



city commission agenda

Regular Meeting

Commission Chamber

August 12, 2013
3:30 p.m.

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 Parks and Recreation Director, John Holland Pledge of Allegiance	
3	Approval of Agenda	
4	Citizens Budget Comments	
5	Mayor's Report <ul style="list-style-type: none">a. Check presentation of \$25,000 from the Winter Park Health Foundation to go toward the purchase of the City's new shuttle bus.b. Board appointments:<ul style="list-style-type: none">- Code Enforcement Board: Daniel McIntosh and John Hunt (2012-2015 terms)- Construction Board of Adjustment and Appeals Board: Bill Maroon (alternate)	5 minutes
6	City Manager's Report	Projected Time 5 minutes

7	City Attorney's Report	Projected Time
8	Non-Action Items	Projected Time
	a. Financial Report – June 2013	5 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)	
10	Consent Agenda	Projected Time
	<ul style="list-style-type: none"> a. Approve the minutes of 7/22/13. b. Approve the following purchases and contracts: <ul style="list-style-type: none"> 1. After the fact Purchase Order 150557 to NU Environmental Development for pond excavation in conjunction with CNL development project for the Martin Luther King, Jr. Park excavation; \$70,000.00. 2. Clay brick pavers for the New England/Alfond Inn Bricking project to Brick America (IFB-15-2011); \$67,210.00. 3. Contract renewal and subsequent Purchase Order with Cigna Group Insurance for RFP-19-2008 Group Term Life, AD&D, and Voluntary Term Life for Employee, Spouse and Children, Long Term Disability and authorize the Mayor to execute the Renewal Package documents; \$133,282. 4. Contract renewal and subsequent Purchase Order with MetLife Dental Group Insurance for RFP-19-2008 and authorize the Mayor to execute the Renewal Package documents; \$370,851. 5. Contract renewal and subsequent Purchase Order with Aetna for RFP-6-2007 for medical insurance and authorize the Mayor to execute the Renewal Package documents; \$6,128,100. 6. Contract with ARAG to offer Pre-paid Legal Services benefits for employee and spouse. 7. Piggybacking the South Florida Water Management District Contract #6000000579 with Winfield Solutions, LLC for various herbicides and related adjuvants and authorize the Mayor to execute the Piggyback Contract. c. Authorize the Mayor to execute the power supply and interconnection agreements with the Orlando Utilities Commission; and to execute the T-1 tariff service agreement and associated transaction confirmations with Florida Power & Light Company plus a limited services agreement which will allow FPL to act as the City's Transmission Agent. d. Confirm the appointment of Dori Stone as Director of Planning and Community Development (Planning and Economic Development/CRA Departments to be consolidated into one unified department). 	5 minutes

11 Action Items Requiring Discussion	Projected Time
a. Comparison report: Winter Park Register of Historic Places and the National Register of Historic Places	20 minutes
b. CNL Request to Use City Owned Land for Public/Private Parking Structure	40 minutes
12 Public Hearings	Projected Time
a. 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 (2)	5 minutes
b. 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 (2)	5 minutes
c. Red Light Camera Program: - Resolution – Appointing a Hearing Officer - Resolution – Appointing a Clerk to the Local Hearing Officer - Resolution – Setting the amount of municipal costs for infractions	20 minutes
d. Police and Fire Pension ordinances to comply with recent changes to the Internal Revenue Code relating to tax qualified pension plans: - Ordinance – Amending the Firefighters’ Pension Plan (1) - Ordinance – Amending the Police Officers’ Pension Plan (1)	20 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

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.”

Appt to Code Enforcement
BOARD

Cindy Bonham

From: info@cityofwinterpark.org
Sent: Friday, July 19, 2013 3:38 PM
To: dan.mcintosh@lowndes-law.com
Cc: Cindy Bonham; Michelle Bernstein
Subject: Citizen Board Application - submission received

Dear Mr. or Ms. McIntosh:

Thank you for submitting your application to be considered for the Code Enforcement Board. Your application will be on file for one year after the submission date. We appreciate your interest in serving the City of Winter Park.

Name: Daniel McIntosh

E-Mail: dan.mcintosh@lowndes-law.com

Home Address: 810 Bonita Drive
Winter Park, FL 32789

Business Address: 450 South Orange Avenue, Suite 200
Orlando, FL 32801

Board 1: Code Enforcement Board

Skills:

Board 2:

Skills:

Board 3:

Skills:

Are you a registered voter? yes

Are you a resident of the yes
city?

Do you own property in the yes
city?

Do you hold a public office? no

Are you employed by the no
city?

May we automatically yes
submit your application
when vacancies occur?

Do you have any potential yes
conflicts of interest that may
arise from time to time if
you serve on one of these
boards?

Conflicts of interest: I am a partner at the Lowndes, Drosdick law firm. I sat on the Code Enforcement Board for tow 3 year terms a number of years ago and recused myself on two occasions due to matters involving firm clients. It happens very, very rarely and I will have notice before the meeting and can alert City staff.

**Are you currently serving on no
a city board(s)?:**

**Have you previously served yes
on a city board(s)?**

Previous city board(s): Code Enforcement Board - two 3 year terms for a total of 6 years Board of Adjustment - two 3 year terms for a total of 6 years

Community Involvement: All Saints Church leadership Winter Park Chamber of Commerce Orlando Shakespeare Theater Board of Directors

Work Experience: I practice real estate law which is helpful when dealign with code enforcement liens, City code application, and issues in connection wtih the specific violations.

Educational Experience: Duke University - B.A. University of Florida School of Law - J.D.

APPT to Code Enforcement Board

Cindy Bonham

From: info@cityofwinterpark.org
Sent: Saturday, July 20, 2013 11:16 AM
To: johng2011@gmail.com
Cc: Cindy Bonham; Michelle Bernstein
Subject: Citizen Board Application - submission received

Dear Mr. or Ms. Hunt:

Thank you for submitting your application to be considered for the Civil Service Board, Winter Park Firefighters' Pension Board and Code Enforcement Board. Your application will be on file for one year after the submission date. We appreciate your interest in serving the City of Winter Park.

Name: John Hunt

E-Mail: johng2011@gmail.com

Home Address: 632 Brechin Dr.
Winter Park, FL 32792

Business Address:

Board 1: Civil Service Board

Skills: Former Fire Chief, BS Fire Safety Administration, Certified Executive Fire Officer

Board 2: Winter Park Firefighters' Pension Board

Skills: Former Fire Chief, BS Fire Safety Administration, Certified Executive Fire Officer

Board 3: Code Enforcement Board

Skills: Former Fire Chief, BS Fire Safety Administration, Certified Executive Fire Officer

Are you a registered voter? yes

Are you a resident of the city? yes

Do you own property in the city? no

Do you hold a public office? no

Are you employed by the city? no

May we automatically submit your application when vacancies occur? yes

Do you have any potential conflicts of interest that may arise from time to time if you serve on one of these boards? no

Are you currently serving on a city board(s)? no

**Have you previously served no
on a city board(s)?**

Community Involvement: Member of First Baptist of Winter Park.

Work Experience: Deputy Fire Chief, City of Orlando, FL, retired Sept. 1986.
Fire Chief of Orange County FL, Oct.1986-May 1989

Educational Experience: AS Valencia Community College BS Rollins College
Certified Executive Fire Officer, National Fire Academy



02/15/2009

STILL Interested
July 2013

Citizen Board Application Form

Note: This application is valid for **one year** from the date of completion.

If you are interested in serving on a City Board, please complete this application and return it to: City Manager's Office, 401 Park Avenue South, Winter Park, FL 32789. Fax 407-599-3436.

Name: William Maroon Home phone: 321-277-8274
Home address: 1041 Via Merano Court Business phone: 407-774-7083
Business: Maroon Fine Homes, Inc. E-Mail address: wmaroon@maroon.net
Business address: 1400 W. Fairbanks Ave., Suite 102, Winter Park, FL 32789

Are you a registered voter?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Are you a resident of the city?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Do you own property in the city?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Do you hold a public office?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Are you employed by the city?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

Until you are selected for the board of your choice, may we submit your application when vacancies occur, rather than phoning you? ☒ Yes ☐ No

Please list in order of your preference, the Board(s) for which you are submitting this application and the special skill(s) that would be beneficial in serving on said board. Note: The functions and requirements of each board are listed on pages 3 and 4 of this application form.

1. Construction Board of Adjustments & Appeals
2. /
3. /

Do you have any potential conflicts of interest that may arise from time to time if you serve on one of these boards? A conflict of interest would be anything that inures to your benefit, your employer's benefit or a member of your family's benefit. For Example: You are applying for a Planning and Zoning Board Appointment and are an Architect or Attorney that may occasionally represent a client with a project before the board. Note: Having a potential conflict of interest does not necessarily exclude you from serving on a board.) ☒ Yes ☐ No

If yes, please explain:

I build in Winter Park and may occasionally appear in front of one of these Boards.

Are you currently serving on a City Board(s)? ☐ Yes ☒ No

If yes, which board(s) _____

Have you previously served on a City Board(s)? ☐ Yes ☒ No

If yes, which board(s) _____

Please list any other community involvement:

I have participated in many focus groups in Winter Park relating to code changes

Please list any work/career experience:

President of Maroon Fine Homes, Inc. for 25 years.

My firm has constructed over 400 homes.

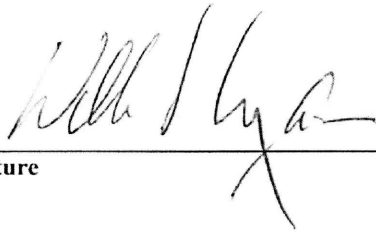
Please list your educational experience:

Bachelor of Science in Business Administration with a concentration in finance

University of Florida 1983 and a Masters in Business Administration at Stetson University in 1987.

Signature

Date



12.04.2012



city commission city manager's report

item type

City Manager's Report

meeting date

August 12, 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. Submitted revised plans 8-6-13 to FDOT.	September 2013
Fairbanks Improvement Project	Contract has been awarded to Masci General Contractor, Inc. 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. Preliminary paving meetings have been held. Project website has been set up at www.cityofwinterpark.org/fairbanks	<u>Construction Project</u> On schedule <u>Communication Notices</u> <ul style="list-style-type: none"> • Jackson lift station is largely complete. • Gravity sewer is complete and being tested. • Paving has begun, shall be completed by the week of August 12
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.	Completed.
Post Office Discussions	No new developments.	
Organizational Support	Will be discussed along with proposed FY14 budget and adoption process.	September 2013
Amtrak/SunRail Station	Roof trusses and decking being constructed. West parking lot improvements completed.	Building complete December 2013 SunRail complete May 2014
Quiet Zones	FDOT consultant still reviewing concept plans. Field meeting held July 23-24.	Ongoing coordination with MetroPlan and FDOT.

Wholesale Power Supply	Power supply portfolio approved by Commission 6/24. Contract negotiations with suppliers are underway.	August 12, 2013 and August 26, 2013
Territory/CR-3 Negotiations	Ongoing discussions with Progress Energy/Duke	August/September 2013
New Hope Baptist Church Project	The pastor notified us that they are having a new person take over the work and will be moving ahead soon. The Pastor's daughter (recovering from major surgery) has returned to handle the DCF licensing with the State.	Fall of 2013 (per Pastor)
Martin Luther King, Jr. Park	Pond expansion started on July 8 and will take four weeks to complete. Excavation completed. Grading and boardwalk bridge will begin 8-7-13.	Completion - August 2013
Strategic Planning Session	The strategic planning meeting will be held at the Winter Park Community Center on September 6 from 9 a.m. to 2 p.m.	

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.



item type City Managers Report

meeting date August 12, 2013

Below is the status of development projects previously approved by the City Commission and others that may be of interest. The changes or updates since the last report are shown [in blue](#).

300 E. New England Avenue: Alford Inn - [Target opening date is August 18th](#).

600 N Orlando Avenue: Borders Books – Redevelopment approved by the City Commission on March 26, 2012. [Chase Bank has now waived all of their contingencies and the building permit for the new Chase bank has been issued. Demolition of the Borders building will be within the next month; they will begin the site work in September and construct the Chase Bank from October thru February 2014. Following the Chase Bank construction, Versona and Starbucks would construct their building and do their build out work in February/March for an opening in April/May 2014. Versona is a woman's fashion store focused on jewelry, handbags, shoes and more per their website. They are occupying 7,000 sq. ft.](#)

643 Orange Avenue: Former Levan's Catering building - [Once the grease trap issue is worked out, the building permit is ready to be issued for a new 165 seat restaurant in this space by the same owners as the adjacent Meat House.](#)

940 W. Canton Avenue: Apartments at Winter Park Village. That 204 unit project received 'final' conditional use approval on the March 25th. [Building permit application was made on August 1st and now under review.](#)

111 and 131 N. Orlando Avenue: The "final" conditional use redevelopment plans for 36,000 sq. ft. of retail, restaurant and bank were approved by the City Commission on June 26th. [The developer has closed on the property. Trader Joe's is a firm commitment. Demolition permits have been issued. Applications are in to the City for the site work.](#)

1201 N. Lakemont Avenue- Winter Park YMCA: Work on the new zero depth children's swimming pool is underway and will be completed by the end of August. Then the focus moves to the parking lot addition which is to be done by October/November.

900, 912 and 952 W. Fairbanks Avenue: Phil Keen has purchased these three properties including the former Café 906, Sadler's Tailoring and the adjacent building and plans to convert the buildings into his business offices.

810 N. Orlando Avenue: The redevelopment plans for a TD branch bank were approved by the City Commission on January 28th. Permits applied for and ready to be issued but FDIC approval is needed before construction can begin so it will likely be many months or as much as a year before construction begins.

200 N. Orlando Avenue: (just north of the new Carmel Café): The building permit for the conversion of that existing building into a new medical office for cosmetic surgery was issued in late May and construction is proceeding.

401 N. Orlando Avenue: ABC Liquors plans a new larger store were approved on November 26th

by the City Commission. They have been issued their site development permit but have not applied for the "building" portion yet. Staff believes we are still some months away from a construction start.

550 N. Denning Drive: (behind the WP Village) Atlantic Housing's project of 105 senior apartments has been issued the building permits and construction is underway. They hope to be completed by November/December of this year.

400 W. Swoope Avenue – A ten unit townhouse project that received the zoning approval from the City Commission in February, 2012. They have modified the project to be nine units in order to improve the floor plans and marketability and the building permit was issued in April.

941 W. Morse Blvd.: CNL Building (former State Office building) – Building permits have been issued and construction is underway. Estimated completion is September/October.

100 Perth Lane – Dr. Bruce Breit (Women's Care Florida) and WP Hospital - Conditional Use approved by the City on January 23rd to construct a 22,000 sq. ft. medical office. Building permit has now been issued and construction on-going. Estimated completion is September.

271 N. Pennsylvania Avenue - the City Commission tentatively approved a rezoning for this property in September 2012 for Rex-Tibbs to build three townhomes but they did not purchase the property and the rezoning was effective only upon their closing. This commercial site was then sold to Zane Enterprises who has a building permit to build a two-story, 4,500 sq. ft. office with tenants committed.

200 E. Canton Avenue: Sestiere Santa Croce First floor interior build-out is completed. Construction continues on the second and third floors which will be a residence for the building owner.

347/349/351 N. Orlando Avenue: Liquidation Station is closing and vacating their three buildings. The northernmost building at the corner of Trovillion and Orlando Avenues has been converted to a Performance Bicycle business. Similar conversions of these buildings for other new businesses are expected in the near future.

901 N. Orlando Avenue: Wawa Store – The permit for the development has been issued and construction has begun.

Other Notes: [Whole Foods is actively looking for a location along Orlando Avenue including the Corporate Square/WP Dodge property; at Ravaudage and other sites.](#)

For more information on these or other projects, please contact Jeff Briggs, Planning Director at jbriggs@cityofwinterpark.org or at (407) 599-3440.

Financial Report

For the Month of June (75% 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	(30,000)	Largest negative variance is electric franchise fee revenues due to lower sales of kWh
Utility taxes	6,768,216	(65,000)	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	650,000	Increased construction activity has improved fee permit revenues
Other licenses & permits	21,500	0	
Intergovernmental	6,069,928	95,000	Sales tax revenue has improved nicely in recent months. Gas tax revenues have decreased.
Charges for services	5,010,068	300,000	Fire inspection fee revenues are up as a result of the increased construction activity and ambulance transport revenues have also improved. Golf course revenues are on target to exceed budget projections by about \$20,000
Fines and forfeitures	1,397,600	(30,000)	Traffic fines are a bit less than expected (\$120,000) and red light traffic camera revenues are expected to be about \$90,000 better than our revised budget
Miscellaneous	683,381	(700,000)	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	70,000	Increases in electric fuel cost recovery rates should improve our electric franchise fee equivalent revenues
	45,626,885	290,000	

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 5.5% 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 nine months ended June 30 is a positive \$1,144,805 and debt service coverage is projected to be a very strong 1.94 for the fiscal year.

Electric Services Fund

Electric sales in kWh are projected to be about 17.5M short of our original estimate. The total projection of 413,159,733 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 nine months ended June 30 a positive \$366,861. The bottom line would be stronger except fuel costs were under recovered from October to June by about \$700,000. Fuel cost recovery rates were increased again on July 1 and this will help bring our revenues more in line with our fuel costs.

Debt service coverage is projected to be 2.41 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. Annual debt service coverage should be in the 2.60 – 2.70 range.

Investment Report

This two page report summarizes the City's cash and investment holdings as of June 30. The overall portfolio has a blended rate of return of 1.50%. All investment holdings were within the parameters of the City's current Investment Policy as of June 30.

The City of Winter Park, Florida
Monthly Financial Report - Budget vs. Actual
General Fund
Fiscal YTD June 30, 2013 and 2012
75% of the Fiscal Year Lapsed

Fiscal YTD June 30, 2013							Fiscal YTD June 30, 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	\$ 13,587,137	128%	\$ 14,174,500	\$ 14,174,500	\$ 10,630,875	\$ 2,956,262	\$ 13,532,792	\$ 14,265,000	\$ 10,698,750	\$ 2,834,042
Franchise Fees	710,717	86%	1,103,800	1,103,800	827,850	(117,133)	710,588	1,132,500	849,375	(138,787)
Utility Taxes	4,450,795	88%	7,048,216	6,768,216	5,076,162	(625,367)	4,351,602	6,717,000	5,037,750	(686,148)
Occupational Licenses	474,386	134%	472,000	472,000	354,000	120,386	461,327	459,500	344,625	116,702
Building Permits	1,481,290	136%	1,340,500	1,450,500	1,087,875	393,415	1,508,875	1,249,050	936,788	572,087
Other Licenses & Permits	20,830	129%	21,500	21,500	16,125	4,705	19,250	21,000	15,750	3,500
Intergovernmental	3,764,039	83%	6,179,928	6,069,928	4,552,446	(788,407)	3,837,508	6,118,315	4,588,736	(751,228)
Charges for Services	3,980,388	106%	5,010,068	5,010,068	3,757,551	222,837	3,668,183	4,939,600	3,704,700	(36,517)
Fines and Forfeitures	993,167	95%	1,287,600	1,397,600	1,048,200	(55,033)	657,130	1,030,200	772,650	(115,520)
Miscellaneous	(110,609)	-22%	683,381	683,381	512,536	(623,145)	371,699	556,457	417,343	(45,644)
Fund Balance	-	-	-	616,788	462,591	(462,591)	-	642,911	482,183	(482,183)
Total Revenues	29,352,140	104%	37,321,493	37,768,281	28,326,211	1,025,929	29,118,954	37,131,533	27,848,650	1,270,304
Expenditures:										
City Commission	15,410	85%	24,077	24,077	18,058	2,648	21,115	22,376	16,782	(4,333)
Legal Services - City Attorney	258,389	143%	240,236	240,236	180,177	(78,212)	182,141	240,236	180,177	(1,964)
Legal Services - Other	1,040	2%	60,000	60,000	45,000	43,960	80,574	110,000	82,500	1,926
Lobbyists	69,543	79%	118,000	118,000	88,500	18,957	77,665	116,000	87,000	9,335
City Management	366,887	98%	501,161	501,383	376,037	9,150	359,081	487,729	365,797	6,716
Budget and Performance Measurement	48,903	0%	-	-	-	(48,903)	-	-	-	-
City Clerk	141,187	93%	237,843	203,145	152,359	11,172	141,421	214,071	160,553	19,132
Communications Dept.	323,942	93%	461,681	463,895	347,921	23,979	306,892	443,574	332,681	25,789
Information Technology Services	841,225	90%	1,212,642	1,241,789	931,342	90,117	927,855	1,343,592	1,007,694	79,839
Finance	609,887	98%	830,673	831,058	623,294	13,407	612,263	808,588	606,441	(5,822)
Human Resources	183,436	98%	249,430	250,789	188,092	4,656	187,879	285,245	213,934	26,055
Purchasing	170,026	101%	211,301	225,011	168,758	(1,268)	92,784	206,965	155,224	62,440
Planning & Community Development	342,049	77%	575,441	592,782	444,587	102,538	419,224	643,641	482,730	63,506
Building	698,805	93%	1,375,881	1,002,095	751,571	52,766	948,258	1,292,765	969,573	21,315
Economic Development	57,483	36%	100,000	211,398	158,549	101,066	19,063	163,402	122,552	103,489
Public Works	4,982,833	96%	6,804,278	6,942,130	5,206,598	223,765	4,897,347	6,931,798	5,198,849	301,502
Police	8,925,693	94%	12,739,143	12,717,307	9,537,978	612,285	8,425,174	11,901,252	8,925,939	500,765
Fire	7,711,679	102%	9,858,414	10,118,777	7,589,083	(122,596)	7,056,841	9,351,829	7,013,871	(42,970)
Parks & Recreation	4,973,153	96%	6,576,086	6,879,703	5,159,777	186,624	4,636,332	6,586,218	4,939,664	303,332
Organizational Support	1,273,383	110%	1,536,560	1,536,560	1,152,420	(120,963)	1,183,909	1,550,212	1,162,659	(21,250)
Non-Departmental	-	-	224,000	150,000	112,500	112,500	-	397,500	298,125	298,125
Total Expenditures	31,994,953	96%	43,936,847	44,310,135	33,232,601	1,237,648	30,575,818	43,096,993	32,322,745	1,746,927
Revenues Over/(Under)										
Expenditures	(2,642,813)	54%	(6,615,354)	(6,541,854)	(4,906,390)	2,263,577	(1,456,864)	(5,965,460)	(4,474,095)	3,017,231
Operating transfers in	6,263,993	99%	8,655,392	8,475,392	6,356,544	(92,551)	5,928,469	8,432,000	6,324,000	(395,531)
Operating transfers out	(1,423,529)	98%	(2,040,038)	(1,933,538)	(1,450,154)	26,625	(1,849,905)	(2,466,540)	(1,849,905)	-
Other Financing Sources/(Uses)	4,840,464	99%	6,615,354	6,541,854	4,906,390	(65,926)	4,078,564	5,965,460	4,474,095	(395,531)
Total Revenues Over										
Expenditures	\$ 2,197,651		\$ -	\$ -	\$ -	\$ 2,197,651	\$ 2,621,700	\$ -	\$ -	\$ 2,621,700

* As adjusted through June 30, 2013

The City of Winter Park, Florida
Monthly Financial Report - Budget vs. Actual
Community Redevelopment Fund
Fiscal YTD June 30, 2013 and 2012
75% of the Fiscal Year Lapsed

	Fiscal YTD June 30, 2013						Fiscal YTD June 30, 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	132%	\$ 2,024,000	\$ 2,024,000	\$ 1,518,000	\$ 485,379	\$ 2,090,102	2,107,423	\$ 1,580,567	\$ 509,535
Intergovernmental	-	0%	-	-	-	-	-	-	-	-
Charges for services	205,358	0%	175,940	175,940	131,955	73,403	139,393	162,000	121,500	17,893
Miscellaneous	(78,575)	-414%	25,300	25,300	18,975	(97,550)	69,787	25,000	18,750	51,037
Fund Balance	-	0%	37,478	55,845	41,884	(41,884)	-	1,039,263	779,447	(779,447)
Total Revenues	2,130,162	125%	2,262,718	2,281,085	1,710,814	419,348	2,299,282	3,333,686	2,500,264	(200,982)
Expenditures:										
Planning and Development	644,564	117%	715,435	733,802	550,352	(94,213)	445,998	605,283	453,962	7,964
Capital Projects	-	0%	-	-	-	-	543,156	1,145,980	859,485	316,329
Debt service	7,093,231	611%	1,547,283	1,547,283	1,160,462	(5,932,769)	1,223,913	1,550,823	1,163,117	(60,796)
Total Expenditures	7,737,795	452%	2,262,718	2,281,085	1,710,814	(6,026,981)	2,213,067	3,302,086	2,476,564	263,497
Revenues Over/(Under)										
Expenditures	(5,607,633)	100%	-	-	-	(5,607,633)	86,215	31,600	23,700	62,515
Debt proceeds	5,870,000	-	-	-	-	5,870,000	-	-	-	-
Operating transfers out	-	0%	-	-	-	-	(23,700)	(31,600)	(23,700)	-
Other Financing Sources/(Uses)	5,870,000	0%	-	-	-	5,870,000	(23,700)	(31,600)	(23,700)	-
Total Revenues Over/(Under)										
Expenditures	\$ 262,367		\$ -	\$ -	\$ -	\$ 262,367	\$ 62,515	\$ -	\$ -	\$ 62,515

* As adjusted through June 30, 2013

WINTER PARK WATER AND WASTEWATER METRICS
June 30, 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	1,535,131	2,055,215	1,972,529	82,686	1,597,254	2,186,360
Outside City	1,042,364	1,395,504	1,424,105	(28,601)	1,129,014	1,472,560
Total	2,577,495	3,450,719	3,396,634	54,085	2,726,268	3,658,920
<hr/>						
Operating revenues: ¹						
Sewer - inside city limits	\$ 4,859,772	\$ 6,406,476	\$ 6,008,000	\$ 398,476	5,010,056	6,628,333
Sewer - outside city limits	5,325,985	7,165,363	6,595,000	570,363	5,497,965	7,337,342
Water - inside city limits	5,234,661	7,175,680	8,047,000	(871,320)	5,323,534	7,264,552
Water - outside city limits	3,965,139	5,174,683	5,558,000	(383,317)	3,680,760	4,890,304
Other operating revenues	1,049,648	1,399,531	1,197,000	202,531	1,092,210	1,396,248
Total operating revenues	20,435,205	27,321,733	27,405,000	(83,267)	20,604,525	27,516,779
Operating expenses:						
General and administration	1,152,759	1,537,012	1,681,263	144,251	1,109,873	1,716,877
Operations	8,021,605	10,695,473	12,221,999	1,526,526	8,325,017	11,322,930
Wastewater treatment by other agencies	2,349,090	3,132,120	3,412,000	279,880	2,046,442	3,480,709
Total operating expenses	11,523,454	15,364,605	17,315,262	1,950,657	11,481,332	16,520,516
Operating income (loss)	8,911,751	11,957,128	10,089,738	1,867,390	9,123,193	10,996,263
Other sources (uses):						
Investment earnings	(340,391)	(453,855)	166,850	(620,705)	197,977	184,401
Miscellaneous revenue	6,432	8,576	-	8,576	7,253	7,253
Transfer to Renewal and Replacement Fund	(1,501,917)	(2,002,556)	(2,002,830)	274	(1,384,340)	(1,846,020)
Transfer to General Fund	(1,435,575)	(1,914,100)	(1,914,100)	-	(1,387,200)	(1,849,600)
Transfer to Capital Projects Fund	(53,250)	(71,000)	(71,000)	-	(49,872)	(66,496)
Debt service sinking fund deposits	(4,442,245)	(5,923,086)	(5,867,532)	(55,554)	(4,364,101)	(5,844,526)
Total other sources (uses)	(7,766,946)	(10,356,021)	(9,688,612)	(667,409)	(6,980,283)	(9,414,988)
Net increase (decrease) in funds	\$ <u>1,144,805</u>	\$ <u>1,601,107</u>	\$ <u>401,126</u>	\$ <u>1,199,981</u>	<u>2,142,910</u>	<u>1,581,275</u>
Debt service coverage	1.93	1.94				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		430,678		430,678
Investment earnings		(91,030)		(91,030)
Sewer extension work at Ravadauge			(108,614)	(108,614)
Other sewer main extension work			(86,462)	(86,462)
Ending balance - 06/30/2013	3,281,868	339,648	(195,076)	3,426,440

Water Impact Fees

	Beginning Balance	Additions	Deductions	Ending Balance
Beginning balance - 10/01/2012	2,656,637			2,656,637
Water impact fee revenues		209,424		209,424
Investment earnings		(69,310)		(69,310)
Water extension work at Ravadauge			(185,713)	(185,713)
Ending balance - 06/30/2013	2,656,637	140,114	(185,713)	2,611,038

Renewal and Replacement Fund

	Beginning Balance	Additions	Deductions	Ending Balance
Beginning balance - 10/01/2012	591,342			591,342
R&R transfer		1,501,917		1,501,917
Investment earnings		(17,137)		(17,137)
Upgrade water mains			(692,763)	(692,763)
Upgrade sewer mains			(526,161)	(526,161)
Rehab sewer manholes			(17,655)	(17,655)
Short line sewer rehab projects			(117,885)	(117,885)
Sewer main extensions			(4,869)	(4,869)
Lift station upgrades and repairs			(69,038)	(69,038)
Utility patch crew work			(207,449)	(207,449)
Ending balance - 06/30/2013	591,342	1,484,780	(1,635,820)	440,302

WINTER PARK ELECTRIC UTILITY METRICS

June 30, 2013

	FY'13 YTD	FY'13 Annualized	FY'13 Budget	Variance from Budget	FY'12 YTD	FY'12	FY'11	FY'10	FY'09	FY'08
<u>Technical Performance</u>										
Net Sales (kWh)	290,657,872	413,159,733	430,647,050	(17,487,317)		413,795,957	427,601,415	438,993,683	427,236,273	440,100,000
Average Revenue/kWh	0.1101	0.1101				0.1091	0.1212	0.1306	0.1251	0.1068
Wholesale Power Purchased (kWh)	305,963,000	435,410,559	446,266,000	(10,855,441)		434,514,000	451,951,216	456,911,847	442,159,788	449,100,000
Wholesale Power Cost/kWh	0.0609	0.0609				0.0553	0.0674	0.0815	0.0810	0.0794
Gross margin	0.0492	0.0492				0.0538	0.0538	0.0491	0.0441	0.0275
SAIDI (rolling 12 month sum)						72.73	64.44	80.04	80.04	63.14
MAIFI (rolling 12 month sum)						1.02	0.42	2.55	2.55	2.90
Sold vs. Purchased kWh Ratio	95.00%	94.89%	96.50%			95.23%	94.61%	96.08%	96.62%	98.48%
<u>Income Statement</u>										
Electric Sales:										
Fuel	11,985,358	17,036,756	18,301,327	(1,264,571)		15,769,044	20,583,619	24,721,381	25,498,612	21,131,479
Non-Fuel	20,006,714	28,438,826	30,865,793	(2,426,967)		29,365,745	31,244,725	32,605,878	27,955,719	25,880,839
Other Operating Revenues	337,146	449,528	412,046	37,482		407,431	667,604	332,720	1,111,386	819,976
Total Operating Revenues	32,329,218	45,925,110	49,579,166	(3,654,056)		45,542,220	52,495,948	57,659,979	54,565,717	47,832,294
Operating Expenses:										
General and Administrative	846,519	1,128,692	1,158,022	29,330		981,451	1,047,988	1,085,915	1,122,148	982,754
Operating Expenses	3,929,280	5,239,040	6,159,983	920,943		4,939,316	5,136,207	4,880,216	5,055,849	6,139,857
Purchased Power										
Fuel	12,680,228	18,045,009	18,375,561	330,552		15,992,090	21,212,369	24,786,014	23,183,450	23,802,250
Non-Fuel	5,938,095	8,450,398	8,569,163	118,765		8,043,955	9,256,070	12,437,885	12,618,456	11,840,108
Transmission Power Cost	1,643,591	2,191,455	2,392,180	200,725		2,328,188	2,130,671	2,155,495	2,062,414	1,600,046
Total Operating Expenses	25,037,713	35,054,594	36,654,909	1,600,315		32,285,000	38,783,305	45,345,525	44,042,317	44,365,015
Operating Income (Loss)	7,291,505	10,870,516	12,924,257	(2,053,741)		13,257,220	13,712,643	12,314,454	10,523,400	3,467,279
Nonoperating Revenues (Expenses):										
Investment Earnings (net of interest paid on interfund borrowings)	(127,940)	(170,587)	(40,000)	(130,587)		57,244	33,506	(38,774)	172,488	(168,750)
Principal on Debt	(1,290,000)	(1,720,000)	(1,720,000)	-		(1,620,000)	(1,430,000)			
Interest on Debt	(2,037,839)	(2,717,119)	(3,029,038)	311,919		(2,579,881)	(2,990,613)	(2,303,537)	(2,823,689)	(3,614,713)
Miscellaneous Revenue	170,396	227,195	-	227,195		126,183	1,337,683	34,307	35,038	49,364
Proceeds from Sale of Assets	2,416	3,221	-	3,221		2,655	(22,089)	57,992	4,011	3,560
Capital Spending from Sources other than Bond Proceeds	(2,356,838)	(3,142,451)	(4,940,000)	1,797,549		(2,109,061)	(1,621,474)	(1,245,371)	(1,921,374)	(2,641,642)
Grant Reimbursements for Undergrounding	-	-	-	-		-	-	892,849	-	-
Contributions in Aid of Construction	510,034	680,045	-	680,045		389,419	477,746	212,897	-	-
Capital Contributions for Plug-In Program	45,701	60,935	-	60,935		102,343	59,593	171,940	1,679	15,893
Total Nonoperating Revenues (Expenses)	(5,084,070)	(6,778,760)	(9,729,038)	2,950,278		(5,631,098)	(4,155,648)	(2,217,697)	(4,531,847)	(6,356,288)
Income (Loss) Before Operating Transfers	2,207,435	4,091,756	3,195,219	896,537		7,626,122	9,556,995	10,096,757	5,991,553	(2,889,009)
Operating Transfers In										
Operating Transfers In	-	-	-	-		-	-	-	-	-
Operating Transfers Out	(1,840,574)	(2,616,310)	(2,757,500)	141,190		(2,537,830)	(2,869,777)	(3,220,605)	(2,931,710)	(2,633,592)
Total Operating Transfers	(1,840,574)	(2,616,310)	(2,757,500)	141,190		(2,537,830)	(2,869,777)	(3,220,605)	(2,931,710)	(2,633,592)
Net Income	366,861	1,475,446	437,719	1,037,727		5,088,292	6,687,218	6,876,152	3,059,843	(5,522,601)
<u>Other Financial Parameters</u>										
Debt Service Coverage	2.15	2.41				3.17	3.11	4.85	2.70	0.73
Fixed Rate Bonds Outstanding	58,510,000					59,915,000	61,235,000	57,120,000		
Auction Rate Bonds Outstanding	15,585,000					16,610,000	16,910,000	22,410,000		
Total Bonds Outstanding	74,095,000					76,525,000	78,145,000	79,530,000	80,010,000	70,760,000
Principal Repayment	2,430,000	2,430,000	1,720,000			1,620,000	1,430,000	480,000	625,000	3,920,000
Capital Spending from Bond Proceeds	128,330	171,107	-			1,802,511	514,366	2,209,465	6,305,626	6,509,127
Balance Owed on Advance from General Fund	-					-	405,494	2,241,006	2,743,554	2,856,026

WINTER PARK ELECTRIC UTILITY METRICS

June 30, 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)

515,978

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)

Cash and Investment Portfolio (excluding pension funds and bond proceeds)
30-Jun-13

Issuer	CUSIP	Purchase Date	Quantity	Estimated Price	Coupon Rate	Market Value	Maturity Date	Moody's Rating	S & P Rating	Percentage of Total Cash and Investments	Percentage of Long-Term Investments
Short-term funds:											
Bank of America						2,351,164.30					
BankFirst						1,152,898.04					
Money Market Fund					0.01%	762.39					
State Board of Administration (SBA)					0.23%	18,955.69					
Total short-term funds						3,523,780.42				7.58%	
Long-term investments:											
US Treasury Note Investments (backed by full faith and credit of the United States Government):											
US TREASURY NOTES	912828SE1	02/07/13	\$ 1,000,000.00	99.930	0.25%	999,300.00	02/15/15				
US TREASURY NOTES	912828UG3	02/08/13	\$ 1,500,000.00	99.625	0.38%	1,494,375.00	01/15/16	AAA			
US TREASURY NOTES	912828UA6	02/07/13	\$ 1,000,000.00	97.438	0.63%	974,380.00	11/30/17	AAA			
Total US Treasury Note Investments						3,468,055.00				7.46%	8.07%
Government National Mortgage Investments (backed by full faith and credit of the United States Government):											
GNMA PASS THRU POOL 488237	36210CLS0	05/03/99	\$ 500,000.00	99.938	6.00%	5,312.66	05/15/14				
GNMA II ARM PASS THRU POOL 8258	36202KE76	05/04/99	\$ 490,000.00	103.228	1.75%	3,655.62	08/20/23				
GNMA PASS THRU POOL 372024	36204KG98	05/21/98	\$ 1,730,000.00	116.338	6.50%	85,267.25	01/15/24				
GNMA PASS THRU POOL AD1605	36180CYA1	02/01/13	\$ 1,000,000.00	98.135	2.00%	957,104.60	01/15/28				
GNMA II PASS THRU POOL 2562	36202CZ30	02/08/01	\$ 2,500,000.00	112.999	6.00%	64,625.51	03/20/28				
GNMA PASS THRU POOL 497581	36210NXJ3	02/11/99	\$ 500,000.00	112.959	6.00%	18,330.28	01/15/29				
GNMA II PASS THRU POOL 2795	36202DC82	02/08/01	\$ 2,000,000.00	115.547	6.50%	38,263.13	08/20/29				
GNMA II PASS THRU POOL 2997	36202DKJ9	01/31/01	\$ 1,717,305.00	115.547	6.50%	23,736.80	11/20/30				
GNMA 04-69 JC REMIC MULTICLASS CMO	38374H7B0	01/18/08	\$ 1,300,000.00	100.237	5.50%	98,732.44	02/20/32				
GNMA PASS THRU POOL 574674	36200WMX6	03/27/08	\$ 1,700,000.00	108.202	5.00%	203,774.74	04/15/34				
GNMA II PASS THRU POOL 3839	36202EHQ5	01/30/08	\$ 1,000,000.00	106.972	4.50%	262,791.72	04/20/36				
GNMA II PASS THRU POOL 4071	36202EQY8	01/18/08	\$ 1,000,000.00	108.396	5.00%	230,869.65	01/20/38				
GNMA 09-9 TA REMIC MULTICLASS CMO	38374TDH4	03/17/09	\$ 1,000,000.00	103.935	4.50%	716,807.88	08/20/38				
GNMA 10-31 AP REMIC MULTICLASS CMO	38376XL50	04/12/10	\$ 1,000,000.00	107.881	4.00%	325,109.42	08/20/38				
GNMA PASS THRU POOL 702875	36296V2G2	05/10/10	\$ 1,015,000.00	105.073	4.00%	894,123.22	07/15/39				
GNMA 13-28 DE REMIC MULTICLASS CMO	38378FWG1	02/08/13	\$ 1,000,000.00	93.024	1.75%	916,912.35	12/20/42				
GNMA 13-42 DE REMIC MULTICLASS CMO	38378JFT4	03/13/13	\$ 1,000,000.00	100.108	1.75%	981,973.63	01/20/43				
Total Government National Mortgage Investments						5,827,390.90				12.54%	13.56%
Federal Instrumentalities (United States Government Agencies which are non-full faith and credit):											
Federal Farm Credit Investments:											
FEDERAL FARM CREDIT	3133EA3Z9	10/16/12	\$ 1,000,000.00	95.654	1.42%	956,540.00	07/10/19	AAA	AA+		
FEDERAL FARM CREDIT	3133ECMJ0	04/22/13	\$ 1,000,000.00	97.286	0.74%	972,860.00	07/25/17	AAA	AA+		
FEDERAL FARM CREDIT	3133ECHS6	03/06/13	\$ 2,000,000.00	97.167	1.03%	1,943,340.00	03/12/18	AAA	AA+		
FEDERAL FARM CREDIT	3133ECNY6	05/03/13	\$ 1,000,000.00	97.906	0.95%	979,060.00	05/08/18	AAA	AA+		
FEDERAL FARM CREDIT	3133EA6F0	10/19/12	\$ 1,000,000.00	96.490	1.24%	964,900.00	10/25/18	AAA	AA+		
FEDERAL FARM CREDIT	31331KAU4	01/21/11	\$ 1,000,000.00	106.873	3.33%	1,068,730.00	01/28/19	AAA	AA+		
FEDERAL FARM CREDIT	3133EAD70	07/31/12	\$ 800,000.00	95.501	1.40%	764,008.00	08/01/19	AAA	AA+		
Total Federal Farm Credit Investments						7,649,438.00				16.46%	17.80%
Federal Home Loan Banks Investments:											
FEDERAL HOME LOAN BANK	313380BQ9	07/31/12	\$ 3,750,000.00	95.420	1.55%	3,578,250.00	08/15/19	AAA	AA+		

Cash and Investment Portfolio (excluding pension funds and bond proceeds)
30-Jun-13

Issuer	CUSIP	Purchase Date	Quantity	Estimated Price	Coupon Rate	Market Value	Maturity Date	Moody's Rating	S & P Rating	Percentage of Total Cash and Investments	Percentage of Long-Term Investments
FEDERAL HOME LOAN BANK	313380Z83	10/10/12	\$ 1,000,000.00	95.889	1.49%	958,890.00	11/01/19	AAA	AA+		
FEDERAL HOME LOAN BANK	3133814M4	10/19/12	\$ 1,000,000.00	95.161	1.05%	951,610.00	04/29/20	AAA	AA+		
FEDERAL HOME LOAN BANK	313380C54	07/31/12	\$ 3,000,000.00	97.110	1.00%	2,913,300.00	08/14/20	AAA	AA+		
Total Federal Home Loan Banks Investments						8,402,050.00				18.07%	19.56%
Federal Home Loan Mortgage Investments:											
FEDERAL HOME LN MTG CORP	3134G3RV4	02/24/12	\$ 1,000,000.00	100.272	0.80%	1,002,720.00	09/21/15	AAA	AA+		
FEDERAL HOME LN MTG CORP	3134G3M56	09/12/12	\$ 1,000,000.00	98.035	1.15%	980,350.00	03/27/18	AAA	AA+		
FEDERAL HOME LN MTG CORP	3134G34QO	03/05/13	\$ 1,000,000.00	97.439	1.10%	974,390.00	07/30/18	AAA	AA+		
FEDERAL HOME LN MTG CORP	3134G42X5	04/11/13	\$ 2,000,000.00	95.894	1.05%	1,917,880.00	10/30/18	AAA	AA+		
FEDERAL HOME LN MTG CORP	3134G3QR4	02/15/12	\$ 2,000,000.00	97.673	2.00%	1,953,460.00	03/05/20	AAA	AA+		
FEDERAL HOME LN MTG CORP	3134G3K58	09/13/12	\$ 1,000,000.00	93.933	1.50%	939,330.00	03/19/20	AAA	AA+		
FHLMC GOLD PASS THRU POOL J01091	3128PCF80	01/17/06	\$ 1,000,000.00	107.688	5.00%	179,062.27	02/01/21				
FHLMC GOLD PASS THRU POOL C91020	3128P7DZ3	03/21/07	\$ 1,000,000.00	108.263	5.50%	140,433.85	03/01/27				
Total Federal Home Loan Mortgage Investments						8,087,626.12				17.40%	18.82%
Federal National Mortgage Association Investments:											
FEDERAL NATL MTG ASSN	3136G16F1	12/11/12	\$ 1,000,000.00	97.479	1.00%	974,790.00	06/27/18	AAA	AA+		
FEDERAL NATL MTG ASSN	3136G0HK0	05/24/12	\$ 1,000,000.00	98.202	1.50%	982,020.00	11/30/18	AAA	AA+		
FEDERAL NATL MTG ASSN	3136G13U1	11/27/12	\$ 1,000,000.00	97.291	1.10%	972,910.00	12/18/18	AAA	AA+		
FEDERAL NATL MTG ASSN	3136G0VM0	07/31/12	\$ 1,000,000.00	95.110	1.00%	951,100.00	07/30/19	AAA	AA+		
FEDERAL NATL MTG ASSN	3135G0NK5	08/13/12	\$ 2,000,000.00	96.871	1.63%	1,937,420.00	08/28/19	AAA	AA+		
FEDERAL NATL MTG ASSN	3136G02B6	10/16/12	\$ 1,000,000.00	94.353	1.60%	943,530.00	10/30/20	AAA	AA+		
FEDERAL NATL MTG ASSN	3136G0YZ8	08/15/12	\$ 2,500,000.00	98.854	2.00%	2,471,350.00	12/14/20	AAA			
FNMA PASS THRU POOL 255994	31371MKF3	03/12/07	\$ 1,605,000.00	109.942	5.50%	295,355.21	11/01/25				
Total Federal National Mortgage Association Investments:						9,528,475.21				20.50%	22.18%
Total Federal Instrumentalities (United States Government Agencies which are non-full faith and credit):						33,667,589.33				72.42%	78.36%
Total Long-Term Investments						42,963,035.23					
Total Short-Term Funds and Long-Term Investments						46,486,815.65					
Blended Portfolio Rate of Return						1.50%					
Average Maturity (in years)						5.46					

REGULAR MEETING OF THE CITY COMMISSION
July 22, 2013

The meeting of the Winter Park City Commission was called to order by Reverend Talia Raymond, First Congregational Church at 3:32 p.m. in the Commission Chambers, 401 Park Avenue South, Winter Park, Florida. The invocation was provided by Reverend Talia Raymond, First Congregational Church, 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 Larry Brown
Deputy City Clerk Michelle Bernstein
City Clerk Cynthia Bonham

Approval of the agenda

Motion made by Commissioner McMacken to approve the agenda; seconded by Commissioner Sprinkel and approved by acclamation with a 5-0 vote.

Mayor's Report

- a. Employee of the Quarter – Randy Jones, Foreman of Water & Wastewater Division

Mayor Bradley recognized Randy Jones, Water & Wastewater Division Foreman, as employee of the Second Quarter 2013 and thanked him for his dedication.

City Manager's Report:

Capen House Update

City Manager Knight addressed his meeting with Assistant City Attorney Bill Reischmann and the representatives of the Pokorny family who reassured the City that things are moving along. As of Friday the Pokorny's did not have a signed agreement but were very optimistic that one would be forthcoming. City Manager Knight noted that the Albin Polasek Museum is involved with relocating the home and they plan on moving it onto the property next to the museum. Currently, the Albin Polasek Museum, the Historical Association, the Friends of Casa Feliz and other volunteers are working together to help raise the money that is needed to move the house.

Strategic Planning Scheduling

City Manager Knight followed up to an email that the City Clerk's office sent out last week regarding the scheduling of the strategic planning session for the first or second week in September. Following a brief discussion, the Commission was directed to RSVP to his office or the Clerk's office to secure the date.

City Attorney's Report – No items.

Non-Action Item

a. May 2013 Financial Report

Finance Director Wes Hamil provided the financial report and answered questions.

Motion made by Commissioner Sprinkel to approve the report as presented; seconded by Commissioner McMacken and carried unanimously with a 5-0 vote.

Public comments (5:00 p.m.)

Joan Cason, 1915 Woodcrest Avenue, thanked City staff for the wonderful job they did with re-routing the construction traffic on Lakemont and Mizell Avenue.

Consent Agenda

- a. Approve the minutes of 7/8/13.
- b. Approve the following purchases, contract, task order and change orders:
 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); - **PULLED FOR DISCUSSION, SEE BELOW**
 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 - **PULLED FOR DISCUSSION, SEE BELOW**
 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. - **PULLED FOR DISCUSSION, SEE BELOW**
 7. Task Order 2011-01 for CH2M HILL Amendment #1 Fairbanks Avenue Roadway and Wastewater System Improvements services during construction; \$263,491.00. - **PULLED FOR DISCUSSION, SEE BELOW**

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

Consent Agenda Item 'b.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);

Consent Agenda Item 'b.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

Fire Chief James White responded to Commissioner Leary's question pertaining to Consent Agenda items 'b.1' and 'b.2' by providing an explanation as to why the total purchasing cost exceeds \$400,000 for the two Fire Rescue vehicles listed above.

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

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

Consent Agenda Item 'b.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.

Consent Agenda Item 'b.7' - Task Order 2011-01 for CH2M HILL Amendment #1 Fairbanks Avenue Roadway and Wastewater System Improvements services during construction; \$263,491.00.

Water & Wastewater Director David Zusi responded to Commissioner McMacken's question pertaining to Consent Agenda items 'b.6' and 'b.7' by providing an explanation as to why a change order and time extension was needed.

Motion made by Commissioner McMacken to approve Consent Agenda items 'b.6', and 'b.7'; seconded by Commissioner Cooper and approved unanimously with a 5-0 vote.

Action Items Requiring Discussion

- a. Budget discussion and set the tentative millage rate.

City Manager Knight explained that the tentative millage rate set by the Commission today will be published on the TRIM notices that will be sent out in August by the Orange County Property Appraiser's office. City Manager Knight answered questions.

Motion made by Commissioner Sprinkel to approve the tentative millage rate (cap) of 4.0923 plus the voted debt service millages of .1004 and .2092; seconded by Commissioner Cooper.

Gregory Seidel, 1250 Richmond Road, asked that the electric company profits be utilized for the electric undergrounding program and not for street lights. He explained that according to the proposed budget the profits from the electric are being utilized to subsidize a City service which in turn is allowing them to keep the millage rate the same. He preferred to increase the millage rate so that the undergrounding program can remain on schedule.

Mayor Bradley acknowledged the above comment and that this should be looked at when they discuss the overall budget. Commissioner Leary wanted to also discuss the tree budget if they are seriously considering undertaking the task of right-of-way trees.

Upon a roll call vote, Mayor Bradley and Commissioners Leary, Sprinkel, Cooper and McMacken voted yes. The motion carried unanimously with a 5-0 vote.

- b. Power Purchase Agreement with Clean FootPrint, LLC.

Electric Utility Director Jerry Warren explained that at the June 24 meeting the Commission approved a go forward power supply portfolio which 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 Road. During that meeting several Commissioners raised concerns with the long term nature of the solar component and the possible constraints it may have for the future use of the central facility/land. Staff has discussed/negotiated with Clean Footprint and offered 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 Road).
- 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 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.

Mr. Warren answered questions relative to the potential costs involved with moving the equipment off site should the City wish to sell the land at a later date. Discussion transpired regarding the site or if another nearby location would be more suitable as well as the associated benefits with having a solar canopy, including property value increases/tax advantages.

Commissioner Cooper spoke about it being all about the land and its value, along with the opportunity cost to the future residents for needs that we cannot define at this time.

Motion made by Mayor Bradley to approve the agreement with Clean Footprint and request that staff bring back possible alternative sites within our City by our next meeting. Mr. Warren explained that the agreement needs to be approved no later than July 31 in order to secure the 6.5 cent/kWh rate. **Mayor Bradley withdrew his motion.**

Motion made by Commissioner Sprinkel to approve the agreement with Clean Footprint; seconded by Mayor Bradley.

Commissioner Leary disagreed with having to make a decision by July 31 and was not comfortable with moving forward since they are not sure what their future needs might be for this property. He did not want to tie the hands of future Commissions just to gain .06% towards our energy supply needs.

The following spoke in favor:

Deirdre Macnab, 1860 Summerland Avenue
Mary Randall, 1000 S. Kentucky Avenue

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

Public Hearings:

- a. Request of Mr. Phil Kean: 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.

Planning Director Jeff Briggs explained that Mr. Phil Kean intends to develop this project based upon the 2006 approvals and entitlements but that his plans involve a completely different architectural style from that originally approved.

Mr. Briggs explained that the Commission is not being asked to evaluate any of the particulars of this project except the change in architectural style. In this case they are changing from a Mediterranean image to a modern contemporary image.

Under the Code there are certain changes which are deemed "significant changes" that require a subsequent review and recommendation from the Planning & Zoning Board (P&Z) and approval by the City Commission. Mr. Briggs noted that on July 2, 2013 the P&Z Board voted 5-0 in favor of the request.

Commissioner Cooper explained that this property is surrounded on three sides by the Interlachen Historic District and that she would feel more comfortable having the Historic Preservation Board provide input whether or not this is the right location for an ultra-modern home.

Discussion ensued regarding the boundaries of the Historic District, if the newly proposed architectural style would be detrimental to the District and if this should be filtered through our Historic Preservation Board. A majority of Commission members agreed that they are the Board to make the decision since the property is located outside of the Historic District.

Motion made by Commissioner Cooper to approve; seconded by Commissioner Sprinkel.

Senior Designer James Lucia, Phil Kean Design Group, 1925 South Boulevard, Maitland, spoke on behalf of the applicant. He provided input on the diverse architectural styles and how they contribute to a community's vibrancy. He encouraged the Commission to approve the request.

Josh Tillotson, speaking on behalf of the owners at 147 Interlachen (Condominium Association), said the owners wanted to make sure that the outside views remain the same.

The following spoke in opposition to the contemporary architectural style:

Carol Rosenfelt, 1400 N. New York Avenue

Mary Randall, 1000 S. Kentucky Avenue

Sally Flynn, 1400 Highland Road

Charles F. Riley, 100 S. Interlachen Avenue

Motion amended by Commissioner Cooper to send this to the Historical Preservation Board. Motion failed for lack of a second.

Motion amended by Commissioner Cooper that allows Mr. Kean the option of proceeding with the conditional use as a traditional or a Mediterranean or something that he would feel would be more in keeping with the historic continuity of Interlachen. Attorney Brown provided legal counsel regarding the amendment. Commissioner Cooper clarified her motion in that they should allow Mr. Kean the option to think about the impact on Interlachen and the request of his neighbors/friends to consider his personal option of building something that is more in keeping with the existing conditional use approval. **Motion was seconded by Commissioner McMacken.** Discussion ensued regarding the wording, interpretation and intent of the above amendment. **Commissioner Cooper withdrew her amendment.**

Motion amended by Commissioner Cooper to approve the conditional use for what has been approved, the Mediterranean style or this one; seconded by Commissioner McMacken. Upon a roll call vote, Mayor Bradley and Commissioners Leary, Sprinkel, Cooper and McMacken voted yes. The motion carried with a 5-0 vote.

Upon a roll call vote, Mayor Bradley and Commissioners Leary, Sprinkel, Cooper and McMacken voted yes. The motion carried with a 5-0 vote.

A recess was taken from 5:15 p.m. to 5:40 p.m.

- b. 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.
First Reading

Attorney Brown read the ordinance by title.

Motion made by Commissioner Sprinkel to accept the ordinance on first reading; seconded by Commissioner Leary. No public comments were made.

Attorney Brown spoke about the wording of the ordinance and that it requires the Commission to appoint by Resolution a local hearing officer. He recommended amending the language to allow the City Manager to hire a local hearing officer.

Discussion ensued regarding monetary compensation, if the hearing officer will be treated as an independent contractor, if cost sharing with other cities for the hearing officer's compensation is allowed and if the hearing results should be reported to the Commission monthly or quarterly. Mayor Bradley wanted to leave it as is which is how they voted and that Attorney Brown should work out any conflicting legal opinions and provide advice to the Commission. Attorney Brown acknowledged.

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. 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. First Reading

Attorney Brown read the ordinance by title and provided background regarding the applicable changes to the code. He explained that this ordinance would make our existing enforcement mechanisms consistent with the Florida Supreme Court case ruling.

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.**

Mayor Bradley requested that City Manager Knight follow up with Bill Peebles and/or the Florida League of Cities to see if they have processed this Supreme Court ruling and if they find it in compliance. City Manager Knight acknowledged.

- d. 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. Second Reading

Attorney Brown read the ordinance by title.

Motion made by Commissioner Sprinkel to adopt the ordinance; seconded by Commissioner McMacken. 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. ORDINANCE NO. 2931-13: 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. Second Reading

Attorney Brown read the ordinance by title. **Motion made by Commissioner McMacken 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.**

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

Planning Director Jeff Briggs explained that Habitat for Humanity has been provided 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 so this item would approve the donation or allocation of that lot to Habitat for Humanity which is 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. Mr. Briggs answered questions including information about the Trust Fund account.

Mayor Bradley said a while back the Commission requested backup information regarding the need for affordable housing within the City. City Manager Knight said he has the report and will distribute it to them via email.

Motion made by Commissioner Sprinkel to approve the contribution to Habitat for Humanity of Winter Park/Maitland, Inc. of the building lot at 813 W. New England Avenue; seconded by Commissioner McMacken.

Commissioner Leary said he understands that affordable housing is a regional issue but wondered if Winter Park has more affordable housing than our neighboring communities. He felt that once they receive the data, a discussion needs to transpire regarding the linkage fee and if it sunsets how long is it necessary for and the numbers they are looking at.

Commissioner Cooper felt it would be more advantageous to spread out our affordable housing assets throughout the community rather than in a specific location.

Linda (Walker) Chappell, 794 Comstock Avenue, disagreed with the lot swap.

Executive Director Denise Weathers, Hannibal Square Community Land Trust, requested that their organization be included in any future discussions related to affordable housing within the City so they can provide input.

Upon a roll call vote, Mayor Bradley and Commissioners Leary, Sprinkel, Cooper and McMacken voted yes. The motion carried with a 5-0 vote.

City Commission Reports:

a. Commissioner Leary

Commissioner Leary thanked Hal George for all the hard work he does for Habitat for Humanity, the Housing Authority and the Community Redevelopment Agency.

b. Commissioner Sprinkel

Commissioner Sprinkel addressed the meeting she attended with several City staff members this morning held by Congressman Mica on the topic of transportation.

c. Commissioner Cooper

Commissioner Cooper requested that City Manager Knight provide the following: ten year pro forma, the annual change to the Parks Acquisition Fund and the Tree Preservation Fund, analysis of the parks level of service given our current population, our projected approved projects, and a breakdown of the Mead Garden capital improvements budget. The request was acknowledged.

d. Commissioner McMacken

Commissioner McMacken thanked city staff for trimming the trees on Highway 17-92 and Fairbanks Avenue. He said the trees look great.

e. Mayor Bradley – No items.

The meeting adjourned at 6:18 p.m.

Mayor Kenneth W. Bradley

ATTEST:

City Clerk Cynthia S. Bonham



city commission agenda item

item type	Consent Agenda	meeting date	August 12, 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.	NU Environmental Development	MLK Park Pond excavation for the CNL development	Total expenditure included in approved FY13 Capital Improvement Project . Amount: \$70,000.00	Commission approve after the fact PO150557 to NU Environmental Development for pond excavation in conjunction with CNL development project.
This purchase was made to remove materials from storm water outfall on an already excavated/open construction area. Time was of the essence to perform this site work.				
2.	Brick America	Purchase of Clay Brick Pavers	Total expenditure included in approved FY13 Budget: Amount: \$67,210.00	Commission approve purchase of clay brick paver for the New England/Alfond Inn Bricking project
This purchase will be made utilizing IFB-15-2011. Fifty (50) percent cost share with Rollins college approved by City Commission 11/12/12.				

Contracts

	vendor	item background	fiscal impact	motion recommendation
3	Cigna Group Insurance	Contract Renewal for RFP-19-2008 Group Term Life, AD&D, Voluntary Term Life for Employee, Spouse and Children, Long Term Disability, and Voluntary Short Term Disability	A total of \$133,282 has been included in the FY14 budget.	Commission approves contract renewal and subsequent Purchase Order with Cigna Group Insurance for FRP-19-2008 Group Term Life, AD&D, and Voluntary Term Life for Employee, Spouse and Children, Long Term Disability and authorize the Mayor to execute the Renewal Package documents.
The City of Winter Park utilized a competitive bidding process to award this contract. The contract was awarded on October 18, 2008 for a period of two (2) years with option to renew. The renewal is for the plan year 2013/2014.				

Contracts

	vendor	item background	fiscal impact	motion recommendation
4.	MetLife	Contract Renewal for RFP-19-2008 for Dental Insurance for Employee, Spouse, and Children.	A total of \$370,851 has been included in the FY14 budget.	Commission approves contract renewal and subsequent Purchase Order with MetLife Dental Group Insurance for FRP-19-2008 and authorizes the Mayor to execute the Renewal Package documents.
The City of Winter Park utilized a competitive bidding process to award this contract. The contract was awarded on October 1, 2008 for a period of two (2) years with option to renew. The renewal is for the plan year 2013/2014.				
5.	Aetna	Contract Renewal for RFP-6-2007 Medical Insurance	Total of \$6,128,100.00 has been included in FY14 budget.	Commission approves the contract renewal and subsequent Purchase Order with Aetna for RFP-6-2007 and authorize the Mayor to execute the Renewal Package documents.
The City of Winter Park utilized a competitive bidding process to award this contract. The contract was awarded on October 18, 2008 for a period of two (2) years with option to renew. The renewal is for the plan year 2013/2014.				
6.	ARAG	Contract to make Pre-paid Legal Services available for Employee and Spouse to contract directly with the firm for three (3) years.	There are no funds expended by the City.	Commission approves the contract with ARAG to offer Pre-paid Legal Services benefits.
The City of Winter Park is offering pre-paid legal services as a benefit for employees and family members to contract directly with ARAG. There is no cost to the City to offer these services to City Employees and participation is voluntary.				

Piggyback contracts

	vendor	item background	fiscal impact	motion recommendation
7.	Winfield Solutions, LLC	Piggybacking for Various Herbicides and Related Adjuvants (6000000579)	Contract for as needed materials, within approved project budget.	Commission approves piggybacking the South Florida Water Management District Contract # 6000000579 and authorize the Mayor to execute the Piggyback Contract.
South Florida Water Management District (SFWMD) utilized a competitive bidding process to award this contract. The contract was awarded on July 1, 2013 for a term of twelve (12) months. The contract may be renewed for additional one year periods.				

Formal Solicitations

	vendor	item background	fiscal impact	motion recommendation



city commission agenda item

item type	Consent Agenda	meeting date	August 12, 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

- 1) Authorize the Mayor to execute the power supply and Interconnection agreements with the Orlando Utilities Commission
- 2) Authorize the Mayor to execute the T-1 Tariff Service Agreement and associated Transaction confirmations with Florida Power & Light Company plus a Limited Services Agreement which will allow FPL to act as the City's Transmission Agent with FPL Transmission.

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 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 system for a term of 6 years. The attached agreements along with other agreements will implement the approved power supply portfolio and are consistent with the approval granted by the City Commission at its June 24th meeting. It is expected that an agreement with Covanta will be brought to the City Commission for approval at the August 26 meeting and the GRU contract will be submitted for approval sometime later this fall.

The Limited Service Agreement creates an Agency relationship between the wholesale power group and the City of Winter Park which will allow the wholesale power group to assist the City in applying for and implementing transmission services from the FPL transmission group. Without such an agency agreement a company's wholesale power personnel are not allowed to interact with the company's transmission personnel. This barrier is intended to prevent a company from giving itself transformation arrangements that are favorable when compared to those provided to others using the company's transmission system.

Fiscal impact

Taken together, the attached contracts are the elements of a power supply portfolio that is expected to provide reliable service to our customers at very favorable rates. The attached contracts will implement the power supply portfolio approved by the City Commission at its June 24th meeting.

During the first six months of 2014 it is expected that FPL will provide approximately 22 MW of firm capacity. Beginning July 1, 2014 Covanta Energy will begin providing 10 MW of capacity. At that point, FPL's capacity will be reduced to approximately 12 MW. Capacity provided by FPL and Covanta will be delivered to the City via the high voltage transmission systems of others. The distribution systems of the City of Winter Park and OUC are physically adjacent to each other which allows for a cost effective distribution interconnection (as opposed to a transmission interconnection). This innovative distribution interconnection and contract avoids transmission through Duke Energy Florida's (formerly Progress Energy Florida) transmission system at considerable savings (i.e. >\$500,000 per year). Beginning January 1, 2015 GRU will begin providing 10 MW of capacity and the current Seminole agreement (approximately 60 MW) will expire. Capacity from FPL and/or OUC will be adjusted in the future to reflect these changes.

The expected cost of power supply from the portfolio is shown on the following table. It is interesting to note that the \$71.97/MWh estimated cost of wholesale power in 2019 is approximately the same price that the City paid for its wholesale power immediately following the formation of the its electric system back in June 2005.

Estimated all in cost of Wholesale Power

Year	Cost of Power \$/MWh
2014	\$65.18
2015	\$61.34
2016	\$63.38
2017	\$66.72
2018	\$69.56
2019	\$71.97

The estimated cost of power indicates an expected decrease in the cost of power in 2015 compared to 2014. This is a result of replacing the Seminole contract with less expensive options such as OUC and FPL.

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 for the FPL agreements. 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: ORLANDO UTILITIES COMMISSION:

AGREEMENT FOR PARTIAL PURCHASE AND SALE OF ELECTRIC ENERGY AND CAPACITY BETWEEN THE CITY OF WINTER PARK AND ORLANDO UTILITIES COMMISSION

INTERCONNECTION AGREEMENT BETWEEN OUC AND CITY OF WINTER PARK

FLORIDA POWER & LIGHT COMPANY:

TARIFF NO. 1 FOR SALES OF POWER AND ENERGY BY FPL

TARIFF NO. 1. SERVICE AGREEMENT

NATIVE LOAD FIRM TRANSACTION CONFIRMATION

SYSTEM FIRM TRANSACTION CONFIRMATION

LIMITED SERVICES AGREEMENT (TRANSMISSION AGENCY AGREEMENT)

**AGREEMENT FOR PARTIAL PURCHASE AND SALE
OF ELECTRIC ENERGY AND CAPACITY,
BETWEEN
THE CITY OF WINTER PARK
AND
ORLANDO UTILITIES COMMISSION**

AGREEMENT FOR PURCHASE AND SALE OF ELECTRIC ENERGY AND CAPACITY

This AGREEMENT FOR PURCHASE AND SALE OF ELECTRIC CAPACITY AND ENERGY (this "Agreement") is made effective as of the _____ day of _____ (2013) ("Effective Date"), by and between THE CITY OF WINTER PARK, a municipal corporation in the State of Florida, duly constituted under Florida law ("Winter Park"), and the ORLANDO UTILITIES COMMISSION, a municipal quasi-governmental agency organized under the State of Florida ("OUC"). Winter Park and OUC are referred to also individually as a "Party, or collectively as the Parties."

WHEREAS, Winter Park is a public agency as defined in Section 163.01(3)(b), Florida Statutes, as amended, and it owns an electric distribution utility;

WHEREAS, OUC is a public agency as defined in Section 163.01(3)(b), Florida Statutes, as amended, and it owns and operates electric utility and related generation, transmission and distribution assets and properties;

WHEREAS, Winter Park is seeking wholesale power supplies ("Wholesale Electric Service") to serve its Load Obligations (as defined below) to its customers and to that end has issued an Invitation to Negotiate ("ITN") for the provision by third parties of such power supplies;

WHEREAS, Winter Park has evaluated the proposal submitted by OUC as one of several attractive proposals received in response to the ITN and the supply of wholesale power by OUC will enable Winter Park to fulfill a municipal purpose to deliver a reliable supply of electricity to customers in its service territory;

WHEREAS, OUC wishes to supply Wholesale Electric Service to Winter Park to enable Winter Park to meet its Load Obligations to its customers, and Winter Park desires to acquire such power supplies from OUC, on the terms and conditions set forth herein;

WHEREAS, in addition and supplemental to their other powers, OUC and Winter Park, pursuant to the Florida Interlocal Cooperation Act of 1969, Chapter 163, Part I, Florida Statutes, as amended, and specifically Section 163.01(15) thereof (the "Interlocal Act"), are authorized and empowered to cooperate with each other on a basis of mutual advantage and thereby to provide services and facilities in a manner and pursuant to forms of government organizations that will best accord with geographic, economic, electrical generation requirements and other factors; and

WHEREAS, this Agreement is entered into by OUC and Winter Park, as an interlocal agreement, invoking the necessary powers under the Interlocal Act, for the purpose of providing a structure for OUC, in participation with Winter Park, to participate jointly in an electric project as contemplated under the Interlocal Act.

NOW, THEREFORE, for and in consideration of the foregoing, the covenants herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and for the purpose of exercising powers enumerated in the Interlocal Act and the Florida Joint Power Act, Part II of Chapter 361, Florida Statutes, as amended, OUC and Winter Park, as public agencies, within the meaning of the aforementioned Acts, hereby designates this Agreement as an interlocal agreement pursuant to the Interlocal Act, and the Parties hereby agree as follows:

ARTICLE 1 DEFINITIONS

Capitalized terms used in this Agreement shall have the meanings set forth in this Article 1 unless the context clearly requires otherwise.

“Billing Meter” shall have the meaning set forth in Section 7.1.

"Charges" shall mean the Demand Charge, the Fuel Energy Charge, the Non-Fuel Energy Charge and Transmission Costs.

"Claims" shall mean all third party claims or actions, threatened or filed and, whether groundless, false, fraudulent or otherwise, that directly or indirectly relate to the subject matter of an indemnity under this Agreement, and the resulting losses, damages, expenses, third party attorneys' fees and court costs, whether incurred by settlement or otherwise, and whether such claims or actions are threatened or filed prior to or after the termination of this Agreement.

"Delivery Point(s)" shall mean the points of interconnection between Winter Park and OUC at the load-side disconnect switch shown in Appendix C.

"Effective Date" shall mean the date of filing with the Clerk of the Official Records of the Agreement signed by authorized representatives of the Parties.

"Fuel Energy Charge" shall have the meaning set forth in Section 6.1.

"Fuel Energy Rate" shall have the meaning set forth in Appendix A.

"Firm Load" shall mean the capacity and energy requirements of OUC's retail customers and other OUC wholesale customers with firm service from OUC system resources equivalent to that of retail customers of OUC.

"Florida PSC" shall mean the Florida Public Service Commission.

"FMPP" shall mean the Florida Municipal Power Pool.

"FRCC" shall mean the Florida Reliability Coordinating Commission.

“Interconnection Facilities” shall mean those interconnection facilities illustrated in Appendix C.

"Interest Rate" shall have the meaning set forth in Section 6.2(b).

“KWh” shall mean kilowatt-hour.

"MWh" shall mean Megawatt-hour or 1000 KWh.

"Letter of Credit" shall mean one or more irrevocable, transferable standby letters of credit issued by a U.S. commercial bank or a foreign bank with a U.S. branch with such bank having a credit rating of at least A- from S&P or A3 from Moody's, in a form reasonably acceptable to the Party in whose favor the letter of credit is issued, the costs of which shall be borne by the applicant therefor.

"Load Obligations" shall mean the power supplies required for Winter Park to meet its obligations to provide retail electricity service in the portion of its electric service territory identified in Appendix G [REDACTED]

"Monthly Wholesale Electric Capacity" shall mean the highest 60 Minute MW demand measured during each calendar month for Winter Park Load Obligations by OUC hereunder, measured by the Billing Meters, as adjusted for transmission and distribution losses.

“Monthly Wholesale Electric Energy” shall mean the MWh measured by the Billing Meter each calendar month as compensated for transmission and distribution losses.

"Non-Fuel Energy Charge" shall have the meaning set forth in Section 6.1.

"Party" and "Parties" shall have the meaning set forth in the first paragraph of this Agreement.

"Payment Date" shall mean Section 6.2(b).

“Prudent Utility Practice” shall mean any of the applicable practices, methods and acts as (i) required by the rules, regulations, policies and standards of state regulatory authorities having jurisdiction relating to emergency operations or otherwise required by applicable law; or (ii) otherwise engaged in or approved by a significant portion of the electric utility industry during the relevant time period; which in each case in the exercise of reasonable judgment in light of the facts known or that should have been known at the time a decision was made, could have been expected to accomplish the desired result in a manner consistent with law, regulation, safety, environmental protection, economy, and expedition. Prudent Utility Practice is intended to be acceptable practices, methods or acts generally accepted and lawful in the region, and is not intended to be limited to the optimum practices, methods or acts to the exclusion of all others.

"Requesting Party" shall have the meaning set out in Section 18.2.

"Service Date" shall mean the later of January 1, 2014, or the date when all conditions precedent in Article 11 have been met or waived by the party whose obligations are subject to such condition, which date shall be the commencement of the Term and the obligations of OUC to deliver and sell and Winter Park to receive and purchase Wholesale Electric Service.

"Service Date Acknowledgment" shall mean a document signed by the Parties acknowledging the date that is the "Service Date" hereunder, which document shall be substantially in the form of Appendix D.

"Term" shall mean the period from the Service Date until six (6) years thereafter, unless sooner terminated in accordance with the terms of this Agreement. OUC shall have the sole option to terminate the Agreement one (1) year earlier by providing written notice by no later than 5:00 PM on January 31, 2017.

"Transmission Costs" shall mean the transmission charges paid by OUC, and reimbursed by Winter Park, under the then applicable Open Access Transmission Tariff for the supply of Wholesale Electric Service to Winter Park under this Agreement.

"Transmission Service" shall mean firm, point-to-point transmission service required to allow delivery of the Wholesale Electric Service across OUC's transmission system to the Delivery Point pursuant to OUC's Open Access Transmission Tariff.

"Wholesale Electric Service" shall have the meaning set forth in Article 2.

ARTICLE 2 WHOLESALE ELECTRIC SERVICE

Commencing on the Service Date and during the Term, in accordance with the terms and subject to the conditions hereof, OUC shall provide and deliver Wholesale Electric Service and Winter Park shall purchase electric energy and capacity requirements necessary for Winter Park to serve its Load Obligation, which services shall be referred to as "Wholesale Electric Service" and consist of the following:

- (a) Supply of Monthly Wholesale Electric Energy, up to the physical limitations of the Interconnection Facilities (expected to be 10 MW per circuit based on a 2 circuit design); and,
- (b) Supply of Monthly Wholesale Electric Capacity, up to the physical limitations of the Interconnection Facilities (expected to be 10 MW per circuit based on a 2 circuit design); and,
- (c) Transmission Service.

ARTICLE 3 TERM

This Agreement shall be in force and effect as of the Effective Date. The obligations of the Parties in respect of the supply and delivery of Wholesale Electric Service shall commence on the Service Date. This Agreement shall remain in effect for the Term, unless terminated earlier under the terms of this Agreement. Termination or expiration of this Agreement shall not affect or excuse the performance of either Party under any provision of this Agreement that by its nature or terms survives any such termination or expiration.

ARTICLE 4 OBLIGATIONS OF WINTER PARK AND OUC

Section 4.1 Obligations of Winter Park

- (a) Winter Park shall at its own cost design and construct the distribution facilities to interconnect with OUC on the Winter Park side of the Delivery Point.
- (b) Winter Park shall, during the Term, receive at the Delivery Point (or such other interconnection points as the parties may mutually agree) and accept and shall pay OUC a monthly payment for Wholesale Electric Service on the applicable Payment Date in accordance with Section 6.2.

Winter Park acknowledges and agrees that OUC shall have no responsibility for the distribution and resale to Winter Park's electric system customers of the electricity delivered to the Delivery Point by OUC or the collection of any payments from Winter Park's electric system customers.

Section 4.2 Obligations of OUC

- (a) OUC shall sell and deliver to Winter Park at the Delivery Point(s) Wholesale Electric Service for the duration of the Term with a firmness and priority of service equal to that of OUC's Firm Load.
- (b) OUC shall apply for and provide [REDACTED] of Transmission Service to Winter Park pursuant to the terms of its Open Access Transmission Tariff.
- (c) OUC shall at its own cost design and construct the distribution facilities to interconnect with Winter Park on the OUC side of the Delivery Point.

OUC and Winter Park shall maintain close coordination with respect to future delivery points in the interests of system reliability. Each party shall endeavor, to the extent practicable, to keep the other party advised of significant developments related to their respective power supply facilities.

(d) OUC shall operate and maintain its generating resources, transmission and distribution system assets and equipment in accordance with Prudent Utility Practice.

(e) OUC shall calculate the amount due on a monthly basis for all Wholesale Electric Service provided in the prior calendar month as measured at the Billing Meter and adjusted to account for OUC transmission and distribution system line losses, and shall submit an invoice to Winter Park for payment. The monthly invoice shall be calculated for the Charges by applying the rate in accordance with Section 6.1.

ARTICLE 5 SALE AND PURCHASE

(a) OUC shall, at its cost and expense, sell and deliver Wholesale Electric Service to the Delivery Point(s). Winter Park shall purchase and receive Wholesale Electric Service at the Delivery Point(s) or alternate delivery points (as applicable) during the Term. The Charges for such sale and purchase shall be as set forth in Section 6.1

(b) The Monthly Wholesale Electric Capacity and Monthly Wholesale Electric Energy sold and delivered by OUC to Winter Park hereunder shall be three phase, 60 hertz alternating current having a nominal voltage as specified by and otherwise in accordance with interconnection protocols.

ARTICLE 6 PRICE AND BILLING

Section 6.1 Billing for Services

Section 6.1.1 For the Wholesale Electric Service that OUC delivers to the Delivery Point(s), OUC shall deliver an invoice to Winter Park substantially in the form of Appendix E and Winter Park shall pay OUC the following Charges as follows:

(a) Monthly Demand Charge

The monthly demand charge shall be: The Demand Rate multiplied by the Monthly Wholesale Electric Capacity. [REDACTED]

(b) Monthly Fuel Energy Charge

The Fuel Energy Rate as set forth in Appendix A multiplied by the Monthly Wholesale Electric Energy.

(c) Monthly Non-Fuel Energy Charge

The Non-Fuel Energy Rate as set forth in Appendix A multiplied by the Monthly Wholesale Electric Energy.

(d) Transmission Costs.

The monthly charges for Transmission Costs shall be [REDACTED] times the OUC published Transmission Tariff rate, currently \$1,565.50/MW-month. If during the Term of this Agreement the Monthly Wholesale Electric Capacity [REDACTED], the Transmission Cost shall equal the new peak Monthly Wholesale Capacity times the current OUC published Transmission Tariff rate.

Section 6.2 Payment

(a) On or before the tenth (10th) day following the end of each calendar month in which OUC provides Winter Park with Wholesale Electric Service, OUC shall calculate the amount due and payable by Winter Park for Wholesale Electric Service delivered in such prior month in accordance with this Article 6. The amount payable shall be calculated as the sum of the Demand Charge, the Fuel Energy Charge, the Non-fuel Energy Charge and Transmission Costs for the prior month and shall be itemized on the monthly invoice along with any other information and detail reasonably requested by Winter Park.

(b) Unless otherwise specified herein, payments due under this Agreement shall be due and payable by wire transfer, on or before the later of the fifteenth (15th) business day following receipt of the invoice or the twenty-fifth day of the calendar month in which the invoice is received (the "Payment Date"). If an amount owed is not paid on or before the due date, a late payment charge shall be applied to the unpaid balance and shall be added to the next billing statement. Such late payment charge shall be calculated based upon the annual interest rate equal to the "Prime Rate" as published on the date of the invoice in the Wall Street Journal (or, if the Wall Street Journal is not published on that day, the next succeeding date of publication) ("Interest Rate"). If the due date occurs on a weekend or holiday, the late payment charge shall begin to accrue on the next succeeding business day and shall cease accruing on the day prior to payment. Disputes relating to invoicing shall be resolved in accordance with the pre-litigation procedures set forth in Section 18.

(c) In the event an invoice or portion thereof is disputed, the disputing Party shall provide notice of the dispute to the other Party and detail therein the basis for the dispute and its proposed correction or adjustment to the invoice within fifteen (15) business days of receipt of the disputed invoice. Representatives of the Parties shall

promptly confer in person or telephonically in a good faith attempt to resolve the dispute within five (5) business days of the notice of dispute. If a correction of or adjustment to the disputed invoice is agreed upon, a revised invoice shall be promptly issued. Payment of the disputed portion shall be made under protest when due, with notice of the objection given to the other Party. Any invoice dispute shall be in writing and shall state the basis for the dispute. Upon resolution of the dispute in accordance with this paragraph or Section 18, any required refund shall be made within five (5) business days of such resolution along with interest accrued at the Interest Rate from and including the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the Interest Rate from and including the date of such overpayment to but excluding the date repaid or deducted by the Party receiving such overpayment.

Section 6.3 Taxes, Fees and Levies, Sales for Resale

(a) OUC shall be obligated to pay all present and future taxes, fees and levies that may be assessed upon OUC by any governmental authority not controlling or controlled by OUC on the sale to Winter Park of Wholesale Electric Service or any component thereof. OUC shall promptly notify Winter Park of the commencement of any legislative, regulatory, administrative or other governmental action, of which it becomes aware, imposing such taxes, fees and/or levies upon the sale of Wholesale Electric Service. Each such tax, fee and levy shall be identified in a separate line item on the monthly invoice from OUC to Winter Park for Wholesale Electric Service. Winter Park shall reimburse OUC for the increase in any such taxes, fees and levies paid by OUC as a result of providing Wholesale Electric Service to Winter Park under this Agreement. In the event of the imposition of any such taxes, fees or levies on the sale of Wholesale Electric Service hereunder, each Party shall use reasonable efforts to minimize all such taxes, fees or levies so long as neither Party is materially adversely affected by such efforts and no such measures will create a subsidy for Winter Park by OUC's retail or other wholesale customers or a subsidy by Winter Park of OUC's retail or other wholesale customers.

(b) All Monthly Wholesale Electric Energy and Monthly Wholesale Electric Capacity delivered by OUC to Winter Park hereunder shall be sales for resale by Winter Park. Winter Park shall obtain and provide OUC with any certificates reasonably requested by OUC to evidence that the deliveries hereunder are sales for resale.

Section 6.4 Sale of Existing OUC Generating Resource

If during the Term, OUC should sell any existing generating resource(s) and concurrently purchase back the capacity and energy from the sold resource(s), the Fuel Energy Rate shall be adjusted, as necessary, to offset any increase in the Fuel Energy Rate that would otherwise occur during the Term arising out of or resulting from the sale of the generating resource(s).

Section 6.5 Audit Rights.

Each Party has the right, after reasonable notice, at its sole expense and during normal business hours, to examine the records of the other Party to the extent reasonably necessary to verify the accuracy of any invoice, bill, statement, Charges or computation made pursuant to this Agreement. If requested, a Party shall provide to the other Party statements evidencing the quantity of Wholesale Electric Service delivered at the Delivery Point. If any such examination reveals any inaccuracy in any invoice, bill or statement, the necessary adjustments in such invoice, bill or statement and the payments thereof will be made promptly and shall bear interest calculated at the Interest Rate from the date the overpayment or underpayment was made until paid; provided, however, that no adjustment for any invoice, bill statement or payment will be made unless objection to the accuracy thereof was made prior to the lapse of twelve (12) months from the rendition thereof, and thereafter any objection shall be deemed waived.

ARTICLE 7 SERVICE FACILITIES AND METERING

Section 7.1 Metering

The Monthly Wholesale Electric Energy and Monthly Wholesale Electric Capacity shall be measured by metering equipment ("Billing Meters") installed at the Delivery Point, which metering equipment shall constitute the basis of measuring demand and energy and the computation of bills for energy consumption. OUC shall furnish and install the Billing Meters.

Section 7.2 Witness Rights

The Parties intend that each Party shall have the right in the presence of a representative of the Billing Meter owner and the other Party, to read and check the Billing Meters and /or associated metering equipment, for any reason, including when there is any dispute or disagreement as to the correctness of the readings or the accuracy of the Billing Meters or metering equipment. In the event of such dispute or disagreement, the Parties shall within five (5) business days of notice of such dispute, retain a mutually agreeable independent inspector to test the Billing Meters and metering equipment per industry standards. The fees, costs and expenses of such test and inspection shall be borne equally by the Parties. The determination of the independent inspector as to the correctness of the reading of the Billing Meter and adjustments, if any, that are required to be made thereto, shall be rendered within thirty (30) days of referral of the dispute or disagreement, shall be in writing and shall be accepted by the Parties as final. The Parties agree that the Billing Meters and metering equipment will be considered accurate for purposes of billing and invoicing hereunder provided calibration is within 0.2% as provided under the ANSI C-12 standards. Should any meter be beyond this range of accuracy, an adjustment shall be made pursuant to Section 7.6(b). Winter Park reserves the right to install at its cost an RTU or other

instrumentation allowing Winter Park to receive real-time load signals to verify the Wholesale Electric Service provided under this Agreement.

Section 7.3 Ownership and Maintenance of Meters

Billing Meters owned by OUC shall be maintained in accordance with Prudent Utility Practice.

Section 7.4 Meter Testing

Billing Meters used to measure the delivery of Wholesale Capacity Service and Wholesale Energy Service hereunder will be tested annually and maintained in accordance with the Prudent Utility Practices. Winter Park shall be entitled to witness meter testing and OUC shall provide Winter Park reasonable advance notice of the meter testing dates.

Section 7.5 Check Meters

Winter Park shall have the right to install at its own expense, backup metering devices ("Winter Park's Back-Up Metering") which installation shall be reasonably acceptable to OUC and shall be maintained consistent with Prudent Utility Practice. OUC, at its own expense, shall have the right to inspect and test Winter Park's Back-Up Metering upon installation and at least annually thereafter. OUC shall provide Winter Park with reasonable advance notice of, and permit a representative of Winter Park to witness and verify, such inspections and tests, provided that Winter Park shall not unreasonably interfere with or disrupt the inspection and testing activities of OUC and OUC shall comply with all of Winter Park's safety standards.

Section 7.6 Accuracy of Meters; Billing Adjustments

If a Billing Meter fails to register, or if the measurement made by a Billing Meter is found upon testing to be inaccurate by more than the meter accuracy threshold set forth in Section 7.2, an adjustment shall be made correcting all measurements by the inaccurate or defective Billing Meter, for both the amount of the inaccuracy and the period of the inaccuracy, in the following manner:

- (a) In the event that the primary Billing Meter is found to be defective or inaccurate, the Parties shall use Winter Park's Back-up Metering, if installed, to determine the amount of such inaccuracy, provided that Winter Park's Back-Up Metering has been tested and maintained in accordance with the provisions of Section 7.5. In the event that the Billing Meter and the Winter Park Backup Meters fail, the Parties shall estimate the amount of the necessary adjustment during periods of similar operating conditions when the Billing Meter was registering accurately. The adjustment shall be made for the period during which inaccurate measurements were made.

(b) In the event that the Parties cannot agree on the actual period during which the inaccurate measurements were made, the period during which the measurements are to be adjusted shall be the shorter of (i) one-half of the period from the last test of the Billing Meter to the test that found the Billing Meter to be defective or inaccurate, or (ii) the ninety (90) days immediately preceding the test that found the Billing Meter to be defective or inaccurate.

(c) To the extent that the adjustment period covers a period of deliveries for which billings have already been made by OUC, OUC shall use the corrected measurements as determined in accordance with this Article 7 to compute the adjustment necessary for the period of the inaccuracy and shall adjust billing for this period from such recomputed amount in the next monthly bill after the error is identified, and to the extent that OUC has overbilled Winter Park for Wholesale Electric Services hereunder, accrued interest on the amount of any overpayments by Winter Park shall be computed at the Interest Rate from the date OUC received such overpayment by Winter Park until refunded or (if requested by Winter Park, credited) against future payment.

ARTICLE 8 ACCESS OF OUC

OUC shall have the right to enter upon the premises of Winter Park where the Billing Meters are installed at all reasonable times for the purpose of reading meters, inspecting or repairing apparatus used in connection with the service, removing its property and/or any other purpose to carry out the work of OUC in connection with the delivery of Wholesale Electric Service provided for herein. OUC shall provide advance notice (reasonable under the circumstances) to Winter Park of its intent to enter upon the premises of Winter Park and shall describe in such notice the activities or work to be performed, the schedule for the performance of the activities or work and the personnel and contractors who will be performing such activities or work. OUC shall comply with Winter Park's rules and policies with respect to safety, security and confidentiality and any work or activities shall be performed in a manner consistent with the requirements, conditions or limitation set forth in any interconnection agreement between Winter Park and OUC.

ARTICLE 9 CONTINUITY OF SERVICE

Section 9.1 Interruptions.

OUC shall supply and deliver Wholesale Electric Service hereunder to the Delivery Point(s) on a firm basis with priority equal to that of OUC's Firm Load. OUC shall not be responsible for any failure to deliver Monthly Wholesale Electric Capacity and Monthly Wholesale Electric Energy due to interruptions to the OUC delivery system. OUC disclaims any liability for third-party claims arising out any failure to supply Wholesale Electric Service

hereunder, or for interruption, reversal or abnormal voltage of the supply, unless such failure, interruption, reversal or abnormal voltage is the result of gross negligence or intentional misconduct on its part, and any liability of OUC for any claims arising out of or related to such failure, interruption, reversal or abnormal voltage of the supply by OUC shall be limited to \$50,000 per occurrence. Winter Park's Load Obligation will be included in OUC's Under Frequency Load Shedding Plan requirements. In the event of an interruption of the Wholesale Electric Service to Winter Park, OUC will establish the priority of restoration based on the number of users on the Winter Park system rather than counting the Winter Park service as a single point of service.

Section 9.2 Capacity Shortfalls.

In the event of an OUC capacity shortfall that requires load interruption, OUC shall effect load interruption of OUC Firm Load and Winter Park Load Obligations on a pro rata basis showing no adverse distinction between Winter Park, or OUC's Firm Load. Winter Park's Load Obligation will be included in OUC's Manual Load Shedding Plan requirements.

Section 9.3 Shortfall Notification.

OUC will promptly inform Winter Park as soon as reasonably possible under the circumstances after becoming aware of any event, occurrence or circumstance that will result in load shedding or otherwise cause a material reduction or an interruption or suspension of delivery of Wholesale Electric Service to Winter Park.

ARTICLE 10 DELIVERY AND LOSSES

Section 10.1 Delivery

Quantities of Monthly Wholesale Electric Energy and Monthly Wholesale Capacity necessary to meet the Load Obligations shall be delivered by OUC to Winter Park at the Delivery Point(s). Title to and risk of loss related to the Wholesale Electric Service shall transfer from OUC to Winter Park at the Delivery Point free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any person arising prior to the Delivery Point. OUC shall not incur any expense or risk beyond the Delivery Point(s) and Winter Park shall not incur any expenses or risk up to and at the Delivery Point.

Section 10.2 Losses

OUC will determine transmission losses for Monthly Wholesale Electric Energy up to the Delivery Point(s) in accordance with the transmission loss percentage factor posted from time to time by OUC in OASIS. [REDACTED]

ARTICLE 11

CONDITIONS PRECEDENT

Section 11.1. Conditions to Obligations of Winter Park.

The obligations of Winter Park under this Agreement to purchase and receive Wholesale Electric Service shall commence on the Service Date, and such obligations are subject to the fulfillment and satisfaction of each of the following conditions on or before December 31, 2013, any one or more of which may be waived only in writing, in whole or in part, by Winter Park:

(a) Representations, Warranties and Covenants True at the Effective Date. (i) All representations and warranties of OUC contained in this Agreement shall be true and correct in all material respects as of the date when made and at and as of the Effective Date as though such representations and warranties had been made or given on such date (except to the extent such representations and warranties specifically pertain to an earlier date), except (A) for changes contemplated by this Agreement and (B) where the failure to be true and correct will not have a material adverse effect on Winter Park's rights, remedies or benefits under this Agreement; (ii) OUC shall have performed and complied with, in all material respects, its obligations that are to be performed or complied with by it hereunder prior to or on the Effective Date; and (iii) OUC shall have delivered a certificate signed by one of its duly authorized officers certifying as to the fulfillment of the conditions set forth in the foregoing clauses (i) and (ii).

(b) Absence of Litigation. No claims, actions, suits, investigations, grievances, arbitrations or proceedings shall be pending or threatened against Winter Park or OUC with respect to the transactions contemplated hereunder or the adverse outcome of which would have a material adverse effect on the ability of Winter Park or OUC to perform its respective obligations under this Agreement.

(c) Required Approvals. All the approvals and authorizations set forth in Appendix B hereto, shall have been received on or before August 30, 2013.

Section 11.2. Conditions to Obligations of OUC.

The obligations of OUC under this Agreement to sell and delivery Wholesale Electric Service shall commence on the Service Date, and such obligations are subject to the fulfillment and satisfaction, on or before the dates indicated, of each of the following conditions, any one or more of which may be waived only in writing, in whole or in part, by OUC:

(a) Representations, Warranties and Covenants True at the Effective Date. (i) All representations and warranties of Winter Park contained in this Agreement shall be true and correct in all material respects when made and at and as of the Effective Date and at and as of the Service Date as though such representations and warranties had been made or given on

such date (except to the extent such representations and warranties specifically pertain to an earlier date), except (A) for changes contemplated by this Agreement and (B) where the failure to be true and correct will not have a material adverse effect on OUC's rights, remedies or benefits under this Agreement; (ii) Winter Park shall have performed and complied with, in all material respects, its respective obligations that are to be performed or complied with by them hereunder prior to or on the Effective Date or the Service Date (as applicable); and (iii) Winter Park shall deliver on or before the Service Date a certificate signed by its Mayor certifying as to the fulfillment of the conditions set forth in the foregoing clauses (i) and (ii).

(b) Required Approvals. All the approvals and authorizations set forth in Appendix B hereto, shall have been received on or before August 30, 2013.

(c) Legal Opinions. OUC shall have received from counsel to Winter Park an enforceability opinion, dated as of the Effective Date.

(d) No Material Adverse Change. No material adverse change in the Load Obligation, electric facilities, electric business, financial condition, results of operations or prospects of Winter Park shall have occurred and be continuing, or with the passage of time, the giving of notice or both, shall be reasonably likely to occur as of the Service Date.

(e) Absence of Litigation/Legislative Action. No claims, actions, suits, grievances, investigations, arbitrations or proceedings shall be pending or threatened against Winter Park or OUC with respect to this Agreement which might have a material adverse effect on the ability of Winter Park or OUC to perform its respective obligations under this Agreement.

Section 11.3. Coordination.

Winter Park and OUC shall cooperate with each other and use all commercially reasonable efforts to (a) promptly prepare and file all necessary documentation, (b) effect all necessary applications, notices, petitions and filings and execute all agreements and documents, and (c) obtain all necessary consents, approvals and authorizations, including those of other parties necessary or advisable to consummate the transactions contemplated by this Agreement, all of which are set forth in Appendix B.

Each Party shall keep the other Party reasonably apprised of the status of the conditions precedent to the occurrence of the Service Date applicable to it. The Parties shall reasonably coordinate so that subject to the satisfaction of other prior conditions, the certificates and opinions to be delivered by a Party hereunder in connection with the Effective Date have been provided by the Effective Date.

ARTICLE 12

TERMINATION PRIOR TO SERVICE DATE

Section 12.1. Termination Prior to Service Date.

(a) If all of the conditions precedent to Winter Park's and OUC's obligations hereunder set forth in Article 11 hereof have not been satisfied or waived in writing on or prior to the express date specified therein or December 31, 2013 notwithstanding the reasonable effort of the Party to Satisfy or waive the condition, then at any time thereafter, either Party may terminate this Agreement on written notice of termination to the other Party, without any liability or obligation of any Party to the others as a result of such termination, unless prior to the delivery of any such written notice of termination the condition or conditions precedent which had not been satisfied are satisfied; provided, however, that in the event of any such termination by OUC or Winter Park prior to the Service Date, Winter Park will reimburse OUC for 50% of all labor and material costs incurred related to the interconnection of the OUC distribution system to the Winter Park distribution system. .

(b) If the Agreement is terminated by OUC pursuant to Section 11.2, the early termination option as described under Term or by Winter Park under 11.1, then the following shall apply:

(i) If OUC exercises its right to terminate this Agreement under Section 11.2 or the option to terminate as described under Term, then neither party shall thereafter have any further obligations to the other hereunder.

(ii) If Winter Park terminates this Agreement pursuant to Section 11.1 then OUC shall thereafter (a) have no further obligations hereunder and (b) shall have the right to require Winter Park to assume OUC's rights, obligations and liabilities under any or all contracts entered into by OUC with Winter Park's prior written approval solely for the purpose of providing electric energy and capacity to Winter Park under this Agreement.

Section 12.2. Notice.

Each Party shall notify the other Party promptly if any information comes to its attention prior to the Effective Date or prior to the Service Date, as applicable that it believes will potentially excuse such Party from the performance of its obligations under this Agreement or might reasonably cause any condition set forth in Article 11 not to be satisfied on or prior to the Service Date.

ARTICLE 13
REPRESENTATIONS AND WARRANTIES

Section 13.1. General Representations and Warranties.

Each Party hereby represents and warrants to the other that:

(a) It is duly organized, validly existing and in good standing under the laws of its jurisdiction of organization and is duly qualified to do business in all jurisdictions where such qualification is required.

(b) It has or will have prior to the Effective Date full power and authority to enter this Agreement and perform its obligations hereunder. The execution, delivery and performance of this Agreement have been duly authorized by all necessary municipal and other action and do not and will not contravene its organizational documents or conflict with, result in a breach of, or entitle any party (with due notice or lapse of time or both) to terminate, accelerate or declare a default under, any agreement or instrument to which it is a party or by which it is bound.

(c) To the best of each Party's knowledge, the execution, delivery and performance by it of this Agreement will not result in any violation by it of any law, rule or regulation applicable to it. It is not a party to, nor subject to or bound by, any judgment, injunction or decree of any court or other governmental entity which may restrict or interfere with the performance of this Agreement by it or may materially and adversely affect the business, property, financial condition, results of operations or prospects of such Party.

(d) This Agreement is its valid and binding obligation, enforceable against it in accordance with its terms, except as (i) such enforcement may be subject to bankruptcy, insolvency, reorganization, moratorium or other similar laws now or hereafter in effect relating to creditors' rights generally and (ii) the remedy of specific performance and injunctive relief may be subject to equitable defenses and to the discretion of the court before which any proceeding therefor may be brought.

(e) Except for those approvals listed in Appendix B and filing of this Agreement as required under Section 163.01(11), Florida Statutes, no consent, waiver, order, approval, authorization or order of, or registration, qualification or filing with, any court or other governmental agency or authority or other person is required for the execution, delivery and performance by such Party of this Agreement and the consummation by such Party of the transactions contemplated hereby. No consent or waiver of any party to any contract to which such Party is a party or by which it is bound is required for the execution, delivery and performance by such Party of this Agreement that has not been or will by the Effective Date have been duly obtained.

(f) There is no action, suit, grievance, arbitration or proceeding pending or, to the knowledge of such Party, threatened against or affecting such Party at law or in equity, before any federal, state, municipal or other governmental court, department, commission, board, arbitrator, bureau, agency or instrumentality which prohibits or impairs its ability to execute and deliver this Agreement or to consummate any of the transactions contemplated hereby. Such Party has not received written notice of and otherwise is not aware of any such pending or threatened investigation, inquiry or review by any governmental entity.

Section 13.2. Disclaimers.

EXCEPT AS EXPRESSLY SET FORTH HEREIN, EACH PARTY EXPRESSLY DISCLAIMS ANY REPRESENTATION OR WARRANTY, WRITTEN OR ORAL, STATUTORY, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY REPRESENTATIONS OR WARRANTIES WITH RESPECT TO MERCHANTABILITY OR

FITNESS FOR ANY PARTICULAR PURPOSE WITH RESPECT TO THE PROVISION OR RECEIPT OF WHOLESALE ELECTRIC SERVICE HEREUNDER, ALL OF WHICH ARE HEREBY EXPRESSLY EXCLUDED AND DISCLAIMED.

ARTICLE 14 SECURITY

Section 14.1. OUC Security

OUC shall maintain a rating on senior unsecured debt securities of OUC by Standard and Poor's Corporation, Moody's Investors Service, Inc., Fitch IBCA or another nationally recognized rating service reasonably acceptable to Winter Park of BBB+ (Standard and Poor's), Baal (Moody's) or BBB+ (Fitch) or its equivalent, or a rating equivalent to Winter Park senior unsecured debt securities, if any, whichever is lower. In the event that OUC's credit rating fails to meet said credit standing and OUC fails to restore its credit rating to said standing within 12 months after its rating has fallen, OUC shall notify Winter Park thereof and shall upon request by Winter Park provide a Letter of Credit, cash, bond or other security reasonably sufficient to assure OUC's due performance under this Agreement.

Section 14.2. Winter Park Security

The Winter Park shall maintain a rating on senior unsecured debt securities of Winter Park, if any such securities are rated, by Standard and Poor's Corporation, Moody's Investors Service, Inc., Fitch IBCA or another nationally recognized rating service reasonably acceptable to OUC of BBB+ (Standard and Poor's), Baal (Moody's) or BBB+ (Fitch) or its equivalent, or a rating equivalent to OUC senior unsecured debt securities, whichever is lower. In the event that Winter Park issues any senior unsecured debt securities and the rating on such securities falls below such specified minimum rating and Winter Park fails to restore its credit rating to such specified minimum rating standing within 12 months after its rating has fallen below the rating described above, Winter Park shall within ninety (90) days of a written request by OUC therefor provide a Letter of Credit, cash, bond or other security reasonably sufficient to assure Winter Park's due performance of its purchase and payment obligations under this Agreement.

ARTICLE 15 EVENTS OF DEFAULT

Section 15.1. Events of Default by OUC.

Any one or more of the following shall constitute an "Event of Default" by OUC:

- (a) OUC fails to pay any amounts to be paid by OUC when due hereunder to Winter Park and such failure shall continue for a period of more than ten (10) Business Days after notice by Winter Park.

(b) A default shall occur in the performance of any other material covenant or condition to be performed by OUC hereunder (other than a default specified in Section 15.1(a)) and such default shall continue un-remedied for a period of thirty (30) days after notice from Winter Park specifying the nature of such default; provided, however, that if such default (other than the failure to make payments when due) cannot reasonably be remedied by OUC within thirty (30) days, subject to commencement of action to remedy the default within such thirty (30) day period, OUC shall have up to an additional ninety (90) days to remedy the default.

(c) A custodian, receiver, liquidator or trustee of OUC or of all or substantially all of the property of either, is appointed or takes possession and such appointment or possession remains uncontested or in effect for more than sixty (60) days; or OUC makes an assignment for the benefit of its creditors or admits in writing its inability to pay its debts as they mature; or OUC is adjudicated bankrupt or insolvent; or an order for relief is entered under the Federal Bankruptcy Code against OUC; or all or substantially all of the material property of either is sequestered by court order and the order remains in effect for more than sixty (60) days; or a petition is filed against OUC under any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction, whether now or subsequently in effect, and is not stayed or dismissed within sixty (60) days after filing.

(d) OUC files a petition in voluntary bankruptcy or seeks relief under any provision of any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction, whether now or subsequently in effect; or consents to the filing of any petition against it under any such law; or consents to the appointment of or taking possession by a custodian, receiver, trustee or liquidator of OUC or all or substantially all of the property of either.

Section 15.2. Events of Default by Winter Park.

Any one or more of the following shall constitute an "Event of Default" by Winter Park:

(a) Winter Park shall fail to pay any amounts to be paid when due by Winter Park hereunder to OUC and such failure shall continue for a period of more than ten (10) Business Days after notice by OUC.

(b) Default shall occur in the performance of any material covenant or condition to be performed by Winter Park hereunder (other than a default specified in Section 15.2 (a)) and such default shall continue un-remedied for a period of thirty (30) days after notice from OUC specifying the nature of such default; provided, however, that if such default cannot reasonably be remedied by Winter Park within thirty (30) days, subject to commencement of action to remedy the default within such thirty (30) day period, Winter Park shall have up to additional ninety (90) days to remedy the default.

(c) A custodian, receiver, liquidator or trustee of Winter Park or of all or substantially all of either of their property is appointed or takes possession and such appointment or possession remains uncontested or in effect for more than sixty (60) days; or Winter Park makes an assignment for the benefit of its creditors or admits in writing its inability to pay its debts as they mature; or Winter Park is adjudicated bankrupt or insolvent; or an order for relief is entered under the Federal Bankruptcy Code against Winter Park; or all or substantially all of the material property of Winter Park is sequestered by court order and the order remains in effect for more than sixty (60) days; or a petition is filed against Winter Park under any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction, whether now or subsequently in effect, and is not stayed or dismissed within sixty (60) days after filing.

(d) Winter Park files a petition in voluntary bankruptcy or seeks relief under any provision of any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction, whether now or subsequently in effect; or consents to the filing of any petition against it under any such law; or consents to the appointment of or taking possession by a custodian, receiver, trustee or liquidator of Winter Park or all or substantially all of its property.

Section 15.3. Remedies.

The Parties shall have the following remedies available to them with respect to the occurrence of an Event of Default with respect to the other Party hereunder:

(a) Upon the occurrence of an Event of Default by either Party hereunder, the non-defaulting Party shall have the right to (i) invoice and collect all amounts then due to it from the defaulting Party hereunder (subject to any applicable limitation of liability or cap on damages), and (ii) terminate this Agreement at any time during the continuation of such Event of Default upon written notice to the defaulting Party. Notwithstanding any other provision of this Agreement, after the occurrence of an Event of Default and for so long as the Event of Default is continuing and has not been cured, the non-defaulting Party shall have the right, upon written notice to the defaulting Party, to suspend all performance under this Agreement until such Event of Default has been cured. In addition, if OUC is the defaulting Party, then Winter Park shall have the right in addition to its other rights and remedies, but not the obligation, during the continuation of such default and prior to any termination of this Agreement, to purchase energy and capacity, in a commercially reasonable manner considering the circumstances of such default, from third parties at the Delivery Point(s) in quantities sufficient to cover any shortfall in Monthly Wholesale Electric Energy resulting from such default. If Winter Park is the defaulting Party and, by reason of Winter Park's

default, OUC is not receiving all or a portion of the Monthly Wholesale Electric Energy and Monthly Wholesale Electric Capacity or associated payments in accordance with the terms hereof, then OUC shall have the right, but not the obligation, during the continuation of such default and prior to any termination of this Agreement to discontinue Wholesale Electric Service to Winter Park upon five (5) Business Days prior notice of such intent.

(b) If Winter Park terminates this Agreement as a result of the occurrence of an Event of Default by OUC, then Winter Park shall thereafter have no further obligations hereunder and shall have all rights and remedies available to it under applicable law, including the right to recover damages and shall thereafter have no further obligations hereunder other than (upon OUC's request) assume OUC's rights, and further obligations and liabilities under any or all contracts entered into by OUC with Winter Park's express, prior written approval solely for the purpose of providing electric energy and capacity to Winter Park under this Agreement.

(c) If OUC terminates this Agreement as a result of the occurrence of an Event of Default by Winter Park, then OUC shall thereafter (a) have no further obligations hereunder and shall have all rights and remedies available to it hereunder and under applicable law, including the right to recover damages and (b) to have the right to require Winter Park to assume OUC's rights, obligations and liabilities under any or all contracts entered into by OUC with Winter Park's express, prior written approval solely for the purpose of providing electric energy and capacity to Winter Park under this Agreement.

(d) The remedies provided for in this Section 15.3 shall be without prejudice and in addition to any right of setoff, combination of accounts, lien or other right to which any Party is at any time otherwise entitled (whether by operation of law, contract or otherwise). The remedies provided for in this Section 15.3 shall be subject to the limitations of liability and caps on damages set forth in Article 16.

ARTICLE 16

LIMITATION OF LIABILITY

Section 16.1. No Consequential Damages. NOTWITHSTANDING ANYTHING IN THE AGREEMENT TO THE CONTRARY, NO PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER INDEMNITY PROVISIONS OR OTHERWISE, INCLUDING WITHOUT LIMITATION, LOST PROFITS, LOST REVENUES, COST OF CAPITAL; LOSS OF USE, LOSS OF GOODWILL, REPLACEMENT POWER OR CLAIMS OF CUSTOMERS, UNLESS SUCH DAMAGES ARE A COMPONENT OR ELEMENT OF A CLAIM THAT IS SUBJECT TO INDEMNIFICATION HEREUNDER AND COVERED UNDER A PRIMARY POLICY OF LIABILITY INSURANCE, IF ANY, ISSUED BY A THIRD PARTY SURETY.

Section 16.2. Aggregate Cap on Liability. NOTWITHSTANDING ANY PROVISION IN THIS AGREEMENT TO THE CONTRARY, THE TOTAL AGGREGATE LIABILITY OF OUC TO WINTER PARK AND OF WINTER PARK TO OUC UNDER THIS AGREEMENT, WHETHER BASED ON CLAIMS ARISING UNDER TORT, CONTRACT, STRICT LIABILITY OR ANY OTHER THEORY OF RECOVERY, SHALL NOT EXCEED THE AMOUNT(S) SET FORTH IN APPENDIX F;

ARTICLE 17 INDEMNIFICATION

Section 17.1. Indemnification by OUC.

To the extent permitted by Florida law and subject to the limitations set out in Article 16, OUC shall indemnify, defend and hold harmless Winter Park and its respective officials, officers, directors, agents, representatives and employees from and against any and all loss, costs, expense, claims, demands, liabilities (including reasonable attorneys' fees), judgments, fines, settlements and other amounts arising from any and all Claims relating to or arising out of:

- (a) any willful misconduct or illegal acts of OUC;
- (b) any damages awarded against Winter Park in a Claim by a third party only to the extent arising from the negligent acts or omissions of OUC or any of its agents or employees in exercising its rights or performing its obligations hereunder after the Effective Date.

Section 17.2. Indemnification by Winter Park.

To the extent permitted by Florida law and subject to the limitations set out in Article 16, Winter Park shall indemnify, defend and hold harmless OUC, its officers, directors, agents, employees and Affiliates from and against any and all loss, costs, expense, claims, demands, liabilities (including reasonable attorneys' fees), judgments, fines, settlements and other amounts arising from any and all Claims relating to or arising out of:

- (a) any willful misconduct or illegal acts of Winter Park;
- (b) any damages awarded against OUC in a Claim by a third party only to the extent arising from the negligent acts or omissions of Winter Park or any of its agents or employees in exercising its rights or performing its obligations hereunder after the Effective Date.

Section 17.3. Sovereign Immunity Not Waived.

Nothing in this Agreement shall be construed or applied as a waiver of either party's sovereign immunity against third party tort claims, including those rights and limitations of liability under s. 768.28, F.S., as it may be amended. If a party pursues indemnity or a hold harmless/defense from the other in connection with a third-party tort claim, then the party from whom indemnity is sought shall have the right to assert against any such third party claimant, the defense of sovereign immunity on behalf of both the indemnitor and the indemnitee.

ARTICLE 18 DISPUTE RESOLUTION

Section 18.1. Resolution By Officers of the Parties.

Except as otherwise expressly, specifically set forth herein, in the event of any dispute between the Parties as to a matter referred to herein or as to the interpretation of any part of this Agreement, including this Section 18.1 or as to the determination of any rights or obligations or entitlements arising from or related to this Agreement or as to the calculation of any amounts payable under this Agreement, the Parties shall refer the matter to their respective duly authorized representatives, for resolution. Should such representatives of the respective Parties fail to resolve the dispute within twenty (20) days from such referral, the Parties agree that any such dispute shall be first referred to non-binding mediation in accordance with Section 18.2. Should mediation be unsuccessful within the times specified in Section 18.2, the Parties may pursue any legal or equitable remedies available under Florida law.

Section 18.2. Mediation Procedures.

A Party submitting a dispute to non-binding mediation pursuant to the procedures set forth in Florida Statutes, Section 44.101 (the "Requesting Party") shall do so by delivering to the other Party a notice demanding or requesting, as the case may be, mediation of the dispute and naming three acceptable mediators. Within ten (10) days after the receipt of the notice from the Requesting Party, the other Party shall, in writing, serve upon the Requesting Party a notice of acceptance of one of the three mediators provided or offer three alternate mediators for consideration. Within five (5) days, the Parties shall confer and mutually agree and appoint a mediator from the lists provided. To the extent practicable, the mediator shall have special competence and experience with respect to the subject matter of the dispute(s). No mediator appointed shall have the power to render any binding or enforceable award, order, decree or disposition or amend or add to this Agreement. Within ten (10) days after the mediator is appointed, a time and date for the mediation shall be scheduled and documented in writing. The mediator thereupon shall proceed promptly to hear and facilitate an amiable resolution of the controversy. If mediation is successful, any settlement achieved through mediation shall be confidential to the extent permissible under Florida law and not in violation of the Florida Statute 119 and made in writing and in duplicate, and one copy shall be delivered to each of the Parties. Each Party shall pay the costs of its own counsel and share equally the fee and cost of the mediator.

Section 18.3. Settlement.

If the resolution of the dispute and the terms of any settlement agreement, amendment to the Agreement or other document or instrument executed in connection therewith will require the approval of the Board of a Party, a request for such approval shall be promptly submitted for the Board's consideration. Once accepted by the Parties, the decision of the mediator and any award made hereunder shall be binding upon each Party and the successors and assigns and any trustee or receiver of each Party.

Section 18.4. Legal Remedies.

If mediation is unsuccessful, either Party may pursue any legal rights and remedies made available under Florida Law. The Parties agree that the exclusive venue for any dispute arising hereunder that is not resolved through the dispute resolution procedures set forth in Section 18.1 and 18.2 shall be the State Circuit Court in Orange County, Florida.

Section 18.5. Continued Performance.

Except to the extent a Party has the right to suspend performance under Section 15.3 hereof, no dispute shall interfere with the Parties' continued fulfillment of their obligations under this Agreement pending the outcome of the mediation process or a decision by the Florida courts.

ARTICLE 19
FORCE MAJEURE

Section 19.1. Force Majeure Standard.

A Party shall be excused from performing its obligations under this Agreement and shall not be liable in damages or otherwise, if and only to the extent that it is unable to so perform or is prevented from performing by an event of Force Majeure.

Section 19.2. Force Majeure Definition.

An event of "Force Majeure" means an event or circumstance that prevents or unduly frustrates the performance by a Party of its obligations under this Agreement (other than the duty to make payments when due, which shall not be excused by Force Majeure) which is not within the reasonable control of, or the result of the negligence of, such Party and which by the exercise of due diligence such Party is unable to overcome or avoid. Force Majeure includes, without limitation, hurricanes, tornadoes, flood, lightning, drought, earthquake, fire, explosion, terrorist attack, civil disturbance, strikes, acts of God, acts of the public enemy, orders, directives (including the state security coordinator), restraints and requirements of the government and governmental agencies, either federal, state or local, civil or military, or any other cause beyond a Party's control. Force Majeure shall not include (i) events affecting the

cost of operating any generating facility, (ii) changes in market conditions which cause the price of energy or capacity to fluctuate including, without limitation, weather, fuel prices and supply and demand, or (iii) the inability of a Party to make a profit or avoid a loss in performing its obligations under this Agreement.

Section 19.3. Obligation to Diligently Cure Force Majeure.

If a Party shall rely on the occurrence of an event of Force Majeure as a basis for being excused from performance of its obligations under this Agreement, then such Party shall:

(a) Provide written notice to the other Party promptly but in no event later than five (5) days of the occurrence of the event or condition giving an estimation of the expected duration and the probable impact on the performance of its obligations hereunder;

(b) Exercise all reasonable efforts to continue to perform its obligations hereunder;

(c) Expeditiously take reasonable action to correct or cure the event or condition excusing performance, provided that settlement of strikes or other labor disputes shall be completely within the sole discretion of the affected Party; and

(d) Exercise all reasonable efforts to mitigate or limit damages to the other Party to the extent such action shall not adversely affect its own interests.

ARTICLE 20 MISCELLANEOUS

Section 20.1. Assignment; Successors and Assigns.

This Agreement shall inure to the benefit of and bind the respective successors and permitted assigns of the Parties, including any successor to any Party by consolidation, merger, or acquisition of all or substantially all of the assets of such Party. No assignment by any Party (or any successor or assignee thereof) of its rights and obligations hereunder shall be made or become effective without the prior written consent of the other Party in each case obtained (which shall (as necessary) include approval by the Commission of the non-assigning Party), which consent shall not be unreasonably withheld, conditioned or delayed if the assignee can demonstrate to the non-assigning Party that it has at least the same or better technical capability and financial wherewithal as the assigning Party. Any assignments by any Party shall be in such form as to ensure that such Party's obligations under this Agreement will be assumed, accepted and honored fully and timely by any transferee, assignee or successor party.

Section 20.2. Notices.

With the exception of communications within the ordinary course of the day to day performance and administration of this Agreement, all notices, requests and other communications hereunder (herein collectively a "notice" or "notices") shall be deemed to have been duly delivered, given or made to or upon any Party if in writing and delivered by hand against receipt, or by certified or registered mail, postage pre-paid, return receipt requested, or to a courier who guarantees next business day delivery or sent by telecopy (with confirmation by return telecopy) to such Party at its address set forth below or to such other address as such Party may at any time, or from time to time, direct by notice given in accordance with this Section 20.2.

IF TO OUC:

Vice President, Electric & Water Production
100 W. Anderson Street
Orlando, Florida 32801
Tel: 407-423-9100
Facsimile: 407-275-4120
E-mail: jaspuru@ouc.com

With a copy to: Office of General Counsel
100 West Anderson Street
Orlando, Florida 32801
Tel: 407-423-9100
Facsimile: 407-434-2220

IF TO WINTER PARK:

City of Winter Park,
City Manager
401 Park Avenue S.
Winter Park, FL 32789-4386

With a copy to: City Attorney c/o City of Winter Park
401 Park Avenue South,
Winter Park, FL 32789-4386

The date of delivery of any such notice, request or other communication shall be the earlier of (i) the date of actual receipt or (ii) three (3) business days after such notice, request or other communication is sent by certified or registered mail, (iii) if sent by courier who guarantees next business day delivery, the business day next following the day such notice, request or other communication is actually delivered to the courier or (iv) the day actually telecopied (with confirmation by return telecopy if on a business day, and if not, then the first business day thereafter).

Section 20.3. Governing Law.

The rights and obligations of the Parties shall be construed and interpreted in accordance with the substantive law of the State of Florida without giving effect to its principles for choice of law.

Section 20.4. Fees and Expenses.

Except as otherwise provided herein, Winter Park and OUC shall each pay for its own costs, fees and expenses in connection with, or in anticipation of, this Agreement and the consummation of the transactions contemplated hereby.

Section 20.5. Captions.

The captions to sections throughout this Agreement and attachments and appendices hereto are intended solely for ease of reference and to facilitate reading and reference to all sections and provisions of this Agreement and such attachments and appendices. Such captions shall not affect the meaning or interpretation of this Agreement or such attachment or appendices.

Section 20.6. Entire Agreement and Amendments.

This Agreement and all of the attachments and appendices referred to herein sets forth the entire agreement of the Parties with respect to the subject matter herein and takes precedence over all prior discussions or understandings. This Agreement may not be amended, modified or changed except by an agreement in writing signed by the Parties.

Section 20.7. Severability.

The invalidity or unenforceability of any provisions of this Agreement shall not affect the other provisions hereof. If any provision of this Agreement is held to be invalid, such provision shall not be severed from this Agreement; instead, the scope of the rights and duties created thereby shall be reduced to the minimum extent necessary to conform such provision to applicable law, preserving to the greatest extent the intent of the Parties to create such rights and duties as set out herein. If necessary to preserve the intent of the Parties, the Parties shall

negotiate in good faith to amend this Agreement, adopting a substitute provision for the one deemed invalid or unenforceable that is legally binding and enforceable.

Section 20.8. Further Assurances.

In connection with this Agreement and the transactions contemplated hereby, upon the request of either Party the other Party shall execute and deliver any additional documents and instruments and perform any additional acts that may be reasonably necessary or appropriate to effectuate and perform the provisions of this Agreement and such transactions and the intention of the Parties.

Section 20.9. Laws and Regulations; Changes in Law; Decrease in Load

20.9.1 This Agreement and the rights, obligations, and performances of the Parties under this Agreement are subject to all applicable state and federal laws, and to all duly promulgated orders and other duly authorized actions of governmental authorities having jurisdiction. Each Party hereto shall be responsible for taking all necessary actions to satisfy any regulatory and other requirements that may be imposed by any federal, state, or municipal statute, rule, regulation, or ordinance that may be in effect from time to time relative to the performance of such Party hereunder.

If and to the extent that, after the Effective Date of this Agreement, any laws or regulations which govern any transaction or duty of a Party contemplated herein shall change so as to (a) make this Agreement or any provision hereof unlawful or a violation of applicable regulatory requirements, (b) subject either Party to regulation by the Florida PSC or (c) increase the cost to OUC of providing non-fuel energy and capacity to Winter Park (as opposed to the entire OUC retail and wholesale load), then the affected Party may require the other to negotiate and use reasonable efforts to agree on such modifications to this Agreement as shall be reasonably necessary for the Agreement to accommodate any such legal or regulatory changes. If OUC is the Party claiming a cost increase under this section for equipment and materials costs and it is an increase that is not incurred solely to serve Winter Park, then OUC shall negotiate the terms of any such cost increase based on an allocation of such costs in accordance with prudent utility accounting practices over the depreciable life the capital investment and as a system-wide cost. If the Parties are unable to agree on terms, conditions or such other measures to prevent (x) the Agreement from being illegal, (y) a Party being subject to Florida PSC regulation or (z) a change in the cost of providing Wholesale Electric Service hereunder, then the affected Party(ies) may terminate this Agreement upon 180 day's prior written notice with no further obligation to the other. OUC represents that as of the Effective Date of this Agreement, it is not aware of any proposed change in law that would increase the cost to OUC of providing non-fuel energy and capacity to Winter Park under this Agreement.

20.9.2 During the term of this agreement, Winter Park shall maintain the existing configuration of circuits IN159 and CA009 such that the number of customers served and area served by feeders shall remain unchanged from the configuration depicted in circuit

maps included as Appendix G. However, in the event of planned or unplanned interruptions on either circuit or adjacent circuits, Winter Park shall be permitted to temporarily switch portions of circuits so as to maintain reliability to customers of these circuits and adjacent circuits. In all events circuits IN159 and CA009 shall be restored to the original configuration as soon practical.

Section 20.10. Counterparts.

This Agreement and any amendment or modification hereto may be executed simultaneously in two or more counterparts, any of which need not contain the signatures of more than one Party, but all such counterparts taken together shall constitute one and the same Agreement or instrument. This Agreement, as executed by the Parties, shall be filed in compliance with Section 163.01(11).

Section 20.11. Interpretation.

In the event of any dispute concerning the construction or interpretation of this Agreement or any ambiguity hereof, there shall be no presumption that this Agreement or any provision hereof be construed against the Party who drafted this Agreement. In this Agreement, unless the context otherwise requires, the singular shall include the plural, the masculine shall include the feminine and neuter, and vice versa; the term "includes or including" shall mean including, without limitation, references to an Article, Section, Appendix or Schedule shall mean an Article, Section, Appendix or Schedule of this Agreement; and the terms "hereof, herein", hereto, hereunder and "herewith refer to this Agreement as a whole. Reference to a given agreement or instrument shall be a reference to that agreement or instrument as modified, amended, supplemented and restated through the date as of which such reference is made.

Section 20.12. Independent Relationship.

Unless specifically and expressly set forth herein to the contrary, nothing in this Agreement shall be construed or interpreted to make a Party or its employees or agents, the agent, representative or employees of the other Party.

Section 20.13. No Third-Party Beneficiaries.

This Agreement shall not confer any rights or remedies upon any third party not a party hereto, except designated indemnities and permitted assignees and successors.

Section 20.14. Waivers.

The failure of a Party hereto to exercise any right or remedy or enforce at any time any provision of this Agreement shall not be construed to be a waiver of such right, remedy or provision, nor in any way to affect the validity of this Agreement or any part hereof or the right of a Party thereafter to exercise such right or remedy or enforce each and every such provision. In order to be enforceable, a waiver under this Agreement must be in writing, state

that it is a waiver and be signed by an authorized representative of the Party to be bound thereby. Any waiver shall be subject to the terms, conditions and limitations thereof, and no waiver of any breach, default or non-performance of this Agreement shall be held to constitute a waiver of any other or subsequent breach, default or non-performance of this Agreement.

Section 20.15. Duty to Mitigate.

Each Party agrees that it has a duty to mitigate damages and covenants that it will use commercially reasonable efforts consistent with Prudent Utility Practice to minimize any damages it may incur as a result of any other Party's breach, default or non-performance of this Agreement.

[REMAINDER OF PAGE INTENTIONALLY BLANK- SIGNATURE PAGE(S)
FOLLOW]

IN WITNESS WHEREOF, and intending to be legally bound hereby, the Parties have caused this Agreement for Partial-Requirements Purchase and Sale of Electric Energy and Capacity to be duly executed as an instrument under seal by their respective duly authorized representatives as of the date and year first above written.

Orlando Utilities Commission

By: _____
Kenneth P. Ksionek
General Manager and CEO

Attest:

Name: _____
Title: _____

Approved as to form and legality,
OUC Legal Department

By: _____
Date: _____

STATE OF FLORIDA
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me this _____ day of _____, 2013 by Kenneth P. Ksionek, General Manager and Chief Executive Officer of the Orlando Utilities Commission, who is personally known to me or who has produced _____ as identification and who (did/did not) take an oath.

NOTARY PUBLIC
Printed Name of Notary _____
My Commission expires: _____

THE CITY OF WINTER PARK

By:_____

APPENDIX A

PRICING FOR WHOLESALE ELECTRIC SERVICE

Section 1 Monthly Fuel Energy Rate

(a) It is the intent that the monthly Fuel Energy Rate be determined in a manner consistent with the requirements of the fuel cost and purchased economic power adjustment clauses as set forth by FERC in 18 CFR 35.14 and 18 CFR Subchapter C, Part 101, with the exception of the items (c)1- (c)13 below.

(b) The monthly Fuel Energy Rate shall be determined by dividing the monthly Fuel Cost by the monthly Energy Sales.

(c) The monthly Fuel Cost shall be the sum of items 1 through 12 below less item 13 and 14 (if applicable) during the applicable month.

1. The cost of all fuel consumed in the production of electricity.
2. The cost of fuel transportation incurred including fixed gas capacity transportation charges.
3. The cost of gas storage incurred.
4. The maintenance and depreciation of all coal cars.
The cost of leased coal cars.
6. The cost of railroad track maintenance only if this cost is included in the determination of OUC's fuel for retail customers.
7. The amortized cost of nuclear fuel consumed during the month including spent fuel charges.
8. Cost of any fuel additives consumed during the month
9. The energy component of the cost any power purchased from third parties.
10. The net cost of any emission allowances only if these amounts are included in the calculation of retail fuel.
11. The O&M costs incurred to treat and transport landfill gas.
12. The energy component of the cost of any renewable resources purchased only for contracts that were in effect on January 1, 2013. In the event that legislation mandating a certain percentage of renewable resources becomes effective during the term of this contract, OUC shall be permitted to include the energy cost component of all renewable resources necessary to comply with the legislation, however the mandated percentage of renewable generation shall be adjusted by any renewable generation provided by Winter Park prorated from Winter Park Owned resources.
13. The fuel component of sales for wholesale except sales to wholesale customers with firmness equivalent to OUC retail load, including the Monthly Wholesale Electric Energy provided to Winter Park.

14. OUC shall notify Winter Park of any new renewable energy projects to be implemented by OUC during the term of this Agreement and Winter Park may opt out of participating in the project and monthly Fuel Charge will be adjusted to preclude any impact of such projects. Winter Park must provide its written notice to opt out of any such project within sixty (60) day after notice from OUC.

(d) The monthly Fuel Cost shall not include the allocation of any OUC labor expenses nor shall include the allocation of any professional services that OUC may utilize in the management of fuel procurement except as required for execution of activities in items (c)1-(c)14 above and if these amounts are included in the calculation of retail fuel. The Monthly Fuel Cost shall not include any of the costs or proceeds from any hedging activities.

(e) The monthly Energy Sales shall be the sum of retail sales and sales to wholesale customers with firmness equivalent to OUC retail load, including the Monthly Wholesale Electric Energy provided to Winter Park less any generation from renewable resources excluded pursuant to the provisions of items in (c)1-(c)14 above.

OUC shall invoice Winter Park based on an estimated monthly Fuel Energy Rate calculated on forecasted monthly Fuel Cost and forecasted Monthly Energy Sales. The difference between the actual and billed monthly Fuel Energy Charge will be subject to a true-up. This true-up will be charged or credited on the second month following the estimate month period by a dollar amount equal to the difference between the billed monthly Fuel Energy Charge and the monthly Fuel Energy Charge based on actual Monthly Fuel Cost and actual monthly Energy Sales.

Section 2 Demand Rate. The Demand Rate will be as follows:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Section 3 [REDACTED]

Section 4 Transmission Costs as defined in Agreement.

APPENDIX B

REQUIRED APPROVALS AND AGREEMENTS

OUC

1. Approval of this Agreement by the OUC Board.

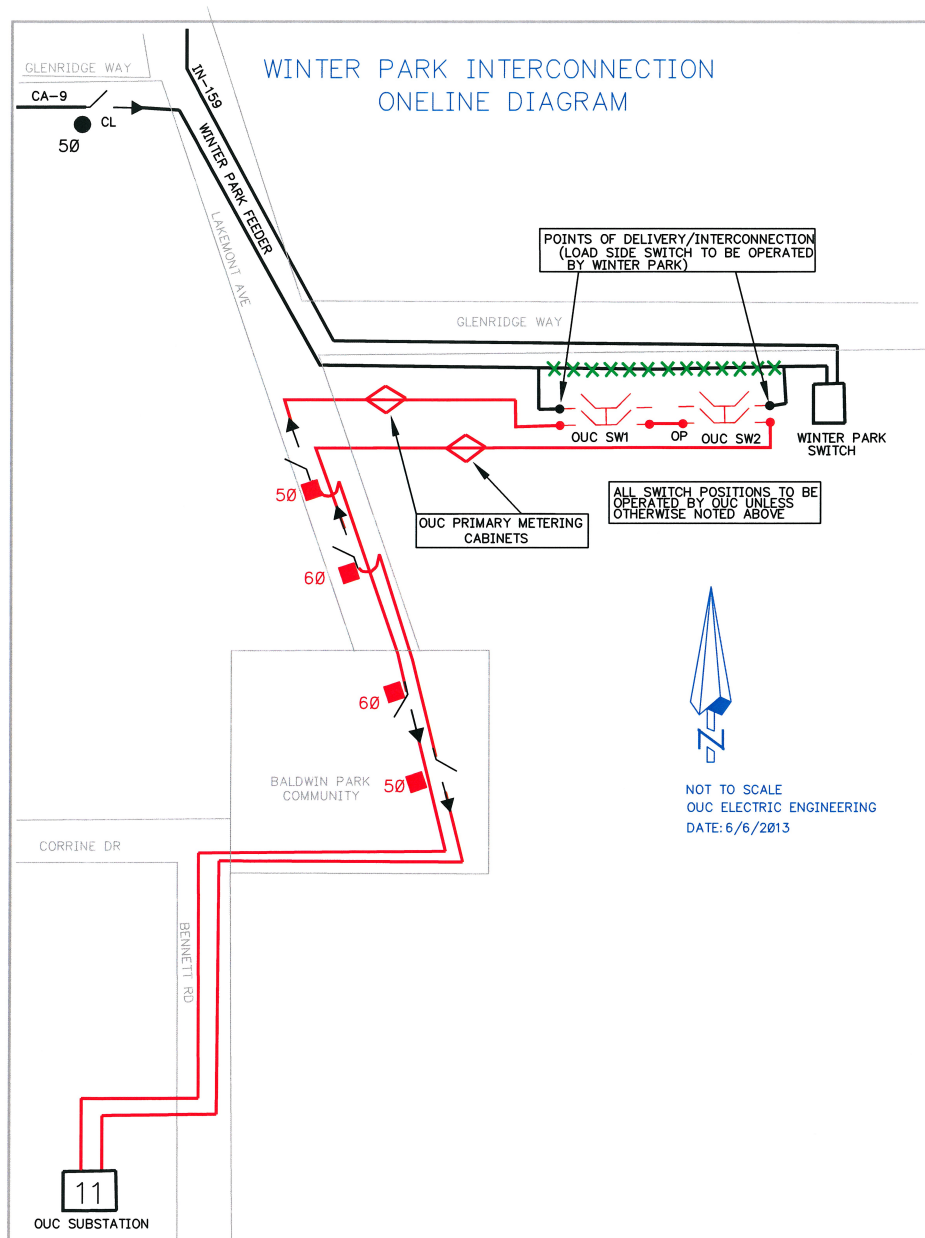
Winter Park

1. Approval of this Agreement by the City Commission of Winter Park.

APPENDIX C DELIVERY POINTS

Delivery Points may be added or deleted upon the mutual written agreement of the Parties.

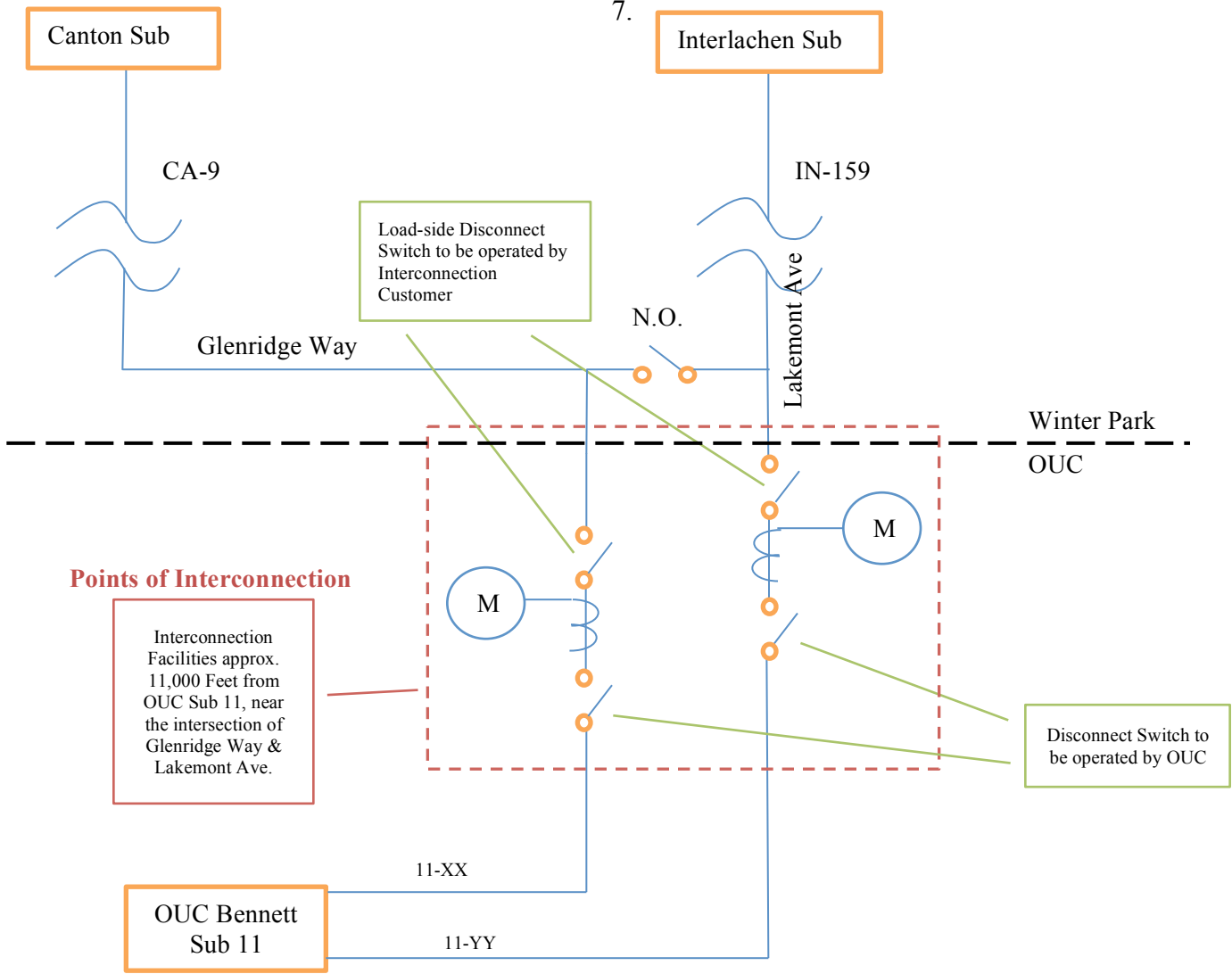
1. OUC interconnection point with Winter Park distribution circuit CA-009
2. OUC interconnection point with Winter Park distribution circuit IN-159



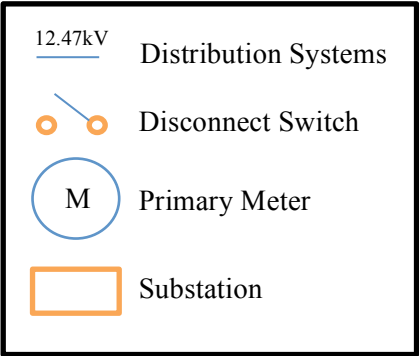
3.

4. Generic One-line Diagram Depicting the Distribution Systems
5. and Interconnection Facilities

6.
7.



Legend



APPENDIX D

FORM OF SERVICE DATE ACKNOWLEDGMENT

The City of Winter Park and Orlando Utilities Commission, parties to that certain Agreement for Partial Purchase and Sale of Electric Energy and Capacity dated, _____, 2013 (the "Agreement") hereby acknowledge that the "Service Date" under the Agreement is January 1, 2014.

City of Winter Park

Orlando Utilities Commission

By: _____ By: _____

Name: _____ Name: _____

Its: _____ Its: _____

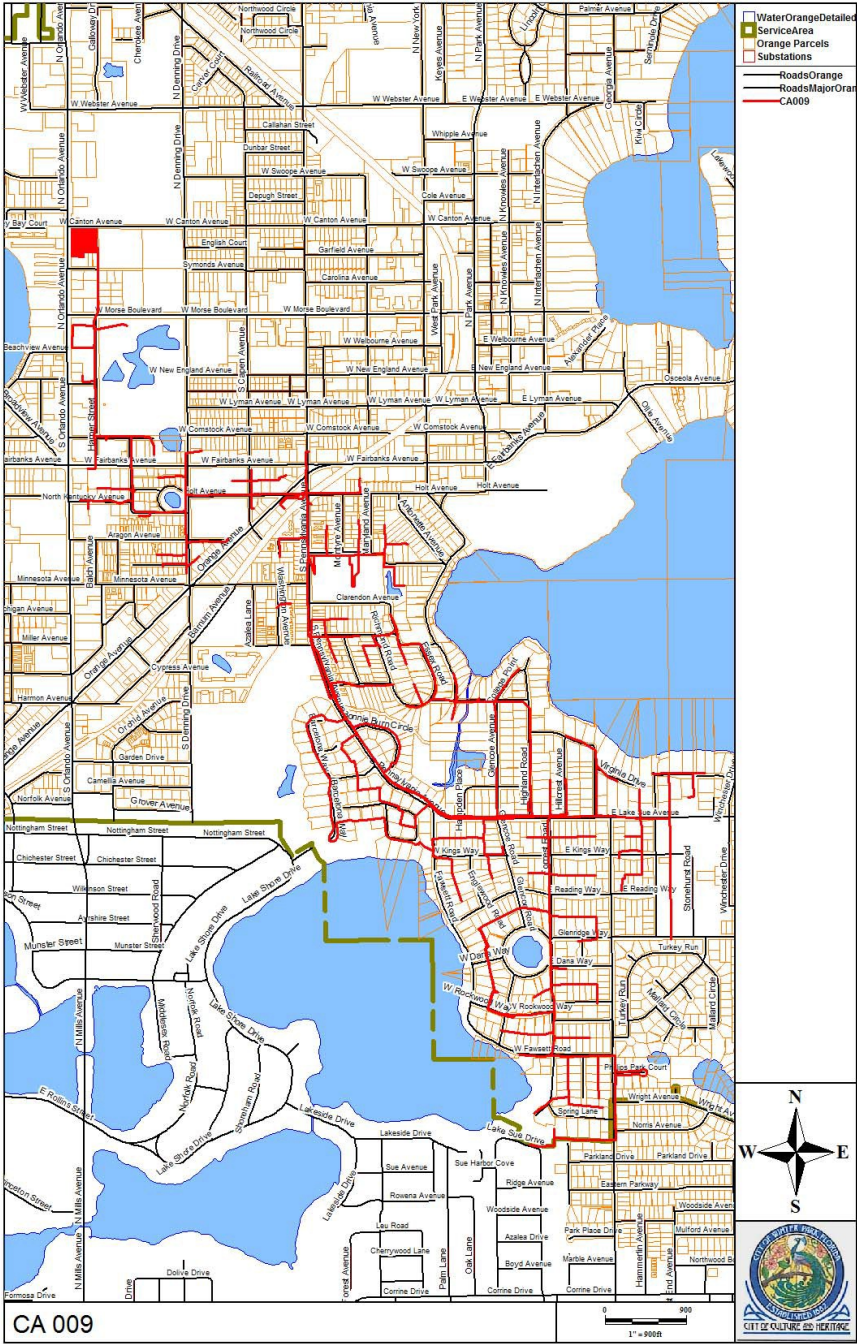
Date: _____ Date: _____

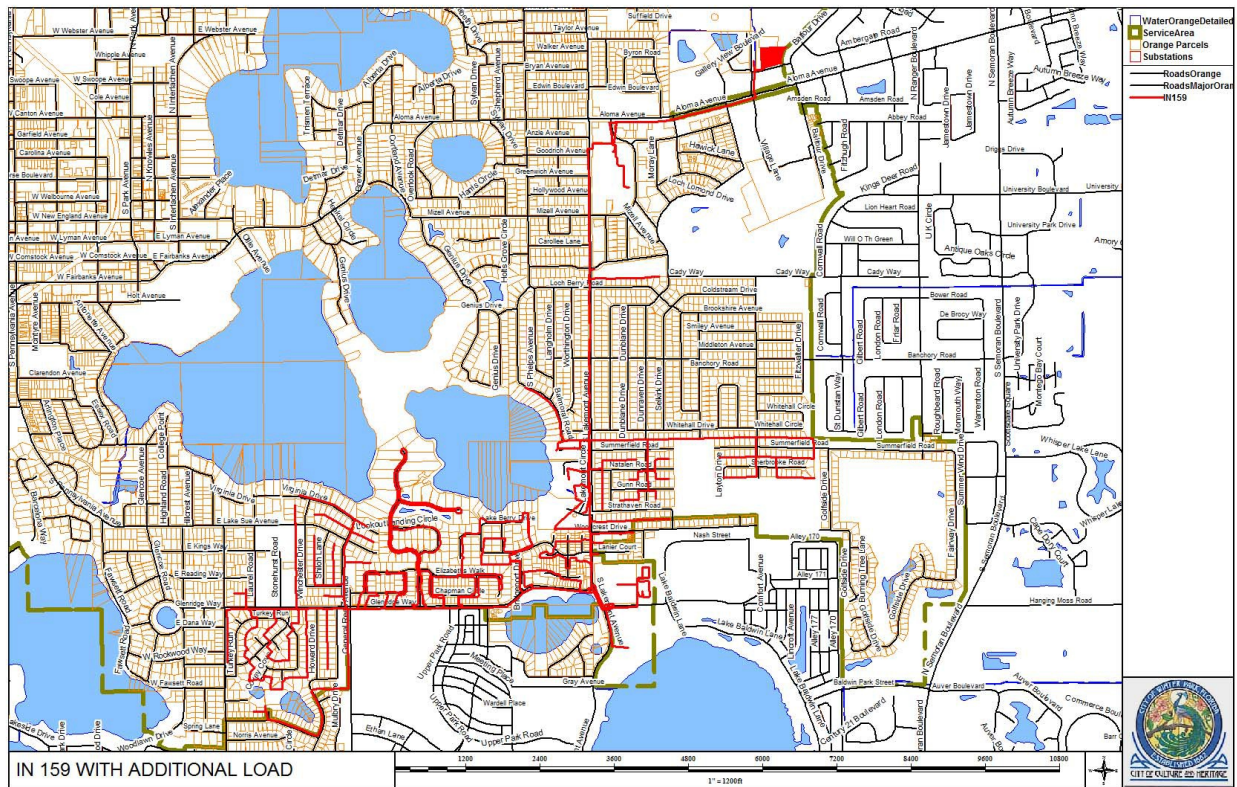
APPENDIX E

SAMPLE BILL

APPENDIX G
WINTER PARK LOAD DIAGRAM

CA 009





INTERCONNECTION AGREEMENT

Between



And

City of Winter Park

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Attachment 1 – Glossary of Terms

Attachment 2 – Description and Costs of the Interconnection Facilities, and Metering Equipment

Attachment 3 – Generic One-Line Diagram Depicting Interconnection Facilities

Attachment 4 – Operating and Design Requirements for OUC's Distribution System

This Interconnection Agreement ("Agreement") is made and entered into this _____ day of _____, 2013, by Orlando Utilities Commission ("OUC"), and _____ ("Interconnection Customer") each hereinafter sometimes referred to individually as "Party" or both referred to collectively as the "Parties."

In consideration of the mutual covenants set forth herein, the Parties agree as follows:

Article 1. Scope and Limitations of Agreement

- 1.1 Capitalized Terms used herein shall have the meanings specified in the Glossary of Terms in Attachment 1 or the body of this Agreement.
- 1.2 This Agreement governs the terms and conditions under which the Interconnection Customer's Distribution System will interconnect and operate with the OUC Distribution System.
- 1.3 This Agreement does not constitute an agreement to purchase from or supply to the Interconnection Customer any energy or capacity. The purchase or supply of energy, capacity or other services that the Interconnection Customer may require will be covered under separate agreements, if any.
- 1.4 This Agreement is entered into concurrently with the Power Purchase Agreement (PPA) between Interconnection Customer and OUC dated [] and shall not become effective unless and until the PPA becomes effective and any conditions precedent therein have been satisfied or waived as provided therein.
- 1.5 Responsibilities of the Parties
 - 1.5.1 The Parties shall perform all obligations of this Agreement in accordance with all Applicable Laws and Regulations, Operating Requirements, and Good Utility Practice.
 - 1.5.2 The Interconnection Customer shall construct, interconnect, operate and maintain its Distribution System and construct, operate, and maintain its Interconnection Facilities in accordance with this Agreement and with Good Utility Practice.
 - 1.5.3 OUC shall construct, operate, and maintain its Distribution System in accordance with Good Utility Practice.
 - 1.5.4 Interconnection Customer is responsible for all expenses and costs, design, construction and installation of any facilities on its respective side of the Point of Interconnection (as set forth in Attachment 3 hereto) associated with the interconnection of Interconnection Customer's Distribution System to OUC's Distribution System. Interconnection Customer shall contract for, perform and pay, consistent with Article 5, for any study costs associated with interconnection of Interconnection Customer's Distribution System.

- 1.5.5 The Interconnection Customer agrees to construct its facilities or systems in accordance with the National Electrical Safety Code and Operating and Design Requirements in effect at the time of construction and other applicable national and state codes and standards. The Interconnection Customer agrees to design, install, maintain, and operate its Distribution System so as to reasonably minimize the likelihood of a disturbance adversely affecting or impairing the system or equipment of OUC's Distribution System.
- 1.5.6 Each Party shall operate, maintain, repair, and inspect, and shall be fully responsible for the facilities that it now or subsequently may own unless otherwise specified in the Attachments to this Agreement. Each Party shall be responsible for the safe installation, maintenance, repair and condition of their respective lines and appurtenances on their respective sides of each Point of Interconnection. The Interconnection Customer shall provide Interconnection Facilities that adequately protect OUC's Distribution System, the Interconnection Customer's facilities, each Party's personnel, and other persons from damage and injury.
- 1.6 Interconnected Operation Obligations
Once the initial interconnection of the distribution systems has been approved in writing by OUC, the Interconnection Customer shall thereafter abide by all rules and procedures pertaining to the Operating Requirements set forth in Attachment 4 of this Agreement.
- 1.7 Metering
One revenue-grade meter shall be installed for each Point of Interconnection (POI). Each POI shall be located as described in Attachment 3 and 3B of this Agreement. The responsibility for the meters' cost, installation and maintenance is described in Attachment 2 of this Agreement.

Article 2. Inspection, Testing, Authorization, and Right of Access

- 2.1 Equipment Testing and Inspection
- 2.1.1 Reserved.
- 2.1.2 Reserved.
- 2.2 Authorization Required Prior to Interconnected Operation
- 2.2.1 OUC has listed applicable operating requirements in Attachment 4 of this Agreement. OUC shall make Reasonable Efforts to cooperate with the Interconnection Customer in meeting requirements necessary for the Interconnection Customer to commence interconnected operations by the Service Date as defined under the PPA.

2.2.2 The Interconnection Customer shall not operate its Distribution System in parallel with the OUC's Distribution System without prior authorization of OUC. OUC will provide such authorization once OUC receives a request to parallel the Distribution Systems and the Interconnection Customer has complied with all applicable Operating Requirements as set forth in Attachment 4. Such authorization shall not be unreasonably withheld, conditioned, or delayed.

2.2.3 Reserved.

2.3 Right of Access

2.3.1 At reasonable hours, and upon reasonable notice, or at any time without notice in the event of an emergency or hazardous conditions, OUC shall have access to the Interconnection Facilities for any reasonable purpose in connection with the performance of the obligations imposed on it by this Agreement or if necessary to meet its legal obligation to provide service to its customers.

2.3.2 Each Party shall be responsible for its own costs associated with following this article.

Article 3. Effective Date, Term, Termination, and Disconnection

3.1 Effective Date

This Agreement shall become effective upon the later of (a) the execution by the last of the Parties to sign or (b) when the conditions precedent under the PPA have been met or waived as required therein (the "Effective Date").

3.2 Term of Agreement

This Agreement shall become effective on the Effective Date and shall continue for a period of twenty (20) years from the Commencement Date, unless terminated earlier in accordance with article 3.3 of this Agreement. No later than one hundred and eighty (180) days prior to the end of the initial Term of Agreement, Customer may, by written notice to and approval by OUC, renew the Agreement for up to an additional five (5) year term.

3.3 Termination

No termination shall become effective until the Parties have complied with all Applicable Laws and Regulations applicable to such termination.

3.3.1 Either Party may terminate this Agreement at any time by giving the other 30 day written notice.

- 3.3.2 Upon termination of this Agreement, the Distribution System will cease to interconnect with OUC's Distribution System.
- 3.3.3 The termination of this Agreement shall not relieve either Party of its liabilities and obligations, owed or continuing at the time of the termination.
- 3.3.4 The provisions of this article shall survive termination or expiration of this Agreement.

3.4 Temporary Disconnection by OUC

Temporary disconnection by OUC shall continue only for so long as reasonably necessary under Good Utility Practice. OUC shall have the right to tag and lock open the utility-interface disconnect switch (see Attachment 3).

3.4.1 Emergency Conditions

"Emergency Condition" shall mean a condition or situation: (1) that in the judgment of the Party making the claim is imminently likely to endanger life or property; or (2) that, in the case of OUC, is imminently likely (as determined in a non-discriminatory manner) to cause a material adverse effect on the security of, or damage to OUC's Distribution System or the Distribution Systems of others to which the OUC Distribution System is directly connected; or (3) that, in the case of the Interconnection Customer, is imminently likely (as determined in a non-discriminatory manner) to cause a material adverse effect on the security of, or damage to, the Distribution System or the Interconnection Customer's Interconnection Facilities. Under Emergency Conditions, OUC may immediately suspend interconnection service and temporarily disconnect the Distribution System. OUC shall notify the Interconnection Customer promptly when it becomes aware of an Emergency Condition that may reasonably be expected to affect the Interconnection Customer's operation of the Distribution System. The Interconnection Customer shall notify OUC promptly when it becomes aware of an Emergency Condition that may reasonably be expected to affect OUC's Distribution System. To the extent information is known, the notification shall describe the Emergency Condition, the extent of the damage or deficiency, the expected effect on the operation of both Parties' facilities and operations, its anticipated duration, and the necessary corrective action.

3.4.2 Routine Maintenance, Construction, and Repair

OUC may interrupt interconnection service of the Distribution System and temporarily disconnect from OUC's Distribution System when necessary for routine maintenance, construction, and repairs on OUC's Distribution System. OUC shall use Reasonable Efforts to coordinate such temporary disconnection with the Interconnection Customer.

3.4.3 Forced Outages

During any forced outage on OUC's Distribution System, OUC may suspend interconnection service to effect immediate repairs. OUC shall use Reasonable Efforts to provide the Interconnection Customer with prior notice.

3.4.4 Adverse Operating Effects

OUC shall notify the Interconnection Customer as soon as practicable if, based on Good Utility Practice, operation of the Distribution System may cause disruption or deterioration of service to other customers served from the same electric system, or if operating the Distribution System could cause damage to OUC's Distribution System. Supporting documentation used to reach the decision to disconnect shall be provided to the Interconnection Customer upon request. If, after notice, the Interconnection Customer fails to remedy the adverse operating effect within a reasonable time, OUC may disconnect the Distribution System. OUC shall provide the Interconnection Customer with notice of such disconnection, unless the provisions of article 3.4.1 apply.

3.4.5 Reconnection

The Parties shall cooperate with each other to restore the Distribution System, Interconnection Facilities, and OUC's Distribution System to their normal operating state as soon as reasonably practicable following a temporary disconnection.

Article 4. Cost Responsibility for Interconnection Facilities and Distribution Upgrades

4.1 Interconnection Facilities

The Interconnection Customer shall pay for the cost of owning, installing, operating, maintaining, repairing, and replacing and removal of the Interconnection Facilities itemized in Attachment 2 of this Agreement.

4.2 Reserved.

Article 5. No Consequential Damages

NOTWITHSTANDING ANYTHING IN THE AGREEMENT TO THE CONTRARY, NO PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER INDEMNITY PROVISIONS OR OTHERWISE, INCLUDING WITHOUT LIMITATION, LOST PROFITS, LOST REVENUES, COST OF CAPITAL; LOSS OF USE, LOSS OF GOODWILL, REPLACEMENT POWER OR CLAIMS OF CUSTOMERS, UNLESS SUCH DAMAGES ARE A COMPONENT OR ELEMENT OF A CLAIM THAT IS SUBJECT TO INDEMNIFICATION HEREUNDER AND COVERED UNDER A PRIMARY POLICY OF LIABILITY INSURANCE, IF ANY, ISSUED BY A THIRD PARTY SURETY.

Article 6. Assignment, Liability, Indemnity, Force Majeure, and Default

6.1 Assignment

This Agreement may not be assigned by the Interconnection Customer without the prior written consent of OUC, which shall not be unreasonably withheld, conditioned, or delayed; provided, however:

- 6.1.1 Either Party may assign this Agreement without the consent of the other Party to any affiliate of the assigning Party with an equal or greater credit rating and with the legal authority and operational ability to satisfy the obligations of the assigning Party under this Agreement.
- 6.1.2 The Interconnection Customer shall have the right to assign this Agreement, without the consent of OUC, for collateral security purposes to aid in providing financing for the Distribution System, provided that the Interconnection Customer will promptly notify OUC of any such assignment.
- 6.1.3 Any attempted assignment that violates this article 6 is void and ineffective. Assignment shall not relieve a Party of its obligations, nor shall a Party's obligations be enlarged, in whole or in part, by reason thereof. An assignee is responsible for meeting the same financial, credit, and insurance obligations as the assigning Party. Where required, consent to assignment will not be unreasonably withheld, conditioned or delayed.

6.2 Indemnity

To the maximum extent permitted by law, OUC shall fully indemnify and defend Interconnection Customer and its officers, directors, and employees, from and against any and all third party claims against the Interconnection Customer based on losses, costs, damages, injuries, liabilities, claims, demands, penalties, fines and violations including reasonable attorney's fees, incurred by any of them directly or indirectly, caused by, arising from or otherwise related to the negligent acts or omissions of OUC in the operation of the Distribution System or that portion of the Interconnection Facilities on OUC's side of each Point of Interconnection.

To the maximum extent permitted by law, Interconnection Customer shall fully indemnify and defend Interconnection Customer and its officers, directors, and employees, from and against any and all third party claims against the Interconnection Customer based on losses, costs, damages, injuries, liabilities, claims, demands, penalties, fines and violations including reasonable attorney's fees, incurred by any of them directly or indirectly, caused by, arising from or otherwise related to the negligent acts or omissions of Interconnection Customer in the operation of the Distribution System or that portion of the Interconnection Facilities on Interconnection Customer's side of each Point of Interconnection.

Nothing in this Agreement shall be construed or applied as a waiver of either party's sovereign immunity against third party tort claims, including those rights and limitations

of liability under s. 768.28, F.S., as it may be amended. If a party pursues indemnity or a hold harmless/defense from the other in connection with a third-party tort claim, then the party from whom indemnity is sought shall have the right to assert against any such third party claimant, the defense of sovereign immunity on behalf of both the indemnitor and the indemnitee.

6.3 Force Majeure

6.3.1 As used in this article 6, a Force Majeure Event shall mean "any act of God, labor disturbance, act of the public enemy, war, insurrection, riot, fire, storm or flood, explosion, breakage or accident to machinery or equipment, any order, regulation or restriction imposed by governmental, military or lawfully established civilian authorities, or any other cause beyond a Party's control. A Force Majeure Event does not include an act of negligence or intentional wrongdoing."

6.3.2 If a Force Majeure Event prevents a Party from fulfilling any obligations under this Agreement, the Party affected by the Force Majeure Event (Affected Party) shall promptly notify the other Party, either in writing or via the telephone, of the existence of the Force Majeure Event. The notification must specify in reasonable detail the circumstances of the Force Majeure Event, its expected duration, and the steps that the Affected Party is taking to mitigate the effects of the event on its performance. The Affected Party shall keep the other Party informed on a continuing basis of developments relating to the Force Majeure Event until the event ends. The Affected Party will be entitled to suspend or modify its performance of obligations under this Agreement (other than the obligation to make payments) only to the extent that the effect of the Force Majeure Event cannot be mitigated by the use of Reasonable Efforts. The Affected Party will use Reasonable Efforts to resume its performance as soon as possible.

6.4 Default

6.4.1 No Default shall exist where such failure to discharge an obligation (other than the payment of money) is the result of a Force Majeure Event as defined in this Agreement or the result of an act or omission of the other Party. Upon a Default, the non-defaulting Party shall give written notice of such Default to the defaulting Party. Except as provided in article 6.4.2, the defaulting Party shall have 30 days from receipt of the Default notice within which to cure such Default; provided however, if such Default is not capable of cure within 30 days, the defaulting Party shall commence such cure within 30 days after notice and continuously and diligently complete such cure within six months from receipt of the Default notice; and, if cured within such time, the Default specified in such notice shall cease to exist.

- 6.4.2 If a Default is not cured as provided in this article, or if a Default is not capable of being cured within the period provided for herein, the non-defaulting Party shall have the right to terminate this Agreement by written notice at any time until cure occurs, and be relieved of any further obligation hereunder and, whether or not that Party terminates this Agreement, to recover from the defaulting Party all amounts due hereunder, plus all other damages and remedies to which it is entitled at law or in equity. The provisions of this article 6 will survive termination of this Agreement.

Article 7. Insurance

- 7.1 The Interconnection Customer shall, at its own expense, maintain in force general liability insurance without any exclusion for liabilities related to the interconnection undertaken pursuant to this Agreement. Certification that such insurance is in effect shall be provided upon request of OUC, except that the Interconnection Customer shall show proof of insurance to OUC no later than 10 Business Days prior to the commencement date. An Interconnection Customer of sufficient credit-worthiness may propose to self-insure for such liabilities, and such a proposal shall not be unreasonably rejected.
- 7.2 The Parties further agree to notify each other whenever an accident or incident occurs resulting in any injuries or damages that are included within the scope of coverage of such insurance, whether or not such coverage is sought.

Article 8. Disputes

- 8.1 The Parties agree to attempt to resolve all disputes arising out of the interconnection process according to the provisions of this article 8.
- 8.2 Prior to filing suit in accordance with Section 9.1, the Parties shall first attempt in good faith to resolve any dispute, claim or controversy arising under this Agreement in accordance with the provisions of this Article 8. In the event of any such dispute, the disputing Party shall give notice of such dispute to the other Party and reference this Article 8. Such notice shall describe with reasonable specificity the basis for the dispute. Within seven calendar days of receipt of such notice, the Parties shall meet to discuss the dispute. If following such discussions the Parties have not resolved the dispute, then within seven calendar days thereafter, the appropriate senior executive of each Party shall meet by telephone or in person to discuss the dispute. If the dispute is not resolved following this meeting of senior executives, the Parties may pursue available remedies under applicable Law.

Article 9. Miscellaneous

- 9.1 Governing Law, Regulatory Authority, and Rules

The validity, interpretation and enforcement of this Agreement and each of its provisions shall be governed by the laws of the State of Florida (where each Point of Interconnection is located), without regard to its conflicts of law principles. This Agreement is subject to all Applicable Laws and Regulations. Each Party expressly reserves the right to seek changes in, appeal, or otherwise contest any laws, orders, or regulations of a Governmental Authority.

9.2 Amendment

The Parties may amend this Agreement by a written instrument duly executed by both Parties.

9.3 No Third-Party Beneficiaries

This Agreement is not intended to and does not create rights, remedies, or benefits of any character whatsoever in favor of any persons, corporations, associations, or entities other than the Parties, and the obligations herein assumed are solely for the use and benefit of the Parties, their successors in interest and where permitted, their assigns.

9.4 Waiver

9.4.1 The failure of a Party to this Agreement to insist, on any occasion, upon strict performance of any provision of this Agreement will not be considered a waiver of any obligation, right, or duty of, or imposed upon, such Party.

9.4.2 Any waiver at any time by either Party of its rights with respect to this Agreement shall not be deemed a continuing waiver or a waiver with respect to any other failure to comply with any other obligation, right, duty of this Agreement. Termination or default of this Agreement for any reason by Interconnection Customer shall not constitute a waiver of the Interconnection Customer's legal rights to obtain an interconnection from OUC. Any waiver of this Agreement shall, if requested, be provided in writing.

9.5 Entire Agreement

This Agreement, including all Attachments, constitutes the entire agreement between the Parties with reference to the subject matter hereof, and supersedes all prior and contemporaneous understandings or agreements, oral or written, between the Parties with respect to the subject matter of this Agreement. There are no other agreements, representations, warranties, or covenants which constitute any part of the consideration for, or any condition to, either Party's compliance with its obligations under this Agreement.

9.6 Multiple Counterparts

This Agreement may be executed in two or more counterparts, each of which is deemed an original but all constitute one and the same instrument.

9.7 No Partnership

This Agreement shall not be interpreted or construed to create an association, joint venture, agency relationship, or partnership between the Parties or to impose any partnership obligation or partnership liability upon either Party. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party.

9.8 Severability

If any provision or portion of this Agreement shall for any reason be held or adjudged to be invalid or illegal or unenforceable by any court of competent jurisdiction or other Governmental Authority, (1) such portion or provision shall be deemed separate and independent, (2) the Parties shall negotiate in good faith to restore insofar as practicable the benefits to each Party that were affected by such ruling, and (3) the remainder of this Agreement shall remain in full force and effect.

9.9 Subcontractors

Nothing in this Agreement shall prevent a Party from utilizing the services of any subcontractor as it deems appropriate to perform its obligations under this Agreement; provided, however, that each Party shall require its subcontractors to comply with all applicable terms and conditions of this Agreement in providing such services and each Party shall remain primarily liable to the other Party for the performance of such subcontractor.

9.9.1 The creation of any subcontract relationship shall not relieve the hiring Party of any of its obligations under this Agreement. The hiring Party shall be fully responsible to the other Party for the acts or omissions of any subcontractor the hiring Party hires as if no subcontract had been made; provided, however, that in no event shall OUC be liable for the actions or inactions of the Interconnection Customer or its subcontractors with respect to obligations of the Interconnection Customer under this Agreement. Any applicable obligation imposed by this Agreement upon the hiring Party shall be equally binding upon, and shall be construed as having application to, any subcontractor of such Party.

9.9.2 The obligations under this article will not be limited in any way by any limitation of subcontractor's insurance.

Article 10. Notices

10.1 General

Unless otherwise provided in this Agreement, any written notice, demand, or request required or authorized in connection with this Agreement ("Notice") shall be deemed properly given if delivered in person, delivered by recognized national courier service, or sent by first class mail, postage prepaid, to the person specified below:

If to the Interconnection Customer:

City of Winter Park
Attention: City Manager
Address: 401 Park Avenue South
City: Winter Park State: Florida Zip: 32789
Phone: 407-599-3235 Email: city_manager@cityofwinterpark.org

If to OUC:

Orlando Utilities Commission
Attention: **Vice President, Electric and Water Delivery / Cc: General Counsel**
Address: Post Office Box 3193
City: Orlando State: Florida Zip: 32802
Phone: 407-423-9100 Fax: 407-236-9616

10.2 Alternative Forms of Notice

Any notice or request required or permitted to be given by either Party to the other and not required by this Agreement to be given in writing may be so given by telephone, facsimile or e-mail to the telephone numbers and e-mail addresses set out below:

If to the Interconnection Customer:

City of Winter Park
Attention: Director of Electric Utility Department
Address: 401 Park Avenue South
City: Winter Park State: Florida Zip: 32789
Phone: 407-599-3491 Email: jwarren@cityofwinterpark.org

If to OUC:

Orlando Utilities Commission
Attention: **Vice President, Electric and Water Delivery**
Address: Post Office Box 3193
City: Orlando State: Florida Zip: 32802
Phone: 407-423-9100 Email: cbullock@ouc.com

10.3 Designated Operating Representative

The Parties may also designate operating representatives to conduct the communications which may be necessary or convenient for the administration of this Agreement. This person will also serve as the point of contact with respect to operations and maintenance of the Party's facilities.

Interconnection Customer's Operating Representative:

City of Winter Park

Attention: Operations Manager
Address: 4515 Metric Dr
City: Winter Park
State: Florida
Zip: 32789
Phone: 407-691-7805
Email: dmullholand@cityofwinterpark.org

OUC's Operating Representative:

Orlando Utilities Commission
Attention: **Director, System Operations**
Address: Post Office Box 3193
City: Orlando
State: Florida
Zip: 32802
Phone: 407-423-9100
Fax: 407-434-4329

10.4 Changes to the Notice Information

Either Party may change this information by giving five Business Days written notice prior to the effective date of the change.

Article 11. Signatures

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their respective duly authorized representatives.

For the Orlando Utilities Commission:

Name: _____

Title: _____

Date: _____

For the Interconnection Customer

Name: _____

Title: _____

Date: _____

Glossary of Terms

Applicable Laws and Regulations – All duly promulgated applicable federal, state and local laws, regulations, rules, ordinances, codes, decrees, judgments, directives, or judicial or administrative orders, permits and other duly authorized actions of any Governmental Authority.

Business Day – Monday through Friday, excluding Federal Holidays.

Default –

Shall mean the occurrence of any of the following: (a) a default in performance or observance by a Party of any agreement, undertaking, covenant or other obligation under this Agreement; (b) the failure of the other Party to make any undisputed payment due hereunder and such failure shall continue for five calendar days after written notice demanding such payment is received; (c) in the event the other Party shall cease doing business as a going concern, shall generally not pay its debts as they become due or admit in writing its inability to pay its debts as they become due, shall file a voluntary petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future federal bankruptcy code or any other present or future applicable law.

Distribution System – OUC and/or Interconnection Customer's facilities and equipment used to transmit electricity to ultimate usage points such as homes and industries directly from nearby generators or from interchanges with higher voltage transmission networks which transport bulk power over longer distances.

Good Utility Practice – 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. Good Utility Practice is not intended to be limited to the optimum practice, methods or act to the exclusion of all others, but rather to be generally accepted and consistently adhered to practice, method, or act by a significant portion of the applicable segments of the electric utility industry during the relevant time period.

Governmental Authority – Any federal, state, local or other governmental regulatory or administrative agency, court, commission, department, board, or other governmental subdivision, legislature, rulemaking board, tribunal, or other governmental authority having jurisdiction over the Parties, their respective facilities, or the respective services they provide, and exercising or entitled to exercise any administrative, executive, police, or taxing authority or power; provided, however, that such term does not include the Interconnection Customer, OUC, or any Affiliate thereof.

Interconnection Customer – City of Winter Park

Interconnection Facilities – The Interconnection Facilities as set forth in Attachments 2 and 3.

Operating and Design Requirements – The Operating and Design Requirements are as set forth on Attachment 4, hereto.

Party or Parties – OUC, Interconnection Customer or any combination of the above.

Point of Interconnection – The load-side terminations of disconnect switch, as shown on Attachment 3 and 3B, where the Interconnection Customer's Distribution System connects with OUC's Distribution System.

Power Purchase Agreement (PPA) – The Agreement for Partial Purchase and Sale of Electric Energy and Capacity between the City of Winter Park dated _____ between OUC and Interconnection Customer.

Reasonable Efforts – With respect to an action required to be attempted or taken by a Party under this Interconnection Agreement, efforts that are timely and consistent with Good Utility Practice and are otherwise substantially equivalent to those a Party would use to protect its own interests.

Description and Costs of the Distribution System, Interconnection Facilities and Metering Equipment

Equipment, including the Distribution System, Interconnection Facilities, and metering equipment shall be itemized and identified as being owned by the Interconnection Customer or OUC.

Interconnection Customer Equipment

All distribution equipment on Interconnection Customer's side of any Point of Interconnection shall be owned by the Interconnection Customer. This includes:

- Distribution System (As specified on Attachment 3 & 3B)
- Interconnection Facilities (As specified on Attachment 3 & 3B)

Interconnection Customer shall be responsible for purchase, installation, testing, operation, maintenance, and repair of all Interconnection Customer's equipment and facilities.

OUC Equipment

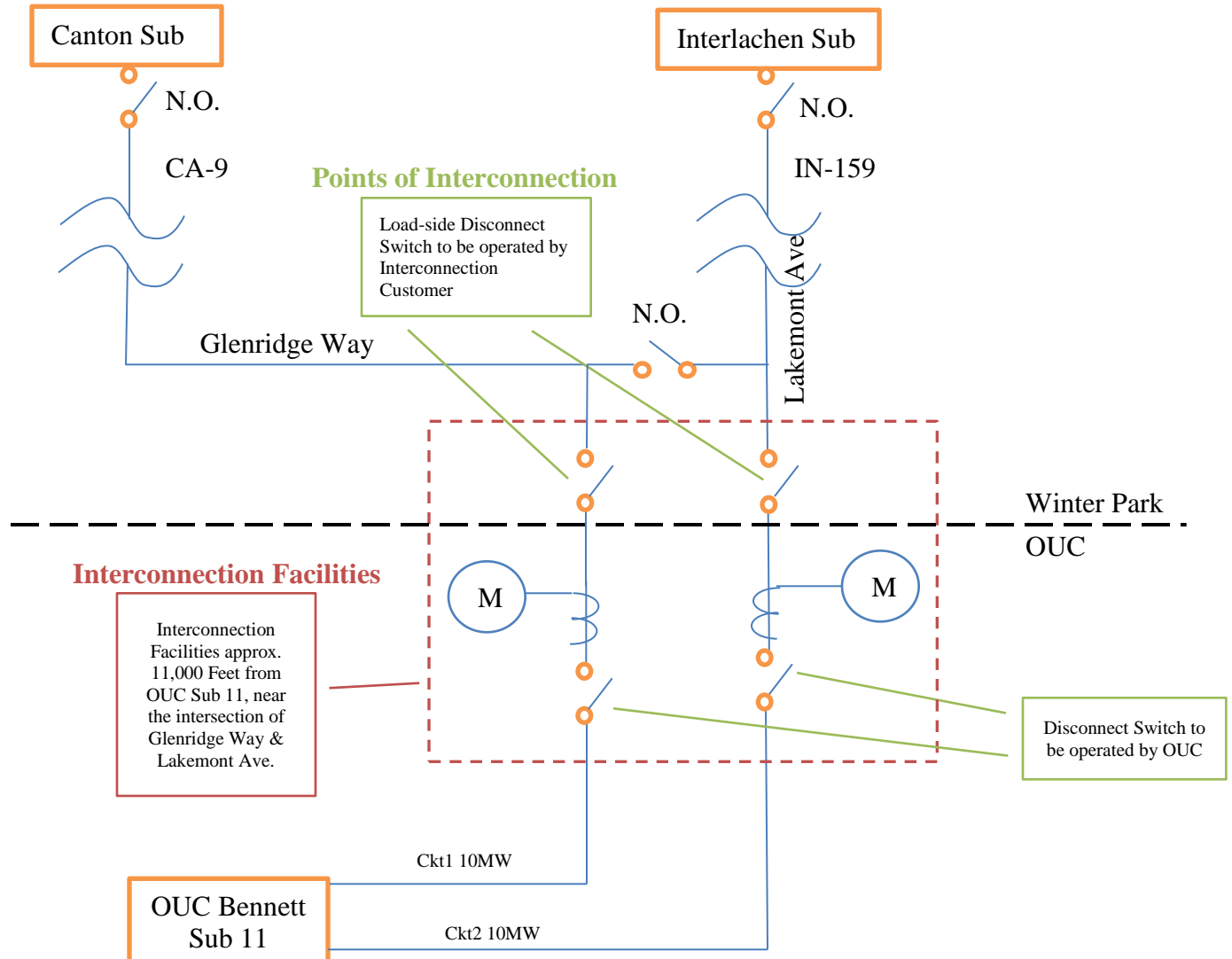
All distribution equipment on OUC's side of any Point of Interconnection shall be owned by OUC.

- Distribution System (As specified on Attachment 3 & 3B)
- Interconnection Facilities (As specified on Attachment 3 & 3B)
 - Shall be rated at a maximum of ten (10) megawatts (MW) for each distribution circuit for a total of twenty (20)MW interconnection capacity

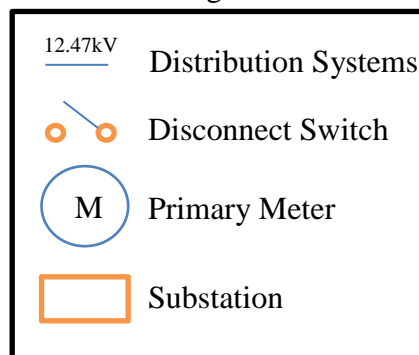
OUC shall be responsible for purchase, installation, testing, operation, maintenance, and repair of all OUC distribution equipment.

OUC will purchase, install, own and maintain revenue-grade meters at each Point of Interconnection.

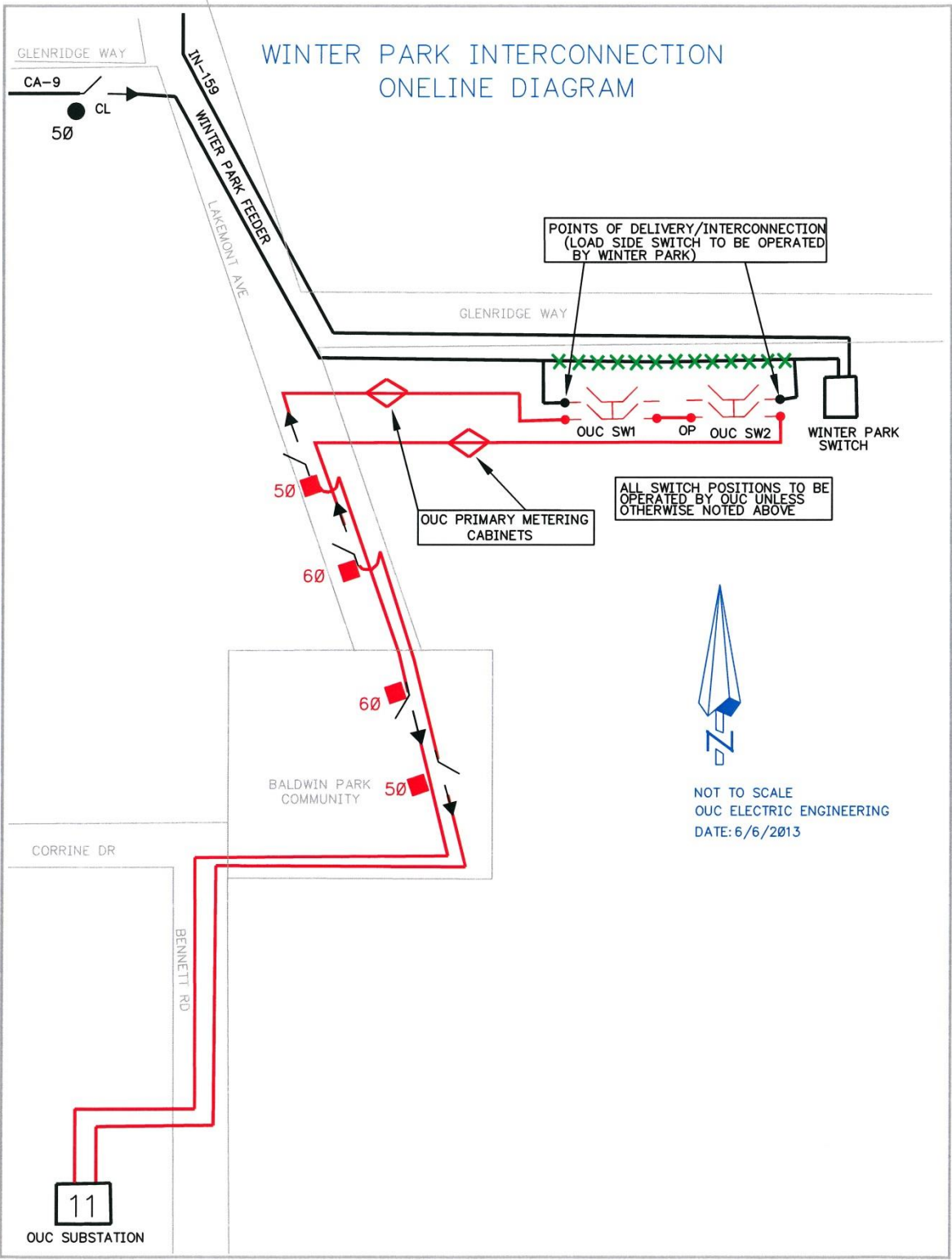
Generic One-line Diagram Depicting the Distribution Systems and Interconnection Facilities



Legend



Detailed One-line Diagram Depicting the Distribution Systems
and Interconnection Facilities



Operating and Design Requirements for OUC's Distribution System

The electrical operation and design of the Interconnection Facilities shall be in accordance with the operating criteria listed below and with respect to the Interconnection Agreement as shown generically on Attachment 3.

1) Operating and Design Criteria:

Voltage

The Interconnection Facilities shall be rated for 12,470/7,200 volts grounded-wye to match OUC's distribution system voltage. OUC shall produce voltages within ± 5 percent of nominal (as defined to be 12,470 volts L-L and 7,200 volts L-N)

Flicker

The Interconnection Customer shall not cause voltage variations exceeding 0.7 percent of nominal on the OUC Distribution System at frequency of occurrence greater than 20 per hour.

Frequency

The Interconnection Facilities shall be rated for 60 Hz base.

Harmonics

Total harmonic distortion shall not exceed 5% of the fundamental 60 Hz voltage or current wave form.

Power Factor

The Interconnection Customer will use reasonable best efforts to have in the shortest practicable time, but under no circumstances greater than (1) year after service begins under the Tariff, sufficient reactive compensation and control to meet the power factor requirements specified below (such range to be adhered to except for momentary deviations or at OUC's written consent) at each Point of Interconnection. If the Interconnection Customer does not provide the necessary reactive compensation and control to comply with the objectives described in this Attachment 4, OUC shall have the unilateral right to install such equipment to meet these standards at the Interconnection Customer's expense.

POWER FACTOR REQUIREMENTS

On-Peak Hours	.97 (lagging) to 0.98 (leading)
Off- Peak Hours	.95 (lagging) to 1.00 (unity)

The Power Factor Requirements (PFR) On-Peak hours are the hour during the PFR On Peak Period; the PFR On Peak Period is (1) from December 1 through March 31 during the hours from 6 a.m. to 10 a.m., and 6 p.m. to 10 p.m. and; (2) from April 1 through November 30 during the hours from 10 a.m. to 10 p.m., unless and until otherwise changed by mutual agreement. All other hours besides the PFR On-Peak hours are PFR "Off-Peak" hours.

Attachment 4, Continued

2) The intent of this agreement is to operate with open-transition (break-before-make) switching between the OUC and Winter Park distribution systems. Paralleling or closed transition switching operations can commence if and when Engineering Studies are conducted and the results support that unacceptable levels of 'flow-through current' will not occur. Any such Engineering Studies will be field verified and must be acceptable to both OUC and Winter Park.

3) Operating Procedures:

(A) OUC and Winter Park shall each appoint one representative and one alternate representative to act in matters relating to the operations and maintenance items contained in the "Interconnection Agreement". Such representatives shall constitute the Operating Committee. The Parties shall notify each other in writing of such appointments and any changes thereto. The Operating Committee shall have no authority to modify the terms or conditions of this Agreement.

(B) The Operating Committee shall develop mutually agreeable written Operating Procedures as needed for routine and emergency conditions. Operating Procedures shall include, but not be limited to, method of day-to-day communications; metering, telemetering, telecommunications, and data acquisition procedures; key personnel list for applicable OUC and Winter Park operating centers; clearances and switching practices; operating and maintenance scheduling and reporting; and such other matters as may be mutually agreed upon by the Parties or the Operating Committee.

4) The OUC Distribution Control Center (DCC) has operational jurisdiction on all OUC owned and operated 12.5, 25, and 34.5 kV overhead and underground feeder circuit breakers and associated equipment. OUC will require all journeyman level Winter Park electric distribution employees that will be participating in switching and tagging procedures on the OUC feeder(s) to complete the certification training class on OUC's "Energy Delivery Business Unit Switching and Tagging Policy".

TARIFF NO. 1
FOR SALES OF POWER AND ENERGY
BY
FLORIDA POWER & LIGHT COMPANY

ARTICLE I

DEFINITIONS

Section 1.1 - Affiliate: Shall mean a Party's direct or indirect parent(s), affiliate(s) and subsidiary(ies), and shall include the officers, directors, employees and agents of such Party and of its parent(s), affiliate(s) and subsidiary(ies).

Section 1.2 - Buyer: Shall mean an Eligible Entity that has entered into a Service Agreement with FPL under this Tariff.

Section 1.3 - Economy Energy: Shall mean non-firm energy which FPL, the Seller, can supply, subject to the provision in Section 2.3, to the Buyer, at an incremental cost which is lower than the incremental cost the Buyer would otherwise incur for the supply of this energy from its currently available Electric Resources.

Section 1.4 - Electric Resources: Shall mean dependable electric power and energy resources available to a Party, consistent with Prudent Utility Practice.

Section 1.5 - Eligible Entity: Shall mean any private or public corporation, governmental agency or authority, municipality, rural electric membership corporation or cooperative, person, or lawful association of any of the foregoing, which engages in the generation, transmission, distribution, or sale of electric energy to which it has title at wholesale or retail and which is subject to regulation

with respect to rates or services under the laws of the state where such entity renders service, or pursuant to the Federal Power Act, or is legally exempted from such regulation as a municipality, rural electric cooperative or qualifying facility. The term "Eligible Entity" shall not include ultimate consumers of electric utility service.

Section 1.6 - Federal Power Act: Shall mean the Federal Power Act, 16 U.S.C. § 792 et seq., as it is now or shall be amended in the future, or any successor thereto.

Section 1.7 - FERC: Shall mean the Federal Energy Regulatory Commission or any successor having comparable responsibilities.

Section 1.8 - FPL: Shall mean Florida Power & Light Company, a corporation organized and existing under the laws of the State of Florida.

Section 1.9 - Force Majeure: Shall mean any cause beyond the reasonable control of, and not the result of negligence or the lack of diligence of, the Party claiming Force Majeure or its contractors or suppliers. It will include, without limitation, strike, stoppage in labor, failure of contractors or suppliers of materials, shortage of fuel, riot, fire, flood, ice, invasion, civil war, commotion, insurrection, blockades, embargoes, sabotage, epidemics, explosions, military or usurped power, order of any court granted in any bona fide adverse legal proceeding or action, order of any civil or military authority (either de facto or de jure and including orders of governmental and administrative agencies which conflict with the terms of this Tariff), acts of God or public enemies, failure or malfunction of system facilities and unscheduled outage of generating units or transmission facilities.

Section 1.10 - Operating Representatives: Shall mean those representatives appointed by FPL and Buyer in accordance with Section 9.1.

Section 1.11 - Parties: Shall mean the Parties to a Service Agreement entered into under this

Tariff.

Section 1.12 - Power and Energy: Shall mean that amount of electric power and/or energy that FPL agrees to sell and the Buyer agrees to purchase pursuant to a transaction entered into under this Tariff.

Section 1.13 - Prudent Utility Practice: Shall mean any of the practices, methods and acts in which a significant portion of the electric utility industry engages or of which it approves 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 at 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 spectrum of acceptable practices, methods or acts.

Section 1.14 - Service Agreement: Shall mean the initial agreement and any amendments thereto entered into by a Buyer and FPL, executed and appropriately filed at FERC for service under this Tariff.

Section 1.15 - Tariff: Shall mean this Tariff No. 1 for Sales of Power and Energy by Florida Power & Light Company, and all Schedules and Appendices attached hereto.

ARTICLE II

POWER AND ENERGY SERVICE

Section 2.1 - Power and Energy Service: Transactions under this Tariff shall be as agreed by the Parties' Operating Representatives on a case-by-case basis. FPL shall be the sole judge of its ability to supply Power and Energy, and all transactions hereunder shall be entirely voluntary. FPL may furnish Power and Energy from any available Electric Resources it chooses for sale to the Buyer under this Tariff. Transactions under this Tariff shall include, but not be limited to, sales of Economy Energy. Unless otherwise explicitly agreed by the Parties, transactions under this Tariff shall have an interruption priority that is below that of FPL's native load.

Section 2.2 - Transmission Service, Scheduling and Third Party Arrangements: Unless otherwise agreed by the Parties, for all transactions under this Tariff: (a) the point(s) of delivery for the Power and Energy shall be at those FPL interconnection(s) as agreed upon by the Parties; (b) (i) FPL shall be responsible for obtaining any transmission services necessary for the delivery of Power and Energy for transactions under this Tariff to the point(s) of delivery and for the costs associated with such transmission service(s) to the point(s) of delivery; (ii) the Buyer shall be responsible for obtaining any transmission services necessary for the delivery of Power and Energy from the point(s) of delivery and for the costs associated with such transmission service(s) from the point(s) of delivery; (iii) transmission service through FPL's system must be obtained in accordance with the applicable Open Access Transmission Tariff of FPL on file with the FERC; and (c) Power and Energy transactions shall be scheduled in accordance with FPL's scheduling procedures and Power and Energy shall be scheduled in whole MW and MWh quantities. For those transactions where the Parties agree that the point(s) of delivery will be other than those specified in (a) of this Section 2.2, unless the Parties agree otherwise, any arrangements with third parties and compensation to any

third parties associated with Power and Energy transactions to such point(s) of delivery shall be the sole responsibility of FPL, and any arrangements with third parties and compensation to any third parties associated with Power and Energy transactions from such point(s) of delivery shall be the sole responsibility of the Buyer.

Section 2.3 - Power and Energy Service Transactions: In the event that the Buyer requests FPL to provide Power and Energy and FPL determines that such service is available, the Parties' Operating Representatives shall agree on the specific terms and conditions for each such transaction. For Economy Energy transactions, the Buyer shall have concurrently available to it Electric Resources which would otherwise be available and used for the supply of this energy if Economy Energy was not available.

Section 2.4 - Service Requests: Procedures for requesting and confirming Power and Energy transactions under a Service Agreement and this Tariff shall be determined by the Parties' Operating Representatives on a case-by-case basis.

Section 2.5 - Expansion of Facilities: FPL will have no obligation under this Tariff or any Service Agreement executed hereunder to plan its system or modify its facilities in order to provide or maintain Power and Energy service.

ARTICLE III

SERVICE AGREEMENT

Section 3.1 - Service Agreement: In order for an Eligible Entity to take service under this Tariff, a Service Agreement must be executed by FPL and the Eligible Entity and appropriately filed at the FERC. The applying Eligible Entity must execute the Service Agreement and return it to FPL in a timely manner sufficient to meet regulatory requirements. The applying Eligible Entity shall

cooperate with FPL and provide information reasonably required by FPL to comply with the appropriate filing requirements.

Section 3.2 - Creditworthiness: For the purpose of determining the ability of any Eligible Entity to meet its obligations related to service hereunder, FPL may require reasonable credit review procedures. This review shall be made in accordance with standard commercial practices. In addition, FPL may require any Eligible Entity to provide and maintain in effect during the term of the Service Agreement, an unconditional and irrevocable letter of credit as security to meet its responsibilities and obligations under the Tariff, or an alternative form of security proposed by such Entity and acceptable to FPL and consistent with commercial practices established by the Uniform Commercial Code that protects FPL against the risk of non-payment.

Section 3.3 - Other Information: FPL may request such other information as it determines may reasonably be required to evaluate the Eligible Entity's application for service.

Section 3.4 - Cancellation: FPL reserves the right to cancel the Service Agreement between FPL and the Buyer and/or terminate transactions under the Service Agreement consistent with the provisions of the FERC's regulations governing notices of cancellation or termination.

Section 3.5 - Bankruptcy and Insolvency: FPL will not be required to enter into a Service Agreement or continue a Power and Energy transaction if (a) the Eligible Entity or the Buyer files a voluntary petition or has an involuntary petition filed against it, for bankruptcy under the United States Bankruptcy Code, 11 U.S.C. §§ 101 et. seq., or similar state insolvency laws; (b) the Eligible Entity or the Buyer otherwise becomes insolvent or fails to meet its payment obligations when due; or (c) FPL reasonably determines that the Eligible Entity or the Buyer is not credit-worthy; provided, however, that FPL may continue to provide Power and Energy if the Buyer prepays for such service or furnishes good and sufficient security of a continuing nature in an amount at least

equal to the cost of such services. FPL retains the right to request the Eligible Entity or the Buyer to submit to FPL updated financial information to ensure the credit-worthiness of the Eligible Entity or the Buyer.

ARTICLE IV

CHARGES

Section 4.1 - Payment for Transactions: The Buyer shall pay FPL the amount as agreed by the Parties for the Power and Energy transaction. The amount shall include:

- (a) A Power and Energy charge which (expressed in \$ per MWh) shall not be less than FPL's Incremental Energy Cost under Section 4.2 of this Tariff and which shall not exceed the sum of (i) one hundred and ten percent (110%) of FPL's Incremental Energy Cost and (ii) the Maximum Hourly Charge specified in Appendix A, subject to the limitations of Section 4.3;
- (b) Any transmission charge incurred by FPL for delivery of the Power and Energy through FPL's transmission system in accordance with FPL's Open Access Transmission Tariff and/or the transmission system(s) of any third party(ies).

In the event and to the extent FPL's Incremental Energy Cost under Section 4.2 of this Tariff represents the cost of purchased power, in determining the Power and Energy charge pursuant to this Section 4.1(a) the ten percent (10%) adder that is applied to such purchased power expense under Section 4.1(a)(i) shall not recover more than 1 mill/kWh and the Maximum Hourly Charge under Section 4.1(a)(ii) for such power shall not apply. Sales of power purchased for FPL's reliability purposes or for FPL's economy purposes where FPL stands by to supply power from its own resources are not subject to the

preceding sentence.

Section 4.2 - FPL's Incremental Energy Cost: FPL's Incremental Energy Cost shall be FPL's forecasted incremental fuel cost for load dispatching in effect at the time of the transaction as determined by FPL taking into consideration any start-up costs incurred in the event a unit needs to be started to supply Power and Energy. The order of priority used to determine FPL's Incremental Energy Cost will be such that the Power and Energy provided under this Tariff will be the increment immediately above (i.e., will be deemed to be provided after) FPL's: (1) retail and wholesale load requirements, including spinning reserves, (2) sales of firm capacity and energy, and (3) sales under other prior commitments into which FPL may have entered.

Section 4.3 - Charges under Section 4.1(a)(ii): The maximum charge under Section 4.1(a)(ii) during any day shall not exceed the product of (i) the highest amount of service (in MW) provided by FPL to the Buyer under this Tariff during any hour of the day times (ii) the Maximum Hourly Charge specified in Appendix A times (iii) sixteen hours. The maximum charge under Section 4.1(a)(ii) during any week shall not exceed the product of (i) the highest amount of service (in MW) provided by FPL to the Buyer under this Tariff during any hour of the week times (ii) the Maximum Hourly Charge specified in Appendix A times (iii) eighty hours.

Section 4.4 - Payment for Economy Energy Transactions: The Buyer shall pay FPL the amount as agreed by the Parties for the Economy Energy transaction which, unless otherwise agreed, shall represent an equal sharing of the benefits from the Economy Energy transaction between the Buyer and FPL. Such amount (expressed in \$ per MWh) shall not be less than FPL's Cost of Economy Energy under Section 4.6 and shall not exceed the greater of (a) or (b) below:

- (a) Fifty percent (50%) of Buyer's Value of Economy Energy under Section 4.5 plus fifty percent (50%) of FPL's Cost of Economy Energy under Section 4.6.

(b) The maximum charge under Section 4.1.

Section 4.5 - Buyer's Value of Economy Energy - (\$/MWh): For an Economy Energy transaction under this Tariff, the Buyer's Value of Economy Energy shall be the forecasted incremental expense, as determined by the Buyer, which the Buyer would incur in supplying the energy from its Electric Resources if Economy Energy was not to be received taking into consideration any incremental expenses associated with deliveries at the point(s) of delivery.

Section 4.6 - FPL's Cost of Economy Energy - (\$/MWh): For an Economy Energy transaction under this Tariff, FPL's Cost of Economy Energy shall be the forecasted incremental expense, as determined by FPL, which FPL would incur in supplying the energy from its Electric Resources including any transmission charge incurred by FPL for delivery of the Power and Energy through FPL's transmission system and/or the transmission system(s) of any third party(ies). Transmission service from FPL must be obtained in accordance with the applicable Open Access Transmission Tariff of FPL on file with the FERC.

Section 4.7 Supply of Economy Energy: Unless otherwise agreed, FPL will supply Economy Energy up to the agreed amount of the transaction from its Electric Resources, subject to the condition that, if FPL, in its sole judgment, determines that it can no longer continue the delivery of such energy due to operating conditions, FPL will notify the Buyer that FPL is terminating the transaction.

ARTICLE V

CURTAILMENTS AND INTERRUPTIONS

Section 5.1 - Interruptions: In the event and to the extent a Power and Energy transaction hereunder is interrupted in accordance with the commitment as agreed by the Parties' Operating Representatives for the specific transaction, the Buyer shall be obligated to make payment only for the amount of actual Power and Energy delivered up to the time of such interruption, unless otherwise mutually agreed. The Buyer's payment obligation will resume if and when the Parties resume the transaction.

Section 5.2 - Curtailments: In the event a Power and Energy transaction is curtailed in accordance with the commitment as agreed by the Parties' Operating Representatives for the specific transaction, the Parties may agree to continue the transaction at the curtailed level. During such period of curtailment, the Buyer shall be obligated to make payment only for the curtailed level of the Power and Energy transaction, unless otherwise mutually agreed.

Section 5.3 - Resumptions: In those instances in which a transaction has been interrupted or curtailed, the Parties may either agree on the specifics to resume the Power and Energy transaction, or terminate the remainder of the Power and Energy transaction. In the event the Parties agree to resume the Power and Energy transaction, the Buyer's subsequent payment obligation shall be based upon the level and amount of Power and Energy as agreed under this Section 5.3.

ARTICLE VI

BILLING AND PAYMENT

Section 6.1 - Presentation and Payment: Promptly after the first of each month, FPL shall submit a billing statement and invoice for the sales transactions and the respective amounts due under the terms of this Tariff for the preceding calendar month except those months in which no amounts are due. All such invoices shall be due and payable within fifteen (15) days from the date of mailing (as determined by postmark) unless otherwise mutually agreed in writing. Invoices not paid within fifteen (15) days from the date of mailing (or as otherwise mutually agreed in writing) shall be deemed delinquent and shall then accrue interest daily for each day delinquent at the rate provided for refunds under the FERC's regulations (18 CFR Section 35.19a) or any successor thereto. All remittances for payment shall be made by immediately available funds, unless otherwise agreed. Unless explicitly agreed in writing, payments due hereunder shall not be subject to any reduction by offset or otherwise.

Section 6.2 - Disputed Bill: In case any portion of any bill is in dispute, the full amount of the bill (including the amount in dispute) shall nevertheless be due and payable in accordance with Section 6.1. Payments made and designated "Paid Under Protest" shall be accompanied by the reason(s) therefor; however, in no circumstances may buyer simply withhold payment. The Buyer's payment of a bill (whether or not under protest) shall not affect any legal or equitable rights a Party may have to challenge the correctness of the bill within the time limitations established in Section 6.3 below. Upon final determination of the correct bill amount, any necessary billing adjustments shall be made within fifteen (15) days, together with interest from the date of payment of the bill, calculated at the rate provided under the FERC's regulations (18 CFR Section 35.19a) or any successor thereto.

Section 6.3 - Challenges to Bills: Either Party may challenge the correctness of any bill or billing

adjustment pursuant to this Tariff no later than twelve (12) months after the date payment of such bill or billing adjustment is due. If a Party does not challenge the correctness of a bill or billing adjustment within such twelve (12) month period, such bill or billing adjustment shall be binding upon that Party and shall not be subject to challenge. Any such challenge must be in writing. Where it is determined as a result of such challenge that an adjustment to a bill or billing adjustment is appropriate, such adjustment shall include interest accrued at the rate provided under the FERC's regulations (18 CFR Section 35.19a) or any successor thereto, and shall be made in the month following such determination.

ARTICLE VII

FORCE MAJEURE AND INDEMNIFICATION

Section 7.1 - Force Majeure: In the event that either of the Parties should be delayed in, or prevented from, performing or carrying out any of the agreements, covenants and obligations made by, and imposed by this Tariff upon, said Party by reason of or through a Force Majeure, then and in such case(s), both Parties shall be relieved of performance under this Tariff and neither Party shall be liable to the other Party for, or on account of, any loss, damage, injury or expense (including consequential damages and cost of replacement power) resulting from, or arising out of, any such delay or prevention from performing; provided, however, the excuse from performance will be of no greater scope and of no longer duration than is reasonably required by the Force Majeure, and the Party suffering such delay or prevention shall notify the other Party and use due and, in its judgment, practical diligence to remove the cause(s) thereof. Neither Party shall be required by the foregoing provisions to settle a strike affecting it except when, according to its own best judgment, such a settlement seems advisable. Nothing in this Section 7.1 shall excuse the payment

obligations incurred under this Tariff.

Section 7.2 - Indemnification: The Buyer shall at all times indemnify, defend, and save FPL harmless from, any and all damages, losses, claims, including claims and actions relating to injury to or death of any person or damage to property, demands, suits, recoveries, costs and expenses, court costs, attorney fees, and all other obligations by or to third parties, arising out of or resulting from FPL's performance of its obligations under this Tariff on behalf of the Buyer, except in cases of gross negligence or intentional wrongdoing by FPL.

Section 7.3 - Consequential Damages: Notwithstanding any other provision of this Tariff, FPL (including its Affiliates) shall not be liable to the Buyer for any exemplary, indirect, punitive, consequential or incidental damages, which shall include, but not be limited to, loss of profits or revenues and costs of purchased or replacement power, under any claims arising under this Tariff.

Section 7.4 - No Liability for Interruption or Curtailment: FPL shall have no liability for, and Buyer hereby releases FPL from, any liability Buyer may incur as a result of the interruption or curtailment of Power and Energy service under this Tariff.

ARTICLE VIII

MISCELLANEOUS

Section 8.1 - Regulatory Approval: The provisions of this Tariff are subject to the regulatory authority of the FERC. Upon execution FPL will file the Service Agreement under this Tariff with the FERC and the Buyer shall, upon FPL's request, support approval of the Service Agreement without modification or condition. All fees assessed by the FERC as they relate to the filing of the Service Agreement shall be the responsibility of FPL. The Buyer shall cooperate with FPL and provide information reasonably required by FPL to comply with the applicable filing requirements, and the Buyer shall not lend support to any party(ies) who oppose(s) the filing of the Service Agreement before the FERC. FPL may unilaterally make application to the FERC for a change in rates, terms and conditions of this Tariff and the Service Agreement under Sections 205 of the Federal Power Act and the regulations promulgated thereunder.

Section 8.2 - Waivers: Any waiver at any time by any Party of its rights with respect to the other Party or with respect to any matter arising in connection with this Tariff shall not be considered a waiver with respect to any other prior or subsequent default or matter.

Section 8.3 - Assignment: The Service Agreement shall inure to the benefit of, and shall be binding upon, the Parties hereto and their respective successors and assigns. Nothing in the Service Agreement, expressed or implied, is intended to confer upon any person other than FPL and the Buyer rights or remedies hereunder. All successors to and assigns of the Buyer shall be subject to the Creditworthiness provisions of Section 3.2 of the Tariff. The Service Agreement shall not be assignable or transferable in whole or in part by either Party without the written consent of the other Party, which consent(s) shall not be unreasonably withheld, except that such written consent(s) shall not be required (a) in the case of an assignment or transfer to a successor in the operation of the

assignor's or transferor's properties by reason of a merger, consolidation, sale or foreclosure, where substantially all such properties are acquired by such successor, or (b) in the case of an assignment or transfer of all or part of the assignor's or transferor's properties or interests to a wholly-owned subsidiary of the assignor or transferor or to another company in the same holding company as the assignor or transferor.

Section 8.4 - Notices: Any notice, demand or request required or authorized by this Tariff shall be deemed properly given if mailed postage prepaid to:

FLORIDA POWER & LIGHT COMPANY
P. O. Box 029100
Miami, FL 33102-9100
Attention: Manager of Wholesale Markets

or to such other person(s) as may be designated in writing from time to time by FPL.

Section 8.5 - Governing Law: This Tariff and each of its provisions, as well as the executed Service Agreement, shall be governed by the laws of the State of Florida.

Section 8.6 - Interconnection with Other Systems: Nothing contained in this Tariff shall restrict or limit either Party from establishing, altering or terminating interconnection points with any person not a party to this Tariff or amending or entering into agreements therefor.

Section 8.7 - Headings Not to Affect Meaning: The descriptive headings of the various sections and articles of this Tariff have been inserted for convenience of reference only and shall in no way modify or restrict any of the terms and provisions hereof.

Section 8.8 - No Consent to Violation of Law: Nothing herein contained shall be construed to constitute consent or acquiescence by either Party to any action of the other Party which violates the laws of the United States as their provisions may be amended, supplemented or superseded, or

which violates any other law or regulation, or any order, judgment or decree of any court or governmental authority of competent jurisdiction.

Section 8.9 - Complete Agreement: This Tariff is intended as the exclusive integrated statement regarding service provided hereto. Parol or extrinsic evidence shall not be used to vary or contradict the express terms of this Tariff.

Section 8.10 - No Dedication of Facilities: Any undertaking or commitment by one Party to the other under any provision of this Tariff shall not constitute the dedication of the system or any portion thereof of any Party to the public or to the other Party.

Section 8.11 - Relationship of the Parties: Nothing contained in this Tariff shall be construed to create an association, joint venture, partnership or any other type of entity or relationship between FPL and the Buyer, or between either or both of them and any other party.

Section 8.12 - Third-Party Beneficiaries: A Service Agreement is intended solely for the benefit of the Parties to the Service Agreement, and nothing in this Tariff or the Service Agreement will be construed to create any duty to, or standard of care with reference to, or any liability to, any person not a Party to the Service Agreement.

Section 8.13 - Tax Adjustment: There shall be added to the charges under this Tariff the applicable proportionate part of any new or increased taxes and assessments (except State or Federal income taxes), imposed by any governmental authority in addition to, or in excess of, those in effect as of the date of this Tariff which are assessed on the basis of meters or customers, or the price of, or revenue from, electric energy or service sold, or the quantity of energy purchased or generated for sale or sold. In the event FPL is required to pay, and pays, a "gross receipts tax" with respect to power and energy sold hereunder, FPL shall be fully reimbursed by the Buyer. Should any tax or assessment be imposed during the course of a transaction hereunder, the Buyer shall have the right

either to continue the transaction at a price which reflects the tax or assessment so imposed or to terminate the remainder of the transaction.

Section 8.14 - Prudent Utility Practice: The Parties shall discharge any and all obligations under this Tariff in accordance with Prudent Utility Practice.

ARTICLE IX

OPERATING REPRESENTATIVES

Section 9.1 - Operating Representatives: The Buyer and FPL shall each appoint an Operating Representative and so notify other Party. Such appointments may be changed at any time. The Operating Representatives shall represent the Parties in all matters relating to the administration of this Tariff. The duties of the Operating Representatives shall include agreeing upon any methods and procedures for implementing transactions under this Tariff. Either Party's Operating Representative may require that such methods and procedures be evidenced in writing.

Section 9.2 - Dispute Resolution: In the event a dispute arises between the Parties concerning the operation or interpretation of this Tariff, the Parties' Operating Representatives shall attempt to resolve the matter. In the event the Operating Representatives are unable to resolve the matter after a reasonable time period (not to exceed sixty days), the matter shall be referred to the Parties' principals for resolution. Nothing in this paragraph shall be interpreted to restrict or limit a Party's rights to pursue all remedies available at law or at equity.

**TARIFF NO. 1
FOR SALES OF POWER AND ENERGY
BY
FLORIDA POWER & LIGHT COMPANY**

APPENDIX A

MAXIMUM HOURLY CHARGE

The maximum Hourly Charge per MW pursuant to Section 4.1(a)(ii) under this Tariff is \$ 17.90/MWh.

**TARIFF NO. 1
FOR SALES OF POWER AND ENERGY
BY
FLORIDA POWER & LIGHT COMPANY**

**SERVICE AGREEMENT
(SAMPLE FORM)**

This Service Agreement, dated as of _____, is entered into by and between Florida Power & Light Company ("FPL") and _____
_____("Buyer").

Neither FPL nor Buyer that executes this Service Agreement commits to enter into any individual transaction. When service is provided under a transaction pursuant to FPL's Tariff No. 1 for Sales of Power and Energy ("Tariff"), FPL agrees to provide and the Buyer agrees to pay for such services in accordance with the provisions of the Tariff and this Service Agreement.

Any notice, demand or request required or authorized by this Service Agreement shall be deemed properly given if mailed postage prepaid to, in the case of FPL:

FLORIDA POWER & LIGHT COMPANY
P. O. Box 029100
Miami, FL 33102-9100
Attention: Manager of Wholesale Markets

and in the case of Buyer:

or to such other person(s) as may be designated in writing from time to time by the recipient Party.

The Tariff is incorporated herein and made a part hereof. This Service Agreement and Tariff may be amended unilaterally by FPL from time to time pursuant to Section 205 of the Federal Power Act as Provided in Section 8.1 of the Tariff. This Service Agreement takes effect on the date permitted by the FERC.

The Buyer's representative responsible for receiving the bill associated with the charges computed in accordance with the Tariff is:

This Service Agreement is intended as the exclusive integrated statement of the Parties' agreement regarding service provided hereunder. Parol or extrinsic evidence shall not be used to vary or contradict the express terms of this Service Agreement or the Tariff.

IN WITNESS WHEREOF, the Parties have caused this Service Agreement to be executed by their respective authorized officials as of the date first above written.

FLORIDA POWER & LIGHT COMPANY

By:_____

BUYER

By:_____

TARIFF NO. 1
FOR SALES OF POWER AND ENERGY
BY
FLORIDA POWER & LIGHT COMPANY

SERVICE AGREEMENT

This Service Agreement, dated as of August __, 2013, is entered into by and between Florida Power & Light Company ("FPL") and the City of Winter Park, FL ("Buyer").

Neither FPL nor Buyer that executes this Service Agreement commits to enter into any individual transaction. When service is provided under a transaction pursuant to FPL's Tariff No. 1 for Sales of Power and Energy ("Tariff"), FPL agrees to provide and the Buyer agrees to pay for such services in accordance with the provisions of the Tariff and this Service Agreement.

Any notice, demand or request required or authorized by this Service Agreement shall be deemed properly given if mailed postage prepaid to, in the case of FPL:

FLORIDA POWER & LIGHT COMPANY
700 Universe Blvd, MC: EMT/JB
Juno Beach, FL 33408-2657
Attention: Director of Origination

and in the case of Buyer:

THE CITY OF WINTER PARK, FL
401 South Park Ave
Winter Park, FL 32789
Attention: City Manager

or to such other person(s) as may be designated in writing from time to time by the recipient Party.

The Tariff is incorporated herein and made a part hereof. This Service Agreement and Tariff may be amended unilaterally by FPL from time to time pursuant to Section 205 of the Federal Power Act as Provided in Section 8.1 of the Tariff. This Service Agreement takes effect on the date permitted by the FERC.

The Buyer's representative responsible for receiving the bill associated with the charges computed in accordance with the Tariff is:

Director Electric Utility Department
Phone: 407-599-3399
Fax: 407-599-3233
Email: jwarren@cityofwinterpark.org

This Service Agreement is intended as the exclusive integrated statement of the Parties' agreement regarding service provided hereunder. Parol or extrinsic evidence shall not be used to vary or contradict the express terms of this Service Agreement or the Tariff.

IN WITNESS WHEREOF, the Parties have caused this Service Agreement to be executed by their respective authorized officials as of the date first above written.

FLORIDA POWER & LIGHT COMPANY

By: _____
Sam A. Forrest

BUYER: CITY OF WINTER PARK, FLORIDA

By: _____
Kenneth W.. Bradley, Mayor

SYSTEM FIRM PARTIAL REQUIREMENTS SERVICE

TRANSACTION CONFIRMATION

Between

City of Winter Park, FL and Florida Power & Light Company

Date: _____

Seller: Florida Power & Light Company
700 Universe Blvd, MC: EMT/JB
Juno Beach, FL 33408

Buyer: City of Winter Park, FL
Electric Utility Department
401 South Park Ave
Winter Park, FL 32789

Attn: Director of Origination
Phone: 561.691.7880
Fax: 561.625.7517
Email: timothy.gerrish@fpl.com
(Above address for any Notices)

Attn: Director Electric Utility Department
Phone: 407-599-3399
Fax: 407-599-3233
Email: jwarren@cityofwinterpark.org
(Above address for any Notices)

Governing Agreement.

This Transaction Confirmation (the "System Firm Transaction" or "Transaction Confirmation") sets forth the terms and conditions of a transaction to be entered into between Seller and Buyer pursuant to Florida Power & Light Company's FERC Electric Tariff No. 1 ("Tariff"). All terms and conditions of the Tariff shall apply to this Transaction Confirmation unless otherwise explicitly set forth to the contrary herein and all terms used but not defined herein shall have the meanings ascribed to such terms according to the Tariff, unless otherwise defined below.

Condition Precedent and Subsequent.

Seller and Buyer have entered into that certain "Native Load Firm Fixed Capacity And Partial Requirements Transaction Confirmation" dated August 12, 2013 (the "Native Load Firm Transaction"), pursuant to which Seller holds a "Seller Pricing Option" as defined therein. Pursuant to the Seller Pricing Option, Seller may, with one year's prior written notice to Buyer, extend the term of the Native Load Firm Transaction in annual increments through December 31, 2019 if notice is given before: (1) January 1, 2016 to extend the term through December 31, 2017, (2) January 1, 2017 to extend the term through December 31, 2018, and (3) January 1, 2018 to extend the term through December 31, 2019. If Seller gives notice of the exercise of the Seller Pricing Option in the Native Load Firm Transaction at any time prior to or during the Delivery Period of this System Firm Transaction, then this System Firm Transaction shall terminate as of the first day of the extended term under the Native Load Firm Transaction, without any liability or damages owed among the parties.

Transaction Terms

- 1) **Seller's Operating Representative:** Vice President, Energy Marketing and Trading or his designee
- 2) **Buyer's Operating Representative:** Director Electric Utility Department or his/her designee

- 3) **Buyer's Service Agreement:** August 12, 2013
- 4) **Transaction Date:** August 12, 2013.
- 5) **Point(s) of Delivery:** Delivered to the FPL Transmission System.
- 6) **Delivery Period:** Beginning Hour Ending 0100 Eastern Prevailing Time on January 1, 2017 to Hour Ending 2400 EPT on December 31, 2019, including weekends and NERC Holidays, unless sooner terminated as permitted in this Transaction Confirmation or Tariff; provided, however, Seller shall have no obligation to provide, or Buyer to purchase, Partial Requirements Power and Energy unless and until the conditions precedent set forth in Section 11 have been satisfied or waived. Seller will make the Quantity of Partial Requirements Power and Energy available to Buyer all hours of every day during the Delivery Period. Prior to the commencement of the Delivery Period, Seller shall have no obligation to provide, and Buyer shall have no obligation to purchase, Partial Requirements Power and Energy. Nothing in this Transaction Confirmation or Tariff is to be construed as extending the time permitted to raise Disputes or as extending the period of time for providing Partial Requirements Power and Energy. At the end of the Delivery Period, each Party's obligations to the other Party under this Transaction Confirmation except those obligations that, pursuant to this Transaction Confirmation or by their express terms survive the end of the Delivery Period, shall automatically terminate, and each Party expressly waives any and all rights to raise in any forum a claim that the other Party must provide or purchase any level or amount of Partial Requirements Power and Energy hereunder on any basis.
- 7) **Power and Energy:** Seller may furnish Power and Energy from any available Electric Resources it chooses for sale to the Buyer. Seller will have no obligation under this Transaction Confirmation to plan its system or modify its facilities in order to provide or maintain the Power and Energy provider hereunder. For the avoidance of doubt, this is not an Economy Energy transaction as set forth in and defined by the Tariff.
- 8) **Quantity of Power and Energy:** From January 1, 2017 to December 31, 2019, the Power and Energy furnished by Seller shall be "Partial Requirements" in that,
 - a) subject to Force Majeure, Seller shall supply and Buyer shall receive the quantity of Energy required to serve all of Buyer's retail load plus any losses between the Point(s) of Delivery and the Winter Park Interconnection Points along with all associated Generation Related Services, with a firmness equivalent to System Firm, but net of the
 - i) Gainesville Regional Utilities Purchase;
 - ii) Covanta Energy Purchase;
 - iii) OUC Distribution Purchase;
 - iv) purchase of renewable energy as set forth in Section 15 below; and
 - v) purchases by Buyer during periods where Seller is unable to deliver Partial Requirements Power and Energy at the Point(s) of Delivery.
 - b) Except as set forth in sections 8(a)(i)-(v) and 8(d), Buyer shall in no circumstances purchase any capacity or energy from anyone other than the Seller during the Delivery Period.
 - c) Buyer and Seller agree that the quantity of energy delivered to the Winter Park Interconnection Points from the Gainesville Regional Utilities Purchase and the Covanta

Energy Purchase shall be at the contractual amounts established in those agreements and as defined in Section 19. Buyer shall be responsible for any energy imbalance penalties or charges as a result of those purchases failing to deliver the contractual amount. The parties mutually agree to develop procedures for dynamically scheduling the metered generation of those purchases as necessary to minimize energy imbalances. The cost, if any, associated with establishing dynamic scheduling of either the Gainesville Regional Utilities Purchase or the Covanta Energy Purchase shall be the responsibility of Buyer.

- d) In addition to the OUC Distribution Purchase, Buyer has the option to purchase from OUC beginning no earlier than January 1, 2017 through a new transmission interconnection to be established between OUC and the Buyer ("OUC Purchase Option"). The Buyer must provide Seller at least one (1) year prior written notice of its intention to exercise the OUC Purchase Option. If Buyer exercises the OUC Purchase Option, then Seller has the option exercisable by written notice to OUC within 3 months of Buyer's written notice exercising the OUC Purchase Option to discontinue Partial Requirements Power and Energy under this Transaction Confirmation upon expiration of the OUC Purchase Option notice period and replace the Partial Requirements Power and Energy product with a 30 MW "Fixed Capacity" product each month thereafter for the remainder of the term ("Seller Fixed Capacity Option"). If Seller does not exercise the Seller Fixed Capacity Option then Seller shall continue to provide Partial Requirements Power and Energy but net of the additional purchase from OUC pursuant to the OUC Purchase Option.
- e) If requested by either party, the parties shall amend this Transaction Confirmation to reflect the exercise of the OUC Purchase Option in Section 8(d).

9) Transmission Service &Scheduling:

- a) The Point(s) of Delivery for the Power and Energy shall be at those FPL interconnection(s) designated by Seller. Seller shall be responsible for obtaining any transmission services necessary for the delivery of Power and Energy to the Point(s) Of Delivery and for the costs associated with such transmission service(s) to the Point(s) Of Delivery. Buyer shall be responsible for obtaining any transmission services necessary for the delivery of Power and Energy from the Point(s) Of Delivery and for the costs associated with such transmission service(s) from the Point(s) Of Delivery. Transmission service through the FPL Transmission System must be obtained in accordance with the applicable Open Access Transmission Tariff of FPL on file with the FERC. Power and Energy shall be scheduled in accordance with the FPL Transmission System's scheduling procedures. Any arrangements with third parties and compensation to any third parties associated with Power and Energy transactions to such Point(s) Of Delivery shall be the sole responsibility of Seller, and any arrangements with third parties and compensation to any third parties associated with Power and Energy transactions from such Point(s) Of Delivery shall be the sole responsibility of the Buyer.
- b) Buyer recognizes that the Transmission Provider(s) may curtail transmission service and that upon notification of such a requirement to curtail, Buyer and Seller shall be obligated to do so, and if Buyer fails to institute the required curtailment, the Transmission Provider(s) will be entitled to limit deliveries during the period any shortage of capacity and/or energy exists. In no event shall Seller be liable under this

Transaction Confirmation for any shortage of capacity, energy or any element of Partial Requirements Power and Energy to the extent resulting from the transmission and/or distribution of Power and Energy, capacity and/or energy or any acts or omissions of Seller in its capacity as a Transmission Provider. There shall be no proration in Buyer's payment or performance obligations under this Transaction Confirmation as a result of curtailments, interruptions, or reductions of transmission service or Ancillary Services at and from the Winter Park Interconnection Point(s), whether as a result of Force Majeure or otherwise.

10) Power And Energy Charge:

- a) Subject to the pricing limitations set forth in Section 4 of the Tariff, the Power and Energy Charge shall be comprised of the monthly sum of the following four (4) components:
 - i) Monthly Option Payment("MOP");
 - ii) Monthly Energy Non-Fuel Payment ("MENFP"); and
 - iii) Monthly Energy Fuel Payment ("MEFP").
- b) Beginning on the first day of the Delivery Period, and thereafter for each Monthly Billing Period of the Delivery Period, Buyer shall be obligated to pay to Seller the MOP set forth in Appendix A, the MENFP set forth on Appendix B, and the MEFP set forth on Appendix C.
- c) There shall be added to the Power and Energy Charge any amounts charged to Seller for any transmission services or charges that are incurred in the delivery of Partial Requirements and/or Fixed Capacity Power and Energy (other than those transmission charges which are Seller's responsibility as set forth in the requirements for Power and Energy) in accordance with the OATT of either Transmission Provider, or in connection with related agreements and arrangements for transmission-related schedules or services, and such amounts shall be forwarded to and paid by Buyer.
- d) There shall be added to the Power and Energy Charge any amounts for Change In Law Costs, Tax Adjustments, Indemnification, and any other charges or assessments permitted by this Transaction Confirmation or Tariff.
- e) Timing and Method of Payment. On or before the tenth (10) day of each Monthly Billing Period, Seller shall provide to Buyer a detailed written invoice on paper and/or by electronic media (in the original file format with all formulas and calculations intact) for the amounts owed by the Buyer pursuant to the Transaction Confirmation (and if applicable the amounts owed by the Seller pursuant to any corrections owed by the Seller). The Parties agree to net any undisputed offsetting amounts which are shown on any monthly billing statement. Buyer shall pay such monthly billing statement on the later of the 20th day of each month or the tenth day after which Buyer receives such invoice (the "Payment Due Date"). The monthly billing statement shall detail the amount and calculation of the following: a) MCP, b) MENFP, and c) MEFP.

- 11) Conditions Precedent:** The obligations of Seller to generate, deliver and sell, and of Buyer to accept delivery of and purchase, Partial Requirements and/or Fixed Capacity Power and Energy shall be subject to the satisfaction or waiver (by the Party entitled to waive the applicable condition) of all of the following conditions precedent:

- a) On or before November 1, 2013, Buyer shall have acquired the necessary network and/or firm point-to-point transmission rights from the affected Transmission Provider(s) for the Delivery Period on terms reasonably acceptable to Buyer to allow for firm delivery of Partial Requirements and/or Fixed Capacity Power and Energy from the Point(s) of Delivery to the Winter Park Interconnection Point(s);
- b) The condition precedent set forth above may only be waived by the affected Party on or before November 1, 2013, or such subsequent date as agreed to in writing by the Parties.
- c) In the event the condition precedent set forth hereinabove is not satisfied (unless such condition is waived in writing by the date provided above), this Transaction Confirmation, except for those provisions that pursuant to this Transaction Confirmation or by their express terms survive such termination, shall terminate automatically without any further obligation and without any need by either Party to take any further action, shall have no further force and effect and Seller and Buyer expressly waive any and all rights to raise in any forum a claim that the other Party must provide or purchase Partial Requirements Power and Energy hereunder on any basis

12) **Performance Security:**

- a) Buyer covenants that it shall maintain, at all times in which it has a Credit Rating, a minimum of an Investment Grade Credit Rating. If Buyer does not have a Credit Rating from S&P or Moody's or does not maintain an Investment Grade Credit Rating, then Buyer shall be required to do the following:
 - i) In the event Buyer is required to secure its obligations to Seller by a letter of credit as provided by Section 3.2 of the Tariff, the letter of credit shall be in form and substance reasonably acceptable to Seller naming Seller as the sole beneficiary and from a credit support provider approved by Seller in Seller's sole discretion, and shall at all times be in an amount equal to or greater than twice the highest total monthly bill incurred by Buyer under this Transaction Confirmation over the most recent prior twelve (12) month period. The letter of credit shall, among other things, permit Seller to make a drawing for the full amount of the letter of credit in the event that
 - (1) Buyer fails to renew or replace the letter of credit at least thirty (30) calendar days prior to the stated expiration of the letter of credit or
 - (2) an Event of Default by Buyer has occurred and is continuing.

Upon notice by Seller to Buyer from time to time of the amount of the highest monthly bill incurred by Buyer over the most recent twelve (12) month period, Buyer, if required to post and/or maintain a letter of credit, shall adjust the amount of the letter of credit to the revised required amount within five (5) Business Days. All costs of a letter of credit shall be borne by Buyer.

- b) **Financial Information:** Buyer shall deliver to Seller each fiscal year, a copy of the annual report containing audited consolidated financial statements for such fiscal year with respect to Buyer. In all cases the statements shall be for the most recent accounting period and shall be prepared in accordance with generally accepted accounting principles. Buyer shall diligently pursue the preparation, certification and delivery of the

statements. Such statements shall be delivered to the Seller when available. Buyer's books, records and accounts shall be open to inspection, audit and reproduction, during normal working hours by Seller or its authorized representative on three (3) Business Days prior notice.

- c) Buyer hereby waives any and all rights it may have at law or otherwise to require Seller to provide financial assurances or security (including cash, letters of credit or other security) in respect of Seller's obligations under this Transaction Confirmation.

13) **Events of Default:** In addition to bankruptcy or insolvency under Section 3.5 of the Tariff, the occurrence of any of the following shall constitute an "Event of Default" with respect to a Party (a "Defaulting Party"):

- a) failure to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within five (5) Business Days after written notice;
- b) any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated;
- c) the failure to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default) if such failure is not remedied within five (5) Business Days after written notice;
- d) the failure of such Party to satisfy the creditworthiness/collateral requirements pursuant to Section 3.2 of the Tariff;
- e) such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such Party under this Transaction Confirmation to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the other Party;
- f) the occurrence and continuation of (1) a default, event of default or other similar condition or event in respect of such Party under one or more agreements or instruments, individually or collectively, relating to indebtedness for borrowed money in an aggregate amount of not less than ten million dollars (\$10,000,000.00) ("Cross Default Amount"), which results in such indebtedness becoming, or becoming capable at such time of being declared, immediately due and payable or (2) a default by such Party in making on the due date therefor one or more payments, individually or collectively, in an aggregate amount of not less than the Cross Default Amount;
- g) with respect to such Party's Guarantor or a Party's issuer of a letter of credit, if any, (1) if any representation or warranty made by a Guarantor or the issuer of a letter of credit is false or misleading in any material respect when made or when deemed made or repeated; (2) the failure of a Guarantor or issuer of a letter of credit to make any payment required or to perform any other material covenant or obligation in any guaranty or letter of credit made in connection with this Transaction Confirmation and such failure shall not be remedied within three (3) Business Days after written notice; (3) a Guarantor or issuer of a letter of credit becomes bankrupt or insolvent as set forth in Section 3.5 of the Tariff; (4) the failure of a Guarantor's guaranty or the issuer's letter of credit to be in full force and effect for purposes of this Transaction Confirmation

(other than in accordance with its terms) prior to the satisfaction of all obligations of such Party under this Transaction Confirmation without the written consent of the other Party; or (5) a Guarantor or issuer of a letter of credit shall repudiate, disaffirm, disclaim, or reject, in whole or in part, or challenge the validity of any guaranty or letter of credit.

- h) with respect to the Native Load Firm Transaction, an Event of Default by the Defaulting Party shall have occurred and be continuing.

14) Remedies.

- a) If an Event of Default by Buyer occurs and is continuing, then Buyer shall:
 - i) pay all amounts outstanding under this Transaction Confirmation and the Native Load Firm Transaction as of the date of notice or such knowledge within ten (10) Business Days of receipt of such notice or such knowledge,
 - ii) post and maintain a letter of credit in favor of Seller for the amount required in Section 12 above, and
 - iii) commence prepaying Seller weekly in advance for all amounts due as reasonably computed and invoiced by Seller under this Transaction Confirmation and the Native Load Firm Transaction until such time as Buyer satisfies the applicable requirements of Subsection (b). In the event that Seller draws on the letter of credit from time to time, Buyer shall post and maintain an additional letter of credit, or amend the existing letter of credit to reinstate the available amount thereunder by an amount equal to the amount drawn within three (3) Business Days after such drawing.

Seller may, at its option, exercise any one or combination of the following remedies:

- iv) calculate a Settlement Amount owed by Buyer to Seller for the termination of this Transaction Confirmation and the Native Load Firm Transaction and to terminate this Transaction Confirmation and the Native Load Firm Transaction without penalty or further obligation by Seller by providing notice to Buyer; and/or
 - v) draw on any outstanding letter of credit issued or any other security issued for Seller's benefit in the amount of Seller's Settlement Amount.
- b) Upon the occurrence of any Event of Default by Seller, Buyer may, at its option, calculate a Settlement Amount owed by Seller to Buyer for the termination of this Transaction Confirmation and the Native Load Firm Transaction and to terminate this Transaction Confirmation and the Native Load Firm Transaction without penalty or further obligation by Buyer by providing notice to Seller.
- c) ABSENT FRAUD, THE REMEDIES SET FORTH HEREIN CONSTITUTE THE SOLE AND EXCLUSIVE REMEDIES AGAINST THE OTHER FOR EVENTS OF DEFAULT, BREACH OF CONTRACT OR ANY FAILURE TO PERFORM ANY OF THE OBLIGATIONS UNDER THIS TRANSACTION CONFIRMATION.

- 15) **Renewable Purchases:** During the Delivery Period Buyer may purchase renewable capacity and energy from a source other than the Seller or an affiliate of the Seller if and only if such generating source is on the distribution side of the Winter Park Interconnection Points. The output of any renewable capacity and energy source, excluding solar capacity installed under the Buyer's existing net metering policy, shall be metered to determine the amount of energy generated for each hour of the Term. Such renewable capacity

exceeding 2,500 kW during the hour of the monthly peak shall be added to Buyer's metered load when determining the Demand Quantity. Buyer shall promptly notify Seller of the proposed purchase or receipt of Energy and/or Capacity to be delivered to Buyer's electric system from such renewable energy resource.

16) **Section 205 Filing:** In the event that there is any filing pursuant to Section 205 of the Federal Power Act to revise the Tariff or this Transaction Confirmation, including without limitation the pricing formulas and the recovery of Buyer's pro-rata share of fuel charge costs, expenses, charges, Taxes, fees and/or assessments; the Parties reserve their right to oppose any such filing to the extent such filing is inconsistent with the provisions of this Transaction Confirmation and Tariff. The Parties shall be limited in any opposition to opposing the matters described in the foregoing sentence and shall not be entitled to argue that changes should be made to any other aspect of this Transaction Confirmation or Tariff in order to make the overall rate just and reasonable or otherwise.

17) **Representations and Warranties.**

a) Seller's Representations and Warranties. Seller hereby represents and warrants as follows:

- i) Seller is a corporation duly organized, validly existing and in good standing under the laws of the State of Florida and is qualified in each other jurisdiction where the failure to so qualify would have a material adverse effect upon the business or financial condition of Seller; and Seller has all requisite power and authority to conduct its business, to own its properties, and to execute, deliver, and perform its obligations under this Transaction Confirmation.
- ii) The execution, delivery, and performance of its obligations under this Transaction Confirmation by Seller have been duly authorized by all necessary corporate action, and do not:
 - (1) Require any consent or approval of Seller's board of directors, other than that which has been obtained and is in full force and effect;
 - (2) Violate any provision of Applicable Laws or violate any provision in any corporate documents of Seller, the violation of which could have a material adverse effect on the ability of Seller to perform its obligations under this Transaction Confirmation;
 - (3) Result in a breach or constitute a default under Seller's corporate charter or bylaws, or under any contract relating to the management or affairs of Seller or any indenture or loan or credit contract, or any other contract, lease, or instrument to which Seller is a party or by which Seller or its properties or assets may be bound or affected, the breach or default of which could reasonably be expected to have a material adverse effect on the ability of Seller to perform its obligations under this Transaction Confirmation; or
 - (4) Result in, or require the creation or imposition of any mortgage, deed of trust, pledge, lien, security interest, or other charge or encumbrance of any nature upon or with respect to any of the assets or properties of Seller now owned or hereafter acquired, the creation or imposition of which could reasonably be expected to have a material adverse effect on the ability of Seller to perform its obligation under this Transaction Confirmation.

- iii) This Transaction Confirmation is a valid and binding obligation of Seller, enforceable against Seller in accordance with its terms (except as such enforcement may be limited by bankruptcy, insolvency, or similar laws affecting the rights of creditors, or by general principles of equity).
 - iv) The execution, delivery, and performance of this Transaction Confirmation will not conflict with or constitute a breach or default under any contract of any kind to which Seller is a party or any judgment, order, statute, or regulation that is applicable to Seller.
 - v) All approvals, authorizations, consents, or other action required by any Governmental Authority to authorize Seller's execution, delivery, and performance under this Transaction Confirmation have been duly obtained and are in full force and effect.
- b) Buyer's Representation and Warranties. Buyer hereby represents and warrants the following:
- i) Buyer is a Florida municipality properly constituted and existing.
 - ii) All Governmental Approvals required by any Governmental Authority to authorize Buyer's execution, delivery, and performance under this Transaction Confirmation have been duly obtained and are in full force and effect.
 - iii) The Buyer shall establish levy and collect rents, rates and other charges for the products and services provided by its electric utility system which rents, rates and other charges shall at least be sufficient to meet the operation and maintenance expenses of such electric utility system to comply with all covenants pertaining thereto contained in and all other provisions of any resolution trust indenture or other security agreement relating to any bond or other evidences of indebtedness issues or to be issued by the Buyer to generate funds sufficient to fulfill the terms of all other contracts and agreements entered into by the Buyer including without limitation this Transaction Confirmation.
 - iv) The execution, delivery, and performance of its obligations under this Transaction Confirmation by Buyer have been duly authorized by all necessary corporate action, and do not:
 - (1) Require any consent or approval other than that which has been obtained and is in full force and effect;
 - (2) Result in a breach or constitute a default under Buyer's charter or bylaws, or under any contract relating to the management or affairs of Buyer or any indenture or loan or credit contract, or any other contract, lease, or instrument to which Buyer is a party or by which Buyer or its properties or assets may be bound or affected, the breach or default of which could reasonably be expected to have a material adverse effect on the ability of Buyer to perform its obligations under this Transaction Confirmation;
 - (3) Result in, or require the creation or imposition of any mortgage, deed of trust, pledge, lien, security interest, or other charge or encumbrance of any nature (other than as may be contemplated by this Transaction Confirmation) upon or with respect to any of the assets or properties of Buyer now owned or hereafter acquired, the creation or imposition of which could reasonably be expected to

have a material adverse effect on the ability of Buyer to perform its obligation under this Transaction Confirmation; and

- (4) Violate any provision of Applicable Laws or violate any provision in any corporate documents of Buyer, the violation of which could have a material adverse effect on the ability of Buyer to perform its obligations under this Transaction Confirmation.
- v) Subject to Section 11 above, this Transaction Confirmation is a valid and binding obligation of Buyer, enforceable against Buyer in accordance with its terms (except as such enforcement may be limited by bankruptcy, insolvency, or similar laws affecting the rights of creditors or by general principles of equity).
- vi) The execution, delivery, and performance of this Transaction Confirmation will not conflict with or constitute a breach or default under any contract of any kind to which Buyer is a party or any judgment, order, statute, or regulation that is applicable to Buyer.

18) Other Terms/Conditions:

- a) [Intentionally left blank].
- b) **Force Majeure:** If an event constituting Force Majeure as defined in the Tariff lasts longer than fifteen (15) days, then the Buyer, at its sole discretion, can terminate this Transaction Confirmation.
- c) **Confidentiality:** Seller and Buyer regard the pricing terms and conditions in this Transaction Confirmation as proprietary trade secrets under Florida law. Each Party agrees to notify the other Party as soon as possible of any request for proprietary information, and not to distribute any proprietary information without first notifying the other Party; provided, however, nothing herein limits an obligation of Seller or Buyer to disclose such information as may be required under Applicable Laws. Seller shall provide Buyer with a public version of this Transaction Confirmation and a sample monthly billing statement that redacts all pricing, terms and conditions that Seller considers to be a trade secret, and City agrees to keep such redacted information confidential as exempt from Florida's Public Record Act (Chapter 119, Florida statutes) to the fullest extent allowed by Applicable Laws. Seller may assume the Buyer's defense against any third party challenge seeking disclosure of the redacted information, but in any event Seller shall hold Buyer harmless and indemnify Buyer from and against all third party claims or actions, including attorneys' fees and damages, resulting from or arising out of the assertion of a trade secret exemption under Florida's Public Record Act with respect to the redacted information that Seller asserts is a trade secret. All information in this Transaction may be released after December 31, 2021.
- d) **Setoff Upon Termination.** Upon the designation of an event of default entitling a Party to terminate this Transaction Confirmation early ("Early Termination Date"), the terminating Party ("X") may, at its option and in its discretion, setoff, against any amounts Owed to the non-terminating Party ("Y") by X or any Affiliate of X under this Transaction Confirmation or under any other agreement, instrument and/or undertaking, any amounts Owed by Y to X or any of X's Affiliates (irrespective of the place of payment or booking office of the obligation) under this Transaction Confirmation or under any other agreement, instrument and/or undertaking. The obligations of Y and X under this Transaction Confirmation in respect of such amounts shall be deemed

satisfied and discharged to the extent of any such setoff exercised by X and/or X's Affiliates. X will give Y notice of any setoff effected under this Section as soon as practicable after the setoff is effected, provided that failure to give such notice shall not affect the validity of the setoff. For purposes of this Section, "Owed" shall mean any amounts owed or otherwise accrued and payable (regardless of whether such amounts have been or could be invoiced) as of the Early Termination Date. If an obligation is unascertained, X may in good faith estimate that obligation and setoff on the basis of such estimate, subject to the relevant Party accounting to the other when the obligation is ascertained.

- e) **Trade Option Representation.** If this Transaction Confirmation meets the conditions contained in CFTC Regulation 32.3(a) ("Trade Option"), then each Party represents and warrants that the Party that is the offeree of a the Trade Option ("Offeree") represents to the other party ("Offeror") that it is a producer, processor, commercial user of or a merchant handling the commodity that is the subject of this commodity option transaction or the products or by-products thereof and is offered or entering into this commodity option transaction solely for purposes related to its business as such. Offeree and Offeror hereby confirm to each other that the Trade Option is intended to be physically settled so that, if exercised, the option would result in the sale of an exempt commodity for immediate or deferred delivery.
- f) **Netting of Payments.** The Parties hereby agree that they shall discharge mutual debts and payment obligations due and owing to each other on the same date pursuant to this System Firm Transaction and the Native Load Firm Transaction through netting, in which case all amounts owed by each Party to the other Party during the monthly billing period, interest, and payments or credits, shall be netted so that only the excess amount remaining due shall be paid by the Party who owes it. If no mutual debts or payment obligations exist and only one Party owes a debt or obligation to the other during the monthly billing period, that Party shall pay such sum in full when due.
- g) **Waiver of Sovereign Immunity.** Buyer warrants and covenants that with respect to its contractual obligations under this Transaction Confirmation and performance thereof, it will not claim immunity on the grounds of sovereignty immunity or similar grounds with respect to itself or its revenues or assets from (a) suit, (b) jurisdiction of court, (c) relief by way of injunction, order for specific performance or recovery of property, (d) attachment of assets, or (e) execution or enforcement of any judgment. However, notwithstanding anything in this Transaction Confirmation or in the Tariff (including Section 7.2, Indemnification, of the Tariff) to the contrary, nothing shall be construed or applied as a waiver of the Buyer's sovereign immunity against third party tort claims, including those rights and limitations of liability under section 768.28, Florida statutes, as it may be amended. If the Seller pursues indemnity or a hold harmless defense from the Buyer in connection with a third-party tort claim, then the Buyer shall have the right to assert against any such third party claimant, the defense of sovereign immunity on behalf of itself and the Seller shall allow the Buyer to maintain that defense and shall take no action that will frustrate Buyer's ability to maintain a defense of sovereign immunity, including the procedures and limitations of liability in section 768.28, Florida statutes.

19) **Additional Definitions:** When used herein with initial or complete capitalization, whether in the singular or in the plural, the following terms shall have the following defined meanings:

- a) "Ancillary Services" means those services as defined in the OATT.
- b) "Applicable Laws" means any and all federal, state regional or local statutes, laws, municipal charter provisions, regulations, ordinances, rules, judgments, orders, decrees, Governmental Approvals, licenses or permit requirements or other governmental requirements or restrictions, or any interpretation or administration of any of the foregoing by any Governmental Authority, that apply to the facilities, services or obligations of either Party under this Contract, whether now or hereafter in effect and that are enforceable in a court of law.
- c) "Business Day" means any day on which the Federal Reserve Member Banks in Florida are open for business. A Business Day shall begin at 8:00 a.m. EPT and end at 5:00 p.m. EPT.
- d) "Covanta Energy Purchase" means a block purchase of 10 MW by Buyer from Covanta Energy commencing July 1, 2014.
- e) "Credit Rating" means the respective rating then assigned to Buyer's unsecured senior long-term debt obligations (not supported by third party credit enhancement) by S&P or Moody's; and if no rating is assigned to Buyer's unsecured, senior long-term debt obligations by such agency, the lower of the general corporate credit rating or issuer rating, as applicable, assigned by such rating agency to Buyer.
- f) "Demand Charge" has the meaning specified in Appendix A.
- g) "Demand Quantity" has the meaning specified in Appendix A.
- h) "Duke" means Duke Energy in its capacity as a Transmission Provider.
- i) "Duke Transmission" means the transmitting or transporting of Power and Energy from the interchange with FPL Transmission to the Winter Park Interconnection Points.
- j) "Eastern Prevailing Time" or "EPT" means the time in effect in the Eastern Time Zone of the United States of America, whether Eastern Standard Time or Eastern Daylight Savings Time.
- k) "Energy" means electrical energy, expressed in MWh, provided by Seller and delivered to Buyer at the Point(s) of Delivery in accordance with the terms and conditions of this Transaction Confirmation.
- l) "Fuel Adjustment Charges" means monthly payments calculated in accordance with Appendix C.
- m) "Gainesville Regional Utilities Purchase" means a block purchase of 10 MW by Buyer from Gainesville Regional Utilities commencing January 1, 2015.
- n) "Generation Related Services" means schedules 3 through 6 of the FPL OATT, excludes schedules 1 and 2 of the FPL OATT and excludes any and all services under the Duke OATT.
- o) "Governmental Approval" means any and all licenses, permits, franchises, contracts, approvals, authorizations, consents, waivers, rights, exemptions, releases, variances,

exceptions, or orders of or issued by, any Governmental Authority under Applicable Laws.

- p) "Governmental Authority" means any national, state, regional or local government (whether domestic or foreign), any political subdivision thereof or any other governmental, quasi-governmental, judicial, executive, legislative, administrative, public or statutory instrumentality, authority, body, agency, department, bureau or entity or any arbitrator with authority to bind a Party at law.
- q) "HE" means "hour ending."
- r) "Investment Grade Credit Rating" means Buyer has a current and continuous Credit Rating from each of S&P and Moody's equal to or higher than "BBB-" (with a neutral/stable or higher outlook) by S&P (or its equivalent under any successor rating category of S&P) and/or "Baa3" (with a neutral/stable or higher outlook) by Moody's (or its equivalent under any successor rating category of Moody's). In determining whether Buyer has an Investment Grade Rating, if Buyer has a Credit Rating from both S&P and Moody's, Buyer's Credit Rating shall be an Investment Grade Credit Rating only if the above minimum ratings requirements are satisfied with respect to both S&P and Moody's.
- s) "Monthly Energy Fuel Payment" or "MEP" means monthly payments calculated in accordance with Appendix C.
- t) "Monthly Energy Non-Fuel Payment" or "MENFP" means monthly payments calculated in accordance with Appendix B.
- u) "Monthly Option Payment" or "MOP" means monthly payments calculated in accordance with Appendix A.
- v) "OATT" means the Transmission Provider's Open Access Transmission Tariff on file at FERC, as amended from time to time.
- w) "OUC" means the Orlando Utilities Commission, a municipal utility owned and operated by the city of Orlando, Florida providing electricity services to customers in Orlando, St. Cloud, and parts of Orange and Osceola counties in Florida.
- x) "OUC Distribution Purchase" means the purchase by Buyer of approximately 18 MW (at peak) of capacity and energy from OUC via two distribution (12.47 kV) interconnections to its Ca-09 and IN-159 circuits provided that such distribution interconnections are transferred to OUC effective January 1, 2014 with OUC being contractually obligated to serve said two distribution interconnections.
- y) "Point(s) of Delivery" means the location at which Power and Energy is first delivered to the FPL Transmission System from Electric Resources on Seller's System that are interconnected with the FPL Transmission System or, in the case of purchased power, from points of interconnection between FPL Transmission System and other transmission systems.
- z) "Power and Energy" means the product Seller sells and delivers and Buyer pays for and receives, consisting of Fixed Capacity and/or Partial Requirements, as the context requires.
- aa) "Seller's System" means, during the Delivery Period, (i) the Electric Resources as such may change from time to time during the Delivery Period, (ii) capacity and energy

purchases by Seller pursuant to power purchase contracts and (iii) to the extent of the sale of electric power to Seller therefrom, all generating plants of co-generators, qualifying facilities, and independent power producers that are not owned by Seller but that produce electric power and sell it to Seller.

- bb) "Settlement Amount" means, with respect to this Transaction Confirmation and a Party, an amount that such Party determines in good faith and in a commercially reasonable manner to be the present value of the Economic Loss to it (net of any gains) resulting from termination of this Transaction Confirmation including costs associated, or that would be included, with entering into new arrangements which replace this Transaction Confirmation and losses (net of any gains) related to terminating or liquidating any hedges or related trading positions, provided that (i) in no event will internal costs, other than reasonable attorney's fees, be included in the calculation of any Settlement Amount; and (ii) the non-defaulting party shall not be required to enter into any offsetting or otherwise mitigating transactions solely for the purpose of establishing such losses or gains. Economic Loss shall (i) mean in the case of the Buyer an amount not to exceed the difference between the payments to be made under this Transaction Confirmation and the cost of replacement power and energy equivalent to the Power and Energy provided under this Transaction Confirmation for the balance of the Delivery Period; and (ii) in the case of the Seller, shall in any event include charges under Appendices A and B(but not Appendix C fuel costs) associated with sales to be made under this Transaction Confirmation until such time as the earlier of the end of the Delivery Period or FPSC allows recovery of such costs from Seller's retail customers.
- cc) "System Firm" means the delivery of Energy from FPL's currently available Electric Resources will be interrupted prior to FPL's use of demand side management programs (such as FPL's On Call program or Commercial Industrial Load Control programs) to avoid activation of any part of the FPL Emergency Plan for Capacity Shortages/Transmission Limitations And Long Term Fuel Shortages.
- dd) "Transmission Provider(s)" means (i) FPL with respect to the entity transmitting the Power and Energy from the Point(s) of Delivery and (ii) Duke with respect to the entity transmitting Power and Energy from the interchange with FPL Transmission interface to the Winter Park Interconnection Point.
- ee) "Transmission System" means the transmission system of the Transmission Provider(s).
- ff) "Winter Park Interconnection Points" means the City of Winter Park, FL interconnection point(s) on the Duke Transmission System at the Interlachen and Canton Substations.

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AGREED TO AS OF THE TRANSACTION DATE SET FORTH ABOVE.

FLORIDA POWER & LIGHT COMPANY

CITY OF WINTER PARK, FLORIDA

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

APPENDIX A
MONTHLY OPTION PAYMENT CALCULATION

The Monthly Option Payment for each Monthly Billing Period shall be determined according to the following formula:

[REDACTED]

Where:

[REDACTED]

[REDACTED]

Year	Demand Charge (\$/Kw-Month)
2017	[REDACTED]
2018	[REDACTED]
2019	[REDACTED]

APPENDIX B
MONTHLY ENERGY NON-FUEL PAYMENT (MENFP) CALCULATION

The Monthly Energy Non-Fuel Payment for each Monthly Billing Period shall be determined according to the following formula:

[REDACTED]

Where:

[REDACTED];

[REDACTED]

[REDACTED]

Year	NFEP (\$/kWh)
2017	[REDACTED]
2018	[REDACTED]
2019	[REDACTED]

APPENDIX C

MONTHLY ENERGY FUEL PAYMENT (MEFP) CALCULATION

The Monthly Energy Fuel Payment for each Monthly Billing Period is comprised of the Monthly Fuel Charge and a Monthly Fuel Adjustment calculated for On-peak and Off-peak time periods in each Monthly Billing Period.

On-peak and Off-peak Energy Fuel Pricing

Buyer shall pay Seller a monthly on-peak and off-peak Fuel Charge and on-peak and off-peak Fuel Adjustment Charge for the Energy Quantity based upon the fuel factors and the fuel adjustment factors determined pursuant to Appendix C. The "Fuel Charge" for each month shall be an amount equal to (i) the product of the estimated On-peak Fuel Charge Factor determined pursuant to Appendix C Schedule 1 for the applicable month and the on-peak Energy Quantity for the applicable month, plus (ii) the product of the estimated Off-peak Fuel Charge Factor determined pursuant to Appendix C Schedule 1 for the applicable month and the off-peak Energy Quantity for the applicable month. The "Fuel Adjustment Charge" shall be an amount equal to (i) the product of the actual On-peak Fuel Adjustment Charge Factor determined pursuant to Appendix C for the applicable month that the Fuel Charge is being trued-up and the on-peak Energy Quantity for the applicable month that the Fuel Charge is being trued-up, plus (ii) the product of the actual Off-peak Fuel Adjustment Charge Factor determined pursuant to Appendix C for the applicable month that the Fuel Charge is being trued-up and the off-peak Energy Quantity for the applicable month that the Fuel Charge is being trued-up.

On-peak and off-peak time periods are those contained in Seller's retail tariff GSLDT-3. The current on-peak periods are for November 1 through March 31, Monday through Fridays during the hours from 6 a.m. to 10 a. m. and 6 p.m. to 10 p.m. excluding Thanksgiving Day, Christmas Day, and New Years Day and for April 1 through October 31, Mondays through Fridays during the hours 12 noon to 9 p.m. excluding Memorial Day, Independence Day, and Labor Day. All other hours are in the off-peak period.

Fuel Pricing True-up

The fuel factors used to bill the Fuel Charges shall be projected by November 30th of every year for the following Calendar Year. The Fuel Charge shall then be subject to true-up through the Fuel Adjustment Charge. Buyer shall be billed an estimated Fuel Charge each month for the Energy Quantity delivered in the preceding month. Any difference between the estimated Fuel Charges and the Fuel Charges based on actual fuel costs shall be billed or credited to Buyer through the Fuel Adjustment Charge on the first bill rendered after such actual fuel costs have been determined. If the Fuel Adjustment Charge is positive, such amount shall be billed to Buyer and if the Fuel Adjustment Charge is negative, such amount shall be credited to Buyer. The amount to be billed or credited for any over-collections or under-collections based on such estimates versus actual costs shall include interest accrued at the average of the Prime Rate as published in the Wall Street Journal for the last business day of the current and prior month and charged or applied to the average of the beginning and ending true-up balance for the month. Seller shall use reasonable diligence when estimating monthly fuel charges so as to avoid any significant difference between estimated and actual

monthly fuel charges to Buyer. Fuel Adjustment Charges shall always be based on Seller's actual costs for fuel and purchased power.

Fuel Charge Factor Formula and Fuel Adjustment Charge Factor Formula

1. The Fuel Charge Factors.

- (a) The amounts included in the estimated and actual total expense of system fuel and Purchased Economic Power shall be consistent with 18 CFR 35.14 and shall include without limitation fees for disposal of spent nuclear fuel and/or high-level radioactive waste as specified in the Contract for Disposal of Spent Nuclear Fuel And/or High-Level Radioactive Waste between the United States of America represented by the US Department of Energy and Florida Power and Light Seller dated June 1983.
- (b) The total expense of estimated and actual system fuel and Purchased Economic Power included in the Fuel Charge Factors and the Fuel Adjustment Charge Factors shall be the cost of:
 - (i) fuel consumed in Seller's own plants, and Seller's share of fuel consumed in jointly owned or leased plants;
 - (ii) the actual identifiable fuel costs associated with energy purchased for reasons other than identified in section 1(b)(iii) of this Appendix;
 - (iii) the Total Cost Of The Purchase as defined in section 1(d) of this Appendix, if the reserve capacity of Seller is adequate independent of all other purchases where nonfuel charges are included;
 - (iv) generation energy charges for any purchase if the total amount of generation energy charges is less than Seller's Total Avoided Variable Costs;
 - (v) less the cost of fuel recovered through all intersystem sales;
 - (vi) plus any Taxes on the energy cost of fuel or, electric energy generated, where such Taxes are not included elsewhere.
- (c) The cost of fuel included in the estimated and actual system fuel and Purchased Economic Power expenses shall include no items other than those listed in the account 151 of the FERC Uniform System of Accounts For Public Utilities and Licensees. The cost of nuclear fuel shall be that as shown in account 518, except that if account 518 also contains any expenses for fossil fuel that has already been included in the cost of fossil fuel, it shall be deducted from this account.
- (d) For the purpose of section 1 (b) (iii) and (iv), the following definitions apply:
 - (i) "Purchased Economic Power" means power or energy purchased over a period of 12 months or less where the Total Cost Of The Purchase is less than Seller's Total Avoided Variable Cost;
 - (ii) "Total Cost Of The Purchase" means all charges incurred in buying Purchased Economic Power and having such power delivered to FPL's Transmission System and includes, but is not limited to, capacity reservation charges, generation energy charges, adders, and any transmission or wheeling charges associated with the purchase.

(iii) "Total Avoided Variable Costs" means all identified and documented variable costs that would have been incurred by Seller had a particular Purchase Economic Power transaction not been made, including, but are not limited to, those costs associated with fuel, startup, shutdown or any purchases that would have been made in lieu of the Purchased Economic Power transaction made.

(e) For the purpose of section 1 (b) (iii), the system reserved capacity criteria used by Seller's system operators is demand and energy purchased for a period of less than a year and shall be deemed as being for reliability purposes if Seller expects that the purchase is required in order to maintain operating reserves in accordance with Prudent Utility Practice.

(f) Total system net generation and Purchased Economic Power costs included in the Fuel Charge Factors and the Fuel Adjustment Charge Factors shall be the sum of:

- (i) generation,
- (ii) purchases,
- (iii) exchange received, less
- (iv) energy associated with pumped storage operations, less
- (v) intersystem sales referred to in section 1 (b) (v) of this Appendix A, less
- (vi) total system losses (losses shall be deemed to be zero because Buyer takes Partial Requirements Electric Service where energy is first received into the Seller's transmission system.).

(g) Calculation of estimated On-peak Fuel Charge Factor:

$((\text{Estimated total fuel costs and net power transactions defined in 1(b) and (c)}^1 * \text{On-peak cost ratio}^2) / (\text{estimated total net generation defined in 1(f)}^1 * \text{On-peak load ratio}^2))$

(h) Calculation of estimated Off-peak Fuel Charge Factor:

$((\text{Estimated total fuel costs and net power transactions defined in 1(b) and (c)}^1 * \text{Off-peak cost ratio}^2) / (\text{estimated total net generation defined in 1(f)}^1 * \text{Off-peak load ratio}^2))$

- (i) The attached Appendix C Schedule 1 illustrates the calculation of the On-peak and Off-peak Fuel Charge Factors.
- (ii) "On-peak" and "Off-peak" shall have the meanings attributed to such terms in Seller's retail tariff GSLDT-3.

¹ Total fuel costs and net power transactions and total MWh generation estimates approved by the FPSC for the current period. Includes applicable FERC adjustments.

² On-peak and off-peak cost and load ratios calculated using cost and load data from the Production Costing Model POWRSYM

2. The Fuel Adjustment Charge Factors.

(a) Calculation of On-peak Fuel Adjustment Charge Factor:

Actual On-peak Fuel Charge Factor minus estimated On-peak Fuel Charge Factor

(b) Calculation of Off-peak Fuel Adjustment Charge Factor:

Actual Off-peak Fuel Charge Factor minus estimated Off-peak Fuel Charge Factor

The actual On-peak and Off-peak Fuel Charge Factors shall be calculated by applying actual costs and expenses to the formulas used to calculate the estimated On-peak and Off-peak Fuel Charge Factors of Appendix C. – Schedule 1

Appendix C - Schedule 1

Calculation of On-Peak and Off-Peak Fuel Charge Factors

<u>Line</u>	<u>Description</u>	<u>Amount</u>
	Total Fuel Costs and Net Power Transactions	
1	Cost of Fuel Consumed - Section 1(b)(i)	
2	Fuel Costs for Energy Purchased - Section 1(b)(ii)	
3	Total Cost Of The Purchase - Section 1(b)(iii)	
4	Generation energy charges - Section 1(b)(iv)	
5	Cost of Fuel Recovered Through all Intersystem Sales - Section 1(b)(v)	
6	Taxes on Energy Cost of Fuel or Electric Energy Generated - Section 1(b)(vi)	
7	Total Fuel Costs and Net Power Transactions - Section 1(g) (Sum Lines 1-4, less line 5, plus line 6)	
	<u>Total Net Generation</u>	
8	Generation - Section 1(f)(i)	
9	Purchases - Section 1(f)(ii)	
10	Exchanged Received 1(f)(iii)	
11	Energy Associated With Pumped Storage Operations - Section 1(f)(iv)	
12	Intersystem Sales Included in Line 5 - Section 1(f)(v)	
13	Total Net Generation - Section 1(f) (Sum lines 8 - 10, less lines 11 - 12)	
14	On-peak Cost Ratio - Section 1(g) (POWRSYM)	
15	Total On-peak Fuel Costs and Net Power Transactions - Section 1(g) (Line 7 x Line 14)	
16	On-peak Load Ratio - Section 1(g) (POWRSYM)	
17	On-peak Net Generation - Section 1(g) (Line 13 x Line 16)	
18	ON-PEAK FUEL FACTOR – Section 1(g)(Line 15 / Line 17)	
19	Off-peak Cost Ratio - Section 1(h) (POWRSYM)	
20	Total Off-peak Fuel Costs and Net Power Transactions - Section 1(h) (Line 7 x Line 19)	
21	Off-peak Load Ratio - Section 1(h) (POWRSYM)	
22	Off-peak Net Generation - Section 1(h) (Line 13 x Line 21)	
23	OFF-PEAK FUEL FACTOR - Section 1(h) (Line 20 / Line 22)	

**NATIVE LOAD FIRM FIXED CAPACITY AND PARTIAL REQUIREMENTS
TRANSACTION CONFIRMATION**

Between
City of Winter Park, FL and Florida Power & Light Company

Date: _____

Seller: Florida Power & Light Company
700 Universe Blvd, MC: EMT/JB
Juno Beach, FL 33408

Buyer: City of Winter Park, FL
Electric Utility Department
401 South Park Ave
Winter Park, FL 32789

Attn: Director of Origination
Phone: 561.691.7880
Fax: 561.625.7517
Email: timothy.gerrish@fpl.com
(Above address for any Notices)

Attn: Director Electric Utility Department
Phone: 407-599-3399
Fax: 407-599-3233
Email: jwarren@cityofwinterpark.org
(Above address for any Notices)

Governing Agreement:

This Transaction Confirmation (the "Native Load Firm Transaction" or "Transaction Confirmation") sets forth the terms and conditions of a transaction to be entered into between Seller and Buyer pursuant to Florida Power & Light Company's FERC Electric Tariff No. 1 ("Tariff"). All terms and conditions of the Tariff shall apply to this Transaction Confirmation unless otherwise explicitly set forth to the contrary herein and all terms used but not defined herein shall have the meanings ascribed to such terms according to the Tariff, unless otherwise defined below.

- 1) **Seller's Operating Representative:** Vice President, Energy Marketing and Trading or his/her designee
- 2) **Buyer's Operating Representative:** Director Electric Utility Department or his/her designee
- 3) **Buyer's Service Agreement:** August 12, 2013
- 4) **Transaction Date:** August 12, 2013.
- 5) **Point(s) of Delivery:** Delivered to the FPL Transmission System.
- 6) **Delivery Period:** Beginning Hour Ending 0100 Eastern Prevailing Time on January 1, 2014 to Hour Ending 2400 EPT on December 31, 2019, including weekends and NERC Holidays, unless sooner terminated as permitted in this Transaction Confirmation or Tariff; provided, however, Seller shall have no obligation to provide, or Buyer to purchase, Power and Energy unless and until the conditions precedent set forth in Section 11 have been satisfied or waived. Seller will make the Quantity of Partial Requirements Power and Energy available to Buyer all hours of every day during the Delivery Period. Prior to the commencement of the Delivery Period, Seller shall have no obligation to provide, and Buyer shall have no obligation to purchase, Fixed Capacity or Partial Requirements Power and Energy. Nothing in this Transaction Confirmation or Tariff is to be construed as extending the time permitted to raise Disputes or as extending the period of time for providing Power and Energy. At the end of the

Delivery Period, each Party's obligations to the other Party under this Transaction Confirmation except those obligations that, pursuant to this Transaction Confirmation or by their express terms survive the end of the Delivery Period, shall automatically terminate, and each Party expressly waives any and all rights to raise in any forum a claim that the other Party must provide or purchase any level or amount of Power and Energy hereunder on any basis.

- 7) **Power and Energy:** Seller may furnish Power and Energy from any available Electric Resources it chooses for sale to the Buyer. Seller will have no obligation under this Transaction Confirmation to plan its system or modify its facilities in order to provide or maintain the Power and Energy provider hereunder. For the avoidance of doubt, this is not an Economy Energy transaction as set forth in and defined by the Tariff.

8) **Quantity of Power and Energy:**

- a) From January 1, 2014 to June 30, 2014, the Power and Energy furnished by Seller shall be "Fixed Capacity", in that, subject to Force Majeure, Seller shall supply and Buyer shall receive 23 MW of Capacity and associated Energy each month at the Point(s) of Delivery to serve Buyer's retail load, with a firmness equivalent to Seller's Native Load customers. The Fixed Capacity shall be scheduled in accordance with Appendix E.
- b) From July 1, 2014 to December 31, 2014, the Power and Energy furnished by Seller shall be "Fixed Capacity", in that, subject to Force Majeure, Seller shall supply and Buyer shall receive 13 MW of Capacity and associated Energy each month at the Point(s) of Delivery to serve Buyer's retail load, with a firmness equivalent to Seller's Native Load customers. The Fixed Capacity shall be scheduled in accordance with Appendix E.
- c) From January 1, 2015 to December 31, 2016, the Power and Energy furnished by Seller shall be "Partial Requirements" in that,
- i) subject to Force Majeure, Seller shall supply and Buyer shall receive the quantity of Energy and Capacity required to serve all of Buyer's retail load plus any losses between the Point(s) of Delivery and the Winter Park Interconnection Points along with all associated Generation Related Services, with a firmness equivalent to Seller's Native Load customers, but net of the
 - (1) Gainesville Regional Utilities Purchase;
 - (2) Covanta Energy Purchase;
 - (3) OUC Distribution Purchase;
 - (4) purchase of renewable energy as set forth in Section 15 below; and
 - (5) purchases by Buyer during periods where Seller is unable to deliver Partial Requirements Power and Energy at the Point(s) of Delivery.
 - ii) Except as set forth in 8(c)(i)(1)-(5), Buyer shall in no circumstances purchase any Capacity or Energy from anyone other than the Seller during the Delivery Period.
 - iii) Buyer and Seller agree that the quantity of Energy delivered to the Winter Park Interconnection Points from the Gainesville Regional Utilities Purchase and the Covanta

Energy Purchase shall be at the contractual amounts established in those agreements and as defined in Section 19. Buyer shall be responsible for any energy imbalance penalties or charges as a result of those purchases failing to deliver the contractual amount. The parties mutually agree to develop procedures for dynamically scheduling the metered generation of those purchases as necessary to minimize energy imbalances. The cost, if any, associated with establishing dynamic scheduling of either the Gainesville Regional Utilities Purchase or the Covanta Energy Purchase shall be the responsibility of Buyer.

- iv) Seller has the option ("Seller's Pricing Option"), with one year's prior written notice to Buyer to extend the term of the Partial Requirements Power and Energy provided pursuant to this Section 8(c) in annual increments through December 31, 2019 if notice is given before:
 - (1) January 1, 2016 to extend the term through December 31, 2017,
 - (2) January 1, 2017 to extend the term through December 31, 2018, and
 - (3) January 1, 2018 to extend the term through December 31, 2019.
 - v) The price for service under this Transaction Confirmation during any term extension pursuant to Section 8(c)(iv) shall be in accordance with the pricing shown in Appendices A-D.
- d) If the Seller does not exercise the Seller Pricing Option contained in 8(c)(iii) above then from January 1, 2017 to December 31, 2019, the Power and Energy furnished by Seller shall be "Partial Requirements" in that, subject to Force Majeure, Seller shall supply and Buyer shall receive a quantity of Capacity and any Energy not supplied by the System Firm Transaction to serve all of Buyer's retail load plus any losses between the Point(s) of Delivery and the Winter Park Interconnection Points along with all associated Generation Related Services, with a firmness equivalent to Seller's Native Load customers, but net of the:
- i) Gainesville Regional Utilities Purchase;
 - ii) Covanta Energy Purchase;
 - iii) OUC Distribution Purchase;
 - iv) purchase of renewable energy as set forth in Section 15 below; and
 - v) purchases by Buyer during periods where Seller is unable to deliver Partial Requirements Power and Energy at the Point(s) of Delivery.
- Except as set forth in 8(d)(i)-(v) and 8(e), Buyer shall in no circumstances purchase any Capacity or Energy from anyone other than the Seller during the Delivery Period.
- e) In addition to the OUC Distribution Purchase, Buyer has the option to purchase from OUC beginning no earlier than January 1, 2017 through a new transmission interconnection to be established between OUC and the Buyer ("OUC Purchase Option"). The Buyer must provide Seller at least one (1) year prior written notice of its intention to exercise the OUC Purchase Option. If Buyer exercises the OUC Purchase Option, then Seller has the option exercisable by written notice to OUC within 3 months of Buyer's written notice exercising the OUC Purchase Option to discontinue Partial Requirements Power and Energy under this Transaction Confirmation upon expiration of the OUC Purchase Option notice period and replace the Partial Requirements Power and Energy product with a 30 MW "Fixed

Capacity” product each month thereafter for the remainder of the term (“Seller Fixed Capacity Option”). If Seller does not exercise the Seller Fixed Capacity Option then Seller shall continue to provide Partial Requirements Power and Energy but net of the additional purchase from OUC pursuant to the OUC Purchase Option.

- f) If requested by either party, the parties shall amend this Transaction Confirmation to reflect the exercise of the options in Sections 8(c), 8(d) and 8(e).

9) Transmission Service & Scheduling:

- a) The Point(s) of Delivery for the Power and Energy (whether Fixed Capacity or Partial Requirements) shall be at those FPL Transmission System interconnection(s) designated by Seller. Seller shall be responsible for obtaining any transmission services necessary for the delivery of Power and Energy to the Point(s) Of Delivery and for the costs associated with such transmission service(s) to the Point(s) Of Delivery. Buyer shall be responsible for obtaining any transmission services necessary for the delivery of Power and Energy from the Point(s) Of Delivery and for the costs associated with such transmission service(s) from the Point(s) Of Delivery; (iii) transmission service through the FPL Transmission System must be obtained in accordance with the applicable Open Access Transmission Tariff of FPL on file with the FERC. Power and Energy shall be scheduled in accordance with the FPL Transmission System's scheduling procedures. Any arrangements with third parties and compensation to any third parties associated with Power and Energy transactions to such Point(s) Of Delivery shall be the sole responsibility of Seller, and any arrangements with third parties and compensation to any third parties associated with Power and Energy transactions from such Point(s) Of Delivery shall be the sole responsibility of the Buyer.
- b) Buyer recognizes that the Transmission Provider(s) may curtail transmission service and that upon notification of such a requirement to curtail, Buyer and Seller shall be obligated to do so, and if Buyer fails to institute the required curtailment, the Transmission Provider(s) will be entitled to limit deliveries during the period any shortage of capacity and/or energy exists. In no event shall Seller be liable under this Transaction Confirmation for any shortage of capacity, energy or any element of Power and Energy to the extent resulting from the transmission and/or distribution of Power and Energy, capacity and/or energy or any acts or omissions of Seller in its capacity as a Transmission Provider. There shall be no proration in Buyer's payment or performance obligations under this Transaction Confirmation as a result of curtailments, interruptions, or reductions of transmission service or Ancillary Services at and from the Winter Park Interconnection Point(s), whether as a result of Force Majeure or otherwise.

10) Power And Energy Charge:

- a) Subject to the pricing limitations set forth in Section 4 of the Tariff, the Power and Energy Charge shall be comprised of the monthly sum of the following four (4) components:
 - i) Monthly Capacity Payment (“MCP”);
 - ii) Monthly Energy Non-Fuel Payment (“MENFP”);
 - iii) Monthly Energy Fuel Payment (“MEFP”); and
 - iv) Monthly Customer Charge (“MCC”).
- b) Beginning on the first day of the Delivery Period, and thereafter for each Monthly Billing Period of the Delivery Period, Buyer shall be obligated to pay to Seller the MCP set forth in

Appendix A, the MENFP set forth on Appendix B, the MEFP set forth on Appendix C, and the MCC set forth on Appendix D.

- c) There shall be added to the Power and Energy Charge any amounts charged to Seller for any transmission services or charges that are incurred in the delivery of Fixed Capacity and/or Partial Requirements Power and Energy (other than those transmission charges which are Seller's responsibility as set forth in the requirements for Power and Energy) in accordance with the OATT of either Transmission Provider, or in connection with related agreements and arrangements for transmission-related schedules or services, and such amounts shall be forwarded to and paid by Buyer.
- d) There shall be added to the Power and Energy Charge any amounts for Change In Law Costs, Tax Adjustments, Indemnification, and any other charges or assessments permitted by this Transaction Confirmation or Tariff.
- e) Timing and Method of Payment. On or before the tenth (10) day of each Monthly Billing Period, Seller shall provide to Buyer a detailed written invoice on paper and/or by electronic media (in the original file format with all formulas and calculations intact) for the amounts owed by the Buyer pursuant to this Transaction Confirmation (and if applicable the amounts owed by the Seller pursuant to any corrections owed by the Seller). The Parties agree to net any undisputed offsetting amounts which are shown on any monthly billing statement. Buyer shall pay such monthly billing statement on the later of the 20th day of each month or the tenth day after which Buyer receives such invoice (the "Payment Due Date"). The monthly billing statement shall detail the amount and calculation of the following: a) MCP, b) MENFP, c) MEFP, and d) MCC.

11) **Conditions Precedent:** The obligations of Seller to generate, deliver and sell, and of Buyer to accept delivery of and purchase, Fixed Capacity and/or Partial Requirements Power and Energy shall be subject to the satisfaction or waiver (by the Party entitled to waive the applicable condition) of all of the following conditions precedent:

- a) On or before November 1, 2013, Buyer shall have acquired the necessary network and/or firm point-to-point transmission rights from the affected Transmission Provider(s) for the Delivery Period on terms reasonably acceptable to Buyer to allow for firm delivery of Fixed Capacity and/or Partial Requirements Power and Energy from the Point(s) of Delivery to the Winter Park Interconnection Point(s);
- b) The condition precedent set forth above may only be waived by the Buyer on or before November 1, 2013, or such subsequent date as agreed to in writing by the Parties.
- c) In the event the condition precedent set forth hereinabove is not satisfied (unless such condition is waived in writing by the date provided above), this Transaction Confirmation, except for those provisions that pursuant to this Transaction Confirmation or by their express terms survive such termination, shall terminate automatically without any further obligation and without any need by either Party to take any further action, shall have no further force and effect and Seller and Buyer expressly waive any and all rights to raise in any forum a claim that the other Party must provide or purchase Partial Requirements Power and Energy hereunder on any basis

12) **Performance Security:**

a) Buyer covenants that it shall maintain, at all times in which it has a Credit Rating, a minimum of an Investment Grade Credit Rating. If Buyer does not have a Credit Rating from S&P or Moody's or does not maintain an Investment Grade Credit Rating, then Buyer shall be required to do the following:

i) In the event Buyer is required to secure its obligations to Seller by a letter of credit as provided by Section 3.2 of the Tariff, the letter of credit shall be in form and substance reasonably acceptable to Seller naming Seller as the sole beneficiary and from a credit support provider approved by Seller in Seller's sole discretion, and shall at all times be in an amount equal to or greater than twice the highest total monthly bill incurred by Buyer under this Transaction Confirmation over the most recent prior twelve (12) month period. The letter of credit shall, among other things, permit Seller to make a drawing for the full amount of the letter of credit in the event that

(1) Buyer fails to renew or replace the letter of credit at least thirty (30) calendar days prior to the stated expiration of the letter of credit or

(2) An Event of Default by Buyer has occurred and is continuing.

Upon notice by Seller to Buyer from time to time of the amount of the highest monthly bill incurred by Buyer over the most recent twelve (12) month period, Buyer, if required to post and/or maintain a letter of credit, shall adjust the amount of the letter of credit to the revised required amount within five (5) Business Days. All costs of a letter of credit shall be borne by Buyer.

b) Financial Information: Buyer shall deliver to Seller each fiscal year, a copy of the annual report containing audited consolidated financial statements for such fiscal year with respect to Buyer. In all cases the statements shall be for the most recent accounting period and shall be prepared in accordance with generally accepted accounting principles. Buyer shall diligently pursue the preparation, certification and delivery of the statements. Such statements shall be delivered to the Seller when available. Buyer's books, records and accounts shall be open to inspection, audit and reproduction, during normal working hours by Seller or its authorized representative on three (3) Business Days prior notice.

c) Buyer hereby waives any and all rights it may have at law or otherwise to require Seller to provide financial assurances or security (including cash, letters of credit or other security) in respect of Seller's obligations under this Transaction Confirmation.

13) **Events of Default:** In addition to bankruptcy or insolvency under Section 3.5 of the Tariff, the occurrence of any of the following shall constitute an "Event of Default" with respect to a Party (a "Defaulting Party"):

a) failure to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within five (5) Business Days after written notice;

b) any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated;

c) the failure to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default) if such failure is not remedied within five (5) Business Days after written notice;

- d) the failure of such Party to satisfy the creditworthiness/collateral requirements pursuant to Section 3.2 of the Tariff;
- e) such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such Party under this Transaction Confirmation to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the other Party;
- f) the occurrence and continuation of (1) a default, event of default or other similar condition or event in respect of such Party under one or more agreements or instruments, individually or collectively, relating to indebtedness for borrowed money in an aggregate amount of not less than ten million dollars (\$10,000,000.00) ("Cross Default Amount"), which results in such indebtedness becoming, or becoming capable at such time of being declared, immediately due and payable or (2) a default by such Party in making on the due date therefor one or more payments, individually or collectively, in an aggregate amount of not less than the Cross Default Amount;
- g) with respect to such Party's Guarantor or a Party's issuer of a letter of credit, if any, (1) if any representation or warranty made by a Guarantor or the issuer of a letter of credit is false or misleading in any material respect when made or when deemed made or repeated; (2) the failure of a Guarantor or issuer of a letter of credit to make any payment required or to perform any other material covenant or obligation in any guaranty or letter of credit made in connection with this Transaction Confirmation and such failure shall not be remedied within three (3) Business Days after written notice; (3) a Guarantor or issuer of a letter of credit becomes bankrupt or insolvent as set forth in Section 3.5 of the Tariff; (4) the failure of a Guarantor's guaranty or the issuer's letter of credit to be in full force and effect for purposes of this Transaction Confirmation (other than in accordance with its terms) prior to the satisfaction of all obligations of such Party under this Transaction Confirmation without the written consent of the other Party; or (5) a Guarantor or issuer of a letter of credit shall repudiate, disaffirm, disclaim, or reject, in whole or in part, or challenge the validity of any guaranty or letter of credit.
- h) with respect to the System Firm Transaction, an Event of Default by the Defaulting Party shall have occurred and be continuing.

14) Remedies.

- a) If an Event of Default by Buyer occurs and is continuing, then Buyer shall:
 - i) pay all amounts outstanding under this Transaction Confirmation and the System Firm Transaction as of the date of notice or such knowledge within ten (10) Business Days of receipt of such notice or such knowledge,
 - ii) post and maintain a letter of credit in favor of Seller for the amount required in Section 12 above, and
 - iii) commence prepaying Seller weekly in advance for all amounts due as reasonably computed and invoiced by Seller under this Transaction Confirmation and the System Firm Transaction until such time as Buyer satisfies the applicable requirements of Subsection (b). In the event that Seller draws on the letter of credit from time to time, Buyer shall post and maintain an additional letter of credit, or amend the existing letter

of credit to reinstate the available amount thereunder by an amount equal to the amount drawn within three (3) Business Days after such drawing.

Seller may, at its option, exercise any one or combination of the following remedies:

- iv) calculate a Settlement Amount owed by Buyer to Seller for the termination of this Transaction Confirmation and the System Firm Transaction and to terminate this Transaction Confirmation and the System Firm Transaction without penalty or further obligation by Seller by providing notice to Buyer; and/or
 - v) draw on any outstanding letter of credit issued or any other security issued for Seller's benefit in the amount of Seller's settlement Amount.
- b) Upon the occurrence of any Event of Default by Seller, Buyer may, at its option, calculate a Settlement Amount owed by Seller to Buyer for the termination of this Transaction Confirmation and the System Firm Transaction and to terminate this Transaction Confirmation and the System Firm Transaction without penalty or further obligation by Buyer by providing notice to Seller.
- c) **ABSENT FRAUD, THE REMEDIES SET FORTH HEREIN CONSTITUTE THE SOLE AND EXCLUSIVE REMEDIES AGAINST THE OTHER FOR EVENTS OF DEFAULT, BREACH OF CONTRACT OR ANY FAILURE TO PERFORM ANY OF THE OBLIGATIONS UNDER THIS TRANSACTION CONFIRMATION.**
- 15) **Renewable Purchases:** During the Delivery Period Buyer may purchase renewable capacity and energy from a source other than the Seller or an affiliate of the Seller if and only if such generating source is on the distribution side of the Winter Park Interconnection Points. The output of any renewable capacity and energy source, excluding solar capacity installed under the Buyer's existing net metering policy, shall be metered to determine the amount of energy generated for each hour of the Term. Such renewable capacity exceeding 2,500 kW during the hour of the monthly peak, shall be added to Buyer's metered load when determining the Demand Quantity. Buyer shall promptly notify Seller of the proposed purchase or receipt of Energy and/or Capacity to be delivered to Buyer's electric system from such renewable energy resource.
- 16) **Section 205 Filing:** In the event that there is any filing pursuant to Section 205 of the Federal Power Act to revise the Tariff or this Transaction Confirmation, including without limitation the pricing formulas and the recovery of Buyer's pro-rata share of fuel charge costs, expenses, charges, Taxes, fees and/or assessments; the Parties reserve their right to oppose any such filing to the extent such filing is inconsistent with the provisions of this Transaction Confirmation and Tariff. The Parties shall be limited in any opposition to opposing the matters described in the foregoing sentence and shall not be entitled to argue that changes should be made to any other aspect of this Transaction Confirmation or Tariff in order to make the overall rate just and reasonable or otherwise.
- 17) **Representations and Warranties.**
- a) **Seller's Representations and Warranties.** Seller hereby represents and warrants as follows:
 - i) Seller is a corporation duly organized, validly existing and in good standing under the laws of the State of Florida and is qualified in each other jurisdiction where the failure to so qualify would have a material adverse effect upon the business or financial condition of Seller; and Seller has all requisite power and authority to conduct its business, to

own its properties, and to execute, deliver, and perform its obligations under this Transaction Confirmation.

ii) The execution, delivery, and performance of its obligations under this Transaction Confirmation by Seller have been duly authorized by all necessary corporate action, and do not:

- (1) Require any consent or approval of Seller's board of directors, other than that which has been obtained and is in full force and effect;
- (2) Violate any provision of Applicable Laws or violate any provision in any corporate documents of Seller, the violation of which could have a material adverse effect on the ability of Seller to perform its obligations under this Transaction Confirmation;
- (3) Result in a breach or constitute a default under Seller's corporate charter or bylaws, or under any contract relating to the management or affairs of Seller or any indenture or loan or credit contract, or any other contract, lease, or instrument to which Seller is a party or by which Seller or its properties or assets may be bound or affected, the breach or default of which could reasonably be expected to have a material adverse effect on the ability of Seller to perform its obligations under this Transaction Confirmation; or
- (4) Result in, or require the creation or imposition of any mortgage, deed of trust, pledge, lien, security interest, or other charge or encumbrance of any nature upon or with respect to any of the assets or properties of Seller now owned or hereafter acquired, the creation or imposition of which could reasonably be expected to have a material adverse effect on the ability of Seller to perform its obligation under this Transaction Confirmation.

iii) This Transaction Confirmation is a valid and binding obligation of Seller, enforceable against Seller in accordance with its terms (except as such enforcement may be limited by bankruptcy, insolvency, or similar laws affecting the rights of creditors, or by general principles of equity).

iv) The execution, delivery, and performance of this Transaction Confirmation will not conflict with or constitute a breach or default under any contract of any kind to which Seller is a party or any judgment, order, statute, or regulation that is applicable to Seller.

v) All approvals, authorizations, consents, or other action required by any Governmental Authority to authorize Seller's execution, delivery, and performance under this Transaction Confirmation have been duly obtained and are in full force and effect.

b) Buyer's Representation and Warranties. Buyer hereby represents and warrants the following:

- i) Buyer is a Florida municipality properly constituted and existing.
- ii) All Governmental Approvals required by any Governmental Authority to authorize Buyer's execution, delivery, and performance under this Transaction Confirmation have been duly obtained and are in full force and effect.
- iii) The Buyer shall establish levy and collect rents, rates and other charges for the products and services provided by its electric utility system which rents, rates and other charges shall at least be sufficient to meet the operation and maintenance expenses of such electric utility system to comply with all covenants pertaining thereto contained in

and all other provisions of any resolution trust indenture or other security agreement relating to any bond or other evidences of indebtedness issues or to be issued by the Buyer to generate funds sufficient to fulfill the terms of all other contracts and agreements entered into by the Buyer including without limitation this Transaction Confirmation.

- iv) The execution, delivery, and performance of its obligations under this Transaction Confirmation by Buyer have been duly authorized by all necessary corporate action, and do not:
 - (1) Require any consent or approval other than that which has been obtained and is in full force and effect;
 - (2) Result in a breach or constitute a default under Buyer's charter or bylaws, or under any contract relating to the management or affairs of Buyer or any indenture or loan or credit contract, or any other contract, lease, or instrument to which Buyer is a party or by which Buyer or its properties or assets may be bound or affected, the breach or default of which could reasonably be expected to have a material adverse effect on the ability of Buyer to perform its obligations under this Transaction Confirmation;
 - (3) Result in, or require the creation or imposition of any mortgage, deed of trust, pledge, lien, security interest, or other charge or encumbrance of any nature (other than as may be contemplated by this Transaction Confirmation) upon or with respect to any of the assets or properties of Buyer now owned or hereafter acquired, the creation or imposition of which could reasonably be expected to have a material adverse effect on the ability of Buyer to perform its obligation under this Transaction Confirmation; and
 - (4) Violate any provision of Applicable Laws or violate any provision in any corporate documents of Buyer, the violation of which could have a material adverse effect on the ability of Buyer to perform its obligations under this Transaction Confirmation.
- v) Subject to Section 11 above, this Transaction Confirmation is a valid and binding obligation of Buyer, enforceable against Buyer in accordance with its terms (except as such enforcement may be limited by bankruptcy, insolvency, or similar laws affecting the rights of creditors or by general principles of equity).
- vi) The execution, delivery, and performance of this Transaction Confirmation will not conflict with or constitute a breach or default under any contract of any kind to which Buyer is a party or any judgment, order, statute, or regulation that is applicable to Buyer.

18) Other Terms/Conditions:

- a) [Intentionally left blank].
- b) **Force Majeure:** If an event constituting Force Majeure as defined in the Tariff lasts longer than fifteen (15) days, then the Buyer, at its sole discretion, can terminate this Transaction Confirmation.
- c) **Confidentiality:** Seller and Buyer regard the pricing terms and conditions in this Transaction Confirmation as proprietary trade secrets under Florida law. Each Party agrees to notify the other Party as soon as possible of any request for proprietary information, and not to distribute any proprietary information without first notifying the other

Party; provided, however, nothing herein limits an obligation of Seller or Buyer to disclose such information as may be required under Applicable Laws. Seller shall provide Buyer with a public version of this Transaction Confirmation and a sample monthly billing statement that redacts all pricing, terms and conditions that Seller considers to be a trade secret, and City agrees to keep such redacted information confidential as exempt from Florida's Public Record Act (Chapter 119, Florida statutes) to the fullest extent allowed by Applicable Laws. Seller may assume the Buyer's defense against any third party challenge seeking disclosure of the redacted information, but in any event Seller shall hold Buyer harmless and indemnify Buyer from and against all third party claims or actions, including attorneys' fees and damages, resulting from or arising out of the assertion of a trade secret exemption under Florida's Public Record Act with respect to the redacted information that Seller asserts is a trade secret. All information in this Transaction may be released after December 31, 2021.

- d) **Setoff Upon Termination.** Upon the designation of an event of default entitling a Party to terminate this Transaction Confirmation early ("Early Termination Date"), the terminating Party ("X") may, at its option and in its discretion, setoff, against any amounts Owed to the non-terminating Party ("Y") by X or any Affiliate of X under this Transaction Confirmation or under any other agreement, instrument and/or undertaking, any amounts Owed by Y to X or any of X's Affiliates (irrespective of the place of payment or booking office of the obligation) under this Transaction Confirmation or under any other agreement, instrument and/or undertaking. The obligations of Y and X under this Transaction Confirmation in respect of such amounts shall be deemed satisfied and discharged to the extent of any such setoff exercised by X and/or X's Affiliates. X will give Y notice of any setoff effected under this Section as soon as practicable after the setoff is effected, provided that failure to give such notice shall not affect the validity of the setoff. For purposes of this Section, "Owed" shall mean any amounts owed or otherwise accrued and payable (regardless of whether such amounts have been or could be invoiced) as of the Early Termination Date. If an obligation is unascertained, X may in good faith estimate that obligation and setoff on the basis of such estimate, subject to the relevant Party accounting to the other when the obligation is ascertained.
- e) **Trade Option Representation.** If this Transaction Confirmation meets the conditions contained in CFTC Regulation 32.3(a) ("Trade Option"), then each Party represents and warrants that the Party that is the offeree of a the Trade Option ("Offeree") represents to the other party ("Offeror") that it is a producer, processor, commercial user of or a merchant handling the commodity that is the subject of this commodity option transaction or the products or by-products thereof and is offered or entering into this commodity option transaction solely for purposes related to its business as such. Offeree and Offeror hereby confirm to each other that the Trade Option is intended to be physically settled so that, if exercised, the option would result in the sale of an exempt commodity for immediate or deferred delivery.
- f) **Netting of Payments.** The Parties hereby agree that they shall discharge mutual debts and payment obligations due and owing to each other on the same date pursuant to this Native Load Firm Transaction and the System Firm Transaction through netting, in which case all amounts owed by each Party to the other Party during the monthly billing period, interest, and payments or credits, shall be netted so that only the excess amount remaining due shall be paid by the Party who owes it. If no mutual debts or payment obligations exist

and only one Party owes a debt or obligation to the other during the monthly billing period, that Party shall pay such sum in full when due.

- g) **Waiver of Sovereign Immunity.** Buyer warrants and covenants that with respect to its contractual obligations under this Transaction Confirmation and performance thereof, it will not claim immunity on the grounds of sovereignty immunity or similar grounds with respect to itself or its revenues or assets from (a) suit, (b) jurisdiction of court, (c) relief by way of injunction, order for specific performance or recovery of property, (d) attachment of assets, or (e) execution or enforcement of any judgment. However, notwithstanding anything in this Transaction Confirmation or in the Tariff (including Section 7.2, Indemnification, of the Tariff) to the contrary, nothing shall be construed or applied as a waiver of the Buyer's sovereign immunity against third party tort claims, including those rights and limitations of liability under section 768.28, Florida statutes, as it may be amended. If the Seller pursues indemnity or a hold harmless defense from the Buyer in connection with a third-party tort claim, then the Buyer shall have the right to assert against any such third party claimant, the defense of sovereign immunity on behalf of itself and the Seller shall allow the Buyer to maintain that defense and shall take no action that will frustrate Buyer's ability to maintain a defense of sovereign immunity, including the procedures and limitations of liability in section 768.28, Florida statutes

19) **Additional Definitions:** When used herein with initial or complete capitalization, whether in the singular or in the plural, the following terms shall have the following defined meanings:

- a) "Ancillary Services" means those services as defined in the OATT.
- b) "Applicable Laws" means any and all federal, state regional or local statutes, laws, municipal charter provisions, regulations, ordinances, rules, judgments, orders, decrees, Governmental Approvals, licenses or permit requirements or other governmental requirements or restrictions, or any interpretation or administration of any of the foregoing by any Governmental Authority, that apply to the facilities, services or obligations of either Party under this Contract, whether now or hereafter in effect and that are enforceable in a court of law.
- c) "Business Day" means any day on which the Federal Reserve Member Banks in Florida are open for business. A Business Day shall begin at 8:00 a.m. EPT and end at 5:00 p.m. EPT.
- d) "Capacity" means net electrical power, in MW, provided by Seller's System and delivered to or available for Buyer's system at the Receipt Point.
- e) "Covanta Energy Purchase" means a block purchase of 10 MW by Buyer from Covanta Energy commencing July 1, 2014.
- f) "Credit Rating" means the respective rating then assigned to Buyer's unsecured senior long-term debt obligations (not supported by third party credit enhancement) by S&P or Moody's; and if no rating is assigned to Buyer's unsecured, senior long-term debt obligations by such agency, the lower of the general corporate credit rating or issuer rating, as applicable, assigned by such rating agency to Buyer.
- g) "Demand Charge" has the meaning specified in Appendix A.
- h) "Demand Quantity" has the meaning specified in Appendix A.
- i) "Duke" means Duke Energy in its capacity as a Transmission Provider.

- j) "Duke Transmission" means the transmitting or transporting of Power and Energy from the interchange with FPL Transmission to the Winter Park Interconnection Points.
- k) "Eastern Prevailing Time" or "EPT" means the time in effect in the Eastern Time Zone of the United States of America, whether Eastern Standard Time or Eastern Daylight Savings Time.
- l) "Energy" means electrical energy, expressed in MWh, provided by Seller and delivered to Buyer at the Point(s) of Delivery in accordance with the terms and conditions of this Transaction Confirmation.
- m) "Fuel Adjustment Charges" means monthly payments calculated in accordance with Appendix C.
- n) "Gainesville Regional Utilities Purchase" means a block purchase of 10 MWs by Buyer from Gainesville Regional Utilities commencing January 1, 2015.
- o) "Generation Related Services" means schedules 3 through 6 of the FPL OATT, excludes schedules 1 and 2 of the FPL OATT and excludes any and all services under the Duke OATT.
- p) "Governmental Approval" means any and all licenses, permits, franchises, contracts, approvals, authorizations, consents, waivers, rights, exemptions, releases, variances, exceptions, or orders of or issued by, any Governmental Authority under Applicable Laws.
- q) "Governmental Authority" means any national, state, regional or local government (whether domestic or foreign), any political subdivision thereof or any other governmental, quasi-governmental, judicial, executive, legislative, administrative, public or statutory instrumentality, authority, body, agency, department, bureau or entity or any arbitrator with authority to bind a Party at law.
- r) "HE" means "hour ending."
- s) "Investment Grade Credit Rating" means Buyer has a current and continuous Credit Rating from each of S&P and Moody's equal to or higher than "BBB-" (with a neutral/stable or higher outlook) by S&P (or its equivalent under any successor rating category of S&P) and/or "Baa3" (with a neutral/stable or higher outlook) by Moody's (or its equivalent under any successor rating category of Moody's). In determining whether Buyer has an Investment Grade Rating, if Buyer has a Credit Rating from both S&P and Moody's, Buyer's Credit Rating shall be an Investment Grade Credit Rating only if the above minimum ratings requirements are satisfied with respect to both S&P and Moody's.
- t) "Monthly Capacity Payment" or "MCP" means monthly payments calculated in accordance with Appendix A.
- u) "Monthly Customer Charge" means monthly payments calculated in accordance with Appendix D.
- v) "Monthly Energy Fuel Payment" or "MEP" means monthly payments calculated in accordance with Appendix C.
- w) "Monthly Energy Non-Fuel Payment" or "MENFP" means monthly payments calculated in accordance with Appendix B.
- x) "Native Load" means that load serving Seller's retail and wholesale power customers.

- y) "OATT" means the Transmission Provider'(s) Open Access Transmission Tariff on file at FERC, as amended from time to time.
- z) "OUC" means the Orlando Utilities Commission, a municipal utility owned and operated by the city of Orlando., Florida providing electricity services to customers in Orlando, St. Cloud, and parts of Orange and Osceola counties in Florida.
- aa)"OUC Distribution Purchase" means the purchase by Buyer of approximately 18 MW (at peak) of capacity and energy from the OUC via two distribution (12.47 kV) interconnections to its Ca-09 and IN-159 circuits provided that such distribution interconnections are transferred to OUC effective January 1, 2014 with OUC becoming contractually obligated to serve said two distribution interconnections.
- bb)"Point(s) of Delivery" " means the location at which Power and Energy is first delivered to the FPL's Transmission System from Electric Resources on Seller's System that are interconnected with the Seller's Transmission System or, in the case of purchased power, from points of interconnection between Seller's Transmission System and other transmission systems.
- cc)"Power and Energy" means the product Seller sells and delivers and Buyer pays and receives, consisting of Fixed Capacity and/or Partial Requirements, as the context requires.
- dd)"Seller's Pricing Option" has the meaning specified in Section 8(c)(iv).
- ee)"Seller's System" means, during the Delivery Period, (i) the Electric Resources as such may change from time to time during the Delivery Period, (ii) capacity and energy purchases by Seller pursuant to power purchase contracts and (iii) to the extent of the sale of electric power to Seller therefrom, all generating plants of co-generators, qualifying facilities, and independent power producers that are not owned by Seller but that produce electric power and sell it to Seller.
- ff) "Settlement Amount" means, with respect to this Transaction Confirmation and a Party, an amount that such Party determines in good faith and in a commercially reasonable manner to be the present value of the Economic Loss to it (net of any gains) resulting from termination of this Transaction Confirmation including costs associated, or that would be included, with entering into new arrangements which replace this Transaction Confirmation and losses (net of any gains) related to terminating or liquidating any hedges or related trading positions, provided that (i) in no event will internal costs, other than reasonable attorney's fees, be included in the calculation of any Settlement Amount; and (ii) the non-defaulting party shall not be required to enter into any offsetting or otherwise mitigating transactions solely for the purpose of establishing such losses or gains. Economic Loss shall (i) mean in the case of the Buyer an amount not to exceed the difference between the payments to be made under this Transaction Confirmation and the cost of replacement power and energy equivalent to the Power and Energy provided under this Transaction Confirmation for the balance of the Delivery Period; and (ii) in the case of the Seller, shall in any event include charges under Appendices A, B and D (but not Appendix C fuel costs) associated with sales to be made under this Transaction Confirmation until such time as the earlier of the end of the Delivery Period or FPSC allows recovery of such costs from Seller's retail customers.
- gg) "System Firm Transaction" means that certain "System Firm Partial Requirements Service Transaction Confirmation" between City of Winter Park, FL and Florida Power & Light Company dated August 12, 2013.

- hh) "Transmission Provider(s)" means (i) FPL with respect to the entity transmitting the Power and Energy from the Point(s) of Delivery and (ii) Duke with respect to the entity transmitting Power and Energy from the interchange with FPL Transmission interface to the Winter Park Interconnection Point.
- ii) "Transmission System" means the transmission system of the Transmission Provider(s).
- jj) "Winter Park Interconnection Points" means the City of Winter Park, FL interconnection point(s) on the Duke Transmission System at the Interlachen and Canton Substations.

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AGREED TO AS OF THE TRANSACTION DATE SET FORTH ABOVE.

FLORIDA POWER & LIGHT COMPANY

CITY OF WINTER PARK, FLORIDA

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

APPENDIX A
MONTHLY CAPACITY PAYMENT CALCULATION

The Monthly Capacity Payment for each Monthly Billing Period shall be determined according to the following formula:

[REDACTED]

Where:

[REDACTED]

[REDACTED];

Year	Demand Charge (\$/Kw-Month)
2014	[REDACTED]
2015	[REDACTED]
2016	[REDACTED]

Year	Demand Charge If Seller Option Not Elected (\$/kW-Month)	Demand Charge If Seller Option Elected (\$/kW-Month)
2017	[REDACTED]	[REDACTED]
2018	[REDACTED]	[REDACTED]
2019	[REDACTED]	[REDACTED]

APPENDIX B
MONTHLY ENERGY NON-FUEL PAYMENT (MENFP) CALCULATION

The Monthly Energy Non-Fuel Payment for each Monthly Billing Period shall be determined according to the following formula:

[REDACTED]

Where:

[REDACTED]

[REDACTED]

[REDACTED]

Year	NFEP (\$/kWh)
2014	[REDACTED]
2015	[REDACTED]
2016	[REDACTED]
2017	[REDACTED]
2018	[REDACTED]
2019	[REDACTED]

APPENDIX C
MONTHLY ENERGY FUEL PAYMENT (MEFP) CALCULATION

1) January 1, 2014 to December 31, 2016 MEFP Calculation

From January 1, 2014 to December 31, 2016 and during the extended term, if Seller exercises the Seller Pricing Option, the Monthly Energy Fuel Payment for each Monthly Billing Period is comprised of the Monthly Fuel Charge and a Monthly Fuel Adjustment calculated for On-peak and Off-peak time periods in each Monthly Billing Period.

On-peak and Off-peak Energy Fuel Pricing

Buyer shall pay Seller a monthly on-peak and off-peak Fuel Charge and on-peak and off-peak Fuel Adjustment Charge for the Energy Quantity based upon the fuel factors and the fuel adjustment factors determined pursuant to this Appendix C. The "Fuel Charge" for each month shall be an amount equal to (i) the product of the estimated On-peak Fuel Charge Factor determined pursuant to Appendix C Schedule 1 for the applicable month and the on-peak Energy Quantity for the applicable month, plus (ii) the product of the estimated Off-peak Fuel Charge Factor determined pursuant to Appendix C Schedule 1 for the applicable month and the off-peak Energy Quantity for the applicable month. The "Fuel Adjustment Charge" shall be an amount equal to (i) the product of the actual On-peak Fuel Adjustment Charge Factor determined pursuant to Appendix C for the applicable month that the Fuel Charge is being trued-up and the on-peak Energy Quantity for the applicable month that the Fuel Charge is being trued-up, plus (ii) the product of the actual Off-peak Fuel Adjustment Charge Factor determined pursuant to Appendix C for the applicable month that the Fuel Charge is being trued-up and the off-peak Energy Quantity for the applicable month that the Fuel Charge is being trued-up.

On-peak and off-peak time periods are those contained in Seller's retail tariff GSLDT-3. The current on-peak periods are for November 1 through March 31, Monday through Fridays during the hours from 6 a.m. to 10 a. m. and 6 p.m. to 10 p.m. excluding Thanksgiving Day, Christmas Day, and New Years Day and for April 1 through October 31, Mondays through Fridays during the hours 12 noon to 9 p.m. excluding Memorial Day, Independence Day, and Labor Day. All other hours are in the off-peak period.

Fuel Pricing True-up

The fuel factors used to bill the Fuel Charges shall be projected by November 30th of every year for the following Calendar Year. The Fuel Charge shall then be subject to true-up through the Fuel Adjustment Charge. Buyer shall be billed an estimated Fuel Charge each month for the Energy Quantity delivered in the preceding month. Any difference between the estimated Fuel Charges and the Fuel Charges based on actual fuel costs shall be billed or credited to Buyer through the Fuel Adjustment Charge on the first bill rendered after such actual fuel costs have been determined. If the Fuel Adjustment Charge is positive, such amount shall be billed to Buyer and if the Fuel Adjustment Charge is negative, such amount shall be credited to Buyer. The amount to be billed or credited for any over-collections or under-collections based on such estimates versus actual costs shall include interest accrued at the average of the Prime Rate as published in the Wall Street Journal for the last business day of the current and prior month and charged or applied to the average of the beginning and

ending true-up balance for the month. Seller shall use reasonable diligence when estimating monthly fuel charges so as to avoid any significant difference between estimated and actual monthly fuel charges to Buyer. Fuel Adjustment Charges shall always be based on Seller's actual costs for fuel and purchased power.

Fuel Charge Factor Formula and Fuel Adjustment Charge Factor Formula

1. The Fuel Charge Factors.

- (a) The amounts included in the estimated and actual total expense of system fuel and Purchased Economic Power shall be consistent with 18 CFR 35.14 and shall include without limitation fees for disposal of spent nuclear fuel and/or high-level radioactive waste as specified in the Contract for Disposal of Spent Nuclear Fuel And/or High-Level Radioactive Waste between the United States of America represented by the US Department of Energy and Florida Power and Light Seller dated June 1983.
- (b) The total expense of estimated and actual system fuel and Purchased Economic Power included in the Fuel Charge Factors and the Fuel Adjustment Charge Factors shall be the cost of:
 - (i) fuel consumed in Seller's own plants, and Seller's share of fuel consumed in jointly owned or leased plants;
 - (ii) the actual identifiable fuel costs associated with energy purchased for reasons other than identified in section 1(b)(iii) of this Appendix;
 - (iii) the Total Cost Of The Purchase as defined in section 1(d) of this Appendix, if the reserve capacity of Seller is adequate independent of all other purchases where nonfuel charges are included;
 - (iv) generation energy charges for any purchase if the total amount of generation energy charges is less than Seller's Total Avoided Variable Costs;
 - (v) less the cost of fuel recovered through all intersystem sales;
 - (vi) plus any Taxes on the energy cost of fuel or, electric energy generated, where such Taxes are not included elsewhere.
- (c) The cost of fuel included in the estimated and actual system fuel and Purchased Economic Power expenses shall include no items other than those listed in the account 151 of the FERC Uniform System of Accounts For Public Utilities and Licensees. The cost of nuclear fuel shall be that as shown in account 518, except that if account 518 also contains any expenses for fossil fuel that has already been included in the cost of fossil fuel, it shall be deducted from this account.
- (d) For the purpose of section 1 (b) (iii) and (iv), the following definitions apply:
 - (i) "Purchased Economic Power" means power or energy purchased over a period of 12 months or less where the Total Cost Of The Purchase is less than Seller's Total Avoided Variable Cost;
 - (ii) "Total Cost Of The Purchase" means all charges incurred in buying Purchased Economic Power and having such power delivered to FPL's Transmission System and includes, but is not limited to, capacity reservation charges, generation energy

charges, adders, and any transmission or wheeling charges associated with the purchase.

(iii) "Total Avoided Variable Costs" means all identified and documented variable costs that would have been incurred by Seller had a particular Purchased Economic Power transaction not been made, including, but are not limited to, those costs associated with fuel, startup, shutdown or any purchases that would have been made in lieu of the Purchased Economic Power transaction made.

(e) For the purpose of section 1 (b) (iii), the system reserved capacity criteria used by Seller's system operators is demand and energy purchased for a period of less than a year and shall be deemed as being for reliability purposes if Seller expects that the purchase is required in order to maintain operating reserves in accordance with Prudent Utility Practice.

(f) Total system net generation and Purchased Economic Power costs included in the Fuel Charge Factors and the Fuel Adjustment Charge Factors shall be the sum of:

- (i) generation,
- (ii) purchases,
- (iii) exchange received, less
- (iv) energy associated with pumped storage operations, less
- (v) intersystem sales referred to in section 1 (b) (v) of this Appendix A, less
- (vi) total system losses (losses shall be deemed to be zero because Buyer takes Partial Requirements Electric Service where energy is first received into the Seller's transmission system.).

(g) Calculation of estimated On-peak Fuel Charge Factor:

$((\text{Estimated total fuel costs and net power transactions defined in 1(b) and (c)}^1 * \text{On-peak cost ratio}^2) / (\text{estimated total net generation defined in 1(f)}^1 * \text{On-peak load ratio}^2))$

(h) Calculation of estimated Off-peak Fuel Charge Factor:

$((\text{Estimated total fuel costs and net power transactions defined in 1(b) and (c)}^1 * \text{Off-peak cost ratio}^2) / (\text{estimated total net generation defined in 1(f)}^1 * \text{Off-peak load ratio}^2))$

- (i) The attached Appendix C Schedule 1 illustrates the calculation of the On-peak and Off-peak Fuel Charge Factors.
- (ii) "On-peak" and "Off-peak" shall have the meanings attributed to such terms in Seller's retail tariff GSLDT-3.

¹ Total fuel costs and net power transactions and total MWh generation estimates approved by the FPSC for the current period. Includes applicable FERC adjustments.

² On-peak and off-peak cost and load ratios calculated using cost and load data from the Production Costing Model POWRSYM

2. The Fuel Adjustment Charge Factors.

(a) Calculation of On-peak Fuel Adjustment Charge Factor:

Actual On-peak Fuel Charge Factor minus estimated On-peak Fuel Charge Factor

(b) Calculation of Off-peak Fuel Adjustment Charge Factor:

Actual Off-peak Fuel Charge Factor minus estimated Off-peak Fuel Charge Factor

The actual On-peak and Off-peak Fuel Charge Factors shall be calculated by applying actual costs and expenses to the formulas used to calculate the estimated On-peak and Off-peak Fuel Charge Factors of Appendix C. – Schedule 1

Appendix C - Schedule 1

Calculation of On-Peak and Off-Peak Fuel Charge Factors

<u>Line</u>	<u>Description</u>	<u>Amount</u>
	Total Fuel Costs and Net Power Transactions	
1	Cost of Fuel Consumed - Section 1(b)(i)	
2	Fuel Costs for Energy Purchased - Section 1(b)(ii)	
3	Total Cost Of The Purchase - Section 1(b)(iii)	
4	Generation energy charges - Section 1(b)(iv)	
5	Cost of Fuel Recovered Through all Intersystem Sales - Section 1(b)(v)	
6	Taxes on Energy Cost of Fuel or Electric Energy Generated - Section 1(b)(vi)	
7	Total Fuel Costs and Net Power Transactions - Section 1(g) (Sum Lines 1-4, less line 5 , plus line 6)	
	<u>Total Net Generation</u>	
8	Generation - Section 1(f)(i)	
9	Purchases - Section 1(f)(ii)	
10	Exchanged Received 1(f)(iii)	
11	Energy Associated With Pumped Storage Operations - Section 1(f)(iv)	
12	Intersystem Sales Included in Line 5 - Section 1(f)(v)	
13	Total Net Generation - Section 1(f) (Sum lines 8 - 10, less lines 11 - 12)	
14	On-peak Cost Ratio - Section 1(g) (POWRSYM)	
15	Total On-peak Fuel Costs and Net Power Transactions - Section 1(g) (Line 7 x Line 14)	
16	On-peak Load Ratio - Section 1(g) (POWRSYM)	
17	On-peak Net Generation - Section 1(g) (Line 13 x Line 16)	
18	ON-PEAK FUEL FACTOR – Section 1(g)(Line 15 / Line 17)	
19	Off-peak Cost Ratio - Section 1(h) (POWRSYM)	
20	Total Off-peak Fuel Costs and Net Power Transactions - Section 1(h) (Line 7 x Line 19)	
21	Off-peak Load Ratio - Section 1(h) (POWRSYM)	
22	Off-peak Net Generation - Section 1(h) (Line 13 x Line 21)	
23	OFF-PEAK FUEL FACTOR - Section 1(h) (Line 20 / Line 22)	

2) January 1, 2017 to December 31, 2019 MEFP Calculation

For any period from January 1, 2017 to December 31, 2019 that Seller does not exercise Seller Pricing Option, the Monthly Energy Fuel Payment (MEFP) for each Monthly Billing Period shall be determined according to the following formula:

$$MEP = [\sum_{k=1}^n (ED_k * GHR_k * GI)]$$

Where:

MEP = the Monthly Energy Fuel Payment, expressed in dollars, for the Monthly Billing Period

ED = the hourly Energy Delivered for hour k of the Monthly Billing Period, expressed in MWh

GHR = Guaranteed Heat Rate shall be 40.0 mmBtu/MWh

GI = the daily midpoint price of natural gas (expressed in \$/MMBtu) for the relevant day of delivery of energy for Louisiana-Onshore South Florida Gas, Zone 3, as published in Platt's Gas Daily Price Survey, plus the Florida Gas Transmission ("FGT") fuel loss factor, the FGT average usage charge from the applicable FGT tariff, and a \$0.80/MMBtu demand charge. In the event that no such price is published for the relevant Delivery Day, then the following shall be used: (a) the arithmetic average of the daily midpoint price (expressed in \$/MMBtu) of the last published price prior to and the next published price after the relevant day of delivery of energy.

n = number of hours in the Monthly Billing Period;

k = each hour, for the Monthly Billing Period;

APPENDIX D
MONTHLY CUSTOMER CHARGE (MCC) CALCULATION

Monthly Customer Charge is \$2,500/Month.

APPENDIX E

SCHEDULING PROVISIONS FOR FIXED CAPACITY

1. Day Ahead Scheduling Parameters

- a) On or before 8:30 a.m. EPT of the prior Business Day (“Scheduling Deadline”), Buyer or its designated agent, shall provide Seller its schedule for Energy for each interval of the applicable Delivery Day, including any intervening non-Business Days (“Schedule for Energy”). For example, on a Friday before a weekend which is followed by a non-Business Day Monday, Buyer would provide a schedule for Saturday, Sunday, Monday and Tuesday. All such notifications as described herein shall be provided via electronic mail sent to _____@fpl.com. Seller shall promptly confirm receipt of any such request from Buyer via electronic mail to scheduler@seminole-electric.com, or by calling 813-739-1265. Buyer and seller may mutually agree in writing to an alternate notification methodology.
- b) Energy may be scheduled at any sixty (60) minute interval at the top of the clock hour. The minimum duration for a Schedule for Energy is eight (8) consecutive hours. Any Schedule for Energy that changes from a zero value to a non-zero value shall restart the minimum duration. All Schedules for Energy shall be scheduled in 1 MW increments as outlined above.

2. Intraday Scheduling Parameters

- a) Buyer may make intraday changes to the extent provided for herein, including on any day in which the Schedule for Energy is zero (0) (“Schedule Change”). After the Scheduling Deadline, Buyer may provide a Schedule Change for any interval(s) of the applicable Delivery Day by providing notice of such change at least two (2) hours prior to the beginning of such hour(s). The number of intraday changes (whether an increase or decrease) that may be made by Buyer to the Schedule of Energy shall be limited to one (1) per calendar day.

LIMITED SERVICES AGREEMENT
BETWEEN
FLORIDA POWER & LIGHT COMPANY AND
CITY OF WINTER PARK, FLORIDA
DATED AS OF
AUGUST ___, 2013

This LIMITED SERVICES AGREEMENT ("Agreement") is dated as of August __, 2013 ("Effective Date"), and is by and between Florida Power & Light Company in its capacity as a generation company and not as a Transmission Provider (together with any successors and assigns, hereinafter referred to as "FPL"), and the City of Winter Park, Florida (together with any permitted successors and permitted assigns, hereinafter referred to as "WINTER PARK") (FPL and WINTER PARK each individually referred to herein as a "Party," or collectively, the "Parties").

RECITALS:

WHEREAS, FPL and WINTER PARK intend to enter into a "Native Load Firm Fixed Capacity And Partial Requirements Transaction" (the "Native Load Firm Transaction") and a "System Firm Partial Requirements Service Transaction Confirmation" (the "System Firm Transaction" and collectively with the Native Load Firm Transaction, the "Transactions");

WHEREAS, it is WINTER PARK's responsibility to arrange and pay for, enter into and maintain all necessary agreements for the delivery and transmission of power and energy at and from the Delivery Points to the Winter Park Interconnection and to arrange and pay for transmission and Ancillary Services for (and enter into and maintain all necessary agreements for) the delivery of power and energy at and from the Delivery Points to the Winter Park Interconnection;

WHEREAS, WINTER PARK desires FPL to request, complete the application for, and schedule transmission services with the Transmission Provider(s) as further described in Section 2.2 of this Agreement; and

WHEREAS, without assuming any obligations of WINTER PARK under the Transactions, FPL is willing, as an accommodation to WINTER PARK, to provide to WINTER PARK the Services subject to the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained, the Parties hereby agree that this Agreement sets forth the terms under which FPL will provide Services to WINTER PARK.

ARTICLE 1 DEFINITIONS

1.1 Definitions. Capitalized terms used in this Agreement and not otherwise defined herein shall have the meanings specified for such terms in the Transactions or, if not defined therein, in the Florida Power & Light Company Open Access Transmission Tariff ("OATT").

ARTICLE 2 APPOINTMENT OF FPL; SERVICES; AND RELATIONSHIP OF PARTIES

2.1 Appointment of FPL. FPL shall provide those Services specifically set forth in this Agreement and such other services as may mutually be agreed upon in writing by the Parties. WINTER PARK and FPL acknowledge and agree that FPL shall be WINTER PARK's "Designated Agent", as that term is defined in the OATT(s), solely to the extent required to communicate with the Transmission Provider(s), as such communication is required in order

to carry out the Services; provided, however, that even if the OATT(s) permits FPL to perform services not set forth in this Agreement (whether as Designated Agent or otherwise), FPL shall not have any obligation or duty to perform any service not specifically set forth herein or agreed to in writing by the Parties.

2.2 Services To Be Performed. Upon WINTER PARK (i) satisfying the requirements under the OATT(s) to become a Transmission Customer (as such term is defined in the OATT(s)) and (ii) entering into a Service Agreement with the Transmission Provider(s), FPL agrees to provide the following services to WINTER PARK only to the extent permitted by applicable laws:

(a) To the extent permitted by applicable laws, FPL shall request, provide all information required to complete such request and schedule transmission services for the delivery of Power and Energy at and from the Delivery Points to the Winter Park Interconnection on behalf of WINTER PARK as reasonably requested by WINTER PARK, as long as FPL, in its sole discretion, believes it will not incur any costs for which it will not be fully reimbursed by WINTER PARK and receives sufficient advance notice necessary for it to perform such services, (the "Services"). Notwithstanding the foregoing, should FPL incur any costs in connection with requesting and/or scheduling transmission services, WINTER PARK agrees to fully reimburse FPL for such costs. It is anticipated that day-to-day communications and directions between the Parties with respect to such Services will occur orally or by electronic communication. If WINTER PARK requests FPL provide additional services under this Agreement other than such Services, and FPL agrees to provide such additional services, Parties will confirm that mutual agreement in writing before FPL begins to provide such additional services.

(b) There shall be no other implied services, duties or obligations on FPL unless specifically set forth herein. FPL shall only be obligated to perform such other services as may be mutually agreed in writing between the Parties.

2.3 Relationship of Parties.

(a) This Agreement shall not make any Party a partner, joint venturer, or legal representative of the other Party for any purpose whatsoever. FPL shall act as Designated Agent of WINTER PARK for the sole and limited purpose of communicating with the Transmission Provider(s) on behalf of WINTER PARK, as such communication is required to carry out the Services. The relationship of FPL as set forth in this Agreement is that of an independent contractor. No Person employed by FPL shall be deemed to be an employee, agent or servant of WINTER PARK for any purpose. Except as provided in Section 2.1 with respect to FPL, neither Party has any right, power, or authority to enter any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party.

No actions or inactions by FPL shall relieve WINTER PARK of its obligations under the OATT to the Transmission Provider(s) and WINTER PARK shall at all times be responsible for compliance with the terms and conditions of the OATT(s). FPL is not responsible for and does not undertake any responsibility, obligations or liability for the actions or omissions of the Transmission Provider(s), but rather its sole role is to perform the limited Services described in this Agreement.

(b) FPL shall be entitled to rely upon, and WINTER PARK shall be bound by, the oral, electronic and written communications, directions, requests and decisions made by WINTER PARK with regard to this Agreement. WINTER PARK acknowledges that FPL shall have no liability to WINTER PARK (and hereby releases FPL) for any obligations of WINTER PARK arising under the OATT and the Transactions as a result of this Agreement or FPL's actions, omissions, communications, directions, and requests made in connection with this Agreement, or as a result of any acts or omissions of the Transmission Provider(s).

(c) WINTER PARK understands and agrees that (i) FPL is not acting in any fiduciary capacity with respect to WINTER PARK in providing the Services set forth in Section 2.2 above (and that the scope of such Services does not include any such fiduciary obligations), (ii) FPL shall have no obligation hereunder for compliance with any law governing the conduct of fiduciaries in connection with FPL providing the Services set forth in Section 2.2 above, (iii) FPL will not be answerable or accountable under any circumstances with respect to the manner in which WINTER PARK elects to use any information provided by FPL, (iv) FPL makes no, and disclaims any, representation or warranty with respect to the accuracy of any information or other Services provided by FPL hereunder and (v) FPL shall not directly or indirectly have any responsibilities for transmission facilities owned by WINTER PARK or the Transmission Provider(s), nor shall FPL have any direct or indirect responsibilities on behalf of WINTER PARK related to compliance or other requirements of NERC, SERC and/or FRCC. FPL's limited responsibility to perform the Services under this Agreement does not and is not intended to shift or in any way modify the risk allocation and responsibilities of the Parties under the Transactions and WINTER PARK remains solely responsible for all transmission risks at and from the Delivery Points as set forth in the OATT.

(d) WINTER PARK further understands and agrees that FERC has promulgated certain standards of conduct (the "Standards of Conduct") which will limit the extent to which FPL can perform Services under this Agreement and that FPL's failure or refusal to act based on Standards of Conduct restrictions shall not constitute a breach of or a Default under this Agreement. Specifically, the Standards of Conduct prohibit the access by the Energy Marketing and Trading Business Unit of Florida Power & Light Company and its employees to non-public Florida Power & Light Company transmission information that has not been simultaneously disclosed to the public. Such transmission information includes, but is not limited to, information about available transmission capability, price, curtailments, ancillary services, system maintenance, line outages, and transmission planning and system expansion.

ARTICLE 3 TERM

3.1 Term. This Agreement shall begin on the Effective Date and shall remain in effect so long as the obligation to provide Power and Energy under the Transactions is in effect provided, however, that FPL shall not have any obligation to perform the Services hereunder unless and until (and only during the period in which) Power and Energy are provided pursuant to the Transactions.

ARTICLE 4

LIABILITY AND INDEMNIFICATION

4.1 Limitation of Liability. TO THE FULLEST EXTENT PERMITTED BY LAW, NEITHER WINTER PARK NOR FPL, NOR THEIR RESPECTIVE OFFICERS, DIRECTORS, AGENTS, EMPLOYEES, MEMBERS, PRINCIPALS, PARENTS, SUBSIDIARIES OR AFFILIATES, SUCCESSORS OR ASSIGNS, OR THEIR RESPECTIVE OFFICERS, DIRECTORS, AGENTS, OR EMPLOYEES, SUCCESSORS, SUBSIDIARIES OR ASSIGNS, SHALL BE LIABLE TO THE OTHER PARTY OR THEIR RESPECTIVE MEMBERS, PRINCIPALS, PARENTS, SUBSIDIARIES, AFFILIATES, OFFICERS, DIRECTORS, AGENTS, EMPLOYEES, SUCCESSORS OR ASSIGNS, FOR CLAIMS, SUITS, ACTIONS OR CAUSES OF ACTION FOR INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE, MULTIPLE, EXEMPLARY OR CONSEQUENTIAL DAMAGES CONNECTED WITH OR RESULTING FROM PERFORMANCE OR NON-PERFORMANCE OF THIS AGREEMENT, INCLUDING WITHOUT LIMITATION, ANY SUCH DAMAGES WHICH ARE BASED UPON CAUSES OF ACTION FOR BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE AND MISREPRESENTATION), BREACH OF WARRANTY, STRICT LIABILITY, STATUTE, OPERATION OF LAW, UNDER ANY INDEMNITY PROVISION (EXCEPT FOR THIRD PARTY INDEMNIFIABLE CLAIMS UNDER SECTION 4.2 OF THIS AGREEMENT) OR ANY OTHER THEORY OF RECOVERY. THE PROVISIONS OF THIS SECTION 4.1 SHALL APPLY REGARDLESS OF FAULT AND SHALL SURVIVE TERMINATION, CANCELLATION, SUSPENSION, COMPLETION OR EXPIRATION OF THIS AGREEMENT.

4.2 Indemnification.

(a) WINTER PARK shall indemnify, defend and hold harmless, on an After-Tax Basis, FPL and its officers, directors, shareholders, agents, affiliates and employees (collectively, "Indemnitees") from and against any and all claims, imposed upon or incurred or suffered by any of the Indemnitees, to the extent directly or indirectly arising out of or resulting from the acts or omissions of either WINTER PARK or FPL, including but not limited to the negligent acts or omissions of FPL in the performance or non-performance by FPL of its duties under this Agreement or under any agreement entered into by FPL in its capacity as Designated Agent for WINTER PARK; provided, however, that such indemnification does not apply to the extent that the claims arise from FPL's fraud or willful misconduct in connection with the performance of its duties hereunder.

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(b) WINTER PARK shall indemnify, defend and hold harmless, on an After-Tax Basis, FPL from and against any and all claims for damages to any individual member, firm, corporation or other type of customer constituting any part of WINTER PARK's retail load arising in any manner directly or indirectly by reason of (i) a failure, interruption, curtailment, or deficiency with the supply of Power and Energy under the Transactions for any reason and/or a failure, interruption, curtailment, or deficiency in FPL's Services under this Agreement for any reason, including but not limited to the negligence of FPL or (ii) a breach or default of this Agreement for any reason.

(c) FPL does not assume any responsibility of any kind with respect to the construction, maintenance, or operation of the system or other property owned or used by WINTER PARK. To the extent permitted by law, WINTER PARK agrees to indemnify, defend and hold harmless, on an After-Tax Basis, FPL from any and all claims for injuries to person or property by any person, firm or corporation in any way

resulting from, growing out of, or arising from or in connection with the construction, maintenance or operation of WINTER PARK's system or other property. WINTER PARK further agrees to indemnify, defend and hold harmless FPL and its officers, directors, agents, principals or employees, successors, subsidiaries or assigns from any and all claims for injuries to persons or property by any person, firm or corporation in any way resulting from, growing out of, or arising in or in connection with the use of, or contact with, Power and Energy delivered under the Transactions after it is delivered to WINTER PARK and while it is flowing through the lines of WINTER PARK, or is being distributed by WINTER PARK, or is being used by retail load.

ARTICLE 5 DEFAULT AND REMEDIES

5.1 Default by WINTER PARK. A default by WINTER PARK under this Agreement shall be deemed to exist upon the occurrence of any one or more of the following events:

- (a) Failure by WINTER PARK to pay or reimburse FPL for any amount due to FPL hereunder, which failure continues for a period of 30 days after receipt of notice from FPL of such failure;
- (b) Any representation or warranty made by WINTER PARK herein is false or misleading in any material respect when made or when deemed made or repeated;
- (c) An Event of Default by WINTER PARK (as such term is defined in the Transactions) occurs under the Transactions;
- (d) A Default by WINTER PARK (as such term is defined in the OATT) occurs under the OATT.

5.2 Remedies of FPL Upon Default by WINTER PARK. Upon the occurrence of a default by WINTER PARK under this Agreement, FPL shall have the right to exercise any (or any combination) of the following remedies:

- (a) suspend performance hereunder;
- (b) exercise any remedy available at law or in equity; and/or
- (c) terminate this Agreement upon ten (10) Business Days prior written notice to WINTER PARK.

5.3 Default by FPL. A default by FPL under this Agreement shall be deemed to exist upon the occurrence of any one or more of the following events:

- (a) The failure by FPL to perform any material covenant or obligation set forth in this Agreement, if such failure is not remedied within thirty (30) days after written notice; provided, however, if a period in excess of thirty (30) days is required to cure such failure, FPL shall have an additional amount of time as may be necessary to cure such failure, provided that the FPL uses reasonable diligence to remedy such failure; or

(b) FPL (i) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it, which is not dismissed within ninety (90) days; (ii) makes an assignment or any general arrangement for the benefit of creditors; (iii) otherwise becomes bankrupt or insolvent (however evidenced); (iv) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets; or (v) is generally unable to pay its debts as they fall due.

5.4 Remedies of WINTER PARK Upon Default by FPL. If a default by FPL shall have occurred and be continuing under this Agreement, WINTER PARK as the non-defaulting Party, upon ten (10) days' prior written notice to FPL, shall have the right to terminate this Agreement or pursue specific performance of FPL's obligations hereunder and injunctive relief. Notwithstanding any other provision of this Agreement, such right of termination, specific performance and injunctive relief shall be WINTER PARK's sole and exclusive remedies under this Agreement, and WINTER PARK hereby waives all other rights and remedies, including without limitation direct damages, cover damages, damages at law, and any consequential, incidental, indirect, special, money or other damages or remedies. In no event shall such injunctive relief require the payment of money or property to WINTER PARK. WINTER PARK agrees and acknowledges that FPL shall have no liability for damages or other responsibility for other losses hereunder. If any provision or provisions of this Section 5.4 shall be held to be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions of this Section 5.4 shall in no way be affected or impaired thereby; and the Parties hereby agree to effect such modifications to this Agreement as shall be reasonably necessary in order to give effect to the original intention of the Parties with respect to his Section 5.4.

5.5 Effect of Default. FPL and WINTER PARK agree that a default by either Party under this Agreement shall not constitute a default (or Event of Default) under the Transactions, and that a default under or the termination or suspension of this Agreement shall have no effect on either Party's obligations under the Transactions.

ARTICLE 6 ADDITIONAL TERMINATION RIGHTS

6.1 Termination for Material Adverse Change. In the event that a material adverse change affecting FPL's ability to perform the Services set forth in Section 2.2 occurs, FPL and WINTER PARK each shall have the right to terminate this Agreement the later of the end of the current calendar month during which such material adverse change occurs or on ten (10) days prior written notice to the other Party. Such termination shall be without any further liability or obligations owing from FPL to WINTER PARK.

6.2 Termination for Change in Law. If FPL's activities hereunder become subject to or affected by a change in law, and such change in law either (a) renders this Agreement illegal of performance by, or unenforceable against, a Party, (b) results in a material increase in costs required by FPL to perform the Services hereunder, or (c) materially adversely affects the business of FPL, with respect to its financial position or otherwise, FPL shall at such time notify WINTER PARK of such change in law and shall have the right to (y) require good faith negotiations to restructure this Agreement in a manner intended to place the Parties in

the same position as if the change in law had not occurred and (z) in the case of a change in law that renders any portion of the FPL's performance under this Agreement illegal, suspend and terminate such performance as of the effective date of such change in law. If the Parties are unable to reach agreement on a mutually acceptable restructuring within thirty (30) days after the WINTER PARK's receipt of the FPL's notice of the change in law, FPL shall have the right, upon ten (10) days' prior notice to the WINTER PARK, to terminate this Agreement as of the date specified in such notice. Such termination shall be without any further liability or obligations owing from FPL to WINTER PARK.

ARTICLE 7 FORCE MAJEURE

7.1 Force Majeure. The term Force Majeure shall have the same meaning as that term is defined in the Transactions and that definition is incorporated herein by reference. To the extent either Party is prevented by Force Majeure from carrying out, in whole or part, its obligations under this Agreement and such Party (the "Claiming Party") gives notice and details of the Force Majeure to the other Party as soon as practicable, then the Claiming Party shall be excused from the performance of its obligations under this Agreement (other than the obligation to make payments then due or becoming due with respect to performance prior to the Force Majeure). The Claiming Party shall remedy the Force Majeure with all reasonable dispatch. The non-Claiming Party shall not be required to perform or resume performance of its obligations to the Claiming Party corresponding to the obligations of the Claiming Party excused by a Force Majeure until the Force Majeure is remedied by the Claiming Party.

ARTICLES 8 GENERAL PROVISIONS

8.1 Amendments. No change, amendment or modification of this Agreement, and no further agreement to be made pursuant to this Agreement, shall be valid or binding upon the Parties unless such change, amendment or modification shall be in writing and duly executed by both Parties.

8.2 Assignment. Neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Party, which consent may be withheld in the exercise of its sole discretion; provided, however, either Party may, without the consent of the other Party (and without relieving itself from liability hereunder), transfer or assign this Agreement to a permitted assignee under the Transactions, provided such assignee has in fact been assigned under the Transactions. Any attempted assignment that violates this Section 8.2 shall be void and ineffective.

8.3 Binding Agreement. This Agreement shall inure to the benefit of FPL and WINTER PARK and their respective successors and permitted assigns.

8.4 Captions. The captions contained in this Agreement are for convenience and reference only and in no way define, describe, extend or limit the scope or intent of this Agreement or the intent of any provision contained herein.

8.5 Counterparts. This Agreement may be signed in counterparts, which counterparts,

when assembled together, shall constitute fully executed originals as if signed by both Parties. Execution of this Agreement by facsimile or PDF signature is deemed to be, and has the same effect as, execution by original signature.

8.6 Dispute Resolution. If any controversy, dispute, claim, counterclaim or cause of action involving the parties and/or their respective representatives ("Dispute") arises out of or relates to this Agreement or the interpretation, breach, validity thereof, the Parties shall resolve such Dispute strictly in accordance with the provisions set forth in the Transactions.

8.7 Entire Agreement. This Agreement sets forth the full and complete understanding of the Parties relating to the subject matter hereof as of the Effective Date, and supersedes any and all prior agreements or understandings, written or oral. No representations, inducements, promises or agreements, oral or otherwise, have been relied upon or made by either Party, or anyone on behalf of a Party, that are not fully expressed in this Agreement. An agreement, statement or promise not contained in this Agreement is not valid or binding.

8.8 Governing Law. This Agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the State of Florida, without regard to principles of conflicts of laws that would refer jurisdiction to the laws of another state. EACH PARTY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY SUIT, ACTION, CLAIM OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY CREDIT SUPPORT DOCUMENTATION MADE IN CONNECTION TO THIS AGREEMENT.

8.9 No Third Party Beneficiaries. (a) Nothing in this Agreement nor any action taken hereunder shall be construed to create any duty, liability or standard of care to any third party, (b) no third party shall have any rights or interest, direct or indirect, in this Agreement or the Services to be provided hereunder and (c) this Agreement is intended solely for the benefit of the Parties, and the Parties expressly disclaim any intent to create any rights in any third party as a third party beneficiary to this Agreement or the Services to be provided hereunder. Nothing in this Agreement shall create a contractual relationship between FPL and WINTER PARK's residents, nor shall this Agreement create a duty of any kind to such residents.

8.10 Notices. All notices, requests, statements or payments made under this Agreement shall be addressed to the applicable Party at the address set forth below. Notices (other than scheduling requests) shall, unless otherwise specified herein, be in writing and may be delivered by hand delivery, United States mail, overnight courier service or facsimile. Notice by facsimile or hand delivery shall be effective at the close of business on the day actually received, if received during business hours on a Business Day, and otherwise shall be effective at the close of business on the next Business Day. Notice by overnight United States mail or courier shall be effective on the next Business Day after it was sent. A Party may change its addresses by providing notice of same in accordance herewith.

If to FPL:

Florida Power & Light Company
Energy Marketing & Trading
Mail Stop FPL/JB
700 Universe Blvd.

If to WINTER PARK:

City of Winter Park, FL
401 South Park Ave
Winter Park, Florida 32789
Attention: City Manager

Juno Beach, FL 33408
Attn: Vice President

8.11 No Waiver. Any failure of either Party to enforce any of the provisions of this Agreement or to require compliance with any of its terms at any time during the pendency of this Agreement, shall in no way affect the validity of this Agreement, or any part hereof, and shall not be deemed a waiver of the right of such Party thereafter to enforce any and each such provision. Any consent or approval given pursuant to this Agreement shall be limited to its express terms and shall not otherwise increase the obligations of the Party giving such consent or approval or otherwise reduce the obligations of the Party receiving such consent or approval.

8.12 Severability. The invalidity of one or more phrases, sentences, clauses, or Sections contained in this Agreement shall not affect the validity of the remaining portions of this Agreement so long as the material purposes of this Agreement can be determined and effectuated.

8.13 Survival. Notwithstanding any provision of this Agreement to the contrary, expiration or other termination of this Agreement shall not relieve the Parties of obligations that by their nature or by their express terms should survive such expiration or termination, including promises of indemnity, payment obligations, limitations of liability, confidentiality, audit rights, and dispute resolution provisions.

IN WITNESS WHEREOF, FPL and WINTER PARK have caused this Agreement to be executed in duplicate by their respective duly authorized officers as of the Effective Date.

FLORIDA POWER & LIGHT
COMPANY

BY: _____

NAME: Sam A. Forrest

TITLE: Vice President, Energy Marketing & Trading

CITY OF WINTER PARK, FL

BY: _____

NAME: Kenneth W. Bradley

TITLE: Mayor, City of Winter Park



city commission agenda item

item type	Consent Agenda	meeting date	August 12, 2013
prepared by department division	City Manager	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

Consolidation of Planning, Economic Development and Community Redevelopment into one unified department.

motion | recommendation

Confirm the appointment of Dori Stone as Director of Planning and Community Development

Background

Section 4.05(b) of the City Charter authorizes the City Manager to appoint department heads subject to confirmation by the City Commission. With this in mind and in an effort to provide continuity of service delivery to the development community, I am recommending the merger of the Planning Department with Economic Development/CRA to create the Planning and Community Development Department.

Under this reorganization, Ms. Stone will manage the consolidated department. Her role as Director will involve quality control, staff management and long-range planning issues. Mr. Briggs will be responsible for current planning activities involving the Land Development Code and compliance with the Comprehensive Plan. The vacant senior planner position will assist in the visioning and corridor studies. The FTE count will remain neutral.

fiscal impact

Less than \$15k depending on the cost of replacing the vacant Senior Planner position.



city commission agenda item

item type	Action Item Needing Discussion	meeting date	August 12, 2013
prepared by department division	Lindsey Hayes Planning Department	approved by	<input checked="" type="checkbox"/> City Manager <input type="checkbox"/> City Attorney <input type="checkbox"/> N/A
board approval	Historic Preservation Board	<input checked="" type="checkbox"/> yes <input type="checkbox"/> no <input type="checkbox"/> N/A	final vote

Subject: Comparison of the Winter Park "Register of Historic Places" to the U.S. "National Register of Historic Places"

At the July 8, 2013 meeting, the City Commission approved a historic preservation review process to update the current inventory of historic properties, review the City's historic preservation ordinance with benchmark comparisons to other key cities and to recommend goals or changes to achieve preservation.

The first report requested of Staff and the Historic Preservation Board (HPB) by August 15th, was to summarize the similarities, differences and benefits of the Winter Park Register of Historic Places and the National Register of Historic Places. The HPB reviewed the City Commission's suggested tasks and process at their regular meeting on July 10 and held special meetings on July 15th and July 25th to review and approve the attached summary and the presentation for this afternoon.

Update on Further Tasks:

Staff will work on the other tasks outlined by the City Commission including an update to the current inventory of historic properties. The HPB is suggesting the use of a consultant (not to exceed \$10,000) to assist in looking at the benchmarking with other key cities including those indicated by the City Commission and others that might be relevant. The consultant would also assist in proposing modifications to the HPB Ordinance that could help achieve the goals to increase the number of designated properties pursuant to goals as may be established by the City Commission.

Motion | Recommendation:

There is no action needed other than to acknowledge receipt of the report but direction is needed regarding the use of a consultant to review and make recommendations on the ordinance benchmark results.

Comparison of the Winter Park Register of Historic Places to the National Register of Historic Places

	Winter Park Register of Historic Places	National Register of Historic Places
Who nominates historic buildings?	May be made by the owner, a member of the Historic Preservation Board or a city commission member.	Nominations of individual buildings or districts may be made by anyone.
How long does it take?	45-60 days from the date of application.	12-18 months from the date of application.
How much does it cost to nominate a building or district?	No fee for nomination applications.	No fee for nomination; however applicants typically hire a professional to prepare the forms and exhibits.
What is the process to list an individual historic property?	<ul style="list-style-type: none"> • A designation application is filed. • Staff prepares legal ad and 500' radius notice. • Staff researches property history and architecture. • Staff takes exterior photographs. • Staff prepares report for the HPB. • HPB receives the report at a public hearing. • HPB makes a recommendation to the City Commission. • The City Commission receives the recommendation and finalizes the designation by Resolution. 	<ul style="list-style-type: none"> • Applicant files a Preliminary Site Information Questionnaire (PSIQ) form and property overview photographs with the Florida Division of Historical Resources (DHR). • Applicant prepares full NRHP nomination with site plan, floor plan, interior and exterior photographs per NRHP standards and utilizing NRHP classifications and forms. This usually requires a preservation professional. • Review by the Florida DHR. • Sent to the city for comment. • Sent to the Florida National Register Review Board. • Property owner notified. • If the board makes a positive recommendation, state staff transmits to the National Park Service. The NRHP board reviews the nomination. • If approved, the property is listed on the NRHP.

	Winter Park Register of Historic Places	National Register of Historic Places
Is owner permission needed?	Permission required prior to review by the Historic Preservation Board.	A state and federal determination of eligibility may be made without the owner's permission, however because of the time and effort involved, Florida does not review individual nominations when there is a notarized owner objection and the nomination will not advance to the National Park Service.
A district preserves a collection of historic buildings united by a theme and their entire setting. How is a historic district listed?	<ul style="list-style-type: none"> • Process starts with petition by 20% of potential district owners, a member of the HPB or by a city commission member. • Staff research. • Conferences and public meetings with owners. • Desired outcomes determined. • Boundaries influenced by owners. • Draft report sent to all owners. • Favorable vote of two-thirds of all owners in the proposed district required to advance to HPB. • Staff prepares final report with maps, history, context and desired outcomes. • Final report sent to all owners. Hearing advertised. • Designation report to the HPB at a public hearing. • HPB makes a recommendation to the City Commission. • The City Commission receives the recommendation and finalizes the designation by Resolution. 	<ul style="list-style-type: none"> • Anyone may nominate a district. • Applicant files a Preliminary Site Information Questionnaire (PSIQ) form and property overview photographs with the Florida Division of Historical Resources (DHR). • Applicant prepares full NRHP nomination with history, context, maps and photographs per NRHP standards and utilizing NRHP classifications and forms. This usually requires a preservation professional. • Boundaries are determined by standards. • Review by the Florida DHR. • Sent to the city for comment. • Sent to the Florida National Register Review Board. • Property owners notified. Hearing advertised. • If the board makes a positive recommendation, state staff transmits to the National Park Service. The NRHP board reviews the nomination. • If approved, the district is listed on the NRHP.

	Winter Park Register of Historic Places	National Register of Historic Places
Once in the National Register, is a property or district automatically listed in the Winter Park Register?	No. NRHP properties and districts would be eligible but must make application.	No. NRHP properties and districts would be eligible but must make application.
What happens to the property's zoning?	The zoning classification of property remains the same. Listing in the WPRHP acts as an overlay to the existing zoning.	The zoning classification of property remains the same.
How does listing affect an owner's rights?	<ul style="list-style-type: none"> • Listing in the WPRHP does not affect an owner's vested property rights. • Listing does not require owners to restore, make changes to their property, or to open it to the public. 	<ul style="list-style-type: none"> • Listing in the NRHP does not affect an owner's vested property rights. • Listing does not require owners to restore or make changes to their property or to open it to the public.
Can properties be altered or enlarged and if so, what is the process?	<ul style="list-style-type: none"> • Exterior alterations and additions are permitted subject to HPB review and approval. They should preserve the historic property character and setting. • There is no fee for review. • Routine repairs and maintenance with in-kind materials require only staff review. • The HPB does not review interior remodeling. • Infill and redevelopment is permitted in historic districts subject to HPB approval. 	<ul style="list-style-type: none"> • Owners may alter or even demolish the property at will. • Demolished properties and properties so altered that they lose their historic integrity are removed from the National Register but the documents remain on file for research purposes.
Can individually listed properties and historic district properties be demolished?	Demolition requires public notice and HPB review and approval based on code criteria.	Demolition does not require local review. Federal buildings and projects, and federally funded projects are reviewed at the federal level.

	Winter Park Register of Historic Places	National Register of Historic Places
Are there special building considerations for individual historic properties and historic district properties?	<ul style="list-style-type: none"> • Appropriate variances may be granted by the HPB. • Listed individual and district properties may have accessory dwelling units subject to conditions and approval. • Listed properties undergoing rehabilitation are eligible for flexible consideration of the Florida Building Code requirements. 	<ul style="list-style-type: none"> • Listed properties may be eligible for flexible consideration of the Florida Building Code requirements.
Are property taxes increased?	There is no change to property taxes because of listing in the Winter Park Register of Historic Places.	There is no change to property taxes because of listing in the National Register of Historic Places.
Are there property tax benefits?	Listed properties undergoing substantial rehabilitation improvements may be eligible for ad valorem property tax relief. There would be no property tax increase based on the improvements for up to ten years. (Process begins at city.)	Listed properties undergoing substantial rehabilitation improvements may be eligible for ad valorem property tax relief. There would be no property tax increase based on the improvements for up to ten years. (Process begins at city.)
Are there federal tax benefits?	Federal tax credit program not available unless also listed on the NRHP as a “certified structure”.	Income producing (commercial or rental residential) NRHP individual or district historic properties may be eligible for a 20% federal tax credit on the total cost of rehabilitation of certified historic structures. Buildings built prior to 1936 that are not deemed historic properties but are located in a NRHP district may be eligible for a 10% federal tax credit on the total cost of rehabilitation. (Process through begins at Florida Division of Historical Resources.)



city commission agenda item

item type	Action Item Requiring Discussion	meeting date	August 12, 2013
prepared by department division	Randy Knight, John Holland, Dori Stone, Jeff Briggs	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 type="checkbox"/> N/A	final vote

Subject:

Use of City-Owned Land for Public/Private Parking Structure.

Motion | recommendation

If consensus is reached at the 2:00 p.m. work shop to move forward with this public/private partnership, authorize CNL to proceed with City Wide Notice of the public process.

The backup for the work shop will be provided by the end of this week and will be forwarded to the Commission.



city commission public hearing

item type	Public Hearing	meeting date	August 12, 2013
prepared by department division	Brett C. Railey, Chief of Police Police Administration	approved by	<input checked="" type="checkbox"/> City Manager <input checked="" 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

SECOND READING - 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	August 12, 2013
prepared by	Deputy Chief Art King	approved by	<input checked="" type="checkbox"/> City Manager
department	Winter Park Police Department		<input type="checkbox"/> City Attorney
division	Administration		<input type="checkbox"/> N/A
board approval		<input type="checkbox"/> yes <input type="checkbox"/> no <input checked="" type="checkbox"/> N/A	final vote

Subject:

Red Light Camera Program

Motion / Recommendation:

Adopt the Resolution appointing retired Orange County Judge Frank N. Kaney as the Hearing Officer.

Adopt the Resolution appointing a member of the Winter Park Police Department as designated by the Chief of Police to function as the clerk to the local hearing officer.

Adopt the Resolution for an administrative cost of \$137.

Summary:

House Bill CS/CS/HB 7125 made several changes to the Mark Wandall Traffic safety Act (red light camera program). One of the changes during the 2013 Legislative Session authorized municipalities to establish a local hearing program for notices of red light camera violations. With the establishment of a local hearing program it will require the appointment of a hearing officer and clerk to the local hearing officer. In order for municipalities to cover the cost of the local hearing program the Bill allows for administrative costs not to exceed \$250, in addition to the fine of \$158.

On July 8, 2013, the City Commission adopted the amount of \$137 for the administrative cost for the red light camera violation hearing program.

Staff Recommendation:

Approve recommended motions.

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF
WINTER PARK, FLORIDA, APPOINTING A HEARING
OFFICER PURSUANT TO THE AUTHORITY CONFERRED IN
CHAPTER 2013-160, LAWS OF FLORIDA; PROVIDING FOR
CONFLICTS AND 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 Legislature has authorized the City of Winter Park to retain qualified hearing officers for purposes of hearing contested red light violations when the violations are detected by camera; and

WHEREAS, the City Commission by Ordinance has ordained that the City Commission shall appoint by resolution one or more hearing officers as authorized in the law to provide a process by which citizens may contest notices of violation that are issued in connection with red light violations detected by camera, separate from traffic court process; and

WHEREAS, the appointment of one or more hearing officers for these purposes is in the public and municipal interest.

NOW, THEREFORE, the City Commission of the City of Winter Park does hereby resolve and directs the following:

SECTION 1. Recitals: The foregoing "Whereas" clauses are hereby ratified and confirmed as being true and correct and are hereby made a specific part of this Resolution upon adoption hereof.

SECTION 2. Appointment of Hearing Officer. Frank N. Kaney is hereby appointed to serve as a hearing officer to hear contested cases and to adjudicate the same with respect to red light violations that are detected through the use of cameras, in accordance with the requirements of both Florida law and the Municipal Code of the City of Winter Park.

SECTION 3. Authority of the City Manager to Contract. The City Commission of the City of Winter Park does hereby authorize the City Manager to contract with Frank N. Kaney, as hearing officer, with respect to the terms, conditions

and compensation of the hearing officer, subject to the requirement that the person so employed shall be an independent contractor of the City and not an employee.

SECTION 4. Impartiality and Due Process. The City Commission of the City of Winter Park hereby directs that the hearing officer shall be neutral, impartial and shall afford due process in the manner required by law in the adjudication of disputed red light camera cases that come before him.

SECTION 5. Contract Shall Be Terminable At Will. Notwithstanding the prior delegation to the City Manager of authority to contract for the hearing officer, the contract and the relationship between the City of Winter Park and the hearing officer shall be terminable without cause on notice by either party.

SECTION 6. Conflicts. All prior resolutions of the City Commission of the City of Winter Park that may be in conflict herewith are hereby repealed.

SECTION 7. Effective date. This Resolution shall become effective immediately upon adoption by the City Commission of the City of Winter Park, Florida.

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

Kenneth W. Bradley, Mayor

Attest:

Cynthia S. Bonham, City Clerk

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF WINTER PARK, FLORIDA, APPOINTING A STAFF MEMBER OF THE CITY OF WINTER PARK POLICE DEPARTMENT AS DESIGNATED BY THE CHIEF OF POLICE AS THE CLERK TO THE LOCAL HEARING OFFICER FOR RED LIGHT CAMERA INFRACTION HEARINGS PURSUANT TO CHAPTER 98, OF THE WINTER PARK CODE OF ORDINANCES; PROVIDING FOR CONFLICTS, SEVERABILITY, AND AN EFFECTIVE DATE.

WHEREAS, the City Commission for the City of Winter Park adopted Ordinance No. _____ amending Chapter 98, Article VI, of the City's Code of Ordinances; and

WHEREAS, pursuant to Ordinance No. _____, and consistent with Section 316.0083, Florida Statutes, the "Mark Wandall Traffic Safety Act," the City is required to designate an existing staff member to serve as the clerk to the local hearing officer for red light camera infraction hearings; and

WHEREAS, this Resolution is adopted pursuant to Ordinance No. _____.

NOW, THEREFORE, be it resolved by the City Commission of the City of Winter Park, Florida as follows:

SECTION 1. Recitals: The foregoing "Whereas" clauses are hereby ratified and confirmed as being true and correct and are hereby made a specific part of this Resolution upon adoption hereof.

SECTION 2. Appointment. The City Commission of the City of Winter Park hereby confirms the appointment of a member of the Winter Park Police Department as designated by the Chief of Police to function as the clerk to the local hearing officer for red light camera infraction hearings.

SECTION 3. Severability. If any section, subsection, sentence, clause, phrase, word or provision of this resolution is for any reason held invalid or unconstitutional by any court of competent jurisdiction, whether for substantive, procedural, or any other reason, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions of this Resolution.

SECTION 4. Conflicts. All resolutions or parts of ordinances in conflict with any of the provisions of this resolution are hereby repealed.

SECTION 5. Effective date. This Resolution shall become effective immediately upon adoption by the City Commission of the City of Winter Park, Florida.

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

Kenneth W. Bradley, Mayor

Attest:

Cynthia S. Bonham, City Clerk

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF
WINTER PARK, FLORIDA, SETTING THE AMOUNT OF THE
MUNICIPAL COSTS FOR RED LIGHT CAMERA INFRACTIONS
PURSUANT TO CHAPTER 98, WINTER PARK CODE OF
ORDINANCES; PROVIDING FOR CONFLICTS, SEVERABILITY
AND 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 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 incurs certain costs in the administration of the local hearing process created by Chapter 2013-160, Laws of Florida; and

WHEREAS, § 316.0083, Florida Statutes, as revised by Laws of Florida 2013-160, provides that the Local Hearing Officer may require a petitioner to pay municipal costs, not to exceed \$250.00.

NOW, THEREFORE, be it resolved by the City Commission of the City of Winter Park, Florida as follows:

SECTION 1. The recitals set forth above are hereby adopted and incorporated herein by reference.

SECTION 2. Municipal costs for the administration of the red light camera program and local hearing officer process under § 316.0083, Florida Statutes, and Chapter 98, Winter Park Code of Ordinances, are hereby set at \$137.00 but not to exceed \$250.00.

SECTION 3. This Resolution shall be published once in a newspaper of general circulation published in the City of Winter Park, Florida.

SECTION 4. Severability. If any section, subsection, sentence, clause, phrase, word or provision of this resolution is for any reason held invalid or unconstitutional by any court of competent jurisdiction, whether for substantive, procedural, or any other

reason, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions of this Resolution.

SECTION 5. Conflicts. All resolutions or parts of ordinances in conflict with any of the provisions of this resolution are hereby repealed.

SECTION 6. This Resolution shall become effectively immediately upon its passage and adoption.

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

Kenneth W. Bradley, Mayor

Attest:

Cynthia S. Bonham, City Clerk



city commission public hearing

item type	Public Hearing	meeting date	August 12, 2013
prepared by department division	Michelle del Valle City Management	approved by	<input checked="" type="checkbox"/> City Manager <input checked="" type="checkbox"/> City Attorney <input type="checkbox"/> N/A
board approval	Police Pension Board Fire Pension Board	<input checked="" type="checkbox"/> yes <input type="checkbox"/> no <input type="checkbox"/> N/A	final vote

subject

1. Ordinance amending City of Winter Park Firefighters' Pension Plan
2. Ordinance amending City of Winter Park Police Officers' Pension Plan

motion | recommendation

Approve both ordinances, separately, on first reading.

summary

The proposed ordinances, provided by the Pension Boards' attorney, Christiansen & Dehner, represent changes required to comply with recent changes to the Internal Revenue Code (IRC) relating to tax qualified pension plans.

Firefighters' Pension Plan

- Amendment Section 74-151- Definition Credited Service
- Amendment Section 74-154 - Finances and Fund Management
- Amendment Section 74-165 – Maximum Pension

Police Officers' Pension Plan

- Amendment Section 74-201- Definition Credited Service
- Amendment Section 74-204 - Finances and Fund Management
- Amendment Section 74-215 – Maximum Pension

Also included in the packet are reviews from Gabriel Roeder Smith & Company, the pension plans' actuary, indicating there is no cost to making these changes and confirmation from the City's pension counsel, Lewis, Longman & Walker, that revisions are required by federal law and IRS regulation.

Also included are changes to Section 74-201, Definitions, Salary.

board comments

N/A

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF WINTER PARK, FLORIDA, AMENDING CHAPTER 74, PERSONNEL, ARTICLE V, RETIREMENT AND PENSION PLANS, DIVISION 3, FIREFIGHTERS, OF THE CODE OF ORDINANCES OF THE CITY OF WINTER PARK; AMENDING SECTION 74-151, DEFINITIONS; AMENDING SECTION 74-154, FINANCES AND FUND MANAGEMENT; AMENDING SECTION 74-165, MAXIMUM PENSION; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY OF PROVISIONS; REPEALING ALL ORDINANCES IN CONFLICT HERewith AND PROVIDING AN EFFECTIVE DATE.

BE IT ENACTED BY THE CITY OF WINTER PARK, FLORIDA, AS FOLLOWS;

SECTION 1: That Chapter 74, Personnel, Article V, Retirement and Pension Plans, Division 3, Firefighters, of the Code of Ordinances of the City of Winter Park, is hereby amended by amending Section 74-151, Definitions, to amend the definition of "Credited Service", to read as follows:

* * * * *

Credited Service means the total number of years and fractional parts of years of service as a Firefighter with Member contributions, when required, omitting intervening years or fractional parts of years when such Member was not employed by the City as a Firefighter. A Member may voluntarily leave his Accumulated Contributions in the Fund for a period of five (5) years after leaving the employ of the Fire Department pending the possibility of being reemployed as a Firefighter, without losing credit for the time that he was a Member of the System. If a vested Member leaves the employ of the Fire Department, his Accumulated Contributions will be returned only upon his written request. If a Member who is not vested is not reemployed as a Firefighter with the Fire Department within five (5) years, his Accumulated Contributions, if one-thousand dollars (\$1,000.00) or less, shall be returned. If a Member who is not vested is not reemployed within five (5) years, his Accumulated Contributions, if more than one-thousand dollars (\$1,000.00), will be returned only upon the written request of the Member and upon completion of a written election to receive a cash lump sum or to rollover the lump sum amount on forms designated by the Board shall be returned. Upon return of a Member's Accumulated Contributions, all of his rights and benefits under the System are forfeited and terminated. Upon any reemployment, a Firefighter shall not receive credit for the years and fractional parts of years of service for which he has withdrawn his Accumulated Contributions from the Fund, unless the Firefighter repays into the Fund the contributions he has withdrawn, with interest, as determined by the Board, within ninety (90) days after his reemployment.

The years or fractional parts of a year that a Member performs "Qualified Military Service" consisting of voluntary or involuntary "service in the uniformed services" as defined in the Uniformed Services Employment and Reemployment Rights Act (USERRA) (P.L.103-353), after separation from employment as a Firefighter with the City to perform training or service, shall be added to his years of Credited Service for all purposes, including vesting, provided that:

- A. The member is entitled to reemployment under the provisions of USERRA.
- B. The Member returns to his employment as a Firefighter within one (1) year from the earlier of the date of his military discharge or his release from active service, unless otherwise required by USERRA.

- C. The maximum credit for military service pursuant to this paragraph shall be five (5) years.
- D. This paragraph is intended to satisfy the minimum requirements of USERRA. To the extent that this paragraph does not meet the minimum standards of USERRA, as it may be amended from time to time, the minimum standards shall apply.

In the event a Member dies on or after January 1, 2007, while performing USERRA Qualified Military Service, the beneficiaries of the Member are entitled to any benefits (other than benefit accruals relating to the period of qualified military service) as if the Member had resumed employment and then died while employed.

Beginning January 1, 2009, to the extent required by Section 414(u)(12) of the Code, an individual receiving differential wage payments (as defined under Section 3401(h)(2) of the Code) from an employer shall be treated as employed by that employer, and the differential wage payment shall be treated as compensation for purposes of applying the limits on annual additions under Section 415(c) of the Code. This provision shall be applied to all similarly situated individuals in a reasonably equivalent manner.

* * * * *

SECTION 2: That Chapter 74, Personnel, Article V, Retirement and Pension Plans, Division 3, Firefighters, of the Code of Ordinances of the City of Winter Park, is hereby amended by amending Section 74-154, Finances and Fund Management, subsection 6.B.(3), to read as follows:

- 6.B. (3) In addition, the Board may, upon recommendation by the Board's investment consultant, make investments in group trusts meeting the requirements of Internal Revenue Service Revenue Ruling 81-100 and Revenue Ruling 2011-1 or successor rulings or guidance of similar import, and operated or maintained exclusively for the commingling and collective investment of monies, provided that the funds in the group trust consist exclusively of trust assets held under plans qualified under section 401(a) of the Code, individual retirement accounts that are exempt under section 408(e) of the Code, eligible governmental plans that meet the requirements of section 457(b) of the Code, and governmental plans under 401(a)(24) of the Code. For this purpose, a trust includes a custodial account that is treated as a trust under section 401(f) or under section 457(g)(3) of the Code. While any portion of the assets of the fund are invested in such a group trust, such group trust is itself adopted as a part of the System or plan.

* * * * *

SECTION 3: That Chapter 74, Personnel, Article V, Retirement and Pension Plans, Division 3, Firefighters, of the Code of Ordinances of the City of Winter Park, is hereby amended by amending Section 74-165, Maximum Pension, to read as follows:

Sec. 74-165. Maximum pension.

- 1. *Basic Limitation.* Notwithstanding any other provisions of this System to the contrary, the Member contributions paid to, and retirement benefits paid from, the System shall be limited to such extent as may be necessary to conform to the requirements of Code Section 415 for a qualified retirement plan. Before January 1, 1995, a plan member may not receive an annual benefit that exceeds the limits specified in Code Section 415(b), subject to the applicable adjustments in that section. On and after January 1, 1995, a plan member may not receive an annual

benefit that exceeds the dollar amount specified in Code Section 415(b)(1)(A) (\$160,000), subject to the applicable adjustments in Code Section 415(b) and subject to any additional limits that may be specified in this System. For purposes of this Section, "limitation year" shall be the calendar year.

For purposes of Code Section 415(b), the "annual benefit" means a benefit payable annually in the form of a straight life annuity (with no ancillary benefits) without regard to the benefit attributable to after-tax employee contributions (except pursuant to Code Section 415(n) and to rollover contributions (as defined in Code Section 415(b)(2)(A)). The "benefit attributable" shall be determined in accordance with Treasury Regulations.

2. *Adjustments to Basic Limitation for Form of Benefit.* If the form of benefit without regard to any benefit increase feature is not a straight life annuity, then the Code Section 415(b) limit applicable at the annuity starting date is reduced to an actuarially equivalent amount (determined using the assumptions specified in Treasury Regulation Section 1.415(b)-1(c)(2)(ii)) that takes into account the death benefits under the form of benefit. If the benefit under the plan is other than the annual benefit described in subsection 1., then the benefit shall be adjusted so that it is the equivalent of the annual benefit, using factors prescribed in Treasury Regulations. If the form of the benefit without regard to any automatic benefit increase feature is not a straight life annuity or a qualified joint and survivor annuity, then the preceding sentence is applied by either reducing the Code Section 415(b) limit applicable at the annuity starting date or adjusting the form of benefit to an actuarially equivalent amount (determined using the assumptions specified in Treasury Regulation Section 1.415(b)-1(c)(2)(ii)) that takes into account the additional benefits under the form of benefit as follows:

A. For a benefit paid in a form to which Section 417(e)(3) of the Code does not apply (generally, a monthly benefit), the actuarially equivalent straight life annuity benefit that is the greater of:

- (1) The annual amount of the straight life annuity (if any) payable to the Member under the Plan commencing at the same annuity starting date as the form of benefit to the Member, or
- (2) The annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the form of benefit payable to the Member, computed using a five percent (5%) interest assumption (or the applicable statutory interest assumption) and (i) for years prior to January 1, 2009, the applicable mortality tables described in Treasury Regulation Section 1.417(e)-1(d)(2) (Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Rulings 2001-62), and (ii) for years after December 31, 2008, the applicable mortality tables described in Section 417(e)(3)(B) of the Code (Notice 2008-85 or any subsequent Internal Revenue Service guidance implementing Section 417(e)(3)(B) of the Code); or

B. For a benefit paid in a form to which Section 417(e)(3) of the Code applies (generally, a lump sum benefit), the actuarially equivalent straight life annuity benefit that is the greatest of:

- (1) The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable, computed using the interest rate

and mortality table, or tabular factor, specified in the Plan for actuarial experience;

(2) The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable, computed using a five and one half percent (5.5%) interest assumption (or the applicable statutory interest assumption) and (i) for years prior to January 1, 2009, the applicable mortality tables for the distribution under Treasury Regulation Section 1.417(e)-1(d)(2) (the mortality table specified in Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62), and (ii) for years after December 31, 2008, the applicable mortality tables described in Section 417(e)(3)(B) of the Code (Notice 2008-85 or any subsequent Internal Revenue Service guidance implementing section 417(e)(3)(B) of the Code); or

(3) The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable (computed using the applicable interest rate for the distribution under Treasury Regulation Section 1.417(e)-1(d)(3) (the 30-year Treasury rate (prior to January 1, 2007, using the rate in effect for the month prior to retirement, and on and after January 1, 2007, using the rate in effect for the first day of the Plan Year with a one-year stabilization period)) and (i) for years prior to January 1, 2009, the applicable mortality tables for the distribution under Treasury Regulation Section 1.417(e)-1(d)(2) (the mortality table specified in Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62), and (ii) for years after December 31, 2008, the applicable mortality tables described in Section 417(e)(3)(B) of the Code (Notice 2008-85 or any subsequent Internal Revenue Service guidance implementing Section 417(e)(3)(B) of the Code), divided by 1.05.

C. The actuary may adjust the 415(b) limit at the annuity starting date in accordance with subsections A. and B. above.

3. *Benefits Not Taken into Account.* For purposes of this Section, the following benefits shall not be taken into account in applying these limits:

A. Any ancillary benefit which is not directly related to retirement income benefits;

B. Any other benefit not required under §415(b)(2) of the Code and Regulations thereunder to be taken into account for purposes of the limitation of Code Section 415(b)(1); and

C. That portion of any joint and survivor annuity that constitutes a qualified joint and survivor annuity.

4. *COLA Effect.* Effective on and after January 1, 2003, for purposes of applying the limits under Code Section 415(b) (the "Limit"), the following will apply:

A. A Member's applicable limit will be applied to the Member's annual benefit in the Member's first ~~calendar~~ limitation year of benefit payments without regard to any automatic cost of living adjustments;

- B. thereafter, in any subsequent ~~calendar~~ limitation year, a Member's annual benefit, including any automatic cost of living increases, shall be tested under the then applicable benefit limit including any adjustment to the Code Section 415(b)(1)(A) dollar limit under Code Section 415(d), and the regulations thereunder; but
- C. in no event shall a Member's benefit payable under the System in any ~~calendar~~ limitation year be greater than the limit applicable at the annuity starting date, as increased in subsequent years pursuant to Code Section 415(d) and the regulations thereunder.

Unless otherwise specified in the System, for purposes of applying the limits under Code Section 415(b), a Member's applicable limit will be applied taking into consideration cost of living increases as required by Section 415(b) of the Code and applicable Treasury Regulations.

5. *Other Adjustments in Limitations.*

- A. In the event the Member's retirement benefits become payable before age sixty-two (62), the limit prescribed by this Section shall be reduced in accordance with regulations issued by the Secretary of the Treasury pursuant to the provisions of Code Section 415(b) of the Code, so that such limit (as so reduced) equals an annual straight life benefit (when such retirement income benefit begins) which is equivalent to a one hundred sixty thousand dollar (\$160,000) annual benefit beginning at age sixty-two (62).
- B. In the event the Member's benefit is based on at least fifteen (15) years of Credited Service as a full-time employee of the police or fire department of the City, the adjustments provided for in A. above shall not apply.
- C. The reductions provided for in A. above shall not be applicable to disability benefits pursuant to Section 8 74-158, or pre-retirement death benefits paid pursuant to Section 7 74-157.
- D. In the event the Member's retirement benefit becomes payable after age sixty-five (65), for purposes of determining whether this benefit meets the limit set forth in subsection 1 herein, such benefit shall be adjusted so that it is actuarially equivalent to the benefit beginning at age sixty-five (65). This adjustment shall be made in accordance with regulations promulgated by the Secretary of the Treasury or his delegate.

6. *Less than Ten (10) Years of Participation or Service.* The maximum retirement benefits payable under this Section to any Member who has completed less than ten (10) years of Credited Service with the City shall be the amount determined under subsection 1 of this Section multiplied by a fraction, the numerator of which is the number of the Member's years of Credited Service and the denominator of which is ten (10). The reduction provided by this subsection cannot reduce the maximum benefit below 10% of the limit determined without regard to this subsection. The reduction provided for in this subsection shall not be applicable to pre-retirement disability benefits paid pursuant to Section 8 74-158, or pre-retirement death benefits paid pursuant to Section 7 74-157.

7. *Participation in Other Defined Benefit Plans.* The limit of this Section with respect to any Member who at any time has been a member in any other defined benefit plan as defined in Code Section 414(j) maintained by the City shall apply as

if the total benefits payable under all City defined benefit plans in which the Member has been a member were payable from one plan.

8. *Ten Thousand Dollar (\$10,000) Limit; Less Than Ten Years of Service.* Notwithstanding ~~the foregoing~~ anything in this Section 74-165, the retirement benefit payable with respect to a Member shall be deemed not to exceed the limit set forth in this subsection 8. of Section 74-165 if the benefits payable, with respect to such Member under this System and under all other qualified defined benefit pension plans to which the City contributes, do not exceed ten thousand dollars (\$10,000) for the applicable ~~Plan-Year limitation year~~ and for any prior Plan-Year limitation year and the City has not any time maintained a qualified defined contribution plan in which the Member participated; provided, however, that if the Member has completed less than ten (10) years of Credited Service with the City, the limit under this subsection 8. of Section 74-165 shall be a reduced limit equal to ten thousand dollars (\$10,000) multiplied by a fraction, the numerator of which is the number of the Member's years of Credited Service and the denominator of which is ten (10).

9. *Reduction of Benefits.* Reduction of benefits and/or contributions to all plans, where required, shall be accomplished by first reducing the Member's benefit under any defined benefit plans in which Member participated, such reduction to be made first with respect to the plan in which Member most recently accrued benefits and thereafter in such priority as shall be determined by the Board and the plan administrator of such other plans, and next, by reducing or allocating excess forfeitures for defined contribution plans in which the Member participated, such reduction to be made first with respect to the plan in which Member most recently accrued benefits and thereafter in such priority as shall be established by the Board and the plan administrator for such other plans provided, however, that necessary reductions may be made in a different manner and priority pursuant to the agreement of the Board and the plan administrator of all other plans covering such Member.

10. *Service Credit Purchase Limits.*

- A. Effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, if a Member makes one or more contributions to purchase permissive service credit under the System, as allowed in Section ~~27 and 28~~ 74-177 and 74-178, then the requirements of this Section will be treated as met only if:

- (1) the requirements of Code Section 415(b) are met, determined by treating the accrued benefit derived from all such contributions as an annual benefit for purposes of Code Section 415(b), or
- (2) the requirements of Code Section 415(c) are met, determined by treating all such contributions as annual additions for purposes of Code Section 415(c).

- (3) For purposes of applying subparagraph (1), the System will not fail to meet the reduced limit under Code Section 415(b)(2)(c) solely by reason of this subparagraph (3), and for purposes of applying subparagraph (2) the System will not fail to meet the percentage limitation under Section 415(c)(1)(B) of the Code solely by reason of this subparagraph (3).

- B. For purposes of this subsection the term "permissive service credit" means service credit—

- (1) recognized by the System for purposes of calculating a Member's benefit under the plan,
- (2) which such Member has not received under the plan, and
- (3) which such Member may receive only by making a voluntary additional contribution, in an amount determined under the System, which does not exceed the amount necessary to fund the benefit attributable to such service credit.

Effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, such term may, if otherwise provided by the System, include service credit for periods for which there is no performance of service, and, notwithstanding clause B.(2), may include service credited in order to provide an increased benefit for service credit which a Member is receiving under the System.

11. Contributions Limits

- € A. For purposes of applying the Code Section 415(c) limits ~~in this subsection 10.~~ which are incorporated by reference and for purposes of this subsection 11., only and for no other purpose, the definition of compensation where applicable will be compensation actually paid or made available during a ~~calendar~~ limitation year, except as noted below and as permitted by Treasury Regulations Section 1.415(c)-2, or successor regulations. Unless another definition of compensation that is permitted by Treasury Regulations Section 1.415(c)-2, or successor regulation, is specified by the System, compensation will be defined as wages within the meaning of Code Section 3401(a) and all other payments of compensation to an employee by an employer for which the employer is required to furnish the employee a written statement under Code Sections 6041(d), 6051(a)(3) and 6052 and will be determined without regard to any rules under Code Section 3401(a) that limit the remuneration included in wages based on the nature or location of the employment or the services performed (such as the exception for agricultural labor in Code Section 3401(a)(2)).
- (1) However, for ~~calendar~~ limitation years beginning after December 31, 1997, compensation will also include amounts that would otherwise be included in compensation but for an election under Code Sections 125(a), 402(e)(3), 402(h)(1)(B), 402(k), or 457(b). For ~~calendar~~ limitation years beginning after December 31, 2000, compensation will also include any elective amounts that are not includible in the gross income of the employee by reason of Code Section 132(f)(4).
 - (2) For limitation years beginning on and after January 1, 2007, compensation for the ~~calendar~~ limitation year will also include compensation paid by the later of 2½ months after an employee's severance from employment or the end of the ~~calendar~~ limitation year that includes the date of the employee's severance from employment if:
 - (a) the payment is regular compensation for services during the employee's regular working hours, or compensation for services outside the employee's regular working hours (such as overtime or shift differential), commissions, bonuses or other similar payments, and, absent a severance from

employment, the payments would have been paid to the employee while the employee continued in employment with the employer; or

(b) the payment is for unused accrued bona fide sick, vacation or other leave that the employee would have been able to use if employment had continued.

(3) Back pay, within the meaning of Treasury Regulations Section 1.415(c)-2(g)(8), shall be treated as compensation for the limitation year to which the back pay relates to the extent the back pay represents wages and compensation that would otherwise be included under this definition.

~~D~~ B. Notwithstanding any other provision of law to the contrary, the Board may modify a request by a Member to make a contribution to the System if the amount of the contribution would exceed the limits provided in Code Section 415 by using the following methods:

(1) If the law requires a lump sum payment for the purchase of service credit, the Board may establish a periodic payment deduction plan for the Member to avoid a contribution in excess of the limits under Code Sections 415(c) or 415(n).

(2) If payment pursuant to subparagraph (1) will not avoid a contribution in excess of the limits imposed by Code Section 415(c), the Board may either reduce the Member's contribution to an amount within the limits of that section or refuse the Member's contribution.

C. If the annual additions for any Member for a limitation year exceed the limitation under Section 415(c) of the Code, the excess annual addition will be corrected as permitted under the Employee Plans Compliance Resolution System (or similar IRS correction program).

D. For limitation years beginning on or after January 1, 2009, a Member's compensation for purposes of this subsection 11. shall not exceed the annual limit under Section 401(a)(17) of the Code.

~~11~~ 12. *Additional Limitation on Pension Benefits*. Notwithstanding anything herein to the contrary:

A. The normal retirement benefit or pension payable to a Retiree shall not exceed one hundred percent (100%) of his Average Final Compensation. However, nothing contained in this Section shall apply to supplemental retirement benefits or to pension increases attributable to cost-of-living increases or adjustments.

B. No Member of the System shall be allowed to receive a retirement benefit or pension which is in part or in whole based upon any service with respect to which the Member is already receiving, or will receive in the future, a retirement benefit or pension from a different employer's retirement system or plan. This restriction does not apply to social security benefits or federal benefits under Chapter 67, Title 10, U.S. Code.

SECTION 4: Specific authority is hereby granted to codify and incorporate this Ordinance in the existing Code of Ordinances of the City of Winter Park.

SECTION 5: All Ordinances or parts of Ordinances in conflict herewith be and the same are hereby repealed.

SECTION 6: If any section, subsection, sentence, clause, phrase of this ordinance, or the particular application thereof shall be held invalid by any court, administrative agency, or other body with appropriate jurisdiction, the remaining section, subsection, sentences, clauses, or phrases under application shall not be affected thereby.

SECTION 7: That this Ordinance shall become effective upon its adoption.

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

By: _____
Mayor Kenneth W. Bradley

Attest: _____
Cynthia S. Bonham, City Clerk

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF WINTER PARK, FLORIDA, AMENDING CHAPTER 74, PERSONNEL, ARTICLE V, RETIREMENT AND PENSION PLANS, DIVISION 4, POLICE OFFICERS, OF THE CODE OF ORDINANCES OF THE CITY OF WINTER PARK; AMENDING SECTION 74-201, DEFINITIONS; AMENDING SECTION 74-204, FINANCES AND FUND MANAGEMENT; AMENDING SECTION 74-215, MAXIMUM PENSION; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY OF PROVISIONS; REPEALING ALL ORDINANCES IN CONFLICT HERewith AND PROVIDING AN EFFECTIVE DATE.

BE IT ENACTED BY THE CITY OF WINTER PARK, FLORIDA, AS FOLLOWS;

SECTION 1: That Chapter 74, Personnel, Article V, Retirement and Pension Plans, Division 4, Police Officers, of the Code of Ordinances of the City of Winter Park, is hereby amended by amending Section 74-201, Definitions, to amend the definitions of "Credited Service" and "Salary", to read as follows:

* * * * *

Credited Service means the total number of years and fractional parts of years of service as a Police Officer with Member contributions, when required, omitting intervening years or fractional parts of years when such Member was not employed by the City as a Police Officer. A Member may voluntarily leave his Accumulated Contributions in the Fund for a period of five (5) years after leaving the employ of the Police Department pending the possibility of being re-employed as a Police Officer without losing credit for the time that he was a Member of the System. If a vested Member leaves the employ of the Police Department, his Accumulated Contributions will be returned only upon his written request. If a Member who is not vested is not reemployed as a Police Officer with the Police Department within five (5) years, his Accumulated Contributions, if one-thousand dollars (\$1,000.00) or less, shall be returned. If a Member who is not vested is not reemployed within five (5) years, his Accumulated Contributions, if more than one-thousand dollars (\$1,000.00), will be returned only upon the written request of the Member and upon completion of a written election to receive a cash lump sum or to rollover the lump sum amount on forms designated by the Board. Upon return of a Member's Accumulated Contributions, all of his rights and benefits under the System are forfeited and terminated. Upon any reemployment, a Police Officer shall not receive credit for the years and fractional parts of years of service for which he has withdrawn his Accumulated Contributions from the Fund, unless the Police Officer repays into the Fund the contributions he has withdrawn, with interest, as determined by the Board, within ninety (90) days after his reemployment.

The years or fractional parts of a year that a Member performs "Qualified Military Service" consisting of voluntary or involuntary "service in the uniformed services" as defined in the Uniformed Services Employment and Reemployment Rights Act (USERRA) (P.L.103-353), after separation from employment as a Police Officer with the City to perform training or service, shall be added to his years of Credited Service for all purposes, including vesting, provided that:

- A. The Member is entitled to reemployment under the provisions of USERRA.
- B. The Member returns to his employment as a Police Officer within one (1) year from the earlier of the date of his military discharge or his release from active service, unless otherwise required by USERRA.

- C. The maximum credit for military service pursuant to this paragraph shall be five (5) years.
- D. This paragraph is intended to satisfy the minimum requirements of USERRA. To the extent that this paragraph does not meet the minimum standards of USERRA, as it may be amended from time to time, the minimum standards shall apply.

In the event a Member dies on or after January 1, 2007, while performing USERRA Qualified Military Service, the beneficiaries of the Member are entitled to any benefits (other than benefit accruals relating to the period of qualified military service) as if the Member had resumed employment and then died while employed.

Beginning January 1, 2009, to the extent required by Section 414(u)(12) of the Code, an individual receiving differential wage payments (as defined under Section 3401(h)(2) of the Code) from an employer shall be treated as employed by that employer, and the differential wage payment shall be treated as compensation for purposes of applying the limits on annual additions under Section 415(c) of the Code. This provision shall be applied to all similarly situated individuals in a reasonably equivalent manner.

* * * * *

Salary means the total compensation for services rendered to the City as a Police Officer reported on the Member's W-2 form, except compensation for special details, duty indirectly paid for by private parties, and tuition reimbursement, and emergency payment for unused Personal Leave, but including all tax deferred items of income deferred pursuant to Sections 457 (employee contributions only) and 414(h) of the Code and tax exempt income exempt pursuant to Section 125 of the Code, and tax sheltered items of income derived from elective employee payroll deductions or salary reductions. Notwithstanding the preceding sentence, for Credited Service on and after October 1, 2011, Salary shall exclude payments for overtime in excess of three hundred (300) hours per calendar year and payments for accrued annual leave, except that payments for accrued annual leave accrued as of October 1, 2011 may be included in Salary for pension purposes even if payment is not actually made until on or after October 1, 2011 provided, however, the amount of accrued annual leave accrued as of October 1, 2011 that may be included in Salary for pension purposes shall be reduced by the actual amount of annual leave used by the Member on or after October 1, 2011 as follows:

- A. For Members with sixteen (16) years or more Credited Service as of October 1, 2011, the amount of accrued annual leave included in Salary shall be calculated by reducing the amount of accrued annual leave as of October 1, 2011 by the actual amount of annual leave used by the Member on or after that date on a last in first out (LIFO) basis; and
- B. For Members with less than sixteen (16) years of Credited Service as of October 1, 2011, the amount of annual leave included in Salary shall be calculated by reducing the amount of accrued annual leave as of October 1, 2011 by the actual amount of annual leave used by the Member on or after that date on a first in first out (FIFO) basis.

Compensation in excess of limitations set forth in Section 401(a)(17) of the Code as of the first day of the Plan Year shall be disregarded for any purpose, including employee contributions or any benefit calculations. The annual compensation of each member taken into account in determining benefits or employee contributions for any Plan Year beginning on or after January 1, 2002, may not exceed \$200,000, as adjusted for cost-of-living increases in accordance with Code Section 401(a)(17)(B). Compensation means compensation during the fiscal year. The

cost-of-living adjustment in effect for a calendar year applies to annual compensation for the determination period that begins with or within such calendar year. If the determination period consists of fewer than 12 months, the annual compensation limit is an amount equal to the otherwise applicable annual compensation limit multiplied by a fraction, the numerator of which is the number of months in the short determination period, and the denominator of which is 12. If the compensation for any prior determination period is taken into account in determining a Member's contributions or benefits for the current Plan Year, the compensation for such prior determination period is subject to the applicable annual compensation limit in effect for that prior period. The limitation on compensation for an "eligible employee" shall not be less than the amount which was allowed to be taken into account hereunder as in effect on July 1, 1993. "Eligible employee" is an individual who was a Member before the first Plan Year beginning after December 31, 1995.

* * * * *

SECTION 2: That Chapter 74, Personnel, Article V, Retirement and Pension Plans, Division 4, Police Officers, of the Code of Ordinances of the City of Winter Park, is hereby amended by amending Section 74-204, Finances and Fund Management, subsection 6.B.(3), to read as follows:

- 6.B. (3) In addition, the Board may, upon recommendation by the Board's investment consultant, make investments in group trusts meeting the requirements of Internal Revenue Service Revenue Ruling 81-100 and Revenue Ruling 2011-1 or successor rulings or guidance of similar import, and operated or maintained exclusively for the commingling and collective investment of monies, provided that the funds in the group trust consist exclusively of trust assets held under plans qualified under section 401(a) of the Code, individual retirement accounts that are exempt under section 408(e) of the Code, eligible governmental plans that meet the requirements of section 457(b) of the Code, and governmental plans under 401(a)(24) of the Code. For this purpose, a trust includes a custodial account that is treated as a trust under section 401(f) or under section 457(g)(3) of the Code. While any portion of the assets of the fund are invested in such a group trust, such group trust is itself adopted as a part of the System or plan.

* * * * *

SECTION 3: That Chapter 74, Personnel, Article V, Retirement and Pension Plans, Division 4, Police Officers, of the Code of Ordinances of the City of Winter Park, is hereby amended by amending Section 74-215, Maximum Pension, to read as follows:

Sec. 74-215. Maximum pension.

1. *Basic Limitation.* Notwithstanding any other provisions of this System to the contrary, the Member contributions paid to, and retirement benefits paid from, the System shall be limited to such extent as may be necessary to conform to the requirements of Code Section 415 for a qualified retirement plan. Before January 1, 1995, a plan member may not receive an annual benefit that exceeds the limits specified in Code Section 415(b), subject to the applicable adjustments in that section. On and after January 1, 1995, a plan member may not receive an annual benefit that exceeds the dollar amount specified in Code Section 415(b)(1)(A) (\$160,000), subject to the applicable adjustments in Code Section 415(b) and subject to any additional limits that may be specified in this System. For purposes of this Section, "limitation year" shall be the calendar year.

For purposes of Code Section 415(b), the "annual benefit" means a benefit payable annually in the form of a straight life annuity (with no ancillary benefits) without regard to the benefit attributable to after-tax employee contributions (except pursuant to Code Section 415(n) and to rollover contributions (as defined in Code Section 415(b)(2)(A)). The "benefit attributable" shall be determined in accordance with Treasury Regulations.

2. *Adjustments to Basic Limitation for Form of Benefit.* If the form of benefit without regard to any benefit increase feature is not a straight life annuity, then the Code Section 415(b) limit applicable at the annuity starting date is reduced to an actuarially equivalent amount (determined using the assumptions specified in Treasury Regulation Section 1.415(b)-1(c)(2)(ii)) that takes into account the death benefits under the form of benefit. If the benefit under the plan is other than the annual benefit described in subsection 1., then the benefit shall be adjusted so that it is the equivalent of the annual benefit, using factors prescribed in Treasury Regulations. If the form of the benefit without regard to any automatic benefit increase feature is not a straight life annuity or a qualified joint and survivor annuity, then the preceding sentence is applied by either reducing the Code Section 415(b) limit applicable at the annuity starting date or adjusting the form of benefit to an actuarially equivalent amount (determined using the assumptions specified in Treasury Regulation Section 1.415(b)-1(c)(2)(ii)) that takes into account the additional benefits under the form of benefit as follows:

A. For a benefit paid in a form to which Section 417(e)(3) of the Code does not apply (generally, a monthly benefit), the actuarially equivalent straight life annuity benefit that is the greater of:

- (1) The annual amount of the straight life annuity (if any) payable to the Member under the Plan commencing at the same annuity starting date as the form of benefit to the Member, or
- (2) The annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the form of benefit payable to the Member, computed using a five percent (5%) interest assumption (or the applicable statutory interest assumption) and (i) for years prior to January 1, 2009, the applicable mortality tables described in Treasury Regulation Section 1.417(e)-1(d)(2) (Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Rulings 2001-62), and (ii) for years after December 31, 2008, the applicable mortality tables described in Section 417(e)(3)(B) of the Code (Notice 2008-85 or any subsequent Internal Revenue Service guidance implementing Section 417(e)(3)(B) of the Code); or

B. For a benefit paid in a form to which Section 417(e)(3) of the Code applies (generally, a lump sum benefit), the actuarially equivalent straight life annuity benefit that is the greatest of:

- (1) The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable, computed using the interest rate and mortality table, or tabular factor, specified in the Plan for actuarial experience;

- (2) The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable, computed using a five and one half percent (5.5%) interest assumption (or the applicable statutory interest assumption) and (i) for years prior to January 1, 2009, the applicable mortality tables for the distribution under Treasury Regulation Section 1.417(e)-1(d)(2) (the mortality table specified in Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62), and (ii) for years after December 31, 2008, the applicable mortality tables described in Section 417(e)(3)(B) of the Code (Notice 2008-85 or any subsequent Internal Revenue Service guidance implementing section 417(e)(3)(B) of the Code); or
 - (3) The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable (computed using the applicable interest rate for the distribution under Treasury Regulation Section 1.417(e)-1(d)(3) (the 30-year Treasury rate (prior to January 1, 2007, using the rate in effect for the month prior to retirement, and on and after January 1, 2007, using the rate in effect for the first day of the Plan Year with a one-year stabilization period)) and (i) for years prior to January 1, 2009, the applicable mortality tables for the distribution under Treasury Regulation Section 1.417(e)-1(d)(2) (the mortality table specified in Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62), and (ii) for years after December 31, 2008, the applicable mortality tables described in Section 417(e)(3)(B) of the Code (Notice 2008-85 or any subsequent Internal Revenue Service guidance implementing Section 417(e)(3)(B) of the Code), divided by 1.05.
 - C. The actuary may adjust the 415(b) limit at the annuity starting date in accordance with subsections A. and B. above.
3. *Benefits Not Taken into Account.* For purposes of this Section, the following benefits shall not be taken into account in applying these limits:
 - A. Any ancillary benefit which is not directly related to retirement income benefits;
 - B. Any other benefit not required under §415(b)(2) of the Code and Regulations thereunder to be taken into account for purposes of the limitation of Code Section 415(b)(1); and
 - C. That portion of any joint and survivor annuity that constitutes a qualified joint and survivor annuity.
4. *COLA Effect.* Effective on and after January 1, 2003, for purposes of applying the limits under Code Section 415(b) (the "Limit"), the following will apply:
 - A. A Member's applicable limit will be applied to the Member's annual benefit in the Member's first ~~calendar~~ limitation year of benefit payments without regard to any automatic cost of living adjustments;

- B. thereafter, in any subsequent ~~calendar~~ limitation year, a Member's annual benefit, including any automatic cost of living increases, shall be tested under the then applicable benefit limit including any adjustment to the Code Section 415(b)(1)(A) dollar limit under Code Section 415(d), and the regulations thereunder; but
- C. in no event shall a Member's benefit payable under the System in any ~~calendar~~ limitation year be greater than the limit applicable at the annuity starting date, as increased in subsequent years pursuant to Code Section 415(d) and the regulations thereunder.

Unless otherwise specified in the System, for purposes of applying the limits under Code Section 415(b), a Member's applicable limit will be applied taking into consideration cost of living increases as required by Section 415(b) of the Code and applicable Treasury Regulations.

5. *Other Adjustments in Limitations.*

- A. In the event the Member's retirement benefits become payable before age sixty-two (62), the limit prescribed by this Section shall be reduced in accordance with regulations issued by the Secretary of the Treasury pursuant to the provisions of Code Section 415(b) of the Code, so that such limit (as so reduced) equals an annual straight life benefit (when such retirement income benefit begins) which is equivalent to a one hundred sixty thousand dollar (\$160,000) annual benefit beginning at age sixty-two (62).
- B. In the event the Member's benefit is based on at least fifteen (15) years of Credited Service as a full-time employee of the police or fire department of the City, the adjustments provided for in A. above shall not apply.
- C. The reductions provided for in A. above shall not be applicable to disability benefits pursuant to Section 8 74-208, or pre-retirement death benefits paid pursuant to Section 7 74-207.
- D. In the event the Member's retirement benefit becomes payable after age sixty-five (65), for purposes of determining whether this benefit meets the limit set forth in subsection 1 herein, such benefit shall be adjusted so that it is actuarially equivalent to the benefit beginning at age sixty-five (65). This adjustment shall be made in accordance with regulations promulgated by the Secretary of the Treasury or his delegate.

- 6. *Less than Ten (10) Years of Participation or Service.* The maximum retirement benefits payable under this Section to any Member who has completed less than ten (10) years of Credited Service with the City shall be the amount determined under subsection 1 of this Section multiplied by a fraction, the numerator of which is the number of the Member's years of Credited Service and the denominator of which is ten (10). The reduction provided by this subsection cannot reduce the maximum benefit below 10% of the limit determined without regard to this subsection. The reduction provided for in this subsection shall not be applicable to disability benefits paid pursuant to Section 8 74-208, or pre-retirement death benefits paid pursuant to Section 74-207.

7. *Participation in Other Defined Benefit Plans.* The limit of this Section with respect to any Member who at any time has been a member in any other defined benefit plan as defined in Code Section 414(j) maintained by the City shall apply as if the total benefits payable under all City defined benefit plans in which the Member has been a member were payable from one plan.
8. *Ten Thousand Dollar (\$10,000) Limit; Less Than Ten Years of Service.* Notwithstanding ~~the foregoing~~ anything in this Section 74-215, the retirement benefit payable with respect to a Member shall be deemed not to exceed the limit set forth in this subsection 8. of Section 74-215 if the benefits payable, with respect to such Member under this System and under all other qualified defined benefit pension plans to which the City contributes, do not exceed ten thousand dollars (\$10,000) for the applicable ~~Plan Year~~ limitation year and for any prior ~~Plan Year~~ limitation year and the City has not any time maintained a qualified defined contribution plan in which the Member participated; provided, however, that if the Member has completed less than ten (10) years of Credited Service with the City, the limit under this subsection 8. of Section 74-215 shall be a reduced limit equal to ten thousand dollars (\$10,000) multiplied by a fraction, the numerator of which is the number of the Member's years of Credited Service and the denominator of which is ten (10).
9. *Reduction of Benefits.* Reduction of benefits and/or contributions to all plans, where required, shall be accomplished by first reducing the Member's benefit under any defined benefit plans in which Member participated, such reduction to be made first with respect to the plan in which Member most recently accrued benefits and thereafter in such priority as shall be determined by the Board and the plan administrator of such other plans, and next, by reducing or allocating excess forfeitures for defined contribution plans in which the Member participated, such reduction to be made first with respect to the plan in which Member most recently accrued benefits and thereafter in such priority as shall be established by the Board and the plan administrator for such other plans provided, however, that necessary reductions may be made in a different manner and priority pursuant to the agreement of the Board and the plan administrator of all other plans covering such Member.
10. *Service Credit Purchase Limits.*
 - A. Effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, if a Member makes one or more contributions to purchase permissive service credit under the System, as allowed in Section ~~27 and 28~~ 74-227 and 74-228, then the requirements of this Section will be treated as met only if:
 - (1) the requirements of Code Section 415(b) are met, determined by treating the accrued benefit derived from all such contributions as an annual benefit for purposes of Code Section 415(b), or
 - (2) the requirements of Code Section 415(c) are met, determined by treating all such contributions as annual additions for purposes of Code Section 415(c).
 - ~~(3)~~ For purposes of applying subparagraph (1), the System will not fail to meet the reduced limit under Code Section 415(b)(2)(c) solely by reason of this subparagraph ~~(3)~~, and for purposes of applying subparagraph (2) the

System will not fail to meet the percentage limitation under Section 415(c)(1)(B) of the Code solely by reason of this subparagraph ~~(3)~~.

B. For purposes of this subsection the term "permissive service credit" means service credit—

- (1) recognized by the System for purposes of calculating a Member's benefit under the plan,
- (2) which such Member has not received under the plan, and
- (3) which such Member may receive only by making a voluntary additional contribution, in an amount determined under the System, which does not exceed the amount necessary to fund the benefit attributable to such service credit.

Effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, such term may, if otherwise provided by the System, include service credit for periods for which there is no performance of service, and, notwithstanding clause B.(2), may include service credited in order to provide an increased benefit for service credit which a Member is receiving under the System.

11. Contributions Limits

€ A. For purposes of applying the Code Section 415(c) limits ~~in this subsection 10. which are incorporated by reference and for purposes of this subsection 11.~~, only and for no other purpose, the definition of compensation where applicable will be compensation actually paid or made available during a ~~calendar~~ limitation year, except as noted below and as permitted by Treasury Regulations Section 1.415(c)-2, or successor regulations. Unless another definition of compensation that is permitted by Treasury Regulations Section 1.415(c)-2, or successor regulation, is specified by the System, compensation will be defined as wages within the meaning of Code Section 3401(a) and all other payments of compensation to an employee by an employer for which the employer is required to furnish the employee a written statement under Code Sections 6041(d), 6051(a)(3) and 6052 and will be determined without regard to any rules under Code Section 3401(a) that limit the remuneration included in wages based on the nature or location of the employment or the services performed (such as the exception for agricultural labor in Code Section 3401(a)(2)).

- (1) However, for ~~calendar~~ limitation years beginning after December 31, 1997, compensation will also include amounts that would otherwise be included in compensation but for an election under Code Sections 125(a), 402(e)(3), 402(h)(1)(B), 402(k), or 457(b). For ~~calendar~~ limitation years beginning after December 31, 2000, compensation will also include any elective amounts that are not includible in the gross income of the employee by reason of Code Section 132(f)(4).
- (2) For limitation years beginning on and after January 1, 2007, compensation for the ~~calendar~~ limitation year will also include compensation paid by the later of 2½ months after an employee's

severance from employment or the end of the ~~calendar~~ limitation year that includes the date of the employee's severance from employment if:

- (a) the payment is regular compensation for services during the employee's regular working hours, or compensation for services outside the employee's regular working hours (such as overtime or shift differential), commissions, bonuses or other similar payments, and, absent a severance from employment, the payments would have been paid to the employee while the employee continued in employment with the employer; or
 - (b) the payment is for unused accrued bona fide sick, vacation or other leave that the employee would have been able to use if employment had continued.
- (3) Back pay, within the meaning of Treasury Regulations Section 1.415(c)-2(g)(8), shall be treated as compensation for the limitation year to which the back pay relates to the extent the back pay represents wages and compensation that would otherwise be included under this definition.

~~D~~ B. Notwithstanding any other provision of law to the contrary, the Board may modify a request by a Member to make a contribution to the System if the amount of the contribution would exceed the limits provided in Code Section 415 by using the following methods:

- (1) If the law requires a lump sum payment for the purchase of service credit, the Board may establish a periodic payment deduction plan for the Member to avoid a contribution in excess of the limits under Code Sections 415(c) or 415(n).
- (2) If payment pursuant to subparagraph (1) will not avoid a contribution in excess of the limits imposed by Code Section 415(c), the Board may either reduce the Member's contribution to an amount within the limits of that section or refuse the Member's contribution.

C. If the annual additions for any Member for a limitation year exceed the limitation under Section 415(c) of the Code, the excess annual addition will be corrected as permitted under the Employee Plans Compliance Resolution System (or similar IRS correction program).

D. For limitation years beginning on or after January 1, 2009, a Member's compensation for purposes of this subsection 11. shall not exceed the annual limit under Section 401(a)(17) of the Code.

~~11~~ 12. *Additional Limitation on Pension Benefits.* Notwithstanding anything herein to the contrary:

- A. The normal retirement benefit or pension payable to a Retiree shall not exceed one hundred percent (100%) of his Average Final Compensation. However, nothing contained in this Section shall apply to supplemental

retirement benefits or to pension increases attributable to cost-of-living increases or adjustments.

- B. No Member of the System shall be allowed to receive a retirement benefit or pension which is in part or in whole based upon any service with respect to which the Member is already receiving, or will receive in the future, a retirement benefit or pension from a different employer's retirement system or plan. This restriction does not apply to social security benefits or federal benefits under Chapter 67, Title 10, U.S. Code.

SECTION 2: Specific authority is hereby granted to codify and incorporate this Ordinance in the existing Code of Ordinances of the City of Winter Park.

SECTION 3: All Ordinances or parts of Ordinances in conflict herewith be and the same are hereby repealed.

SECTION 4: If any section, subsection, sentence, clause, phrase of this ordinance, or the particular application thereof shall be held invalid by any court, administrative agency, or other body with appropriate jurisdiction, the remaining section, subsection, sentences, clauses, or phrases under application shall not be affected thereby.

SECTION 5: That this Ordinance shall become effective upon its adoption.

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

By: _____
Mayor Kenneth W. Bradley

Attest: _____
Cynthia S. Bonham, City Clerk