



city commission agenda

Regular Meeting Commission Chamber

September 9, 2013
3:30 p.m.
Commission Chambers

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 Pastor John Crawl, Calvary Assembly of God Pledge of Allegiance	
3	Approval of Agenda	
4	Mayor's Report	
5	City Manager's Report	Projected Time
6	City Attorney's Report	Projected Time
7	Non-Action Items	Projected Time
	a. Financial Report – July 2013	10 minutes

8	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)	
9	Consent Agenda a. Approve the following formal solicitation: 1. Award and subsequent Purchase Order to Moore, Stephens, Lovelace for RFP-26-2013, External Audit Services, and authorize the Mayor to execute the contract; \$57,800 b. Authorize the Mayor to execute the Settlement Agreement and Mutual Release with Duke Energy Florida. c. Approve the Motorola Solutions Services Agreement (Radio Maintenance, Network Security and Monitoring) expenditure of \$41,846.28 from State Forfeiture Funds in compliance with Florida State Statute 932.7055(5)(1)	Projected Time 5 minutes
10	Action Items Requiring Discussion	Projected Time
11	Public Hearings a. <u>Request of the City of Winter Park:</u> Ordinance – Revising the permitted and conditional uses regulations for restaurants and other food service establishments; providing definitions for fine dining and other restaurants (2) b. Ordinance – Allowing the City Manager to make special exception for dogs to be in Central Park and other prohibited park areas for specific events (1)	Projected Time 10 minutes 15 minutes
12	City Commission Reports a. Commissioner Leary b. Commissioner Sprinkel c. Commissioner Cooper d. Commissioner McMacken e. Mayor Bradley	Projected Time 10 minutes each
13	Budget Public Hearings (Must be held after 5:00 p.m.) a. Ordinance - Adopting the millage rate (1) b. Ordinance - Adopting the FY 2014 annual budget (1)	Projected Time 30 minutes total

appeals & assistance

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

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



city commission **city manager's report**

item type

City Manager's Report

meeting date

September 9, 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	Permit received. Developing construction schedule and bidding tree acquisition.	September 2013
Fairbanks Improvement Project	<p>Duke 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. Engineering is scheduled for completion Spring 2014.</p> <p><u>Communication Notices</u></p> <ul style="list-style-type: none"> • Jackson lift station is largely complete. • Pavement striping this week. • Working with future customers regarding connection to gravity sewer. 	<p><u>Construction Project</u> On schedule- to be complete by the end of September.</p>
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. Constructing underground utilities.	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 2 remaining suppliers are underway.	October 2013
Territory Negotiations	Ongoing discussions with Progress Energy/Duke	September/October 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.

Financial Report

For the Month of July (83% 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	(40,000)	Largest negative variance is electric franchise fee revenues due to lower sales of kWh
Utility taxes	6,768,216	(105,000)	Big negatives are electric utility tax due to lower sales of kWh and communication services tax
Business license tax	472,000	5,000	
Building permits	1,450,500	600,000	Increased construction activity has improved fee permit revenues
Other licenses & permits	21,500	0	
Intergovernmental	6,069,928	120,000	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 \$15,000
Fines and forfeitures	1,397,600	(40,000)	Traffic fines are a bit less than projected
Miscellaneous	683,381	(820,000)	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 experiencing "unrealized" losses as we adjust the value of our portfolio to its estimated market value each month.
Transfers from other funds	8,475,392	80,000	Increases in electric fuel cost recovery rates should improve our electric franchise fee equivalent revenues
	45,626,885	100,000	

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 close to 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 ten months ended July 31 is a positive \$1,311,500 and debt service coverage is projected to be a very strong 1.97 for the fiscal year.

Electric Services Fund

Electric sales in kWh are projected to be about 17.8M short of our original estimate. The total projection of 412,811,495 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 and again effective July 1, 2013 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 ten months ended July 31 a positive \$1,926,348. The bottom line would be stronger except fuel costs were under recovered from October to July by about \$500,000. 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 2.79 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 2.70 – 2.90 range.

The City of Winter Park, Florida
Monthly Financial Report - Budget vs. Actual
General Fund
Fiscal YTD July 31, 2013 and 2012
83.3% of the Fiscal Year Lapsed

Fiscal YTD July 31, 2013							Fiscal YTD July 31, 2012				
Actual			Budget				Actual	Budget			
YTD	YTD %	Original Annual	Adjusted Annual *	Prorated Adj. Annual	Variance from Prorated Adj. Annual		YTD	Adjusted Annual	Prorated Adj. Annual	Variance from Prorated Adj. Annual	
Revenues:											
Property Tax	\$ 13,923,569	118%	\$ 14,174,500	\$ 14,174,500	\$ 11,812,083	\$ 2,111,486	\$ 13,991,453	\$ 14,265,000	\$ 11,887,500	\$ 2,103,953	
Franchise Fees	799,437	87%	1,103,800	1,103,800	919,833	(120,396)	799,259	1,132,500	943,750	(144,491)	
Utility Taxes	5,038,323	89%	7,048,216	6,768,216	5,640,180	(601,857)	4,934,644	6,717,000	5,597,500	(662,856)	
Occupational Licenses	476,643	121%	472,000	472,000	393,333	83,310	466,429	459,500	382,917	83,512	
Building Permits	1,771,113	147%	1,340,500	1,450,500	1,208,750	562,363	1,619,529	1,249,050	1,040,875	578,654	
Other Licenses & Permits	23,170	129%	21,500	21,500	17,917	5,253	21,065	21,000	17,500	3,565	
Intergovernmental	4,341,372	86%	6,179,928	6,069,928	5,058,273	(716,901)	4,244,935	6,118,315	5,098,596	(853,661)	
Charges for Services	4,462,216	107%	5,010,068	5,010,068	4,175,057	287,159	4,057,554	4,939,600	4,116,333	(58,779)	
Fines and Forfeitures	1,101,368	95%	1,287,600	1,397,600	1,164,667	(63,299)	737,367	1,030,200	858,500	(121,133)	
Miscellaneous	(85,019)	-15%	683,381	683,381	569,484	(654,503)	425,824	556,457	463,714	(37,890)	
Fund Balance	-	-	-	616,788	513,990	(513,990)	-	642,911	535,759	(535,759)	
Total Revenues	31,852,192	101%	37,321,493	37,768,281	31,473,567	378,625	31,298,059	37,131,533	30,942,944	355,115	
Expenditures:											
City Commission	19,348	96%	24,077	24,077	20,064	716	23,216	22,376	18,647	(4,569)	
Legal Services - City Attorney	273,198	136%	240,236	240,236	200,197	(73,001)	189,454	240,236	200,197	10,743	
Legal Services - Other	26,119	52%	60,000	60,000	50,000	23,881	95,740	110,000	91,667	(4,073)	
Lobbyists	86,543	88%	118,000	118,000	98,333	11,790	82,692	116,000	96,667	13,975	
City Management	404,714	97%	501,161	501,383	417,819	13,105	397,412	487,729	406,441	9,029	
Budget and Performance Measurement	58,884	0%	-	-	-	(58,884)	-	-	-	-	
City Clerk	154,880	91%	237,843	203,145	169,288	14,408	154,488	214,071	178,393	23,905	
Communications Dept.	367,232	95%	461,681	463,895	386,579	19,347	345,831	443,574	369,645	23,814	
Information Technology Services	905,674	88%	1,212,642	1,241,789	1,034,824	129,150	997,976	1,343,592	1,119,660	121,684	
Finance	671,653	97%	830,673	831,058	692,548	20,895	679,030	808,588	673,823	(5,207)	
Human Resources	201,592	96%	249,430	250,789	208,991	7,399	200,707	285,245	237,704	36,997	
Purchasing	147,585	79%	211,301	225,011	187,509	39,924	114,085	206,965	172,471	58,386	
Planning & Community Development	382,797	77%	575,441	592,782	493,985	111,188	462,618	643,641	536,369	73,751	
Building	768,114	92%	1,375,881	1,002,095	835,079	66,965	1,047,581	1,292,765	1,077,303	29,722	
Economic Development	57,740	33%	100,000	211,398	176,165	118,425	19,063	163,402	136,168	117,105	
Public Works	5,587,268	97%	6,804,278	6,942,130	5,785,108	197,840	5,625,948	6,931,798	5,776,498	150,550	
Police	9,895,313	93%	12,739,143	12,717,307	10,597,756	702,443	9,344,542	11,901,252	9,917,710	573,168	
Fire	8,550,060	101%	9,858,414	10,118,777	8,432,314	(117,746)	7,830,627	9,351,829	7,793,190	(37,437)	
Parks & Recreation	5,527,635	96%	6,576,086	6,879,703	5,733,086	205,451	5,166,717	6,586,218	5,488,515	321,798	
Organizational Support	1,852,967	145%	1,536,560	1,536,560	1,280,467	(572,500)	1,306,010	1,550,212	1,291,843	(14,167)	
Non-Departmental	-	-	224,000	150,000	125,000	125,000	-	397,500	331,250	331,250	
Total Expenditures	35,939,316	97%	43,936,847	44,310,135	36,925,112	985,796	34,083,737	43,096,993	35,914,161	1,830,424	
Revenues Over/(Under)											
Expenditures	(4,087,124)	75%	(6,615,354)	(6,541,854)	(5,451,545)	1,364,421	(2,785,678)	(5,965,460)	(4,971,217)	2,185,539	
Operating transfers in	7,026,885	99%	8,655,392	8,475,392	7,062,827	(35,942)	6,619,124	8,432,000	7,026,667	(407,543)	
Operating transfers out	(1,593,532)	99%	(2,040,038)	(1,933,538)	(1,611,282)	17,750	(2,055,450)	(2,466,540)	(2,055,450)	-	
Other Financing Sources/(Uses)	5,433,353	100%	6,615,354	6,541,854	5,451,545	(18,192)	4,563,674	5,965,460	4,971,217	(407,543)	
Total Revenues Over											
Expenditures	\$ 1,346,229		\$ -	\$ -	\$ -	\$ 1,346,229	\$ 1,777,996	\$ -	\$ -	\$ 1,777,996	

* As adjusted through July 31, 2013

The City of Winter Park, Florida
Monthly Financial Report - Budget vs. Actual
Community Redevelopment Fund
Fiscal YTD July 31, 2013 and 2012
83.3% of the Fiscal Year Lapsed

	Fiscal YTD July 31, 2013						Fiscal YTD July 31, 2012			
	Actual		Budget				Actual	Budget		
	YTD	YTD %	Original Annual	Adjusted Annual *	Prorated Adj. Annual	Variance from Prorated Adj. Annual	YTD	Adjusted Annual	Prorated Adj. Annual	Variance from Prorated Adj. Annual
Revenues:										
Property Tax	\$ 2,003,379	119%	\$ 2,024,000	\$ 2,024,000	\$ 1,686,667	\$ 316,712	\$ 2,090,103	2,107,423	\$ 1,756,186	\$ 333,917
Intergovernmental	-	0%	-	-	-	-	-	-	-	-
Charges for services	205,358	0%	175,940	175,940	146,617	58,741	139,393	162,000	135,000	4,393
Miscellaneous	(78,597)	-373%	25,300	25,300	21,083	(99,680)	77,690	25,000	20,833	56,857
Fund Balance	-	0%	37,478	55,845	46,538	(46,538)	-	1,039,263	866,053	(866,053)
Total Revenues	2,130,140	112%	2,262,718	2,281,085	1,900,904	229,236	2,307,186	3,333,686	2,778,072	(470,886)
Expenditures:										
Planning and Development	672,437	110%	715,435	733,802	611,502	(60,935)	495,145	605,283	504,403	9,258
Capital Projects	-	0%	-	-	-	-	568,322	1,145,980	954,983	386,661
Debt service	7,283,160	565%	1,547,283	1,547,283	1,289,403	(5,993,758)	1,555,247	1,550,823	1,292,353	(262,894)
Total Expenditures	7,955,597	419%	2,262,718	2,281,085	1,900,904	(6,054,693)	2,618,714	3,302,086	2,751,739	133,025
Revenues Over/(Under)										
Expenditures	(5,825,457)	100%	-	-	-	(5,825,457)	(311,528)	31,600	26,333	(337,861)
Debt proceeds	5,870,000	-	-	-	-	5,870,000	-	-	-	-
Operating transfers out	-	0%	-	-	-	-	(26,333)	(31,600)	(26,333)	-
Other Financing Sources/(Uses)	5,870,000	0%	-	-	-	5,870,000	(26,333)	(31,600)	(26,333)	-
Total Revenues Over/(Under)										
Expenditures	\$ 44,543		\$ -	\$ -	\$ -	\$ 44,543	\$ (337,861)	\$ -	\$ -	\$ (337,861)

* As adjusted through July 31, 2013

WINTER PARK WATER AND WASTEWATER METRICS
July 31, 2013

	FY 2013				FY 2012	
	FY 2013 YTD	FY 2013 Annualized	FY 2013 Budget	Projected Variance from Budget	FY 2012 YTD	FY 2012 in Total
<u>Operating Performance:</u>						
Sales (in thousands of gallons)						
Inside City	1,685,268	2,021,843	1,972,529	49,314	1,764,013	2,186,360
Outside City	1,151,361	1,381,306	1,424,105	(42,799)	1,241,938	1,472,560
Total	2,836,628	3,403,148	3,396,634	6,514	3,005,950	3,658,920
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Operating revenues: ¹						
Sewer - inside city limits	\$ 5,356,885	\$ 6,404,388	\$ 6,008,000	\$ 396,388	5,531,853	6,628,333
Sewer - outside city limits	5,895,225	7,053,119	6,595,000	458,119	6,100,980	7,337,342
Water - inside city limits	5,753,238	7,168,299	8,047,000	(878,701)	5,882,334	7,264,552
Water - outside city limits	4,386,385	5,259,771	5,558,000	(298,229)	4,072,969	4,890,304
Other operating revenues	1,159,248	1,391,098	1,197,000	194,098	1,192,643	1,396,248
Total operating revenues	22,550,981	27,276,675	27,405,000	(128,325)	22,780,779	27,516,779
Operating expenses:						
General and administration	1,277,622	1,533,146	1,681,263	148,117	1,230,148	1,716,877
Operations	8,962,054	10,754,465	12,221,999	1,467,534	9,269,001	11,322,930
Wastewater treatment by other agencies	2,412,521	2,895,025	3,412,000	516,975	2,388,613	3,480,709
Total operating expenses	12,652,197	15,182,636	17,315,262	2,132,626	12,887,762	16,520,516
Operating income (loss)	9,898,784	12,094,038	10,089,738	2,004,300	9,893,017	10,996,263
Other sources (uses):						
Investment earnings	(334,838)	(401,806)	166,850	(568,656)	235,656	184,401
Miscellaneous revenue	6,482	7,778	-	7,778	7,253	7,253
Transfer to Renewal and Replacement Fund	(1,668,819)	(2,002,582.80)	(2,002,830)	247	(1,538,223)	(1,846,020)
Transfer to General Fund	(1,595,083)	(1,914,100)	(1,914,100)	0	(1,541,333)	(1,849,600)
Transfer to Capital Projects Fund	(59,167)	(71,000)	(71,000)	(0)	(55,413)	(66,496)
Debt service sinking fund deposits	(4,935,859)	(5,923,086)	(5,867,532)	(55,554)	(4,857,576)	(5,844,526)
Total other sources (uses)	(8,587,284)	(10,304,796)	(9,688,612)	(616,184)	(7,749,636)	(9,414,988)
Net increase (decrease) in funds	\$ <u>1,311,500</u>	\$ <u>1,789,242</u>	\$ <u>401,126</u>	\$ <u>1,388,116</u>	<u>2,143,381</u>	<u>1,581,275</u>
Debt service coverage	1.94	1.97				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		476,064		476,064
Investment earnings		(91,059)		(91,059)
Sewer extension work at Ravadauge			(108,614)	(108,614)
Other sewer main extension work			(88,391)	(88,391)
Ending balance - 07/31/2013	3,281,868	385,005	(197,005)	3,469,868

Water Impact Fees

	Beginning Balance	Additions	Deductions	Ending Balance
Beginning balance - 10/01/2012	2,656,637			2,656,637
Water impact fee revenues		226,869		226,869
Investment earnings		(69,332)		(69,332)
Water extension work at Ravadauge			(185,713)	(185,713)
Ending balance - 07/31/2013	2,656,637	157,537	(185,713)	2,628,461

Renewal and Replacement Fund

	Beginning Balance	Additions	Deductions	Ending Balance
Beginning balance - 10/01/2012	591,342			591,342
R&R transfer		1,668,819		1,668,819
Investment earnings		(17,142)		(17,142)
Upgrade water mains			(719,489)	(719,489)
Upgrade sewer mains			(526,908)	(526,908)
Rehab sewer manholes			(56,226)	(56,226)
Replace asbestos cement force mains			(159)	(159)
Short line sewer rehab projects			(136,230)	(136,230)
Sewer main extensions			(4,869)	(4,869)
Lift station upgrades and repairs			(69,038)	(69,038)
Utility patch crew work			(231,897)	(231,897)
Ending balance - 07/31/2013	591,342	1,651,677	(1,744,816)	498,203

WINTER PARK ELECTRIC UTILITY METRICS

July 31, 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)	329,960,228	412,811,495	430,647,050	(17,835,555)		413,795,957	427,601,415	438,993,683	427,236,273	440,100,000
Average Revenue/kWh	0.1143	0.1143				0.1091	0.1212	0.1306	0.1251	0.1068
Wholesale Power Purchased (kWh)	348,868,000	434,564,026	446,266,000	(11,701,974)		434,514,000	451,951,216	456,911,847	442,159,788	449,100,000
Wholesale Power Cost/kWh	0.0608	0.0608				0.0553	0.0674	0.0815	0.0810	0.0794
Gross margin	0.0535	0.0535				0.0538	0.0538	0.0491	0.0441	0.0275
SAIDI (rolling 12 month sum)	89.06					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	94.58%	94.99%	96.50%			95.23%	94.61%	96.08%	96.62%	98.48%

Income Statement

Electric Sales:

Fuel	14,001,135	17,516,746	18,301,327	(784,581)		15,769,044	20,583,619	24,721,381	25,498,612	21,131,479
Non-Fuel	23,699,785	29,650,676	30,865,793	(1,215,117)		29,365,745	31,244,725	32,605,878	27,955,719	25,880,839
Other Operating Revenues	383,739	460,487	412,046	48,441		407,431	667,604	332,720	1,111,386	819,976
Total Operating Revenues	38,084,659	47,627,908	49,579,166	(1,951,258)		45,542,220	52,495,948	57,659,979	54,565,717	47,832,294

Operating Expenses:

General and Administrative	937,562	1,125,074	1,158,022	32,948		981,451	1,047,988	1,085,915	1,122,148	982,754
Operating Expenses	4,453,576	5,344,291	6,159,983	815,692		4,939,316	5,136,207	4,880,216	5,055,849	6,139,857
Purchased Power										
Fuel	14,509,064	18,073,074	18,375,561	302,487		15,992,090	21,212,369	24,786,014	23,183,450	23,802,250
Non-Fuel	6,697,289	8,342,413	8,569,163	226,750		8,043,955	9,256,070	12,437,885	12,618,456	11,840,108
Transmission Power Cost	1,844,470	2,213,364	2,392,180	178,816		2,328,188	2,130,671	2,155,495	2,062,414	1,600,046
Total Operating Expenses	28,441,961	35,098,217	36,654,909	1,556,692		32,285,000	38,783,305	45,345,525	44,042,317	44,365,015

Operating Income (Loss)	9,642,698	12,529,692	12,924,257	(394,565)		13,257,220	13,712,643	12,314,454	10,523,400	3,467,279
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Nonoperating Revenues (Expenses):

Investment Earnings (net of interest paid on interfund borrowings)	(128,038)	(153,646)	(40,000)	(113,646)		57,244	33,506	(38,774)	172,488	(168,750)
Principal on Debt	(1,433,333)	(1,720,000)	(1,720,000)	-		(1,620,000)	(1,430,000)			
Interest on Debt	(2,266,158)	(2,719,390)	(3,029,038)	309,648		(2,579,881)	(2,990,613)	(2,303,537)	(2,823,689)	(3,614,713)
Miscellaneous Revenue	234,744	281,693	-	281,693		126,183	1,337,683	34,307	35,038	49,364
Proceeds from Sale of Assets	3,062	3,674	-	3,674		2,655	(22,089)	57,992	4,011	3,560
Capital Spending from Sources other than Bond Proceeds	(2,572,366)	(3,086,839)	(4,940,000)	1,853,161		(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	511,562	613,874	-	613,874		389,419	477,746	212,897		
Capital Contributions for Plug-In Program	46,152	55,382	-	55,382		102,343	59,593	171,940	1,679	15,893
Total Nonoperating Revenues (Expenses)	(5,604,375)	(6,725,250)	(9,729,038)	3,003,788		(5,631,098)	(4,155,648)	(2,217,697)	(4,531,847)	(6,356,288)

Income (Loss) Before Operating Transfers	4,038,323	5,804,441	3,195,219	2,609,222		7,626,122	9,556,995	10,096,757	5,991,553	(2,889,009)
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Operating Transfers In	-	-	-	-						
Operating Transfers Out	(2,111,975)	(2,642,281)	(2,757,500)	115,219		(2,537,830)	(2,869,777)	(3,220,605)	(2,931,710)	(2,633,592)

Total Operating Transfers	(2,111,975)	(2,642,281)	(2,757,500)	115,219		(2,537,830)	(2,869,777)	(3,220,605)	(2,931,710)	(2,633,592)
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Net Income	1,926,348	3,162,161	437,719	2,724,442		5,088,292	6,687,218	6,876,152	3,059,843	(5,522,601)
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Other Financial Parameters

Debt Service Coverage	2.57	2.79				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	130,484	156,581	-			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

July 31, 2013

Variance

from

Budget

FY'13

YTD

FY'13

Annualized

FY'13

Budget

FY'12

YTD

FY'12

FY'11

FY'10

FY'09

FY'08

Technical Performance

Cash Balance (borrowed from pooled cash)

(125,727)

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)



city commission agenda item

item type	Consent Agenda	meeting date	September 9, 2013
prepared by department division	Purchasing Division	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

Purchases over \$50,000

	vendor	item background	fiscal impact	motion recommendation

Contracts

	vendor	item background	fiscal impact	motion recommendation

Piggyback contracts

	vendor	item background	fiscal impact	motion recommendation

Formal Solicitations

	vendor	item background	fiscal impact	motion recommendation
1.	Moore, Stephens, Lovelace	RFP 26-2013, External Audit Services	Total annual expenditure included in the FY Budget. Amount: \$57,800.	Commission approve the Committee's recommendation for Moore, Stephens, Lovelace and authorize a one (1) year contract as well as issue a subsequent Purchase Order to Moore, Stephens, Lovelace.
The City utilized a formal solicitation process for External Audit Services, RFP-26-2013 and the Committee ranked the top three (3) firms as follows: 1. Moore, Stephens, Lovelace. 2. Purvis Gray 3. Cherry Bekaert. The contract will be for a period of one (1) year with the option to renew for two (2) one year periods.				



city commission agenda item

item type	Consent Agenda	meeting date	September 9, 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 type="checkbox"/> yes <input type="checkbox"/> no <input checked="" type="checkbox"/> N/A		final vote

subject

Settlement Agreement and Mutual Release with Duke Energy Florida

motion | recommendation

- 1) Authorize the Mayor to execute the Settlement Agreement and Mutual Release With Duke Energy Florida

background

The Crystal River Unit 3 ("CR3") nuclear generating unit located in Citrus County, Florida has been in an outage since September 2009. For the period September 2009 through December 31, 2010 the City Winter Park and Duke Energy Florida, formerly Progress Energy Florida, (DEF) were parties to an All Requirements Power Sales Agreement for Purchase and Sales of Electric Capacity and Energy, dated June 25, 2005 ("PPA"), in which Winter Park purchased power from DEF. DEF is the named insured on several Nuclear Electric Insurance Limited (NEIL) Accidental Outage Insurance Policies, including Policy Numbers E09-015, E10-015, E11-015, and E12-015 (collectively referred to as "NEIL Accidental Outage Insurance Policies") and Winter Park is entitled to its allocated share of the Accidental Outage Insurance Policies amount in accordance with Winter Park's actual usage under any purchase power agreements that qualify for reimbursement. To date, the City has received \$1,496,884 as its share of allocated proceeds from the NEIL Accidental Outage Insurance policies. Those funds have been applied to the City's fuel cost recovery mechanism to directly benefit the City's electric customers. The City of Winter Park has alleged its belief to DEF that as a result of events, actions, or omissions relating to the CR3 Outage, DEF has violated its obligations to Winter Park under the PPA and the NEIL Accidental Outage Insurance Policies and claims damages that exceed the NEIL payments received to date. DEF denies the CR3 Outage Claims, and any grounds upon which such claims are founded.

Additionally and separate from the CR-3 outage, during the transfer of assets and customers when Winter Park purchased portions of DEF's distribution system, Winter Park and DEF inadvertently and mistakenly failed to switch certain customer meters and switched certain meters inadvertently. Approximately 30 customers are involved. Errors in metering have existed continuously to date. In all of these cases one utility billed and received revenues from the customer while the other utility provided the electricity from its own distribution wires.

The City of Winter Park and DEF desire to completely resolve and settle in this Agreement the CR3 Outage Claims and to rectify the inadvertent mistakes made in switching meters during the transfer of assets and customers. In staff's opinion, the attached settlement agreement fairly resolves the two issues between DEF and the City. Upon execution of the agreement neither party will owe the other party additional funds associated with the CR-3 Outage and the metering errors. Both issues are settled and both parties release the other from future claims relating to these two issues.

As permitted by Florida law, DEF has claimed that certain portions of the settlement agreement contain trade secrets (see attached letter). Accordingly, the information claimed by DEF to be trade secrets has been redacted in the attached settlement agreement.

Legal review

The City Attorney has approved the settlement agreement as to legal form and sufficiency.

Attachments: SETTLEMENT AGREEMENT AND MUTUAL RELEASE BETWEEN DUKE ENERGY
FLORIDA AND THE CITY OF WINTER PARK
LETTER FROM DUKE ENERGY ASSERTING THAT THE SETTLEMENT AGREEMENT
CONTAINS TRADE SECRETS

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Settlement Agreement and Mutual Release (the "Agreement") is entered into as of September____, 2013, by and between Duke Energy Florida, Inc. d/b/a Duke Energy ("DEF"), for itself and its subsidiaries, affiliates, predecessors, successors, and assigns, and the City of Winter Park ("Winter Park"), for itself and its departments, subsidiaries, affiliates, predecessors, successors, and assigns. Each of DEF and Winter Park shall be referred to separately as "Party" or "party" and together as "Parties" or "parties."

WITNESSETH:

WHEREAS, the Crystal River Unit 3 ("CR3") nuclear generating unit located in Citrus County, Florida has been in an outage since September 2009 (the "CR3 Outage");

WHEREAS, Winter Park and DEF were parties to a Power Sales Agreement for Purchase and Sales of Electric Capacity and Energy, dated June 25, 2005 ("PPA"), in which Winter Park purchased power from DEF;

WHEREAS, DEF is the named insured on several NEIL Accidental Outage Insurance Policies, including Policy Numbers E09-015, E10-015, E11-015, and E12-015 (collectively referred to as "NEIL Accidental Outage Insurance Policies") and Winter Park is entitled to its allocated share of the Accidental Outage Insurance Policies amount in accordance with Winter Park's actual usage under any purchase power agreements that qualify for reimbursement;

WHEREAS, Winter Park has alleged its belief to DEF that as a result of events, actions, or omissions relating to the CR3 Outage, DEF has violated its obligations to Winter Park under the PPA and the NEIL Accidental Outage Insurance Policies ("CR3 Outage Claims");

WHEREAS, DEF denies the CR3 Outage Claims, and any grounds upon which such claims are founded;

WHEREAS, during the transfer of assets and customers when Winter Park purchased portions of DEF's distribution system, Winter Park and DEF inadvertently and mistakenly failed to switch certain customer meters and switched certain meters inadvertently, which customers are listed on Attachment A to this Agreement;

WHEREAS, the Parties desire to completely resolve and settle in this Agreement the CR3 Outage Claims (the "Dispute") and to rectify the inadvertent mistakes made in switching meters during the transfer of assets and customers;

NOW THEREFORE, in consideration of the mutual releases, promises, and benefits contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. **Recitals.** The Parties acknowledge that the above and foregoing recitals which apply to each of them are true and correct and are essential terms of this Agreement which are incorporated herein by reference.

2. **Representations.** On behalf of themselves, each of the Parties hereby warrant, covenant, and represent to the other that the full execution and delivery of this Agreement was duly authorized by that respective Party, that the terms of this Agreement constitute valid and legally binding and enforceable obligations of that respective Party, and that except as provided for herein, no consent, approval, or other action by any other entity, person, group of persons, or governmental authority is required with the execution, delivery, and performance of this Agreement by that respective Party. Prior to entering into this Agreement, the Parties caused their own investigation to be made regarding this Agreement and the Dispute. The Parties have entered into this Agreement based upon that investigation and have relied upon the advice of independent legal counsel. The Parties understand and agree that the facts that led them to enter this Agreement or the facts regarding the Dispute may prove to be different from the facts they now know or believe to be the facts, however, both Parties expressly accept and assume the risk that these facts may prove to be different and both Parties agree that the terms of this Agreement are not subject to termination or rescission by any difference in such facts. Neither of the Parties was induced to enter into this Agreement by any representations of the other Party other than those representations expressly set forth in this Agreement. Except as stated herein, the releases and covenants exchanged herein are executed without reliance upon any statement or representation of the other Party concerning the nature, merit, legal liability, or value of any claim or claims released herein, or any other matter related to the Dispute.

3. **Settlement Payment and Terms.** The Parties agree to the following obligations:

[REDACTED]

[REDACTED]

[REDACTED]

- [REDACTED]
- [REDACTED]
4. **Mutual Release and Covenant Not to Sue.** In consideration of the covenants set forth in this Agreement, including the payments and fulfillment of the conditions set forth above in section 3, Winter Park and its departments, affiliates, predecessors, successors, and assigns fully and forever, irrevocably and unconditionally releases, remises, discharges, and acquits DEF and its respective partners, parents, successors, assigns, members, subsidiaries and affiliates, whether owned in whole or in part, and all of their present, future, and former directors, officers, agents, employees, contractors, subcontractors, shareholders, assigns, attorneys, insurers, sureties and representatives (hereinafter collectively referred to as the “DEF Releasees”) from and against the CR3 Outage Claims and any and all other claims, disputes, demands, liabilities, actions or causes of action, lawsuits, claims for costs, attorney's fees, damages, losses and expenses of any kind or nature based upon or relating in any manner to any DEF Releasees’ involvement, action or inaction related in any way to the issues that have been or could have been alleged in the CR3 Outage Claims, including all claims that have been or could be, now or in the future, asserted for breach of fiduciary duty or under any one or more of the NEIL Accidental Outage Policies or the PPA. This release is intended to be construed as broadly as possible to enable the DEF Releasees’ to buy their peace and includes, but is not limited to, any and all claims that are related to any DEF Releasees’ involvement or relation to the CR3 Outage Claims, whether based upon or sounding in contract, statute, strict liability, breach of warranty, negligence, tort, breach of fiduciary duty, or other form of equitable relief. Likewise, in consideration of the covenants set forth in this Agreement, including the payment and fulfillment of the conditions set forth above in section 3, DEF and its departments, parents, affiliates, predecessors, successors, and assigns fully and forever, irrevocably and unconditionally releases, remises, discharges, and acquits Winter Park and its respective partners, parents, successors, assigns, members, subsidiaries and affiliates, whether owned in whole or in part, and all of their present, future, and former trustees, directors, officers, agents, employees, contractors, subcontractors, shareholders, assigns, attorneys, insurers, sureties and representatives (hereinafter collectively referred to as the “Winter Park Releasees”) from and against the CR3 Outage Claims and any and all other claims, disputes, demands, liabilities, actions or causes of action, lawsuits, claims for costs, attorney's fees, damages, losses and expenses of any kind or nature based upon or relating in any manner to any Winter Park Releasees’ involvement, action or inaction related in any way to the issues that have been or could have been alleged in the CR3 Outage Claims, including all claims that have been or could be, now or at any time in the future, asserted under or relating to any one or more of the NEIL Accidental Outage Policies or the PPA. This release is intended to be construed as broadly as possible to enable the Winter Park Releasees’ to buy their peace and includes, but is not limited to, any and all claims that

are related to any Winter Park Releasees' involvement or relation to the CR3 Outage Claims, whether based upon or sounding in contract, statute, strict liability, breach of warranty, negligence, tort, breach of fiduciary duty, or other form of equitable relief. Moreover, the Parties mutually agree that they will not directly or indirectly bring any claims arising out of, or related to, the CR3 Outage against the other Party in arbitration or in any judicial, regulatory, administrative, or other forum. The Parties represent and warrant that they own and have not assigned, sold or factored, in whole or in part, any claims, causes of action, or any other similar rights or interests related to those released herein.

5. **Assistance to Third Parties or Disclosure of Information.** In exchange for the consideration set forth in this Agreement, Winter Park agrees not to directly or indirectly encourage, assist or cooperate with anyone else who either has or may in the future present any claim, demand or suit against DEF, whether in contract, for breach of fiduciary duty, in tort, or otherwise, pertaining to the CR3 Outage Claims, including, without limitation, the disclosure of, sharing of, or allowing access to information regarding either matter retained or developed by Winter Park or its consultants.
6. **Implementation.** The Parties shall cooperate with each other to fully implement this Agreement in accordance with its terms, including reasonably making pertinent information available.
7. **Dispute Resolution.** Any controversy, claim, or dispute arising out of, or related to this Agreement, or the breach thereof, between DEF and Winter Park that cannot be settled through negotiation, shall be settled by binding arbitration in accordance with the Florida Arbitration Code currently in effect, unless the parties mutually agree otherwise. The arbitration shall be enforceable and the arbitration shall be held in Pinellas County, Florida before a single arbitrator to be selected by mutual agreement between the parties.
8. **Notices.** Any notice, demand, request, or other communication which any Party desires, or is required, to provide pursuant to this Agreement shall be in writing and shall be deemed to have been given if hand-delivered, sent by email, overnight delivery and/or facsimile, or mailed by depositing in the United States mail postage prepaid to the authorized representatives of the Parties listed below, or such other representative as any Party may designate in writing:

DEF: R. Alexander Glenn
Incoming State President – Florida
Duke Energy Florida, Inc. d/b/a Duke Energy
299 1st Ave N.
St. Petersburg, FL 33701

Winter Park: R. Knight, City Manager
City of Winter Park
401 Park Ave. South
Winter Park, FL 32789

9. **Governing Law.** This Agreement shall be interpreted, governed, and construed under the laws of the State of Florida, except that its conflict of laws provisions shall not be used to invoke the laws of another jurisdiction.
10. **Use of this Agreement.** This Agreement and any discussions in connection therewith shall not be construed as, or deemed to be, evidence of any fact or law, including any admission of fault or liability whatsoever, or concession, by any Party.
11. **Entire Agreement.** This Agreement represents the entire agreement of the Parties as to its subject matter and supersedes all prior negotiations, understandings, representations, and warranties as to its subject matter.
12. **Confidentiality.** DEF asserts that the information in this Agreement is trade secret information as described and regulated by sections 812.081, 815.04 and 815.045, Florida Statutes and has directed Winter Park to maintain as exempt from the public records laws the information in this Agreement as required by section 815.045, Florida Statutes. Winter Park accepts DEF's representations of trade secret protection and shall maintain this information as exempt as required by statute 815.045. The Parties acknowledge and agree that the information in this Agreement shall be deemed proprietary confidential business information, is and shall be kept, confidential and shall not be disclosed to any other person or entity, unless otherwise required by law and/or any lawful order or declaration of any court or governmental entity having proper jurisdiction to enter such an order or declaration. In this regard, however, (a) any Party may disclose such information in confidence to its own agents, such as lawyers or auditors, only where such disclosure is necessary for such agents to perform functions for which they were retained; and (b) if Winter Park receives a subpoena or other request pursuant to statute or rule for the disclosure or release of such information, Winter Park shall promptly give written notice by email, overnight delivery and/or facsimile to DEF. DEF shall have the right to defend against the disclosure or release of proprietary confidential business information and the right to defend DEF's determination that such information is indeed proprietary confidential business information. Upon giving such notice to DEF, Winter Park shall, within the limitations of the law, make a reasonable effort to cooperate with DEF in its efforts to maintain the confidentiality of such information. Either party may disclose any provision of this Agreement, however, if required to do so to comply with any regulatory or loan requirement from any government agency, including but not limited to the Florida Public Service Commission, the Federal Energy Regulatory Commission, the Rural Utilities Service and the NRC and such disclosure shall not be deemed as breach of this Agreement. If Winter Park is compelled by law and/or any lawful order or declaration of any court or governmental entity having proper jurisdiction to enter such an order or declaration, to disclose any information under this Agreement designated as proprietary confidential business information, such disclosure shall only be to the extent legally compelled, as Winter Park is advised by written opinion of counsel or as required by a written lawful order or declaration of any court or governmental entity having proper jurisdiction to enter such an order or declaration.

13. **Amendments.** This Agreement may be amended or modified only by a written instrument duly executed by each of the Parties prior to the effective date of any such amendment or modification.
14. **Headings.** The section headings as used herein are for convenience of reference only and shall not be deemed to vary the content of this Agreement or the covenants, agreements or representations herein set forth, or limit the provisions or scope of any section herein.
15. **No Public or Third Party Rights.** Nothing in this Agreement creates or is intended to create any rights or causes of action in favor of the public or any third party and should not be relied upon by anyone except the Parties hereto.
16. **Counterpart Execution.** This Agreement may be executed in any number of counterparts, each of which shall be a duplicate original, but all of which taken together shall constitute one and the same instrument; any of the Parties hereto may execute this Agreement by signing any such counterpart or counterparts. Executed facsimile copies or executed copies sent via electronic transmission (i.e. e-mail) shall be deemed originals for all purposes, including enforcement.
17. **Severability.** This Agreement is intended to be performed in accordance with, and only to the extent permitted by, all applicable laws, ordinances, rules and regulations. If any provision of this Agreement or the application thereof to any person or circumstance shall, for any reason and to any extent, be invalid or unenforceable, the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected, but rather shall be enforced to the greatest extent permitted by law.
18. **No Waiver.** No waiver of any single breach or default under this Agreement shall be deemed a waiver of any other breach or default. No waiver, consent, or approval under this Agreement shall be effective unless it is in writing.
19. **Joint Drafting.** The Parties acknowledge that this Agreement is a product of joint drafting efforts and shall not be construed against any one Party as the drafter.

The Parties hereto have caused this Agreement to be executed in their names by their respective duly authorized officers as of the date below written.

[THIS SPACE INTENTIONALLY LEFT BLANK]

DUKE ENERGY FLORIDA, INC. D/B/A DUKE ENERGY

By:_____

Printed Name: Alex Glenn

Its: State President - Florida

STATE OF FLORIDA

_____ COUNTY

The foregoing instrument was acknowledged before me this ____ day of _____ 2013, by _____, of Duke Energy Florida, Inc. d/b/a Duke Energy, who ☐ is personally known to me or ☐ has produced _____ as identification.

(Affix Seal)

Print Name:_____

My Commission Expires:_____

CITY OF WINTER PARK

By:_____

Printed Name: Kenneth W. Bradley

Its: Mayor_____

STATE OF FLORIDA

Orange **COUNTY**

The foregoing instrument was acknowledged before me this ____ day of _____ 2013, by _____, of the City of Winter Park, who ☐ is personally known to me or ☐ has produced _____ as identification.

(Affix Seal)

Print Name:_____

My Commission Expires:_____

Settlement Agreement and Mutual Release

Attachment A

Journal of Management Inquiry 23(5)

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██████████

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██████████

© 2006 The Authors

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████████████████████



Dianne M. Triplett
ASSOCIATE GENERAL COUNSEL
Duke Energy Florida, Inc.

August 30, 2013

Mr. Jerry Warren
Director, Electric Utility Services
City of Winter Park
1409 Howell Branch Rd.
Winter Park, FL 32789

Re: Duke Settlement Agreement

Dear Mr. Warren:

Enclosed is a redacted version of the Settlement Agreement and Mutual Release between the City of Winter Park and Duke Energy Florida, Inc. All information that Duke Energy Florida considers to be a trade secret, as that term is used in the Agreement, has been redacted. The attached document can be utilized in a public setting.

Please do not hesitate to contact me if you have any questions or concerns.

Yours truly,

A handwritten signature in blue ink, appearing to read "Dianne M. Triplett", with a stylized flourish at the end.

Dianne M. Triplett

DMT/emc
Enclosure



city commission agenda item

item type	Consent Agenda	meeting date	September 9, 2013
prepared by	Chief Brett C. Railey	approved by	<input checked="" type="checkbox"/> City Manager
department	Police		<input type="checkbox"/> City Attorney
division	Administration		<input type="checkbox"/> N/A
board approval	<input type="checkbox"/> yes <input checked="" type="checkbox"/> no <input type="checkbox"/> N/A		
		final vote	

subject

Motorola Solutions Services Agreement (Radio Maintenance, Network Security and Monitoring)

motion | recommendation

Recommend approval for expenditure of \$41,846.28 from State Forfeiture Funds in compliance with Florida State Statute 932.7055(5)(1)

background

Motorola Solutions Services Agreement provides remote Network Security Monitoring, Dispatch Service, Networking Monitoring, Technical Support, Infrastructure Repair, Network Preventative Maintenance, Onsite Infrastructure Response and Microwave Service. The monitoring and maintenance is provided 24 hours a day, seven days a week, 365 days a year to ensure the radio system is without any interruptions and remains at the highest level for all users. This system provides for early intervention to prevent more costly repairs.

alternatives | other considerations

Without monitoring and maintenance, the public safety radio system runs the risk of interruption of service and work done to repair the system will be billed.

fiscal impact

No impact to the general fund. The entire cost of the service contract will be covered by State Forfeiture Funds.

long-term impact

Ensure radio equipment and communications are always maintained at the highest level

strategic objective

Quality infrastructure

**MOTOROLA SOLUTIONS****SERVICES AGREEMENT**

Attn: National Service Support/4th fl
 1301 East Algonquin Road
 (800) 247-2346

Contract Number: S00001017773
 Contract Modifier: RN04-JUN-13 21:35:37

Date: 08/19/2013

Company Name: Winter Park, City Of
 Attn:
 Billing Address: 500 N Virginia Ave
 City, State, Zip: Winter Park, FL, 32789-3136
 Customer Contact: Vonda Jones
 Phone: (321)303-5901

Required P.O.: No
 Customer #: 1012276946
 Bill to Tag #: 0001
 Contract Start Date: 10/01/2013
 Contract End Date: 09/30/2014
 Anniversary Day: Sep 30th
 Payment Cycle: MONTHLY
 PO #:

QTY	MODEL/OPTION	SERVICES DESCRIPTION	MONTHLY EXT	EXTENDED AMT
		***** Recurring Services *****		
1	SVC01SVC0033A SVC828AE	NETWORK SECURITY MONITORING DISPATCH SITE	\$746.09	\$8,953.08
2	SVC01SVC1102C SVC081AD	DISPATCH SERVICE ASTRO25 ISR SITE	\$50.66	\$607.92
3	SVC084AD	ASTRO25 DISPATCH SITE		
1	SVC01SVC1103C SVC046AD	NETWORK MONITORING SERVICE ASTRO25 ISR SITE	\$0.00	\$0.00
1	SVC049AD	ASTRO25 DISPATCH SITE		
1	SVC01SVC1104C SVC037AD	TECHNICAL SUPPORT SERVICE ASTRO25 ISR SITE	\$128.16	\$1,537.92
2	SVC040AD	ASTRO25 DISPATCH SITE		
1	SVC01SVC1108C SVC070AD	INFRASTRUCTURE REPAIR ASTRO25 ISR SITE	\$671.17	\$8,054.04
2	SVC073AD	ASTRO25 DISPATCH SITE		
5	SVC074AD	ASTRO25 STATIONS		
4	SVC075AD	ASTRO25 OPERATOR POSITIONS		
1	SVC01SVC1405C SVC123AD	NETWORK PREVENTATIVE MAINTENANCE A ASTRO25 ISR SITE	\$256.45	\$3,077.40
1	SVC126AD	ASTRO25 DISPATCH SITE		
5	SVC127AD	ASTRO25 STATIONS		
4	SVC128AD	ASTRO25 OPERATOR POSITIONS		
2	SVC01SVC1410C SVC090AD	ONSITE INFRASTRUCTURE RESPONSE ASTRO25 ISR SITE	\$1,025.67	\$12,308.04
3	SVC093AD	ASTRO25 DISPATCH SITE		
5	SVC094AD	ASTRO25 STATIONS		
4	SVC095AD	ASTRO25 OPERATOR POSITIONS		
2	SVC02SVC0001C	SP - MICROWAVE SERVICES NETWORK(S)	\$608.99	\$7,307.88
SPECIAL INSTRUCTIONS - ATTACH STATEMENT OF WORK FOR PERFORMANCE DESCRIPTIONS			Subtotal - Recurring Services	\$3,487.19
				\$41,846.28

	Subtotal - One-Time Event Services	\$.00	\$.00
	Total	\$3,487.19	\$41,846.28
	Taxes	-	-
	Grand Total	\$3,487.19	\$41,846.28
	THIS SERVICE AMOUNT IS SUBJECT TO STATE AND LOCAL TAXING JURISDICTIONS WHERE APPLICABLE, TO BE VERIFIED BY MOTOROLA.		
	Subcontractor(s)	City	State
	MOTOROLA SYSTEM SUPPORT CENTER	ELGIN	IL
	MOTOROLA - EMB SCHAUMBURG SERVICE (DO211)	SCHAUMBURG	IL
	MOTOROLA SSC NETWORK SECURITY DO298	SCHAUMBURG	IL
	MOTOROLA SYSTEM SUPPORT CENTER-NETWORK MGMT DO087	SCHAUMBURG	IL
	MOTOROLA SYSTEM SUPPORT CTR-CALL CENTER DO066	SCHAUMBURG	IL
	MOTOROLA SYSTEM SUPPORT-TECHNICAL SUPPORT DO068	SCHAUMBURG	IL
	WIRELESS TECHNOLOGY EQUIPMENT COMPANY INC	ORLANDO	FL
	WIRELESS TECHNOLOGY EQUIPMENT COMPANY INC	ORLANDO	FL
	WIRELESS TECHNOLOGY EQUIPMENT COMPANY INC	ORLANDO	FL
	WIRELESS TECHNOLOGY EQUIPMENT COMPANY INC	ORLANDO	FL

I received Statements of Work that describe the services provided on this Agreement. Motorola's Service Terms and Conditions, a copy of which is attached to this Service Agreement, is incorporated herein by this reference.

AUTHORIZED CUSTOMER SIGNATURE

TITLE

DATE

CUSTOMER (PRINT NAME)

MOTOROLA REPRESENTATIVE(SIGNATURE)

TITLE

DATE

Justin Pounders

727 488-6299

MOTOROLA REPRESENTATIVE(PRINT NAME)

PHONE

Company Name: Winter Park, City Of
Contract Number: S00001017773
Contract Modifier: RN04-JUN-13 21:35:37
Contract Start Date: 10/01/2013
Contract End Date: 09/30/2014

Service Terms and Conditions

Motorola Solutions, Inc. ("Motorola") and the customer named in this Agreement ("Customer") hereby agree as follows:

Section 1 APPLICABILITY

These Service Terms and Conditions apply to service contracts whereby Motorola will provide to Customer either (1) maintenance, support, or other services under a Motorola Service Agreement, or (2) installation services under a Motorola Installation Agreement.

Section 2 DEFINITIONS AND INTERPRETATION

2.1. "Agreement" means these Service Terms and Conditions; the cover page for the Service Agreement or the Installation Agreement, as applicable; and any other attachments, all of which are incorporated herein by this reference. In interpreting this Agreement and resolving any ambiguities, these Service Terms and Conditions take precedence over any cover page, and the cover page takes precedence over any attachments, unless the cover page or attachment states otherwise.

2.2. "Equipment" means the equipment that is specified in the attachments or is subsequently added to this Agreement.

2.3. "Services" means those installation, maintenance, support, training, and other services described in this Agreement.

Section 3 ACCEPTANCE

Customer accepts these Service Terms and Conditions and agrees to pay the prices set forth in the Agreement. This Agreement becomes binding only when accepted in writing by Motorola. The term of this Agreement begins on the "Start Date" indicated in this Agreement.

Section 4 SCOPE OF SERVICES

4.1. Motorola will provide the Services described in this Agreement or in a more detailed statement of work or other document attached to this Agreement. At Customer's request, Motorola may also provide additional services at Motorola's then-applicable rates for the services.

4.2. If Motorola is providing Services for Equipment, Motorola parts or parts of equal quality will be used; the Equipment will be serviced at levels set forth in the manufacturer's product manuals; and routine service procedures that are prescribed by Motorola will be followed.

4.3. If Customer purchases from Motorola additional equipment that becomes part of the same system as the initial Equipment, the additional equipment may be added to this Agreement and will be billed at the applicable rates after the warranty for that additional equipment expires.

4.4. All Equipment must be in good working order on the Start Date or when additional equipment is added to the Agreement. Upon reasonable request by Motorola, Customer will provide a complete serial and model number list of the Equipment. Customer must promptly notify Motorola in writing when any Equipment is lost, damaged, stolen or taken out of service. Customer's obligation to pay Service fees for this Equipment will terminate at the end of the month in which Motorola receives the written notice.

4.5. Customer must specifically identify any Equipment that is labeled intrinsically safe for use in hazardous environments.

4.6. If Equipment cannot, in Motorola's reasonable opinion, be properly or economically serviced for any reason, Motorola may modify the scope of Services related to that Equipment; remove that Equipment from the Agreement; or increase the price to Service that Equipment.

4.7. Customer must promptly notify Motorola of any Equipment failure. Motorola will respond to Customer's notification in a manner consistent with the level of Service purchased as indicated in this Agreement.

Section 5 EXCLUDED SERVICES

5.1. Service excludes the repair or replacement of Equipment that has become defective or damaged from use in other than the normal, customary, intended, and authorized manner; use not in compliance with applicable industry standards; excessive wear and tear; or accident, liquids, power surges, neglect, acts of God or other force majeure events.

5.2. Unless specifically included in this Agreement, Service excludes items that are consumed in the normal operation of the Equipment, such as batteries or magnetic tapes.; upgrading or reprogramming Equipment; accessories, belt clips, battery chargers, custom or special products, modified units, or software; and repair or maintenance of any transmission line, antenna, microwave equipment, tower or tower lighting, duplexer, combiner, or multicoupler. Motorola has no obligations for any transmission medium, such as telephone lines, computer networks, the internet or the worldwide web, or for Equipment malfunction caused by the transmission medium.

Section 6 TIME AND PLACE OF SERVICE

Service will be provided at the location specified in this Agreement. When Motorola performs service at Customer's location, Customer will provide Motorola, at no charge, a non-hazardous work environment with adequate shelter, heat, light, and power and with full and free access to the Equipment. Waivers of liability from Motorola or its subcontractors will not be imposed as a site access requirement. Customer will provide all information pertaining to the hardware and software elements of any system with which the Equipment is interfacing so that Motorola may perform its Services. Unless otherwise stated in this Agreement, the hours of Service will be 8:30 a.m. to 4:30 p.m., local time, excluding weekends and holidays. Unless otherwise stated in this Agreement, the price for the Services exclude any charges or expenses associated with helicopter or other unusual access requirements; if these charges or expenses are reasonably incurred by Motorola in rendering the Services, Customer agrees to reimburse Motorola for those charges and expenses.

Section 7 CUSTOMER CONTACT

Customer will provide Motorola with designated points of contact (list of names and phone numbers) that will be available twenty-four (24) hours per day, seven (7) days per week, and an escalation procedure to enable Customer's personnel to maintain contact, as needed, with Motorola.

Section 8 PAYMENT

Unless alternative payment terms are stated in this agreement, Motorola will invoice Customer in advance for each payment period. All other charges will be billed monthly, and Customer must pay each invoice in U.S. dollars within thirty (30) days of the invoice. Customer will reimburse Motorola for all property taxes, sales and use taxes, excise taxes, and other taxes assessments that are levied as a result of Services rendered under this Agreement (except income, profit, and franchise taxes of Motorola by any governmental entity).

Section 9 WARRANTY

Motorola warrants that its Services under this Agreement will be free of defects in materials and workmanship for a period of ninety (90) days from the date the performance of the Services are completed. In the event of a breach of this warranty, Customer's sole remedy is to require Motorola to re-perform the non-conforming Service or to refund, on a pro-rata basis, the fees paid for the non-conforming Service. MOTOROLA DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

Section 10 DEFAULT/TERMINATION

10.1. If either party defaults in the performance of this Agreement, the other party will give to the non-performing party a written and detailed notice of the default. The non-performing party will have thirty (30) days thereafter to provide a written plan to cure the default that is acceptable to the other party and begin implementing the cure plan immediately after plan approval. If the non-performing party fails to provide or implement the cure plan, then the injured party, in addition to any other rights available to it under law, may immediately terminate this Agreement effective upon giving a written notice of termination to the defaulting party.

10.2. Any termination of this Agreement will not relieve either party of obligations previously incurred pursuant to this Agreement, including payments which may be due and owing at the time of termination. All sums owed by Customer to Motorola will become due and payable immediately upon termination of this Agreement. Upon the effective date of termination, Motorola will have no further obligation to provide Services. The City of Winter Park may terminate this agreement, without cause, upon thirty (30) days of written notice to Motorola.

Section 11 LIMITATION OF LIABILITY

Except for personal injury or death, Motorola's total liability, whether for breach of contract, warranty, negligence, strict liability in tort, or otherwise, will be limited to the direct damages recoverable under law, but not to exceed the price of twelve (12) months of Service provided under this Agreement. ALTHOUGH THE PARTIES ACKNOWLEDGE THE POSSIBILITY OF SUCH LOSSES OR DAMAGES, THEY AGREE THAT MOTOROLA WILL NOT BE LIABLE FOR ANY COMMERCIAL LOSS; INCONVENIENCE; LOSS OF USE, TIME, DATA, GOOD WILL, REVENUES, PROFITS OR SAVINGS; OR OTHER SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES IN ANY WAY RELATED TO OR ARISING FROM THIS AGREEMENT OR THE PERFORMANCE OF SERVICES BY MOTOROLA PURSUANT TO THIS AGREEMENT. No action for contract breach or otherwise relating to the transactions contemplated by this Agreement may be brought more than one (1) year after the accrual of the cause of action, except for money due upon an open account. This limitation of liability will survive the expiration or termination of this Agreement and applies notwithstanding any contrary provision.

Section 12 EXCLUSIVE TERMS AND CONDITIONS

12.1. This Agreement supersedes all prior and concurrent agreements and understandings between the parties, whether written or oral, related to the Services, and there are no agreements or representations concerning the subject matter of this Agreement except for those expressed herein. The Agreement may not be amended or modified except by a written agreement signed by authorized representatives of both parties.

12.2. Customer agrees to reference this Agreement on any purchase order issued in furtherance of this Agreement, however, an omission of the reference to this Agreement will not affect its applicability. In no event will either party be bound by any terms contained in a Customer purchase order, acknowledgement, or other writings unless: the purchase order, acknowledgement, or other writing specifically refers to this Agreement; clearly indicate the intention of both parties to override and modify

this Agreement; and the purchase order, acknowledgement, or other writing is signed by authorized representatives of both parties.

Section 13 PROPRIETARY INFORMATION; CONFIDENTIALITY; INTELLECTUAL PROPERTY RIGHTS

13.1. Any information or data in the form of specifications, drawings, reprints, technical information or otherwise furnished to Customer under this Agreement will remain Motorola's property, will be deemed proprietary, will be kept confidential, and will be promptly returned at Motorola's request. Customer may not disclose, without Motorola's written permission or as required by law, any confidential information or data to any person, or use confidential information or data for any purpose other than performing its obligations under this Agreement. The obligations set forth in this Section survive the expiration or termination of this Agreement.

13.2. Unless otherwise agreed in writing, no commercial or technical information disclosed in any manner or at any time by Customer to Motorola will be deemed secret or confidential. Motorola will have no obligation to provide Customer with access to its confidential and proprietary information, including cost and pricing data.

13.3. This Agreement does not grant directly or by implication, estoppel, or otherwise, any ownership right or license under any Motorola patent, copyright, trade secret, or other intellectual property, including any intellectual property created as a result of or related to the Equipment sold or Services performed under this Agreement.

Section 14 FCC LICENSES AND OTHER AUTHORIZATIONS

Customer is solely responsible for obtaining licenses or other authorizations required by the Federal Communications Commission or any other federal, state, or local government agency and for complying with all rules and regulations required by governmental agencies. Neither Motorola nor any of its employees is an agent or representative of Customer in any governmental matters.

Section 15 COVENANT NOT TO EMPLOY

During the term of this Agreement and continuing for a period of two (2) years thereafter, Customer will not hire, engage on contract, solicit the employment of, or recommend employment to any third party of any employee of Motorola or its subcontractors without the prior written authorization of Motorola. This provision applies only to those employees of Motorola or its subcontractors who are responsible for rendering services under this Agreement. If this provision is found to be overly broad under applicable law, it will be modified as necessary to conform to applicable law.

Section 16 MATERIALS, TOOLS AND EQUIPMENT

All tools, equipment, dies, gauges, models, drawings or other materials paid for or furnished by Motorola for the purpose of this Agreement will be and remain the sole property of Motorola. Customer will safeguard all such property while it is in Customer's custody or control, be liable for any loss or damage to this property, and return it to Motorola upon request. This property will be held by Customer for Motorola's use without charge and may be removed from Customer's premises by Motorola at any time without restriction.

Section 17 GENERAL TERMS

17.1. If any court renders any portion of this Agreement unenforceable, the remaining terms will continue in full force and effect.

17.2. This Agreement and the rights and duties of the parties will be interpreted in accordance with the laws of the State in which the Services are performed.

17.3. Failure to exercise any right will not operate as a waiver of that right, power, or privilege.

17.4. Neither party is liable for delays or lack of performance resulting from any causes that are beyond that party's reasonable control, such as strikes, material shortages, or acts of God.

17.5. Motorola may subcontract any of the work, but subcontracting will not relieve Motorola of its duties under this Agreement.

17.6. Except as provided herein, neither Party may assign this Agreement or any of its rights or obligations hereunder without the prior written consent of the other Party, which consent will not be unreasonably withheld. Any attempted assignment, delegation, or transfer without the necessary consent will be void. Notwithstanding the foregoing, Motorola may assign this Agreement to any of its affiliates or its right to receive payment without the prior consent of Customer. In addition, in the event Motorola separates one or more of its businesses (each a "Separated Business"), whether by way of a sale, establishment of a joint venture, spin-off or otherwise (each a "Separation Event"), Motorola may, without the prior written consent of the other Party and at no additional cost to Motorola, assign this Agreement such that it will continue to benefit the Separated Business and its affiliates (and Motorola and its affiliates, to the extent applicable) following the Separation Event.

17.7. The contracts are considered one (1) year agreements and will only be renewed upon both parties providing notice of its intention to continue the agreement. Any price changes will be provided to the City 30 days prior to the renewal date.

17.8. If Motorola provides Services after the termination or expiration of this Agreement, the terms and conditions in effect at the time of the termination or expiration will apply to those Services and Customer agrees to pay for those services on a time and materials basis at Motorola's then effective hourly rates.



Statement of Work
Prepared For :

WINTER PARK, CITY OF

500 N VIRGINIA AVE

WINTER PARK, FL 32789-3136



Statement of Work

Definitions

1.0 Definitions

These defined terms might not apply to every Statement of Work. Capitalized terms below and not otherwise defined within the Statement of Work, or in the Communications System Agreement or other applicable agreement (collectively, "Agreement") have the following meanings:

- 1.1. **Box Unit Test:** Unit is tested in a fixture that simulates the functions for which it was designed, engineered, or manufactured to insure that it meets manufacturer specifications.
- 1.2. **Case:** Electronic tracking document for requests for service through the System Support Center.
- 1.3. **Case Status:** Identifier of the status of a Case from beginning to end.
- 1.4. **Component(s):** Motorola new or refurbished parts of equal quality.
- 1.5. **Configuration Change Support:** A change in a user-defined parameter, which may include a change in the placement of a dispatch console talkgroup window. Fleet mapping is not included in Configuration Change Support.
- 1.6. **Connectivity:** Establishment of remote access to the System via dial up or fixed dedicated links.
- 1.7. **Continuously/Continuous:** Seven (7) days per week, twenty-four (24) hours a day, including holidays.
- 1.8. **Customer:** The end-user Customer as identified in the Agreement.
- 1.9. **Customer Support Plan:** A document mutually developed by Motorola and the Customer that provides information about the Customer and the System and describes the specific processes by which Motorola will deliver and the Customer will receive the services described in this Statement of Work.
- 1.10. **Elements:** Those device types present on the Customer's System whose status may be communicated to the SSC.
- 1.11. **Equipment:** The equipment specified in the Equipment List as set forth in the Agreement, including any additions to the Equipment List during the Warranty Period.
- 1.12. **Enhanced System Support (ESS) Period:** The 12 month period commencing at the start of the Warranty Period for Equipment and Software as defined by the Agreement.
- 1.13. **Event:** An alarm or informational notification received by Motorola through the Network Management tools.
- 1.14. **Feature:** A Software functionality
- 1.15. **Federal Technical Center:** A Motorola facility located in Lanham, Maryland, the purpose of which is to serve as Motorola's centralized location for radio repair for United States Federal Government Customers.
- 1.16. **Firmware:** Software in object code form that is implanted or embedded in hardware.
- 1.17. **FRU:** Field Replaceable Unit, typically a board or module, contained within the Infrastructure.
- 1.18. **Infrastructure:** The fixed Equipment excluding mobiles, portables, and accessories.
- 1.19. **Infrastructure Depot Operations (IDO):** A Motorola facility, which serves as Motorola's centralized location for infrastructure repair.
- 1.20. **Loaner:** Infrastructure that is owned by Motorola and serves as a temporary replacement while the Customer's Infrastructure is being repaired.
- 1.21. **Maintenance:** The process for determining the cause of Equipment failure, removing, repairing, or replacing Components necessary to conform the Equipment with the manufacturer's specifications along with system-specific specifications, delivering and reinstalling the Components, and placing the Equipment back into operation.
- 1.22. **MCNS:** Mission Critical Network Services
- 1.23. **Motorola Software:** Software whose copyright is owned by Motorola or its affiliated company
- 1.24. **Non-Motorola Software:** Software whose copyright is owned by a party other than Motorola or its affiliated company.
- 1.25. **Notification:** The point in time when the Customer contacts Motorola and requests service.
- 1.26. **Optional Feature:** An additional Feature issued with a System Release that is available to Customer at additional cost.
- 1.27. **Radio Support Center (RSC):** A Motorola facility which serves as Motorola's centralized location for radio repair.
- 1.28. **Response:** The event when a technician, a remote systems technologist or a remote network specialist begins actively to work on the technical issue, remotely or on-site, as determined by Motorola.
- 1.29. **Restore/Restoration/Restoral:** The effort required to bring Equipment to the level for which it was designed, engineered and adjusted for performance in accordance with the manufacturer's published specifications, although such Equipment may not necessarily be malfunctioning.
- 1.30. **Servicer:** A Motorola Authorized Service Station or Motorola Field Service personnel.

- 1.31. Severity Level: The degree of adverse impact of an issue or Event.
- 1.32. Software: The software furnished with the System, including any Motorola Software and Non-Motorola Software.
- 1.33. Software License Agreement: The agreement or portion of an agreement pursuant to which Motorola licenses Software to Customer, including System Releases.
- 1.34. Special Product Feature: A Feature that is specially developed for Customer and which contains a functionality that is unique to Customer.
- 1.35. Standard Business Day: Monday through Friday, 8:30 a.m. to 4:30 p.m., local time, excluding Motorola holidays.
- 1.36. Standard Feature: A software functionality for components of Customer's System that is available to Customer in the standard software release
- 1.37. Start Date: Effective start date as listed on the Agreement.
- 1.38. System: The communications system as defined in the Communications System Agreement or other applicable Agreement.
- 1.39. System Acceptance: Unless otherwise defined in the Communications System Agreement, the date upon which Motorola has successfully completed all of the System Tests as described in the acceptance test plan.
- 1.40. System Support Center (SSC): A Motorola facility which serves as Motorola's centralized system support facility to complement the field support resources
- 1.41. System Release: One software version release on a particular platform. ASTRO 25 6.3 example is where 6 is the platform indicator and .3 is software version release indicator.
- 1.42. System Test: Unit is tested in a Motorola manufactured system of similar type from which the unit was designed to test all functionality of the unit to insure that it meets manufacturer specifications.
- 1.43. Systemic: A recurring Software or hardware defect that significantly affects the operation of the System.
- 1.44. Technical Support Operations (TSO): A centralized telephone support help desk that provides technical support for Motorola customers who have purchased products from Motorola (Networks & Enterprise) or who have a contract for technical support services.
- 1.45. Vendor: Any manufacturer (other than Motorola) or third party that services or repairs Infrastructure or subscriber equipment
- 1.46. Verification: Contacting the appropriate designated person to verify the System is operational (original problem resolved) and closing the Case.
- 1.47. Work-around: A change in the followed procedures or data supplied by Vendor to avoid error without substantially impairing use of the Equipment.
- 1.48. Work Flow: A step-by-step process including instruction or direction for routing, handling, and processing information at a given agency.

Definitions

Approved by Motorola Contracts & Compliance 10-31-2006



Statement of Work

Network Monitoring, OnSite Infrastructure Response and Dispatch Service

Motorola will provide Network Monitoring, Dispatch Service and OnSite Infrastructure Response services to the Customer. These services are applicable only for the following system types: ASTRO®, ASTRO® 25, ARC 4000, SmartZone®/OmniLink® v2.0.3 and higher, SmartNet®, Private Data (with a wireless network gateway) v2.0.3 and higher, and Harmony® Wireless Communications System. The terms of this Statement of Work (SOW) are an integral part of the Motorola Service Terms and Conditions or other applicable Agreement(s) with the Customer to which this SOW is appended and made a part thereof by this reference.

1.0 Description of Services

Network Monitoring is a service designed to electronically monitor Elements of a Communication System for Events, as set forth in the Monitored Elements Table. When the Motorola System Support Center (SSC) detects an Event, trained technologists acknowledge and remotely diagnose the Event and initiate an appropriate response per the customer profile. Appropriate responses could include, but are not limited to, continuing to monitor the Event for further development transferring the Event to Technical Support, or opening a Case for dispatch of a Servicer. If dispatched, the Servicer will respond at the Customer location based on pre-defined Severity Levels set forth in the Severity Definitions Table and Response times set forth in the On-Site Response Time Table in order to Restore the System.

Motorola will provide Case management as set forth herein. The SSC maintains contact with the on-site Servicer until System Restoral occurs and Case is closed. The SSC will continuously track and manage Case activity from open to close through an automated Case tracking process.

2.0 Motorola Responsibilities:

- 2.1 Provide dedicated Connectivity through a private network connection necessary for monitoring ASTRO and ASTRO25, SmartZone/ OmniLink, Private Data, and Harmony Wireless Communications network types. The Connectivity Matrix set forth in Appendix 1, further describes the Connectivity options.
- 2.2 If determined necessary by Motorola, provide Motorola owned equipment for monitoring ASTRO and ASTRO 25 System elements. If Motorola installs or replaces Motorola owned equipment, the type equipment and location installed is listed in the Motorola Owned & Supplied Equipment Table.
- 2.3 If determined necessary by Motorola, provide Motorola owned equipment for monitoring SmartNet System elements. If Motorola installs or replaces Motorola owned equipment, the type of equipment and location installed is listed in the Motorola Owned & Supplied Equipment Table.
- 2.4 Verify Connectivity and Event monitoring prior to System Acceptance or Start Date.
- 2.5 Continuously receive data from Customer monitored System and Customer initiated service requests.
- 2.6 Remotely access the Customer's System to perform remote diagnostics as permitted by Customer pursuant to section 3.1
- 2.7 Create a Case as necessary when service requests are received. Gather information to perform the following:
 - 2.7.1 Characterize the Issue
 - 2.7.2 Determine a plan of action
 - 2.7.3 Assign and track the Case to resolution.
- 2.8 Dispatch a Servicer, as required, by Motorola standard procedures and provide necessary Case information collected in section 2.7
- 2.9 Ensure the required personnel have access to Customer information as needed.
- 2.10 Disable and enable System devices, as necessary, for Servicers.
- 2.11 Servicer will perform the following on-site:
 - 2.11.1 Run diagnostics on the Infrastructure or FRU.
 - 2.11.2 Replace defective Infrastructure or FRU, as applicable. Customer, Servicer or Motorola may provide Infrastructure or FRU.
 - 2.11.3 Provide materials, tools, documentation, physical planning manuals, diagnostic/test equipment and any other requirements necessary to perform the Maintenance service.
 - 2.11.4 If a third party Vendor is needed to restore the System, the Servicer may accompany that Vendor onto the Customer's premises.

- 2.12 Verify with Customer that Restoration is complete or System is functional, if required by Customer's repair Verification preference described in the Customer Support Plan required by section 3.5. If Verification by Customer cannot be completed within 20 minutes of Restoration, the Case will be closed and the Servicer will be released.
- 2.13 Escalate the Case to the appropriate party upon expiration of a Response time.
- 2.14 Close the Case upon receiving notification from Customer or Servicer, indicating the Case is resolved.
- 2.15 Notify Customer of Case Status, as described in the Customer Support Plan required by section 3.5 at the following Case levels
 - 2.15.1 Open and closed; or
 - 2.15.2 Open, assigned to the Servicer, arrival of the Servicer on site, deferred or delayed, closed.
- 2.16 Provide the following reports, as applicable:
 - 2.16.1 Case activity reports to Customer.
 - 2.16.2 Network Monitoring Service reports for Customer System(s).
 - 2.16.3 Network Activity/Availability Reports for ASTRO25, SmartZone/ OmniLink, and Private Data Systems only.
- 2.17 Respond in accordance to pre-defined Response times upon receipt from Customer of Customer managed passwords required for proper access to the Customer's System.
- 2.18 Apply additional support charges above and beyond the contracted service agreements that may apply if it is determined that System faults were caused by the Customer making changes to critical System parameters.

3.0 Customer Responsibilities:

- 3.1 Allow Motorola Continuous remote access to obtain System availability and performance data.
- 3.2 Allow Motorola to access System if firewall has been installed; provide permanent/dedicated access for SNMP traps (outbound) and ZDS polling (inbound). Also provide continuous utility service to any Motorola equipment installed or utilized at Customer's premises to support delivery of the Service.
- 3.3 Order and maintain dedicated dial-up phone lines for telephone service for SMARTNET System types. The Connectivity Matrix set forth in Appendix 1, further describes the Connectivity options.
- 3.4 Unless otherwise specified, Motorola recommends a private network connection for all other Systems. The Connectivity Matrix set forth in Appendix 1, further describes the Connectivity options.
- 3.5 Provide Motorola with pre-defined Customer information and preferences prior to Start Date necessary to complete Customer Support Plan.
 - 3.5.1 Case notification preferences and procedure
 - 3.5.2 Repair Verification Preference and procedure
 - 3.5.3 Database and escalation procedure forms.
 - 3.5.4 Submit changes in any information supplied in the Customer Support Plan to the Customer Support Manager.
- 3.6 Provide the following information when initiating a service request:
 - 3.6.1 Assigned System ID number
 - 3.6.2 Problem description and site location
 - 3.6.2 Other pertinent information requested by Motorola to open a Case.
- 3.7 Notify the System Support Center when Customer performs any activity that impacts the System. (Activity that impacts the System may include, but is not limited to, installing software or hardware upgrades, performing upgrades to the network, or taking down part of the system to perform maintenance.)
- 3.8 Allow Servicers access to Equipment (including any Connectivity or monitoring equipment) if remote service is not possible.
- 3.9 Allow Servicers access to remove Motorola owned monitoring equipment upon cancellation of service.
- 3.10 Supply Infrastructure or FRU, as applicable, in order for Motorola to Restore the System as set forth in paragraph 2.12.2
- 3.11 Maintain and store in an easy accessible location any and all Software needed to Restore the System.
- 3.12 Maintain and store in an easily accessible location proper System backups.
- 3.13 Verify with the SSC that Restoration is complete or System is functional, if required by the Repair Verification Preference provided by Customer in accordance with section 3.5.
- 3.14 Pay additional support charges above and beyond the contracted service agreements that may apply if it is determined that System faults were caused by the Customer making changes to critical System parameters
- 3.15 Cooperate with Motorola and perform all acts that are reasonable or necessary to enable Motorola to provide the services described in this SOW.

Severity Definitions Table

Severity Level	Problem Types
Severity 1	<ol style="list-style-type: none"> 1. Response is provided Continuously 2. Major System failure 3. 33% of System down 4. 33% of Site channels down 5. Site Environment alarms (smoke, access, temp, AC power) as determined by the SSC. 6. This level is meant to represent a major issue that results in an unusable system, sub-system, Product, or critical features from the Customer's perspective. No Work-around or immediate solution is available.
Severity 2	<ol style="list-style-type: none"> 1. Response during Standard Business Day 2. Significant System Impairment not to exceed 33% of system down 3. System problems presently being monitored 4. This level is meant to represent a moderate issue that limits a Customer's normal use of the system, sub-system, product, or major non-critical features from a Customer's perspective
Severity 3	<ol style="list-style-type: none"> 1. Response during Standard Business Day 2. Intermittent system issues 3. Information questions 4. Upgrades/preventative maintenance 5. This level is meant to represent a minor issue that does not preclude use of the system, sub-system, product, or critical features from a Customer's perspective. It may also represent a cosmetic issue, including documentation errors, general usage questions, recommendations for product enhancements or modifications, and scheduled events such as preventative maintenance or product/system upgrades.

On-Site Response Time Table (Customer's Response Time Classification is designated in the Service Agreement).

Severity Level	Standard Response Time	Restoral	Off Deferral
Severity 1	Within 4 hours from receipt of Notification Continuously	8 Hours	Time provided by Servicer *
Severity 2	Within 4 hours from receipt of Notification Standard Business Day	8 Hours	Time provided by Servicer *
Severity 3	Within 24 hours from receipt of Notification Standard Business Day	48 Hours	Time provided by Servicer *

- Please note these are Standard Commitment times. The commitment times should be based on the Customers Support Plan.
- Provide update **before** the specific contractual commitments come due.

* Note: Provide update to System Support Center **before** Deferral time comes due.

Appendix 1

Connectivity Matrix

System Type	Connectivity	Responsibility
Astro 25	T1	Motorola
SmartZone/OmniLink v3.5 and below	256K	Motorola
SmartZone/OmniLink v4 and above	512K	Motorola
Private Data	256K	Motorola
ARC 4000	T1 or VPN	Motorola
MESH	T1 or VPN	Motorola
Harmony	T1	Motorola

MotoBridge	T1 or VPN	Motorola
SmartNet	Dial-up	Customer

Private Network Connection IP VPN (All Customers)	Public Internet Connection IP VPN (Option Available only to Customers outside of the US)
Standard solution for real time Connectivity	Non Standard solution for Connectivity
Dedicated bandwidth configuration provided to monitor Customers	No dedicated bandwidth provided to monitor Customers
Protected from unauthorized intrusion	Low risk of unauthorized intrusion
Encryption available	Encryption is required
Connectivity available through Motorola	Customer provides Connectivity to the internet via an internet service provider selected by Customer.

Motorola Owned & Supplied Equipment Table

Equipment Type	Location Installed
Firewall/Router	Master Site
System Support Server	Master Site for each Zone

Monitored Elements Table (Listed by technology)

System Type	Equipment
ASTRO 25 (release 7.0 and higher) SECURITY ELEMENTS Monitoring and managing Security Elements is dependent on Customer purchasing and Core Security Management Server as Equipment with the Customer System	<p>Packet Routing Network; Zone Controllers; Database Server; FullVision Server; UEM Server; Zone Statistical Server; Air Traffic Router; System Statistics Server; User Configuration Server; Packet Data Gateway Server; PBX; Interconnect Server; Motorola Gold Elite Gateway (MGE); AEB; CEB; Conventional Channel Gateway (CCGW); Core, Exit, Gateway, Peripheral, Border, and Site routers, HP Switches master, prime, console (MCC7500) and repeater sites switches, GGSN; CWR</p> <p>MOSCAD Overlay (TenSr, Station, Channel Banks, TRAK GPS, Site Power, Microwave)</p> <p>Simulcast RF Site (Site Controllers, Comparators, Stations); Intelli Repeater RF Site (Stations); Intelli Site Repeater RF Site (Site Controllers, Stations). The SMARTX box is a transparent box that connects the legacy equipment to ASTRO core. The SMARTX box is not part of the monitored elements.</p> <p>DOES NOT INCLUDE MONITORING OF ANY MOSCAD ALARM POINTS THAT DO NOT DIRECTLY IMPACT THE PERFORMANCE OF THE RADIO NETWORK. DOES NOT INCLUDE MONITORING OF ANYTHING OUTSIDE OF THE RADIO NETWORK UNLESS SPECIFICALLY STATED</p> <p>If Motorola Security Monitoring service is purchased - Core Security Management Server, Intrusion Detection Sensor, Firewall, Anti-virus Application, Servicer Authentication, Centralized Logging Server</p>

ASTRO 25 (release 6.3 ? 6.9) SECURITY ELEMENTS Monitoring and managing Security Elements is dependent on Customer purchasing and Core Security Management Server as Equipment with the Customer System	Nortel; Packet Routing Network; Zone Controllers; Database Server; FullVision Server; Zone Statistical Server; Air Traffic Router; System Statistics Server; User Configuration Server; Packet Data Gateway Server; PBX; Interconnect Server; Motorola Gold Elite Gateway (MGEG); AEB; CEB; ARCADACS Cross Connect Switch; Simulcast RF Site (Site Controllers, Comparators, Stations); Intelli Repeater RF Site (Stations);Intelli Site Repeater RF Site (Site Controllers, Stations); MOSCAD Overlay (TenSr, Station, Channel Banks, TRAK GPS, Site Power, Microwave) DOES NOT INCLUDE MONITORING OF ANY MOSCAD ALARM POINTS THAT DO NOT DIRECTLY IMPACT THE PERFORMANCE OF THE RADIO NETWORK. DOES NOT INCLUDE MONITORING OF ANYTHING OUTSIDE OF THE RADIO NETWORK UNLESS SPECIFICALLY STATED If Motorola Security Monitoring service is purchased - Core Security Management Server, Intrusion Detection Sensor, Firewall, Anti-virus Application, Servicer Authentication, Centralized Logging Server
ASTRO 25 6.0 - 6.2	Nortel; Packet Routing Network; Zone Controllers; Database Server; FullVision Server; Zone Statistical Server; Air Traffic Router; System Statistics Server; User Configuration Server; Packet Data Gateway Server; PBX; Interconnect Server; Motorola Gold Elite Gateway (MGEG); AEB; CEB; ARCADACS Cross Connect Switch; Simulcast RF Site (Site Controllers, Comparators, Stations); Intelli Repeater RF Site (Stations);Intelli Site Repeater RF Site (Site Controllers, Stations); MOSCAD Overlay (TenSr, Station, Channel Banks, TRAK GPS, Environmental Alarms, Microwave)
Astro LE	Site Controllers; Environmental Alarms; Channel Banks

Legal Approval
September 2010



Statement of Work

Infrastructure Repair

1.0 Description of Services

Infrastructure Repair is a repair service for Motorola and select third party Infrastructure as set forth in the applicable attached Exhibit(s), all of which are hereby incorporated into this Statement of Work (SOW) by this reference. Customer's System type determines which exhibit is applicable (i.e. SmartZone system exhibit, SmartNet system exhibit). Infrastructure may be repaired down to the Component level, as applicable, at the Motorola Infrastructure Depot Operations (IDO). At Motorola's discretion, select third party Infrastructure may be sent to the original equipment manufacturer or third party vendor for repair. If Infrastructure is no longer supported by the original equipment manufacturer or third party vendor, Motorola may replace Infrastructure with similar Infrastructure, when possible.

The terms and conditions of this Statement of Work (SOW) are an integral part of Motorola's Service Terms and Conditions or other applicable agreement to which it is attached and made a part thereof by this reference.

2.0 Motorola has the following responsibilities:

- 2.1 Provide repair return authorization numbers when requested by Customer.
- 2.2 Receive malfunctioning Infrastructure from Customer and document its arrival, repair and return.
- 2.3 Perform the following service on Motorola Infrastructure:
 - 2.3.1 Perform an operational check on the Infrastructure to determine the nature of the problem.
 - 2.3.2 Replace malfunctioning FRU or Components.
 - 2.3.3 Verify that Motorola Infrastructure is returned to Motorola manufactured specifications, as applicable
 - 2.3.4 Perform a Box Unit Test on all serviced Infrastructure.
 - 2.3.5 Perform a System Test on select Infrastructure.
- 2.4 Provide the following service on select third party Infrastructure:
 - 2.4.1 Perform pre-diagnostic and repair services to confirm Infrastructure malfunction and eliminate sending Infrastructure with no trouble found (NTF) to third party vendor for repair, when applicable.
 - 2.4.2 Ship malfunctioning Infrastructure to the original equipment manufacturer or third party vendor for repair service, when applicable.
 - 2.4.3 Track Infrastructure sent to the original equipment manufacturer or third party vendor for service.
 - 2.4.4 Perform a post-test after repair by Motorola, original equipment manufacturer, or third party vendor to confirm malfunctioning Infrastructure has been repaired and functions properly in a Motorola System configuration, when applicable.
- 2.5 Re-program repaired Infrastructure to original operating parameters based on templates provided by Customer as required by Section 3.3. If Customer template is not provided or is not reasonably usable, a standard default template will be used. If IDO determines that the malfunctioning Infrastructure is due to a Software defect, IDO reserves the right to reload Infrastructure with a similar Software version. Enhancement Release(s), if needed, are subject to additional charges to be paid by Customer unless the Customer has a Motorola Software Subscription agreement.
- 2.6 Properly package repaired Infrastructure.
- 2.7 Ship repaired Infrastructure to the Customer specified address during normal operating hours of Monday through Friday 7:00am to 7:00pm CST, excluding holidays. FRU will be sent two-day air unless otherwise requested. Select third party FRU. Motorola will pay for such shipping, unless Customer requests shipments outside of the above mentioned standard business hours and/or carrier programs, such as NFO (next flight out). In such cases, Customer will be subject to shipping and handling charges

3.0 Customer has the following responsibilities:

- 3.1 Contact or instruct Servicer to contact the Motorola System Support Center (SSC) and request a return authorization number prior to shipping malfunctioning Infrastructure or third party

Infrastructure named in the applicable attached Exhibit.

- 3.1.1 Provide model description, model number, serial number, type of System and Firmware version, symptom of problem and address of site location for FRU or Infrastructure.
- 3.1.2 Indicate if Infrastructure or third party Infrastructure being sent in for service was subjected to physical damage or lightning damage.
- 3.1.3 Follow Motorola instructions regarding inclusion or removal of Firmware and Software applications from Infrastructure being sent in for service.
- 3.1.4 Provide Customer purchase order number to secure payment for any costs described herein.
- 3.2 Properly package Infrastructure and ship the malfunctioning FRU, at Customer's expense and risk of loss to Motorola. Customer is responsible for properly packaging the Customer malfunctioning Infrastructure FRU to ensure that the shipped Infrastructure arrives un-damaged and in repairable condition. Clearly print the return authorization number on the outside of the packaging.
- 3.3 Maintain templates of Software/applications and Firmware for re-loading of Infrastructure as set forth in paragraph
- 3.4 For Digital In-Car Video Infrastructure, remove video from equipment prior to sending Infrastructure in for repair. Video retrieval is a separate service and is not included as part of this SOW. Additional services and fee applies.
- 3.5 Cooperate with Motorola and perform all acts that are reasonable or necessary to enable Motorola to provide the Infrastructure Repair services to Customer.

4.0 In addition to any exclusions named in Section 5 of the Service Terms and Conditions or in any other underlying Agreement to which this SOW is attached, the following items are excluded from Infrastructure Repair.

1. All Infrastructures over seven (7) years from product cancellation date.
2. All Broadband/WiNS Infrastructure three (3) years from product cancellation date.
3. Physically damaged Infrastructure.
4. Third party Equipment not shipped by Motorola.
5. Consumable items including, but not limited to, batteries, connectors, cables, tone/ink cartridges.
6. Video retrieval from Digital In-Car Video equipment.
7. Test equipment.
8. Racks, furniture and cabinets.
9. Firmware and/or Software upgrades

ASTRO® 25 Infrastructure Exhibit	Inclusions, Exclusions, Exceptions and Notes
Antenna Systems	Excludes all Equipment such as bi-directional amplifiers, multicouplers, combiners, tower top pre-amplifiers, antennas, cables, towers, tower lighting, and transmission lines
Backhaul	Includes PTP (Point-to-Point Wireless) PTP 49600 and PTP 800 licensed series Excludes all other PTP technologies
Base Station(s) and Repeater(s)	Includes Quantar, MTR3000, STR3000, GTR8000, GTR8000 HPD, IntelliRepeater, Network Management (Please refer to the SOW for details) is not available on all stations. Quantar high power booster power amplifier, power supply and control board Excludes Fan Modules, Dual Circulator Tray, Site RMC Tray
Central Electronics Bank(s)	Includes Logging Recorder Interface and Network Hub, NICE logging recorders. Excludes All other technologies
Channel Bank(s)	Includes Premisys, Telco, IMACS models 600, 800. Excludes Siemens
Comparator(s)	Includes Spectratrac, Digitac, and ASTRO-tac 9600, ASTRO-tac 3000, GMC8000, Comparators.
Computer(s)/Workstations/Modems	Includes computers (Pentium I, II, III, IV) directly interface with or control the communications System, including Systemwatch II, PT800 tablet HP x1100, HPx2100, HP xw4000-4600, HPz400, HP VL600,

	HP VL800, HPz400, ML850 laptop, MW810, ML900 laptop, ML910 laptop, Compaq XW4000. Includes keyboards, mice, trackballs. Excludes all other laptop and desktop computer technologies and all 286, 386, 486 computers; defective or phosphor-burned cathode ray tubes CRT(s) and burned-in flat panel display image retention,
Console(s)	Includes Centracom Gold Elite, MCC7500, MCC5500, MIP5000, VPM, as part of complete communication System - including headset jacks, dual footswitches, and gooseneck microphones. Excludes cables
Controller - trunking	Includes SmartNet II prime and remote controllers, MTC3600, GCP8000, Site Controller PSC9600, CSC7000, MTC9600, MZC3600, MZC5000 (Includes Netra240 & T5220). Excludes SSMT and SCMS controllers, CD ROM Drive, Fan Tray
Dictaphones and Recording Equipment	Excludes all types and models.
Digital Interface Unit(s)	Included
Digital Signaling Modem(s)	Included upon modem model availability
Digital Voice Modem(s)	Included upon modem model availability
Embassy Switch	Includes AEB, AIMI, ZAMBI, AMB
Firewalls	Includes Nortel Alteon ASF5105, 5106, Juniper SS520, ISSG140, SSG5, ISG1000C, ISG2000
Intrusion Detector	Includes Proventia 201 Linux IDSS, Proventia CX4002C
ISSI Gateway	Includes T5220 Sun server Solaris 10 OS
Links	Includes PTP 49600 and 800 licensed series
Logging Recorder	Includes NICE Excludes All other technologies
Management Terminals	Includes computers (Pentium I, II, III, IV) that directly interface with or control the communications System, including Systemwatch II. Excludes laptop computers and all 286, 386, 486 computers.
MBEX(s) or NOVA Interconnect	Included
Microwave Equipment.	Excluded from service agreement but may be repaired on an above contract, time and material basis. All Equipment must be shipped to IDO. Excludes any on-site services.
Monitor(s)	Includes all Motorola certified monitors connected to computers that directly interface with or control the communications System. Excludes defective or phosphor-burned cathode ray tubes CRT(s) and burned-in flat panel displays image retention. Monitors not shipped by Motorola and/or cannot be confirmed by a Motorola factory order number.
Motobridge	Included
Moscad	Includes NFM (Network Fault Management), as part of communication System only, RTU, SDM Site Manager RTU. Standalone MOSCAD and System Control and Data Acquisition (SCADA) must be quoted separately. Includes FSA4000. Excludes all other fire alarming systems.
ASTRO 25 Infrastructure Repair con't	Inclusions, Exclusions, Exceptions and Notes for Infrastructure Repair
Network Fault Management	Includes Full Vision, Unified Event Manager Excludes NMC

Gateway	Includes PDG:CPX8216, IVD & HPD PDG on HP DL360, MOTOBRIDGE
Printer(s)	Includes printers that directly interface with the communications system.
RAS(s)	Excludes RAS 1100, 1101 and 1102
Receiver(s)	Includes Quantar, MTR2000 and ASTRO-TAC, GPW8000, GTR8000, GTR8000 HPD Receivers. Excludes Fan Modules, Dual Circulator Tray, Site RMC Tray
Routers	Includes GGM8000, ST5500, ST5598, S2500-S6000
Servers	Includes Netra 240, Netra T5220, cPCI, HP DL360, HP ML370, HP ML110, HP ML530, HP TC2110, 2120 HP InfoVista Server. IR8000 series, LX4000 series, Intel Server TSRL-T2, TIGPR2U, Proventia 201 Linux IDSS, Proventia GX4002C, Trak9100. Network Management Server includes cPCI Chassis, Power Supply, Fan Tray, Controller Hard Drive, CD ROM Drive, Tape Drive, CPU, Client PC's, Core Security Management Server, Firewall Servers, Intrusion Detection Sensor Server. Excludes Dell Servers, Monitors, Memory Module 0182915Y02, Rear Fan RLN5352, Central Process Card 0182915Y01
Simulcast Distribution Amplifier(s)	Included
Site Frequency Standard(s)	Includes Rubidium, GPS and Netclocks systems sold with the Motorola System.
Secure SMARTX	Includes KMF crypto card, end to end Cryptor for IVD PDEG Cryptr
Switch	Includes Nortel Passport PBX, Cisco Catalyst 6509, HP 5308 LAN switch, HP ProCurve Switch 2524, 2650, 2626, HP3500, HP2610, 3Com PS40, SS1100
Telco PBX	Includes Avaya Dfinity PBX, S8300, S8500, Intel Server (ACSS), TSRLT2, TIGPR2U
Terminal Servers	Includes IR8000, LX4000S, LX4000T, Paradyne
Universal Simulcast Controller Interface(s)	Included
UPS Systems	Excluded from service agreements but may be repaired on an above contract, time and material basis. All UPS Systems must be shipped to IDO for repair. Excludes batteries and any on-site services.
Workstation	Included

SmartZone System Infrastructure Exhibit	Inclusions, Exclusions, Exceptions and Notes
Antenna Systems	Excludes all Equipment such as bi-directional amplifiers, multicouplers, combiners, tower top pre-amplifiers, antennas, cables, towers, tower lighting, and transmission lines.
Base Station(s) and Repeater(s)	Includes: Quantar, Quantro, Digital, MTR2000 ONLY.
Central Electronics Bank(s)	Includes Logging Recorder, Interface and Network Hub Excludes all other technologies see SOW specifically for NICE logging recorders
Channel Bank(s)	Includes Premisys and Telco Excludes Siemens
Comparator(s)	Includes Spectratrac, Digitac, and ASTRO-tac Comparators
Computer(s)	Includes computers (Pentium I, II, III, IV) that directly interface with or control the communications System, including Systemwatch II, keyboards, mice and trackballs.

	Excludes laptop computers and all 286, 386, 486 computers, defective or phosphor-burned cathode ray tubes CRT(s) and burned-in flat panel display image retention.
Console(s)	Includes Centracom Gold Elite, MCC7500, MCC5500, MIP5000 as part of complete communication System ? including headset jacks, dual footswitches, and gooseneck microphones. Excludes cables
Controller(s) -Trunking	Includes SmartNet II prime and remote controllers. Excludes SSMT and SCMS controllers.
Dictaphones, Logging Recorders and Recording Equipment	Excludes all other technologies see SOW specifically for NICE logging recorders
Digital Interface Unit(s)	Included
Digital Signaling Modem(s)	Included upon modem model availability
Digital Voice Modem(s)	Included upon modem model availability
Embassy Switch	Includes AEB, AIMI, ZAMBI, AMB
Management Terminals	Includes computers (Pentium I, II, III, IV) that directly interface with or control the communications System, including Systemwatch II. Excludes laptop computers and all 286, 386, 486 computers.
MBEX(s) or NOVA Interconnect	Included
Microwave Equipment.	Excluded from service agreement but may be repaired on an above contract, time and material basis. All Equipment must be shipped to IDO. Excludes any on-site services.
Monitor(s)	Includes all Motorola certified monitors connected to computers that directly interface with or control the communications System. Excludes defective or phosphor-burned cathode ray tubes CRT(s) and burned-in flat panel displays image retention as well as monitors that were not shipped by Motorola and/or cannot be confirmed by a Motorola factory order number.
Moscad	Includes NFM (Network Fault Management), as part of communication System only. Standalone MOSCAD and System Control and Data Acquisition (SCADA) must be quoted separately. Includes FSA4000. Excludes all other fire alarming systems.
Motobridge	Included
Network Fault Management	Includes Full Vision Excludes NMC
Printer(s)	Includes printers that directly interface with the communications System.
RAS(s)	Excludes RAS 1100, 1101 and 1102
Receiver(s)	Includes Quantar and MTR2000, ASTRO-TAC Receivers
Simulcast Distribution Amplifier(s)	Included
Site Frequency Standard(s)	Includes Rubidium, GPS and Netlocks systems sold with the Motorola System. Excludes MFS -Rubidium Standard Network Time and Frequency devices
Universal Simulcast Controller Interface(s)	Included
UPS Systems.	Excluded from service agreements but may be repaired on an above contract, time and material basis. All UPS Systems must be shipped to IDO for repair. Excludes batteries and any on-site services.
Zone Manager	Excludes HP715/33, HP 715/50 servers. Excludes x-terminals NDS14C and NDS17C
Zone Controller(s)	Includes console terminals.

	Excludes all Sun/IMP hard drives except TLN3495A 0820 1 GB drive as well as the following SUN/IMP CPUSETs: TLN3278B 0406, TLN3343A 0424 and TLN3278A 0181/0389.
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Approved by Contract and Compliance 11/20/09
Motorola, Inc.
1303 E. Algonquin Road, Schaumburg, IL 60196 U.S.A.
Version 1.9 1/12/12



Statement of Work

Technical Support Service

1.0 Description of Services

The Technical Support service provides centralized remote telephone support for technical issues that require a high level of communications systems expertise or troubleshooting on Equipment. The Motorola System Support Center's (SSC) Technical Support Operation is staffed with technologists who specialize in the diagnosis and resolution of system performance issues. Technical Support Service (i) does not include software upgrades that may be required for issue resolution; and (ii) does not include Customer training (iii) is only available for those system types supported and approved by Technical Support Operations, (iv) limited to Infrastructure currently supported by Motorola.

Technical Support is applicable to the following system types: ASTRO®, ASTRO® 25 , ARC 4000, SmartZone® v2.0.3 and higher, SmartZone®/OmniLink®, E911, Private Data v2.0.3 and higher, SmartNet®, Conventional Two-Way, and Wireless Broadband.

The terms and conditions of this Statement of Work (SOW) are an integral part of Motorola's Service Terms and Conditions or other applicable Agreement to which it is attached and made a part thereof by this reference.

2.0 Motorola has the following responsibilities:

- 2.1. Respond to requests for Technical Support for the Restoration of failed Systems and diagnosis of operation problems in accordance with the response times set forth in the Remote Technical Support Response Times Table and the Severity Level defined in the Severity Definitions Table.
 - 2.1.1 If Infrastructure is no longer supported by Motorola, Technical Support will diagnosis the System but may not be able to resolve the issue without the Customer replacing the Infrastructure.
- 2.2. Advise caller of procedure for determining any additional requirements for issue characterization, Restoration, including providing a known fix for issue resolution when available.
- 2.3. Attempt remote access to System for remote diagnostics, when possible.
- 2.4. Maintain communication with the Servicer or Customer in the field until close of the Case, as needed.
- 2.5. Coordinate technical resolutions with agreed upon third party vendor(s), as needed.
- 2.6. Escalate and manage support issues, including Systemic issues, to Motorola engineering and product groups, as applicable.
- 2.7. Escalate the Case to the appropriate party upon expiration of a Response time.
- 2.8. Provide Configuration Change Support and Work Flow changes to Systems that have dial In or remote access capability.
- 2.9. Determine, in its sole discretion, when a Case requires more than the Technical Support services described in this SOW and notify Customer of an alternative course of action.

3.0 Customer has the following Responsibilities:

- 3.1. Provide Motorola with pre-defined information prior to Start Date necessary to complete Customer Support Plan.
 - 3.1.1 Submit changes in any information supplied in the Customer Support Plan to the Customer Support Manager.
- 3.2. Contact the SSC in order to access the Technical Support Operation, provide name of caller, name of Customer, System ID number, Service Agreement number, site(s) in questions, and brief description of the problem.
- 3.3. Supply on-site presence when requested by System Support Center.
- 3.4. Validate issue resolution prior to close of the Case.
- 3.5. Allow Motorola remote access to the System by equipping the System with the necessary Connectivity.
- 3.6. Remove video from Digital In-Car Video equipment prior to contacting Motorola. If Technical Support assists the Customer in removing video, the Customer acknowledges, understands and agrees that Motorola does not guarantee or warrant that it will be able to extract any captured video or that any captured video will not be damaged, lost or corrupted.

- 3.7 Acknowledge that Cases will be handled in accordance with the times and priorities as defined in Remote Technical Support Response Times Table and the Severity Level defined in the Severity Definitions Table.
- 3.8 Cooperate with Motorola and perform all acts that are reasonable or necessary to enable Motorola to provide the Technical Support service to Customer.

Severity Definitions Table

Severity Level	Problem Types
Severity 1	<ol style="list-style-type: none"> 1. Response is provided Continuously 2. Major System failure 3. 33% of System down 4. 33% of Site channels down 5. Site Environment alarms (smoke, access, temp, AC power) as determined by the SSC. 6. This level is meant to represent a major issue that results in an unusable system, sub-system, Product, or critical features from the Customer's perspective. No Work-around or immediate solution is available.
Severity 2	<ol style="list-style-type: none"> 1. Response during Standard Business Day 2. Significant System Impairment not to exceed 33% of system down 3. System problems presently being monitored 4. This level is meant to represent a moderate issue that limits a Customer's normal use of the system, sub-system, product, or major non-critical features from a Customer's perspective
Severity 3	<ol style="list-style-type: none"> 1. Response during Standard Business Day 2. Intermittent system issues 3. Information questions 4. Upgrades/preventative maintenance 5. This level is meant to represent a minor issue that does not preclude use of the system, sub-system, product, or critical features from a Customer's perspective. It may also represent a cosmetic issue, including documentation errors, general usage questions, recommendations for product enhancements or modifications, and scheduled events such as preventative maintenance or product/system upgrades.

Remote Technical Support Response Times Table

SEVERITY	RESPONSE
Severity 1	Within 1 Hour from receipt of Notification, Continuously
Severity 2	Within 4 Hours from receipt of Notification, Standard Business Day
Severity 3	Within next Business Day, Standard Business Day

Approved by Legal 11-20-09



Statement of Work

Network Preventative Maintenance

1.0 Description of Service

Network Preventative Maintenance will provide an operational test and alignment, on the Customer's Infrastructure Equipment (Infrastructure or fixed network equipment only) to ensure the Infrastructure meets original manufacturer's specifications, as set forth in the applicable attached Exhibit(s), all of which are hereby incorporated by this reference. Customer's System type determines which Exhibit is applicable (i.e. SmartZone system exhibit, SmartNet system exhibit). Network Preventative Maintenance will be performed during Standard Business Days. If the System or Customer requirements dictate this service must occur outside of Standard Business Days, Motorola will provide an additional quotation. Customer is responsible for any charges associated with helicopter or other unusual access requirements or expenses.

The terms and conditions of this SOW are an integral part of Motorola's Service Terms and Conditions or other applicable agreement to which it is attached and made a part thereof by this reference.

2.0 Motorola has the following responsibilities:

- 2.1 Notify the Customer of any possible System downtime needed to perform this service.
- 2.2 Physically inspect the Infrastructure Equipment in the system (equipment cabinets, general circuitry, fault indicators, cables, and connections).
- 2.3 Remove any dust, and/or foreign substances from the Infrastructure.
- 2.4 Clean filters, if applicable.
- 2.5 Measure, record, align, adjust the Infrastructure Equipment parameters in accordance with the manufacturer's service manuals and the Rules and Regulations of the Federal Communications Commission (FCC), where applicable.

3.0 Customer has the following responsibilities:

- 3.1 Provide preferred schedule for Network Preventative Maintenance to Motorola.
- 3.2 Authorize and acknowledge any scheduled System downtime.
- 3.3 Maintain periodic backup of databases, Software applications and Firmware.
- 3.4 Establish and maintain a suitable environment (heat, light, and power) for the Equipment location and provide the Servicer full, free, and safe access to the Equipment so that the Servicer may provide services. All sites shall be accessible by standard service vehicles.
- 3.5 Cooperate with Motorola and perform all acts that are reasonable or necessary to enable Motorola to provide the Network Preventative Maintenance services to Customer.

SmartZone -Network Preventative Maintenance Checklist

SmartZONE Infrastructure	Operational Check (where applicable)
Repeater(s), Control Station(s)	Transmitter modulation
	RF power output/reflected
	RF Frequency Measured/adjusted
	Receiver Sensitivity Measured/Adjusted
	Power Supply voltages
	Audio Input & Output Level
	Check Low Speed Data
	Combiners & Circulator Loss
Consoles Positions/Remotes	Receiver Desense (Full Duplex Only)
	Audio Input & Output Level
	Ethernet Operation
	CEB Power Supply Voltage, and AC Ripple
	Switches, Lights, CRT
	CEB Signal Levels
	Wiring and Grounding for each Position
	CEB Diagnostics
Central Controllers, DIGITAC Comparators	Check and Clean keyboards, CPU, CRT's
	Central Controller and Power Supplies
	T Bar Switched
	Simulcast Controller
	Simulcast Remote Controller
	Distribution Amp
	DIGITAC Comparator
	Receiver Multi-Couplers and Tower Mounted Amplifier
GPS	Check for receiver to Comparator audio path.
	Check for proper audio to Status Tone ratio
	Confirm that all Receiver RX Notch Filters are either IN or OUT
Site Equipment	Roll to Redundant Receive Reference Module
	Check Frequency Standards
	Check Power Supply Voltages
Power UPS Generator AC to DC Power Unit (RF equipment) All Equipment	Audio Network Analyzer
	Baseline Database Server
	System Manager Terminal
	Site Test/System Calibration Equipment
	Check Diagnostics/Alarms
	AC/DC Voltages/Batteries
	Switch-Over Operations
Other Equipment	Switch to Generator Power
	Switch to Battery Power
	Check Diagnostics/Alarms
	Check all system printers
	Check all modems for proper levels & synchronization
	MBX/Other telco interface common equipment

ASTRO® LE -Network Preventative Maintenance Checklist

Astro LE Infrastructure	Operational Check
CO-LOCATED/REMOTE SITE Repeater(s), Control Station(s) Site Controllers Router/Switches All Equipment	TX Frequency in Hz
	TX Power Output of Station (Forward/Reflected)
	TX Power Output out of Combiner (Forward/Reflected)
	TX Low Speed Deviation
	TX Test Pattern Deviation
	TX BER
	RX Tower/Rack Mounted Amplifier
	RX RF Level at 5% BER at Receiver and Through Multi-Coupler
	Receiver Desense/ Degradation do to Site Noise and TX Desense
	Wireline Audio Input & Output Levels
	Check Lights/Fan Operation
	Check/Align Frequency Standard
	Roll to Redundant Controller
	Test Site Trunking/Failsoft Modes (if possible)
	Multiple Control Channel Switching
	Check Lights/Fan Operation
	Check Diagnostics/Alarms
	Power Supply Voltages
MASTER/PRIME SITE (RF Equipment) Master/Prime Site Controllers Router/Switches ASTRO-TAC Comparators Channel Bank	
	Check Lights/Fan Operation
	Roll to Redundant Controller(pre-approved by customer)
	Check Lights/Fan Operation
	Check for receiver to Comparator audio path
	ACTAC 9600 Comparator All sites on line? V.24 link health- link delays
	Channel Bank/ transport health for all sites (diagnostics/alarms)
	Roll to Redundant Power Supply (pre-approved by customer)
MASTER/PRIME SITE (Servers)	Site Control Manager/Site Command Server (Clients)
	Backup Databases
	Terminal Server
	Remote Access Test
GPS	Roll to Redundant Receive Reference Module (pre-approved by customer)
	Frequency Standards (check 1 PPS, 5 MPPS, composite)
	Check Power Supply Voltages

POWER UPS Generator AC to DC Power Unit (RF equipment) All Equipment	Check Diagnostics/Alarms
	AC/DC Voltages/Batteries
	Switch-Over Operations
	Switch to Generator Power
	Switch to Battery Power
TRUNKING TEST (Completed at all sites)	Check Diagnostics/Alarms
	Talkgroup Test
	Multigroup Call
	Private Call
	Secure Call

Approved by Motorola Contracts & Compliance: 1/28/08



Statement of Work

ASTRO® 25 Network & Security Monitoring, Pre-Tested Software Subscription, OnSite Infrastructure Response and Dispatch Service

Overview: Network & Security Monitoring is a bundled service offering that provides Network Monitoring, Security Monitoring, Pre-Tested Software Subscription (PTSS), Dispatch and OnSite Infrastructure Response services to the Customer. This service is applicable only for the following system types: ASTRO 25 current shipping System Release and three prior System Releases.

Definitions

Terms that are capitalized but not defined in this Statement of Work shall have the definition given to such terms in the Service Terms and Conditions, the Communications System Agreement or other applicable agreement. The following terms have the following meanings:

- § Non-Motorola Software: Software whose copyright is owned by a party other than Motorola or its affiliated company, including but not limited to the anti-virus definitions, operating system software patches and signature files that will be pre-tested pursuant to this Statement of Work.
- § Supported System Release: Pre-Tested Software Subscription supports the current ASTRO 25 6.X and 7.X System Releases and 3 previous System Releases.

1.0 Description of Services

ASTRO 25 Network & Security Monitoring includes the monitoring of radio system infrastructure as well as monitoring and managing the Motorola security equipment present on the Customer's System. Monitoring security equipment requires Customer to purchase a Core Security Management Server with Customer's System. Motorola will monitor Elements of a System for Events, as set forth in the Monitored Elements Table below.

When the Motorola System Support Center (SSC) detects an Event, trained technologists will acknowledge the Event, run remote diagnostic routines, and initiate an appropriate Response. Appropriate responses could include, but are not limited to, continuing to monitor the Event for further development, attempting remote Restoral, or transferring the Event by opening a Case for dispatch of a Servicer. If dispatched, the Servicer will respond at the Customer location based on pre-defined Severity Levels set forth in the Severity Definitions Table and Response times set forth in the On-Site Response Time Table in order to Restore the System.

Pre-Tested Software Subscription provides the latest anti-virus definitions, intrusion detection sensor (IDS) signature updates (ONLY for IDS supplied to Customer by Motorola), Microsoft and Solaris operating system security patches that have been pre-tested on a Motorola test system to verify compatibility with the ASTRO 25 System.

Motorola will proactively manage the security Elements present on the System as needed to mitigate the risk of vulnerability such as a virus, worm or other intrusive attack on the System. This may include periodically deploying the latest release of pre-tested anti-virus definitions to the anti-virus management server and updating the intrusion detection sensor signature files on the network barrier (ONLY for IDS supplied to Customer by Motorola and if present on the System) as determined by Motorola. Motorola will also modify intrusion sensor settings and update firewall settings as determined by Motorola and will notify Customer of such modifications.

Motorola will provide Case Management as set forth herein. The SSC maintains contact with the on-site Servicer until System Restoral occurs and Case is closed. The SSC will Continuously track and manage Case activity from open to close through an automated Case tracking process. This Case management allows Motorola to provide activity and performance reports as well as ensures timely resolution of issues.

The terms and conditions of this Statement of Work (SOW) are an integral part of Motorola's Service Terms and Conditions or other applicable Agreement(s) to which it is attached and made a part thereof by this reference.

2.0 Motorola has the following responsibilities:

- 2.1. Provide dedicated Connectivity through a private network connection necessary for monitoring ASTRO 25 System. The Connectivity Matrix set forth below further describes the Connectivity options.
- 2.2. If determined necessary by Motorola, provide Motorola owned equipment for monitoring ASTRO 25 System elements. If Motorola installs or replaces Motorola owned equipment, the type of equipment and location installed is listed in the Motorola Owned & Supplied Equipment Table.

- 2.3. Verify Connectivity and Event monitoring prior to System Acceptance or Start Date.
- 2.4. Coordinate with Customer to maintain Motorola service authentication credentials.
- 2.5. Continuously receive service requests.
- 2.6. Perform Continuous monitoring of System Elements as set forth in the Monitored Elements Table.
- 2.7. Interpret System Events and determine appropriate Response. An appropriate Response could include the following actions: notify customer of activity, continue monitoring the Event for further development, review System log files or transfer the Event information via a Case for dispatch of a Servicer.
- 2.8. Respond in accordance to pre-defined Response times upon receipt from Customer of Customer managed passwords required for proper access to the Customer's System.
- 2.9. Remotely access the Customer's System to perform remote diagnostics as permitted by Customer pursuant to section 3.1.
- 2.10. Attempt remote Restoral, as appropriate. Some System functions may be disrupted as necessary to maintain System integrity until further validation of the Event occurs. This may include shutting down applications, applying security tools, resetting box, or instructing Servicer to reload applications and operating system software as necessary.
- 2.11. Create a Case as necessary when service requests are received. Gather information to perform the following:
 - 2.11.1. Characterize the issue
 - 2.11.2. Determine a plan of action
 - 2.11.3. Assign and track the Case to resolution.
- 2.12. Dispatch a Servicer, as required, by Motorola standard procedures and provide necessary Case information collected in section 2.11.
- 2.13. Ensure the required personnel have access to Customer information as needed.
- 2.14. Disable and enable System devices, as necessary, for Servicers.
- 2.15. Servicer will perform the following on-site:
 - 2.15.1. Run diagnostics on the Infrastructure or FRU.
 - 2.15.2. Replace defective Infrastructure or FRU, as applicable. Customer, Servicer or Motorola may provide Infrastructure or FRU.
 - 2.15.3. Provide materials, tools, documentation, physical planning manuals, diagnostic/test equipment and any Security requirements necessary to perform the Maintenance service.
 - 2.15.4. If a third party Vendor is needed to Restore the System, the Servicer may accompany that Vendor onto the Customer's premises.
- 2.16. Verify with Customer that Restoration is complete or System is functional, if required by Customer's repair Verification preference described in the Customer Support Plan required by section 3.6. If Verification by Customer cannot be completed within 20 minutes of Restoration, the Case will be closed and the Servicer will be released.
- 2.17. Escalate the Case to the appropriate party upon expiration of a Response time.
- 2.18. Close the Case upon receiving notification from Customer or Servicer, indicating the Case is resolved.
- 2.19. Notify Customer of Case Status, as described in the Customer Support Plan by section 3.6 at the following Case levels:
 - 2.19.1. Open and closed; or
 - 2.19.2. Open, assigned to the Servicer, arrival of the Servicer on site, deferred or delayed, closed.
- 2.20. Obtain anti-virus definitions for the Microsoft Windows platform, intrusion detection sensor (IDS) signatures for Motorola supplied IDS, Microsoft and Solaris operating system security patches/updates, as available, from Motorola selected commercial suppliers.
- 2.21. Evaluate anti-virus definitions classified as Category 4 (Severe, difficult to contain) and Category 5 (Very Severe, very difficult to contain) by Motorola selected commercial supplier to determine if a high-priority release is required. Motorola in its discretion will determine the urgency of the update based on the impact to the System.
- 2.22. Test anti-virus definitions, intrusion detection sensor signatures for Motorola supplied IDS, Microsoft and Solaris operating system security patches/updates by deploying them on a dedicated test System with the standard supported configurations, which include Motorola's then current approved cohabitated applications for current System Release and three previous System Releases.
- 2.23. Confirm that tested anti-virus definitions, intrusion detection sensor signatures for Motorola supplied IDS, and operating system security patches/updates do not degrade or compromise System functionality on dedicated test System within the standard supported configurations.
- 2.24. Address issues identified during testing to support functionality under the procedures specified in 2.22 above

- by working with Motorola selected commercial supplier or Motorola product development engineering team.
- 2.25. Deploy pre-tested updates weekly to anti-virus management server and intrusion detection sensor for Motorola supplied IDS (if present on the System) upon successful completion of the weekly test cycle to be completed one week after release by commercial supplier unless an issue is detected or as determined necessary by Motorola. High-priority anti-virus definition releases identified in 2.21 will be made available within 24 hours of commercial supplier release or at Motorola's discretion.
 - 2.26. Notify Customer when anti-virus definition updates and intrusion detection sensor signatures have been deployed on Customer system.
 - 2.27. Release and notify Customer when Microsoft and Solaris operating system security patches/updates are certified and available with instructions for obtaining patch for Customer deployment on the Customer system. Microsoft operating system security updates will be released monthly as available from Motorola selected commercial supplier upon successful completion of monthly test cycle. Solaris operating system security patches will be released quarterly upon successful completion of quarterly test cycle or at Motorola's discretion.
 - 2.28. Maintain annual Customer licenses for anti-virus definitions and intrusion detection sensor signatures for IDS supplied to Customer by Motorola with Motorola selected commercial supplier.
 - 2.29. Provide the following reports, as applicable:
 - 2.29.1. Case activity reports to Customer.
 - 2.29.2. Network Security Monitoring Service reports for Customer System(s).
 - 2.29.3. Network Activity/Availability Reports
 - 2.30. Apply additional support charges above and beyond the contracted service agreements that may apply if it is determined that System faults were caused by the Customer making changes to critical System parameters.

3.0 Customer has the following responsibilities:

- 3.1. Allow Motorola Continuous remote access to obtain System availability, performance and configuration data.
- 3.2. Allow Motorola to access System if firewall has been installed; provide permanent/dedicated access for SNMP traps (outbound) and ZDS polling (inbound).
- 3.3. Provide continuous utility service to any Motorola equipment installed or utilized at Customer's premises to support delivery of the Service.
- 3.4. Maintain and manage any equipment outside of the System.
- 3.5. Deploy pre-tested operating system software patches on the System.
- 3.6. Provide Motorola with pre-defined Customer information and preferences prior to Start Date necessary to complete Customer Support Plan.
 - 3.6.1. Provide 7/24 security contact and escalation list
 - 3.6.2. Case notification preferences and procedures
 - 3.6.3. Repair Verification preference and procedure
 - 3.6.4. Database and escalation procedure forms.
 - 3.6.5. Submit changes in any information supplied in the Customer Support Plan to the Customer Support Manager.
- 3.7. Provide the following information when initiating a service request:
 - 3.7.1. Assigned System ID number
 - 3.7.2. Problem description and site location
 - 3.7.3. Other pertinent information for Motorola to open a Case.
- 3.8. Provide all Customer managed passwords required to access the Customer's System to Motorola upon request or when opening a Case to request service support or enable Response to a technical issue.
- 3.9. Notify the SSC when Customer performs any activity that impacts the System. (Activity that impacts the System may include, installing software or hardware upgrades, performing upgrades to the network, or taking down part of the System to perform maintenance.)
- 3.10. As necessary, upgrade System to Supported System Release as specified in paragraph 2.22.
- 3.11. Allow Servicers access to Equipment (including any Connectivity or monitoring equipment) if remote service is not possible.
- 3.12. Allow Servicers access to remove Motorola owned server upon cancellation of service as set forth in paragraph 2.2.
- 3.13. Supply Infrastructure or FRU, as applicable, in order for Motorola to Restore the System as set forth in paragraph 2.15.2.
- 3.14. Maintain and store in an easily accessible location System backups and any/all Software needed to Restore the System.

- 3.15. Verify with the SSC that Restoration is complete or System is functional, if required by the Repair Verification Preference provided by Customer in accordance with section 3.6.3.
- 3.16. Comply with the terms of the applicable license agreements between Customer and the Non-Motorola Software copyright owners.
- 3.17. Cooperate with Motorola and perform all acts that are reasonable or necessary to enable Motorola to provide the services described in this SOW.

4.0 WARRANTIES AND DISCLAIMER:

Motorola warrants that its services will be free of defects in materials and workmanship for a period of ninety (90) days following completion of the service. Your sole remedies are to require Motorola to re-perform the affected service or at Motorola's option to refund, on a pro-rata basis, the service fees paid for the affected service.

During the applicable Warranty Period, Motorola warrants that the tested anti-virus definitions, intrusion detection sensor signatures, and operating system security updates/patches do not degrade or compromise System functionality, and that after incorporation of the tested Software updates, the System Software, when used properly and in accordance with the Documentation, will be free from a reproducible defect that eliminates the functionality or successful operation of a feature critical to the primary functionality or successful operation of the Software. Product and Software documentation that specifies technical and performance features and capabilities, and the user, operation and training manuals for the Software (including all physical or electronic media upon which this information is provided) are collectively referred to as "Documentation." Whether a defect occurs will be determined solely with reference to the Documentation. Motorola does not warrant that Customer's use of the Software or Products will be uninterrupted or error-free or that the Software or the Products will meet Customer's particular requirements.

MOTOROLA DISCLAIMS ALL OTHER WARRANTIES WITH RESPECT TO PRE-TESTED ANTI-VIRUS DEFINITIONS, OPERATING SYSTEM SOFTWARE PATCHES, AND INTRUSION DETECTION SENSOR SIGNATURE FILES, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. FURTHER, MOTOROLA DISCLAIMS ANY WARRANTY CONCERNING THE NON-MOTOROLA SOFTWARE AND DOES NOT GUARANTEE THAT CUSTOMER'S SYSTEM WILL BE ERROR-FREE OR IMMUNE TO VIRUSES OR WORMS AS A RESULT OF THESE SERVICES.

Severity Definitions Table

Severity Level	Problem Types
Severity 1	<ol style="list-style-type: none"> 1. Response is provided Continuously 2. Major System failure 3. 33% of System down 4. 33% of Site channels down 5. Site Environment alarms (smoke, access, temp, AC power) as determined by the SSC. 6. This level is meant to represent a major issue that results in an unusable system, sub-system, Product, or critical features from the Customer's perspective. No Work-around or immediate solution is available.
Severity 2	<ol style="list-style-type: none"> 1. Response during Standard Business Day 2. Significant System Impairment not to exceed 33% of system down 3. System problems presently being monitored 4. This level is meant to represent a moderate issue that limits a Customer's normal use of the system, sub-system, product, or major non-critical features from a Customer's perspective
Severity 3	<ol style="list-style-type: none"> 1. Response during Standard Business Day 2. Intermittent system issues 3. Information questions 4. Upgrades/preventative maintenance 5. This level is meant to represent a minor issue that does not preclude use of the system, sub-system, product, or critical features from a Customer's perspective. It may also represent a cosmetic issue, including documentation errors, general usage questions, recommendations for product enhancements or modifications, and scheduled events such as preventative maintenance or product/system upgrades.

Response Time Table (Customer's Response Time Classification is designated in the Service Agreement).

Severity Level	Standard Response Time	Premier Response Time	Limited Response Time	Restoral	Off Deferral
Severity 1	Within 4 hours from receipt of Notification Continuously	Within 2 hours from receipt of Notification Continuously	Within 4 hours from receipt of Notification Standard Business Day	8 hours	Time provided by Servicer *
Severity 2	Within 4 hours from receipt of Notification Standard Business Day	Within 4 hours from receipt of Notification Standard Business Day	Within 4 hours from receipt of Notification Standard Business Day	8 hours	Time provided by Servicer *
Severity 3	Within 24 hours from receipt of Notification Standard Business Day	Within 24 hours from receipt of Notification Standard Business Day	Within 24 hours from receipt of Notification Standard Business Day	48 hours	Time provided by Servicer *

- Please note these are Standard Commitment times. The commitment times should be based on the Customers Support Plan.
- Provide update **before** the specific contractual commitments come due.

* Note: Provide update to System Support Center **before** Deferral time comes due.

Connectivity Matrix

Private Network Connection IP VPN (All Customers)	Public Internet Connection IP VPN (Option Available only to Customers outside of the US)
Standard solution for real-time Connectivity	Non-standard solution for real-time Connectivity
Dedicated bandwidth configuration provided to monitor Customers	No dedicated bandwidth provided to monitor Customers
Protected from unauthorized intrusion	Low risk of unauthorized intrusion
Encryption Available	Encryption Available
Connectivity available through Motorola	Customer provides Connectivity to the Internet via an Internet service provider selected by Customer

Motorola Owned & Supplied Equipment Table

Equipment Type	Location Installed
Firewall/Router	Master Site
System Support Server	Master Site for each Zone

Monitored Elements Table (Listed by Technology)

System Type	Equipment
ASTRO 25 (release 7.x)	<p>Packet Routing Network; Zone Controllers; Database Server; FullVision Server; Zone Statistical Server; Air Traffic Router; System Statistics Server; User Configuration Server; Packet Data Gateway Server; PBX; Interconnect Server; Motorola Gold Elite Gateway (MGEG); AEB; CEB; Conventional Channel Gateway (CCGW); Simulcast RF Site (Site Controllers, Comparators, Stations); Intelli Repeater RF Site (Stations); Intelli Site Repeater RF Site (Site Controllers, Stations);</p> <p>Core, Exit, Gateway, Peripheral, Border, and Site routers, HP Switches master, prime, console and repeater sites switches, GGSN; CWR</p> <p>MOSCAD Overlay (TenSr, Station, Channel Banks, TRAK GPS, Site Power, Microwave)</p> <p>DOES NOT INCLUDE MONITORING OF ANY MOSCAD ALARM POINTS THAT DO NOT DIRECTLY IMPACT THE PERFORMANCE OF THE RADIO NETWORK. DOES NOT INCLUDE MONITORING OF ANYTHING OUTSIDE OF THE RADIO NETWORK UNLESS SPECIFICALLY STATED</p>
ASTRO 25 (release 6.3 ? 6.9)	<p>Nortel; Packet Routing Network; Zone Controllers; Database Server; FullVision Server; Zone Statistical Server; Air Traffic Router; System Statistics Server; User Configuration Server; Packet Data Gateway Server; PBX; Interconnect Server; Motorola Gold Elite Gateway (MGEG); AEB; CEB; ARCADACS Cross Connect Switch; Simulcast RF Site (Site Controllers, Comparators, Stations); Intelli Repeater RF Site (Stations);Intelli Site Repeater RF Site (Site Controllers, Stations);</p> <p>MOSCAD Overlay (TenSr, Station, Channel Banks, TRAK GPS, Site Power, Microwave)</p> <p>DOES NOT INCLUDE MONITORING OF ANY MOSCAD ALARM POINTS THAT DO NOT DIRECTLY IMPACT THE PERFORMANCE OF THE RADIO NETWORK. DOES NOT INCLUDE MONITORING OF ANYTHING OUTSIDE OF THE RADIO NETWORK UNLESS SPECIFICALLY STATED.</p>
Security Elements (Monitoring and managing Security Elements is dependent on Customer purchasing Core Security Management Server as Equipment with the Customer System)	<p>Core Security Management Server; Firewall; Intrusion Detection Sensors; Anti-virus Management application; Authentication Management application; Centralized Logging Server</p>

Network Security Monitoring

Approved by Motorola Contracts & Compliance 03/14/08



city commission public hearing

item type	Public Hearing	meeting date	September 9, 2013
prepared by department division	Jeff Briggs Planning Department	approved by	<input type="checkbox"/> City Manager <input checked="" type="checkbox"/> City Attorney <input type="checkbox"/> N/A
board approval	Planning and Zoning Board	<input checked="" type="checkbox"/> yes <input type="checkbox"/> no <input type="checkbox"/> N/A	4-0 final vote

Subject: Ordinance to Revise the Rules for Restaurants within the Park Avenue area.
New text in yellow.

Second Reading of the Ordinance amending the C-2 zoning rules along the Park Avenue corridor for restaurants and other food service establishments. The amendment made at the first reading has been incorporated into the attached Ordinance and is shown in red. That change removed the requirement for a fine dining restaurant to serve alcoholic beverages. The City Commission discussed adding the definition of "non-fine dining restaurant" to the definitions section but there was not a motion to make that change.

Planning and Zoning Board Recommendation:

Motion made by Bob Hahn, seconded by Ross Johnston to approve the proposed Ordinance subject to the city attorney revision to the section regarding city review of menu changes text. Motion carried unanimously with a 4-0 vote.

Summary:

The current zoning rules for restaurants in the Park Avenue corridor are confusing, not well understood and very difficult to enforce as they have evolved over the past 25 years.

The proposed ordinance makes four changes to the C-2 zoning rules for restaurants and other food service type establishments as follows:

1. It provides a new, improved definition of "fine dining restaurant". It makes it clear to the owners and operators of existing fine dining restaurants and to any new proposed fine dining restaurateurs what they are expected to do (operationally) and will be easier for the City staff to enforce.
2. It provides a new definition of "fast food restaurants" and makes it clear that they are prohibited, non-conforming uses.
3. It provides a new definition for "coffee shops, bakeries and dessert restaurants" which provides a solution for staff addressing the menu creep that we have experienced with these establishments that are primarily coffee shops, bakeries or ice cream/dessert places but also which sell some ancillary food for breakfast/lunch.
4. It provides within the Park Avenue corridor a new definition and a new permitted use for "non-fine dining restaurants" otherwise sometimes referred to as 'fast casual' restaurants. These are not currently permitted unless by conditional use

approval based on adequacy of parking. The proposal now is that subject to the defined limitations, new "non-fine dining restaurants" may be established as permitted uses within the Park Avenue corridor. The limitations are no more than 20% of any block storefronts and no more than 15% of total storefronts within the Park Avenue corridor may become "non-fine dining restaurants".

Other than perhaps Panera Bread, none of the existing casual dining places along Park Avenue meet all of the criteria in this "non-fine dining" definition. The percentages might appear potentially large (20% of any block or 15% of the total businesses) but the opportunities are far less. The reality is that most (if not all) of the fast casual franchise chains like Five Guys Burgers or Tijuana Flats meet the criteria to be classified as a fast food franchise. Restaurants that meet these criteria cannot change their operations for just one location on Park Avenue (such as using real dinnerware, busing their tables, etc.) in order to qualify within this "non-fine dining restaurant" definition. So the numbers may look large based on the percentages, but the real opportunities are far less. What this definition does accomplish is to encourage the entrepreneurial start-ups (versus chains) which is what is desired along the Avenue.

The Winter Park Chamber of Commerce provided staff with an analysis of the existing restaurants along Park Avenue as well as a composite of retail and restaurant uses. Staff has verified this data and will use this information as the threshold for the Ordinance percentages going forward.

STAFF RECOMMENDATION - APPROVAL:

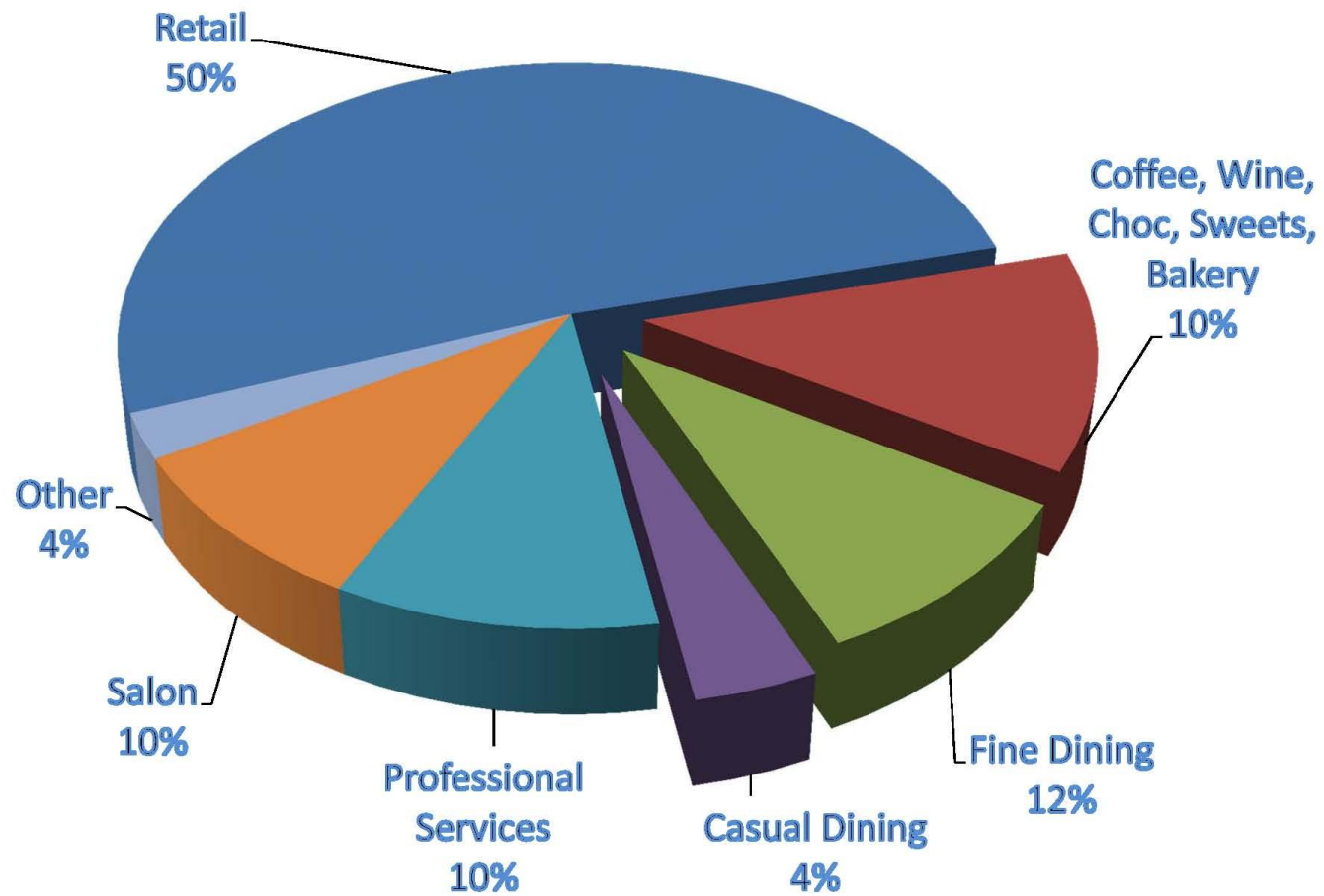
Providing the new and improved definitions for "fine dining restaurants" and for the "coffee shop, bakery, and dessert restaurants" will be extremely helpful in enforcing the Code. Even more so, the new definition on "fast food restaurants" is very important to help preserve the character of the Park Avenue corridor that seems to be universally desired. These first three things that the Ordinance accomplishes are very important and much needed.

The only new thing this Ordinance proposes is the new permitted use for "non-fine dining restaurants". There are many fast casual restaurant chains such as Five Guys, Moe's, Tijuana Flats, Chipotle, Italio Cuisine, etc. However, they would meet the definition of fast food franchise and not be eligible. Instead it would encourage independent start-ups versus these chains which the Park Avenue Association and the staff believes are compatible with the character of Park Avenue and the type of new restaurant to be encouraged.

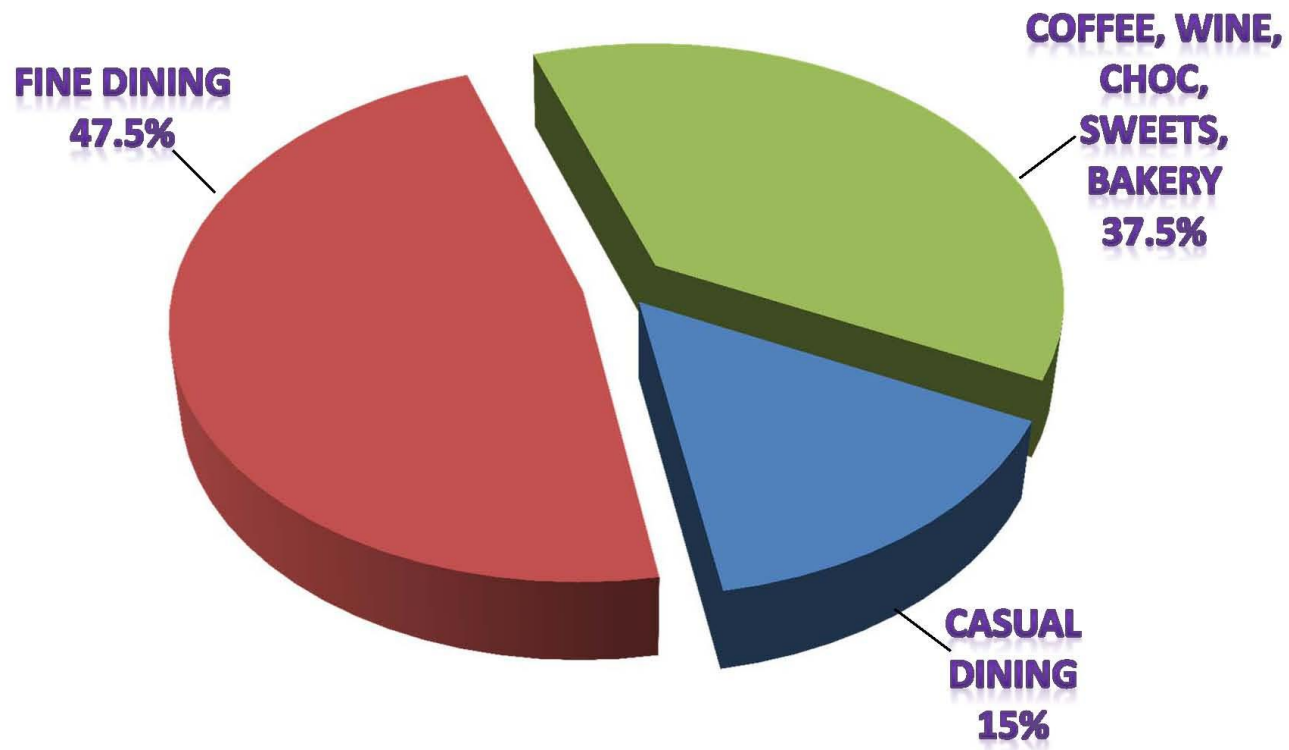
The staff is very grateful to the Park Avenue Merchants Association for working on this proposal. This was a very difficult task to put into words the operational characteristics of the places that are "good" for the 'Avenue' and also to try to do the same for those that are not compatible.

	Park Avenue Frontage		
<u>Fine Dining</u>	<u>Coffee, Wine, Choc, Sweets, Bakery</u>	<u>Casual Dining</u>	
Café de France	Smart Coffee HD	BurgerFi ⁽¹⁾	
Avenue Thai and Sushi	Tutti Fruitti Frozen Yogurt	Panera ⁽²⁾	
Blu on the Avenue	Starbucks Coffee	Tiffany's Deli ⁽³⁾	
310 Park South	Peterbrooke Chocolatier		
Park Plaza Gardens Restaurant	Wine Room		
Luma on Park	Eola Wine Company		
Pannullo's Italian Restaurant	Kilwin		
Bosphorus Turkish Cuisine	Le Macaroon		
Prato	Sweet Traditions Bakery and Café		
Paris Bistro	Barnie's		
Briarpatch Restaurant	Palmano's		
Bistro On Park			
Matilda's			
Orchid Thai Cuisine			
Firehouse ⁽⁴⁾			
	NON -Park Avenue Frontage		
Nelore of Winter Park	Haagen-Dazs	Park Avenue Pizza ⁽²⁾	
Cocina 214	Penguin Frozen Yogurt	Powerhouse Café ⁽³⁾	
Diva Off The Park	Tropical Smoothie Café	Dogmatic ⁽²⁾	
Café 118	Croissant Gourmet		
19	15	6	
	Total Park Avenue Dining	40	%
	Casual Dining	6	15%
	Coffee, Wine, Choc, Sweets, Bakery	15	37.5%
	Fine Dining	19	47.5%
Notes: 1. Approved by staff as a "fine dining" restaurant			
2. Approved via conditional use by City Commission			
3. Grandfathered-in. Predates the zoning rules			
4. Per the April 16, 2013 letter for the operation on Park Avenue			

156 Businesses in Park Ave Area



40 DINING EXPERIENCES IN PARK AVE AREA



ORDINANCE NO. 2013-__

AN ORDINANCE OF THE CITY OF WINTER PARK, FLORIDA AMENDING CHAPTER 58 "LAND DEVELOPMENT CODE", ARTICLE III "ZONING", SECTION 58-95 "DEFINITIONS" OF THE CITY CODE TO REVISE THE DEFINITION OF FINE DINING RESTAURANT AND TO CREATE A DEFINITION OF FAST FOOD RESTAURANT; TO AMEND SECTION 58-75 "COMMERCIAL (C-2) DISTRICT" TO ALLOW CERTAIN CATEGORIES OF RESTAURANTS AS PERMITTED USES IN THE PARK AVENUE CORRIDOR; TO AMEND SECTION 58-75 "COMMERCIAL (C-2) DISTRICT" TO PROVIDE THAT CERTAIN CATEGORIES OF RESTAURANTS ARE PROHIBITED NON-CONFORMING USES IN THE COMMERCIAL (C-2) DISTRICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; PROVIDING FOR CONFLICTS; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the City Commission recognizes that the Park Avenue Corridor possesses a particular character due to the large number of locally owned or operated small businesses of high quality; and

WHEREAS, the City Commission recognizes that the Park Avenue Corridor is a valuable asset of the City of Winter Park, which provides significant and substantial economic benefit to the City; and

WHEREAS, the City Commission desires to maintain the charm, appeal and unique characteristics of the Park Avenue Corridor and the surrounding Commercial (C-2) District as a primarily fine dining destination and to promote locally owned or operated small business restaurants, while at the same time providing a number of options for dining in the Park Avenue Corridor and the Commercial (C-2) District; and

WHEREAS, the City Commission recognizes that Policy 1-2.3.3 of the Future Land Use Element of the City of Winter Park's Comprehensive Plan, provides that the Commercial (C-2) District differs from the other commercial, office or planned development designations in terms of the land use policies for this area which strive to maintain and enhance pedestrian orientation, preserve the scale of the historic premiere retail areas, enhance the eclectic mix of architectural styles, preserve and maintain the mix of retail, office and residential uses, preserve the open space vistas and non-commercialization of historic Central Park and the predominance of small distinctive specialty shops; and

WHEREAS, the City Commission recognizes that the Park Avenue Corridor is currently fully leased and that the present distribution of uses is approximately fifty percent retail and twenty-

six percent dining, based upon a survey conducted by the Winter Park Chamber of Commerce; and

WHEREAS, the City Commission recognizes that distribution of dining uses within the Park Avenue Corridor is approximately forty-eight percent fine dining, fifteen percent casual dining, and thirty-seven percent coffee, dessert or bakery, based upon a survey conducted by the Winter Park Chamber of Commerce and contributions of the City of Winter Park Planning Department, the results of which are attached hereto as Exhibit "A"; and

WHEREAS, the City Commission recognizes that business in the Park Avenue Corridor may occasionally convert from restaurant to retail use, but that such conversions occur less frequently than conversions from retail to restaurant use, due to the expense of construction involved in converting to a restaurant use, as well as the impact fee requirements for restaurants; and

WHEREAS, the City Commission seeks to allow ~~a~~ some non-fine dining restaurants, but limit the number of such establishments in the Park Avenue Corridor, so as not to diminish the reputation and unique character of the Park Avenue Corridor as a fine dining destination; and

WHEREAS, the City Commission finds that the quick service style of fast food restaurants produces increased traffic and other negative effects on the surrounding neighborhood; and

WHEREAS, the City Commission finds that, due to the increased traffic and other negative effects, fast food restaurants are not compatible with the character of the Commercial (C-2) District, including, but not limited to the characteristics articulated in Policy 1-2.3.3 of the Future Land Use Element of the City of Winter Park Comprehensive Plan; and

WHEREAS, the City Commission finds that prohibiting fast food restaurants will serve the public purpose of maintaining the character of the Commercial (C-2) District; and

WHEREAS, the City Commission finds that it is in the best interest of the citizens of Winter Park to regulate the types of restaurants that are permitted to operate in the Park Avenue Corridor and the Commercial (C-2) District to maintain the particular character of the Park Avenue Corridor and the Commercial (C-2) District, thereby continuing their economic benefit to the City; and

WHEREAS, the City Commission seeks to amend the definition of "Fine Dining Restaurant" to provide more objective criteria for this type of restaurant that is a permitted use in the Park Avenue Corridor and the Commercial (C-2) District; and

WHEREAS, the City Commission seeks to create a definition of "Non-Fine Dining Restaurant" to provide more objective criteria for this type of restaurant and to establish that a "Non-Fine Dining Restaurant" meeting certain criteria is a permitted use in the Park Avenue Corridor, provided that the number of such restaurants does not exceed a certain percentage of businesses within the Park Avenue Corridor; and

WHEREAS, the City Commission desires to create a definition of "Fast Food Restaurant" and to specify that this type of restaurant constitutes a prohibited use in the Commercial (C-2) District; and

WHEREAS, the City Commission has determined that certain restaurants existing in the Park Avenue Corridor that have not been found in violation of the City of Winter Park Code of Ordinances by the Code Enforcement Board, and are identified in Exhibit "A", will be non-conforming uses after the enactment of this ordinance, and such restaurants may continue to operate under their current business model and subject to Section 58-64(d) of this Code; and

WHEREAS, the City Commission desires that, where a new restaurant takes the place of a restaurant that existed in the Park Avenue Corridor prior to the enactment of this ordinance, such new restaurant will be required to meet the criteria of fine dining, non-fine dining, or coffee shop, bakery and dessert restaurant, as hereafter defined; and

WHEREAS, the City Commission desires that, where a new restaurant takes the place of a restaurant that existed in the Park Avenue Corridor prior to the enactment of this ordinance, and the restaurant use was not discontinued for a period greater than three months, as provided in Section 58-64(d)(6) of this Code, such new restaurant will not be excluded on the basis of the percentage limitations set forth in Section 58-75(b)(6)(b); 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: **Amendment of Section 58-95.** Chapter 58, Article III, Section 58-95 "Definitions" is hereby amended as follows:

Sec. 58-95. Definitions.

Fine dining restaurant means any establishment which is devoted to the retailing and on-premises consumption of meals and food where more than 50 percent of the gross revenue is derived from food sales versus alcoholic beverages ~~where food service is provided by waiters/waitresses and where the menu shall consist of fine dining cuisine with a range of appetizers, entrees and desserts. Fine dining restaurants shall not include establishments where ordering or payment is done at a counter/cashier and shall not include sandwich shops, sub shops or any type of fast food business.~~ Additionally, fine dining restaurants shall meet all of the following criteria:

1. A host or hostess must be regularly present to greet and arrange for seating of patrons;
2. Food and beverage service (other than bar service) is provided via table service by servers;
3. Dinnerware (utensils, plates, etc.) shall be non-disposable;
4. Ordering, food service and payment is done at the table; and
5. The menu shall consist of fine dining cuisine with a range of appetizers, entrees and desserts along with appropriate selections of ~~wines or alcoholic~~ beverages ~~or both~~.

Establishments which include a drive-thru or where ordering or payment is done at a counter/cashier and then the food and/or beverage is brought to the table or customer by restaurant staff shall not be considered fine dining restaurants. Payment at a counter/cashier may be allowed only and exclusively to accommodate take-out orders. Take-out orders shall not exceed 10% of the gross revenue.

Fast Food Restaurant means any restaurant whose normal business model includes two or more of the following criteria or characteristics:

1. A predominance of locations offer drive-thru service;
2. The menu consists of predominantly fast food or take-out food typically: consumed on site, or off the site as to-go food; pre-made and wrapped before customers place orders; served with disposable tableware or typically served in paper or plastic containers;
3. Food is typically ordered from a wall menu at a service counter;
4. Food consumed on the premises is typically ordered while customers are standing;
5. Payment must typically be made by customers before food is consumed;
6. Customers typically bus their own tables;
7. The service counter is closer to an entry/exit than is the seating/dining area; or
8. The business interior is brightly illuminated (greater than eight candle foot power as measured in a horizontal plane three feet above the floor).

Any restaurant meeting the above-definition shall be considered a fast food restaurant under this Code, even if it also meets the criteria for a non-fine dining restaurant under Section 58-75(b)(6).

SECTION 3: **Amendment of Section 58-75.** Chapter 58, Article III, Section 58-75 “Commercial (C-2) District” is hereby amended as follows:

Sec. 58-75. Commercial (C-2) District.

(b) *Permitted Uses.* All permitted uses shall be conducted so as to emphasize the pedestrian orientation of the district. Thus, drive-in-type businesses or uses which have a drive-in component as part of their operation shall not be permitted except to a limited

degree in the area on Morse Boulevard, west of Virginia Avenue and confined to nonretail use. All uses permitted shall be conducted exclusively within a building except those uses permitted which are customarily conducted in the open such as off-street parking and outdoor patio seating for dining. Storage shall be limited to accessory storage of commodities sold at retail on the premises and storage shall be within a completely enclosed building. Bars, taverns, ~~and cocktail lounges, and fast food restaurants~~ are prohibited in this zoning district.

(6) Fine dining restaurants, as well as ice cream, tea, coffee, cheese, pastry and bakery stores with retail sales and consumption of food and beverage products on premises, except that only those restaurants satisfying the criteria set forth below shall be permitted uses in the Park Avenue Corridor.

(a) *Fine Dining Restaurants.* To qualify for a permitted use, a fine dining restaurant must provide, and continually adhere to, a detailed written description of the business operations and plan layout of dining and food service areas to show the restaurant satisfies the criteria of section 58-95, Fine dining restaurant.

(b) *Non-Fine Dining Restaurants.* Certain other restaurants (other than fast food restaurants, which are a prohibited use) shall qualify for a permitted use in the Park Avenue Corridor, provided that they satisfy the following criteria and do not exceed the percentages set forth in this section:

- i. Upon a patron's request, on-site food and beverage service shall be provided via table service by servers;
- ii. Appropriate visible signage is provided to notify patrons of the availability of table service;
- iii. The menu consists of a variety of food options including pre-entrée items (soups, salads, appetizers, etc.) entrees, sides and desserts;
- iv. Non-disposable dinnerware (utensils, plates, etc.) shall be provided;
- v. Food items are predominately freshly prepared on site rather than just the warming, microwaving or final preparation of pre-packaged items; and
- vi. All tables are bussed by restaurant staff.

The number of non-fine dining restaurants shall not exceed 20% of the available first floor storefronts of either side of any city block in the Park Avenue Corridor, nor 15% of the total number of businesses in the Park Avenue Corridor. If a restaurant currently operating within the Park Avenue Corridor as of the enactment of this ordinance ceases business operations, any applicant proposing a restaurant use in that location must

satisfy the criteria for a permitted use restaurant (fine dining; non-fine dining, meeting the criteria of Section 58-75(b)(6)(b)(i)-(vi); or coffee shop, bakery and dessert restaurant). Provided that the restaurant use has not been discontinued for a period greater than three months, as provided in Section 58-64(d)(6) of this Code, a non-fine dining restaurant will be permitted in the location of an existing restaurant, regardless of the percentage limitations on non-fine-dining restaurants.

(c) *Coffee Shops, Bakery and Dessert Restaurants.* Certain restaurants that do not provide full service of food and beverages, but limit their offerings to particular food and beverages reflecting the core business of the restaurant and a limited number of ancillary non-core items, are permitted uses. These restaurants include, but are not limited to ice cream, frozen yogurt, Italian ice, smoothie, cookie, tea, coffee, wine, cheese, pastry and bakery stores. The restaurants of this category must also provide retail sales and consumption of the named core food or beverage products on premises. Such restaurants shall include, as part of their application for the business tax receipt, a menu identifying the core offerings of the business and a limited number of ancillary non-core items. The restaurants of this category shall not change their core offerings, nor significantly expand their ancillary, non-core offerings, without submitting an application to the City for another business tax receipt.

- (c) *Conditional uses.* The following uses may be permitted as conditional uses following review by the planning and zoning commission and approval by the city commission in accordance with the provisions of this C-2 district section only. See section 58-90, conditional uses.

- (1) Restaurants, outside of the Park Avenue Corridor, with the exception of fine dining restaurants, ice cream, tea, coffee, cheese, pastry and bakery shops, with retail sales and consumption on premises;

- (h) *Restaurants.* The following standards and criteria shall apply:

- (1) The city has established that outside of the Park Avenue Corridor all existing and proposed restaurants are conditional uses in this zoning district, except fine dining restaurants, and ice cream, tea, coffee, cheese, pastry and bakery stores, with retail sales and consumption on premises, ~~are conditional uses in this zoning district~~. For those restaurants that are conditional uses, renovations, changes in decor, floor plan, menu or operating hours up to midnight are not deemed to be significant changes which require amendment of the conditional use permit. Changes which result in the addition of building area, seating or operating

hours beyond midnight are deemed to be significant changes which require amendment/approval of a conditional use.

(2) In order for these restaurant ~~conditional use restrictions~~ C-2 zoning regulations to be effectively applied, this article contains strict definitions of fine dining restaurants, non-fine dining restaurants, and coffee shops, bakery and dessert restaurants, which are either permitted uses or require conditional use approval, restaurants requiring conditional use approval, and cocktail lounges, taverns, and bars, as well as fast food restaurants, which are prohibited uses. Generally, if there is consumption of either food or alcoholic beverages on the premises, then the conditional use requirement applies with the exceptions of the permitted uses shown in subsection (b)(6). If the business is solely for food or alcoholic beverage sale for consumption off the premises, then conditional use approval is not required. With food stores or convenience stores where the primary business is the retail sale of food and beverages for consumption off premises, or when prepared sandwiches or other food is clearly incidental to the principal retail activity, then limited consumption on premises (up to 1042 seats) inside the premises is permitted without conditional use approval. Otherwise, if a restaurant does not fit under one of the permitted uses in subsection (b)(6), then conditional use approval is required.

(3) Among the issues reviewed for conditional uses in this district, the adequacy of parking is often the most contentious. A frequent proposition is that the type of business, its menu, its hours or its size will cater exclusively to pedestrian traffic from employees and visitors already in the downtown. In light of the ability for the nature of the business to change, this proposition is not agreed to be an acceptable argument for the inadequacy of private parking.

(4) ~~In the review of these conditional uses, there are determined to be certain types of businesses where conditional use approval is not required. One type is the ice cream, frozen yogurt, Italian ice, cookie or other business selling solely dessert items and accompanying beverages. These businesses have been determined not to be destination oriented such that they generate parking demand in the downtown during the peak lunch period.~~

(45) The hours and types of amplified musical entertainment permitted within any type of restaurants shall be governed by the noise regulations within chapter 10 of the Code of Ordinances.

SECTION 4:

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 5: **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 6: **Conflicts.** All Ordinances or parts of Ordinances in conflict with any of the provisions of this Ordinance are hereby repealed.

SECTION 7: **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

	Park Avenue Frontage		
<u>Fine Dining</u>	<u>Coffee, Wine, Choc, Sweets, Bakery</u>	<u>Casual Dining</u>	
Café de France	Smart Coffee HD	BurgerFi ⁽¹⁾	
Avenue Thai and Sushi	Tutti Fruitti Frozen Yogurt	Panera ⁽²⁾	
Blu on the Avenue	Starbucks Coffee	Tiffany's Delil ⁽³⁾	
310 Park South	Peterbrooke Chocolatier		
Park Plaza Gardens Restaurant	Wine Room		
Luma on Park	Eola Wine Company		
Pannullo's Italian Restaurant	Kilwin		
Bosphorus Turkish Cuisine	Le Macaroon		
Prato	Sweet Traditions Bakery and Café		
Paris Bistro	Barnie's		
Briarpatch Restaurant	Palmano's		
Bistro On Park			
Matilda's			
Orchid Thai Cuisine			
Firehouse			
	NON -Park Avenue Frontage		
Nelore of Winter Park	Haagen-Dazs	Park Avenue Pizza ⁽²⁾	
Cocina 214	Penguin Frozen Yogurt	Powerhouse Café ⁽³⁾	
Diva Off The Park	Tropical Smoothie Café	Dogmatic ⁽²⁾	
Café 118	Croissant Gourmet		
19	15	6	
	Total Park Avenue Dining	40	%
	Casual Dining	6	15%
	Coffee, Wine, Choc, Sweets, Bakery	15	37.5%
	Fine Dining	19	47.5%
Notes: 1. Approved by staff as a "fine dining" restaurant			
2. Approved via conditional use by City Commission			
3. Grandfathered-in. Predates the zoning rules			



CITY OF WINTER PARK Planning & Zoning Board

**Regular Meeting
City Hall, Commission Chambers**

**August 6, 2013
7:00 p.m.**

MINUTES

Chairman Johnston called the meeting to order at 7:00 p.m. in the Commission Chambers of City Hall. Present: James Johnston, Chairman, Robert Hahn, Shelia De Cicco, James Johnston. Absent: Randall Slocum, Peter Weldon, Tom Sacha, Peter Gottfried. City Attorney Robin McKinney. Staff: Planning Director Jeffrey Briggs and Recording Secretary Lisa Smith.

Approval of minutes – July 2, 2013

Motion made by Mr. Hahn and seconded by Mrs. De Cicco to approve the July 2, 2013, meeting minutes. Motion carried unanimously with a 4-0 vote.

PUBLIC HEARINGS

REQUEST OF THE CITY OF WINTER PARK, FLORIDA, FOR AN ORDINANCE OF THE CITY OF WINTER PARK, FLORIDA, AMENDING ARTICLE "ZONING REGULATIONS" SECTION 58-75 "COMMERCIAL (C-2) DISTRICT," REVISOR THE PERMITTED AND CONDITIONAL USES REGULATIONS FOR RESTAURANTS AND OTHER FOOD SERVICE ESTABLISHMENTS; AMENDING SECTION 58-95 "DEFINITIONS" TO PROVIDE DEFINITIONS FOR FINE DINING AND OTHER RESTAURANTS; PROVIDING FOR CONFLICT, SEVERITY AND EFFECTIVE DATE.

Planning Director Jeffrey Briggs presented the staff report and discussed the history of the proposed amendment and the current status. He said that previous attempts to revise these regulations were challenging because of a lack of a consensus on how to proceed amongst the various stakeholder groups. He said that the current proposal has been developed as a 'bottom-up' approach by the downtown property owners and merchants in concert with the Park Avenue Area Association of the Winter Park Chamber. Mr. Briggs thanked Patrick Chapin, Lambrine Macejewski, Daniel Butts and Frank Hamner for all their work and help in developing the proposal and especially in achieving the much needed consensus on how to proceed with the merchants and property owners. He provided an overview of the current proposal which makes several changes to the C-2 zoning rules, for restaurants and other food service type establishments as follows:

1. It provides a new much improved definition of what a "fine dining restaurant" is supposed to be. This makes it clear to the existing fine dining restaurants and to any new proposed fine dining restaurant what they are expected to do (operationally) and thus will also then be easier for the City to enforce.
2. It provides a new definition of "fast food restaurants" and makes it clear that they are prohibited, non-conforming uses.
3. It provides a new definition for "coffee shops, bakeries and dessert restaurants" which provides for staff a solution for the menu creep that we have experienced with these establishments that are primarily coffee shops, bakeries or ice cream/dessert places but also which sell some ancillary food or lunch/breakfast items.

4. It also provides within the Park Avenue corridor a new definition for; and a new permitted use for "non-fine dining restaurants" otherwise sometimes referred to as 'fast casual' restaurants. These are not currently permitted unless by conditional use approval based on adequacy of parking. The proposal now is that subject to the defined limitations, new "non-fine dining restaurants" could be established within the Park Avenue corridor. The limitations are no more than 20% of any block storefronts and no more than 15% of total storefronts within the Park Avenue corridor may become "non-fine dining restaurants".

Mr. Briggs summarized by stating that there seems to be no debate that the current zoning rules for restaurants in the Park Avenue corridor are confusing, not well understood, and very difficult to enforce as they have evolved over the past 25 years. To the planning staff, providing the new and improved definitions for "fine dining restaurants" and for the "coffee shop, bakery, dessert restaurants" will be extremely helpful in enforcing the Code. Even more so, the new definition on "fast food restaurants" is very important to help preserve the character of the Park Avenue corridor that seems to be universally desired. The only new thing this Ordinance proposes is the new permitted use for "non-fine dining restaurants". There are many fast casual restaurant chains such as Five Guys, Moe's, Tijuana Flats, Chipotle, Italio Cuisine, etc. However, they would meet the definition of fast food franchise and not be eligible. Instead it would encourage independent start-ups versus these chains which the Park Avenue Association and the staff believes are compatible with the character of Park Avenue and the type of new restaurant to be encouraged. Staff recommended approval.

Mr. Briggs introduced City Attorney Robin McKinney. She updated the Board on the minor changes that were made to the proposed ordinance after the P&Z work shop.

Patrick Chapin, President – Chamber of Commerce, introduced the members of the team that worked on the re-write of the ordinance (Daniel Butts, Frank Hamner and Lambrine Macejewski). He provided a brief overview of the process that was undertaken in this effort. He thanked City staff for cooperation and patience in this process.

Attorney Frank Hamner, used a Power Point presentation to provide the Board with a more in-depth look into the re-writing of the Park Avenue corridor code revisions. He stated that the effort was not a City directed effort and that it was not a task force or a Mayor appointed Board. He said that it has been a collaborative effort of the Chamber, the Park Avenue Area Association, and Park Avenue property owners. He discussed their goals, and provided an overview of the new definitions, and the revised business application. Mr. Hamner responded to Board member questions and concerns.

Donna Colado, 327 Beloit Avenue, spoke concerning request. She applauded the efforts of those working on the proposed amendment, especially the curb on fast food restaurants. Mrs. Colado expressed concern with how the proposed policy ties into the current comprehensive plan policies as relates to maintaining the predominately retail nature of Park Avenue when it could allow an unlimited number of restaurants. She suggested a maximum percentage of restaurants that could be allowed of any type in order to maintain the predominately retail character of Park Avenue.

No one else wished to speak concerning this issue. Public Hearing closed.

The Board members discussed their viewpoints on the issue. All of the Board members indicated their general support for the Ordinance and appreciation for all the work that had gone into the process. Mr. Hahn indicated that while this was an improved "regulatory" tool it was lacking in that it did not foster improved entrepreneurial opportunities. Chairman Johnston pointed out that 'zoning' is in fact a regulatory tool and that economic development and incentive programs on what the Avenue could be in the future are more in the domain of Economic Development Advisory Board. The members expressed support for Mr. Hahn ideas in the global sense in addition to the context of this request.

Mr. R. Johnston expressed his support for the work and effort that had been undertaken. He felt that the goals that were set for preserving the character of Park Avenue were being achieved with this proposal.

Mrs. De Ciccio stated her support but indicated that there was one section involving the approval of menu changes that seemed too regulatory and restrictive. Discussion ensued on this topic with others. It was then indicated that the city attorney would revise that section to accomplish the general intent of City review of significant changes to restaurant operations but not minor menu changes.

Chairman Johnston indicated that the Planning Board has spent much time at work sessions and public hearings in 2012 on this issue and it was good to see that both a solution and consensus was at hand.

Motion made by Bob Hahn, seconded by Ross Johnston to approve the proposed Ordinance subject to the city attorney revision to the section regarding city review of menu changes text. Motion carried unanimously with a 4-0 vote.

NEW BUSINESS:

Dori Stone reminded the Board members of the upcoming joint meeting with the Economic Development Advisory Board on August 15th at 5:30 in the Commission Chambers.

The Board discussed the meeting times for the regular monthly meetings and decided that they desired to start an hour earlier. **Motion made by Mrs. De Ciccio, seconded by Bob Hahn changing the regular meeting time to 6:00 p.m. versus 7:00 p.m.**

Date of Next Work Session: Wednesday, August 28, 2013 at 12:00 Noon.

Date of Next Meeting: Tuesday, September 3, 2013 at 6:00 p.m.

There was no further business. Meeting adjourned at 7:50 p.m.

Respectfully submitted,

Lisa M. Smith
Recording Secretary

*Power Point Presentation to P&Z
from Park Avenue Area Assoc.*

PARK AVENUE CORRIDOR CODE REVISIONS

Planning and Zoning
August 6, 2013

GOALS FOR THE REVISIONS

1. Maintain the character and experience of the Park Avenue Corridor by reinforcing the rules and definitions that encourage fine dining and other acceptable restaurants.
2. Keep the charm, appeal and unique characteristics of the Park Avenue Corridor as a primarily fine dining destination and promote locally owned or operated small business restaurants, while at the same time providing a number of options for dining in the Corridor.
3. Clearly define permitted use fine-dining restaurants; non-fine dining restaurants; coffee shops, bakery and dessert restaurants; as well as prohibited use restaurants.

GOALS FOR THE REVISIONS

4. Limiting the non-fine dining restaurants in the Park Ave corridor to ensure that its charm, appeal and unique characteristics are maintained.
5. Clarifying the rules and definitions for allowable restaurant types and defining a scope of permitted and conditional uses.
6. Clarifying the rules and definitions for coffee shops and bakeries, et al., where food service or meals are not the primary business function and to provide for appropriate boundaries of “scope creep” or change in their offerings.

GOALS FOR THE REVISIONS

7. Providing for clarification and certainty in the definitions associated with these rules to provide for not only easier enforcement of these rules and definitions by the City, but also a clearer understanding of allowable or conditional uses for property owners and prospective merchants.
8. Providing that existing restaurants are governed by the rules and definitions, or accepted methods of operation, in effect prior to the enactment of the new ordinance.
9. Revise and update the Business Application to reflect the various categories of restaurants and require applications for changes of use among the categories of permitted restaurants.

OVERVIEW

- While definitions are applicable throughout C-2, certain items are initially applicable only in the Park Avenue Corridor.
 - For purposes of this section, the **Park Avenue Corridor** is that area which encompasses those properties having frontage on Park Avenue or having frontage on the intersecting streets within 140 feet of Park Avenue.

Sec. 58-75 (a)(3)
- **Why?**
 - Point of most emphasis
 - Gives some flexibility outside the PAC

OVERVIEW

➤ **New Definitions**

- Fast Food (prohibited use)
- Fine Dining (objective criteria added)
- Non – Fine Dining (permitted use with % limitations)
- Coffee, Tea, *et al.* (close “scope creep” gap)

➤ **New Business Application**

- Must clarify initial use per category
- Must submit menu and business/ops plan
- Must reapply to change format

CURRENT GUIDANCE

Sec. 58-95. Definitions

Fine dining restaurant means any establishment which is devoted to the retailing and on-premises consumption of meals and food where more than 50 percent of the gross revenue is derived from food sales versus alcoholic beverages where food service is provided by waiters/waitresses and where the menu shall consist of fine dining cuisine with a range of appetizers, entrees and desserts. Fine dining restaurants shall not include establishments where ordering or payment is done at a counter/cashier and shall not include sandwich shops, sub shops or any type of fast food business.

CURRENT GUIDANCE

Sec. 58-75. Commercial (C-2) District

(b) Permitted uses. All permitted uses shall be conducted so as to emphasize the pedestrian orientation of the district. Thus, drive-in-type businesses or uses which have a drive-in component as part of their operation shall not be permitted except to a limited degree in the area on Morse Boulevard, west of Virginia Avenue and confined to nonretail use. All uses permitted shall be conducted exclusively within a building except those uses permitted which are customarily conducted in the open such as off-street parking and outdoor patio seating for dining. Storage shall be limited to accessory storage of commodities sold at retail on the premises and storage shall be within a completely enclosed building. Bars, taverns and cocktail lounges are prohibited in this zoning district.

(6) Fine dining restaurants as well as ice cream, tea, coffee, cheese, pastry and bakery stores with retail sales and consumption of food and beverage products on premises.

NEW DEFINITIONS

Fine dining restaurant means any establishment which is devoted to the retailing and on-premises consumption of meals and food where more than 50 percent of the gross revenue is derived from food sales versus alcohol. Additionally, fine dining restaurants shall meet all of the following criteria:

1. A host or hostess must be regularly present to greet and arrange for seating of patrons;
2. Food and beverage service (other than bar service) is provided via table service by servers;
3. Dinnerware (utensils, plates, etc.) shall be non-disposable;
4. Ordering, food service and payment is done at the table; and
5. The menu shall consist of fine dining cuisine with a range of appetizers, entrees and desserts along with appropriate selections of wines or alcoholic beverages or both.

Establishments which include a drive-thru or where ordering or payment is done at a counter/cashier and then the food and/or beverage is brought to the table or customer by restaurant staff shall not be considered fine dining restaurants. Payment at a counter/cashier may be allowed only and exclusively to accommodate take-out orders. Take-out orders shall not exceed 10% of the gross revenue.

NEW DEFINITIONS

Fast Food Restaurant means any restaurant whose normal business model includes two or more of the following criteria or characteristics:

1. A predominance of locations offer drive-thru service;
2. The menu consists of predominantly fast food or take-out food typically: consumed on site, or off the site as to-go food; pre-made and wrapped before customers place orders; served with disposable tableware and/or typically served in paper or plastic containers;
3. Food is typically ordered from a wall menu at a service counter;
4. Food consumed on the premises is typically ordered while customers are standing;
5. Payment must typically be made by customers before food is consumed;
6. Customers typically bus their own tables;
7. The service counter is closer to an entry/exit than is the seating/dining area; or
8. The business interior is brightly illuminated (greater than eight candle foot power as measured in a horizontal plane three feet above the floor).

Any restaurant meeting the above-definition shall be considered a fast food restaurant under this Code, even if it also meets the criteria for a non-fine dining restaurant under Section 58-75(b)(6).

Bars, taverns, and cocktail lounges, and fast food restaurants are prohibited in this zoning district.

- **DEVELOPED FROM CARMEL, CA CODE**
- **PRIORITIZES PROHIBITION FOR FAST FOOD**

NEW DEFINITIONS

Non-Fine Dining Restaurants. Certain other restaurants (other than fast food restaurants, which are a prohibited use) shall qualify for a permitted use in the Park Avenue Corridor, provided that they satisfy the following criteria and do not exceed the percentages set forth in this section:

- i. Upon a patron's request, on-site food and beverage service shall be provided via table service by servers;
- ii. Appropriate visible signage is provided to notify patrons of the availability of table service;
- iii. The menu consists of a variety of food options including pre-entrée items (soups, salads, appetizers, etc.) entrees, sides and desserts;
- iv. Non-disposable dinnerware (utensils, plates, etc.) shall be provided;
- v. Food items are predominately freshly prepared on site rather than just the warming, microwaving or final preparation of pre-packaged items; and
- vi. All tables are bussed by restaurant staff.

(CONTINUED NEXT SLIDE)

NEW DEFINITIONS

Non-Fine Dining Restaurants. (cont.)

The number of non-fine dining restaurants shall not exceed 20% of the available first floor storefronts of either side of any city block in the Park Avenue Corridor, nor 15% of the total number of businesses in the Park Avenue Corridor. Should any restaurant currently operating within the Park Avenue Corridor as of the enactment of this ordinance cease business operations, another permitted use restaurant (fine dining; non-fine dining, as allowed under this section; or coffee shop, bakery and dessert restaurant) shall be allowed at that location, regardless of the percentage limitation; provided that the restaurant use is not discontinued for a period greater than three months, as provided in Sec. 58-65 (d) of this Code,.

- ALLOWS FOR PRESERVATION OF IMPACT FEE CREDITS
- RETAIL BECOMES RESTAURANT BUT NOT VICE VERSA
- LIMITS TOTAL OF NFD RESTAURANTS IN THE PAC
- REFLECTIVE OF CURRENT PERCENTAGES IN EXISTENCE
- CHAIN Restaurant Question

NEW DEFINITIONS

Coffee Shops, Bakery and Dessert Restaurants.

Certain restaurants that do not provide full service of food, beverages, etc. such as coffee and tea shops, wine shops, dessert shops and bakeries are permitted uses so long as their offerings are limited to food and beverages reflecting the core business of the restaurant and a limited number of ancillary non-core items. Ice cream, frozen yogurt, Italian ice, smoothie, cookie, tea, coffee, wine, cheese, pastry and bakery stores with retail sales and consumption of the named core food or beverage products on premises shall be allowed as a permitted use. Such restaurants shall, at the time of application for the business tax receipt, submit a menu of items to be offered to demonstrate the limitations of the menu to the stated food and beverage items, and shall execute an affidavit stating that the restaurant shall not change its offerings to provide a different category of items, nor expand their offerings, without making application to the City for such changes.

- MORE FOCUSED TO LIMIT SCOPE CREEP

REVISED BUSINESS APPLICATION

Change of Business Activity

- Add restaurant as business activity
- More description of type of restaurant

Change of Use

- Designation of change of use

Affidavit now required

REVISED BUSINESS APPLICATION

Attachment "A"

For all restaurant operations in the Park Avenue Corridor, please provide the following information:

Type of Restaurant:

- ☐ Fine Dining per §§ 58-75 () and 58-95 (), Code of Ordinances, City of Winter Park, Florida
- ☐ Non - Fine Dining per §§ 58-75 () and 58-95 (), Code of Ordinances, City of Winter Park, Florida
- ☐ Coffee Shop, Bakery or Dessert Restaurant per §§ 58-75 () and 58-95 (), Code of Ordinances, City of Winter Park, Florida:
- | | | |
|--|--|------------------------------------|
| <input type="checkbox"/> Coffee | <input type="checkbox"/> Tea | <input type="checkbox"/> Ice Cream |
| <input type="checkbox"/> Frozen Yogurt | <input type="checkbox"/> Italian Ice | <input type="checkbox"/> Cookies |
| <input type="checkbox"/> Cheese | <input type="checkbox"/> Bakery | <input type="checkbox"/> Smoothie |
| <input type="checkbox"/> Wine | <input type="checkbox"/> Other (Describe Below): | |
-

Attach a copy of:

the proposed menu;
building plan; and,
operational plan

(CONTINUED NEXT SLIDE)

REVISED BUSINESS APPLICATION

Confirm the following by initialing in the appropriate box and signing below:

☐ I have read and understood the criteria for a Fine Dining restaurant per §§ 58-75 () and 58-95 (), Code of Ordinances, City of Winter Park, Florida and hereby confirm that I shall at all times operate and maintain the proposed restaurant to satisfy those criteria. Any change in my business operations that would vary those criteria must be approved by the City prior to implementation.

☐ I have read and understood the criteria for a Non - Fine Dining restaurant per §§ 58-75 () and 58-95 (), Code of Ordinances, City of Winter Park, Florida and hereby confirm that I shall at all times operate and maintain the proposed restaurant to satisfy those criteria. Any change in my business operations that would vary those criteria must be approved by the City prior to implementation.

☐ I have read and understood the criteria for a Coffee, Tea and Dessert restaurant per §§ 58-75 () and 58-95 (), Code of Ordinances, City of Winter Park, Florida and hereby confirm that I shall at all times operate and maintain the proposed restaurant to satisfy those criteria. Any change in my business operations that would vary those criteria must be approved by the City prior to implementation.



city commission public hearing

item type	Public Hearing	meeting date	September 9, 2013
prepared by department division	John Holland Parks and Recreation Department Administration	approved by	<input checked="" type="checkbox"/> City Manager <input checked="" type="checkbox"/> City Attorney <input type="checkbox"/> N/A
board approval	Parks and Recreation Advisory Board	<input checked="" type="checkbox"/> yes <input type="checkbox"/> no <input type="checkbox"/> N/A	5-0 final vote

subject

Proposed ordinance amending City Code to allow City Manager to authorize dogs in Central Park and on athletic fields during special events where dogs would otherwise be prohibited.

motion | recommendation

Approval of the proposed City ordinance amending Section 18-45 of the Code of Ordinances allowing the City Manager to make special exception for dogs to be in Central Park and other prohibited park areas for specific events.

summary

Current City Ordinances prohibit dogs from Central Park and other specific areas within some city parks without any options of waiving or suspending the ordinance. This ordinance will allow the City Manager to authorize dogs in Central Park and other park areas (athletic fields) for specific events and times that meet the specified requirements. Requests continue to be received from event holders to allow dogs in the park areas during specific special events such as the Doggie Howl-o-ween Event and Doggie Art Festival.

Dogs will still be required to be on a leash at all times except when approved for competitions and the owners will be required to clean-up after their dogs.

board comments

The Parks and Recreation Advisory Board recommended adoption of the Ordinance by unanimous vote of 5-0.



BROWN, GARGANESE, WEISS & D'AGRESTA, P.A.

Attorneys at Law

111 N. Orange Ave., Suite 2000
P.O. Box 2873
Orlando, Florida 32802-2873
Phone (407) 425-9566
Fax (407) 425-9596

Usher L. Brown
Board Certified Civil Trial Lawyer

ulbrown@orlandolaw.net

August 26, 2013

John Holland, Director of Parks & Recreation
City of Winter Park
401 Park Avenue South
Winter Park, FL 32789

via email & regular U.S. Mail

Re: Proposed ordinance amending City Code to allow City Manager to authorize dogs in Central Park and athletic fields in parks where dogs would otherwise be prohibited (but only for special events)

Dear John:

By email dated August 14, you requested an amendatory ordinance that would allow for the City Manager to approve of dogs in Central Park and other park areas where they would ordinarily be prohibited. This would be for special events only. We clarified that this is not a general allowance for pets, but is limited to dogs and unless otherwise expressly allowed for special performances, the dogs must be on a leash. We will also toss in that folks have to clean up after their animals.

Please review the enclosed draft and let's discuss.

Sincerely,

Usher L. Brown

ULB:tla

Enclosure

cc: Michelle del Valle, Assistant City Manager
Randy Knight, City Manager
Brenda Moody, Assistant Director, Parks & Recreation
Ronnie Moore, Assistant Director, Parks & Recreation
Johnny Miller, Special Events Chief

G:\docs\Cities\Winter Park\Ordinances and Resolutions General\Ordinance allowing dogs in parks for special occasions\correspondence\ltr.holland with draft ordinance allowing dogs in parks.wpd

Ft. Lauderdale (954) 670-1979 • Kissimmee (321) 402-0144 • Cocoa (866) 425-9566

Website: www.orlandolaw.net • Email: firm@orlandolaw.net

ORDINANCE NO.

AN ORDINANCE OF THE CITY OF WINTER PARK, FLORIDA AMENDING SECTION 18-45 OF THE CODE OF ORDINANCES, TO ALLOW THE CITY MANAGER TO MAKE SPECIAL EXCEPTION FOR DOGS TO BE IN CENTRAL PARK AND OTHER PROHIBITED PARK AREAS FOR SPECIFIC EVENTS; PROVIDING FOR SEVERABILITY, CODIFICATION, CONFLICTS, AND AN EFFECTIVE DATE.

RECITALS AND LEGISLATIVE FINDINGS

WHEREAS, the City of Winter Park has determined based upon information presented by the public and staff that it is in the public interest to allow for the presence of dogs for certain limited times during special events in Central Park or other park areas where dogs are generally prohibited; and

WHEREAS, pursuant to the home rule authority of the City of Winter Park, the City Commission may ordain the circumstances, terms and conditions under which the public parks located of the City may be utilized, and may establish rules and regulations for the use of the City parks; and

WHEREAS, the City Commission finds a valid public purpose in granting to the City Manager the authority to grant special exceptions allowing dogs in areas of the parks that are otherwise prohibited, but only during specific times when special events are scheduled.

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

Section 1. Recitals. The foregoing recitals are hereby adopted and confirmed, and constitute the legislative findings of the City Commission of the City of Winter Park acting in its legislative capacity.

Section 2. Section 18-45 of the Code of Ordinances shall be amended by adding a new subsection “(d)” following language at the end of subsection (c), which new language is shown by underlining, as follows:

“Section 18-45.

(d) Notwithstanding any provision in the Code of Ordinances that generally prohibits dogs in certain parks or areas of parks, the City Manager shall have the authority to allow dogs in specified park areas, including Central Park, by written permission. Such written

permission shall have the effect of temporarily waiving the application of the provisions in the Code that otherwise would prohibit the presence of dogs. This authority to waive the prohibition is subject to the following procedures, terms and conditions:

- (1) A person or group promoting a special event in a “dog prohibited” area of a City park, including Central Park, who wishes to have dogs present, shall request in writing at least thirty (30) calendar days before the scheduled start of the event, a written waiver from the City Manager that would allow for dogs to be present during the event. Permission will be granted if all of the requirements set out in this section are met, as determined by the City Manager.
- (2) The applicant must demonstrate that the event will be in conformance with all requirements of the City Code and other applicable laws.
- (3) The applicant must identify the date or dates of the special event and the times during which the event will be held. The application will also identify the need for allowing dogs to be present during the event and will identify the specific park area(s) in which the event will be held and for which the presence of dogs is requested.
- (4) The applicant will demonstrate that persons in possession of dogs and the volunteers and staff working for the person or group sponsoring the event will promptly pick up all animal waste using appropriate plastic bags for such purpose, and will properly dispose of the bags containing the animal waste. The applicant must assure the City Manager that the premises will be kept and maintained clean and free of dog waste during the event, and the group will clean the park land following the conclusion of the event so that it is left in the condition in which it was received, free of dog waste.
- (5) The applicant will satisfy the City Manager that dogs will be kept on-leash at all times while on the premises of any City park unless the applicant specifically requests off-leash dogs. If “off-leash” is requested, the applicant shall specify the reasons why the request is made. If an applicant requests off-leash time, then he, she or it will identify the periods of time during the special events or performances when dogs may be off-leash. Permission for

off-leash, if granted, will be limited to those specific times or events.

- (6) If these required conditions are found by the City Manager to be satisfied, he shall issue a written waiver specifying the specific areas, dates and times during which dogs may be permitted in areas of the parks, including Central Park, where dogs are otherwise prohibited. The permission to have dogs will be subject to these requirements being adhered to during the event, and the waiver may be revoked immediately upon a finding of a violation. If the applicant has requested, and the City Manager has agreed, to grant a waiver that dogs may be off-leash, then the written permission shall refer to the events and the approximate times when dogs may temporarily be off-leash.

The City Manager may add any other appropriate condition within his discretion that he determines will promote the public interest.

- (7) Dogs will continue to be prohibited as provided in Chapter 18 of the Code of Ordinances except to the extent the City Manager has granted a limited waiver in accordance with the requirements of this section.”

Section 3. Codification and Incorporation Into the Code. This Ordinance shall be incorporated into the Winter Park City Code. Any section, paragraph number, letter and/or any heading may be changed or modified as necessary to effectuate the foregoing. Grammatical, typographical and similar or like errors may be corrected, and additions, alterations and omissions not affecting the construction or meaning of this Ordinance and the City Code may be freely made.

Section 4. Severability. If any section, subsection, sentence, clause, phrase, word or provision of this Ordinance is for any reason held invalid, unlawful or unconstitutional by any court of competent jurisdiction, whether for substantive, procedural, facial or other reasons, 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 Ordinance.

Section 5. Conflicts. All ordinances or parts of ordinances in conflict with any of the provisions of this Ordinance are hereby repealed.

Section 6. Effective Date Of Ordinance. This Ordinance shall become effective immediately upon adoption by the City Commission of the City of Winter Park, Florida.

Adopted by the City Commission of the City of Winter Park, Florida in a regular meeting assembled on the _____ day of _____, 2013.

Mayor Kenneth W. Bradley

ATTEST:

Cindy Bonham, City Clerk

First reading: _____

Second reading: _____

From: brian [<mailto:brian@bullfish.net>]

Sent: Thursday, August 01, 2013 5:01 PM

To: Johnny Miller

Subject: 14th Annual Park Avenue Pet Costume Contest - request for Central Park Use

Dear Johnny Miller,

The Sebastian Haul Fund and The Doggie Door would like to formally request the use of the Central Park Stage for the 14th Annual Park Avenue Pet Costume Contest on Sunday October 27th 10-3pm (set up time 6am and breakdown time until 4:30pm).

The Sebastian Haul Fund - has helped more than 1000 greyhounds reach their new families from events like this one.

This event also has a pet "trick or treat" on Park Avenue which involves more than 30 merchants in the downtown.

We request Garfield to be closed as always. We are also requesting the use of the Central Park Stage for our event and the immediate area surrounding the stage.

We intend to use temporary construction fencing to contain the event to within 40 feet south of the stage to Garfield.

All attendees will be given pet clean up bags.

We will have volunteers and a professional company to ensure the entire area is cleaned up throughout the day as well as at the end of the event.

We understand there is a process to go through with the Parks and Rec Department and Board to gain approval for a recommendation. We understand that recommendation will then need to be reviewed and approved in 2 separate readings with our Mayor and City Commission for a change in ordinance to allow for a waiver of dogs in Central Park.

We also understand should the City Commission approve a waiver for Dogs in the Central Park for this event, there is a fee that will be required for the use of Central Park.

Thank you for your assistance in this matter. Please advise me of our next steps to prepare something for the upcoming Parks and Rec Board Meeting.

Sincerely,
Brian Wettstein
Co-owner

The Doggie Door
329 Park Avenue North
Winter Park, FL 32789
407 644 2969
cell 321 278 9937



city commission public hearing

item type	Public Hearing	meeting date	September 9, 2013
prepared by department division	Peter Moore Budget and Performance Measurement	approved by	<input checked="" type="checkbox"/> City Manager <input type="checkbox"/> City Attorney <input type="checkbox"/> N/A
board approval	<input type="checkbox"/> yes <input type="checkbox"/> no <input checked="" type="checkbox"/> N/A final vote		

Subject

Ordinance adopting millage rates for the FY 2014 budget.

motion | recommendation

Approve operating millage rate at 4.0923 mills and debt service millage rates at 0.1004 and 0.2092 for the General Obligation Bonds, Series 2004 and 2011, respectively.

summary

The proposed FY 2014 General Fund budget was prepared assuming the operating millage rate would be kept at its current level of 4.0923 mills. Because property valuations increased, the proposed property tax levy represents a 2.17% increase from FY 2013.

The operating millage rate of 4.0923 mills was approved by the City Commission as the tentative millage rate on July 22. All property owners received a Notice of Proposed Property Taxes from the Orange County Property Appraiser in August that was based on the proposed millage rates above. This notice also advised property owners of this first public hearing on millage rates and the budget.

The operating millage rate can be reduced below 4.0923 mills but not increased. Any reduction in projected property tax revenues would require a corresponding reduction in General Fund budget appropriations.

board comments

n/a

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF WINTER PARK, FLORIDA ADOPTING A 4.0923 MILL AD VALOREM TAX LEVY UPON ALL REAL AND PERSONAL PROPERTY FOR APPROPRIATION TO THE GENERAL OPERATING EXPENSES OF THE CITY, A .1004 MILL VOTED DEBT SERVICE LEVY UPON ALL REAL AND PERSONAL PROPERTY FOR APPROPRIATION TO THE CITY OF WINTER PARK, FLORIDA GENERAL OBLIGATION BONDS, SERIES 2004, AND A .2092 MILL VOTED DEBT SERVICE LEVY UPON ALL REAL AND PERSONAL PROPERTY FOR APPROPRIATION TO THE CITY OF WINTER PARK, FLORIDA GENERAL OBLIGATION BONDS, SERIES 2011.

WHEREAS, the Legislature of the State of Florida mandated a procedure for calculating the taxable value for each taxing authority by the County Property Appraiser and provided for the calculation of rolled back millage rate, and

WHEREAS, the City of Winter Park, Florida has made the necessary rolled back millage calculation as required by law and found it to be 4.0053 mills.

WHEREAS, the citizens of Winter Park approved the issuance of \$5,125,000 General Obligation Bonds, Series 1996 at the June 4, 1996 bond referendum which were subsequently refunded by General Obligation Bonds, Series 2004.

WHEREAS, the citizens of Winter Park approved the issuance of \$11,000,000 General Obligation Bonds, Series 2001 at the May 16, 2000 bond referendum which were subsequently refunded by General Obligation Bonds, Series 2011.

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

SECTION 1. That an ad valorem tax levy upon all real and personal property is hereby levied at a rate of 4.0923 mills, the same to be appropriated for the general operating expenses of the City in accordance with the budget for the fiscal year beginning October 1, 2013 and ending September 30, 2014. In addition, that an ad valorem tax levy upon all real and personal property is hereby levied at a rate of .1004 mills, the same to be appropriated for the City of Winter Park, Florida General Obligation Bonds, Series 2004 and that an ad valorem tax levy upon all real and personal property is hereby levied at a rate of .2092 mills, the same to be appropriated for the City of Winter Park, Florida General Obligation Bonds, Series 2011.

SECTION 2. The above levy to cover general operating expenses of the City is eighty-seven one-thousandths above the rolled back millage of 4.0053 mills. Pursuant to State Statutes this levy represents a 2.17% increase in property taxes.

SECTION 3. The City Commission, after full, complete and comprehensive hearings and expressions of parties wishing to be heard, declares the tax levy to be reasonable and necessary for the immediate preservation and benefit of the public health, safety and welfare.

ADOPTED at a regular meeting of the City Commission of the City of Winter Park, held in City Hall, Winter Park, Florida this 23rd day of September, 2013.

Kenneth W. Bradley, Mayor

Attest:

Cynthia S. Bonham, City Clerk



city commission agenda item

item type	Public Hearing	meeting date	September 9, 2013
prepared by	Peter Moore	approved by	<input checked="" type="checkbox"/> City Manager
department	Budget and Performance		<input type="checkbox"/> City Attorney
division	Measurement		<input type="checkbox"/> N/A
board approval	<input type="checkbox"/> yes <input type="checkbox"/> no <input checked="" type="checkbox"/> N/A		
		final vote	

subject

Ordinance adopting the fiscal year 2014 budgets for all funds and accompanying five-year capital plan as well as the contractual agreements for Mead Botanical Gardens Inc. and the Winter Park Historical Association Inc.

motion | recommendation

Adopt the attached Ordinance setting forth the FY 2014 Budget and Five-year Capital Plan, and separately approve the contractual agreements with Mead Botanical Gardens Inc. and the Winter Park Historical Association Inc.

background

This is the first of two public hearings on the budget. A summary of the proposed budget is included as Schedule A.

The City Manager presented his proposed budget to the City Commission at the July 8, 2013 City Commission Meeting. The Commission has discussed the budget at subsequent meetings. At the August 26th meeting the Commission directed the City Manager to allocated \$250,000 in funding previously designated as contingency to tree removal and trimming.

Additionally, contractual agreements that outline the annual projects and programs to be undertaken by the Mead Botanical Gardens and Winter Park Historic Association have been attached to this item as part of the budget approval process. Approval of the budget will allocate funding to these organizations and the contractual agreements will set out the expectations and standards for the administration of the public funds granted. Both contracts have been reviewed by the City Attorney and describe funding and reporting requirements, programs and projects to be completed, and measurements for determining success. Over the course of the next fiscal year staff will work with both organizations to help them build a demographic profile of their customers that will better assist with targeted marketing and showing economic impact. The completion of grant agreements will allow the city and its funding partners to clearly articulate expectations, monitor progress, and provide accountability for the use of public funds.

strategic objective

Quality of services.

Schedule A

	2014 Proposed	2013 Adopted
Revenues:		
Property Taxes	\$ 14,680,681	\$ 14,174,500
Franchise Fees & Utility Taxes	7,948,400	8,152,016
Licenses & Permits	1,920,000	1,834,000
Intergovernmental	6,298,461	6,179,928
Charges for Services	5,145,450	5,010,068
Fines and Forfeitures	1,294,150	1,287,600
Miscellaneous	553,907	683,381
Transfers from Other Funds	5,051,100	5,392,476
Fund Balance	<u>0</u>	<u>0</u>
Total Revenues	\$ <u>42,892,149</u>	\$ <u>42,713,969</u>
Expenditures:		
General Administration	\$ 4,355,763	\$ 4,147,044
Planning & Development	1,706,254	2,051,322
Public Works	6,672,716	6,804,278
Police	12,983,785	12,739,143
Fire	10,825,257	9,858,414
Parks and Recreation	6,902,196	6,576,086
Organizational Support	1,534,560	1,536,560
Transfers To Other Funds	1,777,474	2,040,038
Non-Departmental	(628,475)	(276,000)
Reimbursements from Other Funds	(3,487,381)	(3,262,916)
Contingency Reserve	<u>250,000</u>	<u>500,000</u>
Total Expenditures	\$ <u>42,892,149</u>	\$ <u>42,713,969</u>
Excess of Revenues Over (Under) Expenditures	\$ <u><u>0</u></u>	\$ <u><u>0</u></u>

**City of Winter Park, Florida
Annual Budget for Fiscal Year 2014
Designations Trust Fund Summary**

	<u>2014 Proposed</u>	<u>2013 Adopted</u>
Revenues:		
Miscellaneous	75,000	128,640
Fund Balance	\$ <u>100,000</u>	\$ <u>0</u>
Total Revenues	\$ 175,000	\$ 128,640
Expenditures:		
Transfers to other funds	75,000	128,640
Parks and Recreation	\$ <u>100,000</u>	\$ <u>0</u>
Total Expenditures	\$ <u>175,000</u>	\$ <u>128,640</u>
Excess of Revenues Over (Under) Expenditures	\$ <u><u>0</u></u>	\$ <u><u>0</u></u>

**City of Winter Park, Florida
Annual Budget for Fiscal Year 2014
Stormwater Utility Fund Summary**

	<u>2014 Proposed</u>	<u>2013 Adopted</u>
Revenues:		
Licenses	\$ 47,000	\$ 45,000
Charges for Services	2,395,000	2,262,511
Intergovernmental	55,000	82,000
Miscellaneous	30,201	40,300
Transfers From Other Funds	0	0
Fund Balance	<u>0</u>	<u>0</u>
Total Revenues	\$ <u>2,527,201</u>	\$ <u>2,429,811</u>
Expenditures:		
Operations	\$ 2,457,295	\$ 2,364,811
Reimbursements to Other Funds	65,000	65,000
Contingency	<u>4,906</u>	<u>0</u>
Total Expenditures	\$ <u>2,527,201</u>	\$ <u>2,429,811</u>
Excess of Revenues Over (Under) Expenditures	\$ <u><u>0</u></u>	\$ <u><u>0</u></u>

City of Winter Park, Florida
Annual Budget for Fiscal Year 2014
Affordable Housing Fund Summary

	<u>2014</u> <u>Proposed</u>	<u>2013</u> <u>Adopted</u>
Revenues:		
Affordable Housing Fee	\$ 210,000	\$ 0
Other Revenue	0	0
Fund Balance	<u>0</u>	<u>0</u>
Total Revenues	\$ 210,000	\$ 0
Expenditures:		
Affordable Housing Operations	\$ 0	\$ 0
Advance to Winter Park Housing Authority - Plymouth Apartments	0	0
Contribution to Community Land Trust	0	0
Reimbursements to Other Funds	0	0
Contingency Reserve	<u>210,000</u>	<u>0</u>
Total Expenditures	\$ <u>210,000</u>	\$ <u>0</u>
Excess of Revenues Over (Under) Expenditures	\$ <u><u>0</u></u>	\$ <u><u>0</u></u>

City of Winter Park, Florida
Annual Budget for Fiscal Year 2014
Community Redevelopment (CRA) Fund Summary

	<u>2014 Proposed</u>	<u>2013 Adopted</u>
Revenues:		
Property Taxes	\$ 2,130,437	\$ 2,024,000
Charges for Services	195,000	175,940
Miscellaneous	70,000	25,300
Fund Balance	<u>0</u>	<u>37,478</u>
Total Revenues	\$ <u>2,395,437</u>	\$ <u>2,262,718</u>
Expenditures:		
Operating Expenses	\$ 781,600	\$ 711,435
Capital Projects	0	0
Debt Service	1,486,425	1,547,283
Organizational Support	13,000	4,000
Reimbursements To Other Funds	25,000	0
Transfers To Other Funds	22,934	-
Contingency Reserve	<u>66,478</u>	<u>0</u>
Total Expenditures	\$ <u>2,395,437</u>	\$ <u>2,262,718</u>
Excess of Revenues Over (Under) Expenditures	\$ <u><u>0</u></u>	\$ <u><u>0</u></u>

**City of Winter Park, Florida
Annual Budget for Fiscal Year 2014
Police Grant Fund Summary**

	<u>2014 Proposed</u>	<u>2013 Adopted</u>
Revenues:		
Intergovernmental	\$ <u>850,497</u>	\$ <u>851,225</u>
Total Revenues	\$ 850,497	\$ 851,225
Expenditures:		
Police	\$ <u>850,497</u>	\$ <u>851,225</u>
Total Expenditures	\$ <u>850,497</u>	\$ <u>851,225</u>
Excess of Revenues Over (Under) Expenditures	\$ <u><u>0</u></u>	\$ <u><u>0</u></u>

**City of Winter Park, Florida
Annual Budget for Fiscal Year 2014
Debt Service Fund Summary**

	<u>2014 Proposed</u>	<u>2013 Adopted</u>
Revenues:		
Property Taxes	\$ 1,205,245	\$ 1,202,385
Special Assessments	181,000	181,000
Transfers From Other Funds	929,408	969,678
Fund Balance	<u>0</u>	<u>0</u>
Total Revenues	\$ <u>2,315,653</u>	\$ <u>2,353,063</u>
Expenditures:		
Debt Service	\$ <u>2,315,653</u>	\$ <u>2,353,063</u>
Total Expenditures	\$ <u>2,315,653</u>	\$ <u>2,353,063</u>
Excess of Revenues Over (Under) Expenditures	\$ <u><u>0</u></u>	\$ <u><u>0</u></u>

**City of Winter Park, Florida
Annual Budget for Fiscal Year 2014
Water and Sewer Fund Summary**

	<u>2014 Proposed</u>	<u>2013 Adopted</u>
Revenues:		
Utility Fee	\$ 27,807,607	\$ 27,330,000
Miscellaneous	178,600	176,850
Fund Balance	<u>0</u>	<u>0</u>
Total Revenues	\$ <u>27,986,207</u>	\$ <u>27,506,850</u>
Expenditures:		
Operations	\$ 15,775,306	\$ 15,342,603
Debt Service	5,885,863	5,870,532
Capital Projects	2,005,000	1,665,000
Reimbursements to Other Funds	2,226,438	2,230,276
Transfers to Other Funds	2,093,600	1,985,100
Contingency Reserve	<u>0</u>	<u>413,339</u>
Total Expenditures	\$ <u>27,986,207</u>	\$ <u>27,506,850</u>
Excess of Revenues Over (Under) Expenditures	\$ <u><u>0</u></u>	\$ <u><u>0</u></u>

**City of Winter Park, Florida
Annual Budget for Fiscal Year 2014
Electric Utility Fund Summary**

	2014 Proposed	2013 Adopted
Revenues:		
Utility Fee	\$ 46,905,780	\$ 49,454,166
Miscellaneous	25,593	(40,000)
Transfers from Other Funds	0	0
Fund Balance	450,000	0
Total Revenues	\$ <u>47,381,373</u>	\$ <u>49,414,166</u>
Expenditures:		
Operations	\$ 2,541,305	\$ 1,704,183
Bulk Power Costs	32,377,297	34,029,256
Debt Service	4,859,378	4,749,038
Capital Projects	3,825,000	4,775,000
Transfers to Other Funds	2,687,500	2,757,500
Reimbursements to Other Funds	1,090,893	892,640
Storm and Working Capital Reserves	0	0
Contingency Reserve	<u>0</u>	<u>506,549</u>
Total Expenditures	\$ <u>47,381,373</u>	\$ <u>49,414,166</u>
Excess of Revenues Over (Under) Expenditures	\$ <u><u>0</u></u>	\$ <u><u>0</u></u>

**City of Winter Park, Florida
Annual Budget for Fiscal Year 2014
Fleet Maintenance Fund Summary**

	<u>2014 Proposed</u>	<u>2013 Adopted</u>
Revenues:		
Charges for Services	\$ 1,382,330	\$ 1,535,185
Miscellaneous	0	5,000
Fund Balance	<u>2,140</u>	<u>0</u>
Total Revenues	\$ <u>1,384,470</u>	\$ <u>1,540,185</u>
Expenditures:		
Operations	\$ 1,358,470	\$ 1,515,185
Reimbursements to Other Funds	26,000	25,000
Contingency Reserve	<u>0</u>	<u>0</u>
Total Expenditures	\$ <u>1,384,470</u>	\$ <u>1,540,185</u>
Excess of Revenues Over (Under) Expenditures	\$ <u><u>0</u></u>	\$ <u><u>0</u></u>

City of Winter Park, Florida
Annual Budget for Fiscal Year 2014
Vehicle/Equipment Replacement Fund Summary

	<u>2014 Proposed</u>	<u>2013 Adopted</u>
Revenues:		
Vehicle/Equipment Rentals	\$ 1,825,105	\$ 998,342
Debt Proceeds	0	0
Miscellaneous	0	10,200
Fund Balance	<u>168,434</u>	<u>512,047</u>
Total Revenues	\$ <u>1,993,539</u>	\$ <u>1,520,589</u>
Expenditures:		
Operations	\$ 2,500	\$ 5,000
Vehicle and Equipment Acquisitions	1,825,105	1,301,159
Debt Service	4,452	53,430
Reimbursements to Other Funds	11,482	11,000
Transfers to Other Funds	150,000	150,000
Contingency Reserve	<u>0</u>	<u>0</u>
Total Expenditures	\$ <u>1,993,539</u>	\$ <u>1,520,589</u>
Excess of Revenues Over (Under) Expenditures	<u><u>\$ 0</u></u>	<u><u>\$ 0</u></u>

**City of Winter Park, Florida
Annual Budget for Fiscal Year 2014
Employee Insurance Fund Summary**

	<u>2014 Proposed</u>	<u>2013 Adopted</u>
Revenues:		
Charges To Departments	\$ 4,812,280	\$ 4,658,400
Charges To Employees	1,423,664	1,402,925
Miscellaneous	567,980	513,994
Fund Balance	<u>31,462</u>	<u>0</u>
Total Revenues	\$ <u>6,835,386</u>	\$ <u>6,575,319</u>
Expenditures:		
Insurance Costs	\$ 6,806,818	\$ 6,513,414
Reimbursements to Other Funds	28,568	25,000
Contingency Reserve	<u>0</u>	<u>36,905</u>
Total Expenditures	\$ <u>6,835,386</u>	\$ <u>6,575,319</u>
Excess of Revenues Over (Under) Expenditures	\$ <u><u>0</u></u>	\$ <u><u>0</u></u>

**City of Winter Park, Florida
Annual Budget for Fiscal Year 2014
General Insurance Fund Summary**

	<u>2014 Proposed</u>	<u>2013 Adopted</u>
Revenues:		
Charges To Departments	\$ 2,120,458	\$ 1,981,879
Miscellaneous	5,000	5,000
Fund Balance	<u>6,629</u>	<u>277,949</u>
Total Revenues	\$ <u>2,132,087</u>	\$ <u>2,264,828</u>
Expenditures:		
Insurance Costs	\$ 2,119,087	\$ 1,976,828
Reimbursements to Other Funds	13,000	13,000
Transfers to Other Funds	0	275,000
Contingency	<u>0</u>	<u>0</u>
Total Expenditures	\$ <u>2,132,087</u>	\$ <u>2,264,828</u>
Excess of Revenues Over (Under) Expenditures	\$ <u><u>0</u></u>	\$ <u><u>0</u></u>

**City of Winter Park, Florida
Annual Budget for Fiscal Year 2014
Cemetery Fund Summary**

	<u>2014 Proposed</u>	<u>2013 Adopted</u>
Revenues:		
Lot Sales	\$ 223,500	\$ 196,000
Miscellaneous	7,500	25,150
Fund Balance	<u>0</u>	<u>13,226</u>
Total Revenues	\$ <u>231,000</u>	\$ <u>234,376</u>
Expenditures:		
Transfers To Other Funds	\$ 230,000	\$ 233,376
Reimbursements to Other Funds	1,000	1,000
Contingency Reserve	<u>0</u>	<u>0</u>
Total Expenditures	<u>231,000</u>	<u>234,376</u>
Excess of Revenues Over (Under) Expenditures	\$ <u><u>0</u></u>	\$ <u><u>0</u></u>

**City of Winter Park, Florida
Annual Budget for Fiscal Year 2014
General Capital Projects Fund Summary**

	<u>2014 Proposed</u>	<u>2013 Adopted</u>
Revenues:		
Transfers From Other Funds	\$ 1,056,000	\$ 1,207,500
Intergovernmental Revenues	0	0
Debt Proceeds	0	0
Fund Balance	<u>0</u>	<u>0</u>
Total Revenues	\$ <u>1,056,000</u>	\$ <u>1,207,500</u>
Expenditures:		
Capital Projects	\$ 1,056,000	\$ 1,207,500
Contingency Reserve	<u>0</u>	<u>0</u>
Total Expenditures	\$ <u>1,056,000</u>	\$ <u>1,207,500</u>
Excess of Revenues Over (Under) Expenditures	\$ <u><u>0</u></u>	\$ <u><u>0</u></u>

City of Winter Park, Florida
Annual Budget for Fiscal Year 2014
Stormwater Capital Projects Fund Summary

	<u>2014 Proposed</u>	<u>2013 Adopted</u>
Revenues:		
Stormwater Utility Fees	\$ 650,000	\$ 710,000
Intergovernmental	0	0
Fund Balance	<u>0</u>	<u>0</u>
Total Revenues	\$ <u>650,000</u>	\$ <u>710,000</u>
Expenditures:		
Capital Projects	\$ 650,000	\$ 710,000
Contingency Reserve	<u>0</u>	<u>0</u>
Total Expenditures	\$ <u>650,000</u>	\$ <u>710,000</u>
Excess of Revenues Over (Under) Expenditures	\$ <u><u>0</u></u>	\$ <u><u>0</u></u>

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF WINTER PARK, FLORIDA ADOPTING THE ANNUAL BUDGET FOR THE FISCAL YEAR BEGINNING OCTOBER 1, 2013 AND ENDING SEPTEMBER 30, 2014 AND ACCOMPANYING FIVE YEAR CAPITAL IMPROVEMENT PLAN; APPROPRIATING FUNDS FOR THE GENERAL FUND, DESIGNATIONS TRUST FUND, STORMWATER UTILITY FUND, AFFORDABLE HOUSING FUND, COMMUNITY REDEVELOPMENT FUND, POLICE GRANT FUND, DEBT SERVICE FUND, WATER AND SEWER FUND, ELECTRIC UTILITY FUND, FLEET MAINTENANCE FUND, VEHICLE/EQUIPMENT REPLACEMENT FUND, EMPLOYEE INSURANCE FUND, GENERAL INSURANCE FUND, CEMETERY TRUST FUND, GENERAL CAPITAL PROJECTS FUND AND STORMWATER CAPITAL PROJECTS FUND; PROVIDING FOR MODIFICATIONS; PROVIDING FOR AMENDMENTS TO SAID ANNUAL BUDGET TO CARRY FORWARD THE FUNDING OF PURCHASE ORDERS OUTSTANDING AND UNSPENT PROJECT BUDGETS AS OF SEPTEMBER 30, 2013; AND AUTHORIZING TRANSFER OF FUNDS HEREIN APPROPRIATED BETWEEN DEPARTMENTS SO LONG AS THE TOTAL FUND APPROPRIATIONS SHALL NOT BE INCREASED THEREBY.

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

SECTION 1. The annual budget of the City of Winter Park for the fiscal year beginning October 1, 2013 and ending September 30, 2014 as set forth on Schedule A attached hereto and by reference made a part hereof, is hereby adopted and approved after full, complete and comprehensive hearings and in consideration of the expressions of all parties concerned. It is hereby declared that said budget represents and presents the judgment and intent of the City Commission as to the needs and fiscal requirements of the various departments of the City government for the next ensuing twelve-month period.

SECTION 2. There are hereby expressly appropriated out of anticipated revenues and funds available for such purposes and not otherwise appropriated, the funds and monies necessary to meet the appropriations set forth in said budget. It is hereby declared that the funds available are those in excess of the amount required by law to be held by the City of Winter Park.

SECTION 3. The budget approved by this ordinance may be reviewed by the City Commission and shall be subject to modification by ordinance if the actual revenues and necessary expenditures are found to differ substantially from the estimates contained in said budget.

SECTION 4. The City Manager is hereby authorized to increase the line item appropriation in the attached budget to cover those purchase orders which shall have been issued on or prior to September 30, 2013, but not filled as of that date, and is authorized to pay for all goods or services received pursuant to such purchase orders from all the funds so appropriated. All such increases shall be appropriated to the corresponding accounts in the same funds against which they were outstanding as of September 30, 2013. The City Manager shall report to the City Commission all such purchase orders.

SECTION 5. The City Manager is hereby authorized to increase the line item appropriation in the attached budget to cover the unspent portion of project length budgets as of September 30,

2013. The City Manager shall report to the City Commission all such project budgets carried forward from fiscal year 2013 to fiscal year 2014.

SECTION 6. The City Manager shall have the authority to transfer appropriations from one line item to another line item within a fund budget so long as the total fund appropriations shall not be increased. Appropriation transfers between funds shall require the approval of the City Commission.

SECTION 7. The accompanying five year capital improvement plan is hereby adopted as part of this ordinance and is made a part of the Comprehensive Plan, Data, Inventory and Analysis document replacing and substituting therefore any previous five year capital improvement plan. Funding for the first year of the plan is included in the annual budget. Funding for projects in years two through five is subject to the annual budgets adopted for each of those years.

ADOPTED at a regular meeting of the City Commission of the City of Winter Park, held in City Hall, Winter Park, Florida this 23rd day of September, 2013.

Kenneth W. Bradley, Mayor

Attest:

Cynthia S. Bonham, City Clerk

**FUNDING AGREEMENT FOR
FISCAL YEAR 2013 – 2014**

THIS FUNDING AGREEMENT, (“Agreement”) made and entered into this ____ day of _____, 2013, by and between the **CITY OF WINTER PARK , FLORIDA**, a municipal corporation organized and existing under the laws of the State of Florida, (“the City”), and **MEAD BOTANICAL GARDEN, INC.**, a Florida not for profit corporation ("the Agency").

WITNESSETH THAT:

WHEREAS, the Agency has applied to the City for a donation of funds in order to provide such services and programs (collectively the “Services”) as are set forth on **Exhibit "A"** attached hereto and incorporated herein by this reference; and

WHEREAS, the Agency is a tax-exempt entity, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, pursuant to 26 U.S.C. 501(c)(3), as further described in paragraph 5 herein; and

WHEREAS, the Agency maintains an independent Board of Directors; and

WHEREAS, these Services benefit, in whole or in part, the citizens of the City; and

WHEREAS, the City has determined that there is a public need for such Services and that a valid public purpose in promoting the general health, welfare and safety of the citizens of the City would be served by funding the Services; and

WHEREAS, in order to serve the public need and in furtherance of the public purpose, the City has appropriated funds to be granted to the Agency for providing such Services; and

WHEREAS, the parties mutually desire to enter into this Agreement whereby the Agency will receive and disburse the aforementioned funds of the City for the purpose of providing the Services in accordance with the terms and conditions set forth herein; and

WHEREAS, the Agency has available the necessary qualified and trained personnel, facilities, materials and supplies to perform the Services set forth in this Agreement; and

WHEREAS, the Agency agrees to report regularly to the City on its progress in providing the Services, as further described in paragraph 4 herein.

NOW, THEREFORE, in consideration of the promises and of the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties, the parties hereby agree as follows:

1. INCORPORATION OF PREAMBLE. The preamble of this Agreement set forth above is true and correct and is incorporated herein by this reference as if fully set forth below.

2. FUNDING; PERFORMANCE OF SERVICES. The City has heretofore appropriated, for the period commencing October 1, 2013, and ending September 30, 2014, the sum of One Hundred Thousand Dollars (\$100,000.00) for Capital Projects, and the sum of Eighty-Five Thousand Dollars

(\$85,000.00) for Operational Expenses, for a total sum of **One Hundred Eighty-Five Thousand Dollars (\$185,000.00)**

3. The City's contribution shall be made to the Agency in four (4) quarterly payments of **Forty-Six Thousand Two Hundred Fifty Dollars (\$46,250.00)**, unless otherwise approved and authorized in writing by the City Manager or his designees. All payments by the City shall be contingent upon: (a) receipt and approval by the City of the progress and financial reports specified in Paragraph 4 below; (b) inclusion of the audit provisions set forth in Paragraph 7 below in sub-recipient agreements; and (c) compliance by the Agency with any and all requirements, terms and conditions contained in this Agreement, including the provision of the Services by the Agency. Contingent upon all requirements having been met, payments will be disbursed on or about the 15th day of each quarter in the amounts set forth above; provided, however that to allow the City time to process this Agreement, the City shall have until the later of (i) the 15th day of the first month of the term of this Agreement or (ii) thirty (30) days following execution of the Agreement by all parties to make the first payment hereunder. Any Funds received by Agency which are not expended by Agency to provide or perform the Services set forth herein prior to December 31, 2014, shall be repaid to the City no later than December 31, 2014, unless an extension of time for such expenditure is granted by the City Manager or his designee in writing.

4. PROGRESS AND FINANCIAL REPORTING. The Agency agrees to submit progress and financial reports on a quarterly basis to the City Manager or his designee in form and content acceptable to the City Manager or his designee in accordance with the schedule set forth on **Exhibit "B"** attached hereto and incorporated herein by this reference. At a minimum, subject to requests for additional information by the City Manager or his designee, such progress reports shall include an evaluation of the Services and must indicate the amount or level of Services provided to City residents. Agency will collect demographic information about its customers and will provide this data to City. Moreover, the quarterly reports shall be consistent with the Services detailed herein and shall identify expenditures associated with or related to the Funds. Failure to comply with the requirement for submission of such reports in form and content acceptable to the City Manager or his designee shall constitute grounds for termination of this Agreement and may result in the ineligibility of the Agency to receive contributions from the City. Completion of the prior year's reporting requirements, if any, and submission of all required annual financial statements are a prerequisite to receipt of any payment under this Agreement.

5. 501(c)3 STATUS. Agency represents and warrants to City that it has applied for and received tax exempt status from the United States Internal Revenue Service ("IRS") as a 501(c)3 organization as evidenced by a determination letter from the IRS. A copy of the IRS letter approving Agency's tax exempt status shall be provided to the City prior to the distribution of any Funds to Agency. The Agency will maintain its tax exempt status with the IRS and its status as an active entity in good standing with the State of Florida throughout the term of this Agreement. If the Agency should, during the term of this Agreement, lose its IRS tax exempt status or its active or non-profit status with the State of Florida, it will immediately notify the City, and the City reserves the right to terminate this Agreement immediately and discontinue payments to the Agency.

6. NONDISCRIMINATION. The Agency agrees that it shall not unlawfully discriminate in the provision of Services. Agency shall provide Services without regard to race, color, creed, sex, sexual orientation, age, national origin, disability or marital status and in compliance with Title VII of the Civil Rights Act of 1964 as amended, and any and all other applicable federal, state or local laws, rules or regulations, whether presently existing or hereafter promulgated. Agency shall not use any

portion of the Funds for religious instruction, worship, proselytizing, or any other unauthorized purpose.

7. ACCOUNTING AND AUDIT. If the Agency's total annual budget is equal to, or exceeds, \$250,000 the Agency will submit copies of its audited annual financial statements to the City. If the Agency's total annual budget is less than \$250,000 the Agency will submit copies of its last two years' tax returns. Copies of the audit or tax returns will be submitted: (1) upon execution of this Agreement (or as soon thereafter as such statements are prepared) for the Agency's immediately preceding fiscal year and (2) thereafter for each fiscal year of Agency during which it receives or expends any Funds from the City under this Agreement such statements shall be submitted upon completion by the Agency which submission date shall not exceed one hundred eighty (180) days following the end of the Agency's fiscal year. For all financial statements and records related to the Funds, the Agency will utilize those accounting practices and procedures and maintain those records regarding receipts and disbursements of the Funds as are in accordance with Generally Accepted Accounting Principles (GAAP). All such records shall be open to inspection and audit by the Assistant to Director or by the Assistant to Director's designee during normal business hours during the term of this Agreement. Additionally, the Agency will maintain its books and records related to the Services provided utilizing the Funds, and the City will be entitled to audit such books and records, for a period of five (5) years from the date of the last payment under this Agreement. Any cost incurred by the Agency as a result of an audit shall be the sole responsibility of, and shall be borne by, the Agency. In addition, should the Agency provide any or all of the Funds to sub-recipients, then, and in that event, the Agency shall include in its written agreements with such sub-recipients a requirement that records of the sub-recipient be open to inspection and audit by the City or the City's designee to the same extent as those of the Agency.

8. MONITORING. The Agency will permit the City and the City's designees to monitor the Services to ensure compliance with the terms of this Agreement. The Agency shall, to assist in the monitoring of its Services, provide the City and the City's designees with access to all client records and such other information as the City may deem necessary within a reasonable time upon written request of the City. In the event of breach of this Agreement by Agency, the City reserves the right to pursue all legal and equitable remedies available to it including, but not limited to, the right to suspend or terminate payments under this Agreement and the right to restitution with respect to any Funds utilized by the Agency in a manner which is not in conformance with the terms of this Agreement. Agency shall make restitution to the City of any Funds not used in conformance with the terms of this Agreement within fifteen (15) days of demand by the City.

9. TERMINATION. This Agreement may be terminated by either party at any time, with or without cause, upon written notice to the other party. Said notice shall be delivered in the manner set forth in Paragraph 21 below. The termination of this Agreement shall not relieve the Agency from any obligations under this Agreement with respect to funds paid to the Agency prior to termination.

10. INDEMNIFICATION. The Agency agrees to indemnify, defend and save harmless the City from and against any and all liability, claims, demands, damages, expenses, fees, fines, penalties, suits, proceedings, actions and cost of actions, including attorneys' fees for trial and on appeal, of any kind and nature arising or growing out of or in any way connected with any or all of the following: (1) the acts or omissions of the Agency, its employees, officers, Directors, sub-recipients or agents related to this Agreement, (2) the provision of any Services by the Agency, its sub-recipients or agents, or (3) the mere existence of this Agreement itself.

11. **NO WAIVER.** Continued performance by either party after a default or violation of any of the terms, covenants or conditions herein shall not be deemed a waiver of any right to terminate this Agreement or elect any other remedy or action, nor shall it be construed or act as a waiver for any subsequent default.

12. **CONSTRUCTION; SEVERABILITY.** This Agreement shall be construed in accordance with the laws of the State of Florida. It is agreed to by the parties that if any covenant, condition or provision contained in this Agreement is held to be invalid by any court of competent jurisdiction, such invalidity shall not affect the validity of any other covenants, conditions or provisions contained herein.

13. **NONASSIGNABILITY.** The Agency may not assign its rights or obligations under this Agreement without the prior written consent of the City Manager or his designee, which assignment may be agreed to, denied, or conditioned in part or in whole as the City Manager or his designee deems appropriate in his or her sole discretion. A successor agency does not automatically have any rights to the Funds disbursed under this Agreement by its position as a successor. A successor agency must receive prior approval from the City Manager or his designee before it can receive Funds. Failure to comply with this section may result in immediate termination of this Agreement.

14. **THIRD PARTY BENEFICIARY.** This Agreement is solely for the benefit of the parties signing hereto and no right, nor any cause of action shall accrue to or for the benefit of any third party.

15. **NO JOINT VENTURE.** It is mutually understood and agreed that nothing contained in this Agreement is intended to or shall be construed as creating, or shall in any way create or establish a relationship as partners or joint ventures between the parties hereto or constitute the Agency as the agent or representative of the City for any purpose or in any manner whatsoever.

16. **VENUE.** Exclusive venue in any action to construe or enforce the provisions of this Agreement shall be in the Circuit Court of and for Orange County, Florida and shall be governed by the laws of the State of Florida. The Agency agrees to notify the City in writing within ten (10) business days of the occurrence of any incident or action such as, but not limited to, lawsuits, injuries, or allegations of abuse or neglect filed against the Agency, related to the Services provided under this Agreement.

17. **CORPORATE TABLE/TICKETS.** In the event the Agency holds a fundraising event, the Agency agrees to give the City, upon its request, up to the number of tickets available to a top level event sponsor at no cost in consideration of the contribution provided to the Agency under this Agreement. This provision may be waived by the City Manager or his designee.

18. **CREDITS.** The Agency will give written credit to the City as a sponsor/financial supporter in all acknowledgements, brochures, catalogues, invitations, press releases, printed materials, and all other marketing, promotions and advertising related to the Services. The form and manner of such written credit shall be mutually agreed to by the parties. This provision may be waived by the City Manager or his designee.

19. **INSURANCE.** The Agency will have in force during the term of this Agreement the insurance coverages listed below. Current and valid certificates of insurance for said insurance coverages will be provided to the City Manager or his designee upon execution of this Agreement by the Agency. Upon the expiration or modification of such certificates of insurance, the Agency shall provide continuing proof of insurance to the City Manager or his designee for the coverages listed below. The

insurance coverages shall contain a provision that forbids any cancellation, changes or material alterations in the coverages without providing thirty (30) days written notice to the City (except for cancellation of a policy for non-payment which may provide for a minimum of ten (10) days notice to the City).

- a. Commercial General Liability -- The Agency will provide and maintain a commercial general liability policy with limits of not less than \$1,000,000 per occurrence and in the aggregate, for bodily injury and property damage.
- b. Automobile Liability -- The Agency will provide coverage for all owned, non-owned and hired vehicles with limits of not less than \$500,000 per occurrence, combined single limits for bodily injury and property damage.
- c. Workers' Compensation -- The Agency will provide full and complete Workers' Compensation coverage as required by Florida state law, as well as Employer's Liability coverage of not less than \$100,000.
- d. Employee's Honesty Insurance (Fidelity Insurance) -- The Agency will provide coverage of not less than \$10,000 per occurrence.

20. **ENTIRE AGREEMENT.** This Agreement, including any Exhibits hereto, contains all the terms and conditions agreed to by the parties. No other agreement, oral or written, regarding the subject matter of this Agreement shall be deemed to exist or to bind either party hereto.

21. **NOTICE.** Any and all notices to be delivered hereunder shall be in writing and shall be deemed to be delivered:

- (i) when hand delivered to the person hereinafter designated,
- (ii) on the date of deposit in the United States Mail, return receipt requested, or
- (iii) on the date such notice is given into the possession of a national delivery company, including but not limited to Federal Express, for delivery requiring signature acceptance,

addressed to a party at the address set forth below, or at such other address as the applicable party shall have specified, from time to time, by written notice to the other party delivered in accordance herewith. The City Manager or his designee shall have full authority to send all notices related to this Agreement on behalf of the City. The parties' addresses are as follows:

City: **City of Winter Park**
Attention: Peter M. Moore
Budget and Performance Measurement Manager
401 South Park Avenue
Winter Park, Florida 32789

Copy to: **Usher L. Brown**
City Attorney
111 North Orange Avenue
Suite 2000
Orlando, FL 32802

Agency: **Mead Botanical Garden, Inc.**
Attention: _____
Title: _____
Address: P.O. Box 1227
Winter Park, FL 32789

IN WITNESS WHEREOF, the parties hereto have executed these presents and have set their hands and seals the day and year first above written.

CITY OF WINTER PARK, FLORIDA

BY: _____
Mayor Kenneth W. Bradley

ATTEST:

Cynthia Bonham, City Clerk

STATE OF FLORIDA
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me this _____ day of _____, 2013, by Kenneth W. Bradley, Mayor, of the City of Winter Park, who is personally known to me.

Notary Public – State of Florida
Print Name: _____
My Commission expires:

MEAD BOTANICAL GARDEN, INC., a Florida
Not-For-Profit Corporation

BY: _____

Print Name: _____

Title: _____

STATE OF FLORIDA
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me this _____ day of _____, 2013, by _____ the _____ of **Mead Botanical Garden, Inc.**, (check one) ☐ who is personally known to me or ☐ who provided a Florida driver's license as identification.

Notary Public – State of Florida
Print Name: _____
My Commission expires: _____

EXHIBIT “A”

Mead Botanical Garden, Inc.
Projects, Programming and Operational Goals / Performance Measures
June 2013 through Oct. 2014 and Beyond

- **Master Plan, Garden Enhancements & Facility Improvements**
- **On-going & One-Time Volunteer Efforts**
- **Horticultural - Educational Initiatives & Demonstration Gardens**
- **Wildlife and Environmental Programming**
- **Brand Awareness, Marketing and Communication**
- **Charitable Support and Grants**
- **Community, Family and Cultural Programming and Events**
- **Future Priorities FY 2014-15 through 2015-16**

Mead Botanical Garden, Inc.

Projects, Programming and Operational Goals

June 2013 through Oct. 2014 and Beyond

Mead Botanical Garden Inc. is dedicated to the preservation and restoration of Mead Botanical Garden as an urban oasis, a refuge for wildlife, and a botanical garden. This 47-acre "public park" with its wandering trails and garden collections – some rustic, others bursting with a rainbow of color – is open dawn to dusk 365 days a year and ready to be enjoyed by all who visit. With its creeks and critters, wetlands and wildlife, gardens and *The Grove*, Mead is a vibrant place that connects people with nature and provides opportunity to celebrate the cultural arts.

MBG Inc.'s mission is to create a garden that is truly the jewel of Winter Park. It works to raise support, to grow and sustain the organization in order achieve this mission. Our vision is to protect and preserve this treasured urban oasis where nature, people and culture can exist in harmony.

As an organization, MBG Inc. works to support the City's goal to be the best place in Florida to live, work and play for today's residents and future generations. To further this goal, MBG leadership coordinates its project plans, activities and decisions with the City's Parks & Recreation and Public Works departments.

MBG Inc. is a non-profit 501(c)3 organization and operates the garden in partnership with the City of Winter Park under a lease agreement. MBG Inc. spearheads advancement of the City approved Master Plan while planning and managing the horticultural, education and cultural activities that take place at the garden. The deed giving the land to the City requires that Mead Botanical Garden operate as a botanical garden. MBG Inc. is dedicated to meeting this requirement.

The Board of Trustees and staff operate with the following Shared Values and Guiding Principles:

- **Stewardship** - Demonstrating accountability, conservation ethic, sustainable practices
- **Integrity** - Standing for respect, excellence, and sound management
- **Enrichment** - Embracing culture, knowledge, learning, and discovery
- **Collaboration** - Working together with creativity and care
- **Harmony** - Balancing garden wildlife, community and culture
- **Leadership** - Anticipating the future; guiding the direction
- **Community** - Actively engaging a diverse, inclusive and connected community
- **Discovery** - Learning through exploration and experience
- **Fun** - Making it enjoyable

Priorities Areas, Projects and Associated Goals
June 2013 – October 2014

Master Plan, Garden Enhancements & Facility Improvements

1. **Advance the Approved Master Plan** - Engage a landscape architect to design the next phase of MBG master plan which includes layout for primary and secondary paths/trails, garden collection areas and edges, activity centers, parking, and support infrastructure such as lighting and irrigation. Goal: Selection of planner, December 2013.
2. **Discovery Barn Enhancement Project** – Expand the usefulness and rental potential of this facility through upgrades. Establish an appealing (rustic/chic) multi-purpose facility and outdoor upper terrace as part of an educational and cultural complex in this area of the garden. The building will be used for MBG Inc. educational programming, community and cultural events along with revenue generating activities (horticultural society meetings, corporate retreats/events, private celebrations, symposiums,) and MBG Inc. administrative operations.

Background: In the summer of 2011, the City's maintenance building was converted to the Discovery Barn, acting as the camp base for MBG Inc.'s Young Naturalist Summer Camp, gathering spot for board and committee meetings and operational activities. It has also served as a classroom for other horticultural classes and gatherings. Under current conditions, the building's usability is hampered by its lack of climate control and accessibility to insects, rodents and reptiles. It is not currently ADA accessible.

Goals:

- a. Develop plan (including design, labor and material cost estimates) to further renovate and upgrade the "Discovery Barn." Project will include installation of insulation, air conditioning, windows, replacement doors, upgraded restrooms, a catering set-up area, and be ADA accessible. Goal: Estimates obtained, September 2013
 - b. Evaluate viability of renovation (based on renovation cost estimates) versus replacing/rebuilding the structure. Goal: November 2013.
 - c. If cost estimates appear appropriate and reasonable, raise/seek funding for renovation project. Goal: Conduct campaign November 2013-May 2014.
 - d. Develop marketing plans for facility, if renovation is viable. Goal: Develop and begin implementing marketing plans simultaneous with fund-raising efforts.
 - e. Project will commence when funding is secured.
3. **Complete duck pond (storm water retention pond) restoration project** by 2013 year end. MBG Inc. secured private funding for this project (up to \$45k); Project objectives are 1) remove overgrown

plants threatening to choke the pond, 2) improve the pond's water quality by removing excess muck/flock and 3) improve water flow by increasing the depth below the bridge. Signage along the shoreline will provide educational information about the pond's restoration and importance of maintaining healthy water for the garden's wildlife habitat. Project planning and oversight is in conjunction with the City Public Works department, Lakes division.

Goal/Timeline:

- a. Phase 1 (June-July) – removal of excess aquatic grasses and reeds
 - b. Phase 2 (August-Sept.) – muck/debris removal and dredging
 - c. Phase 3 (Sept.-Nov.) – dewatering
 - d. Phase 4 – (Nov.-Dec.) – dried muck removal/hauling
4. **Increase the rental income of the historic Little Amphitheatre** – Now more than 60 years old, MBG Inc. plans to upgrade and enhance the existing plantings and botanical features within this venue and the immediate surrounding areas. Goal is to create an idyllic outdoor sanctuary or intimate garden "auditorium" that will be in high demand for weddings and other special events. Plants and trees will be chosen for their beauty, texture, sustainability and ease of maintenance. Project is being conducted in consultation with Park & Recreation dept.'s Chief of Landscaping.
- a. Volunteer Ann Clement, former owner of Garden Palette and overseer of Butterfly Garden, will design the improvements at no cost to MBG Inc. Goal: Design work to be complete by end of Dec. 2013. Installation will occur in stages; will commence during low season (mid-summer) of 2014.
 - b. Determine if rental fee for historic Amphitheatre is appropriately set by conducting a market study of comparative outdoor venues (features and pricing) in Central Florida. Goal: Analysis will be complete by end of August 2013.
 - c. Interview five top wedding/event planners to gain understanding of what they seek in an outdoor wedding venue. Goal: October 2013.
 - d. Develop and implement marketing plan and support materials to generate top of mind awareness of Mead Garden among wedding planners, potential brides, performance oriented and religious organizations. Goal: Summer 2014.
 - e. Redecorate and upgrade the bride and groom's ready rooms. Completion goal: Fall 2014.
 - f. Also identify other areas of the garden for potential small-scale wedding locations. Goal: November 2014.

5. **Lake Lillian Wetlands Restoration Project** – During the Master Planning process, MBG Inc. and the City of Winter Park established the goal of restoring a portion of the Lake Lillian Wetlands as this is the last remaining segment of Howell Creek in the Upper Watershed that exists in a relatively natural state. The purpose of this initiative is to advance the nutrient reduction and improve the aquatic conditions within this area. These actions will lead to a reappearance of wading birds, turtles, fish, otters and a healthier habitat for wildlife. The Lillian Restoration Concept Plan was completed in 2010. Phase 1 (FDEP/City 319 Water Quality Project – Clay Pit) was completed in 2012. A \$40K funding commitment was obtained from the Florida Fish and Wildlife Commission (FWC) in 2012 for work to commence at a later date when funds become available in FY 2013/14. MBG Inc. is overseeing the management of this project in consultation with the Public Works Dept.

2013/2014 Project Goals include:

- a. Phase 2 – Area adjacent to Grove Pavilion
 1. SJRWMD application preparation & submittal. Completion goal: July 2013. Note, availability of FWC grant funds are in coordination with SJRWMD application.
 2. Design for pond layout and tree planting is completed; design of herbaceous species is underway. Completion goal: September 2013.
 3. Restoration Construction Phasing will be finalized upon SJRWMD approval.
 4. Educational signage will be posted in project area to coincide with phases of project work. The Grove will serve as an interpretive and educational platform for those viewing the wetlands work.
 - b. Phase 2 – Advanced (additional) Restoration Area (2-5 year effort)

Efforts to obtain funding from Florida Dept. of Transportation to continue FWC work and extend the restoration area underway.

 1. MBG Inc. is calculating potential mitigation credits, which is one approach to attaining FDOT funding for additional wetlands restoration acreage. Completion goal for calculation: Fall 2013.
 2. MBG Inc. reps, along with City officials and local partners are seeking ongoing project support from Congressman Mica and FDOT, FDEP, SJWRMD officials. Timeline: on-going.
6. **Complete Pole Barn Floor and Steps to Butterfly Garden** – Extend the brick flooring throughout this historic open air pavilion/classroom. Install steps to butterfly garden. Acquire used or repurposed materials for this project. Goal: complete by September 2013.

On-going & One-Time Volunteer Efforts

Through a variety of on-going initiatives, partnerships and one time projects, more than 5,500 volunteer & community service hours are generated annually on behalf of Mead Botanical Garden. Collectively,

these efforts result in an abundance of work and achievement. The *Independent Sector* places a value of \$22.14 for each volunteer hour served. Using this figure, the estimated value of MBG Inc. volunteer service is more than \$120,000.

Goal for FY 2013-14: establish a formal volunteer recruitment and appreciation program with the goal of obtaining more than 5,500 hours of service with the following activities:

1. Engage volunteer groups in concerted effort to control invasive and noxious vines throughout the garden, with special emphasis near the creek where seeds and tubers can be transmitted downstream.
 - a. Partner with the Orange County DEP in hosting an Air Potato Raid. Goal: Jan. 2014; 50 volunteers, 100 hours.
 - b. Develop and conduct a "DIVE" Day (Debris & Invasive Vine Eradication) service project for youth volunteer group/s. Goal: two groups of at least 20 each; 160 hours.
2. Engage in the Central Florida Camellia Society to provide expert seasonal care and maintenance of the camellia collection. Goal: 12 volunteers twice a year; 72 hours.
3. Plant Collections:
Legacy & Learning Garden volunteers. Goal: 2,500 hours
Butterfly Garden volunteers. Goal: 460 hours
Community Garden volunteers who tend the Food Bank Beds. Goal: 72 hours
Native Garden volunteers. Goal: 200 hours.
4. Utilize Orange County Corrections Community Service for volunteer manpower on behalf of the garden. Goal: 500 hours.
5. Partner with Rollins College Office of Community Engagement and Eco-Rollins environmental club to complete projects within the garden. Goal: 120 hours.
6. Special Interest groups (Audubon Bird Walks, Edible Weed Walks, etc.). Goal: 72 hours.
7. Summer Camp Counselors in Training. Goal: 450 hours.
8. Duck Derby volunteers. Goal: 300
9. MBG Inc. Board of Trustees & Liaisons hours and project work. Goal: 700 hours.

Other outreach activities will be employed to strengthen partnerships with Central Florida horticultural societies, garden clubs and groups, environmental & wildlife organizations, landscape and nurseries, youth groups and churches resulting in more interest, volunteer service, in-kind and monetary contributions and sharing of expertise.

Horticultural - Educational Initiatives, Demonstration Gardens and Plant Exhibits

1. **Legacy & Learning Garden (including Greenhouse and Entrance) Area**
 - a. Ongoing: under the leadership of renowned Central Florida horticulturalist Randy Knight and master gardener Alice Mikkleson, engage volunteers to create demonstration beds and container gardens that include a variety of plantings including those that pay tribute to T.L. Mead's work.

- b. Design and install transitional plantings in area leading to the clay pit; this area will serve as a demonstration rain garden. Goal: completion by September 2014.
 - c. Install additional planting beds in the camellia garden, one in memory of Jerry Connor, camellia grower extraordinaire. Goal: completion by November 2013.
 - d. Conduct informational tours for visiting garden clubs. Goal: meet all requests.
 - e. Create Facebook postings of what's blooming now and other notes of interest.
 - f. Schedule "field trips" to area botanical venues (nurseries, public and private gardens) for volunteers. Develops volunteers' horticultural expertise and generates on-going commitment to MBG. Goal: Quarterly
- 2. **Butterfly (Pollinator) and Rock Garden** – Though hidden away, this is one of the most popular and often photographed areas.
 - a. Maintain butterfly garden area that serves as host to important pollinators of all sorts including butterflies, bees, wasps, moths, flies and even hummingbirds. Goal: on-going.
 - b. Install and maintain plantings in the rock garden facing the butterfly garden; area demonstrates how to reduce water erosion on a sloped area. Goal: on-going.
 - c. Paint bulletin board in this area and develop educational information for this display case. Goal: complete by January 2014.
- 3. **On-going: Mead Community Vegetable Garden.**
 - a. Goal: achieve 100% fully paid membership by October 2013 and again by October 2014.
 - b. Goal: Host two tours of Community Garden with visiting children's groups during growing season by June 2014.
 - c. Goal: Community Garden activities will be self-sustaining through membership fees and in-kind contributions.
- 4. **Develop with the Native Plant Society and WP Chief of Landscaping a Restoration Plan for the Uplands area** (as designated on the Master Plan.) This area is one of the few examples of the historic sandhill terrain that remain within the Winter Park/metro Orlando area. Rarely seen understory plants can be found in this area of Mead Garden. Goal: Obtain restoration plan by August 2014. Begin plan implementation upon approval by MBG Inc. Board of Trustees.
- 5. **Conduct a variety of plant classes and clinics**, focusing on topics that appeal to varying gardening interests and levels of expertise. Programs will be conducted by Mead Horticultural director (volunteer) Randy Knight, master naturalist Stacey Matrazzo and other guest horticulturalists. Some programs will have an associated fee, others will be complimentary. Goal: Conduct two multi-session and two single session programs between September 2013 and September 2014. Attendance goal of 15 people per session, or 60 attendees. Expect to generate at least \$1,000 in earned revenue.

6. **Continue efforts to meet criteria/definition for botanical garden** – a place where plant collections are maintained for educational, scientific and/or research purpose. Goals: install discrete educational signage in plant collection areas.
7. **Conduct plant sales** that not only generate income but showcase MBG and lead to new and repeat visitors to the garden. Goal: \$2,000 in revenue.
8. **Co-sponsor the annual Camellia Show and Fest** with the Central Florida Camellia Society. Goal: January 2014; attendance of 300 people measured by show entries and class participation.

Wildlife and Environmental Programming

1. Since 2011, MBG Inc. has conducted the **Mead Young Naturalist Summer Camp**. The first year had 30 some registrations. In 2012, there were 180 campers over a 6-week period.
Goals:
 - a. Summer 2013, 200 campers (including 10 scholarship recipients) and attain approximately \$34,000 in earned revenue.
 - b. Summer of 2014, 215 campers and \$36,000 in revenue.
2. **For Bird Lovers** - MBG is one of the top 5 places in the state of Florida for migratory birds. Each spring and fall the garden plays host to wide variety of birds, who stop off to rest and refuel. During these periods, snowbirds and bird-lovers from all over the state and Southeast visit the garden.
Goals:
 - a. Conduct six Saturday morning "bird walks" in the fall and spring in partnership with the Orange Audubon Society. Achieve an average of 12 bird-watchers per walk or 72 participants.
 - b. Publish updated "bird checklist" brochure for availability in garden, WP Chamber of Commerce, at appropriate local establishments; post on website. Goal: August 2013 and August 2014.
 - c. Encourage photographers to post pictures on Facebook and Tweet about unusual sightings at Mead.

Brand Awareness, Marketing and Communication

1. **Increase Number of (Appropriate/Appreciative) Visitors to the Garden and to Winter Park** - Many local residents affectionately refer to Mead Botanical Garden as the hidden jewel of Winter Park. Our challenge is to protect this treasured urban oasis while building awareness and increasing visitation among a select target audience. Our goal is to develop marketing and communication plans that attract new individuals and members of organizations who would enjoy the garden, be willing to preserve it and/or join MBG Inc. in its work on behalf of the garden.

Tracking actual visitation numbers is difficult because the garden is open to the public year round from dawn to dusk, with three open entrances.

Goal: Success will be measured by the traffic on webpage & Facebook, number of requests to be on e-mail list, program attendance, media interest/inquiries/stories, requests for tours or field trips, volunteer inquiries, volume of plant sale customers and general impressions by on-site staff and volunteers.

- a. Work with Winter Park Chamber of Commerce and other Central Florida visitor bureaus to increase awareness, promote visitation and ensure dissemination of accurate information about the garden. Promote connectivity with other key Winter Park "attractions."
 - b. Seek to become "project site" for Rollins or UCF MBA Marketing Strategies class. Goal: Be selected as project site by fall 2014.
2. **Upgrade and update MeadGarden.org webpage** – ensure that key information about the garden, its programs and events, unique features (what to expect), special collections and seasonal features, methods to donate and volunteer are up to date and active. Goals:
- a. Analyze existing site for strengths and weaknesses by November 2013.
 - b. Develop usage objectives and redesign criteria/features by December 2013, then begin redesigning and writing pages.
 - c. Develop plan to upgrade Drupal platform by February 2014 (include launch date, budget and redesign completion date in the plan).

Charitable Support and Grants

1. As a non-profit 501(c)3, MBG Inc. actively seeks contributions – **monetary and in-kind donations – on behalf of the garden and in support of its mission.** Annually, MBG Inc. expects to generate an amount at least equal to the level of the City funding through a combination of cash donations, in-kind contributions and monetary equivalent in volunteer service. Goals:
 - a. Develop and maintain a dynamic, committed Board of Trustees. Generate \$25,000 from Board contributions.
 - b. Conduct annual appeal campaign, seeking community and organizational support. Goal: \$25,000
 - c. Implement a new MBG Ambassador Council to provide a pathway to philanthropy within the community. Council members will act as "advocates, ambassadors and askers" on behalf of the Mead Botanical Garden and to generate interest/support for Board approved special and capital projects. Goal: Identify potential ambassador council members by December 2013. Begin recruitment in Spring 2014.

2. **To actively pursue cultural, environmental, horticultural and educational grants** (local, state and national, private and public) in support of Board approved goals and projects. Goals during FY 2013-14:
 - d. Maintain a state of organizational readiness in order that grant applications are efficiently and effectively produced. This goal includes identifying a potential grant writer who will familiarize themselves with MBG Inc., audit our readiness and make recommendations to improve organization potential to attain grant funding opportunities.
 - e. To develop and maintain relationships with potential co-sponsors (such as Orange Audubon and Native Plant Society) for grant applications.
 - f. To gain working knowledge of local and state funding organizations likely to support MBG Inc. goals and projects.
3. **Seek plant and horticultural supply in-kind donations** from local growers, botanical groups and individuals. Goal: achieve at least three donations valued at \$150 or more each.
4. **Develop sponsors for MBG Inc. existing and new community events.** Goal: achieve \$8,000 in Duck Derby Sponsorship. Identify and meet with at least 10 potential new sponsors for events and programs.

Community, Family and Cultural Programming and Events

1. **The Duck Derby** is more than an annual fundraising event (benefitting MBG). It has become a tradition among Central Florida families with pre-schoolers and elementary aged children. It is a wonderful way to introduce children to the garden and market the Young Naturalist Summer Camp to parents. Typically over 1500 people attend. Goals: February 2014. Sell a minimum of 800 ducks (ducks generally equate to children's attendance plus parents).
2. **The Grove** was established as an outdoor venue for musical performances and other cultural events. MBG Inc. is currently in discussion with performing arts groups and concert producers to secure turn-key concert management and programming for venue. Goal: Schedule in FY 2013-14 at least four cultural events, including those performed by the Florida Symphony Youth Orchestra.
3. **Develop additional community and/or family event for the fall season** that celebrates the beginning of the best gardening season in Central Florida, the coming flocks of migrating birds and the promise of cooler weather. Goal: Develop detailed plans for new event by summer 2014 to be held in FY 2015-16.

4. The **night blooming cereus cactus** produces a spectacular floral show. This occurs one night every year. Goal: June 2013 and June 2014. Notify the community of pending bloom display and encourage visitation leading up to and on the night of the bloom.
5. Work with City departments to promote and support their activities including **America in Bloom** program, **Earth Day**, and **Arbor Day**.
6. Invite **painting classes and artists** to engage in informal, impromptu plein air sessions in the garden throughout the year.

**Priorities Areas, Projects and Associated Goals
FY 2014-15 through 2015-16**

Projects listed below are priorities; implementation is subject to availability of funding.

1. Landscape The Grove area to create more shade and increase usability.
2. Install additional lighting in and leading to The Grove area for extended venue use and safety.
3. Master Plan continuation: incorporate usability elements such as interpretive signs, benches and other interactive elements.
4. Upgrade main entrance to garden on Denning Drive with new gateway.
5. Install additional perimeter plantings around the garden.
6. Establish a Wetlands Educational Center at the juncture of Howell Creek and the Lake Lillian wetlands marsh in the current environmental education building.
7. Establish WIFI service throughout the garden.

EXHIBIT “B”

QUARTERLY REPORT SCHEDULE FOR FISCAL YEAR 2013 - 2014

Quarterly progress and financial reports for the reporting periods indicated are due to the City Manager or his designee on the due date specified.

Progress reports should include:

Quarterly:

1. Revenues received and spending to date by category
2. Review of projects/program progress and meeting benchmarks
3. Copies of up-to-date Board minutes
4. Updates to Board membership

Mid-Year:

Presentation to City Commission of activities and progress to date

Annually:

1. Final Report on revenue and spending, program/project activities, benchmarks and successes
2. Presentation to City Commission
3. Updated application for next fiscal year
4. Site visit

Reporting Period Due Dates:

First Quarter (Oct. 1 to Dec. 31) - January 15, 2014

Second Quarter (Jan. 1 to Mar. 31) - April 15, 2014

Third Quarter (Apr. 1 to June 30) - July 15, 2014

Fourth Quarter (July 1 to Sept. 30) - Oct. 15, 2014

Reports may be sent by regular mail, e-mail or fax to:

City of Winter Park

ATTN: Peter M. Moore, Budget and Performance Measurement Manager

401 South Park Avenue

Winter Park, FL 32789

E-MAIL: pmoore@cityofwinterpark.org

FAX: (407) 599-3448

Agency acknowledges and understands that the quarterly reports required by this Agreement are a material provision of the Agreement and that the failure of Agency to submit a quarterly report when due shall constitute grounds by the City, in its discretion and in addition to any other right or remedy available to the City, to refuse to make any additional disbursements of Funds to the Agency until such report is filed in form and content acceptable to the City.

**FUNDING AGREEMENT FOR
FISCAL YEAR 2013 – 2014**

THIS FUNDING AGREEMENT, (“Agreement”) made and entered into this ____ day of _____, 2013, by and between the **CITY OF WINTER PARK , FLORIDA**, a municipal corporation organized and existing under the laws of the State of Florida, (“the City”), and **WINTER PARK HISTORICAL ASSOCIATION, INC.**, a Florida not for profit corporation ("the Agency").

WITNESSETH THAT:

WHEREAS, the Agency has applied to the City for a donation of funds in order to provide such services and programs (collectively the “Services”) as are set forth on **Exhibit "A"** attached hereto and incorporated herein by this reference; and

WHEREAS, the Agency is a tax-exempt entity, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, pursuant to 26 U.S.C. 501(c)(3), as further described in paragraph 5 herein; and

WHEREAS, the Agency maintains an independent Board of Directors; and

WHEREAS, these Services benefit, in whole or in part, the citizens of the City; and

WHEREAS, the City has determined that there is a public need for such Services and that a valid public purpose in promoting the general health, welfare and safety of the citizens of the City would be served by funding the Services; and

WHEREAS, in order to serve the public need and in furtherance of the public purpose, the City has appropriated funds to be granted to the Agency for providing such Services; and

WHEREAS, the parties mutually desire to enter into this Agreement whereby the Agency will receive and disburse the aforementioned funds of the City for the purpose of providing the Services in accordance with the terms and conditions set forth herein; and

WHEREAS, the Agency has available the necessary qualified and trained personnel, facilities, materials and supplies to perform the Services set forth in this Agreement; and

WHEREAS, the Agency agrees to report regularly to the City on its progress in providing the Services, as further described in paragraph 4 herein.

NOW, THEREFORE, in consideration of the promises and of the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties, the parties hereby agree as follows:

1. INCORPORATION OF PREAMBLE. The preamble of this Agreement set forth above is true and correct and is incorporated herein by this reference as if fully set forth below.

2. FUNDING; PERFORMANCE OF SERVICES. The City has heretofore appropriated, for the period commencing October 1, 2013, and ending September 30, 2014, the total sum of **Seventy Thousand Dollars (\$70,000.00)**.

3. The City's contribution shall be made to the Agency in four (4) quarterly payments of **Seventeen Thousand Five Hundred Dollars (\$17,500.00)**, unless otherwise approved and authorized in writing by the City Manager or his designees. All payments by the City shall be contingent upon: (a) receipt and approval by the City of the progress and financial reports specified in Paragraph 4 below; (b) inclusion of the audit provisions set forth in Paragraph 7 below in sub-recipient agreements; and (c) compliance by the Agency with any and all requirements, terms and conditions contained in this Agreement, including the provision of the Services by the Agency. Contingent upon all requirements having been met, payments will be disbursed on or about the 15th day of each quarter in the amounts set forth above; provided, however that to allow the City time to process this Agreement, the City shall have until the later of (i) the 15th day of the first month of the term of this Agreement or (ii) thirty (30) days following execution of the Agreement by all parties to make the first payment hereunder. Any Funds received by Agency which are not expended by Agency to provide or perform the Services set forth herein prior to December 31, 2014, shall be repaid to the City no later than December 31, 2014, unless an extension of time for such expenditure is granted by the City Manager or his designee in writing.

4. PROGRESS AND FINANCIAL REPORTING. The Agency agrees to submit progress and financial reports on a quarterly basis to the City Manager or his designee in form and content acceptable to the City Manager or his designee in accordance with the schedule set forth on **Exhibit "B"** attached hereto and incorporated herein by this reference. At a minimum, subject to requests for additional information by the City Manager or his designee, such progress reports shall include an evaluation of the Services and must indicate the amount or level of Services provided to City residents. Agency will collect demographic information about its customers and will provide this data to City. Moreover, the quarterly reports shall be consistent with the Services detailed herein and shall identify expenditures associated with or related to the Funds. Failure to comply with the requirement for submission of such reports in form and content acceptable to the City Manager or his designee shall constitute grounds for termination of this Agreement and may result in the ineligibility of the Agency to receive contributions from the City. Completion of the prior year's reporting requirements, if any, and submission of all required annual financial statements are a prerequisite to receipt of any payment under this Agreement.

5. 501(c)3 STATUS. Agency represents and warrants to City that it has applied for and received tax exempt status from the United States Internal Revenue Service ("IRS") as a 501(c)3 organization as evidenced by a determination letter from the IRS. A copy of the IRS letter approving Agency's tax exempt status shall be provided to the City prior to the distribution of any Funds to Agency. The Agency will maintain its tax exempt status with the IRS and its status as an active entity in good standing with the State of Florida throughout the term of this Agreement. If the Agency should, during the term of this Agreement, lose its IRS tax exempt status or its active or non-profit status with the State of Florida, it will immediately notify the City, and the City reserves the right to terminate this Agreement immediately and discontinue payments to the Agency.

6. NONDISCRIMINATION. The Agency agrees that it shall not unlawfully discriminate in the provision of Services. Agency shall provide Services without regard to race, color, creed, sex, sexual orientation, age, national origin, disability or marital status and in compliance with Title VII of the Civil Rights Act of 1964 as amended, and any and all other applicable federal, state or local laws,

rules or regulations, whether presently existing or hereafter promulgated. Agency shall not use any portion of the Funds for religious instruction, worship, proselytizing, or any other unauthorized purpose.

7. ACCOUNTING AND AUDIT. If the Agency's total annual budget is equal to, or exceeds, \$250,000 the Agency will submit copies of its audited annual financial statements to the City. If the Agency's total annual budget is less than \$250,000 the Agency will submit copies of its last two years' tax returns. Copies of the audit or tax returns will be submitted: (1) upon execution of this Agreement (or as soon thereafter as such statements are prepared) for the Agency's immediately preceding fiscal year and (2) thereafter for each fiscal year of Agency during which it receives or expends any Funds from the City under this Agreement such statements shall be submitted upon completion by the Agency which submission date shall not exceed one hundred eighty (180) days following the end of the Agency's fiscal year. For all financial statements and records related to the Funds, the Agency will utilize those accounting practices and procedures and maintain those records regarding receipts and disbursements of the Funds as are in accordance with Generally Accepted Accounting Principles (GAAP). All such records shall be open to inspection and audit by the Assistant to Director or by the Assistant to Director's designee during normal business hours during the term of this Agreement. Additionally, the Agency will maintain its books and records related to the Services provided utilizing the Funds, and the City will be entitled to audit such books and records, for a period of five (5) years from the date of the last payment under this Agreement. Any cost incurred by the Agency as a result of an audit shall be the sole responsibility of, and shall be borne by, the Agency. In addition, should the Agency provide any or all of the Funds to sub-recipients, then, and in that event, the Agency shall include in its written agreements with such sub-recipients a requirement that records of the sub-recipient be open to inspection and audit by the City or the City's designee to the same extent as those of the Agency.

8. MONITORING. The Agency will permit the City and the City's designees to monitor the Services to ensure compliance with the terms of this Agreement. The Agency shall, to assist in the monitoring of its Services, provide the City and the City's designees with access to all client records and such other information as the City may deem necessary within a reasonable time upon written request of the City. In the event of breach of this Agreement by Agency, the City reserves the right to pursue all legal and equitable remedies available to it including, but not limited to, the right to suspend or terminate payments under this Agreement and the right to restitution with respect to any Funds utilized by the Agency in a manner which is not in conformance with the terms of this Agreement. Agency shall make restitution to the City of any Funds not used in conformance with the terms of this Agreement within fifteen (15) days of demand by the City.

9. TERMINATION. This Agreement may be terminated by either party at any time, with or without cause, upon written notice to the other party. Said notice shall be delivered in the manner set forth in Paragraph 21 below. The termination of this Agreement shall not relieve the Agency from any obligations under this Agreement with respect to funds paid to the Agency prior to termination.

10. INDEMNIFICATION. The Agency agrees to indemnify, defend and save harmless the City from and against any and all liability, claims, demands, damages, expenses, fees, fines, penalties, suits, proceedings, actions and cost of actions, including attorneys' fees for trial and on appeal, of any kind and nature arising or growing out of or in any way connected with any or all of the following: (1) the acts or omissions of the Agency, its employees, officers, Directors, sub-recipients or agents related to this Agreement, (2) the provision of any Services by the Agency, its sub-recipients or agents, or (3) the mere existence of this Agreement itself.

11. **NO WAIVER.** Continued performance by either party after a default or violation of any of the terms, covenants or conditions herein shall not be deemed a waiver of any right to terminate this Agreement or elect any other remedy or action, nor shall it be construed or act as a waiver for any subsequent default.

12. **CONSTRUCTION; SEVERABILITY.** This Agreement shall be construed in accordance with the laws of the State of Florida. It is agreed to by the parties that if any covenant, condition or provision contained in this Agreement is held to be invalid by any court of competent jurisdiction, such invalidity shall not affect the validity of any other covenants, conditions or provisions contained herein.

13. **NONASSIGNABILITY.** The Agency may not assign its rights or obligations under this Agreement without the prior written consent of the City Manager or his designee, which assignment may be agreed to, denied, or conditioned in part or in whole as the City Manager or his designee deems appropriate in his or her sole discretion. A successor agency does not automatically have any rights to the Funds disbursed under this Agreement by its position as a successor. A successor agency must receive prior approval from the City Manager or his designee before it can receive Funds. Failure to comply with this section may result in immediate termination of this Agreement.

14. **THIRD PARTY BENEFICIARY.** This Agreement is solely for the benefit of the parties signing hereto and no right, nor any cause of action shall accrue to or for the benefit of any third party.

15. **NO JOINT VENTURE.** It is mutually understood and agreed that nothing contained in this Agreement is intended to or shall be construed as creating, or shall in any way create or establish a relationship as partners or joint ventures between the parties hereto or constitute the Agency as the agent or representative of the City for any purpose or in any manner whatsoever.

16. **VENUE.** Exclusive venue in any action to construe or enforce the provisions of this Agreement shall be in the Circuit Court of and for Orange County, Florida and shall be governed by the laws of the State of Florida. The Agency agrees to notify the City in writing within ten (10) business days of the occurrence of any incident or action such as, but not limited to, lawsuits, injuries, or allegations of abuse or neglect filed against the Agency, related to the Services provided under this Agreement.

17. **CORPORATE TABLE/TICKETS.** In the event the Agency holds a fundraising event, the Agency agrees to give the City, upon its request, up to the number of tickets available to a top level event sponsor at no cost in consideration of the contribution provided to the Agency under this Agreement. This provision may be waived by the City Manager or his designee.

18. **CREDITS.** The Agency will give written credit to the City as a sponsor/financial supporter in all acknowledgements, brochures, catalogues, invitations, press releases, printed materials, and all other marketing, promotions and advertising related to the Services. The form and manner of such written credit shall be mutually agreed to by the parties. This provision may be waived by the City Manager or his designee.

19. **INSURANCE.** The Agency will have in force during the term of this Agreement the insurance coverages listed below. Current and valid certificates of insurance for said insurance coverages will be provided to the City Manager or his designee upon execution of this Agreement by the Agency.

Upon the expiration or modification of such certificates of insurance, the Agency shall provide continuing proof of insurance to the City Manager or his designee for the coverages listed below. The insurance coverages shall contain a provision that forbids any cancellation, changes or material alterations in the coverages without providing thirty (30) days written notice to the City (except for cancellation of a policy for non-payment which may provide for a minimum of ten (10) days notice to the City).

a. Commercial General Liability -- The Agency will provide and maintain a commercial general liability policy with limits of not less than \$1,000,000 per occurrence and in the aggregate, for bodily injury and property damage.

b. Automobile Liability -- The Agency will provide coverage for all owned, non-owned and hired vehicles with limits of not less than \$500,000 per occurrence, combined single limits for bodily injury and property damage.

c. Workers' Compensation -- The Agency will provide full and complete Workers' Compensation coverage as required by Florida state law, as well as Employer's Liability coverage of not less than \$100,000.

d. Employee's Honesty Insurance (Fidelity Insurance) -- The Agency will provide coverage of not less than \$10,000 per occurrence.

20. **ENTIRE AGREEMENT.** This Agreement, including any Exhibits hereto, contains all the terms and conditions agreed to by the parties. No other agreement, oral or written, regarding the subject matter of this Agreement shall be deemed to exist or to bind either party hereto.

21. **NOTICE.** Any and all notices to be delivered hereunder shall be in writing and shall be deemed to be delivered:

- (i) when hand delivered to the person hereinafter designated,
- (ii) on the date of deposit in the United States Mail, return receipt requested, or
- (iii) on the date such notice is given into the possession of a national delivery company, including but not limited to Federal Express, for delivery requiring signature acceptance,

addressed to a party at the address set forth below, or at such other address as the applicable party shall have specified, from time to time, by written notice to the other party delivered in accordance herewith. The City Manager or his designee shall have full authority to send all notices related to this Agreement on behalf of the City. The parties' addresses are as follows:

City: **City of Winter Park**
Attention: Peter M. Moore
Budget and Performance Measurement Manager
401 South Park Avenue
Winter Park, Florida 32789

Copy to: **Usher L. Brown**
City Attorney
111 North Orange Avenue

Suite 2000
Orlando, FL 32802

Agency:

Winter Park Historical Association, Inc.

Attention: Susan Skolfield

Executive Director

Address: P.O. Box 51

Winter Park, FL 32790

IN WITNESS WHEREOF, the parties hereto have executed these presents and have set their hands and seals the day and year first above written.

CITY OF WINTER PARK, FLORIDA

BY: _____
Mayor Kenneth W. Bradley

ATTEST:

Cynthia Bonham, City Clerk

STATE OF FLORIDA
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me this _____ day of _____, 2013, by Kenneth W. Bradley, Mayor, of the City of Winter Park, who is personally known to me.

Notary Public – State of Florida
Print Name: _____
My Commission expires: _____

**WINTER PARK HISTORICAL ASSOCIATION,
INC., a Florida Not-For-Profit Corporation**

BY: _____

Print Name: _____

Title: _____

STATE OF FLORIDA
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me this _____ day of _____, 2013, by _____ the _____ of **Winter Park Historical Association, Inc.**, (check one) ☐ who is personally known to me or ☐ who provided a Florida driver's license as identification.

Notary Public – State of Florida
Print Name: _____
My Commission expires: _____

EXHIBIT “A”

Service Provided to the City of Winter Park by the WPHA

The **Children's 2013-14 Program** will provide services to children 0-4 years old and create interactive play and stories at the museum. This experience introduces children to City history. This season will be launched by a newly created storybook character, Violet, Princess of the Peacocks, who resides in Winter Park. (Please note that we know the design is essential to the success of the character and reflective of the City. Be assured that the City Communications Department is on the review committee of this mascot-to-be.)

The **Crealdé** project is a historic photo documentation of Winter Park business life in 2013. Selected were 28 businesses throughout Winter Park. Professional exterior and interior shots, including patrons and shop merchandise will be documented. This collaboration provides permanent and professional documentation for our archives. Selected pieces will be on display at the Heritage Center and will be introduced at a well-publicized public reception in July 2014.

The **museum** will continue to be maintained by the WPHA and open Tuesday-Friday, 10AM-4PM, Saturday 9AM-2PM. (The museum will close during February 2014 for exhibition installation and in August.) Experienced docents will continue to greet visitors, answering Winter Park history questions, as well as providing information on retail, dining and cultural venues.

Fifty percent of **staff management** directly supports museum and community services through development, supervision and promotion of these services.

An inventory of important City archives is stored in a climate controlled, off-site space. **Archival services** also include the active collection, documentation and preservation of relevant pieces of Winter Park history and the costs of archiving materials.

The current exhibition, *Growing Up Wildcat: Winter Park High School Through the Years*, is open through January 2014. The new exhibition *Whistle in the Distance: The Trains of Winter Park* will open in March 2014. This exhibit will feature a tribute to the essential role of the train in Winter Park's development—from the first train that rolled into Winter Park to the commuter rail set to be launched in 2014. Interactive activities will include an 'on the train' experience from Boston to Winter Park in the 1880s.

The 2013-14 Winter Speaker Series will feature the very popular storytelling program. This session is filmed for our archives as we record the best stories of Winter Park told by a cross section of citizens. This fall, the WPHA will partner with Casa Feliz to bring Dr. Gary Mormino, a noted Florida historian, to Winter Park.

EXHIBIT A SERVICES

Programming Overview and Attendance Goals October 1, 2013 – September 30, 2014

Displays, Exhibitions and Children's Activities	
<ul style="list-style-type: none">• Exhibitions <i>Growing Up Wildcat: Winter Park High School Through the Years</i> will be open thru January 2014 – an interactive experience for visitors of all ages, including a 1947 authentic, working jukebox and floor to ceiling visual images of the school and past students. <i>Whistle in the Distance: The Trains of Winter Park</i> opening in March of 2014 is an engaging look at the trains' impact on our City as both freight and people mover. The exhibition will explore how trains created the city's growth in the late 1800s and how future trains including Sun Rail will play an important role in the future of Winter Park.• Museum Docents The Winter Park History Museum will provide over 900 hours of docent supported museum hours open free to the public.• Timeline One hundred and twenty five years of City history represented in a timeline format on a permanent wall panel in the museum• Children's Program To complement the train exhibition, a professionally designed program with music, entertainment and hands-on activities for children up to 5 years old located at the history museum. There are 25 shows scheduled for the season.• Children's History Detective Hunt A history adventure that takes children all through Central Park as they track down the answers to the detective hunt. This experience gives children an insider's view of Winter Park and engagingly connects them to City history.	<p>9,600 attendees</p> <p>900 hours</p> <p>250 children</p> <p>200 distributed</p>

<ul style="list-style-type: none"> • Speaker Program A series of programs (3) designed to complement and enhance the scope of the train exhibition; programs are open to the public without charge at the Winter Park Welcome Center. • Walking Tour of Historic Downtown A free and comprehensive brochure, available to any museum visitor, the walk begins at the museum and takes the visitor to 24 historic city properties. 	<p>120 attendees</p> <p>400 distributed</p>
Collaborations	
<ul style="list-style-type: none"> • A photo documentary collaboration, with Crealdé School of Art, designed to professionally capture the people, architecture and retail inventory of business life in 2013. There are 28 businesses selected for documentation (both interior and exterior views) located throughout Winter Park . This project involves 14 photographers and addresses the absence of quality photos of our business districts. • A public exhibition of the aforementioned Winter Park business photographs will be installed in the Hannibal Square Heritage Center exhibition space for three months, summer 2013 • Assist the City Communications Department, as related to historic research and City events • A partnership with Friends of Casa Feliz developing and promoting a Speaker Program, in November 2013 • Provide, display and distribute in the Winter Park History Museum informational brochures for the following cultural institutions: Chamber of Commerce Scenic Boat Tour Cornell Fine Arts Museum Bach Festival Charles Hosmer Morse Museum of American Art Hannibal Square Heritage Center Albin Polasek Museum Crealdé School of Fine Arts 	<p>800 attendees (over 3 months)</p> <p>60 attendees</p> <p>3,000 distributed</p>
Direct Community Activities and Services	
<ul style="list-style-type: none"> • Provide, without charge, the new Children's Program to the Winter Park Day Nursery, Welbourne Day Nursery and Winter Park United Methodist Church, for their 2-4 year old children. 	

<ul style="list-style-type: none"> • Video tape and preserve histories from a variety of Winter Park citizens at a “storytelling” session involving 5-7 Winter Park residents. This event is scheduled as a Speaker Program. • Provide historic research services, without charge, to citizens, organizations, scholars and the press • Maintain and make publicly available the 133 oral histories from local city residents that have been collected over the past 50 years • Continue to professionally archive and store Winter Park artifacts and documents of importance, in temperature controlled space. • Provide six specially designed museum tours for diverse audiences such as Leadership Winter Park, senior citizen groups and school classes. 	120 attendees
Public Receptions and Social Enrichment	
<ul style="list-style-type: none"> • Community-wide invitation (free) to the opening of the Spring 2014 scheduled exhibition, <i>Whistle in the Distance: The Trains of Winter Park</i>, held at the Winter Park History Museum and Farmer’s Market • Community-wide Holiday Party at a historic Winter Park venue in December 2013. • A free community-wide grand opening at the Hannibal Square Heritage Center with Crealdé School of Art featuring the best of the Winter Park business photos from the above described project. 	300 attendees 175 attendees 250 attendees
Total projected program and museum attendance	11,675
Total projected Winter Park informational, educational and/or marketing materials distributed	3,600
Total projected number of museum docent hours	900

EXHIBIT “B”

QUARTERLY REPORT SCHEDULE FOR FISCAL YEAR 2013 - 2014

Quarterly progress and financial reports for the reporting periods indicated are due to the City Manager or his designee on the due date specified.

Progress reports should include:

Quarterly:

1. Revenues received and spending to date by category
2. Review of projects/program progress and meeting benchmarks
3. Copies of up-to-date Board minutes
4. Updates to Board membership

Mid-Year:

Presentation to City Commission of activities and progress to date

Annually:

1. Final Report on revenue and spending, program/project activities, benchmarks and successes
2. Presentation to City Commission
3. Updated application for next fiscal year
4. Site visit

Reporting Period Due Dates:

First Quarter (Oct. 1 to Dec. 31) - January 15, 2014

Second Quarter (Jan. 1 to Mar. 31) - April 15, 2014

Third Quarter (Apr. 1 to June 30) - July 15, 2014

Fourth Quarter (July 1 to Sept. 30) - Oct. 15, 2014

Reports may be sent by regular mail, e-mail or fax to:

City of Winter Park

ATTN: Peter M. Moore, Budget and Performance Measurement Manager

401 South Park Avenue

Winter Park, FL 32789

E-MAIL: pmoore@cityofwinterpark.org

FAX: (407) 599-3448

Agency acknowledges and understands that the quarterly reports required by this Agreement are a material provision of the Agreement and that the failure of Agency to submit a quarterly report when due shall constitute grounds by the City, in its discretion and in addition to any other right or remedy available to the City, to refuse to make any additional disbursements of Funds to the Agency until such report is filed in form and content acceptable to the City.