

# **Regular Meeting**

October 14, 2013 3:30 p.m. Commission Chambers

commissioners		mayor	commissioners			ioners		
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	
Invocation Reverend Jim Govatos, Aloma United Methodist Churce Pledge of Allegiance	ch
3 Approval of Agenda	
A Mayor's Donort	
4 Mayor's Report	
a. Proclamation - Week of the Family	
<ul> <li>b. Presentation - Employee of the Quarter; Luke Dunning, Operator</li> </ul>	3,
Lakes Division	10 minutes
<ul> <li>Board appointments: Code Enforcement Board, Utilities Advisory</li> </ul>	/
Board, Pedestrian and Bicycle Board	
	- · · · · -
5 City Manager's Report	<b>Projected Time</b>
6 City Attorney's Depart	Ducingted Time
6 City Attorney's Report	Projected Time
7 Non-Action Items	Projected Time

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

## **Projected Time**

- a. Approve the minutes of 9/23/13.
- b. Approve the following purchases, contract and formal solicitation:
  - Blanket Purchase Order to ENCO Utility Services for FY14 professional services (operations and maintenance); \$4,000,000.
  - 2. Blanket Purchase Order to Seminole Electric Cooperative, Inc. for FY14 purchase of bulk power (ITN-33-2010); \$2,300,000.
  - 3. Blanket Purchase Order to Duke Energy for FY14 power transmission for first quarter (ITN-33-2010); \$550,000.
  - 4. Blanket Purchase Order to Duke Energy for FY14 bulk power for first quarter (ITN-33-2010); \$3,700,000.
  - 5. Blanket Purchase Order to Air Liquide Industrial Company for FY14 liquid oxygen for water treatment facilities; \$150,000.
  - 6. Blanket Purchase Order to Odyssey Manufacturing Company for FY14 12.5% sodium hypochlorite for water & wastewater treatment facilities; and authorize the Mayor to execute the piggyback contract; \$150,000.
  - 7. Blanket Purchase Order to Stephen's Technology for FY14 trenchless repairs to sanitary sewer mains; \$185,000.
  - 8. Blanket Purchase Order to Perma-Liner Industries for FY14 lateral lining materials for sewer repairs; \$85,000.
  - 9. Blanket Purchase Order to Masci General Contractor, Inc. for Fairbanks Avenue Roadway and Wastewater System Improvements (IFB-10-2012); \$1,247,148.10.
  - 10. Blanket Purchase Order to City of Altamonte Springs for FY14 wholesale sewer treatment; \$126,500.
  - 11. Blanket Purchase Order to SSNOCWTA for FY14 operation & maintenance; depreciation per Interlocal Agreement; \$600,000.
  - 12. Blanket Purchase Order to City of Orlando for FY14 sanitary sewer charges for McLeod/Asbury; \$385,000.
  - 13. Blanket Purchase Order to Duval Asphalt for E-Z street cold asphalt; \$50,000.
  - 14. Purchase Requisition 153296 to City of Orlando for wastewater system revenue bond series 1984 30<sup>th</sup> Annual payment Asbury Park Agreement; \$231,493.10.
  - 15. Blanket Purchase Order to CH2M Hill for Fairbanks Avenue roadway & wastewater improvements; \$263,491.00.
  - **16.** Blanket Purchase Order to DeYoung Law Firm for legal services under contract signed February 8, 2013; 50,000.
  - 17. Blanket Purchase Order to GATSO USA and to exercise the last renewal option for red light safety enforcement under RFP-13-2009; \$441,600.

5 minutes

18.	Piggyback	ing C	ity of Da	yto	na Beach	contr	act Resolu	ition 13	-159
	with USA	Serv	ices, Ind	c. fo	or mechar	nical	sweeping	service	and
	authorize	the	Mayor	to	execute	the	piggybac	k cont	ract;
	\$205,247.	64.							

- c. Authorize purchase orders of \$54,000; \$68,000; \$108,000 and \$150,000 for several independent contractors who provide specialized and confidential investigative services on behalf of the High Intensity Drug Trafficking Agency (HIDTA). Additionally, approve a purchase order of \$110,000 for facility expenses of HIDTA.
- d. Ratify the Winter Park Firefighter's Local 1598 IAFF Labor Contract.
- e. Approve the ground lease for Verizon for co-location of cell antennae on the public safety cell tower; authorize the Mayor to execute the ground lease and Memorandum of Lease (MOL)

10 Action Items Requiring Discussion	<b>Projected Time</b>
a. Senate Bill 50 and Resolution No. 1978-07	20 minutes
b. Urban Forestry Management Plan	30 minutes
c. Visioning Planning Process	30 minutes
d. Territorial Agreement With Duke Energy Florida	20 minutes

Public Hearings	<b>Projected Time</b>
a. Ordinance – Amending Section 34-30, Title and Ownership of lots and spaces in the City cemeteries, to clarify the ownership interest that may be conferred and to add provision for the City to regain ownership of abandoned rights to be buried within a municipal	10 minutes
<ul> <li>cemetery (2)</li> <li>b. Ordinance - Amending Chapter 26 Article III "Film Industry" to streamline the film permitting process and amend certain provisions (1)</li> </ul>	15 minutes
c. Ordinance – Amending the Firefighters' Pension Plan (1)	10 minutes

12 City Commission Reports	<b>Projected Time</b>
<ul> <li>a. Commissioner Leary</li> </ul>	
<ul><li>b. Commissioner Sprinkel</li></ul>	
c. Commissioner Cooper	10 minutes each
d. Commissioner McMacken	
e. Mayor Bradley	

# appeals & assistance

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<sup>&</sup>quot;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).

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

# WINTER PARK 2013 MAYORAL ADVISORY BOARD APPOINTMENTS, October 14, 2013

- - - -

		Board				
City Board	<b>Mayoral Action</b>	Member Name				
Code Enforcement Board	Appoint to position resigned by Fred Jones, (now till 2014) Appoint to Alternate Position	Jennifer Pending	Frank			
KWPB and Sustainable	Appoint to position resigned by Myriam Garzon from Alternate (now to 2015)  Appoint to Alternate	Carole Mark	Kostick Roush	733 Granvi Winter Park	FL	32789
Pedestrian and Bicycle Board	Appoint to position resigned by Elizabeth Hemphill, (now to 2015)	Susan	Pins	111 Spring Winter Park	FL	32789
Utilities Advisory Board	Appoint to Alternate Position	Richard	James	1551 Dale , Winter Park	FL	32789

# **Cindy Bonham**

From:

Cindy Bonham

Sent:

Wednesday, May 29, 2013 3:10 PM

To:

Cindy Bonham

Subject:

Citizen Board Application - Jennifer Frank CEB, P&R, KWPB&S

From: info@cityofwinterpark.org [mailto:info@cityofwinterpark.org]

Sent: Wednesday, May 29, 2013 3:07 PM

To: jennifer@jcfranklaw.com

Cc: Cindy Bonham; Michelle Bernstein

Subject: Citizen Board Application - submission received

#### Dear Mr. or Ms. Frank:

Thank you for submitting your application to be considered for the Code Enforcement Board, Parks & Recreation Advisory Board and Keep Winter Park Beautiful & Sustainable Advisory Board. Your application will be on file for one year after the submission date. We appreciate your interest in serving the City of Winter Park.

Name: Jennifer Frank

E-Mail: jennifer@jcfranklaw.com

Home Address: 2170 Blossom Ln.

Winter Park, FL 32789

Business Address: 815 Orienta Ave., Suite 1030

Altamonte Springs, FL 32701

#### Board 1: Code Enforcement Board

Skills: Attorney (specialize in Family Law) which includes some involvement in assisting my clients with preparation and recording of deeds. General legal knowledge. Extensive dispute resolution training and, in addition to representing clients, also serve as a Family Law Certified Mediator in my

private practice.

Board 2: Parks & Recreation Advisory Board

**Skills:** In addition to skills listed above, frequent user of local parks with 4 year old daughter and husband.

Board 3: Keep Winter Park Beautiful & Sustainable Advisory Board

Skills: See above.

Are you a registered voter? yes

Are you a resident of the yes

city?

Do you own property in the yes

city?

Do you hold a public office? no

Are you employed by the no

city?

May we automatically yes submit your application when vacancies occur?

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

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

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

Community Involvement: 1. Currently sit on the Board of Florida Symphony Youth Orchestra. 2. Currently sit on the Board of the Central Florida Family Law American Inns of Court (also active on the subcommittee for the Cherokee Elementary School playground improvement project - April 2013). 3. In years past, I have served by sitting on, and ultimately co-chairing, the Orange County Bar Association Family Law Committee as well as serving as Chair of a Grievance Committee for the Florida Bar Association.

Work Experience: 1. Frank Family Law Practice, President/Owner. 2008 to present, Florida Bar Board Certified specialist in Family law. Represent clients in all manners of family law matters. Also act as a Certified Family Law Mediator within my private law practice. 2. Aikin Family Law Group. Partner 2005 to 2008 (Associate 2002 to 2005). 3. Drage, deBeaubian, Knight Simmons, Mantzaris and Neal. Associate Attorney 1996 to 2002. 4. Gulfcoast Legal Services. Attorney 1994 to 1996.

Educational Experience: 1. University of Miami School of Law. Graduated 1994. 2. Western Michigan Univ. Bachelor of Science. Graduated 1990. 3. Continuing Legal Education in Alternative Dispute Resolution (continued Mediation as well as Collaborative Law training) and in Family Law.

From:

info@cityofwinterpark.org

Sent:

Monday, March 11, 2013 1:36 PM

To:

roushmrk@yahoo.com

Cc:

Cindy Bonham; Michelle Bernstein

Subject:

Citizen Board Application - submission received

#### Dear Mr. or Ms. Roush:

Thank you for submitting your application to be considered for the Keep Winter Park Beautiful Board and Economic Development Advisory Board. Your application will be on file for one year after the submission date. We appreciate your interest in serving the City of Winter Park.

Name: Mark Roush

E-Mail: roushmrk@yahoo.com

Home Address: 733 Granville Dr

Winter Park, FL 32789

Business Address: 1675 East Buena Vista Dr, Suite 310

Lake Buena Vista, FL 32830

Board 1: Keep Winter Park Beautiful Board

Skills: Geeral Busiess, citizen and interest in community

Board 2: Economic Development Advisory Board

Skills: General Business, Master of Finance degree

Board 3:

Skills:

Are you a registered voter? yes

Are you a resident of the yes

city?

Do you own property in the yes

city?

Do you hold a public office? no

Are you employed by the no

city?

May we automatically yes submit your application

when vacancies occur?

Do you have any potential no

conflicts of interest that may arise from time to time if

you serve on one of these

boards?

Are you currently serving on no

a city board(s)?:

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

# **Community Involvement:**

Work Experience: Employed by Disney Parks and Resorts for 23 years in

progressive roles in Finance and Human Resources. I am

currently Director of Human Resources.

Educational Experience: Master of Finance, Georgia State University BBA Business

Management, College of William and Mary

## **Cindy Bonham**

From:

Cindy Bonham

Sent:

Monday, March 11, 2013 8:28 AM

To:

Cindy Bonham

Subject:

Citizen Board Application - Susan Pins Ped&Bicycle, Ethics, PAAB

From: info@cityofwinterpark.org [mailto:info@cityofwinterpark.org]

Sent: Monday, March 11, 2013 8:08 AM

To: spins111@qmail.com

Cc: Cindy Bonham; Michelle Bernstein

Subject: Citizen Board Application - submission received

Dear Mr. or Ms. Pins:

Thank you for submitting your application to be considered for the Pedestrian & Bicycle Board, Ethics Board and Public Art Advisory Board. Your application will be on file for one year after the submission date. We appreciate your interest in serving the City of Winter Park.

Name: Susan Pins

E-Mail: spins111@gmail.com

Home Address: 111 Spring Lane

Winter Park, FL 32789

Business Address: na

Board 1: Pedestrian & Bicycle Board

Skills: I rarely use my car in WP. I cycle and/or walk and know the

improvements that would enhance my cycling experience.

Board 2: Ethics Board

Skills: PH.D. Psychology and have taught ethics class

Board 3: Public Art Advisory Board

Skills: I am an artist and a collector of art

Are you a registered voter? yes

Are you a resident of the yes

city?

Do you own property in the yes

city?

Do you hold a public office? no

Are you employed by the no

city?

May we automatically yes submit your application

when vacancies occur?

Do you have any potential no

conflicts of interest that may arise from time to time if you serve on one of these boards?

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

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

Community Involvement: League of Women Voters, Unitarian Church

Work Experience: Retired. UCF Assistant to the President; College of Business,

Director of External Activities; Children Home Society

corporate office, fund raiser and board liason; Private Practice

therapy, college teacher.

Educational Experience: B.A. Carnegie Mellon; M.Ed. from Rollins and PhD from

UF.

# **Cindy Bonham**

From:

Cindy Bonham

Sent:

Wednesday, March 20, 2013 11:18 AM

To:

Cindy Bonham

Subject:

Citizen Board Application - Richard James Utilities Advisory Board

From: info@cityofwinterpark.org [mailto:info@cityofwinterpark.org]

Sent: Wednesday, March 20, 2013 11:10 AM

**To:** <u>rhjames@oriondevgroup.com</u> **Cc:** Cindy Bonham; Michelle Bernstein

Subject: Citizen Board Application - submission received

#### Dear Mr. or Ms. James:

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

Name: Richard James

E-Mail: rhjames@oriondevgroup.com

Home Address: 1551 Dale Avenue

Winter Park, FL 32789

Business Address: 1551 Dale Avenue

Winter Park, FL 32789

Board 1: Utilities Advisory Board

Skills: Electrical engineer/computer scientist; project management;

corporate executive;

Board 2:

Skills:

Board 3:

Skills:

Are you a registered voter? yes

Are you a resident of the yes

city?

Do you own property in the yes

city?

Do you hold a public office? no

Are you employed by the no

city?

May we automatically yes

submit your application

when vacancies occur?

Do you have any potential no

conflicts of interest that may arise from time to time if you serve on one of these boards?

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

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

Community Involvement: coach - Winter Park Little League volunteer - WPHA and

Casa Feliz pro-bono work for Winter Park Fire Department

(EMS inventory system)

Work Experience: 28 years as engineer/program manager/corp executive in

defense modeling/simulation industry 14 years as professor at

Rollins 5 years as entrepreneur (consultant)

Educational Experience: BS Electrical Engineer (Univ of Florida) MS Computer

Science (FIT) PhD Computer Science (FIT)

item type

City Manager's Report

meeting date

October 14, 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.	Installation to begin in November 2013
Fairbanks Improvement	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.	Construction Project Contractor behind schedule. Poor quality striping being addressed.
Project	<ul> <li><u>Communication Notices</u></li> <li>Jackson lift station is largely complete.</li> <li>Pavement striping this week.</li> <li>Working with future customers regarding connection to gravity sewer.</li> </ul>	Connection to sewer instructions posted on City website.
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.	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.	November-December 2013
Territory Negotiations	Duke Territorial Agreement on agenda	October 14, 2013
New Hope Baptist Church Project	The Pastor recently authorized additional work with a new project manager who has been working on completing the skirting on the portables, placing the handicap ramp and steps in place, performing grading on the site and hiring a new plumber to complete work on the restrooms. The daughter of the Pastor is still pursuing licensing w DCF as a faith based child care facility.	Fall of 2013 (per Pastor)

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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.

# REGULAR MEETING OF THE CITY COMMISSION September 23, 2013

The meeting of the Winter Park City Commission was called to order by Mayor Kenneth Bradley at 3:30 p.m. in the Commission Chambers, 401 Park Avenue South, Winter Park, Florida. The invocation was provided by Pastor Samuel Dade Jr., Patmos Chapel Seventh Day Adventist Church, followed by the Pledge of Allegiance.

Members present:

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

City Manager Randy Knight
City Attorney Larry Brown
City Clerk Cynthia Bonham
Deputy City Clerk Michelle Bernstein

## Approval of the agenda

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

## **Mayor's Report**

a. 2013 Third Quarter Business Recognition Award - Millers Hardware

Dori Stone, Director of Planning & Community Development, and Debra Hendrickson, Winter Park Chamber of Commerce, presented Steve Miller of Miller's Hardware with the Third Quarter 2013 Business Recognition Award.

b. <u>Universal Public Procurement Certification Council (UPPCC) Agency Certification Award 2013 – Purchasing Division</u>

Mayor Bradley recognized the City's Purchasing Division for receiving the 2013 Procurement Counsel Agency Certification Award. Purchasing Manager Althea Pemsel presented the award to Purchasing Agent Jennifer Jones and recognized both Jennifer and Anthony Durrum for achieving this certification.

# City Manager's Report

#### 940 W. Canton Avenue (former State DMV property)

City Manager Knight provided an update regarding the numerous trees that were recently removed from this property. He explained that prior to removal the developer and City staff conducted a site visit to assess the overall conditions of the existing trees. Many of the trees that were located outside of the building pad were in distress and not worth saving. The developer has submitted an elaborate landscape plan and reassured the City that they will make this property look better than it was previously.

#### Miscellaneous Items

- 1. Mayor Bradley advised the Commission that there was a tree taken down in the City's ROW on Summerlin Avenue and per the request of the resident City Manager Knight is investigating the matter. The residents said they have invested more than \$17,000 over the past 15 years maintaining this tree and have asked the City to replant their yard and to explain the process of why the tree was taken down.
- 2. City Manager Knight answered questions and advised that a report will be forthcoming pertaining to the Strategic Planning session that was held on September 6.
- 3. Commissioner Cooper shared concerns with the appearance of the SunRail corridor and that we should work on getting a plan in place particularly for the back lot. City Manager Knight acknowledged.

## **City Attorney's Report**

Commissioner Cooper asked for a status update regarding the ordinance that addresses the newly enacted Senate Bill 50 allowing for citizen comment. City Manager Knight explained that the Clerk's office did not receive the information in time to be included in the agenda packet. The Commission agreed to place the item on the next agenda as an Action Item Requiring Discussion.

#### **Non-Action Item** - No items.

#### **Consent Agenda**

- a. Approve the minutes of 8/26/13 and 9/9/13.
- b. Approve the following purchases and contracts:
  - 1. Blanket Purchase Order to Heart Utilities of Jacksonville for underground electric utility projects; \$350,000.00.
  - 2. PR153275 to Traffic Control Devices, Inc. for Traffic and Pedestrian signal maintenance/improvement at New England/Interlachen intersection. (CC approved project on November 12, 2012); \$106,655.07.
  - 3. Blanket Purchase Order increase for Seminole Electric Cooperative; \$1,300,000.00.
  - 4. Renewal of commercial insurance package with Brown & Brown for the period 10/1/2013-10/1/2014; authorize the Mayor to execute the renewal document and approve subsequent purchase order; \$658,387.
  - 5. Change Order No. 1 to Wal-Rose, Inc. for additional water and sewer infrastructure constructed in conjunction with roadway improvements required by Orange County as part of the Ravaudage Phase 1 developments; \$88,739.92.
  - 6. Authorize the Mayor to execute the participation agreement (piggyback contract) with Bank of America Merchant Services, LLC to obtain state contract pricing for bank fees.

- c. Approve the Right-of-Way Use Agreement with Orange County for the future maintenance of the faux brick thermoplastic pedestrian crosswalks on Jackson Avenue and Harold Avenue at the intersection of Fairbanks Avenue.
- d. Approve the contractual grant agreements with Mead Botanical Gardens Inc. and the Winter Park Historical Association, Inc. for FY 2014.

Motion made by Commissioner McMacken to approve the Consent Agenda; seconded by Commissioner Sprinkel. No public comments were made. The motion was approved by acclamation with a 5-0 vote.

Action Items Requiring Discussion - No items.

#### **Public Hearings:**

a. Request of the City of Winter Park:

ORDINANCE NO. 2937-13: 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. Second Reading

Attorney Brown read the ordinance by title.

Motion made by Commissioner Leary to adopt the ordinance; seconded by Commissioner McMacken.

Mayor Bradley said he thought they were allowing the City Manager to authorize up to two annual events per year and asked for clarification since the revised ordinance clearly specifies the two events. City Manager Knight said the Commission has the option whether or not to list the events and that staff is comfortable either way.

Motion amended by Mayor Bradley to strike the wording (Park Avenue Pet Costume Contest and Doggie Art Festival) on page 2 of 4; seconded by Commissioner Cooper.

Motion amended by Commissioner Cooper that all reference to the use of Central Park for dog related activities be struck from this ordinance; seconded by Commissioner McMacken.

Parks and Recreation Director John Holland answered questions.

The following spoke in opposition: Paul F. Reich, 240 Alexander Place Linda Eriksson, 535 N. Interlachen Sally Flynn, 1400 Highland Road The following spoke in favor: Brian Wettstein, 329 N. Park Avenue City Manager Knight addressed questions relative to the current dog enforcement and patrol in Central Park. Mr. Holland addressed questions regarding the use of chemical treatments to neutralize the ground following the removal of dog feces and noted that several event holders currently use this procedure. Commissioner Leary asked if there is anything else we can do to keep it cleaner. City Manager Knight said we can look into it. A suggestion was made to add a permit requirement stating that once the dog feces has been removed they need to spray a cleaning enzyme in that particular area.

Upon a roll call vote on the amendment to strike the wording (Park Avenue Pet Costume Contest and Doggie Art Festival) on page 2 of 4; Mayor Bradley and Commissioners Leary, Sprinkel, Cooper and McMacken voted yes. The motion carried unanimously with a 5-0 vote.

Upon a roll call vote on the amendment (that all reference to the use of Central Park for dog related activities be struck from this ordinance); Mayor Bradley and Commissioners Leary, Sprinkel and McMacken voted no. Commissioner Cooper voted yes. The motion failed with a 4-1 vote.

Upon a roll call vote to adopt the ordinance as amended, Mayor Bradley and Commissioners Leary, Sprinkel and McMacken voted yes. Commissioner Cooper voted no. The motion carried with a 4-1 vote.

b. Request of the Winter Park Racquet Club: Amending their conditional use approval for the existing facilities and operations to add a new tennis court and to re-arrange their parking and driveways on their property at 2111 Via Tuscany, zoned (PR) Parks and Recreation.

Planning Manager Jeff Briggs explained that the new tennis court is to be built out front on the Via Tuscany frontage and located in between the entrance and exit drives. In order to get as close as they can to the standard 120' length of a tennis court, the drive on the north side is being shifted slightly toward the pond. The tennis court will have the standard 10' tall green colored chain link fence surrounding it and buffered by two new bismark palms, four new oak trees and other landscaping.

The other parts of the project are the modifications to the parking lot and the driveway configuration. The number of paved parking spaces is being increased from 85 spaces to 134 spaces. Parking is also being gained by shifting angle spaces to 90 degree parking. The plan is splitting the combination entrance/exit driveway that exists now out front on Via Tuscany into a separate entrance and exit driveway for safer traffic flow.

Mr. Briggs said the plan also shows a new or expanded stormwater retention/treatment area that will serve both the parking lot drainage and the tennis court drainage. Staff has been working with the Racquet Club over the years

concerning the issues with the "clay water" drainage to minimize the clay seepage into the natural pond out front by Via Tuscany. This project will include the installation of a separator device to help keep the clay out of the pond.

The existing unpaved overflow parking lot area, south of the tennis courts, is being re-landscaped on the east and south boundaries to better buffer the neighbors. It will continue to be used for boat trailer parking for members that use the boat ramp. With the net increase in paved parking of 49 spaces, there should be a much less need of this area as overflow parking for members.

Mr. Briggs said the Club was very good in reaching out to the local neighbors and that the City gave proper notice to all property owners within 500 feet. The adjacent neighbor to the south of the entrance/exit at 2011 Via Tuscany (Sutton's) sent a letter to the City outlining their requests which were reasonable and have been agreed to by the Racquet Club. He also noted that the Planning & Zoning Board voted unanimously for approval.

Jim Van Buren, General Manager of the Racquet Club, responded to questions.

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

c. Request of the Albin Polasek Museum: To relocate the Capen House now at 520 Interlachen Avenue to the Polasek Museum at 633 Osceola Avenue and to amend the existing development agreement to revise the number of weddings, receptions and other events that may be held on the Polasek Museum property, zoned PQP.

Planning Manager Jeff Briggs explained that the Polasek Museum and the Capen Preservation Group is on a very strict timeline as dictated by the current property owners. Not only do they have to meet the fundraising goals they also have to secure the services of over a dozen subcontractors by October 1 so they can save the Capen house and move it off of the 520 Interlachen Avenue location no later than the December 31, 2013 deadline set by Mr. and Mrs. Pokorny.

Mr. Briggs explained this item was presented to the Planning and Zoning (P&Z) Board at noon today whereby they discussed the dynamics of the lot and where the house should be placed on the lakefront as well as tree preservation, stormwater retention, views from the lake and protection of views of the neighbors. The board members concurred that this was a good location for the home and voted unanimously in favor by recommending approval to the Commission.

Mr. Briggs explained the location of the 10 trees that will need to be removed. He answered questions including the proposed changes to the development agreement and the code requirements for parking.

Commission discussion ensued regarding the proposed new location of the house being too close to the lake, grass parking and handicap parking.

Kip Marchman, representing the Polasek Museum, introduced team members Executive Director Debbie Komanski, President Mark Harry, Architect Steve Feller, and Contractor Frank Rourke.

Ms. Komanski clarified several issues raised by the Commission. She said they already have paved handicap parking and that the grass parking lots are the same ones they have been utilizing for decades. A majority of the rental venue will take place on Saturdays with the occasional Friday or Sunday rental. She expressed excitement that their organization will now be able to offer educational programs as well. She addressed questions related to the anticipated number of events and the notice to neighbors.

Motion made by Commissioner Cooper to approve the amended development agreement as requested and any conditional use authorization that they need (per the recommendation that came from the Planning and Zoning Board as follows: to approve the relocation of the Capen House now at 520 Interlachen Avenue to the site of the Polasek Museum at 633 Osceola Avenue, and to amend the existing development agreement to revise the number of wedding, receptions and other events that may be held on the Polasek Museum property); seconded by Commissioner McMacken

Motion amended by Commissioner Leary to amend the developer's agreement to only allow 175 events at 50+ people. Motion failed for lack of a second.

Ms. Komanski addressed concerns raised by the Commission pertaining to offsite parking and explained that they only hold two major yearly events, the Holiday Boat Parade and Paint Out. She also addressed concerns with regards to the placement of the Capen House by explaining that they lined up the front doors of the Capen House with the front doors of the Polasek Museum, allowing for an equidistant to the street and so that one building would not dominate the other. She also clarified that they will not request a liquor license of their own at any time.

Attorney Brown explained the process for any future amendments to the developer's agreement. He said the changes are required to be in writing because the City cannot be bound to an agreement unless it is brought forward to the Commission in a public meeting for approval. Mr. Briggs explained that anything

over 500 square feet is a significant change to a conditional use and would have to come back through the amendment process.

Mark Terry, President of the Board of Trustee for the Albin Polasek Museum, said their board met on September 20 and as a support effort to ensure that the Capen house would be moved they funded the difference of the \$400,000 needed to move the house. He said they can now officially announce that the Capen House can be moved, should the Commission vote in the affirmative. Ms. Komanski commented that the fundraising will still continue.

Joe Terranova, 151 N. Virginia Avenue, stated for the record that all of the living ex-mayors of Winter Park approve this project and urged for approval.

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

d. AN ORDINANCE OF THE CITY OF WINTER PARK, FLORIDA AMENDING SECTION 34-30, TITLE AND OWNERSHIP OF LOTS AND SPACES IN THE CITY CEMETERIES, TO CLARIFY THE OWNERSHIP INTEREST THAT MAY BE CONFERRED AND TO ADD PROVISION FOR THE CITY TO REGAIN OWNERSHIP OF ABANDONED RIGHTS TO BE BURIED WITHIN A MUNICIPAL CEMETERY; PROVIDING FOR, SEVERABILITY, CODIFICATION, CONFLICTS, AND AN EFFECTIVE DATE. <u>First Reading</u>

Attorney Brown read the ordinance by title.

Motion made by Mayor Bradley to accept the ordinance on first reading; seconded by Commissioner McMacken.

Parks and Recreation Director John Holland answered questions. He explained that since the records for Pineywood Cemetery are not very thorough they are only focusing on Palm Cemetery. He said as of this date, Palm Cemetery has 1,400 spaces available as well as an additional 378 spaces which are abandoned.

No public comments were made. Upon a roll call vote, Mayor Bradley and Commissioners Leary, Sprinkel, Cooper and McMacken voted yes. The motion carried unanimously with a 5-0 vote.

e. Adoption of the Fee Schedule effective October 1, 2013.

City Manager Knight summarized the changes to the fee schedule.

Motion made by Commissioner McMacken to adopt the fee schedule; seconded by Commissioner Leary. No public comments were made.

City Manager Knight addressed questions related to the increase in water/sewer fees. Fire Chief Jim White addressed the ambulance fee increase and comparable costs.

Parks and Recreation Director Holland answered questions and provided clarity relative to the monthly fee that commercial businesses are required to pay in order to use our lakes and parks for recreational business activities. Commissioner Cooper requested to hold off with approving the fees until the City Attorney provides a report on what our authority is for regulating the use of our lakes. Attorney Brown said he is currently working with staff to provide our advisory boards with the applicable information for discussion and feedback.

Motion amended by Commissioner Cooper that we not permit any additional businesses on our lakes until the six month study is finished and until something comes back to the Commission. Motion failed for lack of a second.

Attorney Brown stated that the City can regulate the safety issues in regards to what is happening on the lakes in our City but we cannot charge a permit, an occupational tax or any type of license fee for the actual activity on the water because the State of Florida owns the water.

Motion amended by Commissioner Cooper that we strike the use of the park business permit (second line) and we say in parenthetical limited to 20 attendees. Motion failed for lack of a second.

Motion amended by Commissioner Leary to remove the affordable housing fee (linkage fee) from the fee schedule; seconded by Mayor Bradley.

Commissioner Leary questioned the legality of the fee and if it is really needed. Upon questioning by Commissioner Sprinkel, City Manager Knight said the money collected is placed into a special fund that can only be spent on affordable housing. Over the years the City has donated the money to the Winter Park Housing Authority, the Plymouth, the Hannibal Square Community Land Trust and the Habitat for Humanity. Attorney Brown provided legal counsel regarding the legality with the imposed fee. Commissioner Leary said the Commission has the ability to update the fee schedule at any time and suggested that once they have reviewed the affordable housing status report they can then decide if the fee needs to be adjusted or removed. A majority of the Commission agreed with this suggestion.

No public comments were made.

Upon a roll call vote on the amendment (to remove the affordable housing fee (linkage fee) from the fee schedule); Commissioner Leary voted yes. Commissioners Sprinkel, Cooper and McMacken voted no. The motion failed with a 3-1 vote. (Mayor Bradley was not present for the vote.)

Upon a roll call vote, Commissioners Leary, Sprinkel, Cooper and McMacken voted yes. The motion carried unanimously with a 4-0 vote. (Mayor Bradley was not present for the vote.)

Public comments (5:00 p.m.)

Lurlene Fletcher, 790 Lyman Avenue, asked the City to remove some of the dead trees on Lyman Avenue and to install a water drain on the corner of Morse Boulevard and Denning Avenue.

#### **Budget Public Hearings**

Mayor Bradley opened the public hearing and read into the record the following: "The millage rate needed for fiscal year 2014 to generate the same property tax revenue for the City as in 2013, based on the Property Appraiser's certification, is 4.0053 mills. The budget proposed by the staff with amendments generally agreed to by the City Commission requires a millage of 4.0923 mills. This proposed millage of 4.0923 mills would represent an increase in property taxes of 2.17% not counting new construction and the City's dedicated increment value payment to the Community Redevelopment Agency. In addition, a .1004 mill voted debt service is levied to cover the debt service of the General Obligation Bonds, Series 2004 approved by the citizens of Winter Park at the June 4, 1996 bond referendum, and a .2092 mill voted debt service is levied to cover the debt service of the General Obligation Bonds, Series 2011 approved by the citizens of Winter Park at the May 16, 2000 bond referendum."

Mayor Bradley commented that this would be a simultaneous public hearing on both ordinances. Attorney Brown read both ordinances by title.

a. ORDINANCE NO. 2938-13: 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. Second Reading

Lurlene Fletcher, 790 Lyman Avenue, asked if the proposed budget includes funding for the senior citizen programs held at the Community Center. City Manager Knight said yes.

Motion made by Commissioner Leary to adopt the millage ordinance; seconded by Commissioner Sprinkel. Upon a roll call vote, Mayor Bradley and Commissioners Leary, Sprinkel, Cooper and McMacken voted yes. The motion carried unanimously with a 5-0 vote.

 b. ORDINANCE NO. 2939-13: 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 PROVIDING 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. Second Reading

Motion made by Commissioner Leary to adopt the budget ordinance; seconded by Commissioner Cooper.

Motion amended by Commissioner Cooper to use the \$80,000 of additional sales tax revenue that they have not yet allocated for a community visioning process related to the consultants analysis of our regulatory guidelines. Motion failed for lack of second.

City Manager Knight explained that the \$80,000 was not included in the current budget because we did not receive the funds until after the budget was presented. He said if the money is not allocated, it will be placed into the contingency fund.

Commissioner McMacken addressed the recent direction given to Planning & Community Development Director Dori Stone to provide a scope of services and estimated fee proposal for the visioning process. He preferred to wait until they know how much it is going to cost. Mayor Bradley agreed with this since they do not know the amount and in case the estimate needed is much less.

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

#### **City Commission Reports**:

a. <u>Commissioner Leary</u>

Commissioner Leary announced the recent passing of Helen Woodall, a longtime resident of Winter Park. The Commission offered their condolences to the family.

b. Commissioner Sprinkel

CITY COMMISSION MEETING MINUTES SEPTEMBER 23, 2013 PAGE 11 OF 11

Commissioner Sprinkel said there was a great turn out for the SunRail event this past Saturday; Winter Park High School homecoming event is this Wednesday; and that the American In Bloom Organization has reached out to the City and is very interested in participating.

#### c. Commissioner Cooper

Commissioner Cooper mentioned that the Florida League of Cities is in the process of moving forward with their legislative session and to submit any items for consideration to City Manager Knight.

- d. <u>Commissioner McMacken</u> No report.
- e. Mayor Bradley

Mayor Bradley said it was a great opportunity seeing the new trains this past weekend at the SunRail event.

Mayor Bradley mentioned that the Alfond Inn is currently operating under a temporary certificate of occupancy. He requested that this item be added to the City Manager's Report. The request was acknowledged.

Parks and Recreation Director John Holland announced that the City recently applied for the National Recreation Parks Association Gold Medal Award and that we are one of four finalists. He said Parks and Recreation Assistant Director Brenda Moody, Assistant Chief Ronnie Moore and himself will be attending the award ceremony on October 9 in Houston, Texas for the final selection. The Commission applauded our Parks and Recreation Department for being one of the top four finalists in the country. Communications Director Clarissa Howard acknowledged the request to formally publish this information.

The meeting adjourned at 5:43 p.m.

Mayor Kenneth W. Bradley

City Clerk Cynthia S. Bonham



item type	Consent Agenda	meeting date	October 14, 2013
prepared by department division	Purchasing Division	approved by	<ul><li>City Manager</li><li>City Attorney</li><li>N A</li></ul>
board approval		☐ yes ☐ no ■	N A final vote

# Purchases over \$50,000

	vendor	item   background	fiscal impact	motion   recommendation		
1.	ENCO Utility Services	Blanket Purchase Order for Professional Services (Operations and Maintenance)	Total expenditure included in approved FY14 budget. Amount: \$4,000,000	Commission approve Blanket Purchase Order to ENCO Utility Services for FY14 Professional Services		
	This Blanket Pu	ırchase Order will expire September				
2.	Seminole Electric Cooperative, Inc.	Blanket Purchase Order for Bulk Power for first quarter (ITN-33- 2010)	Total expenditure included in approved FY14 budget. Amount: \$2,300,000	Commission approve Blanket Purchase Order to Seminole Electric Cooperative, Inc. for FY14 Purchase of Bulk Power		
		zed a competitive formal solicitate proved this contract on October 2 2014.				
3.	Duke Energy	Blanket Purchase Order Power Transmission for first quarter (ITN-33-2010)	Total expenditure included in approved FY14 budget. Amount: \$550,000	Commission approve Blanket Purchase Order to Duke Energy for FY14 Power Transmission		
		zed a competitive formal solicitatoproved this contract on October 2 2014.				
4.	Duke Energy	Blanket Purchase Order for Bulk Power for first quarter (ITN-33- 2010)	Total expenditure included in approved FY14 budget. Amount: \$3,700,000	Commission approve Blanket Purchase Order to Duke Energy for FY14 Bulk Power		
	The City utilized a competitive formal solicitation process to award this contract. The City Commission approved this contract on October 25, 2010. This Blanket Purchase Order will expire September 30, 2014.					
5.	Air Liquide Industrial Company	Blanket Purchase Order for Liquid Oxygen for Water Treatment Facilities	Total expenditure included in approved FY14 budget. Amount: \$150,000	Commission approve Blanket Purchase Order to Air Liquide Industrial Company for FY14 Liquid Oxygen for Water Treatment Facilities		
	The City Commission approved piggybacking the Orlando Utilities Commission contract RFP#35 for this product on June 25, 2012. The current contract term expires May 29, 2017. This Blanket Purchase Order will expire September 30, 2014.					

6.	Odyssey Manufacturing Company	Blanket Purchase Order for 12.5% Sodium Hypochlorite for Water & Wastewater Treatment Facilities	Total expenditure included in approved FY14 budget. Amount: \$150,000	Commission approve Blanket Purchase Order to Odyssey Manufacturing Company for FY14 12.5% Sodium Hypochlorite for Water & Wastewater Treatment Facilities & authorize Mayor to execute Piggyback contract.			
	October 10, 20	113. The current contract term exp tember 30, 2014.					
7.	Stephen's Technology	Blanket Purchase Order for Trenchless Repairs to Sanitary Sewer Mains	Total expenditure included in approved FY14 budget. Amount: \$185,000	Commission approve Blanket Purchase Order to Stephen's Technology for FY14 Trenchless Repairs to Sanitary Sewer Mains			
	This is a Sole S	Source vendor. This Blanket Purcha	· · · · · · · · · · · · · · · · · · ·	· · · · · · · · · · · · · · · · · · ·			
8.	Perma-Liner Industries	Blanket Purchase Order for Trenchless Repairs to Sanitary Sewer Mains	Total expenditure included in approved FY14 budget. Amount: \$85,000	Commission approve Blanket Purchase Order to Perma- Liner Industries for FY14 Lateral Lining Materials for Sewer Repairs			
		Source vendor. This Blanket Purcha	se Order will expire :	September 30, 2014.			
9.	Masci General Contractor, Inc.	Blanket Purchase Order for Fairbanks Avenue Roadway and Wastewater System Improvements (IFB-10-2012)	Total expenditure included in approved capital improvement budget. Amount: \$1,247,148.10	Commission approve Blanket Purchase Order to Masci General Contractor, Inc.			
'		nter Park utilized a competitive bid on June 11, 2012. This Blanket Pur	ding process to awa				
10	City of Altamonte Springs	Blanket Purchase Order Wholesale Sewer Treatment	Total expenditure included in approved FY14 budget. Amount: \$126,500	Commission approve Blanket Purchase Order to City of Altamonte Springs for FY14 Wholesale Sewer Treatment			
	The City is lock	ked into a three year rate for wholes	· · · · · · · · · · · · · · · · · · ·	with the City of Altamonte			
		h FY14. This Blanket Purchase Orde					
11	South Seminole & North Orange County Wastewater Transmission Authority (SSNOCWTA)	Blanket Purchase Order for Operation & Maintenance Charges; Depreciation per Interlocal Agreement	Total expenditure included in approved FY14 budget. Amount: \$600,000	Commission approve Blanket Purchase Order to SSNOCWTA for FY14 Operation & Maintenance; Depreciation			
		ted an Interlocal Agreement with SS	SNOCWTA on Septen	nber 1, 2003. This Blanket			
12	City of Orlando	r will expire September 30, 2014.  Blanket Purchase Order for Sanitary Sewer for McLeod/Asbury	Total expenditure included in approved FY14 budget. Amount: \$385,000	Commission approve Blanket Purchase Order to City of Orlando for FY14 sanitary sewer charges for McLeod/Asbury			
	This Blanket Purchase Order will expire September 30, 2014.						

13	Duval Asphalt	Blanket Purchase Order for E-Z Street Cold Asphalt	Total expenditure included in approved FY14 budget. Amount: \$50,000	Commission approve Blanket Purchase Order to Duval Asphalt for E-Z Street Cold Asphalt
	This is a Sole S	Source vendor. This Blanket Purcha	se Order will expire S	September 30, 2014.
14	City of Orlando	PR153296 for Wastewater System revenue bond series 1984– 30 <sup>th</sup> Annual payment Asbury Park Agreement	Total expenditure included in approved FY14 budget. Amount: \$231,493.10	Commission approve PR153296 to City of Orlando.
15	CH2M Hill	Blanket Purchase Order for CH2M Hill for Fairbanks Avenue Roadway & Wastewater Improvements	Total expenditure included in approved FY14 budget. Amount: \$263,491.00	Commission approve Blanket Purchase Order to CH2M Hill.
The City of Winter Park utilized a competitive bidding process to award this contract. The contract was awarded on July 26, 2010. This Blanket Purchase Order will expire September 30, 2014.				
16	De Young Law Firm	Blanket Purchase Order for Legal Services under contract Signed February 8, 2013.	Total Expenditure included in approved FY 14 budget, Amount: \$50,000	Commission approve Blanket Purchase Order to DeYoung Law Firm.
The	e City of Winter P	ark executed an agreement on Feb		is Blanket Purchase Order will
	oire on Septembe		. aa. , 0, 2010 and th	Diamice i di chase si dei Will
17	GATSO USA	Blanket Purchase Order for Red Light Safety Enforcement under RFP 13-2009.	Total Expenditure included in approved FY 14 budget, Amount: \$441,600	Commission approve Blanket Purchase Order to GATSO USA and to exercise the last renewal option.
The City of Winter Park executed an agreement on June 22, 2009 for three years with two (2) one year				
renewal options. This Blanket Purchase Order will expire on September 30, 2014.				

# **Piggyback contracts**

_	337 *** ** ***				
	vendor	item   background	fiscal impact	motion   recommendation	
18	USA Services, Inc.	Piggyback Contract for Mechanical Sweeping Service	Total expenditure included in approved FY14 budget. Amount: \$205,247.64	Commission approve piggybacking City of Daytona Beach contract Resolution 13-159 with USA Services, Inc. and authorize the Mayor to execute the Piggyback Contract.	
	City of Daytona Beach utilized a competitive bidding process to award this contract. The contract was				
	awarded July 1, 2014. The contract term expires on October 1, 2018.				

item type	Consent Agenda	meeting date	October 14, 2013
	Purchasing Division/Police Department	approved by	<ul><li>City Manager</li><li>City Attorney</li><li>N A</li></ul>
board approval		■yes □ no □	N A final vote

# subject

Purchases related to Central Florida HIDTA

#### motion | recommendation

Commission authorized the City Manager, in consultation with the City Attorney, as needed, to sign purchase orders for payment of HIDTA personnel and operations, subject to the condition that the HIDTA grant funds will be the sole source of money to pay these obligations.

Additionally, authorize purchase orders in the amounts of \$54,000, \$68,000, \$108,000 and \$150,000 for several independent contractors who provide specialized and confidential investigative services on behalf of HIDTA. Additionally, a purchase order is requested in the amount of \$110,000 for facility expenses of HIDTA.

#### background

The City participates in a joint task force identified as HIDTA (which stands for High Intensity Drug Trafficking Agency). Much of the activity of HIDTA is confidential and the information exempt pursuant to several provisions of Florida law, including Section 119.071 (2), Florida Statutes, relating to information revealing surveillance techniques and procedures, personnel involved in surveillance techniques and procedures, and criminal investigative techniques and procedures. Estimated HIDTA funding for FY 2014 is \$850,497.

#### alternatives | other considerations

N/A

#### fiscal impact

No fiscal impact incurred by the City. All expenses related to HIDTA are paid by grant funding awarded to HIDTA received from the federal government.

# strategic objective

Quality government services & financial security.

item type	Consent Agenda	meeting date October 14, 2013
department	James White, Fire Chief Fire Rescue Administration	approved by ■ City Manager □ City Attorney □ N A
	Civil Service Board is aware of this action but takes not vote	yes □ no □ N A final vote

## subject

Winter Park Firefighter's Local 1598 IAFF Labor Contract

#### motion | recommendation

Staff recommends the ratification of this labor agreement.

## background

The IAFF local and the City have negotiated a new labor agreement for Fiscal 2014. The one-year agreement received a positive vote from the Union membership and is supported by City Management and Fire Administration. This is a one-year agreement.

#### alternatives | other considerations

Failure of the City to agree to this ratified labor agreement will send the parties back to negotiations. No other alternative is available.

#### fiscal impact

The fiscal impact of the agreement is included in the approved FY 2014 budget. Salary adjustments include a 2.5% merit-based increase. All language required by the State of Florida related to F.S. 175 Pension Plan is included, as well as a reopener language for the Pension Article.

### long-term impact

This contract does not commit the City to any new or long-term labor arrangements that were not in place during prior agreements.

#### strategic objective

Quality government services and financial security.

# AGREEMENT BETWEEN THE CITY OF WINTER PARK, FLORIDA

AND

THE WINTER PARK PROFESSIONAL

FIRE FIGHTERS, LOCAL 1598, IAFF

("A" Unit)

&

("B" Unit)

2014

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# **PREAMBLE**

THIS AGREEMENT, executed this 14th day of October, 2013, between CITY OF WINTER PARK, FLORIDA, hereinafter called the City, and WINTER PARK PROFESSIONAL FIRE FIGHTERS, LOCAL 1598, IAFF, hereinafter called the Union.

#### **ARTICLE 1 - RECOGNITION**

The City recognizes the Union as the sole and exclusive bargaining agent for the following bargaining unit of the City's employees employed in the Winter Park Fire Department:

INCLUDED IN THE "A" UNIT:

All full-time certified and probationary fire fighters, paramedics, fire engineers employed by the City of Winter Park.

**EXCLUDED FROM THE "A" UNIT:** 

Fire chief, assistant fire chiefs, fire training officer, fire marshal, fire inspector, battalion chiefs, lieutenants, captains, clerical employees and all other employees employed by the City of Winter Park.

INCLUDED IN THE "B" UNIT:

All full-time and probationary certified lieutenants, captains and fire marshal, fire inspector, employed by the City of Winter Park.

**EXCLUDED FROM THE "B" UNIT:** 

All full-time and probationary certified fire fighters, paramedics, engineers, fire training officer, assistant fire chiefs, fire chief, clerical employees, and all other employees employed by the City of Winter Park.

#### ARTICLE 2 - UNIFORMS AND MAINTENANCE

All trousers, shorts, shirts (tee-shirts), jackets, and caps, if any, and all insignia, which unit employees are required to wear in the performance of their work shall be furnished on an as needed basis by the City to unit employees without cost. The specific items to be furnished by the City shall consist of uniform work pants, uniform work shorts, uniform dress pants, uniform dress shirts, uniform tee shirts, uniform belt, sweater, coveralls, uniform cap and one pair of department approved uniform shoes. Quantities of these items shall be provided on an as needed basis to maintain an agreed upon minimum amount. The employees shall furnish all other items of their clothing worn on duty at their cost. It shall be the obligation of the employees to maintain all items furnished by the City in good and presentable condition, and to notify the City in advance of a need for replacement of any such item.

The City agrees to furnish one towel per unit employee annually, and one set of bed linens (two sheets, one blanket and a pillow case) per unit employee, on an as needed basis, to all unit personnel. It shall be the responsibility of each employee to maintain such towels and linens.

The City shall have the right to establish and to from time to time change the procedure and arrangements for furnishing all of the materials furnished to employees by it under this Article.

The City agrees to reimburse the full cost of eye glasses and contact lenses not to exceed One Hundred and Fifty Dollars (\$150.00) and up to Fifty Dollars (\$50.00) for wrist watches damaged in the line of duty, provided an adequate proof of such damage, the circumstances of the event and proof of original purchase price are presented to the appropriate manager.

### **ARTICLE 3 - WITNESS SERVICE**

Employees who are required to serve during scheduled duty as witnesses for the City in any judicial or administrative proceeding, or who are required to serve during scheduled duty as witnesses for any party under a valid and lawfully served subpoena in connection with any non-personal matter which arose from the course or scope of their employment, shall be given time off with pay to serve, and shall return to duty immediately upon completion of such service, so long as at least three (3) hours of their work hours or shift is still in effect. Employees who are required to serve in either capacity during times other than their scheduled duty time shall be paid at their base hourly rate for actual hours or fractions thereof necessarily spent by them at the courthouse or other required place of attendance. All such paid time shall be documented by the employee upon request of the department.

All witness fees payable to an employee for or in connection with such service must be endorsed and tendered to the City by the affected employee as a condition to being paid by the City for the time taken off for witness service under the foregoing language of this article.

Actual time spent by an employee serving as a witness for the City, regardless of whether the employee is on scheduled duty during such time; and actual time spent serving as a witness under a valid and lawfully served subpoena for any party in connection with any non-personal matter which arose from the course or scope of the employment of such employee, provided such service occurs and such time is spent while such employee is on scheduled duty, shall be counted as hours worked for purposes of computing statutory overtime under the overtime regulations promulgated under the Fair Labor Standards Act.

Unit members that have been called and placed on stand-by status by an official of the court, thereby restricting their off-duty activities, shall receive two (2) hours compensatory time, for each day they are placed on stand-by. The compensatory time will be counted at a straight-time rate and not be used or included when calculating any overtime for the purposes of compensation under the Fair Labor Standards Act. If a unit member is on stand-by for multiple cases during the same period of time, only

two (2) hours of compensatory time will be allowed to be accrued for each day on stand-by. This benefit will only apply when stand-by is required during a unit member's off-duty time. Stand-by status will begin when the member is actually called, text, or emailed by the witness coordinator within the two week trial period notifying them that the trial is set to be heard, and only for the day(s) they are told they will be needed for court appearance.

Stand-by status will end once the member is notified the case has been resolved or their testimony will not be required, or when the member actually responds to court. Stand-by status will not apply to subpoenas received for a trial period or for the two week notice of trial unless the member is notified (called, text, or emailed) by a court representative that the trial is set to be heard and their appearance is required.

### ARTICLE 4 - JURY SERVICE

Employees summoned by law for jury selection or service shall be granted the necessary time off from scheduled duty with pay upon presentation to their superior officer of satisfactory written evidence relating to such duty. Twenty-four hour shift personnel shall be excused from duty at 2000 (twenty-hundred) hours the day prior to his/her scheduled service. An employee serving on such duty shall report to his assigned work location upon being released for the day if at least three (3) hours of his work hours or shift is still in effect. However, an employee selected to serve on a jury in a pending case need not report to his assigned location until released from service on such case.

This article shall apply only to petit jury service; and shall have no applicability to grand jury service unless the City determines to apply it in full or in part, in its sole discretion, on an individual case basis. Compensation paid by the state, county or other authority issuing any summons or notice for jury service must be endorsed and tendered to the City by the affected employee as a condition to being paid by the City for the time taken off for jury service under the foregoing language of this article.

### ARTICLE 5 - DUES CHECKOFF

The City agrees to deduct, each pay period, Union dues from the pay of those employees who individually authorize and request, in writing, that such deductions are made. The City shall not make deductions for payment of initiation fees or fines. Dues thus deducted by the City shall be remitted to the Union by check each pay period. Any change in the amount of dues to be deducted will require a written authorization by the Secretary/Treasurer of the Union, and will be effective the beginning of the following pay period thirty (30) days from receipt of such written authorization.

The payroll deduction authorized shall be revocable by any affected employee. The payroll deduction of Union dues shall be stopped at any time by a written and dated request from such employee delivered to the City Personnel Department. The effective date for stopping dues check-off shall be thirty (30) days after the pay period following the date of such revocation by the employee. If, for any reason, the employee's employment is terminated the effective date for stopping dues check-off shall be the date of termination.

No deduction shall be made from the pay of any employee for any payroll period in which the employee's net earnings for that payroll period, after other deductions, are less than the amount of dues to be checked off.

The Union agrees to indemnify and hold harmless the City, its agents, employees and officials from and against any claims, demands, damages or causes of action (including but not limited to claims, etc., based on clerical or accounting errors caused by negligence), of any nature whatsoever, asserted by any person, firm or entity, based on or relating to any payroll deduction required or undertaken under this article, and agrees to defend at its sole expense any such claims against the City or its agents, employees or officials. The term official as used herein includes elected or appointed officials.

# ARTICLE 6 - GENDER

Where	the	words	"he",	"him"	or	"his"	are	used	in	this	agreer	ment,	it sh	all	be	understoo	od,	unless	the
context	req	uires of	therwi	se, tha	ıt su	ch w	ords	inclu	de 1	the v	vords "	'she",	"her	" ar	nd "	hers".			

### **ARTICLE 7 - INSURANCE**

The City will make available health, life and long term disability insurance on a group basis to unit employees to the same extent and in the same manner that such insurance is provided to other City employees up to Department Head level. It is understood that "health" as used in this paragraph includes certain dental coverage. The City reserves the right to terminate the said group insurance program or any part thereof at any time.

The health insurance dependent coverage will be optional to all eligible employees. Employees who opt for such insurance will pay such portion as is determined from time to time by the City of the premiums and other costs through deductions from payroll.

The City reserves the right to reduce or enlarge the benefits payable under any coverage, to alter or cease any coverage, to raise or lower any "out of pocket" amounts and to raise or lower any deductibles.

The City shall have the same rights with regard to unit members to agree upon with the provider, to make any changes in the costs of any of the insurance and to require unit employees to bear any portion of the cost of coverage presently paid for in full by the City as it has with regards to its non-bargaining unit employees. It is agreed that, in the event of a premium increase or other increase in the cost to the City of providing any of the insurance, such increase will be paid by the employees in any proportion as determined by the City, including in its entirety. Such increases shall be deducted from wages, and shall be administered in the manner presently in effect.

In addition, any such changes shall include all changes necessary to comply with all applicable laws, including the Patient Protection and Affordable Care Act of 2010, and all applicable regulations under such laws and changes in such laws and regulations.

The parties also agree that the Union may select one individual to sit as a member of any formal employee review committee or focus group that is formed by City Administration to review health benefits.

The Union agrees that any medical plan offered hereunder may make any change or alteration in cost, coverage, benefits, amounts thereof or any other characteristics, all such changes being beyond the City's control.

The City shall not be obligated to bargain over any of the changes referred to in this article or over the effects of any such changes.

### ARTICLE 8 -PROTECTIVE CLOTHING

Unit fire suppression personnel shall be provided with the following protective clothing, such clothing to be of a type approved by NFPA, OSHA and NIOSH.

- One fire helmet
- One complete structural firefighting ensemble
- One pair of fire fighter-type gloves
- One pair of fire fighter boots with safety insoles, knee-high
- Firefighter's protective hood
- SCBA face piece assembly

Such firefighting equipment shall be assigned to each such employee and shall be his responsibility in all respects during his tenure of service. A record shall be kept of all equipment so issued. All such equipment shall remain the property of the City.

Coats, pants, fire helmet, boots and other protective equipment shall be marked with the assignee's name.

The City will replace, in the manner provided in this article, any of the above-listed items which, in the judgment of the Chief or his designee, are worn out, damaged, or otherwise unfit for the intended use.

Any of the above-listed property which is lost, stolen or destroyed will be replaced under Article C above, but the City may deduct all or part of the cost of replacement from the wages of the employee responsible if the loss, theft or destruction is caused by or attributable to the act or omission of the assignee.

An employee may, at his/her own expense, purchase and utilize a leather helmet meeting all required safety standards. The City will not be responsible for damage, loss or theft of said helmet in excess of the amount it would pay toward the standard City supplied helmet under any circumstances. If the

employee ceases to work for the City within two years of the purchase of a leather helmet, the employee will be responsible to reimburse the City the portion paid by the City. If the employment is terminated after two years from the purchase, the employee can keep the helmet at no charge.

The City agrees to maintain said equipment as outlined by the NFPA 1851.

### **ARTICLE 9 - SAFETY AND HEALTH**

The City and the Union agree to cooperate in making continuing efforts to eliminate accidents and health hazards and in the enforcement of City rules and regulations relating to safety.

The parties agree that the Union may appoint one individual to sit as a member of any safety committee of the City now existing or which may hereafter exist during the term of this agreement. The individual appointed by the Union shall have the same decision making and voting rights as any other committee member. Such individual may participate in committee meetings while on duty without loss of pay if such meetings are scheduled while he is on duty; otherwise his attendance will not be compensated by the City.

The Chief of the Department shall give good faith consideration to implementation of any recommendation made by any such committee during the term of this agreement, which relates to any functions or duties of unit personnel.

### **ARTICLE 10 - HOLIDAYS**

The City, during the term of this agreement, shall recognize, with respect to unit personnel, the following holidays:

- 1. New Year's Day (January 1).
- 2. Dr. Martin Luther King Jr. Day (Third Monday in January) is considered a Floating Holiday for 56-hour employees.
- 3. Memorial Day (last Monday in May).
- 4. Independence Day (July 4).
- 5. Labor Day (first Monday in September).
- 6. Thanksgiving Day.
- 7. Friday after Thanksgiving.
- 8. Christmas Eve half day.
- 9. Christmas Day.
- 10. Floating holiday (1)

No unit members shall be eligible for any floating holiday or payment therefore until after six months of employment.

Unit members have the option to take any floating holiday as a 24-hour shift off with pay, or to be compensated 14-hours of straight time to be paid out during any pay period in the fiscal year.

Nothing herein shall be interpreted as meaning that the recognition by the City of the foregoing holidays can interrupt or interfere with the normal scheduling and working of shifts. The intent of this article is that the above holidays be recognized for unit personnel with additional 14 hours (7 hours for ½ day) compensation per employee per holiday at straight time.

An employee who is on approved Vacation or Medical Absence Leave on a designated holiday under this agreement shall be paid for the holiday as prescribed above. However, an employee on leave without

pay; on disability leave; on any leave under or allegedly under the Workers' Compensation law; or on any leave while receiving compassionate leave benefits as prescribed in this agreement shall not receive holiday pay if on any such leave on any designated holiday.

## ARTICLE 11 - VOTING

The City agrees to allow each employee who is a registered voter and is scheduled to work from 7:00 A.M. to 7:00 P.M. on the day of a general election reasonable time off with pay to vote. Voting time will be scheduled in the discretion of the Battalion Chief in command in such a fashion as to not interfere with normal work production. The location of the employee's precinct and the employee's work schedule shall be considered in scheduling time off.

## **ARTICLE 12 - MILITARY LEAVE**

An employee who is a member of the United States Armed Forces Reserve, including the National Guard, shall be entitled to leave without loss of pay during periods in which the employee is engaged in annual field training, other training exercise, or other similar activities as a reservist as required by his service, other than deployment to active duty. Such leave with pay shall not exceed 408 hours in any one calendar year. In no case shall such per-day pay exceed the regular work day or regular shift pay at the base rate. Copies of all relevant orders must be provided before military leave is granted.

For weekend drills, the employee approved for leave will be granted time off at 1900 hours on Friday (if on duty) preceding the drill and shall return to work on his/her first duty day after the drill is completed. For annual (two week) drills, the member shall be granted time off for the entire time and shall return to work on his/her first duty day after the drill is complete. All time off shall be counted as time worked and be documented as Military Leave (ML). Should a member have a scheduled Kelly Day during Military Leave, the Kelly Day shall be rescheduled.

### **ARTICLE 13 - BULLETIN BOARDS**

The City shall provide the Union with the exclusive use of one bulletin board in each fire station, it being understood that such bulletin boards shall be the same bulletin boards or other bulletin boards equivalent in size to the bulletin boards in existence. Such bulletin boards and the space where they are located are granted to the Union for the sole purpose of posting and disseminating information pertaining to the business and activities of the Union.

No material shall be posted which is of a political nature, or reflects negatively or adversely upon the City or upon any of its employees, officials or its constituent departments or agencies. Nothing shall be posted which is obscene, inflammatory or which would interfere with the operation of the Winter Park Fire Department. All materials placed on any such bulletin board must be signed by the President of the Union.

### ARTICLE 14 - PERSONNEL RULES AND ORDINANCES

The parties agree that changes may be made to the Personnel Policy Manual, Standard Operating Guidelines and Job Descriptions provided the City furnishes copies of the proposed amendments to the Union at least ten (10) days prior to the requested change appearing on the agenda, and provided further that the proposed amendments shall be considered by the Civil Service Board and City Commission in the absence of a response after such notice to the Union.

Should Local 1598 express its written opposition or modification to said change, the City Manager agrees to meet with Local 1598 to permit input into the proposed change before submission to the Commission for consideration.

## **ARTICLE 15 - MANAGEMENT RIGHTS**

It is the right of the City to determine unilaterally the purpose of the Winter Park Fire Department, to set standards of services to be offered to the public, to exercise control and discretion over the operations of the Winter Park Fire Department and to direct its employees in that Department.

### ARTICLE 16 - WORK DAY, WORK PERIOD, PAY PERIOD, EXTRA DUTY AND OVERTIME

Work Shift and Work Period

Twenty-four (24) hours shall constitute a normal shift for shift personnel. The work period contemplated in Section 7 (k) of the Fair Labor Standards Act will be 14 consecutive days to coincide with the pay period.

All employees are required to be present at and on their assigned jobs for the total hours in the work shift unless absence from duty is authorized by the appropriate authority. All absences shall be properly recorded and charged.

Pay Period

The pay period shall be 14 consecutive days, beginning at 7:00 a.m. every other Monday.

**Extra Duty Assignments** 

Employees may be required to work extra duty in addition to regularly scheduled hours. Conditions that warrant utilization of extra duty assignments shall include, but are not limited to, emergency call back and short staffing.

Overtime and Overtime Compensation

Overtime hours and overtime compensation shall be defined and implemented as prescribed by the Fair Labor Standards Act and the United States Department of Labor regulations existing from time to time there under insofar as applicable. The City will treat unit employees under Section 7 (k) of the Fair Labor Standards Act.

No time not worked shall constitute hours worked for Fair Labor Standards Act purposes except as follows. Personal leave, excluding pay out of Personal Leave hours for approved emergency situations, or in the case of termination, shall count as hours worked.

Use of any Long Term Medical Leave as described in Article 37 of this document shall not be counted as hours worked.

All hours worked by employees, and all straight time compensation and overtime compensation will be recorded, calculated and paid on the basis of actual hours. All record keeping shall be in accordance with the requirements of the Fair Labor Standards Act and the above referenced regulations. The manner of record keeping shall be at the City's discretion.

Utilization of overtime, assignment of overtime and selection of personnel to work overtime shall be for both scheduled and non-scheduled work, and shall be done at the discretion of management.

A Kelly Day, consisting of twenty-four (24) hours off duty, will be scheduled for each 56-hour member at a rate of six (6) 24-hour periods per twelve-month period. Kelly Days will count as hours worked for overtime computation purposes.

Unit members will be afforded the opportunity to work-back on their assigned Kelly Day if the daily minimum staffing for their shift would require either a 12 or 24 hour overtime person. Should the unit member choose to work-back on their Kelly Day they will be paid an additional 12 or 24 hours of pay based upon their base hourly rate. It shall remain the decision of management to utilize personnel to fill any overtime position and it shall be the choice of the unit member to accept any offer to work-back an assigned Kelly Day. Unit members may only be offered to work-back on their assigned Kelly Day.

With regards to the scheduling of Personal Leave; the City agrees to maintain the existing process of awarding such Leave and that under the staffing levels in place at time of ratification, no more than three positions would be made available for use of scheduled Personal Leave. In the case where a Kelly Day is scheduled, a total of four 56-hour personnel may be off at any one time.

If more than one person is scheduled on Kelly Day, management will reserve the right to reschedule the Kelly Day to another available position within the current Kelly Day period. In any case, no more than

four 56-hour personnel may be scheduled for Kelly Day or Personal Leave at any given time. Management reserves the right to schedule all leave.

### ARTICLE 17 - PROMOTIONAL OPPORTUNITIES

It is the policy of the Winter Park Fire Department to consider its own employees for promotional opportunities in employment prior to considering outside applicants.

The procedure relating to promotional opportunities is as set forth in the Winter Park Personnel Policy Manual and the Winter Park Civil Service Code.

In an effort to maintain adequate levels of personnel in all grades it will be the responsibility of the City to initiate the selection process for the positions of Engineer and Lieutenant within 90 days of the creation of such vacancies, filling said vacancies as soon as possible upon certification of the promotional lists by the Civil Service Board.

Nothing in this agreement shall prohibit the Winter Park Fire Department from hiring an outside applicant for any position, if, in the sole discretion of the hiring authority, no employee applicant possesses the necessary qualifications, credentials and skills for the position. All selection decisions made under this article shall be made at the sole discretion of management.

### ARTICLE 18 - GRIEVANCE AND ARBITRATION PROCEDURE

Members of the bargaining unit will follow all written and verbal orders given by superiors even if such orders are alleged to be in conflict with this agreement. Compliance with such orders will not prejudice the right to file a grievance within the time limits contained herein, nor shall compliance affect the ultimate resolution of the grievance.

A "grievance" is a claimed violation of this agreement. No grievance will or need be entertained or processed unless prepared in writing in the manner described herein, and unless filed in the manner provided herein within the time limit prescribed herein. A grievance may be filed by either a bargaining unit employee ("employee" as used herein being understood to include the plural for purposes of this Article) or by the Union. Grievances are limited to claims, which are dependent for resolution exclusively upon interpretation or application of one or more express provisions of this agreement. The City need not entertain or process under this article and may refuse to entertain or process any dispute, claim or complaint or other matter not meeting this definition.

Grievances will be processed in the following manner and strictly in accordance with the following stated time limits.

Step 1: An aggrieved employee or the Union shall present in writing the grievance to the aggrieved employee's immediate supervisor within ten (10) calendar days of the aggrieved employee's or Union's knowledge of the occurrence of the action giving rise to the grievance. The immediate supervisor shall reach a decision and communicate it in writing to the grievant within ten (10) calendar days from the date the grievance was presented to him. The failure of the aggrieved employee or the Union to make the grievance known in writing to the immediate supervisor within ten (10) calendar days of such knowledge of the occurrence of the action giving rise to the grievance shall constitute a final and conclusive bar on the merits of the grievance. The phrase "action giving rise to the grievance" shall include a final decision made by a representative of the City, which results at a later time in the action which is the subject of the grievance. In any case in which a grievance is presented to the City without

the Union's knowledge, and that fact is known to the City the City shall within one (1) business day forward a copy of the grievance to a member of the Union's Executive Board.

Step 2: If the grievance is not resolved with finality at the first step, the aggrieved employee or the Union, within ten (10) calendar days following receipt of the answer in the first step, may forward it to the Battalion Chief assigned to the grievant's shift at the time of occurrence of the facts giving rise to the grievance. The Battalion Chief shall, within ten (10) calendar days of receipt of the written grievance, conduct a meeting with the aggrieved employee. The aggrieved employee may be accompanied at this meeting by a Union representative. The Battalion Chief shall notify the aggrieved employee in writing of the decision not later than ten (10) calendar days following the meeting date.

Step 3: If the grievance is not fully resolved at the second step, the aggrieved employee or Union may forward the written grievance to the Fire Chief within ten (10) calendar days of receipt of the answer provided in Step 2. The decision of the Fire Chief shall be determinative of the grievance. The City shall notify the aggrieved employee and the Union of the Fire Chief's decision within ten (10) calendar days following the meeting.

#### ARBITRATION

If the grievance is not resolved by the foregoing grievance procedure, the Union, within fourteen (14) calendar days after the Fire Chief's decision in Step 3, may give to the Fire Chief, by hand delivery or by registered or certified mail, a written notice of its desire to submit the matter to arbitration; said written notice to include a written statement of the position of the Union with respect to the arbitrable issues.

Within fourteen (14) calendar days from receipt of such notice, the parties shall meet to select an arbitrator. In the event the parties fail to agree on an arbitrator, both parties shall, within fourteen (14) calendar days, jointly request a list of nine (9) qualified arbitrators. For each individually claimed grievance process and beginning with the Federal Mediation and Conciliation Service (FMCS), the City and the Union agree to alternate the use of arbitration services between the American Arbitration

Association (AAA) and the FMCS. The use of any arbitration service will be limited to only one of the two aforementioned services.

Once the specific service agency is selected, the Union and then the City will alternately eliminate one at a time from said list of names or persons not acceptable until only one remains and this person will be the arbitrator. The City and the Union will alternate in the right to first strike names in successive arbitrations.

As promptly as possible after the arbitrator has been selected, he shall conduct a hearing between the parties and consider the grievance. The decision of the arbitrator will be served upon the employee or employees aggrieved the City and the Union in writing. It shall be the obligation of the arbitrator to rule within twenty-one (21) calendar days after the hearing. The expense of the arbitration, including the fee and expenses of the arbitrator, shall be paid by the losing party. Each party shall be exclusively responsible for compensating its own representatives and witnesses.

The submission to the arbitrator shall be based exclusively on the written grievance as submitted in Steps 1, 2 and 3 of the grievance procedure, and shall include a copy of this agreement.

The power and authority of the arbitrator shall be strictly limited to determination and interpretation of the express terms of this agreement. He shall not have the authority to add to or subtract from or modify any of said terms, or to limit or impair any right that is reserved by this agreement, by statute or otherwise to the City or the Union or the employees, or to establish or change any wages or rate of pay in this agreement.

No decision of any arbitrator or of the City in one case shall create a basis for retroactive adjustment in any other case.

All claims for back wages shall be limited to the amount of wages that the employee otherwise would have earned from the City, less any unemployment compensation or compensation from other sources that he may or might have received during the period for which the back pay was awarded.

In settlement or other resolution of any grievance resulting in retroactive adjustment, including back wages, such adjustment shall be limited to a maximum of thirty (30) calendar days prior to the date of the filing of the grievance at Step 1.

The decision of the arbitrator is final and binding on both parties, and the grievance shall be considered permanently resolved, subject to any judicial relief available to either party under Florida law.

It is agreed, with respect to this grievance and arbitration procedure, that:

- A. It is the intent of the parties that grievances must be raised at the earliest possible time. Any grievance, in order to be entertained and processed, must be submitted in writing at Step 1 within ten (10) calendar days after initial knowledge of the action allegedly giving rise to the grievance, which means, as indicated in Step 1 above, within ten (10) calendar days after knowledge of a final decision which results in the action which is the subject of the grievance.
- B. A matter otherwise constituting a grievance not presented at Step 1 within the time limit prescribed in Step 1 and in compliance with paragraph A above shall be conclusively barred on the merits following expiration of the prescribed time limit. Such a time-barred grievance need not be entertained or processed, and only factual disputes as to timing will be the subject of any arbitration resulting from the matter. A grievance which is for any reason not advanced to Step 2, Step 3 or to arbitration within the time limits prescribed herein for such advancement shall be similarly permanently withdrawn and barred. Failure on the part of the City to respond within the time limit set forth at any step shall require the aggrieved employee or Union to proceed to the next step, and failure on the part of the aggrieved employee or Union to so proceed within the time limit after expiration of the time limit for the City's response shall cause the matter to be barred as set forth in this paragraph.
- C. A time limit at any stage of the grievance procedure may be extended by written mutual agreement of the Union and the Fire Chief.

- D. All grievances shall be dated and signed by the aggrieved employee or Union representative. Any decision rendered shall be in writing and shall be dated and signed by the City's representative at that step.
- E. In any grievance there shall be set forth in space provided on the grievance form or on attachments, if necessary, all of the following:
- 1. a complete statement of the grievance and facts upon which it is based;
- 2. the section or sections of this agreement claimed to have been violated; and
- 3. the remedy or correction requested.
- F. Unless mutually agreed, all grievance hearings will be during working hours.
- G. Any grievances filed on behalf of or for the benefit of any employee or employees must specifically name all such employees, and may not be amended after completion to Step 2 to add names. No monetary or other relief shall be granted or awarded to any employee not so named. The only exception to this is that if the Union claims that a grievance affects the entire unit, it may describe the unit generally.
- H. In all cases requiring the aggrieved employee or the Union to timely present or advance a grievance to a designated City official, hand delivery during the hours of 9:00 a.m. until 5:00 p.m., Monday through Friday, except holidays hereunder, to the office of that official shall be sufficient for compliance with prescribed time limits if the designated official is not personally available for service.
- Nothing in this agreement shall prohibit the presence of a Union representative at Steps 1, 2 or 3 of this procedure.

# ARTICLE 19 - HUMAN RIGHTS

The parties agree that the race, color, sex, national origin, religion or marital status of one or more unit employees shall not be a basis for the application this agreement.										

### **ARTICLE 20 - PHYSICAL FITNESS**

All unit employees shall be and remain at all times physically able to effectively, quickly and safely exercise all duties related to fire suppression and fire rescue. The City shall have the right to implement and enforce this article by conducting annual, job-related physical examinations of all unit personnel (to be performed by a licensed medical doctor of the City's choice at the City's expense), by setting physical skill, strength, agility and endurance standards as set forth in NFPA 1582 (2000 edition) and by determining by such annual physical examinations whether such standards are met by each unit employee.

The City and the Union shall maintain a Physical Fitness Peer Review Committee. Two employees will be selected by the Union and two by the Fire Chief. Terms shall be for no more than one year, selected annually. Individuals may serve more than one term. The Fire Chief shall designate a fifth non-voting member to the Committee to serve as the moderator. The Peer Review Committee will meet on a quarterly basis for the purpose of monitoring the progress of the department's fitness program, and as needed to evaluate individual employee situations.

The City and the Union agree that the additional responsibilities of the Peer Review Committee shall be further outlined in Standard Operating Guideline 100.09. All functions of the Peer Review Committee shall be exclusively advisory in nature. The City further agrees to negotiate any substantial changes to Standard Operating Guideline 100.09

# ARTICLE 21 - APPENDICES AND AMENDMENTS

Appendices and amendments of this agreement, if any, shall I signed by the parties, and shall constitute part of this agreement.	or numbered,	dated,	and

# ARTICLE 22 - COMPENSATORY TIME

The m	aximum	number	of comp	ensatory	hours	which	can b	oe ac	cumu	lated l	оу "А"	Unit	member	s is	168;
for "B	" Unit me	embers w	ho work	a 56 hou	r shift	, 168 aı	nd for	"B"	Unit 4	10 hou	r emp	loyee	s, 120		

## ARTICLE 23 - SAVINGS

If any article of this agreement or any portion of any article is ruled to be illegal or otherwise invalid, either as to language or application, by any Court or other tribunal having jurisdiction of the parties and this agreement, such ruling shall not invalidate the remaining articles and portions of articles of this agreement.

### **ARTICLE 24 - SALARIES**

The City agrees to pay base compensation to all unit employees after the date of full ratification of this Agreement at their base rates on that date.

On October 1, 2013 the City will implement the pay ranges identified in Appendix A. Unit members whose pay on October 1, 2013 is below the minimum of the rage will be adjusted to the new minimum level.

Should the City during Fiscal Year 2014 provide any non-merit-based percentage cost of living increases to all City employees, other than unit members, that increase will be granted to unit members in the next full pay period following the effective date of the increase.

The employment performance of all unit members will be evaluated annually on their designated merit date utilizing the TrakStar® employee performance appraisal system.

All increases noted shall be based upon the final ratings awarded by the unit member's supervisor and approved by the Fire Chief. A minimum overall rating of 2.5 must be achieved to receive any merit increase. Any unit member who receives a rating from 0-2.4 will be scheduled for a re-evaluation six months from their annual appraisal date, and based on their performance, would be eligible for a merit increase at that time. Any actions resulting from a re-evaluation will not change the members original annual merit date.

Beginning on October 1, 2013 and ending on September 30, 2014, any unit member receiving a performance rating of 2.5 to 3.2 will receive a base salary increase of 2.0% and unit members receiving a rating of 3.3, or higher will receive a base salary increase of 2.5%.

If the unit members annual merit increase brings them to their maximum pay limit as noted in Appendix A, the increase for that fiscal year may be less than that afforded other unit members. At no point shall a

unit member have a base annual compensation above the maximum annual salary listed in Appendix A of this document.

Unit members who are promoted from the classification of Firefighter to Engineer or from Engineer to Lieutenant will receive an increase in base compensation equal to 11%.

Unit members who are promoted from the classification of Firefighter to Lieutenant, and any unit member approved by management to change their medical certification from EMT to Paramedic will receive an increase in base compensation equal to 13%, rounded up, as necessary, to the minimum pay level of the grade.

Any salary change resulting in a base compensation increase of more than 15% will change the affected member's annual evaluation/merit date to the date of action. Except as otherwise provided in this article, no increases in compensation will be promised or given which would result in an employee's base compensation being above the maximum salary for his position.

At no time during the duration of this agreement will any unit member be paid base compensation above the maximum amount indicated in Appendix A.

**ARTICLE 25 - INCENTIVE COMPENSATION** 

The parties agree that the City will pay, annually, as incentive compensation, the following amounts to

unit personnel, other than probationary employees, who have been continuously employed by the City

in the unit for one calendar year and have obtained the following academic credentials.

1. Associate's Degree:

\$487.00 per year;

2. Bachelor's Degree:

\$650.00 per year.

Such incentive compensation, once earned, shall be paid in equal amounts per pay period commencing

in the pay period after the incentive is fully earned. In order for an employee to be eligible for this

incentive, the course of study and the degree must be among those approved by the State of Florida as

being job related.

The parties further agree that the City will continue to pass on to eligible unit employees the

educational incentives authorized by the State of Florida and administered by the State of Florida

Bureau of Fire Standards and Training. These incentives will be disbursed in the amounts and at the

times as prescribed by State guidelines as issued from time to time. The Union acknowledges that such

guidelines may be changed unilaterally by the State of Florida from time to time at the discretion of the

State. The City will continue to process the necessary forms to continue disbursement of these

incentives so long as such incentives are provided by the State of Florida.

However, nothing in this paragraph shall obligate the City to pay such incentives from its own funds.

Transport Incentive: The City will pay as incentive compensation one dollar and fifty cents (\$1.50) per

hour for paramedics and EMT's assigned to a rescue/transport unit.

Paramedic Preceptor Incentive: Unit members who are selected by the Department as Paramedic Preceptors will be compensated an additional \$35.00 per pay period of service, not to exceed \$910 annually.

Tiller Operator Incentive: The City will pay as incentive compensation one dollar (\$1.00) per hour for any qualified Firefighter assigned to the tiller operator position only. The City will determine the level of qualification for tiller operator. Engineers and Lieutenants are not eligible for tiller operator incentive.

#### ARTICLE 26 - MANDATORY LEVELS OF PROBATIONARY FIREFIGHTER TRAINING

The City shall continue to maintain mandatory training requirements for all entry-level, probationary firefighters.

All newly employed firefighters will be classified as Probationary regardless of the level of medical certification. In addition to producing a satisfactory employee annual appraisal report, a Probationary Firefighter must successfully complete all monthly requirements as set forth by the Department, the Fire Department street familiarization tests, and the Company Fire Inspector Program, in order to successfully complete their probation period.

During the second twelve months of employment all Firefighters must successfully complete the Equipment Operator/Pump Operator Program and all requirements as set forth by the Department for all Firefighters during their second twelve months of employment.

Employees classified as Firefighter shall have twelve (12) months from their first workday in such classification to complete their probation. Completion of all such training programs within the time specified shall be a condition of further employment. Failure to complete such training programs as required by this Article shall be conclusive grounds for termination of employment. The City may, at its sole discretion, grant an additional six (6) months to complete such training programs, if the City believes special circumstances exist justifying such extension. Normally, such circumstances will be limited to an affected employee not having had, due to illness or injury, the full twelve (12) months within which to complete the required training programs.

Training opportunities afforded to probationary firefighters will be scheduled by the City and shall not be considered part of any educational opportunities otherwise offered to non-probationary members.

# ARTICLE 27 - ADDITIONAL COMPENSATION FOR WORK IN HIGHER CLASSIFICATION

The City agrees to pay to any unit employee who temporarily assumes and occupies the position and duties of a shift lieutenant engineer or shift commander additional compensation, consisting of 1.10 times the base rate of such employee for each hour worked.

In no event will the additional compensation earned and paid hereunder exceed the per-shift or per-day base compensation of the individual whose position is temporarily assumed and occupied hereunder.

# ARTICLE 28 - DETAIL PAY

The City, for the term of this agreement, shall continue its practice of establishing hourly rates of compensation for detail pay. Detail pay, to the extent collected by the City, shall be paid to the entitled unit employees at the hourly rate or rates as established by the City from time to time.

### ARTICLE 29 - COMPASSIONATE LEAVE BANK

The Parties agree to establish Compassionate Leave Bank (Bank). The Bank shall operate in strict compliance with the language of this article.

The Bank is available to all unit employees, who must elect in writing to participate: those who so elect are participants. The Bank furnishes benefits equivalent to medical absence leave for participants who experience personal injury or illness (including without limitation, personal injury or illness caused by or related to pregnancy or maternity) and for such reason are unable to perform the essential functions of their assigned positions and therefore desire time off after the expiration of all other forms of paid leave, such as, but not limited to, medical absence leave, annual leave, personal leave and compensatory leave. The Bank is not available for any other purpose. The Bank shall operate in strict compliance with the language of this policy.

The City Human Resources Manager will administer the Bank and will keep the only official records of all hours in the Bank and all hours granted to and used by participants.

The department's Fitness Peer Review Committee identified in Article 21 will be responsible for reviewing requests for benefits made by all unit members

### Eligibility to be a participant:

The following requirements must all be met for a unit employee to become and remain a participant.

- 1. Participants shall be unit employees of the Winter Park Fire Department with a minimum of six months continuous at the time of election to participate.
- 2. Each participant must elect in writing to be a participant between December 1 and December 15 of each year. There will be no exceptions to this, except: (1) otherwise eligible unit employees may elect in writing to be participants for 14 calendar days following full ratification of this Agreement; (2) newly hired unit employees may so elect for a 14 calendar day period immediately following 6 months of continuous employment.

3. Participants must have accrued the following minimum amounts of medical absence leave hours as of the sixteenth day of September occurring before making the election.

56-hour employees

6-12 months (\*1) = 84 hours 12-24 months = 168 hours

24-35 months = 252 hours 36-48 months = 336 hours

Over 48 months = 420

40-hour employees

6-12 months = 60 12-24 months = 120

24-36 months = 180 36-48 months = 240

Over 48 months = 300

(\*1) Months as used in 3., 4., and 5. Under Eligibility, etc. means months of continuous service as a unit employee.

- 4. 56 hour participants with 12 months or more service as of the date of their election shall contribute (\*2) 48 hours of accrued medical absence leave. Participants with 6-12 months of service as of the date of their election shall contribute 24 hours of accrued medical absence leave. Such participants who only contributed 24 hours to enroll will be assessed the additional 24 hours on the succeeding December 16, in addition to the annual uniform assessment.
- 5. 40-hour participants with 12 months or more service as of their date of election shall contribute 32 hours of accrued medical absence leave. Participants with 6-12 months of service as of the date of their election shall contribute 16 hours of accrued medical absence leave. Such participants who only contributed 16 hours to enroll will be assessed the additional 16 hours on the succeeding December 16, in addition to the annual uniform assessment.
- 6. Employees with less than the required amount of hours at the date of their election may become participants, but will only be eligible for a total benefit that is twice their accrued amount of medical absence leave as of the date of such election. Such participants donate the required number of medical absence leave hours as stated in Section 4 & 5 above. Such

participants, upon accrual of the hours of medical absence leave required in 4 & 5 shall be eligible as other participants.

(\*2) Contributions shall be simultaneous with elections, except under Limitations, first paragraph, under which the contribution shall take effect automatically upon accrual of the required 168/120 hours

All participants will be uniformly assessed additional medical absence leave hours each year beginning January 2 so as to maintain the balance of hours in the Bank at amounts equal to 48 times the amount of 56 hour members, plus 32 times the amount of 40 hour members. The assessment will take place on that date or the first business day after it if January 2 is a holiday, Saturday or Sunday. The assessment shall be in amounts sufficient in the committee's sole discretion to maintain or exceed the abovementioned minimum balance.

### Request for Benefits/Criteria for Award

Participants who experience a personal injury or prolonged illness as defined herein, and who have used all available paid leave except for one shift of vacation leave (8 hours for 40 hour members or 24 hours for 56 hour members) may request benefits. Requests for benefits shall be made directly to the Human Resources Manager. Benefits will not be granted unless the personal injury or illness is the sole reason the participant is unable to perform the essential functions of his/her assigned position.

All requests for Compassionate Leave benefits shall be forwarded by the Human Resources Manager to the Peer Review Committee for review. A decision shall be made whether to award benefits to the requesting participant within 7 calendar days of receipt of the request by the Human Resources Manager.

The Committee has the authority, in its sole discretion, to require medical information satisfactory to it, and may defer consideration until such information is furnished.

In all cases, it is the participant's exclusive responsibility to furnish such information.

If the Committee receives with a request for benefits written evidence satisfactory to it that a participant will be unable to perform the essential functions of his/her assigned position solely because

of personal injury or illness, as defined herein, as opposed to any other cause, following the expiration of all other available paid leave, it will grant benefits subject to the remaining provisions of this article. Benefits will not be granted unless the personal injury or illness renders such participant unable to perform the essential functions of his/her assigned position.

A participant may appeal the decision of the Committee to the City Manager within ten business days after being denied benefits. The City Manager shall have total and exclusive discretion to grant or deny benefits. The City Manager's decision in such regards shall be final.

Withdrawal of Benefits

After approval by the Committee of a request, a participant (other than as described in 6. above) may withdraw up to 240 hours for 56 hour members / 160 for 40 hour members.

If grounds exist, such a participant may request additional hours up to a total of 1456 hours for 56 members / 1040 for 40 hour members, which amounts shall be the maximum amounts allowed per participant. Additional hours shall be issued in blocks of no more than 240 and 160 hours respectively. Limitations

A participant who has used the maximum medical absence leave hours specified immediately above (1456/1040) shall not be eligible for any additional benefits until such participant has accrued 168 hours for 56 hour employees / 120 hours for 40 hour employees of medical absence leave and contributed an additional 48 hours for 56 hour employees / 40 hours for 40 hour employees.

Medical absence leave that has been contributed to the Bank may not be removed for any reasons other than those described in the Withdrawal of Benefits section of the Article.

Participants are not eligible for the return of and will not receive payment for any contributed medical absence leave hours upon termination of employment with the City, regardless of whether termination was voluntary or involuntary, and regardless of the reasons for termination.

Any time off taken pursuant to this article shall be counted toward the participant's entitlement to any unpaid disability leave provided in the City's Personnel Policy Manual.

All terms and conditions regarding said unpaid leave — including, without limitations provisions regarding the non-accrual of medical absence leave and personal leave, non-payment for holidays, and responsibility for payment for group health insurance payments — shall apply to time off taken pursuant to this article.

Participants may not withdraw benefits for any period simultaneously covered by workers compensation or long-term disability payments provided however that a participant out on workers compensation of a period exceeding thirty (30) days may withdraw hours each pay period to cover all deductions and the difference between the workers compensation pay and their average net pay. The average net pay will be calculated using the same thirteen-week period on which workers compensation pay was calculated. Under no circumstances will the use of compassionate leave be allowed to enrich the participant beyond what they would earn if working.

The employee may continue to use the Bank until one of the following occurs: (1) he reaches the maximum limit of hours available as defined in this policy under Withdrawal of Benefits; (2) he returns to work; or (3) he reaches MMI (Maximum Medical Improvement).

Nothing in this Article affects the right of the City to terminate the employment of any participant who exhausts all paid leave and all benefits under this article and who remains unable to perform the essential functions of his/her assigned position.

The City shall have the right to terminate benefits hereunder in cases in which the criteria for benefits are not met or cease to be met.

### ARTICLE 30 - UNIT TIME POOL

The City agrees to establish a unit time pool utilizing unit approved mandatory donated hours derived from vacation hours accrued by unit members. The time is to be used by the unit's executive board or those members designated by the president for the purpose of attending conferences, seminars, unit meetings, conventions and other functions not covered by City administrative time, as deemed necessary by the president.

The time pool shall require the donation, as previously approve by unit members, of five (5) Personal Leave hours by unit members initially to establish the pool. Subsequent donations shall be required only to maintain the pool at the established level of 225 hours, when those hours drop to 120 hours or below. New unit members will not be assessed until the first reassessment period following their becoming a unit member.

When time is required for the above mentioned purposes, the president shall submit to the chief or his/her designee the required form specifying the number of hours needed for any member of the executive board or his/her designee. The chief or his/her designee will submit the required form to the department's administrative assistant for forwarding to payroll. The president will submit a letter to the Chief or his/her designee to replenish time pool hours as needed to maintain established levels.

Unit members have the option of donating greater than the five (5) hours of mandatory time required by this article.

If the need for time pool hours necessitates the use of overtime personnel, then those hours required will be deducted from the pool by the City. Pool hours will be charged on an hour-for-hour basis to a total of 36 hours per unit member, per event.

Example: Unit member A is approved to use 24 pool hours to attend a meeting out of town and an overtime person is required to meet minimum staffing which was caused by the use of the pool hours.

The Union Time Pool will be charged 24 hours for member A and 12 hours for the overtime person for a maximum of 36 hours. If no overtime person is required, only those hours needed to cover member A would be deducted. This formula will apply to each individual approved for pool hour use.

# ARTICLE 31 - EXEMPT EMPLOYEE BONUS PACKAGE

The parties agree that, during the term of this agreement, the captains, lieutenants, fire marshal and fire inspectors will receive the exempt employee bonus package, which is granted to and received by all City employees who are exempt employees under Section 13(a)(1) of the Fair Labor Standards Act.

### **ARTICLE 32 - DRUG TESTING**

The City and the Union agree that substance abuse at any level in the organization is detrimental to the safety and work performance of all employees. To help ensure that the community can feel confident that the City is providing a drug free workplace, the Union agrees that the City may continue to require drug testing of unit members. Such testing will be in accordance with the requirements of Section 440.102, Florida Statutes ("Section 440.102").

The City agrees to allow the Union to review all testing procedures under its control upon reasonable request to assure confidence in the integrity of the process. Specimen collection, to the extent of City control of the process, will be performed with due regard for employee privacy.

In the event a unit member eligible to do so has a portion of a specimen retested by a second laboratory, as allowed under Section 440.102(5)(g), Florida Statutes, 1999, if that test is positive, it shall be at the unit members expense, if negative, at that of the City.

Testing of unit members will take place at the following times: 1) annually, during and as part of the unit member's annual medical examination; 2) post-accident, when the unit member is involved in any accident occurring within the scope of employment with the City which results in physical injury or property damage in excess of \$1,000; or 3) at any time in response to reasonable suspicion as defined in Section 440.102. At no time will unit members be subject to random testing. The City will be responsible for the costs incurred for all required drug testing.

Any unit member subjected to testing for any post-accident event, or in response to reasonable suspicion will be assigned to duties which do not include driving/operating any apparatus until such time as the test is confirmed. If accommodations cannot be made to reassign the member to a position where they are not driving/operating apparatus, the member shall be reassigned to administrative duties as determined by their supervisor.

Any unit member who receives a confirmed positive test will, for the first such offense, be required to participate in an Employee Assistance Program (EAP) and will be suspended from duty without pay for a period not to exceed 48 hours for 56 hour employees and 40 hours for 40 hour employees. In addition, follow up testing will be conducted in accordance with F.S 440.102 Section (4)(a)(4). Refusal to participate in the full EAP and follow-up testing will be conclusive grounds for discharge. At any time during the remainder of such unit member's employment with the City, a second confirmed positive test would result in discharge.

The Union agrees that at any time, including for a first such offense, should a unit member receive a confirmed positive test for a controlled substance contained in the inventory of medications used by the City in the provision of emergency medical services, the unit member will be discharged unless the unit member can establish that such substance was taken pursuant to a current lawfully given and received prescription.

### ARTICLE 33 - EDUCATIONAL ASSISTANCE

The City of Winter Park encourages unit members to continue developing and improving their skills for their current job and to prepare for promotional opportunities and advancement in their chosen career path. Therefore, unit members shall be eligible for educational assistance as described in Section 6.10 of the City of Winter Park Personnel Policy Manual.

In addition to the financial assistance offered under this policy, the City agrees to supplement the reimbursable amount approved in Section 6.10 by an additional \$500 each year, beginning on October 1st.

The City and the Union agree to make reasonable effort to utilize local educational institutions for the purpose of meeting the training needs of the agency. The City will have the right to recruit advanced training opportunities for unit members and when not available, shall approve opportunities outside the immediate area.

In addition to the educational reimbursement benefits available in Section 6.10, the City of Winter Park will, when funding is available, sponsor selected unit members to training for State Paramedic certification training. Unit members who are selected to participate by the City shall agree to all policies of the Paramedic Training Sponsorship Program. A selection process for all participants in this program shall be established and agreed upon by both the Union and the City. In addition, any unit member who may choose to attend the paramedic curriculum at Valencia College outside of this program shall be provided a letter of support from the City identifying them as employees of the City.

Upon receipt of state of Florida paramedic certification, any reclassification of pay will based upon position availability as a paramedic. It will be the responsibility of the City only to offer such sponsorships when paramedic positions are available; however no guarantee is made to the reclassification of any unit member sponsored under this program.

The City agrees to support the attendance of two (2) unit members to the IAFF Redmond Firefighter Health and Safety Symposium and the Fire Department Instructors Conference (FDIC). Attendees at these events will receive those benefits identified in SOG 430.02 for a Class "A" training event. The City also agrees to follow the City Personnel Policy manual for any conference related expenses for these events. To receive this benefit, unit members will be recommended by the Union Executive Board with final approval made by the Fire Chief. All applications for attendance must be filed in time to receive the maximum discount for early registration to the event. The City reserves the right to select additional unit members over and above the two unit members approved under this Article to attend these events. Any additional Unit members who attend these events will be required to apply under the current City Personnel Policy for conference attendance.

All unit members who are eligible to receive city sponsored educational assistance as described in the Personnel Policy Manual Section 5.15, may, upon approval of the Fire Chief utilize up to 120 hours for 40 hour members and 168 hours for 56 hour members for the purpose of funding approved educational expenses. These expenses may only include those specifically outlined in the current City Personnel Policy Manual Section 5.15.

### **ARTICLE 34 - PENSIONS**

The City agrees to continue to fund the current Defined Benefit (DB) Pension Plan for all qualified unit members as required by Florida Statute. For all unit members who do not qualify for the DB plan, the City agrees to continue to fund the current Defined Contribution (DC) Plan as described in the City Personnel Policy Manual.

For the purposes of this Article, salary shall mean the total compensation for services rendered to the City as a Firefighter reported on the member's W-2 form, except compensation for special details, duty indirectly paid for by private parties, tuition reimbursement, and emergency payment for unused Personal Leave, but including all tax deferred items of income deferred pursuant to Sections 457 (employee contributions only) and 414(h) of the Code and tax exempt income exempt pursuant to Section 125 of the Code, and tax sheltered items of income derived from elective employee payroll deductions or salary reductions.

Notwithstanding the preceding sentence, for Credited Service on and after October 1, 2011, salary shall exclude payments for overtime used for the calculation of hours worked under the Federal Fair Labor Standards Act (FLSA) in excess of 300 hours per calendar year, and payments for accrued unused personal leave, except as follows: payments for accrued unused personal leave accrued as of October 1, 2011 may be included in salary for pension purposes even if payment is not actually made until on or after October 1, 2011; provided, the amount of accrued personal leave accrued as of October 1, 2011 that may be included in salary for pension purposes shall be reduced by the actual amount of personal leave used by the Member on or after October 1, 2011.

To further clarify, any overtime earned as part of employee's regularly scheduled hours of work as required by the Fair Labor Standards Act (FLSA overtime) will not count towards the 300 hours annual overtime cap.

For employees hired on or before October 1, 1998, the amount of accrued personal leave included shall be calculated by reducing the amount of accrued personal leave as of October 1, 2011 by the actual amount of personal leave used by the member on or after that date on a last in first out (LIFO) basis; and for employees hired after October 1, 1998, the amount of personal leave included in salary shall be calculated by reducing the amount of accrued personal leave as of October 1, 2011 by the actual amount of personal leave used by the member on or after that date on a first in first out (FIFO) basis.

### ARTICLE 35 - EMERGENCY DEPLOYMENT COMPENSATION

The City agrees to offer compensation to those unit members who are deployed as a result of the City's participation in the State of Florida Mutual Aid Agreement. Deployment compensation will be paid in the following manner;

Upon notification by the State of Florida to the City of a request for resource assistance, a unit member assigned to deploy, or to back-fill a vacated position, will be compensated for those hours which are reimbursable under the guidelines of the Federal Emergency Management Agency (FEMA). The City will calculate those hours worked by the unit member and compensate for all hours worked under the Fair Labor Standards Act (FLSA).

Unit members not on-duty at the time of the deployment activation will be compensated from the time of confirmed response

# **ARTICLE 36 - PERSONAL LEAVE**

Beginning October 1, 2011 all permanent, full-time employees shall earn Personal Leave as prescribed in the Personnel Policy Manual Section 5.05. Temporary and part-time employees, if any, shall not be eligible to earn or accrue Personal Leave. Employees are eligible to use accrued Personal Leave after six months from date of hire. Personal Leave is provided at the following annual rates:

# All 56-hour UNIT Members:

Minimum Length of Service	Personal Leave Hours
1 year	272
2 years	284
3 years	296
4 years	308
5 years	320
6 years	332
7 years	344
8 years	358
9 years	380
10 years & over	392

# All 40-hour Members / Fire Inspector & Fire Marshal

Minimum Length of Service	Personal Leave Hours
1 year	120
2 years	128
3 years	136
4 years	144
5 years	160
6 years	168

7 years	176
8 years	184
9 years	192
10 years & over	200

Newly hired employees starting to work on or before the 15th of the month will accrue Personal Leave for that month. Employees starting to work after the 15th of the month begin accruing Personal Leave the following month.

Beginning October 1, 2011 the maximum number of Personal Leave hours which can be accumulated will be 672 for unit members who work a 56 hour work week; 520 for unit members who work a 40 hour work week.

Any unit member's Personal Leave accrual amount which annually meets the maximum amount of 672 hours for 56 hour members and 520 hours for 40 hour members will have the opportunity to sell-back at straight time no more than 15% of his total hours; and any 56 hour member who has an accrual balance of 600 hours or a 40 hour member who has an accrual balance of 470 may sell-back at straight time no more than 10% of his total hours.

All sell-back hours will be paid during the first pay period in November. Any other Personal Leave earned in excess of the hours indicated in this article, which is not taken before the end of a fiscal year, or paid out as a part of the sell-back formula is forfeited and lost as of the beginning of the next fiscal year.

Personal Leave shall not be authorized prior to the time it is earned and credited to the employee. On reasonable notice, the City may require an employee to use any part of his accrued Personal Leave. The minimum charge for Personal Leave shall be units of one hour.

Payment for earned unused Personal Leave, other than at layoff, termination or under the sell back provisions in this article will be granted only under extraordinary circumstances and only with the approval of the City Manager or his/her designee. Such approval will only be granted if there is a

documented severe financial hardship. The employee requesting payment must submit the request in writing along with sufficient supporting information to document the hardship. The employee must have enough accrued Personal Leave to leave a minimum of one (1) week in his or her accrual. The request cannot exceed 120 hours for 40 hour employees or 168 hours for 56 hour employees. No more than one request will be approved for any 24-month period.

Employees will be paid at straight time to a maximum of 672 hours for 56 hour unit members and 520 hours for 40 hour unit members for all unused but earned Personal Leave upon layoff or termination from the employment of the City, except that an employee who resigns must give two weeks' written notice of resignation prior to his last day of work in order to receive such payment and will forfeit such payment by failure to meet this condition. In the event of death of an employee with earned but unused Personal Leave, payment for such earned hours shall be made at straight time to the employee's beneficiary, personal representative or estate or as provided by the law of Florida.

Use of Personal Leave: Unit members shall schedule the use of Personal Leave in accordance with agreed upon system of both annual and nominal scheduling with the unit members identified supervisor. Scheduling of Personal Leave for 56-hour members must be approved by a Battalion Chief or Division Supervisor a minimum of 48 hours in advance of the assigned work day; and 24 hours in advance for all 40-hour employees. In the case of 56-hour members, a supervisor may award the use of Personal Leave within 48 hours of an assigned shift if the approval will not force the use of overtime to maintain minimum staffing.

The first 40 hours of continuous Personal Leave (scheduled or unscheduled) used by a 40 hour unit member and the first 36 hours of continuous hours of Personal Leave (scheduled or unscheduled) used by a 56 hour unit member to be away from work for any personal illness shall be charged to Personal Leave. Absences extending beyond that time will be recorded in accordance with the Long-Term Medical Leave absence policies in Article 37. Even if a unit member returns to duty, any Long-Term Medical Leave event which is identified by diagnosis of a physician and documented to the City shall be considered as one continuous event for the purposes of recording as Long-Term Medical Leave.

Example: Unit Member "A" is ill and uses 36 hours of Personal Leave immediately followed by 36 hours of Long-Term Medical Leave. After being cleared by his physician Unit Member "A" returns to duty for 48 hours. On the next duty day the unit member once again is ill and is diagnosed by his physician to have the same illness as was the cause of the first use of Long-Term Medical Leave. After providing a physician's note to the City the time off duty shall be considered one event for the purposes of recording the time as Long-Term Medical Leave.

Unscheduled Personal Leave: Unit members may choose to use Unscheduled Personal Leave for time away from duty for personal medical purposes. Unscheduled Personal Leave may also be used to make possible the employee's personal appointments with a physician or dentist when it is not possible to arrange such appointments for off-duty hours; such use of Unscheduled Personal Leave shall not exceed the time required to complete such appointments.

All 56 hour employees may use up to 56 hours, and all 40 hour employees may use up to 40 hours, per year of Long Term Medical Leave for paternity leave, adoption of a child, or the illness of an immediate family member. Long Term Medical Leave for family purposes can only be used following the use of 56 consecutive hours (40 hours for 40 hour employees) of Unscheduled Personal Leave for the same purpose. No more than a total of 112 hours (80 hours for 40 hour employees) of paternity leave will be available during any 12 month period. The minimum charge for all Unscheduled Personal Leave is one-half hour.

Compensatory Time: The maximum number of compensatory hours which can be accumulated by "A" Unit members is 168; for "B" Unit members who work a 56 hour shift, 168 and for "B" Unit 40 hour employees, 120.

### ARTICLE 37 - LONG-TERM MEDICAL LEAVE

The City shall grant to unit employee's Long-Term Medical Leave as described below, on the terms and conditions as below set forth.

Long-Term Medical Leave shall be granted to and shall be earned only by permanent, full-time employees. Long-Term Medical Leave shall be accrued at the rate of 9.33 hours per month for 56 hour employees to a maximum allowed accrual of 1,392 hours and at a rate of 6.67 hours per month for 40 hour employees to a maximum allowed accrual of 1,000 hours.

An employee who is unable to work due to illness shall notify his designated supervisor as early as possible prior to his scheduled reporting time, giving the expected period of absence. Such procedure shall be followed for each shift the employee is unable to work unless otherwise noted by a physician's note. Any employee who fails to notify the appropriate supervisor as above required within three calendar days following the shift missed by such employee will be considered as having resigned without notice.

Long-Term Medical Leave shall be used only in accordance with the City of Winter Park Personnel Policy Manual. Long-Term Medical Leave shall not be authorized prior to the time it is earned and credited to the employee.

Long-Term Medical Leave use is authorized only in the event of the employee's personal illness, injury, or exposure to a contagious disease, which would endanger other employees.

When a unit member uses Long-Term Medical Leave, the City is responsible for determining to its satisfaction that an employee is too ill to work. The City may require an employee to present medical evidence from a licensed physician that the employee is physically not able to work.

No employee shall be paid under any circumstances for unused Long-Term Medical Leave. An employee who separates from City employment for any reason shall forfeit earned but unused Long-Term Medical Leave.

Long-Term Medical Leave Conversion Option: The City shall offer to all eligible unit members the option to convert a portion of a unit members accrued Long-Term Medical hours under the following situation. A 40-hour unit member who uses less than 40 hours of combined Unscheduled Personal Leave and Long-Term Medical Leave or a 56-hour unit member who uses less than 56 hours of combined Unscheduled Personal Leave and Long-Term Medical Leave has the option to convert a portion of his Long-Term Medical Leave hours to Personal Leave hours in accordance with the formulas described in City Personnel Policy Manual Section 5.06 (E).

To be eligible for any conversion of Long-Term Medical Leave hours under this Article, the unit member must be employed by the City in a qualified position on December 31st of the prior calendar year and must have an accrued Long-Term Medical Leave balance of 160 hours for 40-hour members, and 224 hours for 56-hour members. Conversion of Long-Term Medical Leave will only occur once annually at a time determined by the City.

# **ARTICLE 38 - EMPLOYEE APPRAISAL SYSTEM**

The City and the Union agree that all unit members will participate in the TrakStar® Employee Appraisal system. Each unit member shall complete the required appraisal within the prescribed time limit as established by the City. If during the duration of this agreement the TrakStar system becomes no longer available, the City and the Union agree to seek out a similar electronic employee appraisal system. If none is found, all appraisals will revert back to the previous (paper) employee system appraisal system.

### **ARTICLE 39 - DURATION**

This Agreement shall take effect in accordance with Section 447.309(1), Florida Statutes, on October 1, 2013 and shall terminate on September 30, 2014. If either party wishes to bargain collectively before October 1, 2014 for a new Agreement that party must give written notice to the other to that effect which must be received on or before June 1, 2014. If either party gives such timely written notice, then the initial proposals of each party must be presented and received on or before July 1, 2014. If timely written notice under this Article 41 is not given by one or both parties, this Agreement will continue in effect from fiscal year to fiscal year thereafter, except for the "re-opener" below.

This agreement may be reopened upon written notice by either the City or the Union during Fiscal Year 2014 to discuss Article 35 (Pension). No other issues may be the subject of collective bargaining during the re-opener in the absence of mutual agreement in writing between the City and the Union. During any such negotiations all provisions of this agreement shall continue in full force and effect unless and until new provisions are ratified in full.

# SIGNATURE PAGE

Executed: CITY OF WINTER PARK, FLORIDA	
	October 14, 2013
Randy B. Knight, City Manager	
(Chief Executive Officer)	
WITNESS:	
	October 14, 2013
Rene Brogan, Human Resources Director	
Executed: WINTER PARK PROFESSIONAL FIRE FIG	GHTERS, LOCAL 1598, IAFF
Anthony Braish, President L1598	
ATTEST:	
	October 14, 2013
Ryan Fischer, Secretary, L1598	

Ratified this 14th day of October, 2013
City of Winter Park, Florida
Kenneth W. Bradley, Mayor
Attest:
City Clerk
Ratified this 14th day of October, 2013
Winter Park Professional Fire Fighters, Local 1598, IAFF
Anthony Braish, President L1598
Attest:
Ryan Fischer, Secretary, IAFF 1598

# FIRE DEPARTMENT PAY GRADES - POSITION TITLES EFFECTIVE OCTOBER 1, 2013

	SALARY RANGE		POSITION TITLE
PAY GRADE	MINIMUM	MAXIMUM	
514	38,571.19	60,228.90	Firefighter / EMT
515	41,270.90	64,444.89	Engineer / EMT
517	47,251.28	73,783.38	Firefighter / Paramedic
518	50,558.73	78,948.11	Engineer / Paramedic
519	54,097.68	84,474.21	Engineer / FT Paramedic
520	57,884.74	90,387.61	Lieutenant / EMT
522	66,272.17	103,484.62	Lieutenant / Paramedic
523	70,911.28	110,728.80	Captain EMS Supervisor
565	42,638.96	64,433.41	Fire Inspector Community Risk Specialist
569	51,827.99	80,929.89	Fire Marshal



# City of Winter Park Fire-Rescue Department 1900 - Providing a Century of Extraordinary Care - 2000

# INTER-OFFICE MEMORANDUM

TO: Randy Knight, City Manager

FROM: Jim White, Fire Chief

DATE: 10-01-13

SUBJECT: 2014 IAFF - Contract Items

# WRITE IT! - DON'T SAY IT!

As you are aware we had a successful vote from the firefighters on the first draft of the new labor agreement. The following are the key items found in the new draft:

- Language was added to address stand-by pay for qualified witness service.
- Language was added to address the implications of the Affordable Care Act in the Insurance article.
- A 2.5% maximum salary increase is available determined through the performance appraisal system.
- Language was added that offers the transfer of Personal Leave hours to pay for qualified higher education credits.
- Required language was added that meets the State Statute on Pension Reform for the F.S. 175 Firefighters Pension Plan.
- Language was included that offers the Pension (Article 34) to be reopened during the year.
- This is a one-year agreement.

JW

item type	Consent Agenda	meeting date	October 14, 2013
department	Troy Attaway Public Works Administration	approved by	<ul><li>■ City Manager</li><li>■ City Attorney</li><li>□ N A</li></ul>
board approval		☐ yes ☐ no ■	N A final vote

# subject

Ground lease for Verizon for co-location of cell antennae on the public safety cell tower.

### motion | recommendation

Approve Lease. Approve Mayor to execute Ground Lease and Memorandum of Lease (MOL)

# background

A cell tower currently exists on the Public Safety Building property and has been in operation for approximately 20 years. The tower houses the City's communications equipment as well as 2 other cell phone provider's equipment. The tower is currently owned by Cingular Wireless; however, the tower will become the City's property within 6 years, through agreement. The City encourages co-location of users where possible to minimize the proliferation of towers. In order for cell service providers to co-locate, there is a need for ground space adjacent to the tower for the placement of cell provider specific equipment. Verizon approached the City about the possibility of co-locating their antenna on said tower. An interference study was completed confirming the proposed Verizon operation will not interfere with the City's current operation. The attached Lease is a Ground Lease for Verizon's proposed equipment. This ground lease will not impact existing nor future uses of the City's property. Also, attached is a Memorandum of Lease (MOL) that reiterates the Lease for recording purposes. See attached.

### alternatives | other considerations

N/A

### fiscal impact

This lease will provide revenue of \$14,400 per year with no cost to the City.

# long-term impact

N/A

# strategic objective

N/A

### LAND LEASE AGREEMENT

This Agreement, made this \_\_\_\_\_\_day of \_\_\_\_\_\_, 2013 between **The City of Winter Park, Florida**, a Florida municipal corporation, with its principal offices located at 401 Park Avenue South, Winter Park, Florida 32789, hereinafter designated LESSOR and **Verizon Wireless Personal Communications LP** d/b/a Verizon Wireless, with its principal office located at One Verizon Way, Mail Stop 4AW100, Basking Ridge, New Jersey 07920 (telephone number 866-862-4404), hereinafter designated LESSEE. The LESSOR and LESSEE are at times collectively referred to hereinafter as the "Parties" or individually as the "Party".

PREMISES. LESSOR hereby leases to LESSEE a portion of that certain parcel of property located at 600 North Virginia Avenue, Winter Park, Orange County, Florida, as shown on the Tax Map of Orange County as Tax Parcel Number 05-22-30-9398-00-010 and being further described in Deed Book 2811 at Page 274 as recorded in the Official Records of Orange County and a portion of that certain parcel of property located at 511 W. Swoope Avenue, Winter Park, Orange County, Florida, as shown on the Tax Map of Orange County as Tax Parcel Number 06-22-30-5764-00010 and being further described in Deed Book 6508 at Page 2977 as recorded in the Official Records of Orange County (the entirety of LESSOR's property is referred to hereinafter as the Property), and being described as a 12' by 30' parcel containing 360 square feet (the "Land Space"), together with the non-exclusive right (the "Right of Way") for ingress and egress, seven (7) days a week twenty-four (24) hours a day, on foot or motor vehicle, including trucks over or along a fifteen (15') foot wide right-of-way extending from the nearest public right-of-way, Swoope Avenue, to the Land Space, and an easement for the installation and maintenance of utility wires, poles, cables, conduits, and pipes over, under, or along a right of way from the Land Space, said Land Space and Rights of Way (hereinafter collectively referred to as the "Premises") being substantially as described herein in Exhibit "A" attached hereto and made a part hereof.

In the event LESSEE is unable to use the Rights of Way, the Parties shall attempt to provide for and negotiate a replacement right of way and easement.

2. <u>SURVEY</u>. LESSEE has prepared a survey of the Property and the Premises, said survey is attached hereto as Exhibit "B" and made a part hereof, and shall control in the event of boundary and access discrepancies between it and Exhibit "A".

### 3. TERM; RENTAL.

a. This Agreement shall be effective as of the date of execution by both Parties. Provided, however, the initial term shall be for five (5) years and shall commence on the Commencement Date (as hereinafter defined) at which time rental payments shall commence and be due at a total annual rental of Fourteen Thousand Four Hundred Dollars (\$14,400.00) to be paid in equal monthly installments on the first day of the month, in advance, to LESSOR or to such other person, firm or place as LESSOR may, from time to time, designate in writing at least thirty (30) days in advance of any rental payment date by notice given in accordance with Paragraph 23 below. The Agreement shall commence on September-October 1, 2013. LESSOR and LESSEE acknowledge and agree that initial rental payment(s) shall not actually be sent by LESSEE until thirty (30) days after the Commencement Date.

Upon agreement of the Parties, LESSEE may pay rent by electronic funds transfer and in such event, LESSOR agrees to provide to LESSEE bank routing information for such purpose upon request of LESSEE.

b. LESSOR hereby agrees to provide to LESSEE certain documentation evidencing LESSOR's good and sufficient title to and/or interest in the Property. The Documentation shall be provided to LESSEE in accordance with the provisions of and at the address given in Paragraph 23.

Within fifteen (15) days of obtaining an interest in the Property or this Agreement, any assignee(s), transferee(s) or other successor(s) in interest of LESSOR shall provide to LESSEE Documentation of such assignment in the manner set forth in the preceding paragraph.

- c. LESSOR and LESSEE acknowledge that LESSEE is negotiating a separate tower lease ("Tower Lease") with New Cingular Wireless PCS, LLC ("Current Tower Owner") and that Current Tower Owner has a separate ground lease ("Prime Lease") with LESSOR for the Tower. In the event the Prime Lease is terminated for any reason at any time during the term of this Agreement, this Agreement shall also be terminated and the termination shall be effective on the date the Prime Lease is terminated. Further, the Parties agree that this Agreement shall not in any way alter, amend, or modify the Prime Lease. Additionally, the Parties agree that Current Tower Owner may only convey and extend such rights to LESSEE in the Tower Lease as Current Tower Owner is permitted to under the Prime Lease. LESSOR's execution of this Agreement shall memorialize LESSOR's consent to the Tower Lease.
- 4. <u>EXTENSIONS</u>. Subject to the provisions set forth in Section 3(c) above, this Agreement shall automatically be extended for three (3) additional five (5) year terms unless LESSEE terminates it at the end of the then current term by giving LESSOR written notice of the intent to terminate at least six (6) months prior to the end of the then current term. The Parties agree that all such extension terms are subject to and conditioned upon the Prime Lease and that LESSEE may only exercise such extension terms for the length of the term of the Prime Lease. Under no circumstances shall the term this Agreement extend beyond that of the Prime Lease.
- 5. <u>EXTENSION RENTALS</u>. Commencing on the first annual anniversary of the Commencement Date and on each annual anniversary thereafter during the term of this Agreement (including all extension terms), annual rent shall increase by an amount equal to 2.85% of the annual rent due for the immediately preceding lease year.
- 6. <u>ADDITIONAL EXTENSIONS</u>. If at the end of the fourth (4th) five (5) year extension term this Agreement has not been terminated by either Party by giving to the other written notice of an intention to terminate it at least three (3) months prior to the end of such term, this Agreement shall continue in force upon the same covenants, terms and conditions for a further term of five (5) years and for five (5) year terms thereafter until terminated by either Party by giving to the other written notice of its intention to so terminate at least three (3) months prior to the end of such term. Annual rental for each such additional five (5) year term shall be increased consistent with Paragraph 5. The initial term and all extensions shall be collectively referred to herein as the "Term".

7. <u>TAXES</u>. LESSEE shall have the responsibility to pay any personal property, real estate taxes, assessments, or charges owed on the Property which LESSOR demonstrates is the result of LESSEE's use of the Premises and/or the installation, maintenance, and operation of the LESSEE's improvements, and any sales tax imposed on the rent (except to the extent that LESSEE is or may become exempt from the payment of sales tax in the jurisdiction in which the Property is located), including any increase in real estate taxes at the Property which LESSOR demonstrates arises from the LESSEE's improvements and/or LESSEE's use of the Premises. LESSEE shall each be responsible for the payment of any taxes, levies, assessments and other charges imposed including franchise and similar taxes imposed upon the business conducted by LESSEE at the Property. Notwithstanding the foregoing, LESSEE shall not have the obligation to pay any tax, assessment, or charge that LESSEE is disputing in good faith in appropriate proceedings prior to a final determination that such tax is properly assessed provided that no lien attaches to the Property. Except as set forth in this Paragraph, LESSOR shall have the responsibility to pay any personal property, real estate taxes, assessments, or charges owed on the Property and shall do so prior to the imposition of any lien on the Property.

LESSEE shall have the right, at its sole option and at its sole cost and expense, to appeal, challenge or seek modification of any tax assessment or tax billing for which LESSEE is wholly or partly responsible for payment. LESSOR shall reasonably cooperate with LESSEE at LESSEE's expense in filing, prosecuting and perfecting any appeal or challenge to taxes as set forth in the preceding sentence, including but not limited to, executing any consent, appeal or other similar document. In the event that as a result of any appeal or challenge by LESSEE, as provided in this paragraph, there is a reduction, credit or repayment received by the LESSOR for any taxes previously paid by LESSEE, LESSOR agrees to promptly reimburse to LESSEE the amount of said reduction, credit or repayment. In the event that LESSEE does not have the standing rights to pursue a good faith and reasonable dispute of any taxes under this paragraph, LESSOR will pursue such dispute at LESSEE's sole cost and expense upon written request of LESSEE.

USE; GOVERNMENTAL APPROVALS. LESSEE shall use the Premises for the purpose of constructing, maintaining, repairing and operating a communications facility and uses incidental thereto. A security fence consisting of chain link construction or similar but comparable construction may be placed around the perimeter of the Premises at the discretion of LESSEE (not including the access easement). All improvements and equipment, shall be at LESSEE's expense and their installation shall be at the discretion and option of LESSEE. LESSEE shall have the right to replace, repair, add or otherwise modify, its utilities and equipment, or any portion thereof whether the equipment is specified or not on any exhibit attached hereto, during the Term. LESSOR's consent shall not be required for any replacement, repair, addition or other modification to LESSEE's utilities or equipment which are located inside LESSEE's shelter or otherwise do not alter the exterior physical characteristics of the Premises. LESSOR's consent shall be required for any replacement, repair, addition or other modification outside of LESSEE's shelter or which alters the exterior physical characteristics of the Premises. It is understood and agreed that LESSEE's ability to use the Premises is contingent upon its obtaining after the execution date of this Agreement all of the certificates, permits and other approvals (collectively the "Governmental Approvals") that may be required by any Federal, State or Local authorities as well as satisfactory

soil boring tests which will permit LESSEE use of the Premises as set forth above. LESSOR shall cooperate with LESSEE in its effort to obtain such approvals and shall take no action which would adversely affect the status of the Property with respect to the proposed use thereof by LESSEE. In the event that (i) any of such applications for such Governmental Approvals should be finally rejected; (ii) any Governmental Approval issued to LESSEE is canceled, expires, lapses, or is otherwise withdrawn or terminated by governmental authority; (iii) LESSEE determines that such Governmental Approvals may not be obtained in a timely manner; (iv) LESSEE determines that any soil boring tests are unsatisfactory; (v) LESSEE determines that the Premises is no longer technically compatible for its use, or (vi) LESSEE, in its sole discretion, determines that the use of the Premises is obsolete or unnecessary, LESSEE shall have the right to terminate this Agreement. Notice of LESSEE's exercise of its right to terminate shall be given to LESSOR in writing by certified mail, return receipt requested, and shall be effective upon the mailing of such notice by LESSEE, or upon such later date as designated by LESSEE. All rentals paid to said termination date shall be retained by LESSOR. Upon such termination, this Agreement shall be of no further force or effect except to the extent of the representations, warranties and indemnities made by each Party to the other hereunder (including, but not limited to, Paragraph 14 herein). Otherwise, the LESSEE shall have no further obligations for the payment of rent to LESSOR.

9. <u>INDEMNIFICATION</u>. Subject to Paragraph 10 below, each Party shall indemnify and hold the other harmless against any claim of liability or loss from personal injury or property damage resulting from or arising out of the negligence or willful misconduct of the indemnifying Party, its employees, contractors or agents, except to the extent such claims or damages may be due to or caused by the negligence or willful misconduct of the other Party, or its employees, contractors or agents. Nothing in this Agreement shall be interpreted as a waiver or limitation of the City's sovereign immunity, and the City hereby reserves all rights of sovereign immunity under Florida law, including, but not limited to, those rights and procedures set out in Section 768.28, Florida Statutes. In any action in which Section 768.28, Florida Statutes, applies, the City shall only be liable in an amount not exceeding the limitations of liability contained in that statute.

### 10. INSURANCE.

LESSEE agrees that at its own cost and expense, it will maintain commercial general liability insurance with limits not less than \$1,000,000 for injury to or death of one or more persons in any one occurrence and \$500,000 for damage or destruction to property in any one occurrence. LESSEE agrees that it will include LESSOR as an additional insured.

11. <u>LIMITATION OF LIABILITY</u>. Except for indemnification pursuant to Paragraphs 9 and 29, neither Party shall be liable to the other, or any of their respective agents, representatives, employees for any lost revenue, lost profits, loss of technology, rights or services, incidental, punitive, indirect, special or consequential damages, loss of data, or interruption or loss of use of service, even if advised of the possibility of such damages, whether under theory of contract, tort (including negligence), strict liability or otherwise.

### 12. Intentionally Deleted.

- 13. INTERFERENCE. LESSEE agrees to install equipment of the type and frequency which will not cause harmful interference which is measurable in accordance with then existing industry standards to any equipment of LESSOR or other lessees of the Property which existed on the Property prior to the date this Agreement is executed by the Parties. In the event any after-installed LESSEE's equipment causes such interference, and after LESSOR has notified LESSEE in writing of such interference, LESSEE will take all commercially reasonable steps necessary to correct and eliminate the interference, including but not limited to, at LESSEE's option, powering down such equipment and later powering up such equipment for intermittent testing. In no event will LESSOR be entitled to terminate this Agreement or relocate the equipment as long as LESSEE is making a good faith effort to remedy the interference issue. LESSOR agrees that LESSOR and/or any other tenants of the Property who in the future take possession of the Property will be permitted to install only such equipment that is of the type and frequency which will not cause harmful interference which is measurable in accordance with then existing industry standards to the then existing equipment of LESSEE. acknowledge that there will not be an adequate remedy at law for noncompliance with the provisions of this Paragraph and therefore, either Party shall have the right to equitable remedies, such as, without limitation, injunctive relief and specific performance.
- 14. REMOVAL AT END OF TERM. LESSEE shall, upon expiration of the Term, or within ninety (90) days after any earlier termination of the Agreement, remove its building(s), antenna structure(s) (except footings), equipment, conduits, fixtures and all personal property and restore the Premises to its original condition, reasonable wear and tear and casualty damage excepted. LESSOR agrees and acknowledges that all of the equipment, conduits, fixtures and personal property of LESSEE shall remain the personal property of LESSEE and LESSEE shall have the right to remove the same at any time during the Term, whether or not said items are considered fixtures and attachments to real property under applicable Laws (as defined in Paragraph 33 below). If such time for removal causes LESSEE to remain on the Premises after termination of this Agreement, LESSEE shall pay rent at the then existing monthly rate or on the existing monthly pro-rata basis if based upon a longer payment term, until such time as the removal of the building, antenna structure, fixtures and all personal property are completed.
- 15. <u>HOLDOVER</u>. LESSEE has no right to retain possession of the Premises or any part thereof beyond the expiration of that removal period set forth in Paragraph 14 herein, unless the Parties are negotiating a new lease or lease extension in good faith. In the event that the Parties are not in the process of negotiating a new lease or lease extension in good faith, LESSEE holds over in violation of Paragraph 14 and this Paragraph 15, then the rent then in effect payable from and after the time of the expiration or earlier removal period set forth in Paragraph 14 shall equal to the rent applicable during the month immediately preceding such expiration or earlier termination.
- 16. <u>RIGHT OF FIRST REFUSAL</u>. If LESSOR elects, during the Term (i) to sell or otherwise transfer all or any portion of the Property, whether separately or as part of a larger parcel of which the Property is a part, or (ii) to grant to a third party by easement or other legal instrument an interest in and to that portion of the Property occupied by LESSEE, or a larger portion thereof, for the purpose of operating and maintaining communications facilities or the management thereof, with or without an assignment of this Agreement to such third party,

LESSEE shall have the right of first refusal to meet any bona fide offer of sale or transfer on the same terms and conditions of such offer. If LESSEE fails to meet such bona fide offer within thirty (30) days after written notice thereof from LESSOR, LESSOR may sell or grant the easement or interest in the Property or portion thereof to such third person in accordance with the terms and conditions of such third party offer.

- 17. <u>RIGHTS UPON SALE</u>. Should LESSOR, at any time during the Term decide (i) to sell or transfer all or any part of the Property to a purchaser other than LESSEE, or (ii) to grant to a third party by easement or other legal instrument an interest in and to that portion of the Property occupied by LESSEE, or a larger portion thereof, for the purpose of operating and maintaining communications facilities or the management thereof, such sale or grant of an easement or interest therein shall be under and subject to this Agreement and any such purchaser or transferee shall recognize LESSEE's rights hereunder under the terms of this Agreement. To the extent that LESSOR grants to a third party by easement or other legal instrument an interest in and to that portion of the Property occupied by LESSEE for the purpose of operating and maintaining communications facilities or the management thereof and in conjunction therewith, assigns this Agreement to said third party, LESSOR shall not be released from its obligations to LESSEE under this Agreement, and LESSEE shall have the right to look to LESSOR and the third party for the full performance of this Agreement.
- 18. <u>QUIET ENJOYMENT</u>. LESSOR covenants that LESSEE, on paying the rent and performing the covenants herein, shall peaceably and quietly have, hold and enjoy the Premises.
- 19. <u>TITLE</u>. LESSOR represents and warrants to LESSEE as of the execution date of this Agreement, and covenants during the Term that LESSOR is seized of good and sufficient title and interest to the Property and has full authority to enter into and execute this Agreement. LESSOR further covenants during the Term that there are no liens, judgments or impediments of title on the Property, or affecting LESSOR's title to the same and that there are no covenants, easements or restrictions which prevent or adversely affect the use or occupancy of the Premises by LESSEE as set forth above.
- 20. <u>INTEGRATION</u>. It is agreed and understood that this Agreement contains all agreements, promises and understandings between LESSOR and LESSEE and that no verbal or oral agreements, promises or understandings shall be binding upon either LESSOR or LESSEE in any dispute, controversy or proceeding at law, and any addition, variation or modification to this Agreement shall be void and ineffective unless made in writing signed by the Parties or in a written acknowledgment in the case provided in Paragraph 3. In the event any provision of the Agreement is found to be invalid or unenforceable, such finding shall not affect the validity and enforceability of the remaining provisions of this Agreement. The failure of either Party to insist upon strict performance of any of the terms or conditions of this Agreement or to exercise any of its rights under the Agreement shall not waive such rights and such Party shall have the right to enforce such rights at any time and take such action as may be lawful and authorized under this Agreement, in law or in equity.

- 21. <u>GOVERNING LAW</u>. This Agreement and the performance thereof shall be governed, interpreted, construed and regulated by the Laws of the State in which the Property is located. Venue of any claim arising from this Agreement shall be in Orange County, Florida.
- 22. <u>ASSIGNMENT</u>. This Agreement may be sold, assigned or transferred by the LESSEE without any approval or consent of the LESSOR to the LESSEE's principal, affiliates, subsidiaries of its principal or to any entity which acquires all or substantially all of LESSEE's assets in the market defined by the Federal Communications Commission in which the Property is located by reason of a merger, acquisition or other business reorganization. As to other parties, this Agreement may not be sold, assigned or transferred without the written consent of the LESSOR, which such consent will not be unreasonably withheld, delayed or conditioned. No change of stock ownership, partnership interest or control of LESSEE or transfer upon partnership or corporate dissolution of LESSEE shall constitute an assignment hereunder. LESSEE may sublet the Premises within its sole discretion, upon LESSOR's consent, as provided in this paragraph. Any sublease that is entered into by LESSEE shall be subject to the provisions of this Agreement and shall be binding upon the successors, assigns, heirs and legal representatives of the respective Parties hereto.
- 23. <u>NOTICES</u>. All notices hereunder must be in writing and shall be deemed validly given if sent by certified mail, return receipt requested or by commercial courier, provided the courier's regular business is delivery service and provided further that it guarantees delivery to the addressee by the end of the next business day following the courier's receipt from the sender, addressed as follows (or any other address that the Party to be notified may have designated to the sender by like notice):

LESSOR: The City of Winter Park

401 Park Avenue South Winter Park, Florida 32789

LESSEE: Verizon Wireless Personal Communications LP

d/b/a Verizon Wireless

180 Washington Valley Road Bedminster, New Jersey 07921 Attention: Network Real Estate

Notice shall be effective upon actual receipt or refusal as shown on the receipt obtained pursuant to the foregoing.

- 24. <u>SUCCESSORS</u>. This Agreement shall extend to and bind the heirs, personal representative, successors and assigns of the Parties hereto.
- 25. <u>SUBORDINATION AND NON-DISTURBANCE</u>. At LESSOR's option, this Agreement shall be subordinate to any future master lease, ground lease, mortgage, deed of trust or other security interest (a "Mortgage") by LESSOR which from time to time may encumber all or part of the Property or right-of-way; provided, however, as a condition precedent to LESSEE being required to subordinate its interest in this Agreement to any future Mortgage covering the Property, LESSOR shall obtain for LESSEE's benefit a non-disturbance and attornment

agreement for LESSEE's benefit in the form reasonably satisfactory to LESSEE, and containing the terms described below (the "Non-Disturbance Agreement"), and shall recognize LESSEE's right to remain in occupancy of and have access to the Premises as long as LESSEE is not in default of this Agreement beyond applicable notice and cure periods. The Non-Disturbance Agreement shall include the encumbering party's ("Lender's") agreement that, if Lender or its successor-in-interest or any purchaser of Lender's or its successor's interest (a "Purchaser") acquires an ownership interest in the Property, Lender or such successor-in-interest or Purchaser will (1) honor all of the terms of the Agreement, (2) fulfill LESSOR's obligations under the Agreement, and (3) promptly cure all of the then-existing LESSOR defaults under the Agreement. Such Non-Disturbance Agreement must be binding on all of Lender's participants in the subject loan (if any) and on all successors and assigns of Lender and/or its participants and on all Purchasers. In return for such Non-Disturbance Agreement, LESSEE will execute an agreement for Lender's benefit in which LESSEE (1) confirms that the Agreement is subordinate to the Mortgage or other real property interest in favor of Lender, (2) agrees to attorn to Lender if Lender becomes the owner of the Property and (3) agrees to accept a cure by Lender of any of LESSOR's defaults, provided such cure is completed within the deadline applicable to LESSOR. In the event LESSOR defaults in the payment and/or other performance of any mortgage or other real property interest encumbering the Property, LESSEE, may, at its sole option and without obligation, cure or correct LESSOR's default and upon doing so, LESSEE shall be subrogated to any and all rights, titles, liens and equities of the holders of such mortgage or other real property interest and LESSEE shall be entitled to deduct and setoff against all rents that may otherwise become due under this Agreement the sums paid by LESSEE to cure or correct such defaults.

26. <u>RECORDING</u>. LESSOR agrees to execute a Memorandum of this Agreement which LESSEE may record with the appropriate recording officer. The date set forth in the Memorandum of Lease is for recording purposes only and bears no reference to commencement of either the Term or rent payments.

#### 27. DEFAULT.

- a. In the event there is a breach by LESSEE with respect to any of the provisions of this Agreement or its obligations under it, including the payment of rent, LESSOR shall give LESSEE written notice of such breach. After receipt of such written notice, LESSEE shall have thirty (30) fifteen (15) days in which to cure any monetary breach and thirty (30) days in which to cure any non-monetary breach, provided LESSEE shall have such extended period as may be required beyond the thirty (30) days for either monetary or non-monetary breach if the nature of the cure is such that it reasonably requires more than thirty (30) days and LESSEE commences the cure within the thirty (30) day period and thereafter continuously and diligently pursues the cure to completion. LESSOR may not maintain any action or effect any remedies for default against LESSEE unless and until LESSEE has failed to cure the breach within the time periods provided in this Paragraph.
- b. In the event there is a breach by LESSOR with respect to any of the provisions of this Agreement or its obligations under it, LESSEE shall give LESSOR written notice of such breach. After receipt of such written notice, LESSOR shall have thirty (30) days in which to cure any such breach, provided LESSOR shall have such extended period as may be

required beyond the thirty (30) days if the nature of the cure is such that it reasonably requires more than thirty (30) days and LESSOR commences the cure within the thirty (30) day period and thereafter continuously and diligently pursues the cure to completion. LESSEE may not maintain any action or effect any remedies for default against LESSOR unless and until LESSOR has failed to cure the breach within the time periods provided in this Paragraph. Notwithstanding the foregoing to the contrary, it shall be a default under this Agreement if LESSOR fails, within fifteen (15) days after receipt of written notice of such breach, to perform an obligation required to be performed by LESSOR if the failure to perform such an obligation interferes with LESSEE's ability to conduct its business on the Property, as set forth and defined in Section 8 above; provided, however, that if the nature of LESSOR's obligation is such that more than fifteen (15) days after such notice is reasonably required for its performance, then it shall not be a default under this Agreement if performance is commenced within such fifteen (15) day period and thereafter diligently pursued to completion.

REMEDIES. Upon a default, the non-defaulting Party may at its option (but without obligation to do so), perform the defaulting Party's duty or obligation on the defaulting Party's behalf, including but not limited to the obtaining of reasonably required insurance policies, so long as LESSOR does not modify or enter the Premises or LESSEE's equipment in anyway. The costs and expenses of any such performance by the non-defaulting Party shall be due and payable by the defaulting Party upon invoice therefore. All such costs shall be reasonable and at the commercially accepted standard for such type performance. In the event of a default by either Party with respect to a material provision of this Agreement, without limiting the non-defaulting Party in the exercise of any right or remedy which the non-defaulting Party may have by reason of such default, the non-defaulting Party may i) terminate the Agreement; or ii) pursue any remedy now or hereafter available to the non-defaulting Party under the Laws or judicial decisions of the State of Florida provided, however, LESSOR shall use reasonable efforts to mitigate its damages in connection with a default by LESSEE. If a Party so performs any of the other Party's obligations hereunder, the full amount of the reasonable and actual cost and expense incurred by such Party shall immediately be owing by the other Party, and the obligated Party shall pay to such Party upon demand the full undisputed amount thereof with interest thereon from the date of payment at the greater of (i) ten percent (10%) per annum, or (ii) the highest rate permitted by applicable Laws.

#### 29. ENVIRONMENTAL.

- a. LESSOR will be responsible for all obligations of compliance with any and all environmental and industrial hygiene laws, including any regulations, guidelines, standards, or policies of any governmental authorities regulating or imposing standards of liability or standards of conduct with regard to any environmental or industrial hygiene conditions or concerns as may now or at any time hereafter be in effect, that are or were in any way related to activity now conducted in, on, or in any way related to the Property, unless such conditions or concerns are caused by the specific activities of LESSEE in and on the Premises.
- b. Subject to the limitations of Section 768.28, Florida Statutes, LESSOR shall hold LESSEE harmless and indemnify LESSEE from and assume all duties, responsibility and liability at LESSOR's sole cost and expense, for all duties, responsibilities, and liability (for payment of penalties, sanctions, forfeitures, losses, costs, or damages) and for responding to any

action, notice, claim, order, summons, citation, directive, litigation, investigation or proceeding which is in any way related to: a) failure to comply with any environmental or industrial hygiene law, including without limitation any regulations, guidelines, standards, or policies of any governmental authorities regulating or imposing standards of liability or standards of conduct with regard to any environmental or industrial hygiene concerns or conditions as may now or at any time hereafter be in effect, unless such non-compliance results from conditions caused by LESSEE; and b) any environmental or industrial hygiene conditions arising out of or in any way related to the condition of the Property or activities conducted thereon, unless such environmental conditions are caused by LESSEE.

- 30. <u>CASUALTY</u>. In the event of damage by fire or other casualty to the Premises that cannot reasonably be expected to be repaired within forty-five (45) days following same or, if the Property is damaged by fire or other casualty so that such damage may reasonably be expected to disrupt LESSEE's operations at the Premises for more than forty-five (45) days, then LESSEE may, at any time following such fire or other casualty, provided LESSOR has not completed the restoration required to permit LESSEE to resume its operation at the Premises, terminate this Agreement upon fifteen (15) days prior written notice to LESSOR. Any such notice of termination shall cause this Agreement to expire with the same force and effect as though the date set forth in such notice were the date originally set as the expiration date of this Agreement and the Parties shall make an appropriate adjustment, as of such termination date, with respect to payments due to the other under this Agreement. Notwithstanding the foregoing, the rent shall abate during the period of repair following such fire or other casualty in proportion to the degree to which LESSEE's use of the Premises is impaired.
- 31. <u>CONDEMNATION</u>. In the event of any condemnation of all or any portion of the Property, this Agreement shall terminate as to the part so taken as of the date the condemning authority takes title or possession, whichever occurs first. If as a result of a partial condemnation of the Premises or Property, LESSEE, in LESSEE's sole discretion, is unable to use the Premises for the purposes intended hereunder, or if such condemnation may reasonably be expected to disrupt LESSEE's operations at the Premises for more than forty-five (45) days, LESSEE may, at LESSEE's option, to be exercised in writing within fifteen (15) days after LESSOR shall have given LESSEE written notice of such taking (or in the absence of such notice, within fifteen (15) days after the condemning authority shall have taken possession) terminate this Agreement as of the date the condemning authority takes such possession. LESSEE may on its own behalf make a claim in any condemnation proceeding involving the Premises for losses related to the equipment, conduits, fixtures, its relocation costs and its damages and losses (but not for the loss of its leasehold interest). Any such notice of termination shall cause this Agreement to expire with the same force and effect as though the date set forth in such notice were the date originally set as the expiration date of this Agreement and the Parties shall make an appropriate adjustment as of such termination date with respect to payments due to the other under this Agreement. If LESSEE does not terminate this Agreement in accordance with the foregoing, this Agreement shall remain in full force and effect as to the portion of the Premises remaining, except that the rent shall be reduced in the same proportion as the rentable area of the Premises taken bears to the total rentable area of the Premises.

- 32. <u>SUBMISSION OF AGREEMENT/PARTIAL INVALIDITY/AUTHORITY</u>. The submission of this Agreement for examination does not constitute an offer to lease the Premises and this Agreement becomes effective only upon the full execution of this Agreement by the Parties. If any provision herein is invalid, it shall be considered deleted from this Agreement and shall not invalidate the remaining provisions of this Agreement. Each of the Parties hereto warrants to the other that the person or persons executing this Agreement on behalf of such Party has the full right, power and authority to enter into and execute this Agreement on such Party's behalf and that no consent from any other person or entity is necessary as a condition precedent to the legal effect of this Agreement.
- 33. <u>APPLICABLE LAWS</u>. During the Term, LESSOR shall maintain the Property in compliance with all applicable laws, rules, regulations, ordinances, directives, covenants, easements, zoning and land use regulations, and restrictions of record, permits, building codes, and the requirements of any applicable fire insurance underwriter or rating bureau, now in effect or which may hereafter come into effect (including, without limitation, the Americans with Disabilities Act and laws regulating hazardous substances) (collectively "Laws"). LESSEE shall, in respect to the condition of the Premises and at LESSEE's sole cost and expense, comply with (a) all Laws relating solely to LESSEE's specific and unique nature of use of the Premises (other than general office use); and (b) all building codes requiring modifications to the Premises due to the improvements being made by LESSEE in the Premises.
- 34. <u>SURVIVAL</u>. The provisions of the Agreement relating to indemnification from one Party to the other Party shall survive any termination or expiration of this Agreement. Additionally, any provisions of this Agreement which require performance subsequent to the termination or expiration of this Agreement shall also survive such termination or expiration.
- 35. <u>CAPTIONS</u>. The captions contained in this Agreement are inserted for convenience only and are not intended to be part of the Agreement. They shall not affect or be utilized in the construction or interpretation of the Agreement.

(Signature Page to Follow)

IN WITNESS WHEREOF, the Parties hereto have set their hands and affixed their respective seals the day and year first above written.

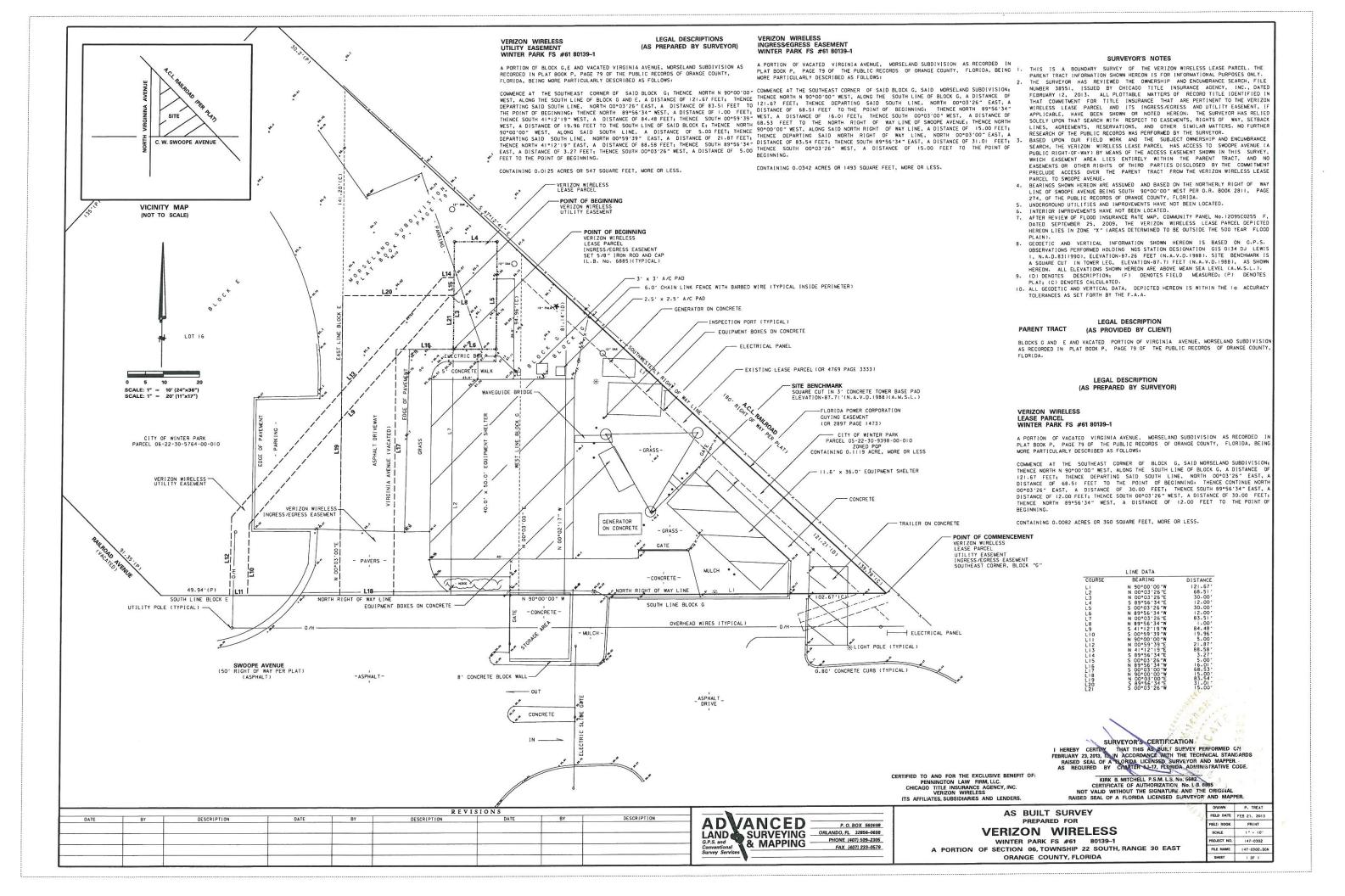
	LESSOR: The City of Winter Park
	By:
WITNESS	Printed Name:
	Title:
WITNESS	Date:
	LESSEE: Verizon Wireless Personal Communications LP d/b/a Verizon Wireless
	By:
WITNESS	Printed Name: Hans F. Leutenegger
	Title: Area Vice President Network
WITNESS	Date:

## Exhibit "A"

(Sketch of Premises within Property)

# Exhibit "B"

(Survey of the Property)



SITE NAME: Winter Park FS #61
SITE NUMBER: 80139

Prepared by:
Pennington Law Firm, L.L.C.
Post Office Box 2844
Columbia, South Carolina 29202

Upon Recording, Return to:
Winter Park City Clerk
401 S. Park Avenue
Winter Park, FL 32789

STATE OF FLORIDA

COUNTY OF ORANGE

#### MEMORANDUM OF LAND LEASE AGREEMENT

This Memorandum of LAND LEASE AGREEMENT is made this \_\_\_\_\_ day of \_\_\_\_\_, 2013, between the CITY OF WINTER PARK, a Florida municipal corporation, with its principal offices located at 401 Park Avenue South, Winter Park, Florida 32789 hereinafter designated LESSOR, and VERIZON WIRELESS PERSONAL COMMUNICATIONS LP, a Delaware limited partnership d/b/a Verizon Wireless, with its principal offices at One Verizon Way, Mail Stop 4AW100, Basking Ridge, New Jersey 07920, hereinafter designated LESSEE. LESSOR and LESSEE are at times collectively referred to hereinafter as the "Parties" or individually as the "Party".

1. LESSOR and LESSEE entered into a Land Lease Agreement (the "Agreement") on \_, 2013 for an initial term of five (5) years, commencing on the Commencement Date. Subject to the provisions set forth in Section 3(c) of the Agreement, the Agreement shall automatically be extended for three (3) additional five (5) year terms unless the LESSEE terminates it at the end of the then current term by giving the LESSOR written notice of the intent to terminate at least six (6) months prior to the end of the then current term. If at the end of the fourth (4th) five (5) year extension term the Agreement has not been terminated by either Party by giving to the other written notice of an intention to terminate it at least three (3) months prior to the end of such term, this Agreement shall continue in force upon the same covenants, terms and conditions for a further term of five (5) years and for five (5) year terms thereafter until terminated by either Party by giving to the other written notice of its intention to so terminate at least three (3) months prior to the end of such term. The Parties agree that all such extension terms are subject to and conditioned upon the Prime Lease, as set forth and defined in the Agreement, and that LESSEE may only exercise such extension terms for the length of the term of the Prime Lease. Under no circumstances shall the term the Agreement extend beyond that of the Prime Lease.

- 2. LESSOR hereby leases to LESSEE a portion of that certain parcel of property located at 600 North Virginia Avenue, Winter Park, Orange County, Florida, as shown on the Tax Map of Orange County as Tax Parcel Number 05-22-30-9398-00-010 and being further described in Deed Book 2811 at Page 274 as recorded in the Official Records of Orange County and a portion of that certain parcel of property located at 511 W. Swoope Avenue, Winter Park, Orange County, Florida, as shown on the Tax Map of Orange County as Tax Parcel Number 06-22-30-5764-00010 and being further described in Deed Book 6508 at Page 2977 as recorded in the Official Records of Orange County (the entirety of LESSOR's property is referred to hereinafter as the Property), and being described as a 12' by 30' parcel containing 360 square feet (the "Land Space"), together with the non-exclusive right (the "Right of Way") for ingress and egress, seven (7) days a week twenty-four (24) hours a day, on foot or motor vehicle, including trucks over or along a fifteen (15') foot wide right-of-way extending from the nearest public right-of-way, Swoope Avenue, to the Land Space, and an easement for the installation and maintenance of utility wires, poles, cables, conduits, and pipes over, under, or along a right of way from the Land Space, said Land Space and Rights of Way (hereinafter collectively referred to as the "Premises") being substantially as described herein in Exhibit "A" attached hereto and made a part hereof. In the event LESSEE is unable to use the Rights of Way, the Parties shall attempt to provide for and negotiate a replacement right of way and easement.
- 3. The Agreement shall commence on September 1, 2013 (the "Commencement Date").
- 4. If LESSOR elects, during the initial term or any renewal term (i) to sell or otherwise transfer all or any portion of the Property, whether separately or as part of a larger parcel of which the Property is a part, or (ii) grant to a third party by easement or other legal instrument an interest in and to that portion of the Property occupied by LESSEE, or a larger portion thereof, for the purpose of operating and maintaining communications facilities or the management thereof, with or without an assignment of this Agreement to such third party, LESSEE shall have the right of first refusal to meet any bona fide offer of sale or transfer on the same terms and conditions of such offer. If LESSEE fails to meet such bona fide offer within thirty (30) days after written notice thereof from LESSOR, LESSOR may sell or grant the easement or interest in the Property or portion thereof to such third person in accordance with the terms and conditions of such third party offer.
- 5. The terms, covenants and provisions of the Agreement, the terms of which are hereby incorporated by reference into this Memorandum, shall extend to and be binding upon the respective executors, administrators, successors and assigns of LESSOR and LESSEE.

IN WITNESS WHEREOF, hereunto and to a duplicate hereof, LESSOR and LESSEE have caused this Memorandum to be duly executed on the date first written hereinabove.

	LESSOR: The City of Winter Park
	By:
WITNESS	Printed Name:
	Title:
WITNESS	Date:
	LESSEE: Verizon Wireless Personal Communications LP d/b/a Verizon Wireless
	By:
WITNESS	Printed Name: Hans F. Leutenegger
	Title: Area Vice President Network
WITNESS	Date:

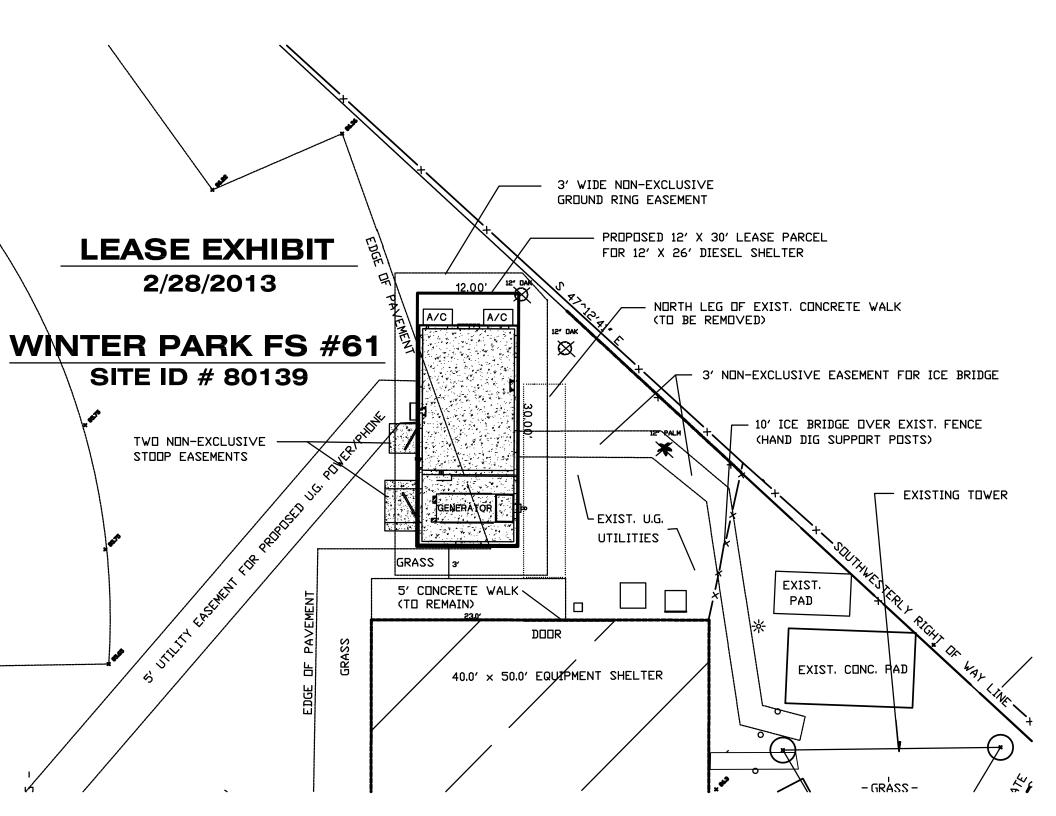
SITE NAME: Winter Park FS #61 SITE NUMBER: 80139

STATE OF FLORIDA	)	ACKNOWLI	FDCEMENT
COUNTY OF ORANGE	)	ACKNOWLI	EDGEMENT
	personally came b	before me this day	State, do hereby certify that and acknowledged that s/he is
	to do so, executed	the foregoing instr	Florida municipal corporation rument as his/her own act and
WITNESS my hand	and official Notari	al Seal, this day	of, 2013.
		Notary Public	
My Commission Expires:			

STATE OF NORTH CAROLINA	)	NOWLEDGMENT
COUNTY OF MECKLENBURG	) ACN	NOWLEDGMENT
I,, a Leutenegger personally came before President Network of <b>VERIZON W</b> Verizon Wireless, and that he, being behalf of the Partnership.	e me this day and acknowle VIRELESS PERSONAL CO	OMMUNICATIONS LP d/b/a
WITNESS my hand and office	cial Notarial Seal, this day	y of, 2013.
	Notary Public	;
My Commission Expires:		

# **EXHIBIT A**

# [BOUNDARY SURVEY OF THE PREMISES AND INGRESS/EGRESS AND UTILITY EASEMENT – SEE ATTACHED PAGE]



item type	Action Item Requiring Discussion	meeting date	October 14, 2013
prepared by department division	Larry Brown City Attorney	approved by	<ul><li>■ City Manager</li><li>■ City Attorney</li><li>□ N A</li></ul>
board approval		yes □ no ■	N A final vote

#### subject

Discuss the Resolution restating Resolution 1978-07 and amending that Resolution to comply with recently adopted SB 50, Chapter 2013-227, Laws of Florida.

#### motion | recommendation

Schedule the adoption of the resolution at a future meeting.

#### background

This resolution establishes two new rules for the guidance and government of the City Commission and slightly amends previously amended rules in Resolution 1978-07 (attached for reference). Below is an abbreviated summary of the <u>new</u> recommended rules:

- Required by SB 50 (a) The agenda for the meetings of the Commission should briefly identify all propositions coming before the Commission (b)"Citizens Comments" shall be included on every agenda (c) in the event a proposition comes before the Commission for action or a formal vote that was not on the agenda, the Mayor will allow public comment (d) public comment may not be heard in emergencies, ministerial items, quasi-judicial matters (e) Citizens comments will not be part of workshop agendas (f) All City Boards and subsidiary boards will allow public comment as required by law.
- The City Manager has authority to identify areas to remain free of persons and objects during the meeting.

#### alternatives | other considerations

N/A

fiscal impact

N/A

long-term impact

N/A

strategic objective

N/A

# 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 Law
Board Certified Education Law

ulbrown@orlandolaw.net

September 5, 2013

Randy Knight, City Manager Cindy Bonham, City Clerk City of Winter Park 401 Park Avenue South Winter Park, FL 32789

via email & regular U .S. Mail

Re:

Resolution regarding Conduct of Meetings, amended to include language from SB 50

Dear Randy and Cindy:

Enclosed please find the following items for inclusion in the September 23<sup>rd</sup> agenda package:

- 1. My letter dated August 26, 2013 and its attachments regarding SB 50 and the legislative changes;
  - 2. Chapter 2013-227, Laws of Florida;
  - 3. Redline Resolution, showing the edits to existing Resolution 1978-07; and
- 4. Blackline Resolution which incorporates all of the edits. (The Word version of this blackline is also being emailed).

September 5, 2013 Page 2

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

Sincerely,

Usher L. Brown

ULB:tla **Enclosures** 

cc: Michelle del Valle, Assistant City Manager (w/encl.)
G:\docs\Cities\Winter Park\Ordinances and Resolutions GeneralMeetings - conduct of\tr.knight and bonham with resolution for conduct of meetings.wpd



# 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 Law Board Certified Education Law

ulbrown@orlandolaw.net

August 26, 2013

Randy Knight, City Manager Michelle del Valle, Assistant City Manager City of Winter Park 401 Park Avenue South Winter Park, FL 32789

via email & regular U.S. Mail

Re: Senate Bill 50 regarding public meetings and public participation

Dear Randy and Michelle:

There was discussion concerning SB 50 and the extent to which it will impact City meetings. In response, I have briefed the new law and offer suggested changes to the Commission Resolution governing conduct of meeting.

Enclosed are two memos. One is short form summarizing SB 50, and the second is a more detailed legal analysis prepared by a lawyer in my firm for your benefit and for the benefit of our other governmental clients.

I propose the following additional language as a result of SB 50:

To the extent possible, all agendas for meetings of the Commission should briefly identify all propositions coming before the Commission for discussion or action, so that the public is sufficiently notified of the subject of the proposition.

- 2. "Citizens' Comments" will be included on every agenda (including the public agendas for subsidiary boards or commissions). "Citizens' Comments" will occur at the beginning of the City Commission meeting. The Commission will allow comments by members of the audience regarding all items, including matters listed under "Reports", with the exception of those matters that are identified as exempt from these requirements by Statute 286.0114, including, as provided in the statute, emergencies, ministerial acts including the approval of minutes and ceremonial proclamations, a meeting that is exempt from Sunshine (Section 286.011), or a matter in which the City Commission or a subsidiary board is acting in a quasi judicial capacity, and all comments with respect to items that are not exempt or to be heard under public hearing will be received during "Citizens' Comments".
- 3. In the event that a proposition comes before the Commission for action or for a formal vote that was not on the agenda, then the Mayor will allow public comment on that proposition.
  - 4. Public comment will not be heard on:
    - a. Emergency items, meaning an official act that must be taken to deal with an emergency situation affecting the public health, welfare, or safety, if compliance with Florida Statutes 286.0114 would cause an unreasonable delay in the ability of the Commission to act;
    - Ministerial items, meaning an official act involving no more than a ministerial act, including but not limited to, approval of minutes and ceremonial proclamations;
    - c. Quasi judicial matters.
- 5. The public may comment on the consent agenda during the section on the agenda entitled "Citizens' Comments".
- 6. Citizens' Comments will not generally be part of a workshop agenda. However, Citizens' Comments will be allowed on the workshop topics at the first regular or special meeting of the Commission following the workshop, and before any action on an item is taken by the Commission.
- 7. All City boards and subsidiary boards will allow public comment at their meetings except for emergency, ministerial or quasi judicial items.

I recommend that I be given direction to prepare amendments to the current Resolution for the conduct of City meetings to insure that the requirements in SB 50 are addressed. The effective date of the law is October 1, 2013.

August 26, 2013 Page 3

Please contact me if I may be of any further assistance.

Usher L. Brown

ULB:tla **Enclosures** 

City Commissioners cc:

Mayor Kenneth Bradley
G:\docs\Cities\Winter Park\Legislation\2013 Legislation\ltr.analysis of SB 50 relating to meetings.wpd

# **FILE MEMORANDUM**

File: Winter Park/Legislative Updates 2013

From: Usher L. Brown, Esq.

**File No.:** 1416-001

7,

Subject: SB 50 Regarding Public Meetings

**Date:** August 6, 2013

This memorandum will serve to summarize SB 50 regarding public meetings. The bill was approved by the Governor on June 28, 2013, and becomes effective on October 1, 2013.

The bill creates § 286.0114, Florida Statutes, regarding public meetings and a reasonable opportunity for the public to be heard. The bill requires members of the public be given a reasonable opportunity to be heard on a proposition before the City. The opportunity to be heard need not occur at the same meeting at which the City takes official action on the proposition if the opportunity occurs at a meeting that is during the decision making process and is within reasonable proximity in time before the meeting at which official action is taken. The opportunity to be heard is subject to rules adopted by the City and does not prohibit the City from maintaining orderly conduct or proper decorum at a public meeting.

The bill specifies rules must be adopted to govern the opportunity to be heard and are limited to rules that:

- Provide guidelines regarding the amount of time the individual has to address the Board;
- Provide procedures for allowing representatives of groups or factions on a proposition to address the Board, rather than all members of such groups or factions, at meetings in which a large number of individuals wish to be heard;
- Provide procedures/forms for an individual to use to inform the Board of the desire to be heard; and
- Designate a specified period of time for public comment.

A circuit court has jurisdiction to issue an injunction for the purposes of enforcing this new statutory provision upon the filing of an application for such injunction by a citizen of the State. When such an action is filed against a Board to enforce this new statutory provision, the court shall

assess reasonable attorney's fees against the Board if the court determines that the Board acted in violation of this new statutory provision. The court may also assess reasonable attorney's fees against the individual filing such an action if the court finds the action was filed in bad faith or was frivolous.

The opportunity to be heard does not apply to emergency situations; ministerial acts including the approving of minutes and ceremonial proclamations; a meeting that is exempt from § 286.011, Florida Statutes, also known as the Sunshine law; or a meeting during which the City is acting in a quasi-judicial capacity.

Finally, the new statutory provision indicates that any action taken by the City which is later found to be in violation of this statute is not void as a result of that violation.

Existing City rules regarding the conduct of public meetings and public comment will need to be revised as a result of this new bill.

cc: Mayor Kenneth Bradley
City Commissioners
Randy Knight, City Manager
Michelle del Valle, Assistant City Manager

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#### **MEMORANDUM**

TO:

**Government Attorneys** 

FROM:

L. Robin McKinney

RE:

Summary and Analysis of Senate Bill 50 - Comment at Public Meetings

DATE:

August 23, 2013

#### **Summary**

During the 2013 session, the Florida Legislature adopted S.B. 50 requiring that members of the public be given the opportunity to be heard on a proposition before a board or commission. The opportunity to be heard need not occur at the same meeting at which the board or commission takes official action on the proposition if the opportunity occurs at a meeting that is during the decision-making process and is within a reasonable proximity in time before the meeting at which the board or commission takes the official action. Local governments and boards should review their procedures for various public meetings and adopt rules or policies implementing the requirements of the new legislation. If a board adopts rules or policies in compliance with this section, and follows such rules, the board will be deemed in compliance. Actions seeking to remedy violations allow for entry of injunctions and result in mandatory attorney fees against the government. If a board violates this section, however, it does not render the board's action void.

#### **Analysis**

#### 1. Background

- a. Florida Constitution requires open meetings Article I, s. 24(b)
- b. Sunshine meetings Section 286.011, Florida Statutes
- c. Florida Constitution and Florida Statutes are silent on citizens' right to speak at public meetings
- d. 2 court cases:
  - i. Keesler v. Community Maritime Park Associates, Inc., 32 So. 3d 659 (Fla. 1<sup>st</sup> DCA 2010) (First DCA, relying on Marston, 443 So. 2d 934 (Fla. 1983), found no public right to speak at public meeting and CMPA, not-for-profit corporation charged by City of Pensacola to oversee development of parcel of waterfront property, did not violate Sunshine Law by not providing opportunity to speak at public meeting)
  - ii. Kennedy v. St. Johns Water Management District, 2011 WL 5124949 (per curiam aff'd) (unpublished decision) (Court did not find violation of the Sunshine law where SJWMD meeting room not large enough to hold crowd; overflow crowd placed in other room to watch meeting by video

feed; "Riverkeeper" group was limited in participation to one representative and attorney.)

e. These cases are specifically referenced in the legislative history.

#### 2. General Information on § 286.0114

- a. Effective October 1, 2013
- b. Codified at Laws of Florida 2013-227
- c. Key language of Section 286.0114
  - i. Section 286.0114(2) "Members of the public shall be given a reasonable opportunity to be heard on a proposition before a board or commission. The opportunity to be heard need not occur at the same meeting at which the board or commission takes official action on the proposition if the opportunity occurs at a meeting that is during the decision-making process and is within a reasonable proximity in time before the meeting at which the board or commission takes the official action."

#### d. Important terms:

- i. "board or commission"
  - Defined as a board or commission of any state agency or authority or of any agency or authority of a county, municipal organization, or political subdivision
    - a. Includes all Sunshine Law Boards
    - Includes Local School Districts —see definition of "agency" in s. 120.52(1)
  - 2. Intended to be consistent with 286.011(1), "All meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision, ... at which official acts are to be taken are declared to be public meetings open to the public at all times ..."
- ii. "reasonable opportunity to be heard"
  - Section 286.0114 provides "The opportunity to be heard need not occur at the same meeting at which the board or commission takes official action on the proposition if the opportunity occurs at a meeting that is during the decision-making process and is within a reasonable proximity in time before the meeting at which the board or commission takes the official action."
    - a. "during the decision making process" not defined
    - b. "reasonable proximity in time" not defined
  - 2. Board/commission can still maintain orderly conduct or proper decorum
  - 3. The "opportunity to be heard" will be subject to the rules or policies adopted as provided in subsection (4).

#### iii. "proposition"

1. Not defined by the statute

- 2. Likely to be applied broadly to include all matters coming before a board or commission
- 3. Relevance of legislative history This bill was proposed to address the two court cases finding that the Florida Constitution and Statutes did not specifically provide for public right to comment. The new law will work in tandem with the Sunshine Law right of access to public meetings.

#### 3. Exceptions

- a. Subsection (2) does not apply to:
  - i. Emergency actions
    - An official act that must be taken to deal with an emergency situation affecting the public health, welfare, or safety, if compliance with the requirements would cause an unreasonable delay in the ability of the board or commission to act;
    - 2. "unreasonable delay" not defined

#### ii. Ministerial acts

 An official act involving no more than a ministerial act, including, but not limited to, approval of minutes and ceremonial proclamations;

#### iii. 286.011 exempt meetings

- 1. A meeting that is exempt from s. 286.011; or
- 2. Ex. shade meeting, security system plan, procurement, see s. 286.0113

#### iv. Quasi-Judicial capacity

- 1. A meeting during which the board or commission is acting in a quasi-judicial capacity. This paragraph does not affect the right of a person to be heard as otherwise provided by law.
- 2. See s. 286.0115(2) on quasi-judicial matters

#### 4. Criteria for Rules

a. Rules or policies of a board or commission which govern the opportunity to be heard are limited to those that:

#### i. Speaker time limit

1. Provide guidelines regarding the amount of time an individual has to address the board or commission;

#### ii. Group representatives

 Prescribe procedures for allowing representatives of groups or factions on a proposition to address the board or commission, rather than all members of such groups or factions, at meetings in which large numbers of individuals wish to be heard;

#### iii. Forms

 Prescribe procedures or forms for an individual to use in order to inform the board or commission of a desire to be heard; to indicate his or her support, opposition, or neutrality on a proposition, and to indicate his or her designation of a representative to speak for him or her or his or her group on a proposition if he or she so chooses;

#### iv. Public Comment Time at Meeting

- 1. Designate a specified period of time for public comment.
- b. Boards and commissions subject to the state Administrative Procedure Act must comply with the rulemaking procedures set forth in that chapter. Generally, rulemaking takes 90 days (reason for October 1, 2013 effective date). Section 120.52(1) defines "Agency" as including "educational units" local school districts per s. 120.52(6).
- c. The following are excluded from "Agency" in 120.52:
  - I. [A]ny municipality or legal entity created solely by a municipality; any legal entity or agency created in whole or in part pursuant to part II of chapter 361; any metropolitan planning organization created pursuant to s. 339.175; any separate legal or administrative entity created pursuant to s. 339.175 of which a metropolitan planning organization is a member; an expressway authority pursuant to chapter 348 or any transportation authority under chapter 343 or chapter 349; or any legal or administrative entity created by an interlocal agreement pursuant to s.163.01(7), unless any party to such agreement is otherwise an agency as defined in this subsection.
  - ii. Not clear whether agency's denial of the right to speak is challengeable under APA. Plaintiff may be required to exhaust all administrative remedies before pursuing civil remedy.

#### 5. Protection if Rules Adopted

- a. If a board or commission adopts rules or policies in compliance with this section [see s. 286.0114(4)] and follows such rules or policies when providing an opportunity for members of the public to be heard, the board or commission is deemed to be acting in compliance with this section.
- b. The language of the statute was changed to "is deemed to be" (previously read "it is presumed that") to prevent confusion about whether subsection created a rebuttable legal presumption.

#### 6. Enforcement

- a. Injunctions
  - i. Jurisdiction in Circuit Court to Issue injunction
- b. Attorney fees
  - i. Mandatory against gov't violator trial court level s. 286.0114(7)(a)
  - ii. Mandatory against gov't violator appellate level s. 286.0114(7)(b)
  - iii. Discretionary against an individual for bringing a frivolous or bad faith action s. 286.0114(7)(a)
    - 1. If individual files frivolous or bad faith action, court may assess attorney fee against individual (appears to apply to trial level only)

# 2. Does not apply to state attorneys enforcing statute

#### 7. Effect of violation

a. An action taken by a board or commission which is found to be in violation of this section is not void as a result of that violation

#### **Issues and Questions**

## What does this sentence in s. 286.0114(2) mean?

The opportunity to be heard need not occur at the same meeting at which the board or commission takes official action on the proposition if the opportunity occurs at a meeting that is during the decision-making process and is within a reasonable proximity in time before the meeting at which the board or commission takes the official action.

The opportunity to be heard might occur at another meeting during the decision-making process, other than the meeting where official action is taken, if the following 2 conditions are met:

- (1) The opportunity occurs during the decision-making process, and
- (2) The opportunity is within a reasonable proximity in time before the meeting at which the board or commission takes the official action.

Since the term "proposition" is not clearly defined, however, it will be broadly applied. Public comment is now required during the various meetings that constitute the decision-making process on a particular "proposition", because the proposition itself might change.

Does it apply to all appointed and advisory boards of cities? Yes, public comment must be allowed at all Sunshine Boards. Just as advisory boards are subject to the public meeting requirement, it is likely that a court would find that public comment also must be allowed at advisory board meetings. See Fla. AGO 2002-24 ("[C]ourts have stated that the Sunshine Law applies to the entire decision-making process and not merely to the formal assemblage of a public body at which final vote to ratify a decision is taken.")

An argument can be made that if, during the decision-making process, a proposition is going to come before another board or commission within a reasonable proximity in time, then public comment can take place at that meeting. For example, If P&Z considers a proposition that will subsequently go to City Commission, the public comment can be held at the City Commission meeting, as long as the CC meeting takes place within a reasonable proximity in time. As noted above, however, the term "proposition" is not clearly defined, and public comment may be required during the various meetings that constitute the decision-making process, because the proposition itself might change.

The following is a list of boards to which the new law may apply:

City Council (except quasi-judicial matters or shade meetings)
CRA
Board of Adjustment
Code Enforcement Board
Pension Board
Civil Service Board
P&Z Board
Local Planning Agency
Parks & Recreation
Economic Development Board
Other advisory boards

Does it apply to DRC meetings? - Yes, if DRC is part of the decision-making process, but not if it is performing a quasi-judicial function, in which case s. 286.0115 will apply. Section 286.0114 contains an exception for a board or commission acting in a quasi-judicial capacity. DRC meetings have been found subject to the Sunshine Law. See Evergreen Tree Treasurers of Charlotte County, Inc. v. Charlotte County Board of County Commissioners, 810 So. 2d 526, 531-32 (Fla. 2d DCA 2002) ("[W]hen, as here, public officials delegate their fact-finding duties and decision-making authority to a committee of staff members, those individuals no longer function as staff members but 'stand in the shoes public officials insofar as application of Government in the Sunshine is concerned." (citation omitted)). Pursuant to the Charlotte County ordinance, final project approval had been delegated to DRC, therefore, the county staff members serving on the DRC functioned as public officials. Any DRC meeting at which quasi-judicial action will be taken is subject to the Sunshine Law.

Does it apply to Staff meetings? – Yes, if staff has been delegated decision-making authority. The new law would likely be interpreted in a manner consistent with the AGOs and cases applying the Sunshine Law. See Fla. AGO 98-70 (lengthy analysis of situations in which authority delegated to staff makes meeting subject to Sunshine Law). The legislative history of s. 286.0114 evidences the Legislature's intent to make the language of the new statute consistent with s. 286.011. "No official act which is in and of itself decision-making can be "remot" [sic] from the decision-making process, regardless of how many decision-making steps go into the ultimate decision. Neither can the fact that members of a committee were staff shelter its official acts from public scrutiny." Fla. AGO 84-70 (citing Wood v. Marston, 443 So. 2d 934, 941 (Fla. 1983)).

Does it apply to Workshops? — Yes, if it is the public's only chance to be heard on the proposition; no, if the public will be given the opportunity to speak on it at a meeting in the reasonably proximate future time. The opportunity need not occur at the same meeting, if the opportunity occurs at a meeting that is during the decision-making process and is within a reasonable proximity in time before the meeting at which the board or commission takes the official action. Workshop items that are definitely coming before the city commission within a

month or so probably do not need public comment at the workshop, because comment will be provided at city commission meeting. However, if an item may not come back within a reasonably proximate time, then there should be public comment at the workshop. Note that if there is a chance that a "proposition" could change, public comment should take place at all meetings during the decision-making process.

Does the Board have to allow public comment on the Consent Agenda, and if so, when should public comment occur? Yes, the Board must allow public comment on the consent agenda. The comment should take place after the approval of the minutes & ceremonial duties, but before the consent agenda (even if no agenda items are pulled off for a separate vote).

What about Staff or Commission Reports? - The analysis is what is a "proposition" under Section 286.0114(2)? If the reports relate to a "proposition", not simply ministerial/ceremonial things, then the Board must allow public comment, if it is the public's only chance to speak on the proposition for the reasonably foreseeable future. If the staff reports or commissioners' reports contain a "proposition" (undefined term) then public comment should be allowed on these also. Also, as noted, because the "proposition" could change, it is probably best to allow public comment on commission reports that go beyond ministerial matters. The suggested procedure is for staff or commissioners to list specific propositions on the agenda under their reports, so that the public could know the "propositions" to be voted on. In that case, public comment time for these items could occur before commission/staff reports. If an item is not placed on the agenda, then the commission could ask for public comment during the reports, but before the vote.

Does it apply to Future Agenda Items? Yes, if it is the public's only chance to be heard on the proposition; no, if the public will be given the opportunity to speak on it at a meeting in the reasonably proximate time. See Section 286.0114(2) ("The opportunity need not occur at the same meeting, if the opportunity occurs at a meeting that is during the decision-making process and is within a reasonable proximity in time before the meeting at which the board or commission takes the official action."). Again, note that the "proposition" could change.

#### Sample documents:

Resolution
Speaker form
Modified City Council/Commission rules

Gildocs/Cities/City Dump/MEMO on Comment at Public Meetings SB 50 LRM 7-30-13.docs

RESOLUTION NO.	
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A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF WINTER PARK, FLORIDA, RESTATING AND ACCEPTING PRIOR RESOLUTION NO. 1978-07 REGARDING RULES FOR THE CONDUCT OF CITY COMMISSION MEETINGS AND DECORUM, AS WELL AS OTHER SUBJECTS ADDRESSED IN THAT RESOLUTION, AND SUPPLEMENTING AND AMENDING THAT PRIOR RESOLUTION TO ADD TWO SECTIONS, TO COMPLY WITH SENATE BILL 50 ADOPTED IN THE 2013 LEGISLATURE, AND AUTHORIZING THE CITY MANAGER TO PROVIDE FOR CERTAIN AREAS TO REMAIN OPEN DURING COMMISSION MEETINGS AND TO PROHIBIT PERSONS NOT SPECIFICALLY INVITED BY THE COMMISSION TO ADDRESS THE COMMISSION FROM CERTAIN AREAS.

BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF WINTER PARK, FLORIDA:

<u>SECTION 1:</u> Resolution No. 1415, Resolution No. 1463 and Resolution No. 1927-05 were repealed by Resolution 1978-07, and such repeal is reaffirmed here. Resolution 1978-07 is hereby restated in its entirety with certain changes to take into account the requirements of SB 50, Chapter 2013-227, Laws of Florida, and to add a rule allowing the City Manager to identify areas in the Commission Chambers that will remain free of persons and objects during meetings so as to promote a safe and orderly meeting.

<u>SECTION 2</u>: RULES. It is the duty of the City Commission to make such rules for its own guidance and government as it may deem expedient. The following shall be the rules for the government of the City Commission:

RULE 1. REGULAR MEETINGS: The City Commission shall hold regular meetings on the second and fourth Monday of each month in the City Commission Chambers at the City Hall at 3:30 p.m. or at such time of day as the Commission may decide provided, however, that the City Commission may dispense with any one meeting each month when it is anticipated that the business of the Commission be not urgent.

RULE 2. SPECIAL AND EMERGENCY MEETINGS: Any member of the City Commission may call a special or emergency meeting of the Commission either by written or verbal request to the City Manager. Whenever a special or emergency meeting is called, the Commission shall be notified either via e-mail and/or by telephone at least twenty-four (24) hours before any special meeting and, when practicable at least twelve (12) hours before any emergency meeting. A copy of such notice shall likewise be posted at City Hall and on the City's website.

RULE 3. WORK SESSION MEETINGS: The City Commission may meet informally for study and discussion of the affairs of the City, but no formal or binding action shall be taken at a workshop or work session meeting. The Commission may schedule work sessions at such times as the Commission may decide.

RULE 4. MEETINGS OPEN TO THE PUBLIC: All meetings of the City Commission for the purpose of transacting city business, whether action is taken or not, shall be held in the City Commission Chambers unless the Commission indicates another advertised location, and shall be open to the public.

<u>RULE 5. AGENDA:</u> The City Manager shall prepare an agenda for all meetings, except emergency meetings when time does not permit.

- (A) Formal Meetings -- The agenda for formal meetings, whether regular or special, shall include only such matters as requested by a member of the Commission, together with such other and subsequent matters as may be recommended for consideration by the City Manager. Any person or persons desiring to appear before the City Commission on a particular subject matter may make a request in writing to the City Manager to be placed on the agenda no later than 10 days prior to the regular Monday meeting of the City Commission, stating the purpose for which such person or persons desire to appear. Requests received after that time will be placed on the next regular Commission meeting agenda.
- (B) Distribution The agenda shall be provided to the public via the City's website no later than the Friday prior to the Monday meeting and shall be posted at City Hall.

<u>RULE 6. PRESIDING OFFICER</u>: The Mayor shall preside at all meetings, if present, and in his/her absence, the Vice-Mayor, and in the absence of both the Mayor and the Vice-Mayor a Mayor pro tem shall be elected to preside.

RULE 7. DECORUM: The presiding officer, and in the absence of a presiding officer the City Manager or the City Manager's designee, is empowered to and shall preserve decorum. Members of the public attending commission meetings also shall observe the same rules of propriety, decorum and good conduct applicable to members of the Commission. Any person making personal, impertinent, and slanderous remarks or who becomes boisterous while addressing the commission or while attending the commission meeting shall be removed from the building and may not return to the meeting from which he or she was removed, or to the building, prior to close or adjournment of the meeting without leave of the presiding officer or the permission of the commission. If the person removed is an applicant for city action or otherwise is the named proponent of a matter which is scheduled to come before the commission, but which has not been decided by the commission at the time of the person's removal, the commission may, but is not required to, postpone consideration of said action or matter until the next regularly scheduled meeting. If consideration of said action or matter is postponed, any fees required to be paid in connection with bringing said action or matter before the commission shall be required to be paid again prior to the subsequent consideration of said action or matter.

The provisions of this Rule 7 shall also apply to Commission work sessions and informal meetings, to the meetings of City boards, and to meetings with City staff which are open to members of the public.

RULE 8. ORDER OF BUSINESS: All meetings (regular or special) of the Commission shall be open to the public promptly at the hour set on the day of each meeting. The business of the Commission shall be taken up for consideration and disposition in substantially the following order.

- 1. Meeting Called to Order
- 2. Invocation and Pledge of Allegiance
- 3. Approval of Agenda
- 34. Mayor's Report (for non-action items such as proclamations, awards, check presentations, etc. The only action item under this section would be board appointments).
- 4. Citizens' Comments (before Consent Agenda)
- 5. <u>City Manager's Report</u>Action Items (for all items requiring Commission action, including items formally on the consent agenda. The back up for these items should include all information necessary for making a decision. The Mayor, any Commissioner and the City Manager would be given the opportunity to pull anything off this list for discussion or to hear a presentation. Anything not pulled for discussion or presentation would be voted on in one vote (all items together as one vote). At the Commission's option, any presentation requested under this section could be heard at this time or after the Public Hearings portion of the agenda, in an attempt to handle those items with the most public interest first).
- 6. Public Hearings (for all resolutions and ordinances).
- 7. City Attorney's Report (for updates on litigation or other legal matters).
- **87**. Non-action items (for updates on issues, citizen board reports and general discussion items requiring Commission direction, but not official action).
- 8. Citizens' Comments (at 5:00 p.m. or as soon thereafter as possible)
- 9. New Business (Public) Consent Agenda (allow Citizen input)
- 10. New Business (City Commission) Action Items Requiring Discussion (allow Citizen input)
- 11. Public Hearings (for all resolutions and ordinances; allow Citizen input)
- 12. City Commission Reports
- RULE 9. ADDRESSING THE COMMISSION: During work sessions, persons may address the Commission only when requested to do so by a member of the Commission or the City Manager. At formal meetings any person desiring to address the Commission shall first be recognized for that purpose by the presiding officer.
  - (A) Written Communications -- Members of the City Commission, taxpayers or residents of the City and other interested parties, or their authorized representatives may address the Commission by written communications in regard to matters then under discussion. A copy shall be provided to the City Clerk.
  - (B) Oral Communications -- Taxpayers or residents of the City and other interested parties, or their authorized legal representatives, may address the Commission by oral communication on any matter concerning the City's business or any matter over which the Commission has jurisdiction or control under New Business (Public).
  - (C) Anonymous Communications -- Unsigned communications shall not be introduced to the Commission.
  - (D) Manner of Addressing Commission; Time Limited -- Each person recognized for the purpose of addressing the Commission shall step forward to the podium with the microphone thereon, and shall give his name and address in an audible tone for the record, and unless further time is granted for the Commission, shall limit his address to four

(4) minutes for individuals and fifteen (15) minutes for team presentations, or such additional time as may be deemed appropriate by the Commission. All remarks shall be addressed to the Commission as a body and not to any member thereof. No person, other than the Commission and the person having the floor shall be permitted to enter into any debate or discussion, either directly or through a member of the Commission, without the permission of the presiding officer. Further, City Commissioners shall comply with this rule, except that they are permitted to address the Commission from their seat. Copies of all overhead or power point presentations or other information used as part of their discussion shall be provided to the City Clerk either in hard copy or by CD.

RULE 10. VOTING: Ordinances and resolutions require a roll call vote of the City Commission. All other votes may be done by voice vote. Any time the results of a voice vote is unclear, the City Clerk may request a roll call vote. Whenever a roll call vote is ordered, the City Clerk shall call the roll of Commissioners and record the vote of each member.

#### RULE 11. PROCEDURE FOR ADOPTION OF ORDINANCES AND RESOLUTIONS:

- (A) Adoption Procedures -- The procedure for adoption of ordinances and resolutions shall be as set forth in Section 166.041, Florida Statutes, and Section 2.11 and 2.12 of the City Charter.
- (B) Preparation and Review of Ordinances, Resolutions, Contracts, Etc.
- 1. Preparation of Ordinances. No ordinance shall be prepared for presentation to the Commission unless ordered by a majority vote of the Commission, or requested by the City Manager, or prepared by the City Attorney on his own initiative.
- 2. All ordinances, resolutions and contract documents shall, before presentation to the Commission, be approved as to form and legality by the City Attorney or his authorized representative, and shall have been examined and approved for administration by the City Manager or his authorized representative, where there are substantive matters of administration involved. All such instruments first shall have been referred to the head of the department under whose jurisdiction the administration of the subject matter of the ordinance, resolution or contract document would devolve and be reviewed by said department head; provided, however, that if approval is not given, then the department head shall provide the City Manager and City Commission with comments and recommendations for consideration by the City Commission in their review and approval of any ordinance, resolution or contract documents. OR THIS: City Attorney or department head shall explain to the City Manager why such approval is withheld.

# RULE 12. RULES REQUIRED BY THE ADOPTION OF SENATE BILL 50, CHAPTER 2013-227, LAWS OF FLORIDA:

- (A) The agendas for meetings of the Commission should briefly identify all propositions coming before the Commission for discussion or action, so that the public is sufficiently notified of the subject of the proposition.
- (B) "Citizens' Comments" will be included on every agenda (including the public

agendas for subsidiary boards or commissions). The Commission will allow comments by members of the audience regarding all propositions and proposed actions, with the exception of those matters that are identified as exempt from these requirements by Statute 286.0114, including, as provided in the statute, emergencies, ministerial acts (including but not limited to the approval of minutes), and ceremonial proclamations, a meeting that is exempt from Sunshine (Section 286.011), or a matter in which the City Commission or a subsidiary board is acting in a quasi judicial capacity.

- (C) In the event that a proposition comes before the Commission for action or for a formal vote that was not on the agenda, the Mayor will allow public comment on that proposition.
- (D) Public comment may not be heard on:
- 1. Emergency items, meaning an official act that must be taken to deal with an emergency situation affecting the public health, welfare, or safety, if compliance with Florida Statutes 286.0114 would cause an unreasonable delay in the ability of the Commission to act.
- 2. Ministerial items, meaning an official act involving no more than a ministerial act, including but not limited to, approval of minutes and ceremonial proclamations. Additionally, any parliamentary vote such as a motion to table, motion to adjourn, motion to extend debate or other similar procedural votes which do not implicate any substantive right but are merely designed to facilitate the conduct of the meeting shall be deemed ministerial and public comment may not be allowed.
- 3. Quasi judicial matters except by permission of the Commission, and in no event will public comments be considered evidence at a quasi judicial proceeding.
- (E) Citizens' Comments will not as a matter of normal order be part of a workshop agenda. However, Citizens' Comments will be allowed on any proposition regarding a workshop topic at the first regular or special meeting of the Commission following the workshop, and before a vote on the item is taken by the Commission.
- (F) All City boards and subsidiary boards will allow public comment at their meetings except for emergency, ministerial or quasi judicial items.
- (G) To the extent there is any conflict between the provisions of this Rule, 12, and any other rule of the City Commission, this Rule 12 shall take precedence and shall control.
- (H) The City's Administrative Policies adopted in April, 2011, are still valid and binding, and are incorporated herein by reference. However, no formal action may be taken on any matter discussed at a meeting scheduled under section 10 of the Administrative Policies or otherwise is allowed until after there is an opportunity for Citizens' Comments as set out in this Resolution.
- RULE 13. PROVISION FOR SAFE AND ORDERLY MEETINGS: The City Manager has the authority to provide for and identify areas to remain free of persons and objects during meetings except for those persons invited to address the Commission. This will promote safety, and insure an orderly meeting, free of interruption, and is in the interest of allowing citizens in

attendance at the meeting while seated in the area reserved for the audience to observe the dais and Commission activity without having their view obstructed or their attention distracted by persons, objects or activity within such designated areas, including that area between the dais and the citizens' seating area. This Rule is subject to the exception that persons and their exhibits or other objects may cross into such area(s) when those persons are recognized by the Commission, or by the Mayor at a meeting as presiding officer.

$\frac{\text{SECTION}}{3}$ . This Resolution sha and adoption.	all become effective immediately upon its final passage
ADOPTED at a regular meeting of tho on this, day of, 201	ne City Commission of the City of Winter Park, Florida 13.
ATTEST:	Mayor Kenneth W. Bradley
ATTEST.	
City Clerk	_



## 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 Law
Board Certified Education Law

ulbrown@orlandolaw.net

February 3, 2012

Mayor Kenneth Bradley City Commissioners City of Winter Park 401 Park Avenue South Winter Park, FL 32789

via email & regular U.S. Mail

Re:

Resolution regarding conduct of meetings amended to include language providing for Citizens' Comments (Chapter 2013-227) and to allow the City Manager to allocate certain areas that will remain free of persons and objects during City Commission meetings.

**Dear Mayor and Commissioners:** 

At the meeting held on September 9, 2013, there was a discussion concerning a proposal to amend the Resolution regarding conduct of meetings.

The highlighted language in this proposed resolution highlights the paragraphs that are new. These are in compliance with Senate Bill 50 regarding public comment, procedure that I prepared for the City Manager that allows for him to maintain certain areas in Commission Chambers free of persons and objects (so that cameramen may not stand in front of the dias, blocking the view, and the free flow of people in the Chambers). Also added is a provision that refers to the City's Administrative Policies adopted in April 2011. This will allow a person reviewing the Resolution to be aware of all of the rules regarding meetings of the City.

This Resolution is presented for discussion. Hopefully this is a reasonable starting point. for discussion. I enclose the new law, 2013-227, my letter to Randy Knight dated September 5, 2013, which included my correspondence of August 26, 2013, with attachments regarding Senate Bill 50 (Chapter 2013-227). Lastly, Resolution 1978-07 is enclosed so that you can compare it with the proposed new Resolution.

**September 17, 2013** Page 2

I trust this information is sufficient. However, I am available to respond to emails and questions should there be any questions or comments at this point. Thank you for your attention to these matters.

Sincerely,

Usher L. Brown

**ULB:tla Enclosures** 

Randy Knight, City Manager

Cindy Bonham, City Clerk
G:\docs\Cities\Winter Park\Ordinances and Resolutions General\Meetings - conduct of\trans.mayor and commissioners with new resolution re conduct of meetings.wpd

RESOLUTION NO.	
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- 5. Action Items (for all items requiring Commission action, including items formally on the consent agenda. The back up for these items should include all information necessary for making a decision. The Mayor, any Commissioner and the City Manager would be given the opportunity to pull anything off this list for discussion or to hear a presentation. Anything not pulled for discussion or presentation would be voted on in one vote (all items together as one vote). At the Commission's option, any presentation requested under this section could be heard at this time or after the Public Hearings portion of the agenda, in an attempt to handle those items with the most public interest first).
- 6. Public Hearings (for all resolutions and ordinances).
- 7. City Attorney's Report (for updates on litigation or other legal matters).
- 8. Non-action items (for updates on issues, citizen board reports and general discussion items requiring Commission direction, but not official action).
- 9. New Business (Public)
- 10. New Business (City Commission)
- <u>RULE 9. ADDRESSING THE COMMISSION</u>: During work sessions, persons may address the Commission only when requested to do so by a member of the Commission or the City Manager. At formal meetings any person desiring to address the Commission shall first be recognized for that purpose by the presiding officer.
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- 2. Ministerial items, meaning an official act involving no more than a ministerial act, including but not limited to, approval of minutes and ceremonial proclamations. Additionally, any parliamentary vote such as a motion to table, motion to adjourn, motion to extend debate or other similar procedural votes which do not implicate any substantive right but are merely designed to facilitate the conduct of the meeting shall be deemed ministerial and public comment may not be allowed.
- 3. Quasi judicial matters except by permission of the Commission, and in no event will public comments be considered evidence at a quasi judicial proceeding.
- (E) Citizens' Comments will not as a matter of normal order be part of a workshop agenda. However, Citizens' Comments will be allowed on any proposition regarding a workshop topic at the first regular or special meeting of the Commission following the workshop, and before a vote on the item is taken by the Commission.
- (F) All City boards and subsidiary boards will allow public comment at their meetings except for emergency, ministerial or quasi judicial items.
- (G) To the extent there is any conflict between the provisions of this Rule, 12, and any other rule of the City Commission, this Rule 12 shall take precedence and shall control.
- (H) The City's Administrative Policies adopted in April, 2011, are still valid and binding, and are incorporated herein by reference. However, no formal action may be taken on any matter discussed at a meeting scheduled under section 10 of the Administrative Policies or otherwise is allowed until after there is an opportunity for Citizens' Comments as set out in this Resolution.

RULE 13. PROVISION FOR SAFE AND ORDERLY MEETINGS: The City Manager has the authority to provide for and identify areas to remain free of persons and objects during meetings except for those persons invited to address the Commission. This will promote safety, and insure an orderly meeting, free of interruption, and is in the interest of allowing citizens in attendance at the meeting while seated in the area reserved for the audience to observe the dais and Commission activity without having their view obstructed or their attention distracted by persons, objects or activity within such designated areas, including that area between the dais and the citizens' seating area. This Rule is subject to the exception that persons and their exhibits or other objects may cross into such area(s) when those persons are recognized by the Commission, or by the Mayor at a meeting as presiding officer.

<u>SECTION 3</u>. This Resolution shall become effective immediately upon its final passage and adoption.

<u> </u>	r meeting of the City Co	ommission of the City	y of Winter Park, Florid
n this day of	, 2013.		
	Mover	Konnoth W. Bradlay	
	iviayoi	Kenneth W. Bradley	
A TTE OT			
ATTEST:			
City Clerk			

## RESOLUTION NO. 1978-07

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF WINTER PARK, FLORIDA, REPEALING RESOLUTION NO. 1415, RESOLUTION NO. 1463, "RULES FOR THE CONDUCT OF MEETINGS" AND RESOLUTION NO. 1927-05, RULES OF DECORUM AND RESTATING IN ITS ENTIRETY THE RULES FOR THE CONDUCT OF MEETINGS, THE PREPARATION OF THE AGENDA, DECORUM, CITY COMMISSION MEETING ORDER OF BUSINESS, ADDRESSING THE COMMISSION, AND THE PROCEDURE FOR ADOPTING ORDINANCES AND RESOLUTIONS.

BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF WINTER PARK, FLORIDA:

SECTION 1: That Resolution No. 1415, Resolution No. 1463 and Resolution No. 1927-05 are hereby repealed and restated in its entirety with certain modifications as set forth as follows:

SECTION 1. RULES. It is the duty of the City Commission to make such rules for its own guidance and government as it may deem expedient. The following shall be the rules for the government of the City Commission:

RULE 1. REGULAR MEETINGS: The City Commission shall hold regular meetings on the second and fourth Monday of each month in the City Commission Chambers at the City Hall at 3:30 p.m. or at such time of day as the Commission may decide provided, however, that the City Commission may dispense with any one meeting each month when it is anticipated that the business of the Commission be not urgent.

RULE 2. SPECIAL AND EMERGENCY MEETINGS: Any member of the City Commission may call a special or emergency meeting of the Commission either by written or verbal request to the City Manager. Whenever a special or emergency meeting is called, the Commission shall be notified either via e-mail and/or by telephone at least twenty-four (24) hours before any special meeting and, when practicable at least twelve (12) hours before any emergency meeting. A copy of such notice shall likewise be posted at City Hall and on the City's website.

RULE 3. WORK SESSION MEETINGS: The City Commission may meet informally for study and discussion of the affairs of the City, but no formal or binding action shall ever be taken at any such meeting. The Commission may schedule work sessions at such times as the Commission may decide.

RULE 4. MEETINGS OPEN TO THE PUBLIC: All meetings of the City Commission for the purpose of transacting city business, whether action is taken or not, shall be held in the City Commission Chambers unless the Commission indicates another advertised location, and shall be open to the public.

RULE 5. AGENDA: The City Manager shall prepare an agenda for all meetings, except emergency meetings when time does not permit.

- (A) Formal Meetings -- The agenda for formal meetings, whether regular or special, shall include only such matters as requested by a member of the Commission, together with such other and subsequent matters as may be recommended for consideration by the City Manager. Any person or persons desiring to appear before the City Commission on a particular subject matter may make a request in writing to the City Manager to be placed on the agenda no later than 10 days prior to the regular Monday meeting of the City Commission, stating the purpose for which such person or persons desire to appear. Requests received after that time will be placed on the next regular Commission meeting agenda.
- (B) Distribution The agenda shall be provided to the public via the City's website no later than the Friday prior to the Monday meeting and shall be posted at City Hall.

RULE 6. PRESIDING OFFICER: The Mayor shall preside at all meetings, if present, and in his/her absence, the Vice-Mayor, and in the absence of both the Mayor and the Vice-Mayor a Mayor pro tem shall be elected to preside.

RULE 7. DECORUM: The presiding officer, and in the absence of a presiding officer the City Manager or the City Manager's designee, is empowered to and shall preserve decorum. Members of the public attending commission meetings also shall observe the same rules of propriety, decorum and good conduct applicable to members of the Commission. Any person making personal, impertinent, and slanderous remarks or who becomes boisterous while addressing the commission or while attending the commission meeting shall be removed from the building and may not return to the meeting from which he or she was removed, or to the building, prior to close or adjournment of the meeting without leave of the presiding officer or the permission of the commission. If the person removed is an applicant for city action or otherwise is the named proponent of a matter which is scheduled to come before the commission, but which has not been decided by the commission at the time of the person's removal, the commission may, but is not required to, postpone consideration of said action or matter until the next regularly scheduled meeting. If consideration of said action or matter is postponed, any shall be required to be paid in connection with bringing said action or matter before the commission shall be required to be paid again prior to the subsequent consideration of said action or matter.

The provisions of this Rule 7 shall also apply to Commission work sessions and informal meetings, to the meetings of City boards, and to meetings with City staff which are open to members of the public.

RULE 8. ORDER OF BUSINESS: All meetings (regular or special) of the Commission shall be open to the public promptly at the hour set on the day of each meeting. The business of the Commission shall be taken up for consideration and disposition in substantially the following order.

Meeting Called to Order

Invocation and Pledge of Allegiance

 Mayor's Report (for non-action items such as proclamations, awards, check presentations, etc. The only action item under this section would be board appointments).

4. Action Items (for all items requiring Commission action, including items formally on

the consent agenda. The back up for these items should include all information necessary for making a decision. The Mayor, any Commissioner and the City Manager would be given the opportunity to pull anything off this list for discussion or to hear a presentation. Anything not pulled for discussion or presentation would be voted on in one vote (all items together as one vote). At the Commission's option, any presentation requested under this section could be heard at this time or after the Public Hearings portion of the agenda, in an attempt to handle those items with the most public interest first).

5. Public Hearings (for all resolutions and ordinances).

City Attorney's Report (for updates on litigation or other legal matters).

7. Non-action items (for updates on issues, citizen board reports and general discussion items requiring Commission direction, but not official action).

8. New Business (Public)

New Business (City Commission)

RULE 9. ADDRESSING THE COMMISSION: During work sessions, persons may address the Commission only when requested to do so by a member of the Commission or the City Manager. At formal meetings any person desiring to address the Commission shall first be recognized for that purpose by the presiding officer.

- (A) Written Communications -- Members of the City Commission, taxpayers or residents of the City and other interested parties, or their authorized representatives may address the Commission by written communications in regard to matters then under discussion. A copy shall be provided to the City Clerk.
- (B) Oral Communications -- Taxpayers or residents of the City and other interested parties, or their authorized legal representatives, may address the Commission by oral communication on any matter concerning the City's business or any matter over which the Commission has jurisdiction or control under New Business (Public).
- (C) Anonymous Communications Unsigned communications shall not be introduced to the Commission.
- (D) Manner of Addressing Commission; Time Limited -- Each person recognized for the purpose of addressing the Commission shall step forward to the podium with the microphone thereon, and shall give his name and address in an audible tone for the record, and unless further time is granted for the Commission, shall limit his address to four (4) minutes for individuals and fifteen (15) minutes for team presentations, or such additional time as may be deemed appropriate by the Commission. All remarks shall be addressed to the Commission as a body and not to any member thereof. No person, other than the Commission and the person having the floor shall be permitted to enter into any debate or discussion, either directly or through a member of the Commission, without the permission of the presiding officer. Further, City Commissioners shall comply with this rule, except that they are permitted to address the Commission from their seat. Copies of all overhead or power point presentations or other information used as part of their discussion shall be provided to the City Clerk either in hard copy or by CD.

RULE 10. VOTING: Ordinances and resolutions require a roll call vote of the City Commission. All other votes may be done by voice vote. Any time the results of a voice vote is unclear, the City Clerk may request a roll call vote. Whenever a roll call vote is ordered, the City Clerk shall call the roll of Commissioners and record the vote of each member.

## RULE 11. PROCEDURE FOR ADOPTION OF ORDINANCES AND RESOLUTIONS:

- (A) Adoption Procedures -- The procedure for adoption of ordinances and resolutions shall be as set forth in Section 166.041, Florida Statutes, and Section 2.11 and 2.12 of the City Charter.
  - (B) Preparation and Review of Ordinances, Resolutions, Contracts, Etc.
  - Preparation of Ordinances. No ordinance shall be prepared for presentation to the Commission unless ordered by a majority vote of the Commission, or requested by the City Manager, or prepared by the City Attorney on his own initiative.
  - 2. All ordinances, resolutions and contract documents shall, before presentation to the Commission, be approved as to form and legality by the City Attorney or his authorized representative, and shall have been examined and approved for administration by the City Manager or his authorized representative, where there are substantive matters of administration involved. All such instruments first shall have been referred to the head of the department under whose jurisdiction the administration of the subject matter of the ordinance, resolution or contract document would devolve and be reviewed by said department head; provided, however, that if approval is not given, then the department head shall provide the City Manager and City Commission with comments and recommendations for consideration by the City Commission in their review and approval of any ordinance, resolution or contract documents. OR THIS: City Attorney or department head shall explain to the City Manager why such approval is withheld.

SECTION 2. This Resolution shall become effective immediately upon its final passage and adoption.

ADOPTED at a regular meeting of the City Commission of the City of Winter Park, Florida on this <u>11<sup>th</sup></u> day of <u>June</u>, 2007.

Mayor David C. Strong

ATTEST:

City Clerk

yotthe Gerlam



#### CHAPTER 2013-227

# Committee Substitute for Committee Substitute for Senate Bill No. 50

An act relating to public meetings; creating s. 286.0114, F.S.; defining "board or commission"; requiring that a member of the public be given a reasonable opportunity to be heard by a board or commission before it takes official action on a proposition; providing exceptions; establishing requirements for rules or policies adopted by the board or commission; providing that compliance with the requirements of this section is deemed to have occurred under certain circumstances; providing that a circuit court has jurisdiction to issue an injunction under certain circumstances; authorizing a court to assess reasonable attorney fees in actions filed against a board or commission; providing that an action taken by a board or commission which is found in violation of this section is not void; providing that the act fulfills an important state interest; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

- Section 1. Section 286.0114, Florida Statutes, is created to read:
- 286.0114 Public meetings; reasonable opportunity to be heard; attorney fees.—
- (1) For purposes of this section, "board or commission" means a board or commission of any state agency or authority or of any agency or authority of a county, municipal corporation, or political subdivision.
- (2) Members of the public shall be given a reasonable opportunity to be heard on a proposition before a board or commission. The opportunity to be heard need not occur at the same meeting at which the board or commission takes official action on the proposition if the opportunity occurs at a meeting that is during the decisionmaking process and is within reasonable proximity in time before the meeting at which the board or commission takes the official action. This section does not prohibit a board or commission from maintaining orderly conduct or proper decorum in a public meeting. The opportunity to be heard is subject to rules or policies adopted by the board or commission, as provided in subsection (4).
  - (3) The requirements in subsection (2) do not apply to:
- (a) An official act that must be taken to deal with an emergency situation affecting the public health, welfare, or safety, if compliance with the requirements would cause an unreasonable delay in the ability of the board or commission to act;

- (b) An official act involving no more than a ministerial act, including, but not limited to, approval of minutes and ceremonial proclamations;
  - (c) A meeting that is exempt from s. 286.011; or
- (d) A meeting during which the board or commission is acting in a quasijudicial capacity. This paragraph does not affect the right of a person to be heard as otherwise provided by law.
- (4) Rules or policies of a board or commission which govern the opportunity to be heard are limited to those that:
- (a) Provide guidelines regarding the amount of time an individual has to address the board or commission;
- (b) Prescribe procedures for allowing representatives of groups or factions on a proposition to address the board or commission, rather than all members of such groups or factions, at meetings in which a large number of individuals wish to be heard:
- (c) Prescribe procedures or forms for an individual to use in order to inform the board or commission of a desire to be heard; to indicate his or her support, opposition, or neutrality on a proposition; and to indicate his or her designation of a representative to speak for him or her or his or her group on a proposition if he or she so chooses; or
  - (d) Designate a specified period of time for public comment.
- (5) If a board or commission adopts rules or policies in compliance with this section and follows such rules or policies when providing an opportunity for members of the public to be heard, the board or commission is deemed to be acting in compliance with this section.
- (6) A circuit court has jurisdiction to issue an injunction for the purpose of enforcing this section upon the filing of an application for such injunction by a citizen of this state.
- (7)(a) Whenever an action is filed against a board or commission to enforce this section, the court shall assess reasonable attorney fees against such board or commission if the court determines that the defendant to such action acted in violation of this section. The court may assess reasonable attorney fees against the individual filing such an action if the court finds that the action was filed in bad faith or was frivolous. This paragraph does not apply to a state attorney or his or her duly authorized assistants or an officer charged with enforcing this section.
- (b) Whenever a board or commission appeals a court order that has found the board or commission to have violated this section, and such order is affirmed, the court shall assess reasonable attorney fees for the appeal against such board or commission.

- (8) An action taken by a board or commission which is found to be in violation of this section is not void as a result of that violation.
- Section 2. The Legislature finds that a proper and legitimate state purpose is served when members of the public have been given a reasonable opportunity to be heard on a proposition before a board or commission of a state agency or authority, or of an agency or authority of a county, municipal corporation, or political subdivision. Therefore, the Legislature determines and declares that this act fulfills an important state interest.

Section 3. This act shall take effect October 1, 2013.

Approved by the Governor June 28, 2013.

Filed in Office Secretary of State June 28, 2013.

item type	Action Item Requiring Discussion	meeting date	October 14, 2013
prepared by department division	Dru Dennison Urban Forestry Management	approved by	<ul><li>■ City Manager</li><li>□ City Attorney</li><li>□ N A</li></ul>
board approval		☐ yes ☐ no ■	N A final vote

## subject

Urban Forestry Management Plan

#### motion | recommendation

Resolve the below identified policy questions and adopt the Urban Forestry Management Plan

## background

Over the past year City Staff has been building an Urban Forestry Management Plan. The draft plan was previously presented to the Tree Preservation Board and the City Commission. The Commission asked that a sample area be prepared in accordance with the recommended practices and individual educational session were conducted. The plan was presented to the Tree Preservation Board with the key policy decisions identified. The Tree Preservation Board made recommendations on how to improve participation and education at the Community Meeting to discuss UFMP. In September 2013, the City Commission recognized the City's Urban Forest as one of their top five priorities for FY 14, however, did not provide direction on any of the key policy discussions as the Community Meeting was already scheduled.

On September 30, the City held the Community Meeting to discuss the UFMP at the Community Center. There were approximately 15 community members in attendance. Staff utilized an interactive polling system to solicit feedback from the community members on the key policy questions and had between 12-14 members of the audience participate.

Below is a summary of the policy questions identified, the results of the feedback received at the community meeting and staff's recommendation for each. It should be noted that this citizen input is not a statistical sampling of the community and is for information purposes only. Once these policy questions have been resolved, the UFMP is ready for adoption.

		Community Meeting Feedback	Staff Recommendation
ROW 1	Tree Maintenance:  Who should be responsible for maintenance of the trees in the ROW (including planting& watering, pruning and dead tree removal)	City - 100%	City
•	<ul><li>If the City, How should we fund?</li><li>1. Growth in the Budget</li><li>2. Tax increase</li><li>3. Reduction in other services</li></ul>	<ol> <li>Growth in the Budget – 25%</li> <li>Tax increase – specific to trees – 67%</li> <li>Reduction in other services – 8%</li> </ol>	Growth in the budget; annual review
•	<ul><li>If the adjacent property owner</li><li>1. Do we continue to utilize city resources once the tree has been designated a high hazard?</li><li>2. Implement more aggressive code enforcement?</li></ul>	Continue to utilize City resources	Continue to utilize City resources
	ng Practices		
•	Should the adjacent property owner have a say in the replanting process?	Yes - 75% No - 25%	Yes
•	Should the adjacent property owner be able to say "I don't want a tree in the ROW in front of my home?"	Yes - 50% No- 50%	Yes
•	Should the adjacent property owner be able to select the species if appropriate for the planting space?	Yes, from a "pick list" – 89% No – 11%	Yes
•	Who should be responsible for watering new trees?  1. The adjacent resident 2. The City 3. The adjacent resident on a voluntary basis	<ol> <li>The adjacent resident – 29%</li> <li>The City – 7%</li> <li>The adjacent resident on a voluntary basis – 64%</li> </ol>	The adjacent resident on a voluntary basis
Specie	es Diversification		
•	Should the City make an effort to diversify our canopy?	Yes - 69% No - 31%	Yes
٠	What % of New ROW trees planted should be oak?  1. 10% 2. 25% 3. 50% 4. 75% 5. 100%	1. 10% - 38% 2. 25% - 23% 3. 50% - 8% 4. 75% - 15% 5. 100% - 15%	A goal of planting no more than 50% oak in the ROW over the next five years. This is not a goal of reducing oaks to 50% of the canopy; it is a short term goal, specific to the planting of <b>new</b> ROW trees, to determine a five year impact of encouraging diversity.
•	How should we encourage diversity on private property?  1. We shouldn't; residents should plant what they want  2. Tree give away  3. Educational Material  4. Tree permitting process	<ol> <li>We shouldn't; residents should plant what they want - 25%</li> <li>Tree give away - 67%</li> <li>Educational Material - 8%</li> <li>Tree permitting process - 0%</li> </ol>	Through a combination of tree give aways, educational materials and consultations.

## alternatives | other considerations

Many alternatives were considered in the development of the UFMP. Clearly there are many opportunities to customize the plan to meeting our Community's needs.

## fiscal impact

The estimated annual cost to contract for services that include ROW maintenance responsibilities are approximately \$950K annually (to complete one full cycle in seven years, recognizing the first cycle would be more costly than subsequent cycles). The FY 2014 budget includes \$310K for general contracted labor, \$250K for dead tree removal.

## long-term impact

Trees are a renewable resource. Through increasing age and species diversity as well as increasing routine maintenance, the City would be enhancing the canopy of today and ensuring these important assets are well established for future generations.

## strategic objective

Quality Infrastructure

item type	Action Item Requiring Discussion	meeting date	October 14, 2013
prepared by department division	Dori Stone Planning & Community Development	approved by	<ul><li>City Manager</li><li>City Attorney</li><li>N A</li></ul>
board approval		yesno	N A final vote

## **Subject**

Next Steps in the Visioning Planning Process

### motion | recommendation

Authorize staff to advertise the attached scope and to solicit bids based on the scope for consideration by the City Commission.

## **Background**

While the WRT study highlighted a number of recommendations, the principle theme behind the study showed the need for a shared consensus on a community vision. As the study noted, "A vision statement sets the tone and provides a "destination" for the comprehensive plan that every citizen can understand. The vision represents the consensus of the citizens. Consensus does not imply unanimity, but a process where everyone's input is carefully considered and the outcome best meets the needs of the community as a whole."

Given this, staff has researched several visioning exercises throughout the state and identified the following key points that symbolize the visioning process:

#### A Vision Statement is:

- A vivid description of what the community aspires to become
- An expression of the community's collective vales and aspirations
- The community's destination
- The benchmark to establish priorities
- A statement of intent on new strategic directions to achieve the vision

#### A Vision Statement is not:

- A mission statement
- A visualization
- A comprehensive plan

#### An effective Vision Statement is:

- Honest
- Memorable
- Imaginable
- Positive
- Ambitious
- Inspiring
- Forward thinking

In all cases, a visioning process must have key participants that make the process work. These would include the City of Winter Park citizens and community stakeholders, a Steering Committee made up of nine members that represent key stakeholders from a cross-section of Winter Park and a Resource Team made up of City staff.

There are a number of models for visioning exercises available. As staff has researched these models they all seem to rely on a number of community outreach options and a group of volunteers that make up the advocacy and core of the effort. In addition, the time frame for a community of Winter Park's size seems to be about 6-8 months. Given this, staff is recommending that the City Commission authorize the advertisement of the attached scope and solicit bids based on this scope. This allows staff to negotiate the best fee possible. Staff will then bring back the bids for the Commission's consideration.

While the City Commission can choose to put the vision statement into the Comprehensive Plan, it can also be used to frame decisions about economic development capital investment in the City. Many communities incorporate their vision statements into their strategic plan as a foundation for their Capital Improvement Plan.

At this time, staff would also recommend the City Commission authorize the Planning and Zoning Board and the EDAB continue working on several of the key points brought out in the WRT study. These include discouraging the proliferation of sprawl, reconciling expectations of principal arterial corridors such as West Fairbanks and Orlando Avenue, any possible modifications to concurrency and addressing the lack of clear economic development goals in the Comprehensive Plan. Both boards have been discussing the study results and are interested in pursuing the recommendations in greater detail.

#### alternatives | other considerations

The City Commission could decide to postpone or not pursue a visioning plan.

#### fiscal impact

The fiscal impact of this plan would be determined at the time that the Commission decided to select a consultant.

## long-term impact

A vision statement that represents a consensus of the community will set the tone for the future update of the Comprehensive Plan and the economic considerations of the city as redevelopment begins to occur.

## **Visioning Scope of Work**

## Phase 1 – Mobilization Timeframe: 1 month

The activities included in the mobilization phase are designed to allow the consultant team and the City to finalize organizational details of the work program and formally launch the visioning process through a series of high-profile events, meetings, briefings and activities directed to a variety of audiences. In addition, the consultant will assemble the data necessary to prepare and Existing Conditions report and begin communications with stakeholder groups and community opinion leaders to scan for key issues.

#### 1.1 Project Kickoff

- 1.1.1. Vision Resource Team Kickoff.
- 1.1.2. Vision Plan Steering Committee Kickoff Meeting
- 1.1.3. Stakeholder/Opinion Leader Interviews
- 1.1.4. Commission Briefing(s)
- 1.1.5. Media Briefing

#### 1.2 Data Collection/Data Book

The Resource Team will collect available maps, reports, plans, studies and other data necessary to the preparation of the Existing Conditions Report Card. The consultant will assemble all the data in a Data Book. The Data Book will provide the factual basis for the analysis to be carried out in the Existing Conditions Report Card in Phase 2.

### 1.3 Social Networking Tools

The consultant will be responsible for providing information and creating opportunities for input through Facebook and Twitter in coordination with the City's website. The consultant team will create content based on and limited to the deliverables identified herein.

#### 1.4 Public Open House(s)

Hosted by the Steering Committee and the consultant team, one (1) open house event (approximately 2-3 hours) will be held to launch the public participation process.

# Phase 2 - Existing Conditions Report Card *Timeframe: 2-3 months*

#### 2.1 Existing Conditions Documentation and Analysis

Using the information in the Data Book and in the city comprehensive plan, the consultant will analyze existing conditions and trends around such topics as:

- Socioeconomic Profile
- Demographic Projections
- Land Use / Development Patterns and Trends
- Community Character/Image
- Housing and Neighborhoods

- Economic Sectors and Activities
- Transportation
- Infrastructure
- Community Facilities
- Public Safety
- Parks and Recreation
- Natural / Coastal Resources
- Cultural / Historic Resources

#### **2.2 Identification/Research of Peer Communities** (optional)

The consultant working with the Steering Committee and the Resource Team, will identify up to three (3) cities in the United States that can be used as peer communities for the purpose of comparative references in the Existing Conditions Report Card.

## 2. 3 Draft Existing Conditions Report Card

The consultant team will compile the results of Tasks 2.1 and 2.2 into a draft report, which will be submitted for review by the Resource Team and the Steering Committee.

**2.4 Community Forum Series 1 – "Community Report Card" Open Houses** – The consultant team will conduct up to three (3) open houses (approximately 2-3 hours), held in different geographic areas of the city to present the findings of the existing conditions analysis and preliminary benchmarking in an informal setting, which will allow citizens one-on-one Q&A interaction with the project team. All materials presented at the open houses, will be posted on the project website (and made available for review and comment through the project's social networking tools, if applicable).

#### 2.5 Final Existing Conditions Report Card

Based on the input received from the Steering Committee, the Resource Team and the public, the consultant team will refine the draft report to create the final Existing Conditions Report Card. The consultant team will use the project website to post the final document.

**Meetings:** During this Phase, the Consultant team will participate in two (2) meetings with the Steering Committee and two (2) meetings the Resource Team.

## Phase 3 – Vision Statement / Strategic Directions Timeframe: 3 months

#### **3.1 Community Forums**:

The consultant team will lead a series of up to three (3) forums (approximately 2-3 hours), held in different geographic areas of the city. The consultant team will train member of the Steering Committee and the Resource Team to facilitate small group discussions focused on identifying consensus on present strengths and weaknesses in Winter Park, as well as future opportunities and threats. Keypad polling or other state-of-the-art techniques will be used to manage the brainstorming effort and aid in ranking consensus ideas.

In addition, the consultant team will prepare materials to allow the Resource Team to conduct small group meetings targeting specific groups such as business, civic and homeowners groups to host their own meetings. These meetings should also be targeted to reach out to groups and segments of the population that were underrepresented in the community forums.

#### 3.2 Synthesis: Community Aspirations and Issues

The consultant team will prepare a working paper that summarizes the input collected from the community forums, small group meetings and from the website, which may be organized as follows:

- Summary of Visioning Results
  - Areas of Consensus
  - o Areas of Divergence
- Identification of Overarching Themes
- Summary of Key Issues and Challenges
- Preliminary Identification of Focal Areas/Topical Areas

#### 3.3 Draft Vision Statement

Following the review and approval of the Community Aspirations and Issues Working Paper, the consultant team will develop a draft vision statement describing in what ways the City of Winter Park aspires to become an exceptional community of choice over the next two decades. The Vision Statement document may also begin to identify "focal areas" which may smaller geographic areas in need of attention such as downtown, highway corridors or distressed neighborhoods; or focal issues, such as economic diversification, community branding or connectivity.

#### 3.4 Review and Refinement

The consultant team will hold one or more meetings with the Steering Committee to refine and finalize the draft vision statement.

#### 3.5 Strategic Directions

The consultant team will facilitate a daylong retreat with the Steering Committee and the Resource Team to brainstorm strategic directions, and as appropriate, identify benchmarks for achievement and community improvement over time.

#### 3.6 Community Forum - Vision Statement/Strategic Direction Validation

The consultant team will facilitate a second series of three (3) open houses (approximately 2-3 hours), held in different geographic areas of the city. The purpose of the meetings will be to present and obtain input on the Vision Statement and Strategic Directions.

### 3.7 City of Winter Park Vision Document

The consultant team will prepare a Vision Plan document which may be structured as follows.

- Executive Summary
- Introduction
  - Background
  - o What is a Vision Plan?
  - Relationship to Comprehensive Plan and other Plans and Studies
- Vision Plan Process
- Winter Park Vision 2035

- o Community-wide Vision Statement
- Strategic Directions
- Next Steps
  - o Comprehensive Plan Update

## 3.8 Presentation(s) to City Commission

After refining the draft Vision Statement based on the input received at the second series of community forums, the consultant team and members of the Steering Committee will present the Vision Statement and Strategic Directions to the City Commission.

**Meetings:** During this Phase, the Consultant team will participate in up to four (4) meetings with the Steering Committee and up to two (2) meetings with the Resource Team.

item type	Action Items Requiring Discussion	meeting date October 14, 2013
prepared by department division	Jerry Warren, Director Electric Department	approved by ☐ City Manager ☐ City Attorney ☐ N A
board approval	Utilities Advisory Board	l∎yes □ no □ N A 7-0 final vote

## subject

Territorial Agreement with Duke Energy Florida

#### motion | recommendation

1) Authorize the Mayor to execute the Territorial Agreement With Duke Energy Florida

## background

On September 9, 2003, 49% of the registered voters went to the polls and voted 69% to 31% to approve the issuance of up to \$49.8 million in bonds for the City to purchase Florida Power's electric distribution system located within the city limits of Winter Park as existed on December 9, 2002. Nearly two years of negotiations ensued to accomplish the transaction. In February 2005, Florida Power/Progress Energy filed a petition with the Florida Public Service Commission (FPSC) to seek relief of its statutory obligation to provide retail electric service to its customers that would be transferred to the City. On April 28, 2005, the FPSC ordered, among other things, that Progress Energy's obligation to provide electric service to those customers would be relieved effective June 1, 2005. On May 24, 2005, the City issued the bonds and accepted transfer of Florida Power's distribution facilities and customers effective June 1, 2005. In addition to relieving Progress Energy of its obligation to serve, the FPSC directed Progress Energy and the City to enter into a formal territorial agreement setting forth the boundaries of the respective utilities. For various reasons, no territorial agreement was ever implemented.

Over the last few years, with the development of Ravaudage beginning, both the developer and the City informally notified Progress Energy of the developer's and the City's desire to serve that area. Although no formal territorial agreement existed at that time, portions of the Ravaudage area were included in the City's corporate limits as the boundary existed in December 2002, but the majority of the area was located outside the city limits. As a result of the City's and the developer's requests, the City and Progress Energy began negotiating a territorial agreement. Negotiations have been ongoing for approximately 9 months. As a part of those negotiations, the City requested the following territorial concessions from Progress Energy.

- 1) The right to serve Ravaudage.
- 2) The right to serve City residents along Westminster Street and Berkshire Avenue. As a part of the transfer of distribution facilities and customers in 2005, these customers were assigned to Progress Energy and the customers in unincorporated Orange County located

in the Stonehurst area were assigned to the City. Although the Stonehurst area was not located within the City limits in December 2002 and should have been served by Progress Energy, that area is so far from Progress Energy's distribution facilities it was determined to be cost prohibitive for Progress Energy to serve.

3) The right to serve City owned and operated facilities within reach of the City's electric distribution system.

Progress/Duke agreed to 1) the City's request to serve Ravaudage; rejected 2) the City's request to serve residents along Westminster Street and Berkshire Avenue. Duke took a non-negotiable position during negotiations that it is not in the business of selling its customers; 3) agreed that both parties can serve its own facilities that are entirely used in its electric utility functions. The City was primarily seeking the right to serve City owned water and wastewater facilities that are located within Progress Energy/Duke's territory within reach of the City's electric distribution system.

The agreement provides for Duke to continue to serve its existing customers within the Ravaudage area. At such time(s) that the property is developed and new customers are created, the City of Winter Park will be entitled to serve those customers. Following 12 months of service, the City will be obligated to pay Duke a going concern payment of 2.5 times the electric billings for the preceding 12 months. This novel approach prevents the City from having to take the risk of non-development of the Ravaudage area through an estimate of future electric system revenues. The going concern payment of 2.5 time's annual revenues is typical in the electric utility industry when customer swaps take place as a result of territorial agreements. There are nine electric service accounts that are located along Lewis Dr. north of Lee Rd. These customers are considered temporary customers in that they are Duke's customers but due to Ravaudage development activities were easier for the City to serve. The City will be required to pay the 2.5 times the annual revenue amounts (estimated to be approximately \$39,000) within 60 days of the approval of the territorial agreement by FPSC.

Two Customers located at 1451 Lee Rd, Dry Clean World and Tetra Tech (both associated with the dry cleaners) are considered extra territorial. They are served from Winter Park electric lines, but are in Duke's existing territory. Both customers will become Winter Park customers upon approval of the territorial agreement and like the temporary customers will require a going concern payment equal to 2.5 times the annual revenue amounts (estimated to be approximately \$13,000) within 60 days of the approval of the territorial agreement by FPSC. Although the average profit level of our utility system is around 10%, the incremental profit associated with a new customer would be around 30%. To recover a 2.5 time's annual revenues going concern payment would take approximately 8 years to recover.

#### **Alternative**

- 1) Instruct staff to negotiate the removal of Ravaudage from the Territorial Agreement and memorialize the territory created by the May 29, 2003 arbitration award.
- 2) Continue to operate without a territorial agreement. (Note: FPSC could order the parties to enter into an agreement).

**Attachments:** Territorial Agreement with Exhibits A-F

## **TERRITORIAL AGREEMENT**

Section 0.1: The City of Winter Park ("Winter Park"), and Duke Energy Florida, Inc. d/b/a Duke Energy, ("DEF") (collectively, the "Parties") enter into this Territorial Agreement (the "Agreement") on this \_\_\_\_\_ day of \_\_\_\_\_\_, 2013.

## WITNESSETH:

Section 0.2: WHEREAS, Winter Park and DEF are each authorized, empowered and obligated by their corporate charter and laws of the State of Florida to furnish retail electric service to persons upon request within their respective service areas in Orange County; and

Section 0.3: WHEREAS, in Docket No. 050117, the Florida Public Service Commission granted DEF's (under its former name) *Petition of Progress Energy Florida, Inc. to Relieve It of the Statutory Obligation to Provide Certain Customers Within the City of Winter Park with Electrical Service,* delineating the territorial boundary established in the 2003 arbitration award regarding Winter Park's purchase of a portion of PEF's distribution system.

Section 0.4: WHEREAS, the Parties desire to clearly delineate the territorial boundaries in Orange County in their entirety through this Agreement in order to gain further operational efficiencies and customer service improvements in Orange County, while continuing to eliminate circumstances giving rise to the uneconomic duplication of service facilities and

hazardous situations.

Section 0.5: WHEREAS, the Commission is empowered by the Florida legislature, pursuant to Section 366.04(2)(d), Florida Statutes, to approve territorial agreements, and the Commission, as a matter of long-standing regulatory policy, has encouraged retail territorial agreements between electric utilities subject to its jurisdiction based on its findings that such agreements, when properly established and administered by the parties and actively supervised by the Commission, avoid uneconomic duplication of facilities, promote safe and efficient operations by utilities in rendering electric service provided to their customers, and therefore serve the public interest.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, which shall be construed as being interdependent, the Parties hereby agree to the Agreement as follows:

#### ARTICLE I

#### **DEFINITIONS**

Section 1.1: Territorial Boundary Line(s). As used herein, the term "Territorial Boundary Line(s)" shall mean the boundary line(s) depicted on the maps attached hereto as Exhibit A which delineate and differentiate the Parties respective Territorial Areas in Orange County.

<u>Section 1.2</u>: <u>Winter Park Territorial Area</u>. As used herein, the term "Winter Park Territorial Area" shall mean the geographic areas in Orange

County allocated to Winter Park as its retail service territory and labeled as "Winter Park Territorial Area" or "Winter Park" on the maps contained in Exhibit A.

Section 1.3: DEF Territorial Area. As used herein, the term "DEF Territorial Area" shall mean the geographic areas in Orange County allocated to DEF as its retail service territory and labeled as "DEF Territorial Area" or "DEF" on the maps contained in Exhibit A.

Section 1.4: Point of Use. As used herein, the term "Point of Use" shall mean the location within the Territorial Area of a Party where a customer's end-use facilities consume electricity, wherein such Party shall be entitled to provide retail electric service under this Agreement, irrespective of where the customer's point of delivery or metering is located.

Section 1.5: New Customers. As used herein, the term "New Customers" shall mean all customers applying for retail electric service after the Effective Date of this Agreement at a Point of Use in the Territorial Area of either Party.

<u>Section 1.6</u>: <u>Extra-Territorial Customers</u>. As used herein, the term "Extra-Territorial Customers" shall mean those customers served by either Party on the Effective Date of the Agreement who are located within the service territory of the other Party established by such Agreement.

<u>Section 1.7</u>: <u>Temporary Service Customers.</u> As used herein, the term "Temporary Service Customers" shall mean customers who are being temporarily served under the temporary service provisions of the Agreement.

<u>Section 1.8</u>: <u>Commission</u>. As used herein, the term "Commission" shall mean the Florida Public Service Commission.

Section 1.9: Effective Date. As used herein, the term "Effective Date" shall mean the date on which the final order of the Commission granting approval of this Agreement in its entirety becomes no longer subject to judicial review.

#### ARTICLE II

#### RETAIL ELECTRIC SERVICE

Section 2.1: In General. Except as otherwise specifically provided herein, Winter Park shall have the exclusive authority to furnish retail electric service within the Winter Park Territorial Area and DEF shall have the exclusive authority to furnish retail electric service within the DEF Territorial Area. The Territorial Boundary Line shall not be altered or affected by any change that may occur in the corporate limits of any municipality or county lying within the Winter Park or DEF Territorial Area, through annexation or otherwise, unless such change is agreed to in writing by the Parties and approved by the Commission.

Section 2.2: Service to New Customers. The Parties agree that neither of them will knowingly serve or attempt to serve any New Customer whose Point of Use is located within the Territorial Area of the other Party, except as specifically provided in Sections 2.3 and 4.4 below. However, in those instances where the Territorial Boundary Line traverses the property of an individual New Customer or prospective New Customer, the Party in whose service area the preponderance of the Customer's electric energy usage is expected to occur shall be entitled to serve all of the Customer's usage. With respect to new residential customers, however, the Parties recognize that in some instances, the information needed to locate the various points of the New Customer's usage in relation to the Territorial Boundary Line with reasonable certainty may be unavailable or difficult to determine, and agree that in such event the Party with the greater portion of the New Customer's property in its service area shall be entitled to serve all of the New Customer's usage.

Section 2.3: Temporary Service. The Parties recognize that in exceptional circumstances, economic constraints or good engineering practices may indicate that a New Customer's Point of Use either cannot or should not be immediately served by the Party in whose Territorial Area such Point of Use is located. In such instances, upon written request by the Party in whose Territorial Area the New Customer's Point of Use is located, the other Party may, in its sole discretion, agree in writing to temporarily provide service to such New Customer until such time as the requesting Party provides written

notice of its intent to serve the Point of Use. Prior to the commencement of temporary service, the Party providing such service shall inform the New Customer of the temporary nature of its service and that the other Party will ultimately serve the New Customer. Any such agreement for temporary service which lasts, or is anticipated to last, for more than one year shall be submitted to the Commission for approval in accordance with Section 5.1 hereof. Such temporary service shall be discontinued upon written notice from the requesting Party of its intent to provide service, which the Parties shall coordinate to minimize any inconvenience to the customer. In conjunction with such discontinuance, the Party providing temporary service hereunder shall be compensated by the requesting Party in accordance with Section 3.5 for its distribution facilities used exclusively to provide such service. However, the Party providing temporary service hereunder shall not be required to pay the other Party for any loss of revenue associated with the provision of such temporary service, nor shall the Party providing temporary service be required to pay the other party any Going Concern value as set forth in Section 3.3.1.

Further, the existing customers that are being provided temporary service by the Parties as of the Effective Date of this Agreement and listed on Exhibit C, shall be considered New Customers upon approval of this Agreement and shall thereafter be subject to the provisions of this section.

Section 2.4: Referral of Service Request. In the event that a prospective New Customer requests or applies for service from either Party to be provided to a Point of Use located in the Territorial Area of the other Party, the Party receiving the request or application shall advise the prospective New Customer that such service is not permitted under this Agreement as approved by the Commission, and shall refer the prospective New Customer to the other Party.

Section 2.5: Correction of Inadvertent Service Errors. If any situation is discovered during the term of this Agreement in which either Party is inadvertently providing retail electric service to a customer's Point of Use located within the Territorial Area of the other Party, service to such customer will be transferred to such other Party at the earliest practical time, but in any event within 12 months of the date the inadvertent service error was discovered. Until service by the other Party can be reasonably established, the inadvertent service will be deemed to be temporary service provided and governed in accordance with Section 2.3 above.

#### **ARTICLE III**

#### TRANSFER OF CUSTOMERS AND FACILITIES

<u>Section 3.1</u>: <u>In General</u>. In order to achieve the operational efficiencies and other benefits contemplated by this Agreement in a timely manner, all Extra-Territorial Customers shall be transferred to the Party in whose

Territorial Area such customers are located at the earliest practical time, consistent with sound utility practices and reasonable customer notice. The Parties expect the transfer of any Extra-Territorial Customers to be completed within twenty-four (24) months of the Effective Date and will notify the Commission in writing if circumstances require additional time to complete the transfer.

Section 3.2: Extra-Territorial Customers. The Extra-Territorial Customers, which includes Temporary Service Customers being served as of the Effective Date of this Agreement, are located in the Winter Park Territorial Area identified in Exhibit B, and listed on Exhibit C and Exhibit D, hereto. The Extra-Territorial Customers served by DEF on the Effective Date of this Agreement and located in the Winter Park Territorial Area in Exhibit B will continue to be served by DEF until such time that those electrical services are Any future service within the area depicted on Exhibit B disconnected. identified as the Winter Park Territorial Area will be considered a New Customer pursuant to Section 1.5, shall be served by Winter Park, and shall be subject to the compensation provisions in Section 3.3.2. The Extra-Territorial customers listed on Exhibit C were transferred to Winter Park and are currently being served on a temporary basis by Winter Park at the request of DEF and shall be considered New Customers and shall be subject to the compensation provisions in Section 3.3.1 upon approval of this Agreement.

Section 3.3: Compensation for Existing and Future Transferred Customers.

Section 3.3.1: Going Concern Customers. For the temporary service customers listed on Exhibit C, and the customers listed on Exhibit D, upon approval of the Agreement, the receiving Party shall compensate the transferring Party, for each customer account transferred, an amount equal to two and one-half (2.5) multiplied by (a) the transferring Party's total revenues from the sale of electric service (including the customer, fuel and demand charges but excluding taxes and fees) to such account during the most recent 12 complete billing months available at the time of transfer, or (b) if service was provided for less than 12 complete billing months, the average monthly amount of such revenues multiplied by 12. In the case of a customer account that was not billed for any part of the preceding 12 billing months, the amount to be paid for the transfer of such account shall be the transferring Party's prevailing average annual amount of such revenues from customers of the same class (i.e., residential, commercial, etc.) multiplied by 2.5. In addition, the same compensation methodology shall be followed for the total revenues (including pole rental and fixture maintenance charges) of each transferred street or security lighting account.

The Going Concern payments made for the customers listed on Exhibit C and Exhibit D will be deducted from future Going Concern payments (calculated under Section 3.3.2) made for New Customers in the same location

as the customers listed on Exhibit C and depicted on Exhibit E and New Customers in the same location as the customers listed on Exhibit D For purposes of this subsection, the area in which the customers on Exhibit C are located is depicted on the map in Exhibit E.

Section 3.3.2: Compensation for Future Customers. For New Customers that initiate service during the term of this Agreement within the area identified in Exhibit B, Winter Park shall provide DEF one year's history of billed revenues for these customers within sixty (60) days of the one-year anniversary of the New Customer's electric service. Winter Park will compensate DEF for each customer account transferred an amount equal to two and one-half (2.5) multiplied by (a) the transferring Party's total revenues from the sale of electric service (including the customer, fuel and demand charges but excluding taxes and fees) to such account during the most recent 12 complete billing months available at the time of transfer, or (b) if service was provided for less than 12 complete billing months, the average monthly amount of such revenues multiplied by 12. In addition, the same compensation methodology shall be followed for the total revenues (including pole rental and fixture maintenance charges) of each transferred street or security lighting account. The transferring Party shall have the right to audit the books and records of the receiving Party as they relate to the billing and revenues used to calculate the compensation to the transferring Party.

Section 3.4: Transfer of Related Service Facilities. In conjunction with the transfer of Extra-Territorial Customers pursuant to Sections 3.1 and 3.2 above, the receiving Party may purchase the electric distribution facilities of the transferring Party used exclusively for providing electric service to the transferred customers for an amount determined in accordance with Section 3.5 below.

Section 3.5: Compensation for Transferred Facilities. If service facilities are transferred pursuant to Section 3.4 above, the receiving Party shall compensate the transferring Party an amount based upon the replacement cost (new), less depreciation calculated on a straight line basis over the life of the asset (facility) as determined from the transferring Party's books and records, and the cost to the transferring Party for reintegration of its remaining system to the extent such reintegration costs are reasonably required by sound utility practices. The replacement cost shall be determined by applying a cost escalator such as the Handy Whitman Index or a common engineering cost estimation methodology to the original cost, as long as both Parties apply the same escalation method.

<u>Section 3.6</u>: <u>Transfer Closings</u>. The Parties shall mutually agree on a closing date for each transfer, allowing sufficient time for the Parties to identify the customers and facilities to be transferred; to determine the compensation

for transferred customers and facilities; and to prepare the appropriate closing statements, assignments and other instruments to transfer and convey the transferring party's interest in the electric distribution facilities to the receiving party pursuant to Section 3.4 above.

Section 3.7: Time of Payment. Compensation applicable under Section 3.3.1 shall be paid to the transferring Party by the receiving Party for Extra-Territorial Customers listed on Exhibit C upon approval of the Agreement, and for Extra-Territorial Customers listed on Exhibit D at the completion of the customer transfers, and shall be made in cash within 60 days of the presentation of an invoice from the transferring Party. Additionally, compensation for customers applicable under Section 3.3.2 shall be paid to the transferring Party after completing one year of service provided by the receiving Party and in shall be made in cash within 60 days of the presentation of an invoice from the transferring Party.

Section 3.8: Transfer Instruments. For each transfer made under this Agreement, the transferring Party will make, execute, and deliver to the receiving Party a conveyance, deed or other instrument of transfer, as is appropriate, in order to convey all rights, titles and interests of the transferring Party in any facilities, rights-of-way, easements, road permits, or other rights to the receiving Party.

#### **ARTICLE IV**

#### **OPERATION AND MAINTENANCE**

Section 4.1: Facilities to Remain. Other than as expressly provided for herein, no generating plant, transmission line, substation, distribution line or related equipment shall be subject to transfer or removal hereunder; provided, however, that each Party shall operate and maintain its lines and facilities in a manner that minimizes any interference with the operations of the other Party.

Section 4.2: Winter Park Facilities to be Served. Nothing herein shall be construed to prevent or in any way inhibit the right and authority of Winter Park to serve any Winter Park facility located in a DEF Territorial Area which is used exclusively in connection with Winter Park's business as an electric utility; provided, however, that Winter Park shall construct, operate, and maintain said lines and facilities in such manner as to minimize any interference with the operation of DEF in the DEF Territorial Area.

Section 4.3: DEF Facilities to be Served. Nothing herein shall be construed to prevent or in any way inhibit the right and authority of DEF to serve any DEF facility located in the Winter Park Territorial Area which is used exclusively in connection with DEF business as an electric utility; provided, however, that DEF shall construct, operate, and maintain said lines and facilities in such manner as to minimize any interference with the operation of Winter Park in the Winter Park Territorial Area.

Section 4.4: Retail Service at Facility Sites. Where either Party serves any of its facilities located in the Territorial Area of the other Party pursuant to Sections 4.3 or 4.4 above, such Party may provide limited retail service on the site of the facilityto prevent potential safety hazards or unsound operating conditions that would result from the construction and maintenance of lines and related facilities by the other Party to provide retail service at the site. As used in this section, limited retail service shall mean no more than three separate retail accounts with a combined load of 25 kW or less at any such site.

#### **ARTICLE V**

#### PREREQUISITE APPROVAL

Section 5.1: Commission Approval. The provisions and the Parties performance of this Agreement are subject to the regulatory authority of the Commission, and appropriate approval by the Commission of this Agreement in its entirety shall be an absolute condition precedent to the validity, enforceability and applicability hereof. This Agreement shall have no effect whatsoever until Commission approval has been obtained. Any proposed modification to this Agreement shall be submitted to the Commission for approval. In addition, the Parties agree to jointly petition the Commission to resolve any dispute concerning the provisions of this Agreement or the Parties performance hereunder.

Section 5.2: Liability in the Event of Disapproval. In the event approval of the Commission pursuant to Section 5.1 is not obtained, neither Party will have any claim against the other arising under this Agreement.

<u>Section 5.3</u>: <u>Supersedes Prior Agreements</u>. Upon approval by the Commission, this Agreement shall be deemed to specifically supersede all prior agreements between the Parties regarding their respective retail service areas in Orange Counties.

#### **ARTICLE VI**

#### **DURATION**

<u>Section 6.1</u>: <u>Term</u>. This Agreement shall continue and remain in effect for a period of twenty (20) years from the Effective Date.

#### ARTICLE VII

#### **CONSTRUCTION OF AGREEMENT**

Section 7.1: Other Electric Utilities. Nothing in this Agreement is intended to define, establish or affect in any manner the right of either Party to furnish retail electric service with any other electric utility that is not a party to this Agreement. The Parties understand that Winter Park or DEF may, from time to time, and subject to Commission approval, enter into territorial agreements with other electric utilities that have adjacent or overlapping service areas and that, in such event, nothing herein shall be construed to

prevent Winter Park or DEF from designating any portion of its Territorial Area under this Agreement as the retail service area of such other electric utility.

Section 7.2: Bulk Power for Resale. Nothing herein shall be construed to prevent either Party from providing a bulk power supply for resale purposes, regardless of where the purchaser for resale may be located. Further, no other section or provision of this Agreement shall be construed as applying to a bulk power supply for resale purposes.

Section 7.3: Intent and Interpretation. It is hereby declared to be the purpose and intent of the Parties that this Agreement shall be interpreted and construed, among other things, to further this State's policy of actively regulating and supervising the service territories of electric utilities; supervising the planning, development, and maintenance of a coordinated electric power grid throughout Florida; avoiding uneconomic duplication of generation, transmission and distribution facilities; and encouraging the installation and maintenance of facilities necessary to fulfill the Parties respective obligations to serve.

#### ARTICLE VIII

#### **MISCELLANEOUS**

<u>Section 8.1</u>: <u>Negotiations</u>. Whatever terms or conditions may have been discussed during the negotiations leading up to the execution of this Agreement, the only terms and conditions agreed upon are those set forth

herein, and no alteration, modification, enlargement or supplement to this Agreement shall be binding upon either of the Parties unless agreed to in writing by both Parties, and approved by the Commission.

Section 8.2: Successors and Assigns. Nothing in this Agreement expressed or implied is intended or shall be construed to confer upon or give to any person or corporation, other than the Parties, any right, remedy or claim under or by reason of this Agreement or any provision or conditions hereof; and all of the provisions, representations, covenants and conditions herein contained shall inure to the sole benefit of and shall be binding only upon the Parties and their respective representatives, successors and assigns.

<u>Section 8.3</u>: <u>Notices</u>. Notices and other written communications contemplated by this Agreement shall be deemed to have been given if sent by certified mail, postage prepaid, by prepaid private courier, or by confirmed facsimile transmittal, as follows:

To WINTER PARK:

To DEF:

City Manager
City of Winter Park
401 Park Avenue, South
Winter Park, Florida 32789

Manager, Public Policy & Constituency Relations Duke Energy Florida, Inc. P.O. Box 14042 St.Petersburg, Florida 33733 Facsimile 727-820-5044

Either Party may change its designated representative or address to which such notices or communications shall be sent by giving written notice thereof to the other Party in the manner herein provided.

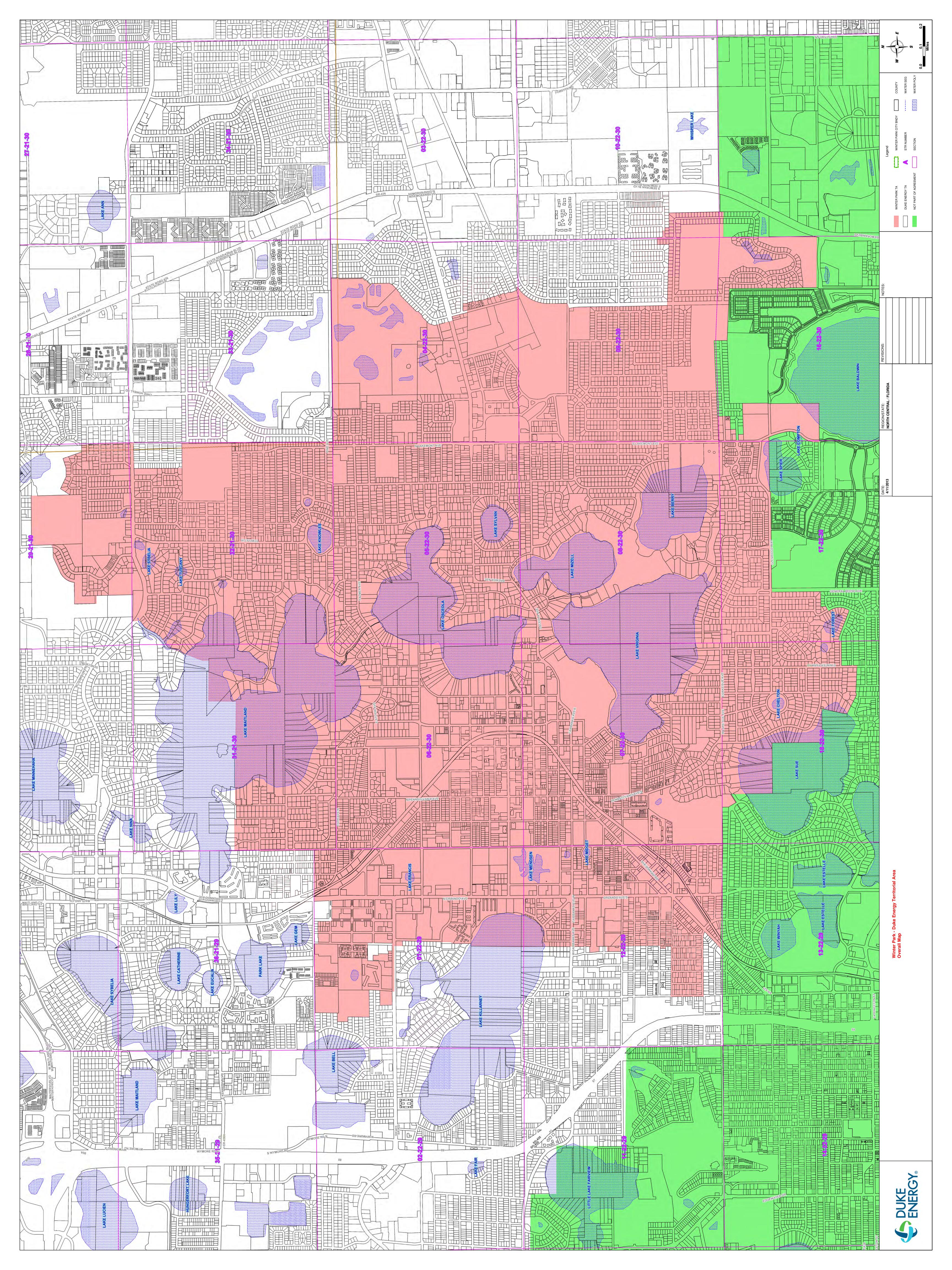
IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed in their respective corporate names and their corporate seals affixed by their duly authorized officers on the day and year first above written.

Ву
Mayor
DUKE ENERGY FLORIDA, INC.
DORE ENERGY FLORIDA, INC.
By
President

THE CITY OF WINTER PARK

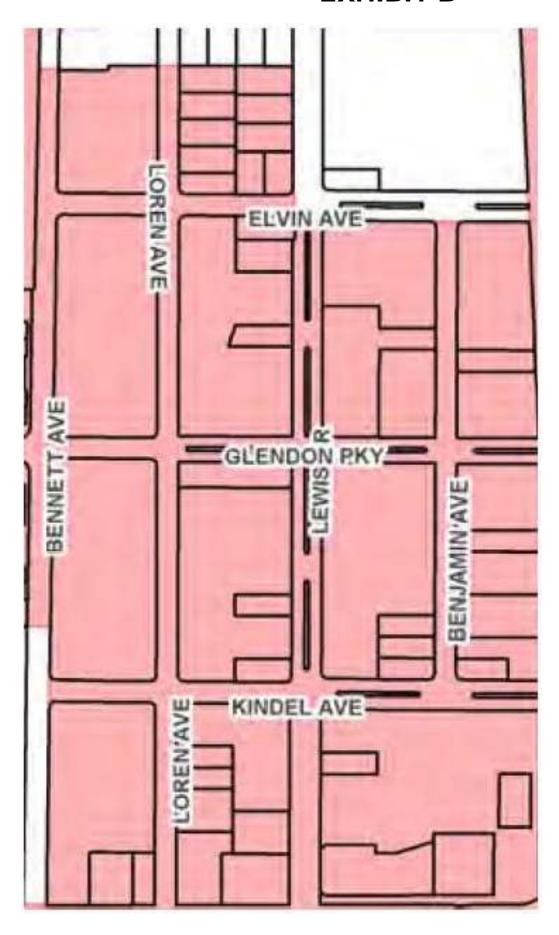
### EXHIBIT A

# Maps Depicting The Territorial Boundary Lines And Service Territories Of Winter Park And DEF



## Ехнівіт В

## **EXHIBIT B**



## **EXHIBIT C**

## TEMPORARY SERVICE EXTRA-TERRITORIAL CUSTOMERS TRANSFERRED FROM DEF TO WINTER PARK

No.	Name	Service Address	Premise Number
1.	Fuji Sushi	1449 Lee Road, Winter Park, FL 32789	474629794
2.	Fortis Enterprises LLC	933 Lewis Drive, Suite A, Winter Park, FL 32789	474627782
3.	Savage Partners LLC	933 Lewis Drive, Suite B, Winter Park, FL 32789	474628788
4.	Savage Partners LLC	933 Lewis Drive, Suite C, Winter Park, FL 32789	474628285
5.	Savage Partners LLC	933 Lewis Drive, Winter Park, FL 32789	474629291
6.	Precision Paint	989 Lewis Drive, Winter Park, FL 32789	605537556
7.	Brannon Construction	1006 Lewis Drive, Winter Park, FL 32789	474611183
8.	Valerie Campos	1101 Lewis Drive, Winter Park, FL 32789	474622249
9.	Raymond Naffke (light)	1101 Lewis Drive, Winter Park, FL 32789	193419159

Temporary Service Customers are being served by Winter Park as of 2-15-13.

## **Е**хнівіт **D**

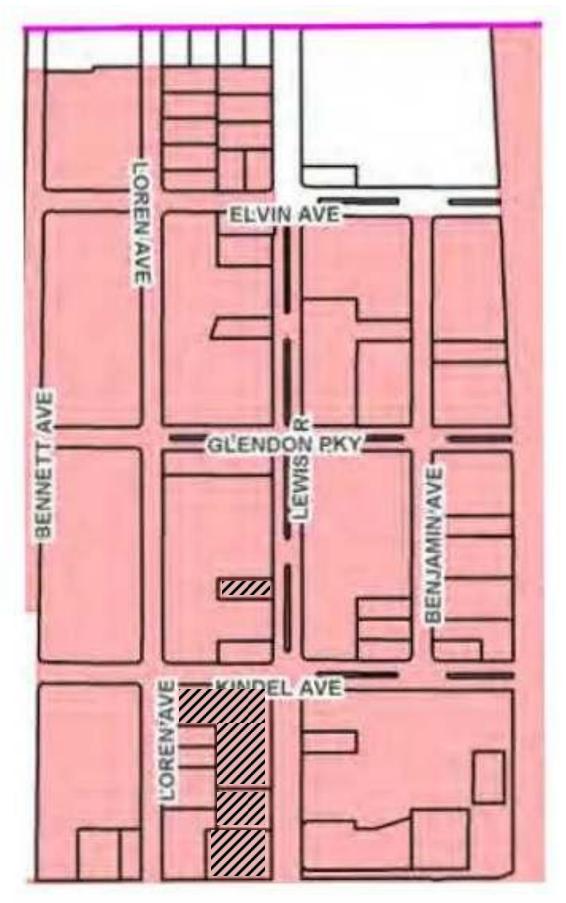
## EXTRA-TERRITORIAL CUSTOMERS TO BE SERVED BY WINTER PARK

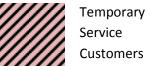
No.	Name	Service Address	Premise Number
1.	Lin Ha Corporation (Dryclean World)	1451 Lee Road, Winter Park, FL 32789	474630297
2.	Tetra Tech EC Inc.	1451 Lee Road, Winter Park, FL 32789	874295939

## **EXHIBIT E**

## LOCATION OF EXHIBIT C EXTRA-TERRITORIAL CUSTOMERS

## **EXHIBIT E**





item type	Public Hearing	meeting date	October 14, 2013
prepared by department division	John Holland Parks and Recreation Cemeteries	approved by	<ul><li>■ City Manager</li><li>■ City Attorney</li><li>□ N A</li></ul>
board approval	Parks and Recreation Board	■ yes □ no □	N A 5-0 final vote

#### subject

SECOND READING: An ordinance providing for the reclamation of abandoned Cemetery Spaces.

#### motion | recommendation

Approval of ordinance as written.

#### summary

There are 378 spaces at Palm Cemetery that were purchased between 66 and 101 years ago that have remained unused. Purchase agreements from that time had only a name with no address. As available spaces will be in short supply in future years, cemetery staff researched the families that purchased the seemingly abandoned spaces. Using five death indexes and genealogy sites, most of the families have been traced. For the most part, these families have moved from the area and were buried elsewhere. Some were buried at Palm Cemetery but have surplus spaces and no lineal descendants that would be eligible to declare ownership.

This ordinance follows state statute that addresses this issue and allows adoption of similar processes to declare a space abandoned. Should a space be unused with no contact from the owner in over 50 years, the city reserves the right to declare it abandoned.

This will not apply across the board. Discretion is important in ensuring that due diligence is done to find the families and exercise caution in which spaces are declared abandoned.

Example: The 1920's Census shows one of our designated space owners, Nannie V. Hayes living in Winter Park at age 65 with her 58 year old maid, Affie Cooper on New England Avenue, five doors down from the Hotard family. Nannie Hayes died on 12/27/1923. Her death certificate lists her as single. She owned six spaces at Palm Cemetery and they were 6/\$100 in that time period. One was used for her burial. The other five have been unused with no contact for 90 years. The five remaining spaces would be designated abandoned and made available for sale.

#### board comments

Unanimously approved by the Parks and Recreation Advisory Board.

ORDINANCE NO.	

AN ORDINANCE OF THE CITY OF WINTER PARK, FLORIDA AMENDING SECTION 34-30, TITLE AND OWNERSHIP OF LOTS AND SPACES IN THE CITY CEMETERIES, TO CLARIFY THE OWNERSHIP INTEREST THAT MAY BE CONFERRED AND TO ADD PROVISION FOR THE CITY TO REGAIN OWNERSHIP OF ABANDONED RIGHTS TO BE BURIED WITHIN A MUNICIPAL CEMETERY; PROVIDING FOR, SEVERABILITY, CODIFICATION, CONFLICTS, AND AN EFFECTIVE DATE.

#### RECITALS AND LEGISLATIVE FINDINGS

**WHEREAS**, the City of Winter Park has municipal cemeteries within its jurisdictional boundaries including the Palm and Pineywood Cemeteries; and

**WHEREAS**, the Palm Cemetery consists of approximately 11 acres and is located at the intersection of New York Avenue and Webster Street, and Pineywood consists of approximately 17 acres located at the intersection of S. Lakemont Avenue and Glenridge; and

**WHEREAS**, the City Manager reports that these cemeteries have 18,757 grave spaces in total: At the Palm Cemetery only 1,506 open spaces remain, and at Pineywood only 1,455 open spaces remain; and

**WHEREAS**, the City Manager and his staff have analyzed burial rights which appear to be abandoned and have determined that approximately 378 of the spaces in the Palm Cemetery should be deemed to be abandoned, which would thereby increase the available open spaces of the Palm Cemetery; and

WHEREAS, the available open spaces in the municipal cemeteries are a fixed asset of the City and the City Commission finds that it is in the municipal interest to develop and adopt a fair process by which abandoned gravesites or entitlements should be transferred back to the City so that the spaces are available and open for qualified burial purposes; and

**WHEREAS**, pursuant to Section 497.260(1)(b), Florida Statutes, the City's cemeteries are exempt generally from the regulations and licensing imposed by Florida law, but, the City's cemeteries are subject to limited state oversight as provided in Section 497.260(3), Florida Statutes, but such oversight does not extend to, nor include regulation of how the City may determine burial rights are abandoned and available for redistribution in accordance with the procedures adopted by the City Commission of the City of Winter Park; and

**WHEREAS**, Section 497.286, Florida Statutes provides for a procedure by which cemeteries subject to state regulation may take back ownership of abandoned burial rights in a state licensed cemetery; and

WHEREAS, although the City of Winter Park is not subject to state regulation or licensure except to a limited extent with respect to its municipal cemeteries, and the abandonment procedures in Section 497.286, Florida Statutes, are not binding upon the City of Winter Park, it is nonetheless in the municipal interest and consistent with the City's exercise of its home rule authority that the City Commission shall adopt certain provisions contained in Section 497.286, Florida Statutes, and impose those provisions as prerequisites to a determination that burial rights in any of the City's cemeteries have been abandoned, including the presumption that burial rights in a cemetery are abandoned when an owner of unused rights has failed to provide the cemetery with a current residence address for a period of 50 consecutive years and the cemetery is unable to communicate by certified letter with said owner of unused rights regarding the lack of address; and

**WHEREAS**, the City Commission desires to provide a reasonable and appropriate process to ensure that the lineal descendants and co-owners of burial rights have access to reasonable notice before the burial rights are deemed abandoned back to the ownership of the City of Winter Park; and

**WHEREAS**, it is within the home rule authority of the City Commission of the City of Winter Park to determine and impose procedures governing the abandonment of burial rights within any municipal cemetery of the City of Winter Park.

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

<u>Section 1.</u> <u>Recitals</u>. 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.

<u>Section 2.</u> Section 34-30. Title and ownership of lots and spaces (in the municipal cemeteries) shall be amended by adding the following language at the end of subsection (a), which new language is shown by underlining, as follows:

"Section 34-30. Title and ownership of lots and spaces.

(a) Title and ownership of cemetery spaces, lots or blocks shall be evidenced by deeds executed by the mayor or city manager and attested to by the city clerk with the seal of the city affixed. The burial rights conveyed by the city may, depending upon the express language used in an approved form of deed or other document of conveyance, consist only of a right to burial but shall

not consist of fee title ownership in the real property comprising a specific plot or burial space."

<u>Section 3</u>. Section 34-30, Title and ownership of lots and spaces is further amended by adding a new subsection (d) as follows:

- rights in any cemetery of the City of Winter Park shall be abandoned and that the city shall thereafter regain all title and rights previously conveyed when an owner of unused burial rights has failed to provide the City of Winter Park or its cemetery with a current residence address for a period of 50 consecutive years, the burial rights are unused for such period of time, and the cemetery is therefore unable to communicate by certified letter with said owner regarding the lack of address. However, in all such cases of abandonment the following procedures shall be followed:
  - 1. Before the city retakes ownership of such rights for reason of abandonment, a certified letter shall be sent to any lineal relative of the owner, if the city has knowledge of the lineal descendant and his or her address. Additionally, the city shall send a certified letter to any person who holds the burial rights in common ownership or any lineal descendant, if known, of such person. In the certified letter, if one may be sent to a known address and known lineal descendant, the cemetery shall set forth the fact that the burial rights shall be deemed abandoned unless the person contacts the designated representative of the city and its cemetery with proof of ownership and intent concerning use of the burial rights.
    - If a lineal descendant timely contacts in writing the designated representative of the city, then the burial rights shall not be deemed abandoned if such person is able to establish an ownership interest and an intent for a lineal descendant to use the burial rights.
  - 2. The city or its designated representative shall cause to be published one time in a newspaper of general circulation in Orange County the fact that burial rights will be deemed abandoned unless, within 30 days from the date of advertisement, a lineal descendant shall contact the designated city official in writing and establish his or her legal right to the burial rights that will otherwise be abandoned.

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If no response is timely received or if a response is inadequate to prove the interest, the ownership or burial rights shall be deemed abandoned and available for resale by the City of Winter Park in accordance with the then existing fee schedule.

In order to better conserve this precious and limited asset of the City of Winter Park, it shall be necessary for all owners of burial rights to either use the rights within 50 years from the date of acquisition of such rights, or through themselves or a lineal descendant provide notice prior to the expiration of 50 years from date of acquisition of the rights of the then current residence address and identity of the person or persons then entitled to use such burial rights, who may be either the original purchaser or a lineal descendant thereof.

The city will honor a person's right other than a lineal descendant if the person who acquired the original burial rights has bequeathed the right to another and the city is provided a certified copy of a court order conferring the transference of such burial rights."

Section 4. 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.

<u>Section 5.</u> <u>Severability.</u> 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 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 Of Ordinance. This Ordinance shall become effective immediately upon adoption by the City Commission of the City of Winter Park, Florida.

	of the City of Winter Park, Florida in a regular
meeting assembled on the 14 <sup>th</sup> day of _	October, 2013.
	Mayor Kenneth W. Bradley
ATTEST:	
Cynthia S. Bonham, City Clerk	_
Cymma S. Bommani, Only Clonk	

item type	Public Hearing	meeting date	October 14, 2013
prepared by department division	George Wiggins Building & Permitting Services	approved by	<ul><li>■ City Manager</li><li>■ City Attorney</li><li>□ N A</li></ul>
board approval		☐ yes ☐ no ■	N A final vote

#### subject

Film Ordinance Modification to Streamline the Permitting Process

#### motion | recommendation

Approve Ordinance on first reading

#### summary

It has been brought to our attention that all governments in the Central Florida area utilize the services of the Metro Orlando Film Commission to process film permits while maintaining any unique features or requirements of those participating governments, including Orange, Seminole, Lake and Osceola Counties and cities within these counties. We have reviewed their process and feel this can be accomplished expeditiously and allow us to collect any required fees for these permits. There is no charge for their handling of this process. Currently, we electronically route film permits to the respective City Departments for approval and this process will continue and be handled by the Film Commission. When approved by our departments with conditions (if any) addressed by the applicant, then we will issue the permit as we do now. Any conditions or limitations unique to the City of Winter Park will still be applicable and must be met by the applicant.

#### board comments

N/A

ORDINANCE NO.	
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AN ORDINANCE OF THE CITY OF WINTER PARK, FLORIDA, AMENDING CHAPTER 26 ARTICLE III "FILM INDUSTRY" TO STREAMLINE THE FILM PERMITTING PROCESS AND AMEND CERTAIN PROVISIONS.

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

<u>SECTION 1</u>. That Chapter 26, Article III "Businesses" of the Code of Ordinances is hereby amended and modified by moving this Chapter 26, Article to Chapter 7 and amending text to read as follows:

#### Sec. <u>7-1</u> <del>26-92</del>. Findings of fact.

The motion picture, television and still picture industries can be environmentally clean industries, desirable for the city so long as there is adequate regulation to protect the health, safety and well-being of the local community, atmosphere and environment.

#### Sec. 7-2 <del>26-91</del>. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

**Applicant** includes an individual, firm, partnership, corporation, company or any association of joint stock.

*City equipment* means and includes any tangible property, other than real property, owned or controlled by the city.

**City facilities** means and includes any public street, sidewalk, park, recreational facility, cemetery, building, lake or other water body or real property owned or controlled by or under the jurisdiction of the city.

*Film production* means and includes any and all motion picture production, television production, videography and still photography.

<u>Film Commissioner</u> means the Director of the Metro Orlando Film Commission, a <u>Division of the Metro Orlando Economic Development Commission.</u>

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**Motion picture production** means and includes all activity attendant to staging or shooting commercial motion pictures or programs and commercially prepared videotape.

Permittee means any applicant to whom a film production permit is issued by the city.

**Production crew** means and includes any and all persons who are in any way involved in the production, staging or shooting of commercial motion pictures, videotaping, television shows or programs or still photography.

**Production vehicles** means and includes any and all vehicles which are in any way involved in the production, staging or shooting of commercial motion pictures, videotaping, television shows or programs or still photography and includes but is not limited to automobiles, trucks, trailers, vessels, motorcycles, helicopters and airplanes.

**Still photography** means and includes all activity attendant to staging or shooting commercial still photographs.

**Television production** means and includes all activity attendant to staging or shooting commercial television pictures, shows or programs and commercially prepared broadcasts.

**Temporary structures** means and includes any and all structures assembled on or near a location attendant to motion picture production, television production or still photography.

*Videography* means and includes all activity attendant to staging and shooting commercially prepared videotape.

#### Sec. 26-92. Findings of fact.

The motion picture, television and still picture industries can be environmentally clean industries, desirable for the city so long as there is adequate regulation to protect the health, safety and well-being of the local community, atmosphere and environment.

#### Sec. 7-3. Film Commissioner.

The Film Commissioner is hereby authorized to act as the agent for the City of Winter Park in the receipt and processing of applications for production permits. After review and approval by the City, the Film Commissioner shall issue the permit. With regard to motion photography production, no other City permits shall be required.

Sec. 7-4 <del>26-93</del>. Exemptions.

- (a) Broadcast studios. The provisions of this article shall not apply to any commercial motion picture, television or videotaping studio or photography studio operating at its established or fixed place of business in the city.
- (b) Current news. The provisions of this article shall not apply to or affect reporters, photographers or cameramen in the employ of a newspaper, news service, television station or similar entity engaged in on-the-spot broadcasting of news events concerning those persons, scenes or occurrences in the news and of general public interest.
- (c) Limited film production. The permitting provisions of this article shall not apply to any film productions conducted entirely on privately owned property and not involving the use of any city facilities or city equipment, but the filming requirements of <u>section 26-94</u> section 7-5 shall apply.
- (d) Limited videography and still photography. The provisions of this article shall not apply to videography or still photography involving a production crew of five or fewer persons and three or fewer production vehicles.
- (e) Personal-family use. The provisions of this article shall not apply to noncommercial filming or videotaping of motion pictures or still photography which are solely for personal-family use.
- (f) Training, educational and public service use. The provisions of this article shall not apply to any industrial, corporate, charitable or not-for-profit film production intended for in-house training or educational purposes which are not offered for sale or distribution to third persons and which involve a production crew of five or fewer persons and three or fewer production vehicles, but the filming requirements of <u>section 26-94</u> section 7-5 shall apply.

#### Sec. 7-5 <del>26-94</del>. Filming requirements.

The following requirements will be made of all motion picture production, television production and still photography within the limits of the city:

- (1) A film production permit may be issued authorizing filming at more than one location within the city limits.
- (2) Film production or related activity shall be permitted between the hours of 7:30 a.m. and 7:30 p.m. in residential neighborhoods and between 6:00 a.m. and 10:00-12 p.m. in business and commercial areas. Film production or related

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activity shall not occur at any other time unless the special written prior approval of the city manager is granted.

- (3) No filming or related activity shall take place on Sundays or holidays without the prior written approval of the city manager.
- (4) All parking relating to film production shall be restricted to one side of the street only. All public roadways shall be kept open at all times unless approved by the chief of police. Parking may be prohibited in the area of filming activity if, in the opinion of the city manager, a safety hazard could result.
- (5) There shall be no nude or partially nude performers in the view of the public at any time <u>or within any city park or city facilities</u>.
- (6) There shall be no act of rape, sodomy, bestiality, sexual intercourse or acts of violence portraying the dismemberment of bodies or body parts of humans or animals in view of the public at any time or within any city park or city facilities.
- (7) Waste and refuse disposal, as well as placement of portable toilet facilities, shall be conducted in the manner directed by the director of public works.
- (8) Any damage to public property, private property and landscape shall be fully remedied at the cost of the permittee.
- (9) No film production or any related activity may take place in violation of any federal, state or local law, ordinance or regulation.
- (10) Additional restrictions may be placed on film production within the limits of the city if the city manager or the city commission deems it necessary to protect the public health, safety or general welfare of the community, its citizenry, and its environment. Such restrictions may include the required use of police, fire and other city personnel during the filming.
- (11) At no time shall the noise level resulting from film production or related activities violate Chapter 62, Article IV, Division 2.
- (12) At no time, during film production or related activities, shall lights or lighting be operated in any manner which endangers or injures the safety or health of humans or animals or which annoys or disturbs the reasonable person of normal sensitivities or which endangers or injures personal or real property.

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(13) Vehicles shall not be parked overnight on or about property or roadways within the city, except property properly zoned therefor, without prior written consent obtained from the property owner of the parking site, a majority of the neighboring residents or occupants or businesses within a 500-foot circumference of the parking site and the city manager.

#### Sec. <u>7-6</u> <del>26-106</del>. Required.

No person shall engage in, conduct or carry on the business of film production, motion picture production, television production or still photography on private or public property within the limits of the city without first applying for or receiving a film production permit from the city except for filming or videotaping of motion pictures or still photography personal use.

#### Sec. 7-7 <del>26-107</del>. City manager's duties.

The city manager is authorized to act as the agent for the city in the receipt and processing of applications for film production permits. The city manager shall issue the film production permits.

#### Sec. 7-8 <del>26-108</del>. Application; fees.

- (a) Any person seeking the issuance of a film production permit shall complete the written application form provided by the city manager and file that written application with the city manager not less than seven working days and not more than 180 days before the commencement of film production. The application must be signed, under oath, by an authorized representative of the applicant, together with a nonrefundable application fee.
- (b) The <u>city commission city manager</u> is authorized to establish a schedule of application fees that will defray the city's costs of investigation and review in connection with the application. The fee may be waived or reduced by the city manager upon a determination that the film production provides positive publicity or otherwise advances the goals of the city.

### Sec. 7-9 <del>26-109</del>. Contents and effect of application.

- (a) An application for a film production permit shall contain the following specific information:
  - (1) Location of the film production described by a street address or, if necessary, property description.

- (2) Film production dates, including estimates and projections as to the possibility of delays and postponements.
- (3) Hours of filming, which must be consistent with the permit requirements of this division.
- (4) Type of film production.
- (5) Proposed use of temporary structures, including a description of each temporary structure, its proposed use and placement and the dates and duration of each proposed placement.
- (6) Number and type of production vehicles and equipment, as well as the number of production crew and other personnel to be on location with the production.
- (7) Proposed plan for dealing with sanitation, including disposal of waste and refuse as well as placement of portable toilet facilities.
- (8) Necessity for closures of public streets or sidewalks and the proposed dates and necessary duration of such proposed closures.
- (9) Neighborhood consents signed by the majority of proprietors or authorized representatives of any business and residents and occupants of any property located within a 500 foot circumference of each film production site as well as a signed consent from each neighboring business or resident on the immediate right, left, front and rear of the film production site. The consents shall be informed consents reflecting that the signatory party has been advised of the location, duration and nature of the film production, including any special effects and the number and type of production vehicles to be used.
- (10) Proposed utilization of city equipment and city facilities.
- (11) A hold harmless agreement in favor of the city executed by an authorized representative of the applicant.
- (12) Proof of general liability insurance coverage in the amount of at least \$1,000,000.00 naming the city as additional insured.
- (13) Proof of worker's compensation insurance coverage for each and every employee in any way involved with the film production, as required under the laws of the state.

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- (14) A comprehensive list of special effects to be utilized, the proposed date and site for performance of each special effect or use of explosive devices, accompanied by proof of \$5,000,000.00 of liability insurance therefor, naming the city as additional insured. In addition, the film production permit application shall list the person in charge (pilot or technician) of special effects, together with his qualifications and licensure by the applicable federal and state agencies.
- (b) The application for a film production permit shall constitute an agreement by the applicant to pay for city personnel expenses and extraordinary services provided by the city, including all repairs, renovations and landscaping and turf restoration or replacement which are necessitated by virtue of the production.
- (c) The application for a film production permit shall constitute a covenant between the applicant and the city, specifying that the applicant will halt or interrupt filming upon instruction from a uniformed officer of the police department. The city covenants not to instruct that film production be halted or interrupted unless in its discretion it perceives that the filming shall cause or coincide with interference with traffic movement, disturbance of the peace, destruction of property, violation of the law or a threat to the public peace, health, safety or welfare.

#### Sec. <u>7-10</u> <del>26-110</del>. Approval criteria.

The city manager shall approve issuance of a film production permit upon application, unless one of the following circumstances exists:

- (1) The applicant has been convicted of a felony or a misdemeanor involving moral turpitude and has not subsequently demonstrated rehabilitative characteristics.
- (2) The applicant has made a material misrepresentation in the application.
- (3) The proposed film production will substantially disrupt the peace and quiet within any area of the city.
- (4) The proposed film production will have a substantial impact upon traffic within any area of the city.
- (5) The proposed film production in any way damages or degrades the image of the city.

- (6) The film production fails to comply with any of the criteria designated under this article for issuance of the film production permit or rules and regulations governing the production.
- (7) If the application is for renewal of a film production permit, the applicant has violated conditions of the previous permit or ordinances or regulations of the city in the conduct of the film production.

#### Sec. 7-11 <del>26-111</del>. Limitations.

- (a) There shall be no more than four film production permits granted with reference to any single residentially zoned property during a given calendar year.
- (b) There shall be no more than ten film production permits granted with reference to any single non-residentially zoned property during a given calendar year.
- (c) No film production permit shall be issued with reference to a particular location if either the city manager or city commission determines that film production at that location would, in any way, adversely affect the public health, safety or general welfare of the citizenry, community and environment of the city.

#### Sec. 7-12 <del>26-112</del>. Fees; deposit for city personnel and extraordinary service fee.

- (a) Upon issuance of a film production permit, the permittee shall pay to the city the applicable film production permit fees as established by the city.
- (b) At the conclusion of the film production, any additional permit fees required in excess of those paid at the time of issuance of the permit will be paid to the city by the permittee, and any excess permit fees paid by the permittee will be refunded by the city.
- (c) The issuance of a film production permit shall not operate to waive the payment of any prescribed fees for the use of city facilities, and the permittee shall be required to pay the applicable charges and deposits, if any, as established by the city for the use of its city facilities.
- (d) The city shall recover its reasonable expenses for city personnel utilized and extraordinary services rendered in connection with a film production. Such costs shall include but not be limited to charges for personnel and equipment committed in support of the production. Based on the information contained in the permit application and such consultations as may be required between the applicant and the city manager, an estimate of these costs will be provided to the applicant at the time his

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application for the permit is approved. Prior to issuance of a film production permit, the permittee shall deposit with the city the amount of these estimated costs. At the conclusion of the production, expenses below or in excess of the estimates will be refunded by the city or paid by the permittee, respectively.

#### Sec. <u>7-13</u> <del>26-113</del>. Denial; term; revocation or suspension.

- (a) Denial of permit. Where the film production permit is denied, the applicant shall be notified in writing by mail or by electronic email with verification of receipt within ten days of the denial and the reasons therefor.
- (b) *Term.* Film production permits issued pursuant to this article shall be effective for the stated purpose from the date of issuance through the date specified in the permit.
- (c) Revocation or suspension. A film production permit may be revoked or suspended for any of the following reasons:
  - (1) A material false statement contained in the application;
  - (2) Failure to comply with federal, state or municipal laws and regulations;
  - (3) Failure to comply with any conditions imposed by the city on the issuance of the film production permit;
  - (4) Failure to operate the film production in accordance with such ordinances, laws, orders, rules and regulations as may be applicable; or
  - (5) Conducting the film production business or activity in a fraudulent or disorderly manner or in a manner which endangers the public health, safety, welfare or in any manner which disrupts the public peace.

#### Sec. <u>7-14</u> <del>26-114</del>. Notice of hearing and grounds for suspension or revocation.

Prior to suspension or revocation of a film production permit, the permittee shall be notified in writing of the grounds for suspension or revocation of the permit, and a hearing shall be held before the city manager thereon. Notice of the hearing shall be given to the permittee at least ten days prior to the hearing.

#### Sec. 7-15 <del>26-115</del>. Emergency temporary suspension.

If the conduct or activity of the permittee creates an imminent peril to the environment or the public health, safety or welfare, the film production permit may be summarily suspended upon notice to the permittee. The permittee shall be entitled to a hearing within three working days thereafter and any temporary emergency suspension shall not exceed 15 days pending a hearing under section 26-114.

#### Sec. 7-16 <del>26-116</del>. Conduct of hearing on suspension or revocation.

The hearing before the city manager on the suspension or revocation of a film production permit shall be conducted to allow the permittee the right to be heard and to call witnesses on the permittee's behalf.

#### Sec. 7-17 <del>26-117</del>. Decision after hearing on suspension or revocation.

The decision of the city manager shall be rendered within ten days of the close of the hearing on the suspension or revocation of the film production permit. The decision shall be in writing and shall set forth the findings of fact and conclusions of law underlying the decision, and the permittee shall be notified of the decision in writing within ten days of the date of the decision.

#### Sec. <u>7-18</u> <del>26-118</del>. Appeal procedure.

The decision of the city manager upon a denial of a film production permit application or suspension or revocation of a film production permit may be appealed to the city commission by written notice thereof filed with the city manager within 30 days of the date of the written decision of the city manager.

**SECTION 2.** All ordinances or portions or ordinances in conflict herewith are hereby repealed.

**SECTION 3.** This ordinance shall become effective immediately upon its final passage and adoption.

ADOPTED at a regular meeting of the	City Commission of the City of Winter Park
Florida, held in City Hall, Winter Park, on this	day of , 2013.
, , ,	,
	Mayor Kenneth W. Bradley
	may or mornious in Diagnoy
ATTEST:	
ATTEST.	
City Clerk Cynthia S. Bonham	
, ,	

item type	Public Hearing	meeting date	October 14, 2013
prepared by department division	Michelle del Valle City Management	approved by	<ul><li>■ City Manager</li><li>■ City Attorney</li><li>N A</li></ul>
board approval		☐ yes ☐ no ■	N A final vote

#### subject

Ordinance amending City of Winter Park Firefighters' Pension Plan

#### motion | recommendation

Approve ordinance on first reading.

#### summary

This Ordinance proposes a change to the definition of salary in the Firefighter's Pension Plan in response to state law adopted in 2011. The law required that the language be modified with the ratification of the first collective barging agreement following its enactment. The FY 2014 agreement between the IAFF and the City of Winter Park ratified earlier tonight was the first agreement to meet this requirement.

The same definition recommended in this ordinance was applied to the Police Pension Plan with the ratification of the FY 2013 collective bargaining agreement between the Teamsters and the City of Winter Park and the adoption of Ordinance No. 2935-13 on August 28, 2013.

#### board comments

N/A

#### ORDINANCE NO. -13

AN ORDINANCE OF THE CITY OF WINTER PARK, FLORIDA, AMENDING CHAPTER 74, PERSONNEL, ARTICLE V, RETIREMENT AND PENSION PLANS, DIVISION 4, FIRE FIGHTERS, OF THE CODE OF ORDINANCES OF THE CITY OF WINTER PARK; AMENDING SECTION 74-201, DEFINITIONS; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY OF PROVISIONS; REPEALING ALL ORDINANCES IN CONFLICT HEREWITH AND PROVIDING AN EFFECTIVE DATE.

#### BE IT ENACTED BY THE CITY OF WINTER PARK, FLORIDA, AS FOLLOWS;

**SECTION 1**: That Chapter 74, Personnel, Article V, Retirement and Pension Plans, Division 4, Fire Fighters, of the Code of Ordinances of the City of Winter Park, is hereby amended by amending Section 74-201, Definitions, to amend the definition of "Salary", to read as follows:

\* \* \* \* \*

Salary means the total compensation for services rendered to the City as a Fire Fighter reported on the Member's W-2 form, except compensation for special details, duty indirectly paid for by private parties, and tuition reimbursement, and emergency payment for unused Personal Leave, but including all tax deferred items of income deferred pursuant to Sections 457 (employee contributions only) and 414(h) of the Code and tax exempt income exempt pursuant to Section 125 of the Code, and tax sheltered items of income derived from elective employee payroll deductions or salary reductions. Notwithstanding the preceding sentence, for Credited Service on and after October 1, 2011, Salary shall exclude payments for overtime in excess of three hundred (300) hours per calendar year, excluding FLSA overtime, and payments for accrued annual leave, except that payments for accrued annual leave accrued as of October 1, 2011 may be included in Salary for pension purposes even if payment is not actually made until on or after October 1, 2011 provided, however, the amount of accrued annual leave accrued as of October 1, 2011 that may be included in Salary for pension purposes shall be reduced by the actual amount of annual leave used by the Member on or after October 1, 2011 as follows:

- A. For Members with sixteen (16) years or more Credited Service as of October 1, 2011, the amount of accrued annual leave included in Salary shall be calculated by reducing the amount of accrued annual leave as of October 1, 2011 by the actual amount of annual leave used by the Member on or after that date on a last in first out (LIFO) basis; and
- B. For Members with less than sixteen (16) years of Credited Service as of October 1, 2011, the amount of annual leave included in Salary shall be calculated by reducing the amount of accrued annual leave as of October 1, 2011 by the actual amount of annual leave used by the Member on or after that date on a first in first out (FIFO) basis.

\* \* \* \* \*

**SECTION 2**: Specific authority is hereby granted to codify and incorporate this Ordinance in the existing Code of Ordinances of the City of Winter Park.

**SECTION 3**: All Ordinances or parts of Ordinances in conflict herewith be and the same are hereby repealed.

**SECTION 4**: If any section, subsection, sentence, clause, phrase of this ordinance, or the particular application thereof shall be held invalid by any court, administrative agency, or other body with appropriate jurisdiction, the remaining section, subsection, sentences, clauses, or phrases under application shall not be affected thereby.

**SECTION 5**: That this Ordinance shall become effective upon its adoption.

ADOPTED at a regular meeting of the City Commission of the City of Winter Park, Florida, held at City Hall, Winter Park, Florida, on the <u>28<sup>th</sup></u> day of <u>October</u>, 2013.

		By:_	
			Mayor Kenneth W. Bradley
Attest:			
	Cynthia S. Bonham, City Clerk		

dm/wtp/pol/08-05-13.ord