (i) unusual weather events, such as extreme storms, hurricanes and floods; extreme lightning and earthquakes; (ii) explosions or fires arising from extreme lightning or other causes unrelated to the acts or omissions of the Party seeking to be excused from performance; (iii) acts of war or public disorders, civil disturbances, riots, insurrection, sabotage, epidemic, terrorist acts, or rebellion; (iv) strikes or labor disputes; (v) action by a Governmental Authority, including a moratorium on any activities related to the Agreement which are not the result of such Party's failure to comply with applicable laws or Governmental Authorizations; (vi) emergencies or abnormal conditions affecting the Purchaser's distribution system and (vii) the impossibility for one of the Parties, despite its reasonable efforts, to obtain, in a timely manner, any Governmental Approval necessary to enable the affected Party to fulfill its obligations in accordance with the Agreement, provided that the delay or non-obtaining of such Governmental Approval is not attributable to the Party in question and that such Party has exercised its reasonable best efforts to obtain such Permit. Failure, production shortfalls, defects, deficiencies and outages of the System in any way attributable to the design, materials, installation, workmanship, maintenance, repair or replacement of the System or any part thereof shall not be a Force Majeure Event.

11.2 Excused Performance. Except as otherwise specifically provided in the Agreement, neither Party shall be considered in breach of the Agreement or liable for any delay or failure to comply with the Agreement (other than the failure to pay amounts due hereunder), if and to the extent that such delay or failure is attributable to the occurrence of a Force Majeure Event; provided that the Party claiming relief under this Section 11 shall immediately (i) notify the other Party in writing of the existence of the Force Majeure Event, (ii) exercise all reasonable efforts necessary to minimize delay caused by such Force Majeure Event, (iii) notify the other Party in writing of the cessation or termination of said Force Majeure Event and (iv) resume performance of its obligations hereunder as soon as practicable thereafter; provided, however, that neither Party shall be excused from making any payments and paying any unpaid amounts due in respect of Solar Services delivered to Purchaser by Provider prior to the Force Majeure Event performance interruption.

11.3 Termination in Consequence of Force Majeure Event. If a Force Majeure Event shall have occurred that has affected a Party's performance of its obligations hereunder and that has continued for a continuous period of one hundred eighty (180) days, then either Party shall be entitled to terminate the Agreement upon thirty (30) days' prior written notice to the other Party. If at the end of such thirty (30) day period such Force Majeure Event shall still continue, the Agreement shall automatically terminate. Upon such termination for a Force Majeure Event, neither Party shall have any liability to the other, subject to Section 19.5 (Survival) and the Early Termination Fee shall be inapplicable; provided, however, that neither Party shall be excused from making any payments and paying unpaid amounts that have accrued and become due and payable prior to the Force Majeure Event performance interruption. By mutual agreement of the Parties, any System damaged or destroyed by a Force Majeure Event may be replaced by Provider within the time frames set forth above and subsequent to replacement and upon commencement of operation of the replacement System all terms and conditions of the Agreement will remain in effect, including the remaining Term (but without extension) of the Agreement.

12. DEFAULT.

12.1 Provider Defaults and Purchaser Remedies.

- (a) Provider Defaults. The following events shall be defaults with respect to Provider (each, a “Provider Default”):
 - (i) A Bankruptcy Event shall have occurred with respect to Provider;
 - (ii) Provider shall be in default in the performance of any Project Agreement or Premises License;
 - (iii) Provider fails to meet or cannot meet the Production Guarantee;
 - (iv) Provider fails to pay Purchaser any undisputed amount owed to Purchaser under the Agreement within thirty (30) days from receipt of notice from Purchaser of such past due amount; or
 - (v) Provider makes an untrue, inaccurate or incomplete representation or breaches any warranty or material term of the Agreement and (A) if such breach can be cured within thirty (30) days after Purchaser’s written notice of such breach and Provider fails to so cure, or (B) Provider fails to commence and pursue a cure within such thirty (30) day period if a longer cure period is needed, but not to exceed 180 days in any event.
 - (vi) Provider breaches any material term of the Agreement if (A) such breach can be cured within thirty (30) days after Purchaser’s notice of such breach and Provider fails to cure, or (B) Provider fails to commence and pursue said cure within such thirty (30) day period if a longer cure period is needed.
- (b) Purchaser’s Remedies. If a Provider Default described in Section 12.1(a) of this Agreement has occurred and is continuing, Purchaser may terminate the Agreement, seek the recovery of damages and exercise any other remedy it may have at law or equity or under the Agreement or Bond or any credit support. Purchaser may also exercise the Purchase Option and acquire the System and related properties, assets and rights within ninety (90) days and set off against the Option Price any amounts due and owing by Purchaser.
- (c) No Early Termination Fee. The Early Termination Fee shall not apply to any termination of the Agreement by Purchaser pursuant to this Section 12.1.

12.2 Purchaser Defaults and Provider’s Remedies.

- (a) Purchaser Default. The following events shall be defaults with respect to Purchaser (each, a “Purchaser Default”):
- (i) A Bankruptcy Event shall have occurred with respect to Purchaser;
 - (ii) Purchaser breaches any material term of the Agreement if (A) such breach can be cured within thirty (30) days after Provider’s notice of such breach and Purchaser fails to so cure, or (B) Purchaser fails to commence and pursue said cure within such thirty (30) day period if a longer cure period is needed; or
 - (iii) Purchaser fails to pay Provider any undisputed amount due Provider under the Agreement within thirty (30) days from receipt of notice from Provider of such past due amount.
- (b) Provider’s Remedies. If a Purchaser Default described in Section 12.2(a) has occurred and is continuing, Provider may terminate the Agreement and pursue other remedies expressly provided herein or Provider may by written election to Purchaser within sixty (60) days after a Purchaser Default opt to receive from Purchaser the Early Termination Fee pursuant to Column 1 of Exhibit A, Schedule 4, attached hereto. In the event that Provider terminates the Agreement, Purchaser agrees to pay Provider’s expenses incurred in removing the System and restoring the Premises to its original condition.

13. LIMITATIONS OF LIABILITY.

13.1 Neither Party shall be liable to the other Party for any special, punitive, exemplary, indirect, or consequential damages, losses or damages for lost revenue or lost profits, whether foreseeable or not, arising out of, or in connection with the Agreement provided, however, that any liquidated damages specifically set forth in the Agreement (including the Termination Fee) shall not be considered such an excluded amount under this Section 13.1.

13.2 Purchaser’s maximum liability to Provider under the Agreement shall in the aggregate be limited to the Early Termination Fee pursuant to Exhibit A, Schedule 4 according to the year in which the Loss or termination occurs as discounted by mutual agreement of the parties, plus Provider’s expenses incurred in removing the System and restoring the Premises to its original condition.

14. ASSIGNMENT.

14.1 Assignment by Provider. Provider shall not sell, transfer, hypothecate, or assign (collectively, an “Assignment”) the Agreement, the System or any interest therein, without the prior written consent of Purchaser, which shall not be unreasonably withheld, conditioned or delayed; provided, however, that, without the prior consent of Purchaser, Provider may (i) make an Assignment to an Affiliate of Provider (provided that such Assignment shall only release Provider from its obligations hereunder if such assignment is made prior to the date that is one

hundred (100) days following the Commercial Operation Date with prior notice to Purchaser); (ii) make an Assignment through, reorganization, merger, consolidation or sale of all or substantially all of Provider's stock, membership interests, or assets (provided that such Assignment shall not release Provider from its obligations hereunder without the consent of Purchaser); (iii) sell, transfer, assign or pledge, upon written notice to Purchaser all or a part of its interest in the System (provided that such Assignment shall not release Provider from its obligations hereunder without the consent of Purchaser) or any monies due under the Agreement; under Section 14.1(i-iii), the assignee, surviving or successor entity, purchaser or transferee deliver an instrument acknowledging its assumption of the obligations and liabilities of Provider hereunder. In all cases, Assignee must have the same qualifications as Provider to provide the Solar Services under the Agreement. Except as expressly permitted by Section 14.1(i), any assignment by Provider without the prior written consent of Purchaser shall not release Provider of its obligations hereunder.

15. NOTICES.

14.1 Notice Addresses. Unless otherwise provided in the Agreement, all notices and communications concerning the Agreement shall be in writing and addressed to the other Party at the addresses set forth in the Agreement, or at such other address as may be designated in writing to the other Party from time to time.

14.2 Notice. Unless otherwise provided herein, any notice provided for in the Agreement shall be hand delivered, sent by registered or certified U.S. Mail, postage prepaid, or by commercial overnight delivery service, or transmitted by facsimile or e-mail and shall be deemed delivered to the addressee or its office when received at the address for notice specified above when hand delivered, upon confirmation of sending when sent by facsimile or e-mail (if sent during normal business hours or the next Business Day if sent at any other time), on the Business Day after being sent when sent by overnight delivery service (Saturdays, Sundays and legal holidays excluded), or ten (10) Business Days after deposit in the mail when sent by U.S. mail.

14.3 Address for Invoices. All invoices under the Agreement shall be sent to the address provided by a Party. Invoices shall be sent by regular first class mail postage prepaid unless the Parties agree otherwise.

16. CONFIDENTIALITY.

16.1 Confidentiality Obligation. If either Party provides confidential information, including business plans, strategies, financial information, proprietary, patented, licensed, copyrighted or trademarked information, and/or technical information regarding the financing, design, operation and maintenance of the System or of Purchaser's business ("Confidential Information") to the other or, if in the course of performing under the Agreement or negotiating the Agreement a Party learns Confidential Information regarding the facilities or plans of the other, the receiving Party shall, to the extent permitted under Florida law, (a) protect the Confidential Information from disclosure to third parties with the same degree of care accorded its own confidential and proprietary information, and (b) refrain from using such Confidential Information, except in the negotiation and performance of or as otherwise related to the Agreement.

16.2 Permitted Disclosures. Notwithstanding any other provision herein, neither Party shall be required to hold confidential any information that:

- (a) becomes publicly available other than through the receiving Party;
- (b) is required to be disclosed by or to a Governmental Authority, under Applicable Law or pursuant to a validly issued subpoena or required filing, but a receiving Party subject to any such requirement shall promptly notify the disclosing Party of such requirement, unless prohibited by law;
- (c) is independently developed by the receiving Party; or
- (d) becomes available to the receiving Party without restriction from a third party under no obligation of confidentiality.

16.3 Goodwill and Publicity. Neither Party shall use the name, trade name, service mark, or trademark of the other Party in any promotional or advertising material without the prior written consent of such other Party. The Parties shall coordinate and cooperate with each other when making public announcements related to the execution and existence of the Agreement and each Party shall have the right to promptly review, comment upon, and approve any publicity materials, press releases, or other public statements by the other Party that refer to, or that describe any aspect of, the System.

17. INDEMNITY.

17.1 Provider's Indemnity. Subject to Section 13, Provider agrees that it shall indemnify, defend and hold harmless Purchaser, its permitted successors and assigns and their respective directors, officers, members, shareholders and employees (collectively, the "Purchaser Indemnified Parties") from and against any and all Losses incurred by the Purchaser Indemnified Parties to the extent arising from or out of the following: (a) any claim for or arising out of any injury to or death of any Person or loss or damage to property of any Person to the extent arising out of Provider's negligence or willful misconduct or performance of its obligations hereunder (b) any infringement of patents or the improper use of other proprietary rights by Provider or its employees or representatives that may occur in connection with the performance of the Installation Work, System Operations or provision of Solar Services and the ownership and use of the System. Provider shall not, however, be required to reimburse or indemnify any Purchaser Indemnified Party for any Loss to the extent such Loss is due to the negligence or willful misconduct of any Purchaser Indemnified Party.

18. INSURANCE.

18.1 Generally. Provider shall maintain the following insurance coverages in full force and effect throughout the Term either through insurance policies: (a) Workers' Compensation Insurance as may be from time to time required under applicable federal and state law, (b) Commercial General or Excess Liability Insurance with limits of not less than \$2,000,000 general aggregate, \$1,000,000 per occurrence, and (c) automobile insurance with commercially reasonable coverages and limits. Additionally, Provider shall carry or cause to be carried

replacement value property loss insurance on the System (both during the performance of the Installation Work and after the Commercial Operations Date) which need not be covered by the Purchaser's property coverage. Each party shall obtain waivers of any insurers' rights of subrogation under its insurance policies for any obligations it has agreed to assume under the Agreement. The Parties acknowledge and agree that Purchaser does not waive, release or relinquish the limitations of liability and immunities under sovereign immunity as provided in Florida Statutes Chapter 728.

18.2 Certificates of Insurance. Prior to execution and commencement of any operations/services provided under this contract, the Provider shall provide the City with current Certificates of Insurance evidencing all required coverage. For ongoing operations, renewal certificates shall be submitted thirty (30) days prior to renewal. No material change or cancellation of the insurance shall be effective without thirty (30) days prior written notice to the City.

18.3 Additional Insureds. Provider's insurance policy shall be written on an occurrence basis and shall include Purchaser as an additional insured as its interest may appear.

18.4 Insurer Qualifications. Provider's third party insurance maintained hereunder shall be maintained with companies either rated no less than A- as to Policy Holder's Rating in the current edition of Best's Insurance Guide (or with an association of companies each of the members of which are so rated) or having a parent company's debt to policyholder surplus ratio of 1:1.

19. MISCELLANEOUS.

19.1 Integration; Exhibits. The Agreement, together with the Exhibits and Schedules attached thereto, constitutes the entire agreement and understanding between Provider and Purchaser with respect to the subject matter thereof and supersedes all prior agreements relating to the subject matter hereof, which are of no further force or effect. The Exhibits and Schedules attached thereto are integral parts hereof and are made a part of the Agreement by reference. In the event of a conflict between the provisions of this Agreement and any applicable Exhibits and/or Schedules, the provisions of this Agreement shall prevail.

19.2 Amendments. The Agreement may only be amended, modified or supplemented by an instrument in writing executed by duly authorized representatives of Provider and Purchaser.

19.3 Cumulative Remedies. Except as set forth to the contrary herein, any right or remedy of Provider or Purchaser shall be cumulative and without prejudice to any other right or remedy, whether contained herein or not.

19.4 Limited Effect of Waiver. The failure of Provider or Purchaser to enforce any of the provisions of the Agreement, or the waiver thereof, shall not be construed as a general waiver or relinquishment on its part of any such provision, in any other instance or of any other provision in any instance.

19.5 Survival. The obligations under Sections 3.2(a) (Purchaser's Options), Section 8.1(d) (Provider Covenant), Section 9.3 (Exclusion of Warranties), Section 10 (Taxes and Governmental Fees), Section 13 (Limitation of Liability), Section 15 (Notices), Section 16

(Confidentiality), Section 17 (Indemnity), Section 19 (Miscellaneous) and other provisions of the Agreement that, by their sense and context, are intended to survive termination of the Agreement shall survive the expiration or termination of the Agreement for any reason.

19.6 Governing Law. The Agreement shall be exclusively governed by and construed in accordance with the laws of the State of Florida. The exclusive venue of any legal proceedings initiated under the Agreement shall be Orange County, Florida.

19.7 Severability. If any term, covenant or condition in the Agreement shall, to any extent, be invalid or unenforceable in any respect under Applicable Law, the remainder of the Agreement shall not be affected thereby, and each term, covenant or condition of the Agreement shall be valid and enforceable to the fullest extent permitted by Applicable Law and, if appropriate, such invalid or unenforceable provision shall be modified or replaced to give effect to the underlying intent of the Parties and to the intended economic benefits of the Parties.

19.8 Relation of the Parties. The relationship between Provider and Purchaser shall not be that of partners, agents, or joint ventures for one another, and nothing contained in the Agreement shall be deemed to constitute a partnership or agency agreement between them for any purposes, including federal income tax purposes. Provider and Purchaser, in performing any of their obligations hereunder, shall be independent contractors or independent parties and shall discharge their contractual obligations at their own risk. The Agreement provides no rights, remedies, benefits or privileges to any Person not a party hereto.

19.9 Successors and Assigns. The Agreement and the rights and obligations under the Agreement shall be binding upon and shall inure to the benefit of Provider and Purchaser and their respective permitted successors and assigns.

19.10 Counterparts. The Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument

19.11 Facsimile Delivery. The Agreement may be duly executed and delivered by a Party by execution and facsimile delivery of the signature page of a counterpart to the other Party, and, if delivery is made by facsimile (or electronic, "PDF" delivery), the executing Party shall promptly deliver, via overnight delivery, a complete original counterpart that it has executed to the other Party, but the Agreement shall be binding on and enforceable against the executing Party whether or not it delivers such original counterpart.

19.12 Liquidated Damages Not Penalty. Purchaser acknowledges that the Early Termination Fee, if applicable, constitutes liquidated damages, and not penalties, in lieu of Provider's actual damages resulting from the early termination of the Agreement. Purchaser further acknowledges that Provider's actual damages may be impractical and difficult to accurately ascertain, and in accordance with Purchaser's rights and obligations under the Agreement, the Early Termination Fee constitutes fair and reasonable damages to be borne by Purchaser in lieu of Provider's actual damages.

IN WITNESS WHEREOF and in confirmation of their consent to the terms and conditions contained in this Agreement and intending to be legally bound hereby, Provider and Purchaser have executed this Agreement as of the Effective Date.

“PROVIDER”:	Clean Footprint, LLC By: _____ Name: John Porter Title: Managing Partner Date: _____
“PURCHASER”	CITY OF WINTER PARK By: _____ Name: Kenneth W. Bradley Title: Mayor Date: _____

Attest:

Approved as to form and legality,

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: City Attorney for City of Winter Park

Exhibit A -- SCHEDULE 1

DESCRIPTION OF PREMISES

The premises are located at:

Address	Individual System Size
<u>1409 Howell Branch Road Winter Park, FL</u>	<u>2.25 Megawatts</u>

Exhibit A -- SCHEDULE 2

DESCRIPTION OF SYSTEM

Total Solar System Size:	2.25 Megawatts (DC nameplate capacity)
Scope:	Design and supply one grid-interconnected, solar electric (PV) systems at the Premises described in Exhibit A – Schedule 1. Provider responsible for all labor, services, permits, equipment, tools, materials and supplies, turnkey design, permitting equipping, installation, construction, operation, maintenance, repair, replacement and removal at its cost, risk and expense.
Module:	UL certified module to be determined during procurement process.
Inverter:	IEEE 1547 qualified
Delivery Points	The Purchaser is required to extend its distribution facilities to the delivery point which the Parties shall identify during the Installation Work. The design of the system and interconnection with the Winter Park distribution system shall comply with IEEE 1547: Standard for Interconnecting Distributed Resources with Electric Power Systems
Includes:	System components including: integrated assembly of photovoltaic solar panels, support system, including mounting assemblies, inverter system, converters, metering lighting fixtures, step-up transformers, ballasts, disconnects, combiners, switches, wire kits, including devices and wiring, and data monitoring system. Design including: necessary site visits, system drawings, engineering review and stamps (not including building structural review, if required). Installation by registered and experienced contractors. System commissioning. Interconnection application and permitting, preparation of as-built plans, operating manuals and other documentation reasonably requested by Purchaser.

Exhibit A -- SCHEDULE 3

MWh RATE

Year of Install	2013	2014	2015	2016
Year of System Term	Price per MWh	Price per MWh	Price per MWh	Price per MWh
1	\$65.00	\$75.00	\$75.00	\$75.00
2	\$65.00	\$75.00	\$75.00	\$75.00
3	\$65.00	\$75.00	\$75.00	\$75.00
4	\$65.00	\$75.00	\$75.00	\$75.00
5	\$65.00	\$75.00	\$75.00	\$75.00
6	\$65.00	\$75.00	\$75.00	\$75.00
7	\$65.00	\$75.00	\$75.00	\$75.00
8	\$65.00	\$75.00	\$75.00	\$75.00
9	\$65.00	\$75.00	\$75.00	\$75.00
10	\$65.00	\$75.00	\$75.00	\$75.00
11	\$65.00	\$75.00	\$75.00	\$75.00
12	\$65.00	\$75.00	\$75.00	\$75.00
13	\$65.00	\$75.00	\$75.00	\$75.00
14	\$65.00	\$75.00	\$75.00	\$75.00
15	\$65.00	\$75.00	\$75.00	\$75.00
16	\$65.00	\$75.00	\$75.00	\$75.00
17	\$65.00	\$75.00	\$75.00	\$75.00
18	\$65.00	\$75.00	\$75.00	\$75.00
19	\$65.00	\$75.00	\$75.00	\$75.00
20	\$65.00	\$75.00	\$75.00	\$75.00
21	\$65.00	\$75.00	\$75.00	\$75.00
22	\$65.00	\$75.00	\$75.00	\$75.00
23	\$65.00	\$75.00	\$75.00	\$75.00
24	\$65.00	\$75.00	\$75.00	\$75.00
25	\$65.00	\$75.00	\$75.00	\$75.00

Exhibit A -- SCHEDULE 4

EARLY TERMINATION

The Early Termination Fee with respect to the System under the Agreement shall be calculated in accordance with the following:

Year of System Term	Early Termination Fee
1	N/A
2	N/A
3	N/A
4	N/A
5	N/A
6	N/A
7	\$2,436,357
8	\$2,271,351
9	\$2,105,294
10	\$1,938,175
11	\$1,769,980
12	\$1,600,694
13	\$1,430,306
14	\$1,258,800
15	\$1,086,164
16	\$912,382
17	\$1,534,784
18	\$1,368,635
19	\$1,201,422
20	\$1,033,132
21	\$863,751
22	\$693,266
23	\$521,662
24	\$348,926
25	\$175,043

At Expiration (the Total Term), the amount in Column 2 shall be deemed to be zero (0).

Exhibit A -- SCHEDULE 5

DESIGN CAPACITY

Design Capacity commencing on the Commercial Operation Date and throughout the Term of the Agreement with respect to System shall be as follows:

Year of System Term	Estimated MWhs
1	3069.00
2	3053.66
3	3038.39
4	3023.19
5	3008.08
6	2993.04
7	2978.07
8	2963.18
9	2948.37
10	2933.63
11	2918.96
12	2904.36
13	2889.84
14	2875.39
15	2861.01
16	2846.71
17	2832.48
18	2818.31
19	2804.22
20	2790.20
21	2776.25
22	2762.37
23	2748.56
24	2734.81
25	2721.14

Exhibit A- SCHEDULE 6

NOTICE INFORMATION

<u>Purchaser:</u> With a required copy to: Jerry Warren Director of Electric Utility City of Winter Park 401 South Park Avenue Winter Park, Florida 32789	<u>Provider:</u> With a copy to: John Porter Managing Partner Clean Footprint 405 Atlantis Road Suite E115 Cape Canaveral, Florida 32920
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<u>Financing Party:</u> Provider will notify Purchaser of the Financing Party once financing negotiations have been completed	<u>Premises Lessor:</u> <u>Clean Footprint, LLC</u> 405 Atlantis Road Suite E115 Cape Canaveral, Florida 32920
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EMERGENCY CONTACT INFORMATION

<u>Purchaser:</u> Jerry Warren Director of Electric Utility City of Winter Park 401 South Park Avenue Winter Park, Florida 32789	<u>Provider:</u> John Porter Managing Partner Clean Footprint 405 Atlantis Road Suite E115 Cape Canaveral, Florida 32920
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Exhibit A- SCHEDULE 7

CONSTRUCTION SCHEDULE

Preliminary Construction Schedule							
	July	August	September	October	November	December	January
PPA Signed (7/22)							
Financing Negotiations							
Procurement							
Construction							
Interconnection							

Exhibit A- SCHEDULE 8

SITE LICENSE AGREEMENT

Purchaser does hereby license to Provider in accordance with the terms and conditions hereinafter set forth, the approximately 200,000 square feet of real property located at 1409 Howell Branch Road Winter Park, Florida for the sole purposes of installing, maintaining, and operating the System.

Purchaser hereby also grants to Provider, for the Term, a nonexclusive right-of-way for vehicular and pedestrian ingress and egress to the Premises or the System to the extent required by Provider and as mutually agreed upon by the Parties. Provider will give Purchaser reasonable written or telephonic notice before any entry onto the Premises by Provider's employees, agents or contractors. Purchaser will make available to Provider access to the System and the Premises for the purposes set forth in Section 4. Notwithstanding anything to the contrary in this Agreement, Provider shall be permitted to access the Premises twenty-four (24) hours a day, seven (7) days a week for emergency purposes, as reasonably determined by Provider. Within twenty-four (24) hours of such emergency access, Provider shall provide Purchaser with a written explanation of the nature of the emergency. All such emergency work shall be diligently prosecuted to completion to the end and that such work shall not remain in a partly finished condition any longer than necessary for completion.

Provider hereby covenants to pay Purchaser, on or before the Commercial Operation Date, and on or before each anniversary of the Commercial Operation Date during the Term, as and for rent of the Premises \$1.00 (one U.S. dollar).



city commission public hearing

item type	Public Hearing	meeting date	July 22, 2013
prepared by department division	Jeff Briggs Planning Department	approved by	<input checked="" type="checkbox"/> City Manager <input type="checkbox"/> City Attorney <input type="checkbox"/> N/A
board approval	Planning and Zoning Board	<input checked="" type="checkbox"/> yes <input type="checkbox"/> no <input type="checkbox"/> N/A	5-0 final vote

Subject: Request of Phil Kean to amend the Conditional Use approval for a modified architectural style for the proposed Condo project at 125 S. Interlachen Ave.

Mr. Phil Kean is requesting approval to modify the exterior architectural style of the residential condominium project per the conditional use granted to the Ye Olde Bric property at 125 S. Interlachen Avenue. The change in architectural style from that which was approved in 2006 represents a "significant change" per the Code and thus needs this subsequent approval.

Planning and Zoning Board Recommendation:

Motion made by Mr. Gottfried, seconded by Mr. Hahn to approve the request to alter the exterior architectural style of the project for the conditional use permit granted to the Ye Olde Bric condominium property at 125 S. Interlachen Avenue. Motion carried unanimously with a 5-0 vote.

Summary:

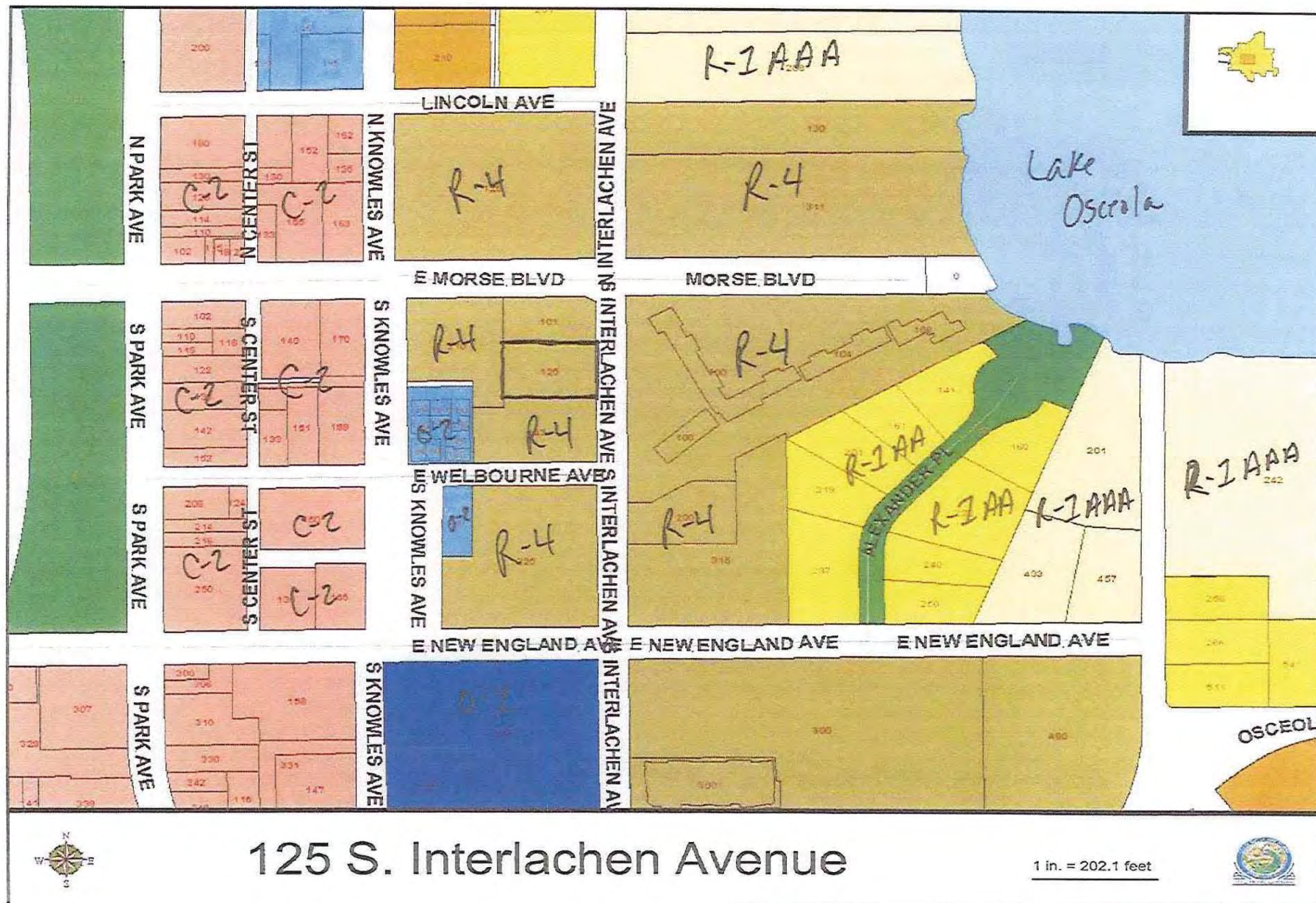
On September 25, 2006 the City Commission by a 4-1 vote approved the conditional use, for a six unit, four story, 23,500 square foot condominium project to replace the existing Ye Ole Brick condo building at 125 S. Interlachen Avenue. This project required a conditional use approval for buildings over 10,000 sq. ft. and this specific project included variances that were approved for additional lot coverage (50% vs. 40%) and additional height (four stories vs. three stories).

The property is zoned R-4 but with less than 20,000 square feet of land area it is to conform to the R-3 development standards. The City Commission compromised in the original 2006 approval between the R-3 and R-4 standards. Six units is the R-3 residential density. The 50% impervious coverage is less than the 55% permitted in R-4 but more than the 40% allowed in R-3. The building height of four stories and 45 feet is less than the five stories and 55 feet allowed in R-4 but more than the three stories and 35 feet of R-3.

Mr. Phil Kean now intends to develop this project based upon those 2006 approvals and entitlements. His plans however, involve a completely different architectural style from that originally approved. Under the Code there are certain changes which are deemed "significant changes" that require a subsequent review and recommendation from the Planning Board and approval by the City Commission. Those include "when there is a change in the architectural style of the building" which is the case with this request. In other words, don't show the City something and then build something that looks completely different. Thus, this subsequent approval is required under our Code.

Also as background, on October 14, 2008 the City Commission granted to the original developer, Mr. Robert Vega, an extension to that original conditional use approval for another two years. That the conditional use approval was to expire on October 14, 2010. However, in the interim Mr. James Moye recovered the property (in lieu of foreclosure) and obtained another two year extension of the conditional use approval on August 23, 2010. Since conditional uses expire after two years, that approval was to expire on October 14, 2012 however, the City Commission granted an additional extension until October 14, 2014. Thus, the project still maintains the entitlements and variances that were approved in 2006.

Project Plan Request: The City Commission is not being asked to evaluate any of the particulars of this project except the change in architectural style. In this case we are changing from a more or less Mediterranean look to a Modern Contemporary look. There are many eclectic architectural styles throughout the City and unless something was proposed that was markedly incongruous with the character of the neighborhood then the City generally is not in the position to dictate one architectural style over another. So if this were to look like a rocket ship or a geodesic dome then it would be markedly incongruous but that is not the case in this circumstance.



Original Architectural Style - as approved in 2006



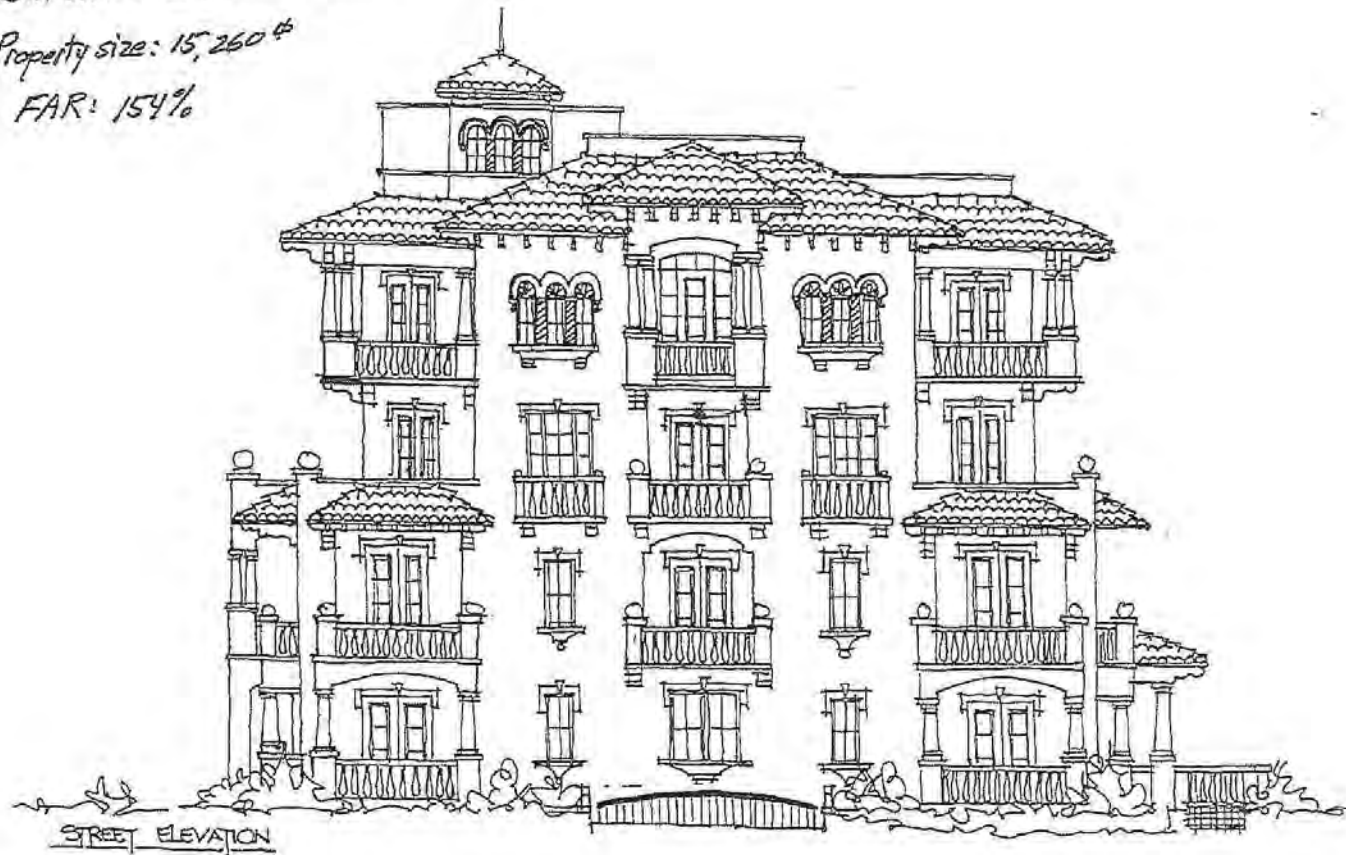
2006 Project Plans

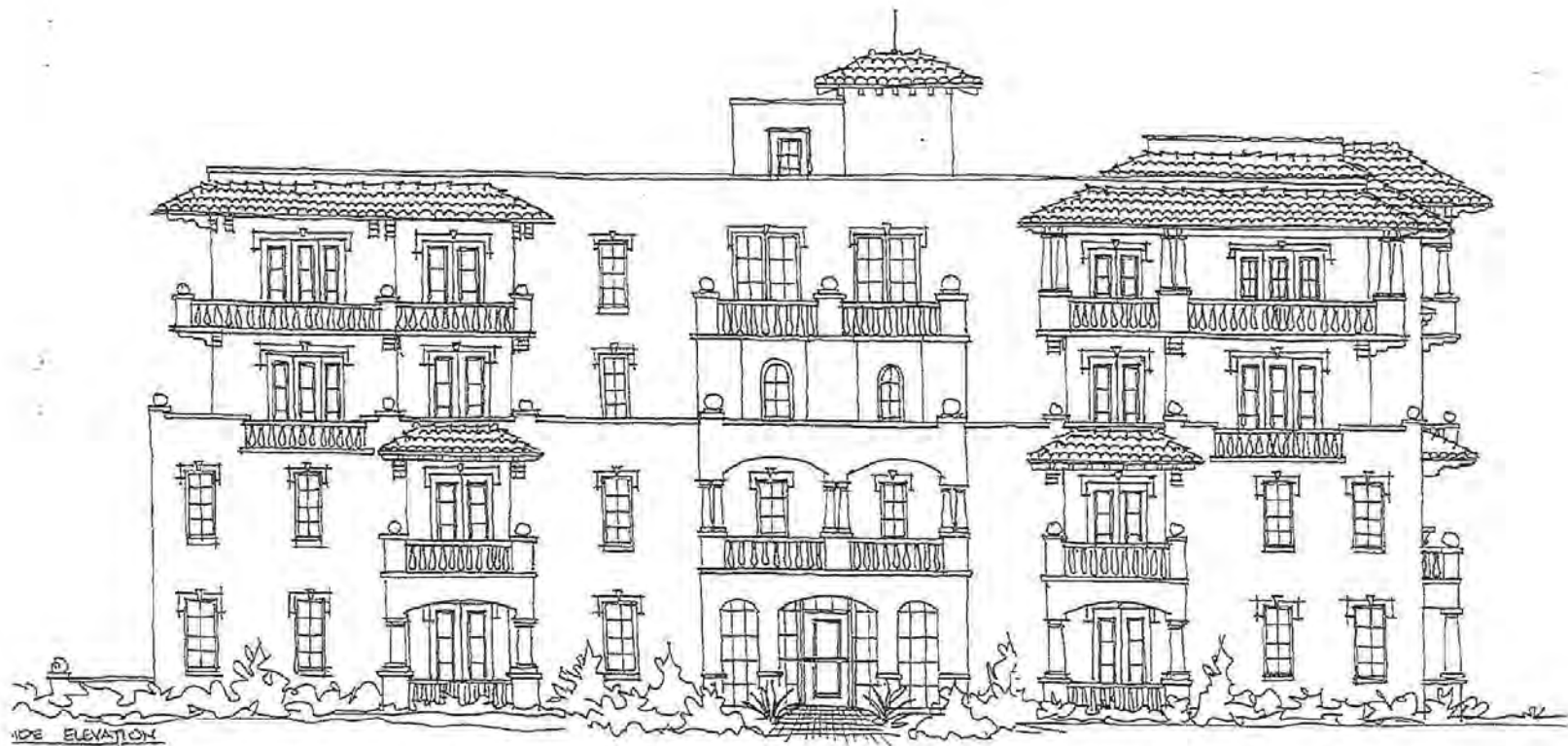
Robert Vega's Project e 125 S. Interlachen Zoning: R-4

Six units 23,500 \pm total

Property size: 15,260 \pm

FAR: 154%





102 ELEVATION
EET-



ARCHITECT:

Architecture by
Phil Kean
AIA

963 N. Orange Avenue
Winter Park, FL 32789
PH: 407-939-3623
FAX: 407-939-3623
CKP@philkean.com
(407) 939-3623

DATE: September 11, 2013

PROJECT INFORMATION:

125 S. Interlachen Ave.
Winter Park, Florida

PLAN HISTORY

DATE	DESCRIPTION
03-20-20	PRELIM DESIGN
05-20-2013	REVIEW SET ONLY THESE PLANS ARE NOT FINISHED

SHEET DATA:

DESIGNED BY: PHIL KEAN
DRAWN BY: ERIC AL LUCHA
CHECKED BY:

SHEET DESCRIPTION

FRONT RENDERING

SHEET

10



PHIL KEAN DESIGNS INC.
ARCHITECTURE / CONSTRUCTION / INTERIORS

ARCHITECT:

Architecture by
Phil Kean
3823 N. Georgia Avenue
Winter Park, FL 32789
PH: 407-938-2822
FAX: 407-938-2823
Phil Kean
AIA 1500

DATE: September 11, 2013

PROJECT INFORMATION:

125 S. Interlachen Ave.
Winter Park, Florida

PLAN HISTORY

DATE	DESCRIPTION
00-00-00	PRELIM DESIGN
05-20-2013	REVIEW SET ONLY THESE PLANS ARE NOT FINISHED

SHEET DATA:

DESIGNED BY: PHIL KEAN
DRAWN BY: ERIC M. LUCIA
CHECKED BY:

SHEET DESCRIPTION

RCAR RENDERING

SHEET

11

REQUEST OF MR. PHIL KEEN TO: ALTER THE EXTERIOR ARCHITECTURAL STYLE OF THE PROJECT FOR THE CONDITIONAL USE PERMIT GRANTED TO THE YE OLDE BRIC CONDOMINIUM PROPERTY AT 125 S. INTERLACHEN AVENUE TO PERMIT THE REDEVELOPMENT OF THE PROPERTY AND THE CONSTRUCTION OF A FOUR STORY, SIX UNIT RESIDENTIAL CONDOMINIUM BUILDING OF 23,500 SQUARE FEET IN SIZE WITH UNDERGROUND PARKING ON PROPERTY ZONED R-4.

Mr. Briggs presented the staff report and discussed the history of this particular site. He explained that on September 25, 2006 the City Commission by a 4-1 vote approved the conditional use, for a six-unit, four-story, 23,500 square foot condominium project to replace the existing Ye Ole Brick condo building at 125 S. Interlachen Avenue. This project required a conditional use approval for buildings over 10,000 sq. ft. and this specific project included variances that were approved for additional lot coverage (50% vs. 40%) and additional height (four stories vs. three stories). The property is zoned R-4 but with less than 20,000 square feet of land area it is to conform to the R-3 development standards. The City Commission compromised in the original 2006 approval between the R-3 and R-4 standards. Six units is the R-3 residential density. The 50% impervious coverage is less than the 55% permitted in R-4 but more than the 40% allowed in R-3. The building height of four stories and 45 feet is less than the five stories and 55 feet allowed in R-4 but more than the three stories and 35 feet of R-3. He explained that Mr. Phil Keen now intends to develop this project based upon those 2006 approvals and entitlements. His plans however, involve a completely different architectural style from that originally approved. Under the Code there are certain changes which are deemed "significant changes" that require a subsequent review and recommendation from the Planning Board and approval by the City Commission. Those include "when there is a change in the architectural style of the building" which is the case with this request. In other words, don't show the City something and then build something that looks completely different. Thus, this subsequent approval is required under our Code.

He noted that on October 14, 2008 the City Commission granted to the original developer, Mr. Robert Vega, an extension to that original conditional use approval for another two years which would expire on October 14, 2010. However, in the interim Mr. James Moye recovered the property (in lieu of foreclosure) and obtained another two year extension of the conditional use approval on August 23, 2010. Since conditional uses expire after two years, that approval was to expire on October 14, 2012 however, the City Commission granted an additional extension until October 14, 2014. Thus, the project still maintains the entitlements and variances that were approved in 2006. In this case we are changing from a more or less Mediterranean look to a Modern Contemporary look. There are many eclectic architectural styles throughout the City and unless something was proposed that was markedly incongruous with the character of the neighborhood then staff is not in the position to dictate one architectural style over another. Staff recommendation is for approval. Mr. Briggs responded to Board member questions and concerns.

Phil Keen, 229 Alexander Place, spoke concerning the request. He stated this proposal is smaller than the original plan. The six units will be self-contained. He responded to Board member questions and concerns. No one else wished to speak concerning this request. Public Hearing closed.

The Board members expressed that they were supportive of the request. They stated that they understood why when the City sees a project and then the 'look' changing completely whey the City and the neighbors are entitled to another 'look see' at the changes. They agreed that there are varied architectural styles throughout the City and this was a quality project.

Motion made by Mr. Gottfried, seconded by Mr. Hahn to approve the request to alter the exterior architectural style of the project for the conditional use permit granted to the Ye Olde Bric condominium property at 125 S. Interlachen Avenue to permit the redevelopment of the property and the construction of a four story, six unit residential condominium building of 23,500 square feet in size with underground parking on property zoned R-4. Motion carried unanimously with a 5-0 vote.

NEW BUSINESS: Mr. Briggs stated that staff is working with the Chamber and the PAAA are working on a proposed fine dining ordinance that will be presented at the August Public Hearing. He indicated that the July 31st work session would concentrate on this topic.



city commission public hearing

item type	Public Hearing	meeting date	July 22, 2013
prepared by department division	Brett C. Railey, Chief of Police Police Administration	approved by	<input checked="" type="checkbox"/> City Manager <input type="checkbox"/> City Attorney <input type="checkbox"/> N/A
board approval	<input type="checkbox"/> yes <input type="checkbox"/> no <input checked="" type="checkbox"/> N/A final vote		

subject

An ordinance repealing obsolete provisions and amending Chapter 98, Traffic and Vehicles, Article VI, Traffic Light Safety Act, and provides for a local hearing officer consistent with general law.

motion | recommendation

Approval of modification of Ordinance

summary

Florida Legislature passed CS/CS/HB 7125 during the 2013 Legislative Session authorizing local hearings for notices of violations connected with the use of red light cameras as traffic infraction detectors to enforce Chapter 316, the State of Florida Uniform Traffic Code. The Governor of the State of Florida signed CS/CS/HB 7125 into law on June 12, 2013, resulting in the Chapter 2013-160, Laws of Florida, taking effect on July 1, 2013.

This ordinance revision aligns the Winter Park Ordinance with the newly enacted State law, and establishes a hearing process for contested red light camera notices of violation.

board comments

N/A

ORDINANCE NO. 2013-__

**AN ORDINANCE OF THE CITY OF WINTER PARK,
FLORIDA REPEALING OBSOLETE PROVISIONS AND
AMENDING CHAPTER 98, TRAFFIC AND VEHICLES,
ARTICLE VI, TRAFFIC LIGHT SAFETY ACT, OF THE
CITY CODE TO IMPLEMENT CHAPTER 2013-160, LAWS
OF FLORIDA; PROVIDING FOR LOCAL HEARING
OFFICER CONSISTENT WITH GENERAL LAW;
PROVIDING FOR SEVERABILITY; PROVIDING FOR
CODIFICATION; PROVIDING FOR CONFLICTS;
PROVIDING FOR AN EFFECTIVE DATE**

WHEREAS, the Florida Legislature passed CS/CS/HB 7125 during the 2013 Legislative Session authorizing local hearings for notices of violations connected with the use of red light cameras as traffic infraction detectors to enforce Chapter 316, the State of Florida Uniform Traffic Code; and

WHEREAS, the Governor of the State of Florida signed CS/CS/HB 7125 into law on June 12, 2013, resulting in the Chapter 2013-160, Laws of Florida, taking effect on July 1, 2013; and

WHEREAS, the use of a Local Hearing Officer allows citizens of the City of Winter Park to have a process for contesting notices of violation issued related to red light violations separate from the traffic court process; and

WHEREAS, the City Commission wishes to repeal certain provisions of Chapter 98, Article VI, of the City's Code of Ordinances and to amend other provisions to implement Chapter 2013-160, Laws of Florida; and

WHEREAS, the City Commission wishes to adopt and administer the local hearing process created by Chapter 2013-160, Laws of Florida; and

WHEREAS, words with double underlined type shall constitute additions to the original text and ~~strike through~~ shall constitute deletions to the original text, and asterisks (* * *) indicate that text shall remain unchanged from the language existing prior to adoption of this Ordinance.

NOW THEREFORE BE IT ENACTED BY THE PEOPLE OF THE CITY OF WINTER PARK:

SECTION 1: **Recitals Adopted.** The forgoing "WHEREAS" clauses are hereby ratified and confirmed as being true and correct and are hereby made a specific part of this Ordinance upon adoption hereof.

SECTION 2: **Deletion of Obsolete Provisions.** Chapter 98, Article VI, Sections 98-194 through 98-196, Sections 98-198 through 98-208, and Section 98-210 are hereby repealed in their entirety.

SECTION 3: **Amendment to Section 98-192.** Chapter 98, Article VI, Section 98-192 “Intent” is hereby amended as follows:

Sec. 98-192. **Intent.**

The purpose of this ~~Act~~Article is to authorize the use of traffic infraction detectors within the City’s jurisdictional limits as defined in the ~~Mark Wandall Traffic Safety Act and in F.S. § 316.003(86)~~permitted by the Mark Wandall Traffic Safety Act and F.S. § 316.0083. This ~~Act~~ shall authorize the use of traffic infraction detectors to promote compliance with red light signal directives and to adopt a civil enforcement system for red light signal violations that are enforced through the use of traffic infraction detectors. This Act will supplement law enforcement and grants supplemental authority to law enforcement personnel in their enforcement of red light signal violations, and nothing herein shall prohibit law enforcement officers from issuing a citation for a red light signal violation in accordance with normal statutory traffic enforcement techniques.

SECTION 4: **Amendment of Section 98-193.** Chapter 98, Article VI, Section 98-193 “Use of traffic infraction detectors” is hereby amended as follows:

Sec. 98-193. **Use of traffic infraction detectors.**

The city shall ~~utilize traffic infraction detectors as defined in F.S. § 316.003(86) as a supplemental means of monitoring compliance with laws related to traffic control signals, while assisting law enforcement personnel in the enforcement of such laws. This technology is in the public interest and is used as an ancillary deterrent to persons running red lights and otherwise committing traffic control signal violations, for the purpose of reduction of accidents, deaths and injuries associated with such violations.~~ exercise its option under F.S. § 316.0083 as of the effective date of this ordinance to use traffic infraction detectors within its jurisdiction to enforce F.S. § 316.074(1) or § 316.075(1)(C), when a driver fails to stop at a traffic signal on streets and highways in the city’s jurisdiction. The city may utilize traffic infraction detectors as a supplemental means of monitoring and assisting law enforcement personnel in the enforcement of compliance with laws related to traffic control signals as permitted and provided for by state law, which are designed to protect and improve the public health, safety, and welfare of the community and thereby reduce accidents, injuries and disruption of traffic associated with such violations.

SECTION 5: Amendment of Section 98-209. Chapter 98, Article VI, Section 98-209 “Consistency with state law” is hereby amended as follows:

Sec. 98-209. **Consistency with state law.**

- (a) This article shall be interpreted and applied so that it is consistent with state law, specifically, the Mark Wandall Traffic Safety Act; ~~CS/CS/HB 325, Laws of Florida 2010-80 and any subsequent amendments thereto.~~
- (b) Any amendment to an applicable state law shall automatically apply to the enforcement and application of this article, whether or not this article or any provision hereof has been amended to specifically address such amendment to state law. ~~Without limitation, any future amendment regarding the amount of the civil penalty or the apportionment of the proceeds thereof shall be deemed applied in the enforcement of this article, even prior to a specific amendment to this article to make the article expressly consistent with such change in state law with respect to the amount of the penalty or the apportionment of proceeds thereof.~~
- (c) Pursuant to F.S. § 316.0776, the city shall notify the public that a traffic infraction detector may be in use at each intersection at which such device or devices may be in use, and such notice shall specifically specify whether the camera enforcement will apply to violations concerning right turns. The signage used to notify the public shall meet the specifications for uniform signals and devices adopted by the D.O.T. pursuant to F.S. § 316.0745.

SECTION 6: Creation of New Section 98- # . Chapter 98, Article VI, Section 98-____ “Implementation of General Law and Designation of Local Hearing Officer,” is hereby created as follows:

Sec. 98- # . **Implementation of General Law and Designation of Local Hearing Officer.**

In accordance with the provisions of the Mark Wandall Traffic Safety Act as of the effective date of this ordinance, the city authorizes the implementation of the provisions and requirements of Chapters 2010-80 and 2013-160, Laws of Florida. The city commission shall appoint by resolution a Local Hearing Officer, as defined by Chapter 2013-160, Laws of Florida, in accordance with the provisions of the Mark Wandall Traffic Safety Act.

SECTION 7: **Severability.** The provisions of this Ordinance are declared to be severable and if any section, sentence, clause, or phrase of this Ordinance

shall for any reason be held to be invalid or unconstitutional such decision shall not affect the validity of the remaining sections, sentences, clauses and phrases of this Ordinance, but they shall remain in effect it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

SECTION 8: **Codification.** It is the intention of the City Commission and it is hereby ordained that the provisions of this Ordinance shall become and be made a part of the Code of the City of Winter Park, that the sections of this Ordinance may be renumbered to accomplish such intentions, and that the word Ordinance shall be changed to Section or other appropriate word.

SECTION 9: **Conflicts.** All Ordinances or parts of Ordinances in conflict with any of the provisions of this Ordinance are hereby repealed.

SECTION 10: **Effective Date.** This Ordinance shall be effective immediately upon adoption on second reading.

ADOPTED at a regular meeting of the City Commission of the City of Winter Park, Florida, held in City Hall, Winter Park, on this _____ day of _____, 2013.

Mayor Kenneth W. Bradley

ATTEST:

Cindy Bonham, City Clerk

ORDINANCE 13-_____

**AN ORDINANCE OF THE CITY OF WINTER PARK,
FLORIDA, AMENDING SECTION 2-107(e),
ADMINISTRATIVE FINES; COSTS OF REPAIR; LIENS,
OF CHAPTER 2, ADMINISTRATION, REPEALING THE
CLAUSE DECLARING THAT CODE ENFORCEMENT
LIENS TAKE PRIORITY OVER OTHER LIENS;
PROVIDING FOR SEVERABILITY, CODIFICATION,
CONFLICTS AND EFFECTIVE DATE.**

WHEREAS, Winter Park Code section 2-107(e) needs to be amended to repeal the clause according code enforcement liens priority over other liens, due to the Florida Supreme Court ruling in *City of Palm Bay v. Wells Fargo Bank, N.A.*, ____ So. 3d ____, 2013, WL 2096257 (Fla. May 16, 2013); and

WHEREAS, words with double underlined type shall constitute additions to the original text and ~~strike through~~ shall constitute deletions to the original text, and asterisks (***) indicate that text shall remain unchanged from the language existing prior to adoption of this Ordinance.

NOW, THEREFORE, BE IT ENACTED BY THE PEOPLE OF THE CITY OF WINTER PARK:

SECTION 1. Section 2-107(e), Administrative fines; costs of repair; liens, of Chapter 2, Administration, is hereby amended as follows:

Sec. 2-107. – Administrative fines; costs of repair; liens.

* * *

(e) A certified copy of an order imposing a fine, or a fine plus repair costs, may be recorded in the public records and thereafter shall constitute a lien against the land on which the violation exists and upon any other real or personal property owned by the violator. ~~All liens filed by the code enforcement board shall be co-equal with the liens of all state, county, district and municipal taxes, superior in dignity to all other liens, titles, and claims, until paid or extinguished.~~ Upon petition to the circuit court, such order shall be enforceable in the same manner as a court judgment by the sheriffs of the state, including execution and levy against the personal property of the violator, but such order shall not be deemed otherwise to be a court judgment except for enforcement purposes. A fine imposed pursuant to this section shall continue to accrue until the violator comes into compliance or until judgment is rendered in a suit to foreclose on a lien filed pursuant to this section, whichever occurs first. A lien arising from a fine imposed pursuant to this section runs in favor of the city, and the city may execute a satisfaction

or release of lien entered pursuant to this section. After three months from the filing of any such lien which remains unpaid, the code enforcement board may authorize the city attorney to foreclose on the lien or to sue to recover a money judgment for the amount of the lien plus accrued interest. Actions for money judgments may be pursued only on fines levied after October 1, 2000. No lien created pursuant to the provisions of this section may be foreclosed on real property which is a homestead under Fla. Const. art. X, § 4. The money judgment provisions of this section shall not apply to real property or personal property which is covered under Fla. Const. art. X, § 4.

* * *

SECTION 2. SEVERABILITY. If any Section or portion of a Section of this Ordinance proves to be invalid, unlawful, or unconstitutional, it shall not be held to invalidate or impair the validity, force, or effect of any other Section or part of this Ordinance.

SECTION 3. CODIFICATION. It is the intention of the City Commission of the City of Winter Park, Florida, and it is hereby ordained that the provisions of this Ordinance shall become and be made a part of the Code of Ordinance of the City of Winter Park, Florida; that the Sections of this Ordinance may be renumbered or re-lettered to accomplish such intention; that the word, "Ordinance" may be changed to "Section," "Article," or other appropriate word.

SECTION 4. CONFLICTS. All Ordinances or parts of Ordinances in conflict with any of the provisions of this Ordinance are hereby repealed.

SECTION 5. EFFECTIVE DATE. This Ordinance shall become effective immediately upon its passage and adoption.

ADOPTED at a regular meeting of the City Commission of the City of Winter Park, Florida, held in City Hall, Winter Park, on this _____ day of _____, 2013.

Mayor Kenneth W. Bradley

ATTEST:

City Clerk, Cynthia S. Bonham



city commission public hearing

item type	Public Hearing	meeting date	July 22, 2013
prepared by department division	Jeff Briggs Planning Department	approved by	<input checked="" type="checkbox"/> City Manager <input type="checkbox"/> City Attorney <input type="checkbox"/> N/A
board approval		<input type="checkbox"/> yes <input type="checkbox"/> no <input checked="" type="checkbox"/> N/A	final vote

Subject: Ordinance to annex a portion of the Aloma Avenue right-of-way. – SECOND READING

This ordinance would annex that portion of the Aloma Avenue right-of-way from 2015 Aloma Avenue (Mellow Mushroom) out east to the city limits (at the CVS Pharmacy). What happened years ago, was that the city annexed down from the north and up from the south and never included the Aloma right-of-way.

Over the years, this has been frustrating for the Police and Fire Depts. because they get called to accidents in this section of Aloma and then have to get the Orange County Sheriffs or the Highway Patrol to take over since it is not inside the city limits. This will eliminate that confusion in this section of Aloma and also for a tiny section of Balfour Drive, where the same condition exists.

The staff has provided the notice required to Orange County per Chapter 171, Florida Statutes, as well done the required legal advertisements. **FDOT's position is that their maintenance responsibilities are unchanged so they have no opinion on annexations.**

Staff Recommendation: Approval

ORDINANCE NO. 2920-13

AN ORDINANCE OF THE CITY OF WINTER PARK, FLORIDA AMENDING WITHIN THE CHARTER LAWS OF THE CITY OF WINTER PARK, SECTION 1.02, "CORPORATE LIMITS DESCRIBED" SO AS TO ANNEX THE RIGHT-OF-WAY OF ALOMA AVENUE FROM 2015 ALOMA AVENUE EAST TO THE CITY LIMITS AND THE RIGHT-OF-WAY OF BALFOUR DRIVE FROM AMSDEN ROAD SOUTH TO THE CITY LIMITS, MORE PARTICULARLY DESCRIBED HEREIN.

WHEREAS, the City of Winter Park has previously annexed properties on both sides of sections of the Aloma Avenue and the Balfour Drive right-of-way and desires to annex those right-of-ways in order to simplify police, fire and emergency service response, and

WHEREAS, the annexation of said property meets the criteria established by Chapter 171, Florida Statutes and pursuant to and in compliance with law, notice has been given to Orange County and to the public by publication once a week for two consecutive weeks in a newspaper of general circulation to notify the public of this proposed Ordinance and of public hearings to be held.

NOW THEREFORE BE IT ENACTED BY THE CITY COMMISSION OF THE CITY OF WINTER PARK, FLORIDA, AS FOLLOWS:

SECTION 1. That Section 1.02 "Corporate Limits Described," of the Charter Laws of the City of Winter Park be hereby amended and modified so as to annex the portions of the right-of-way of Aloma Avenue and Balfour Drive, as more particularly described in Exhibit "A" and depicted in the Map in Exhibit "B".

SECTION 2. This ordinance shall take effect upon immediately upon its final passage and adoption.

ADOPTED at a regular meeting of the City Commission of the City of Winter Park, Florida, held in City Hall, Winter Park, on this ____ day of _____, 2013.

Mayor

Attest:

City Clerk

EXHIBIT "A"

Aloma Avenue East Annex

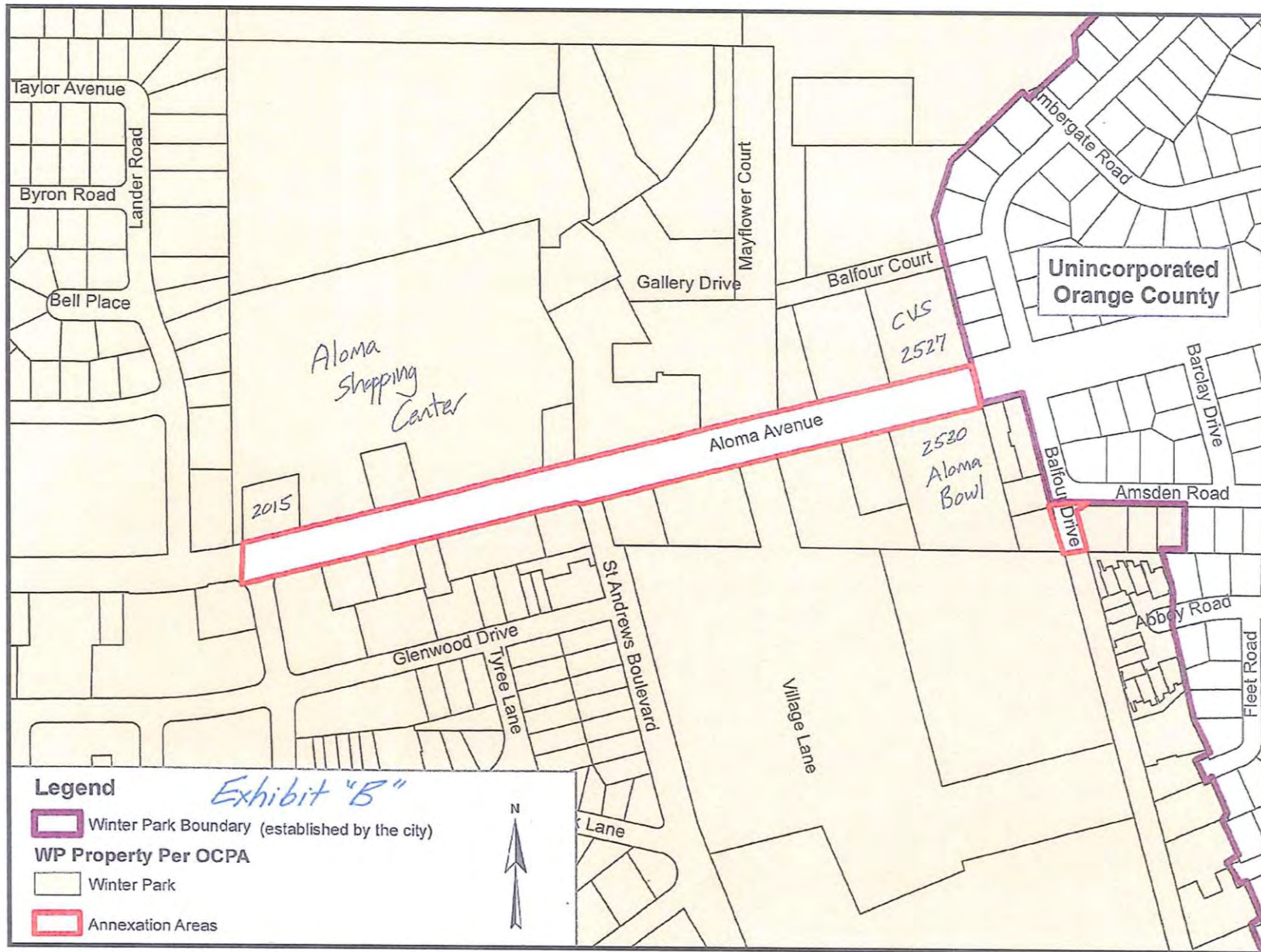
Legal Description:

Commence at the Southwesterly corner of Lot 1, Block A, of Winter Park Estates Section One, according to the plat thereof, as recorded in Plat Book "U," Page 146, of the Public Records of Orange County, Florida; thence run South 14°49'48" East a distance of 20.00 feet to the Northerly right-of-way line of Aloma Avenue (State Road 426), said point also being the Point of Beginning; thence South 75°09'12" West along said Northerly right-of-way line a distance of 1839.72 feet to the Point of Curvature of a curve concave Northwesterly and having a radius of 1860.08 feet; thence run Southwesterly along said Northerly right-of-way line and the arc of said curve 130.71 feet, through a central angle of 04°01'35" to a point on said curve; thence departing said curve and Northerly right-of-way line, run South 08°04'21" East a distance of 100.11 feet to the Southerly right-of-way line of Aloma Avenue (State Road 426), said point being a point on a curve concave Northwesterly and having a radius of 1960.08 feet; thence from a Chord Bearing of North 77°14'12" East, run Northeasterly along said Southerly right-of-way line and the arc of said curve 142.54 feet, through a central angle of 04°10'00" to the Point of Tangency; thence North 75°09'12" East along said Southerly right-of-way line a distance of 1839.70 feet; thence departing said Southerly right-of-way line run North 14°49'48" West a distance of 100.00 feet to the Point of Beginning.

Together with:

A portion of Balfour Drive of Winter Park Estates Section Three, as recorded in Plat Book "X"; Page 1, of the Public Records of Orange County, Florida, being more particularly described as follows:

Begin at the Southwest Corner of Lot 1, Block F, of said Winter Park Estates Section Three; thence run North 89°51'11" West a distance of 62.11 feet to the Westerly right-of-way line of said Balfour Drive; thence North 14°49'48" West along said Westerly right-of-way line a distance of 124.20 feet; thence departing said Westerly right of way run South 89°51'11" East a distance of 92.11 feet to a point on a curve concave Southeasterly and having a radius of 23.03 feet; thence run Southwesterly along the arc of said curve and the Easterly right-of-way line of said Balfour Drive a distance of 42.20 feet, through a central angle of 104°58'37" to the Point of Tangency; thence continue along said Easterly right-of-way line, South 14°49'48" East a distance of 94.20 feet to the Point of Beginning.





CITY OF WINTER PARK

401 Park Avenue South

Winter Park, Florida

32789-4386

June 7, 2013

Board of the Orange County Commission
Orange County Administration
PO Box 1393
Orlando, FL 32801

RE: Annexation of portions of Aloma Avenue and Balfour Drive

Dear Board of County Commissioners:

Pursuant to Chapter 171, Florida Statutes, the City of Winter Park is proceeding to annex portions of the rights-of way of Aloma Avenue and Balfour Drive which have properties within the city on both sides. There have been instances of confusion with public safety response where these right-of-ways are in the County but all the properties along these sections are in the City. This will remedy these public safety response issues. Enclosed is a copy of the legal advertisement, ordinance and map. The legal advertisements will run in the Orlando Sentinel for two consecutive weeks on Sunday, June 30, 2013 and Sunday, July 7, 2013.

The ordinance for this annexation will be heard at public hearings on July 8, 2013 and July 22, 2013 at 3:30 pm in the Commission Chambers of City Hall, 401 S. Park Avenue, Winter Park.

If you have other questions, please contact me at jbriggs@cityofwinterpark.org or at (407) 599-3440.

Sincerely,

Jeffrey Briggs,
Planning Director

Enclosures

NOTICE OF ANNEXATION

CITY OF WINTER PARK
PUBLIC NOTICE

TO CONSIDER THE ANNEXATION OF PORTIONS OF THE ALOMA AVENUE AND BALFOUR DRIVE RIGHT-OF-WAYS

NOTICE is hereby given that public hearings will be held by the Winter Park City Commission on Monday, July 8, 2013 at 3:30 p.m. and on Monday, July 22, 2013 at 3:30 pm in the Winter Park City Hall, Commission Chambers at 401 S. Park Avenue, Winter Park, Florida, to consider the following:

ORDINANCE NO. 2920-13

**AN ORDINANCE OF THE CITY OF WINTER PARK,
FLORIDA, ANNEXING THE RIGHT-OF-WAY OF ALOMA
AVENUE FROM 2015 ALOMA AVENUE EAST TO THE
CITY LIMITS AND THE RIGHT-OF-WAY OF BALFOUR
DRIVE FROM AMSDEN ROAD SOUTH TO THE CITY
LIMITS, MORE PARTICULARLY DESCRIBED HEREIN.**

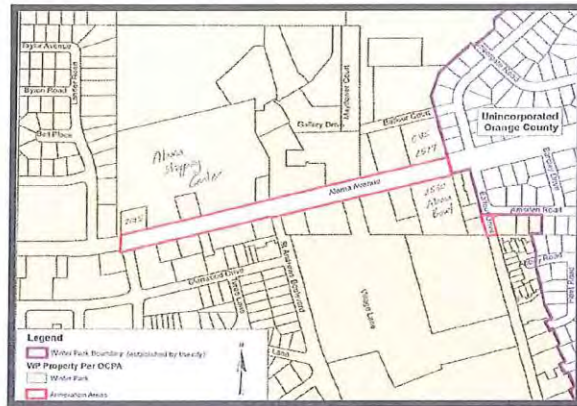
The complete legal description by metes and bounds as well as a complete copy of this proposed Ordinance No. 2896-13 may be obtained and inspected at the office of the City Clerk at 401 Park Avenue, South, Winter Park, Florida during regular business hours.

All interested parties are invited to attend and be heard. Additional information is available in the City Clerk's office so that citizens may acquaint themselves with each issue and receive answers to any questions they may have prior to the meeting.

NOTE: 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.

Cynthia S. Bonham, CMC
City Clerk



Publish: Sunday, June 30, 2013 and Sunday, July 7, 2013, Orlando Sentinel



city commission public hearing

item type	Public Hearing	meeting date	July 22, 2013
prepared by department division	Jeff Briggs Planning Department	approved by	<input type="checkbox"/> City Manager <input type="checkbox"/> City Attorney <input type="checkbox"/> A
board approval	N/A	<input type="checkbox"/> yes <input type="checkbox"/> no <input type="checkbox"/> N/A	final vote

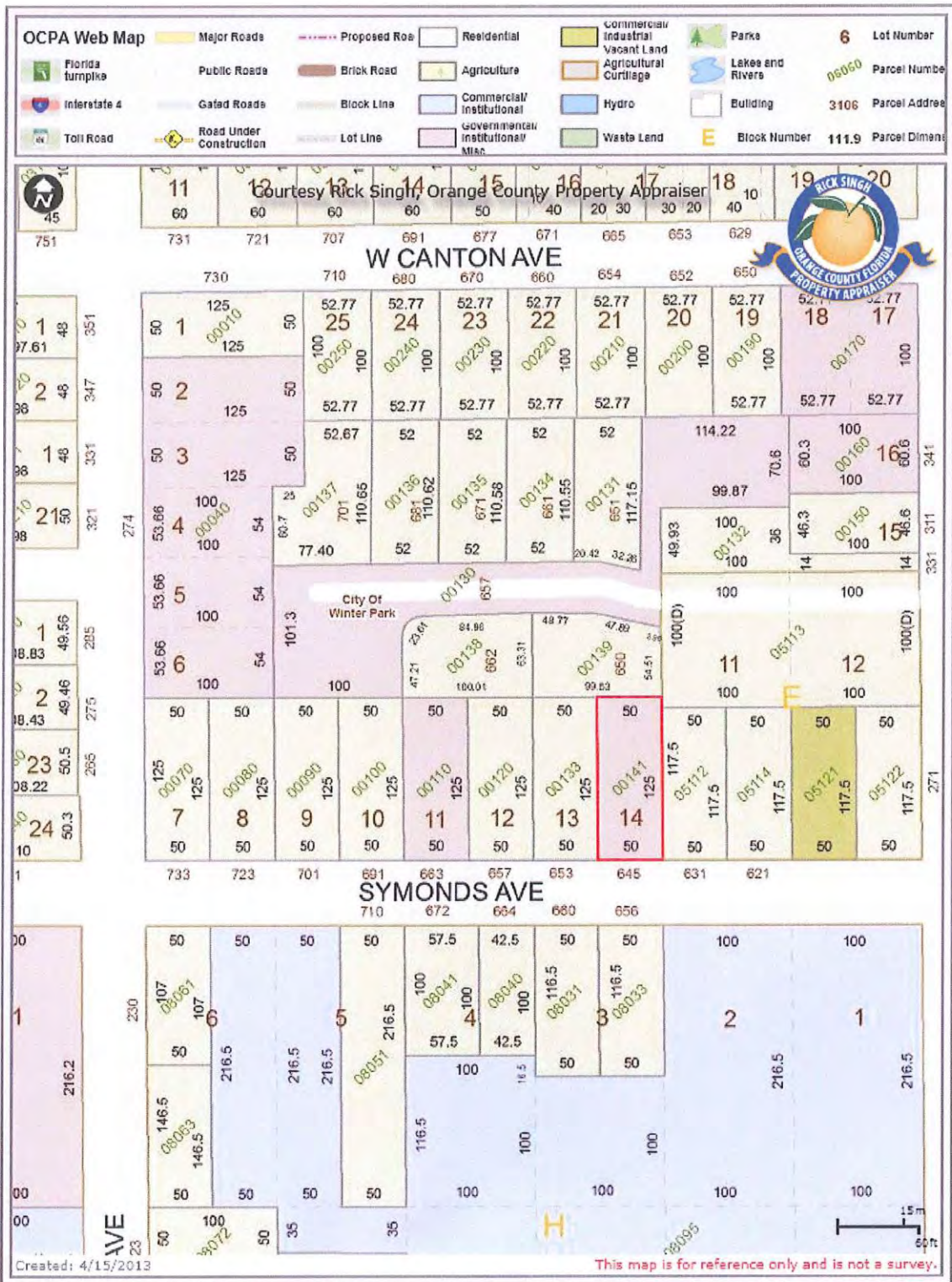
Subject: Ordinance for the land swap of 645 Symonds Avenue – SECOND READING

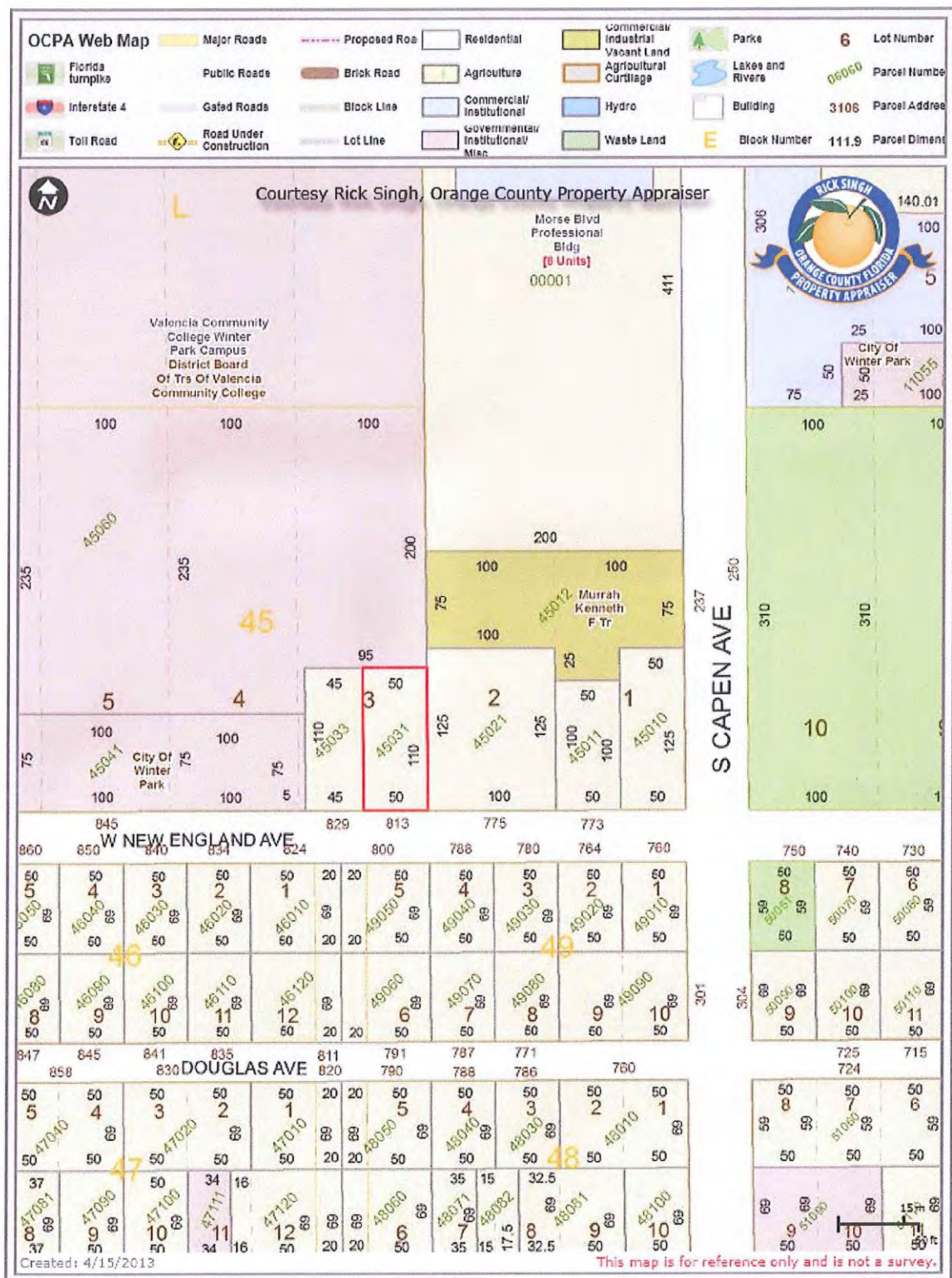
On May 13, 2013, the City Commission approved the request of CRDI LLC (Dan Bellows) to exchange or swap the city owned lot at 645 Symonds Avenue for his lot at 813 W. New England Avenue. The City Attorney advises that the City Charter requires an Ordinance to be adopted to sell (or swap) city owned land and has prepared this ordinance for that purpose.

As you recall, both lots are zoned R-2. The city lot at 645 Symonds is 6,250 sq. ft. in size. The lot at 813 W. New England is 5,500 sq. ft. in size. The difference in lot size is deemed to be inconsequential.

Under the terms approved by the City Commission, the applicant pays all of the closing costs.

Staff Recommendation: Approval





ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF WINTER PARK, FLORIDA, AUTHORIZING THE CONVEYANCE OF THE CITY OWNED PROPERTY LOCATED AT 645 SYMONDS AVENUE, WINTER PARK, FLORIDA, IN EXCHANGE FOR THE PROPERTY LOCATED AT 813 W. NEW ENGLAND AVENUE, SUBJECT TO MINIMUM REQUIREMENTS AS SET FORTH HEREIN; PROVIDING FOR CONFLICTS AND AN EFFECTIVE DATE.

WHEREAS, Section 2.11 of the Charter of the City of Winter Park, Florida, authorizes the City Commission, by ordinance to convey or authorize by administrative action the conveyance of any lands of the City; and

WHEREAS, the City purchased the lot at 645 Symonds Avenue in 2006, with funding from the Affordable Housing Trust Fund, with the intention to use the lot for a home built either by Habitat for Humanity or the Hannibal Square Community Land Trust; and

WHEREAS, CRDI, LLC, has requested that the City exchange or swap the City owned Lot at 645 Symonds Avenue for a lot at 813 W. New England Avenue owned by CRDI, LLC, so that CRDI, LLC, can combine 645 Symonds Avenue with adjacent property it owns; and

WHEREAS, the City can use the lot at 813 W. New England Avenue for affordable housing; and

WHEREAS, the City Commission deems it advisable to convey City property pursuant to the terms of an agreement between the City and CRDI, LLC which agreement will provide that CRDI, LLC, will pay all closing costs.

NOW, THEREFORE, BE IT ENACTED BY THE PEOPLE OF THE CITY OF WINTER PARK:

SECTION 1. The recitals stated hereinabove are incorporated herein by reference and are made fully a part of this Ordinance.

SECTION 2. The property that is authorized to be conveyed by the City to CRDI, LLC, is the property identified in Exhibit "A" attached hereto and made a part hereof by reference, with a street address of which is 645 Symonds Avenue, Winter Park, Florida.

SECTION 3. The City Commission of the City of Winter Park hereby approves the transfer and conveyance of 645 Symonds Avenue to CRDI, LLC, on the terms and conditions and subject to all requirements as stated in the Real Estate Exchange

Agreement (attached hereto as Exhibit "B"), as the City Commission deems it to be in the public interest.

SECTION 4. This Ordinance shall constitute the authorization by the City Commission pursuant to Section 2.11 of the Charter of the City of Winter Park, Florida, for the transfer and conveyance of the property set forth above, and the City Commission of the City of Winter Park hereby authorizes the Mayor to execute the Real Estate Exchange Agreement on behalf of the City.

SECTION 5. CONFLICTS. All Ordinances or parts of Ordinances in conflict with any of the provisions of this Ordinance are hereby repealed.

SECTION 6. EFFECTIVE DATE. This Ordinance shall become effective immediately upon its passage and adoption.

ADOPTED at a regular meeting of the City Commission of the City of Winter Park, Florida, held in City Hall, Winter Park, on this _____ day of _____, 2013.

Mayor Kenneth W. Bradley

ATTEST:

City Clerk, Cynthia S. Bonham

EXHIBIT "A"
CITY PROPERTY

Lot 14 of AARON HORTON, according to the Plat thereof as recorded in Plat Book N, Page 66, of the Public Records of Orange County, Florida.

Parcel Id. 06-22-30-3724-00-141

EXHIBIT "B"
REAL ESTATE EXCHANGE AGREEMENT

REAL ESTATE EXCHANGE AGREEMENT

THIS REAL ESTATE EXCHANGE AGREEMENT (the "**Agreement**") is made by and between **CRDI, LLC**, a Florida limited liability company, (hereinafter referred to as "**CRDI**"), with a principal address of 222 S. Pennsylvania Avenue, Ste. 200, Winter Park, FL 32789, and the **CITY OF WINTER PARK, FLORIDA**, a Florida municipal corporation ("**City**") with a principal address of 401 Park Avenue South, Winter Park, FL 32789, (collectively referred to herein as the "**Parties**"). The effective date of this Contract (the "**Effective Date**") shall be the date upon which the last of the parties shall have signed this Contract.

RECITALS:

WHEREAS, City is the owner of the real property located in Orange County, Florida, located at 645 Symonds Avenue, Winter Park, Florida, and more particularly described on the attached **Exhibit "A"** and hereinafter referred to as the "**City Property**".

WHEREAS, CRDI is the owner of the real property located in Orange County, Florida, located at 813 W. New England Avenue, Winter Park, Florida, and more particularly described on the attached **Exhibit "B"** and hereinafter referred to as the "**CRDI Property**".

WHEREAS, City and CRDI intend to transfer the real property interests of the City Property on the one hand, and the CRDI Property on the other hand, and are willing to take such steps on their respective parts to enable the transactions contemplated.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and for other good and valuable consideration, in hand paid each party by the other, the receipt and adequacy of which is hereby acknowledged, the Parties covenant and agree as follows:

1. Recitals. The Parties agree that the recitals are true and correct, and are incorporated and made a part of this Agreement. The City Property and the CRDI Property are sometimes individually or collectively referred to herein as the "Real Property."

2. Property to be Conveyed. The Parties agree to exchange the City Property and the CRDI Property upon the terms and conditions hereinafter set forth and subject to performance of all conditions of this Agreement and performance by each party hereto of its respective obligations hereunder. The conveyances of the Real Property shall in each case include all rights, easements, fixtures and appurtenances pertaining to such property, as well as the owner of such property's interests in any permits, licenses, governmental approvals, leases and other agreements pertaining to the Real Property, along with such other rights as may be specified herein.

3. Value of Exchange.

(a) Adjustment of Equities. It is the intent of the Parties that the relative fair market value of the City Property and the CRDI Property shall be approximately equal and equivalent to FORTY-THREE THOUSAND and 00/100 Dollars (\$43,000.00).

(b) Cash at Closing. Such cash amounts as each party may owe to the other, as set forth hereinabove, shall be first offset against the other, and, after all other prorations and adjustments required hereunder are made, the balance shall be paid to the appropriate party in the form of cash, cashiers check or confirmed wire transfer, in immediately available U.S. funds.

4. Conditions to Closing. The obligation of each party hereunder to consummate the Closing contemplated hereby is subject to the satisfaction of each of the following conditions (any of which may be waived in whole or in part in writing by the party benefited by the condition). If any of the following conditions precedent are not satisfied, the party benefited by such unsatisfied condition may terminate this Agreement by giving the other party written notice.

(a) Correctness of Representations and Warranties. The representations and warranties of the Parties set forth herein shall be true on and as of the Closing with the same force and effect as if such representations and warranties had been first made on and as of the Closing.

(b) Compliance by Parties. The Parties shall have performed, observed, and complied with all of the covenants, agreements, and conditions required by this Agreement to be performed, observed, and complied with by prior to or as of the Closing.

(c) The complete execution of this Agreement by the Parties and the approval of this Agreement by the City Commission of the City of Winter Park at a public meeting, pursuant to §166.045, Fla. Stat.

(d) CRDI shall fully comply with the provisions of Section 286.23, Florida Statutes by executing and delivering an Affidavit in the form of the Affidavit of Interest in Real Property - Florida Statute 286.23, a copy of which is attached hereto as **Exhibit "C."**

(e) Inspection Period. Each party hereto shall have until the date of Closing (herein the "**Inspection Period**") in which to conduct an investigation of the Real Property, including, by way of illustration and not in limitation : inspections as to the physical condition of the Real Property; investigation of the availability of utilities; status of zoning or ability to rezone; zoning codes; building codes; physical condition and any other condition or characteristic of the Real Property which Buyer may deem necessary or relevant to Buyer in purchasing the Real Property. Should either party for any reason become dissatisfied or concerned with the result of any such investigation, search, inquiry or report as contemplated hereby, then either party may, prior to the expiration of the Inspection Period, terminate this Agreement by written notice thereof to the other party.

(f) **Delivery of Materials.** Within five (5) days after the Effective Date of this Agreement, City and CRDI shall deliver to the other party copies of all existing studies, tests, environmental audits, soil borings results, surveys, site plans, reports, plans, permits, petitions, warranties, applications, certificates, reservations, agreements, development orders, approvals, maps, aerials and related materials in its possession relating to the Real Property.

5. Warranties and Representations. The Parties hereby make the following warranties, representations and covenants with respect to the Real Property, and which warranties, representations and covenants shall survive the Closing.

(a) **Marketable Title.** City and CRDI have good and insurable title to their respective parcels, and will have good and insurable title, in both cases, free and clear of all mortgages, liens, encumbrances, leases, tenancies, security interests, covenants, conditions, restrictions, rights-of-way, easements, reservations, judgments, lis pendens and other matters affecting title, except the Permitted Exceptions as hereinafter defined.

(b) **No Condemnation Pending or Threatened.** There is no pending or threatened condemnation or similar proceeding affecting any portion of the Real Property or any portion thereof, nor has either party acknowledged that any such action is presently contemplated.

(c) **Authority.** Except as may specifically be set forth herein, neither party is aware of any facts which prohibit it from entering into this Agreement and closing this Agreement in accordance with the terms hereof. The execution and delivery of this Agreement, and the consummation of the transaction contemplated hereby will not result in any breach of the terms and conditions of, or constitute a default under, any instrument or obligation to which either party is now or may become a party, or by which either party may be bound or affected, or violate any order, writ, injunction or decree of any court in any litigation to which either party is a party, or violate any law. The Parties have the power and authority to enter into, deliver and perform this Agreement, to execute and deliver all documents required hereby, to convey all of their right, title and interest in and to the Real Property to the other, and to otherwise take all steps necessary to the performance of the duties and obligations of either party hereunder.

(d) **Permitted Use.** The Real Property is zoned for such uses as are consistent with the comprehensive plan adopted by any Local Authority, except to the extent the failure of such representations and warranties does not materially affect the Parties or their successors, assigns or tenants from using the Real Property in a manner materially consistent with its historic and present use.

(e) **Compliance with Laws.** The Real Property and any improvements comply in all material respects with all applicable Land Use Approvals in effect as of this date and the Closing Date.

(f) **Certificates of Occupancy, Consents and Approvals.** All permanent certificates of occupancy and other consents and approvals required from any governmental

agency having jurisdiction over the Real Property have been issued and are in full force and effect without the presence or existence of any unsatisfied conditions or requirements with respect thereto, and true, correct and complete copies of such consents, approvals and certificates of occupancy have been delivered to the other party.

(g) **Litigation.** There are no actions, suits, proceedings or investigations, at law or in equity, or before any governmental agency or other person, pending or threatened against the City or CRDI that, in any case or in the aggregate, will affect the other party's ability to meet its obligations arising under this Agreement or have an adverse affect on the use, operation or occupancy of the Real Property.

(h) **Access, Special Assessments.** Pedestrian and vehicular access to the Real Property is provided by publicly dedicated streets that are contiguous with the Real Property. There are no special assessments pending or, to the knowledge of the City or CRDI, threatened against or with respect to the Real Property on account of or in connection with such streets, roads or any other public improvements including but not limited to storm and sanitary sewer, water or other utility lines, curbs, gutters, drainage facilities, sidewalks, lighting and the like.

(i) **Easements.** No additional easements are required for the provision of utilities, access, egress and drainage to or for the benefit of the Real Property in connection with the use, operation and enjoyment of the Real Property as a transmitter site and related facilities.

(j) **Utilities.** All necessary utility services, including but not limited to sanitary sewer, water, electric power, and telephone service are available to the Real Property and no unpaid assessments, impact fees, development fees, tap-on fees or recapture costs are payable in connection therewith.

(k) **Encroachments.** The Real Property does not encroach on the real property of another or upon real property not being conveyed to the transferee as a result of the transactions contemplated by this Agreement.

(l) **Environmental Status.** Each party warrants and represents to the other that, as to the respective property owned by them, (i) the Real Property is free of all hazardous waste or substances except as may be permitted by applicable law; (ii) that the Property has been operated and maintained in compliance with all applicable environmental laws, statutes, ordinances, rules and regulations; (iii) no other release of any hazardous waste or substances has taken place on the Real Property, (iv) no migration of hazardous waste or substances has taken place from the Real Property which would cause the release of any hazardous waste or substance on any adjoining lands or any other lands in the vicinity of the Real Property; and (v) there are no bulk or underground tanks on or in the Real Property, and, no bulk or underground storage tanks have ever been located on or in the Real Property.

The term hazardous waste or substances shall include those substances included within the definitions of "hazardous substances", "hazardous materials", "toxic substances", or "solid waste" in CERCLA, RCRA, and the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq., and in the regulations promulgated pursuant to said laws or any replacement

thereof; such other substances, materials and wastes which are or become regulated under applicable local, state or federal law, or which are classified as hazardous or toxic under federal, state, or local laws or regulations.

Both City and CRDI have no notice or knowledge of the on-site existence of any "Endangered and Threatened Species," flora and fauna as identified by the U.S. Fish and Wildlife Service's "List of Endangered and Threatened Wildlife and Plants" as may be amended from time to time. Both City and CRDI further warrant no knowledge of the on-site existence of any upland conservation areas which are preserved, or may be preserved, for the purposes of providing wildlife habitat.

The provisions of this Section shall survive the Closing or earlier termination of this Contract.

(m) **Representations Complete.** None of the representations or warranties made by the City or CRDI, nor any statement made in any document or certificate furnished by the either party pursuant to this Agreement contains or will contain at the Closing, any untrue statement of a material fact, or omits or will omit at the Closing, to state any material fact necessary in order to make the statements contained herein or therein, in the light of the circumstances under which they were made, not misleading.

6. **Title Insurance.**

(a) **CRDI Property.** CRDI, at CRDI's expense and within thirty (30) days from the Effective Date, shall obtain a title insurance commitment (the "**Title Commitment**") as to the CRDI Property, to issue an ALTA Owner's Title Insurance Policy - Form B, in the amount of \$43,000.00 to be issued by a title company of CRDI's choosing (the "**Title Insurance Company**"), naming City as the proposed insured. The Title Commitment shall show good, marketable and insurable fee simple title to the Property to be vested in City, liens, encumbrances, exceptions and qualifications which will not interfere with or impair the Property's use; exceptions permitted by the provisions of this Agreement; and those exceptions which are capable of and are actually to be discharged by CRDI at or before Closing (all other exceptions to title being deemed title defects for purposes of this Agreement). Legible and complete copies of all instruments listed as exceptions to title (commonly identified as Schedule B-II exceptions in the Title Commitment) shall be delivered with the Title Commitment. If title is found to be defective, City shall, within ten (10) days from the date it receives the Title Commitment, notify CRDI in writing to that effect specifying the defects. CRDI shall have twenty (20) days from the receipt of City's notice specifying the title defects to cure the defects and, if after said period CRDI shall not have cured the defects, or if CRDI shall not have progressed to a point where the defects are certain to be remedied prior to Closing, or where the removal of such defects is not otherwise assured to City's satisfaction, City shall have the option of (i) accepting the title "as is" or (ii) terminating the Agreement after which City and CRDI shall each be released from all further obligations to each other respecting matters arising from this Contract.

(b) **City Property.** CRDI, at CRDI's expense and within thirty (30) days

from the Effective Date, shall obtain a title insurance commitment (the "**Title Commitment**") as to the City Property, to issue an ALTA Owner's Title Insurance Policy - Form B, in the amount of \$43,000.00 to be issued by a title company of CRDI's choosing (the "**Title Insurance Company**"), naming CRDI as the proposed insured. The Title Commitment shall show good, marketable and insurable fee simple title to the Property to be vested in CRDI, liens, encumbrances, exceptions and qualifications which will not interfere with or impair the Property's use; exceptions permitted by the provisions of this Agreement; and those exceptions which are capable of and are actually to be discharged by City at or before Closing (all other exceptions to title being deemed title defects for purposes of this Agreement). Legible and complete copies of all instruments listed as exceptions to title (commonly identified as Schedule B-II exceptions in the Title Commitment) shall be delivered with the Title Commitment. If title is found to be defective, CRDI shall, within ten (10) days from the date it receives the Title Commitment, notify City in writing to that effect specifying the defects. City shall have twenty (20) days from the receipt of CRDI's notice specifying the title defects to cure the defects and, if after said period City shall not have cured the defects, or if City shall not have progressed to a point where the defects are certain to be remedied prior to Closing, or where the removal of such defects is not otherwise assured to CRDI's satisfaction, CRDI shall have the option of (i) accepting the title "as is" or (ii) terminating the Agreement after which CRDI and City shall each be released from all further obligations to each other respecting matters arising from this Contract.

7. **Surveys.** City, at CRDI's expense, may obtain a survey of the CRDI Property (the "**CRDI Survey**"), and CRDI, at CRDI's expense, may obtain a survey of the City Property (the "**City Survey**"), prepared by a licensed Florida land surveyor within the last thirty (30) days before closing, or in the alternative, an update of an earlier survey re-dated to a point in time within the last thirty (30) days which complies with the Florida Minimum Technical Standards F.A.C. 5J-17-051. If the Survey shows any encroachments onto the Property and/or improvements located outside its boundaries or encroachments by improvements principally located on the Property over required setback lines or over onto the property of others or onto any public right-of-way adjacent to the Property, or if it is apparent that the Property violates existing title covenants and/or applicable zoning laws or ordinances, City and/or CRDI shall notify the other party in writing to that effect specifying the defects. City and/or CRDI shall have until thirty (30) days from receipt of the other party's notice specifying the survey defects in which to cure such defects. If after said period City and/or CRDI shall not have cured the defects, or if City or CRDI shall not have progressed to a point where the defects are certain to be remedied at or prior to Closing, City or CRDI shall have the option of (i) accepting the condition of the Property as disclosed in the survey in an "as is" condition, or (ii) terminating the Agreement, thereupon City and CRDI shall each be released from all further liabilities and obligations to each other with respect to all matters arising from this Agreement.

8. **Closing.** The Closing shall occur on or before ninety (90) days from the Effective Date, and shall be held by express courier or at the offices of CRDI's choosing, or such other location as is mutually agreed upon by Parties. At the time of Closing, the Parties shall execute the Transaction Documents, conveying their respective property to the other.

9. Closing Cost and Prorations. Taxes, assessments and other items of income and expenses that survive closing, shall be prorated to the date of closing. If the Closing takes place and the current year's taxes are not fixed and the current year's assessment is available, taxes shall be prorated based upon such assessment and the prior year's millage. If the current year's assessment is not available, then taxes shall be prorated on the prior year's tax. As to the CRDI Property, taxes shall be prorated pursuant to F.S. 196.295, since the City is tax exempt. CRDI shall pay all closing costs, including the title insurance and the documentary stamps and recording costs for the transfer of the Real Property.

10. Transaction Documents. At the Closing, the appropriate party shall execute or procure the execution and delivery of the following documents:

(a) Special Warranty Deed conveying the City Property free and clear of all encumbrances except for the Permitted Exceptions to CRDI.

(b) Special Warranty Deed conveying the CRDI Property free and clear of all encumbrances except for the Permitted Exceptions to City.

(c) Closing Statement itemizing the dollar amounts of all financial matters related to the Closing, including the adjustments and prorations provided herein.

(d) FIRPTA affidavit by each party.

(e) Mechanics' lien, possession and gap affidavits.

(f) Limited Liability Affidavit by CRDI.

(g) Such other documents as may be required, necessary or useful to either party or the Title Insurance Company in consummating the transaction contemplated by this Agreement.

11. Entry. Each party shall have the reasonable right during the term of this Agreement to enter upon the Real Property, or any part thereof, for the purposes of reasonable inspection, environmental audits, surveys and tests and inspections. All inspections of either parcel shall be accomplished so as not to unreasonably interfere with the on-going business or activity conducted on said sites.

12. Condemnation. If, prior to closing, all or any part of the Real Property is taken by any governmental authority under its power of eminent domain, the party to which said Real Property shall be conveyed shall have the option, to be exercised within fifteen (15) days after said party receives written notice from the other party of same:

(a) to take title to the Real Property at Closing without any abatement or adjustment in the agreed value, in which event the party conveying such real estate shall unconditionally assign its rights in the condemnation award to the other (or said other party shall

receive the condemnation award from the conveying party if it has already been paid prior to Closing); or

(b) to terminate this Agreement, whereupon the duties and obligations of each of the Parties hereto shall end.

13. Brokers. Each of the parties warrant and represent to each other that they have no knowledge of any real estate broker or agent involved in this exchange of the Real Property.

14. Default. If City or CRDI fails to perform any of the covenants set forth in this Agreement, City or CRDI shall have, as its sole and exclusive remedy the right of specific performance against the other party.

15. Notices. Notices to City and CRDI shall be deemed delivered (i) when hand delivered, or (ii) one business day following delivery to an express delivery courier, such as Federal Express, or (iii) three days following deposit in U.S. mail, certified, return receipt requested. Notice shall be given to the following addresses:

To CRDI:

CRDI, LLC
Attn: Daniel B. Bellows, Vice President
222 S. Pennsylvania Ave., Ste. 220
Winter Park, FL 32789
Tel. 407-644-2699
Fax 407-644-2854

To City:

City of Winter Park
Attn: City Manager
401 Park Avenue South
Winter Park, FL 32789
Tel. 407-599-3235
Fax 407-599-3436

With a copy to:

Usher L. Brown, Esq.
City Attorney
Brown, Garganese, Weiss & D'Agresta, P.A.
111 N. Orange Ave., Ste. 2000
Orlando, FL 32801
Tel. 407-425-9566
Fax 407-425-9596

16. Assignment. This Agreement and any rights hereunder shall not be assignable by either party hereto without the prior written consent of the other party.

17. Miscellaneous.

(a) **Attorneys' Fees and Costs.** In connection with any litigation arising out of this Agreement, the prevailing party shall be entitled to recover all costs incurred, including reasonable attorneys' fees, including without limitation trial, appellate and bankruptcy proceedings.

(b) **Modifications to Agreement.** This Agreement may be modified only by an agreement in writing signed by the Parties to this Agreement.

(c) **Agreement To Survive the Closing.** All warranties, representations and agreements contained herein shall survive the Closing of the transaction contemplated by this Agreement.

(d) **Contract Not Recordable.** This contract shall not be recorded in the office of the Clerk of any Circuit Court of the State of Florida, except as may be required to enforce the provisions hereof in the event of a default.

(e) **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the respective successors and assigns and, as applicable, to heirs and legal representatives of the Parties hereto.

(f) **Governing Law and Venue.** This Agreement shall be governed by the laws of the State of Florida. The proper venue for any action concerning this Agreement shall be Orange County.

(g) **Counterparts.** This Agreement may be executed in several counterparts, each of which shall be deemed an original.

(h) **Severability.** If any provision of this Agreement, or the application thereof to any person or entity or any circumstance, is invalid or unenforceable in any jurisdiction, (i) a suitable and equitable provision shall be substituted therefor in order to carry out, so far as may be valid and enforceable, the extent and purpose of such invalid and unenforceable provision, and (ii) the remainder of this Agreement and the application of such provision to other persons, entities or circumstances shall not be affected by such invalidity or unenforceability, nor shall such invalidity or unenforceability affect the validity or enforceability of such provision, or the application thereof, in any other jurisdiction.

(i) **Time.** TIME IS OF THE ESSENCE IN THIS AGREEMENT.

(j) **Construction.** The paragraph headings, captions or abbreviations are used for convenience only and shall not be resorted to for interpretation of this Agreement. Whenever the context so requires, the masculine shall refer to the feminine, the singular shall refer to the plural, and vice versa.

(k) **Extension of Time Periods.** In the event that the last day of any period of time specified in this Agreement shall fall on a weekend or legal holiday, such period of time shall be extended through the end of the next work day following.

(l) **Waiver.** No waiver hereunder of any condition or breach shall be deemed to be a continuing waiver or a waiver of any subsequent breach.

IN WITNESS WHEREOF, the parties have executed this instrument as of the day and year indicated below.

*Signed, sealed and delivered
in the presence of:*

CRDI, LLC, a Florida limited
liability company

By: WELBOURNE AVE. CORP.,
a Florida corporation

(print name)

By: _____
Daniel B. Bellows, Vice President

(print name)

Date: _____

*Signed, sealed and delivered
in the presence of:*

(print name)

(print name)

CITY OF WINTER PARK, FLORIDA

By: _____
Kenneth W. Bradley, Mayor

ATTEST:

By: _____
Cynthia S. Bonham, City Clerk

Date: _____

EXHIBIT "A"
CITY PROPERTY

Lot 14 of AARON HORTON, according to the Plat thereof as recorded in Plat Book N, Page 66, of the Public Records of Orange County, Florida.

Parcel Id. 06-22-30-3724-00-141

EXHIBIT "B"
CRDI PROPERTY

The East 50 feet of the South 110 feet of Lot 3, Block 45, REVISED MAP OF THE TOWN OF WINTER PARK, according to the Plat thereof as recorded in Plat Book A, Pages 67-72, Public Records of Orange County, Florida.

Parcel Id. 05-22-30-9400-45-031

EXHIBIT “C”

AFFIDAVIT OF INTEREST IN REAL PROPERTY – F.S. 286.23

THIS AFFIDAVIT OF INTEREST IN REAL PROPERTY is made and entered into this _____ day of _____, 2013, for the sole purpose of compliance with Section 286.23 of the Florida Statutes.

The undersigned hereby swears and affirms that the following is true:

The undersigned is the _____ of CRDI, LLC, a Florida limited liability company, the legal title holder of the real property described as follows:

The East 50 feet of the South 110 feet of Lot 3, Block 45, REVISED MAP OF THE TOWN OF WINTER PARK, according to the Plat thereof as recorded in Plat Book A, Pages 67-72, Public Records of Orange County, Florida;

and (*select appropriate option below*):

☐ (*check if applicable*) – The name(s) and address(es) of every person having a beneficial interest in the real property described above however small or minimal is/are:

	Name	Address
a)		
b)		
c)		

☐ (*check if applicable*) – All beneficial interests in the property are exempt from disclosure because the entity identified above as the owner of the real estate is an entity registered with the Federal Securities Exchange Commission or the Florida Department of Financial Services pursuant to Chapter 517, Florida Statutes, whose interest is for sale to the general public.

[SIGNATURE ON FOLLOWING PAGE]

WITNESSES:

By: _____

Print name: _____

(print)

Title: _____

(print)

STATE OF _____

COUNTY OF _____

SWORN TO and subscribed before me this _____ day of _____, 2013, by _____, the _____ of CRDI, LLC, (check one) ☐ who is personally known to me or ☐ who provided _____ as identification.

Notary Public

Print Name: _____



city commission public hearing

item type	Public Hearing	meeting date	July 22, 2013
prepared by department division	Wes Hamil/Jeff Briggs Finance/Planning	approved by	<input checked="" type="checkbox"/> City Manager <input type="checkbox"/> City Attorney <input type="checkbox"/> N/A
board approval	N/A	<input type="checkbox"/> yes <input type="checkbox"/> no <input checked="" type="checkbox"/> N/A	final vote

Subject:

Contribution to Habitat for Humanity of Winter Park/Maitland, Inc. of the building lot at 813 W. New England Avenue.

Summary:

The City's affordable housing fee and the affordable housing trust fund has provided financial assistance to the non-profit affordable housing providers in the City since 1992. The recipients have been Habitat for Humanity of Winter Park/Maitland, the Hannibal Square Community Land Trust and the Winter Park Housing Authority.

Historically, Habitat for Humanity has been provided with an annual donation of one building lot from the City or they have been provided an annual budget allocation of \$65,000 to use to purchase a lot. Originally, the lot at 645 Symonds Avenue was purchased with affordable housing fees collected by the City for that purpose. The City is swapping that lot for the one at 813 W. New England Avenue. Thus, this agenda item would approve the donation or allocation of that lot to Habitat for Humanity. It is important to note that properties purchased with affordable housing funds must be used for that purpose.

This will be Habitat's 43rd house in Winter Park and 50th house total since 1992. They will begin construction right after Labor Day and will finish next June.

Fiscal Impact:

There is no direct dollar fiscal impact to the General Fund as this is the donation of a land asset held by the Affordable Housing Trust Fund. Habitat for Humanity of Winter Park/Maitland, Inc. as a non-profit 501 (c) (3) organization can and will provide whatever documentation is requested of others receiving organizational support from the City such as their IRS tax returns (Form 990's), list of their all-volunteer Board of Directors, etc. The city liaison to the Board of Directors is Jeff Briggs who serves as treasurer. Habitat has one part time employee who is paid from mortgage revenue. Thus, 100% of all donations from the City and others are used for the building of homes.

