

#8

2982

13-0-1297

1301297

First Reading

Committee _____
 Date _____
 Chair _____
 Referred To _____

FINAL COUNCIL ACTION
 2nd 1st & 2nd 3rd
 Readings
 Consent V Vote RC Vote

AN ORDINANCE BY COUNCILMEMBER YOLANDA ADREAN TO AUTHORIZE THE USE OF A PORTION OF CERTAIN PROPERTY OWNED BY THE CITY OF ATLANTA, BY AND THROUGH THE DEPARTMENT OF WATERSHED MANAGEMENT, AS PART OF THE CITY'S WATER AND SEWER SYSTEM, FOR THE PURPOSE OF MAINTAINING THE PROPERTY AS GREENSPACE AND ALLOWING LIMITED PUBLIC ACCESS FOR PASSIVE RECREATIONAL USES; TO AUTHORIZED A MEMORANDUM OF UNDERSTANDING BETWEEN THE DEPARTMENT OF WATERSHED MANAGEMENT AND THE DEPARTMENT OF PARKS, RECREATION AND CULTURAL AFFAIRS FOR THE OPERATION, MAINTENANCE AND IMPROVEMENT OF THE PORTION OF THE PROPERTY PERMITTED FOR SUCH USES; TO EXPRESSLY RESERVE THE RIGHT OF OWNERSHIP, OPERATION MAINTENANCE, REPAIR AND IMPROVEMENT OF THE PROPERTY FOR WATER AND SEWER PURPOSES, SUBJECT TO THE CONDITIONS DESCRIBED HEREIN; AND FOR OTHER PURPOSES.

substitute

- CONSENT REFER
- REGULAR REPORT REFER
- ADVERTISE & REFER
- 1ST ADOPT 2ND READ & REFER
- PERSONAL PAPER REFER

Date Referred: 10/07/13
 Referred To: CD/HR
 Date Referred: 10/21/13
 Referred To: City Utilities
 Date Referred:
 Referred To:

Committee: CD/HR
 Date: 10/15/13
 Chair: J. Adrean
 Action: Fav. Adv. Hold (see rev. side)
 Other: Refer
 Members: [Signatures]
 Refer To: City Utilities

Committee: _____
 Date: _____
 Chair: _____
 Action: Fav. Adv. Hold (see rev. side)
 Other: _____
 Members: [Signature]
 ADOPTED BY
 NOV 04 2013
 Refer To: COUNCIL

Committee: City Utilities
 Date: Oct. 29 2013
 Chair: [Signature]
 Action: Fav. Adv. Hold (see rev. side)
 Other: ON substitute
 Members: [Signatures]
 Refer To: _____

Committee: _____
 Date: _____
 Chair: _____
 Action: Fav. Adv. Hold (see rev. side)
 Other: _____
 Members: _____
 Refer To: _____

CERTIFIED
 NOV 04 2013
 ATLANTA CITY COUNCIL PRESIDENT
 [Signature]
 CERTIFIED
 NOV 04 2013
 [Signature]
 MUNICIPAL CLERK

MAYOR'S ACTION
 [Signature]
 APPROVED
 NOV 18 2013
 WITHOUT SIGNATURE
 BY OPERATION OF LAW



AN ORDINANCE

13-O-1297

BY COUNCIL MEMBERS YOLANDA ADREAN AND FELICIA A. MOORE

AS SUBSTITUTED BY CITY UTILITIES COMMITTEE

AN ORDINANCE TO AUTHORIZE THE USE OF A PORTION OF CERTAIN PROPERTY OWNED BY THE CITY OF ATLANTA, BY AND THROUGH THE DEPARTMENT OF WATERSHED MANAGEMENT, AS PART OF THE CITY'S WATER AND SEWER SYSTEM, FOR THE PURPOSE OF MAINTAINING THE PROPERTY AS GREENSPACE AND ALLOWING LIMITED PUBLIC ACCESS FOR PASSIVE RECREATIONAL USES; TO AUTHORIZE A MEMORANDUM OF UNDERSTANDING BETWEEN THE DEPARTMENT OF WATERSHED MANAGEMENT AND THE DEPARTMENT OF PARKS AND RECREATION FOR THE OPERATION, MAINTENANCE AND IMPROVEMENT OF THE PORTION OF THE PROPERTY PERMITTED FOR SUCH USES; TO EXPRESSLY RESERVE THE RIGHT OF OWNERSHIP, OPERATION MAINTENANCE, REPAIR AND IMPROVEMENT OF THE PROPERTY FOR WATER AND SEWER PURPOSES, SUBJECT TO THE CONDITIONS DESCRIBED HEREIN; AND FOR OTHER PURPOSES.

WHEREAS, the City of Atlanta owns and operates, by and through the Department of Watershed Management ("DWM"), certain property located in the Land Lot 856 of the 17th District of Fulton County, Georgia, said property having a Fulton County Tax Identification Number of 17 0232 LL0856 and is depicted in that certain Fulton County Tax map attached as Exhibit "A" ("Property"); and

WHEREAS, the Property is owned, maintained and operated as part of the City's water/sewer system and is the site of certain critical water operational facilities; and

WHEREAS, DWM, in cooperation with the Department of Parks and Recreation ("DPR"), has identified a portion of the Property that can be developed and used as greenspace with limited access by the public for passive recreational uses, as such area is generally depicted in the conceptual drawing, attached and incorporated herein as Exhibit "B" ("Greenspace Area"); and

WHEREAS, use of the Greenspace Area for passive recreational uses by the public must be limited and expressly conditioned upon the existing and future needs of the Property for the operation, repair, maintenance, improvement, safety and security of the City's water/sewer system, as more particularly described, below; and

WHEREAS, the Commissioner of Watershed Management has determined that the Greenspace Area can be maintained as greenspace and used for passive recreational purposes by the public with limited access without impeding the efficient operations of the water/sewer system, subject to the reservations and conditions set forth in Section 2, below; and



WHEREAS, the water and sewer facilities located on the Property are part of the water/sewer “System” that is pledged to the City’s bondholders as security for the bondholders, pursuant to the Master Bond Ordinance, Ordinance No. 99-O-0399 (“Bond Ordinance”), as more particularly described in the definitions and conditions of the Bond Ordinance; and

WHEREAS, the Commissioner of DWM has further determined that use of the Greenspace Area for greenspace and limited access by the public for passive recreational uses, subject to the limitations and conditions described herein, will maintain the bondholders’ security interests in the System and will not diminish the bondholders’ security interest in the System in accordance with the City’s obligations under the Bond Ordinance; and

WHEREAS, DPR agrees to manage the improvement, operation and maintenance of the Greenspace Area, in accordance with the terms and conditions of a Memorandum of Understanding (“MOU”) between DWM and DPR, as more particularly described in the MOU attached and incorporated herein as Exhibit “C;” and

WHEREAS, the Commissioner of DWM and the Commissioner of DPR recommend that the Greenspace Area is designated as limited public access greenspace for passive recreational uses, subject to the reservations and conditions described herein.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF ATLANTA GEORGIA HEREBY ORDAINS as follows:

Section 1: Subject to the conditions and express reservations set forth in Section 2, the Greenspace Area may be improved, operated and maintained as limited public access greenspace for passive recreational uses; provided, however, that any public access to the Greenspace Area shall not be permitted unless and until the Greenspace Area becomes operational, per the determination the DPR.

Section 2: Use of the Greenspace Area as limited public access for greenspace and passive recreational uses shall be permitted according to the following limitations and conditions:

- A) The City reserves a perpetual right to use the Property for the ownership, operation, maintenance, repair, improvement, enlargement, inspection, testing and use of all wastewater, storm, or water of all water/sewer facilities, which may now or hereafter exist on the Property;
- B) The City reserves the right to use such areas as may be necessary to construct additional water/sewer facilities or water/sewer system improvements on the Property, which may be now or hereafter necessary and appropriate for the efficient operation of the City’s System;
- C) The City expressly reserves for the benefit of the System all other rights and privileges necessary or convenient for the full enjoyment and use of the Property as may be necessary and appropriate for the efficient operation of the System; and
- D) The Greenspace Area shall not be used in a way that would materially impede and/or diminish the efficient operations of the City’s System;



- E) No structures or improvements shall be located or maintained on or within the Greenspace Area, unless DWM provides prior written approval of any such structures or improvements confirming that such structures or improvements are consistent with the safety, security and efficient operations of the System; and any such structures or improvements shall be constructed and maintained consistent with the rights, privileges and uses expressly reserved herein;
- F) The Greenspace Area shall be improved, operated and maintained by DPR in a clean and good condition;
- G) The public shall have limited access to the Greenspace Area during daylight hours or such times that DWM determines meets operational, safety and security requirements for the Property; and further, public access to the Greenspace Area is subject to the City's express right to temporarily or permanently restrict and/or close the public's access to the Greenspace Area as may be necessary and appropriate from time to time to exercise the rights described herein, including without limitation for the safety, security, and operational needs of the System;
- H) The City may temporarily or permanently close public access to the Greenspace Area if funding is not available for the adequate operation and maintenance of the Greenspace Area in accordance with the intent of this Ordinance;
- I) Public access to the Property shall be limited only to the Greenspace Area, which shall be secured from the remaining operational portion of the Property with gates, fencing and other means necessary to restrict public access to the remainder of the Property; and
- J) DPR shall assume responsibility for the operation and maintenance of the Greenspace Area commencing at the beginning of Fiscal Year 2015 and continuing thereafter so long as DPR has available sufficient funding available for operating and maintaining the Greenspace Area.

Section 3: The Mayor, the Commissioner of DWM, and the Commissioner of DPR are authorized to execute a MOU in substantial form as Exhibit "C" for the purpose of setting forth the terms and conditions of the improvement, operation and maintenance of the Greenspace Area, which MOU shall at least include the following terms and conditions:

- A) Water and sewer funds shall not be used for the improvement, operation or maintenance of the Greenspace Area, unless it is deemed necessary and appropriate for the operation and maintenance of the System;
- B) DPR may partner with community groups and third party organizations for the purpose of securing sufficient funds and resources needed for the improvement, operation or maintenance of the Greenspace Area; provided, however, that any agreements with third parties shall incorporate such terms and conditions as appropriate to be consistent with this Ordinance and the MOU; and
- C) The Greenspace Area may be amended with DWM's express written consent and approval, consistent with rights and privileges necessary or convenient for the full enjoyment and use of the Property as may be necessary and appropriate for the efficient operation of the System and as described herein;
- D) The improvement, operation and maintenance of the Greenspace Area shall be the responsibility of DPR.



Section 4: The Mayor, on behalf of the City, is authorized to execute any and all instruments or other documents that the City Attorney deems to be necessary or advisable in order to carry out the purposes and intent of this Ordinance.

Section 5: All ordinances and parts of ordinances in conflict herewith are hereby waived for purposes of this Ordinance only, and only to the extent of the conflict.

A true copy

A handwritten signature in black ink, appearing to be "K. Bell", written over the text "A true copy".

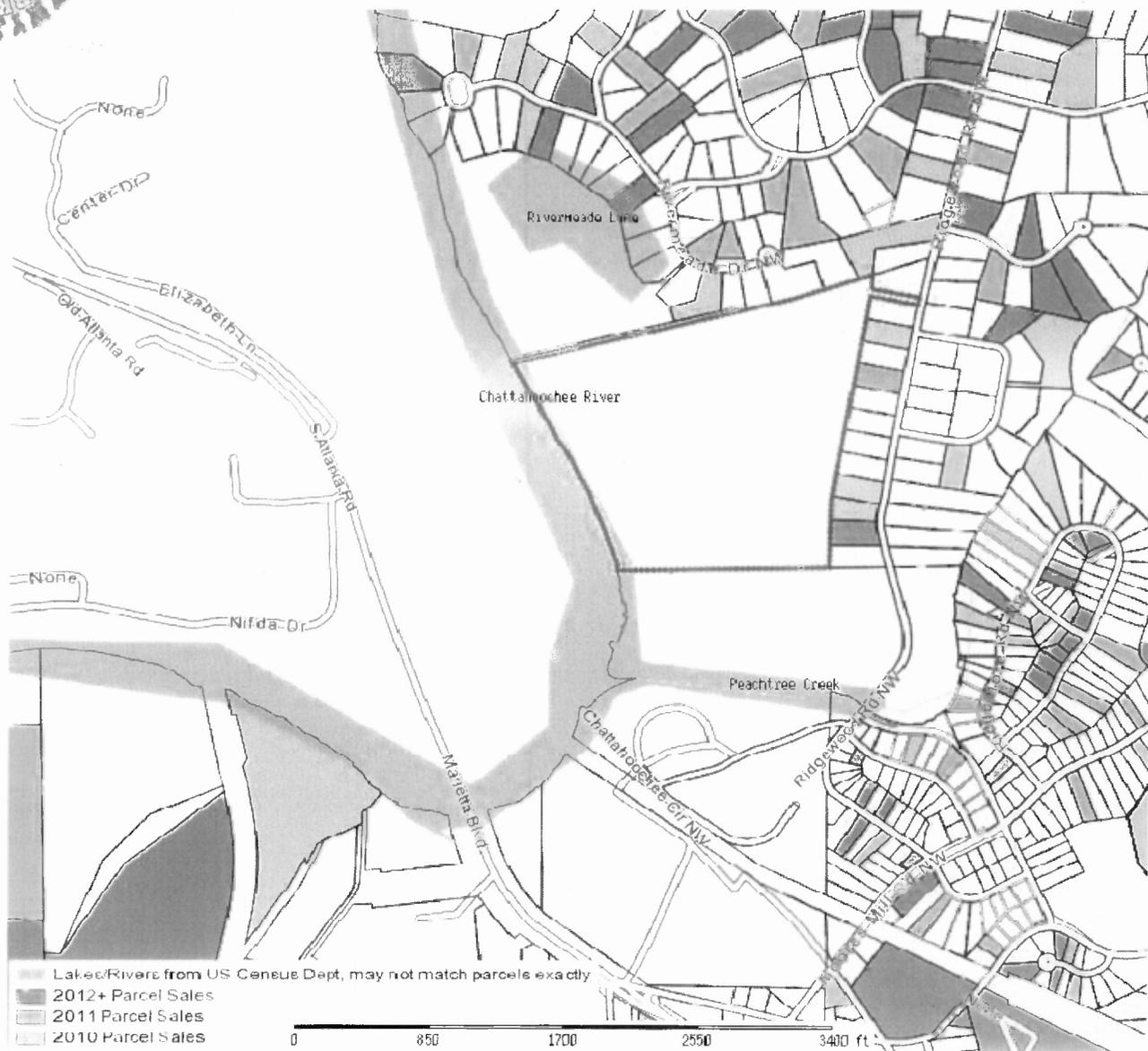
Deputy Clerk

ADOPTED by the Atlanta City Council
APPROVED as per City Charter Section 2-403

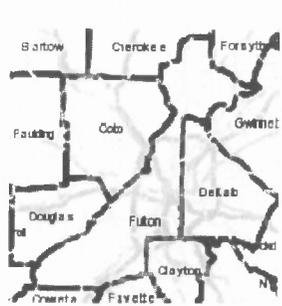
NOV 04, 2013
NOV 13, 2013



EXHIBIT
A



2630 RIDGEWOOD RD NW			
Parcel: 17 0232 LL0856 Acres: 0			
Name:	CITY OF ATLANTA	Land Value:	\$ 20,240,500
Site:	RIDGEWOOD RD # REAR	Building Value:	0
Sale:		Misc Value:	0
Address:	68 MITCHELL ST SW SUITE 1350	Total Value:	\$ 20,240,500
City:	ATLANTA, GA 30303-3534		

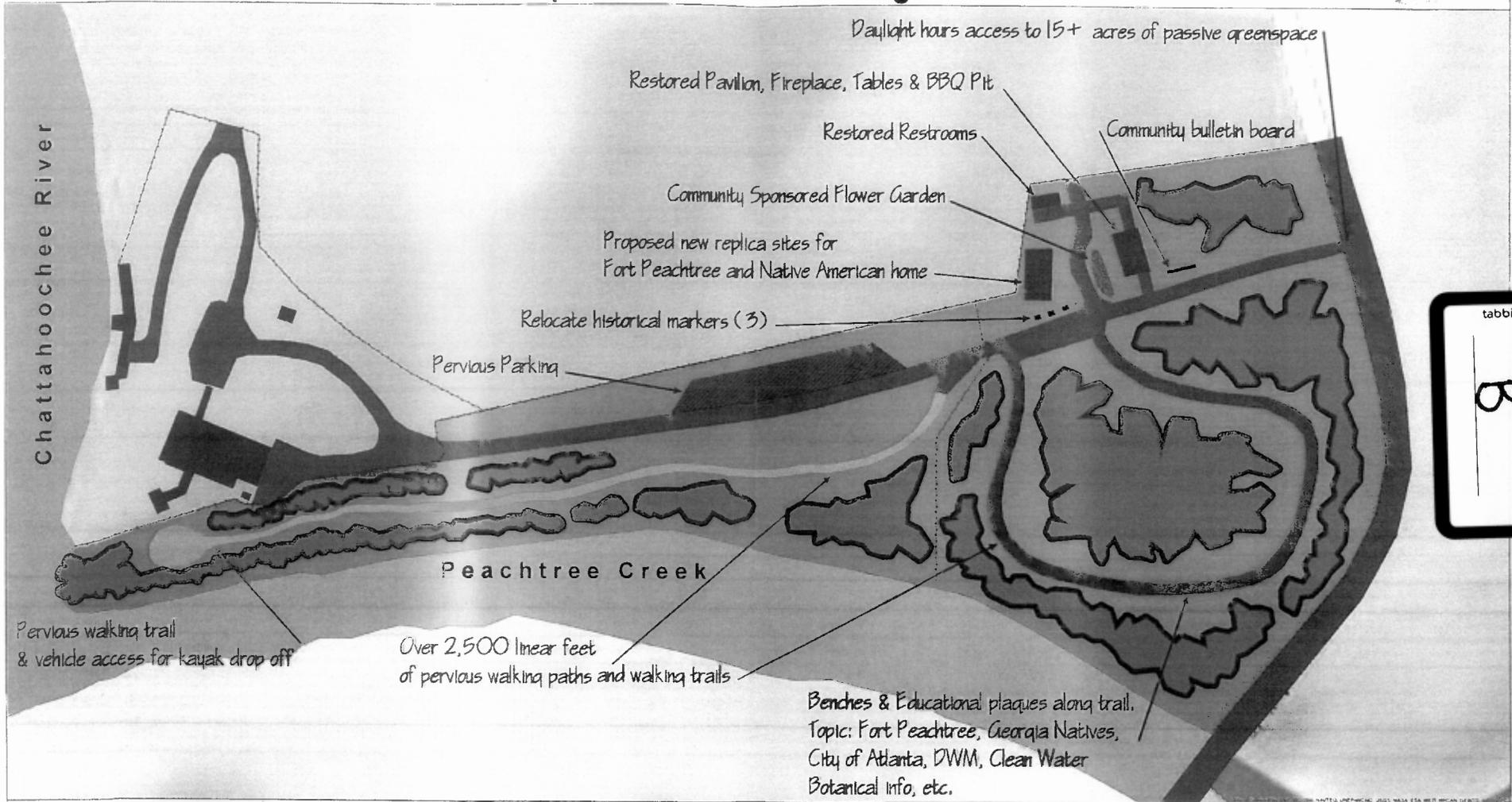


The Fulton County Assessor's Office makes every effort to produce the most accurate information possible. No warranties, expressed or implied, are provided for the data herein, its use or interpretation. The assessment information is from the last certified taxroll. All data is subject to change before the next certified taxroll. PLEASE NOTE THAT THE PROPERTY APPRAISER MAPS ARE FOR ASSESSMENT PURPOSES ONLY NEITHER FULTON COUNTY NOR ITS EMPLOYEES ASSUME RESPONSIBILITY FOR ERRORS OR OMISSIONS ---THIS IS NOT A SURVEY---

Date printed: 10/07/13 : 11:19:11



Fort Peachtree Facility-City of Atlanta-DWM Conceptual Site Design Plan



tabbies'

B

EXHIBIT

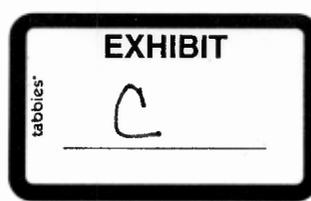
THIS MAP IS PROVIDED AS A PUBLIC SERVICE
The City of Atlanta has made known that these data contain known errors and inconsistencies. The City of Atlanta in no way ensures, represents, or warrants the accuracy and/or reliability of the data and/or map products being developed. The user of the data and/or map products assumes all risks and liabilities which may arise from the information produced by maps or data furnished to the user by the City of Atlanta.



City of Atlanta
Department of
Watershed Management



NAD 1983 STATE PLANE GEORGIA WEST		COMMENTS:
U.S. SURVEY FEET		(Comments here.)
DATE:	8/22/2013	
AUTHOR:	DWM GIS	
PROJECT:	Request	
SCALE:	1:780	
MAP SCALE:	1 in = 85 ft	



**MEMORANDUM OF UNDERSTANDING BETWEEN
THE CITY OF ATLANTA DEPARTMENT OF WATERSHED MANAGEMENT
AND THE CITY OF ATLANTA DEPARTMENT OF PARKS AND RECREATION
FOR THE OPERATION AND MAINTENANCE OF THE
FT. PEACHTREE GREENSPACE**

This Memorandum of Understanding (“MOU”), dated this ____ day of October, 2013 (“Effective Date”) between the City of Atlanta Department of Watershed Management (“DWM”) and the City of Atlanta Department of Parks and Recreation (“DPR”) (DWM and DPR may be individually referred to as “Party” and collectively, “the Parties”).

I. Background

The City of Atlanta owns and operates, by and through the DWM, certain property located in the Land Lot 856 of the 17th District of Fulton County, Georgia, said property having a Fulton County Tax Identification Number of 17 0232 LL0856 and is depicted in that certain Fulton County Tax map attached as Exhibit “A” (“Property”). The Property is owned, maintained and operated as part of the City’s water/sewer system (“System”) and is the site of certain critical water operational facilities. DWM, in cooperation with DPR, has identified a portion of the Property that can be developed and used as greenspace with limited public access for passive recreational uses, as such area is generally depicted in the conceptual drawing, attached and incorporated herein as Exhibit “B” (“Greenspace Area”). Use of the Greenspace Area for passive recreational uses by the public must be limited and expressly conditioned upon the existing and future needs of the Property for the operation, repair, maintenance, improvement, safety and security of the City’s water/sewer system, as more particularly described herein. Furthermore, the water and sewer facilities located on the Property and the Property are part of the water/sewer “System” that is pledged to the City’s bondholders as security for the bondholders, pursuant to the Master Bond Ordinance, Ordinance No. 99-O-0399 (“Bond Ordinance”), as more particularly described in the definitions and conditions of the Bond Ordinance. As such, DPR has agreed to manage the improvement, operation and maintenance of the Greenspace Area, in accordance with the terms and conditions this Memorandum of Understanding (“MOU”) between DWM and DPR, as more particularly described below.

II. Use of the Greenspace Area.

- A. The portion of the Property designated as the Greenspace Area, as depicted on Exhibit “B” may be accessed by the public on a limited basis for the purpose of using the Greenspace Area for the limited use as a passive recreational area; and shall be maintained as a natural greenspace area, except for certain Permitted Improvements, as hereinafter defined.
- B. Public access to the Greenspace Area shall be limited to daylight hours and shall be prohibited between dusk to dawn. Signage indicating the hours for permitted access shall be posted at least at the entry of the Greenspace Area. Public Access to



the Greenspace Area is expressly conditioned upon and subject to the City's right to operate, maintain, repair and improve the Property for water/sewer purposes as part of the System, as the System exists now or as may exist in the future. Further, Public access to the Greenspace Area shall be restricted or closed as may be necessary and appropriate for the operation, repair, maintenance, improvement, safety and security of the City's water/sewer System, as determined by DWM.

- C. Public access to the Greenspace Area is further conditioned upon DPR having adequate funding necessary for the operation and maintenance of the Greenspace Area.
- D. Public access to areas beyond the Greenspace Area shall be prohibited and security measures shall be implemented as may be deemed necessary and appropriate to ensure the public access is limited to the Greenspace Area and monitored to ensure that use of the Greenspace Area falls within Permitted Uses and behaviors.
- E. Permitted Uses shall mean use, operation, repair and maintenance of the Greenspace Area for the purpose of passive recreation, including any Permitted Improvements (as defined in Section 2, below), according to the rules, regulations, ordinances and other laws applicable to the public's use of City parks and recreational area; and in such a manner that does not conflict with, restrict, impair or threaten the safety, security and efficient operations, repairs and improvements to the Property for water and sewer purposes. Illegal activities shall be prohibited and persons shall be immediately removed from the Property, who are not observant of the safety, security and other Rules (as hereinafter defined) of the Greenspace Area that may be developed to regulate use of Greenspace Area.
- F. DWM shall maintain ownership of the Property, inclusive of the Greenspace Area, for purposes of operating, maintaining, repairing and improving the System and nothing in this MOU shall be construed to limit or encumber the DWM's rights and interests in the Property for such purposes. DPR agrees to take no action to limit, restrict or encumber the DWM's interests in the Property, without the DWM's express written permission.
- G. The DWM shall make all final decisions regarding use of the Greenspace Area, but shall exercise this authority in the spirit of good faith cooperation with DPR, consistent with this MOU.
- H. All DWM decisions regarding the Greenspace Area that arise from this MOU shall be made by the Commissioner of the Department of Watershed Management or her/his designee, (the "Commissioner").
- I. DPR shall develop, maintain, and manage the Greenspace Area in good order and repair, free from safety hazards and consistent this MOU and in accordance with all applicable local, state and federal laws and regulations, including any required



permits or permissions for improvements, at its sole risk and expense (except as otherwise provided by this MOU).

- J. DWM shall have the right to oversee and inspect the Greenspace Area and all work performed on the Greenspace Area to ensure compliance with the terms and conditions of this MOU. DWM may stop work on the Greenspace Area in the event that any work or use of the Greenspace Area is inconsistent with this MOU. In the event that DPR uses or improves the Greenspace Area inconsistent with this MOU, DWM may undertake such work as may be necessary to comply with this MOU, the costs of which shall be at DPR's expense.
- K. Any personnel employed by or volunteering on behalf of DPR shall be deemed "employees" or "volunteers" respectively of DPR, and shall not be deemed employees or volunteers of the DWM. DPR shall remain responsible for the supervision, management and control of such employees and volunteers and any payroll, taxation or other employment obligation incident to their work and to ensure that such personnel comport with the requirements of this MOU.
- L. DPR shall not discriminate based upon race, creed, color, religion, sex, national origin, marital status, age, physical handicap, sexual orientation, or gender identity in the implementation of the Master Plan or this MOU.
- M. DPR shall have no responsibilities or obligations for the operation and maintenance of the Greenspace Area prior to the beginning of Fiscal Year 2015, unless otherwise agreed upon by DPR; provided, however, that no public access shall be permitted until all security improvements and measures, including cameras and fencing, is installed and operational and the pavilion is restored to a safe condition. Should the Greenspace Area be opened for public access prior to DPR assuming operational responsibilities, DWM shall maintain the Greenspace Area in its existing state (excepting safety and security improvements mentioned above) and shall have no obligation to further improve the Greenspace Area.
- N. DWM shall receive at least twenty-four (24) hours notice prior to access by any contractor performing work on the Greenspace Area in conjunction with this MOU and all such contractors shall obtain requisite security clearance prior to performing work on the Greenspace Area.

III. Permitted Improvements.

- A. Improvements to the Greenspace Area shall be limited to the following permissive elements, as depicted generally in the conceptual plan attached and incorporated herein as Exhibit "B"¹:

¹ Exhibit "B" is intended to depict conceptual plans to illustrate Permitted Improvements and are subject to the final plans, which may include adjusting the precise location and design of such improvements. Furthermore, some or all of the Permitted Improvements as depicted in Exhibit "B" may not be constructed as conditioned upon the availability of sufficient funds to develop and maintain the Permitted Improvements.



- 1) walking trails designed to maximize infiltration, including the use of pervious surfaces where feasible, provided that any impervious surfaces must be approved by the Commissioner;
 - 2) parking areas;
 - 3) relocation and/or reconstruction of the Ft. Peachtree structure, which may include a secured display of historical artifacts and historical markers;
 - 4) access drive along the bank of Peachtree Creek;
 - 5) public restrooms;
 - 6) a community garden; and
 - 7) a pavilion with fireplace, tables and BBQ pit.
- B. No improvements or alterations to the Greenspace Area shall be made without the express, written approval of the DWM. Specifically, any improvements or alterations of the Greenspace Area shall be submitted with plans and specifications to the Commissioner of DWM for review and approval. DPR shall not begin any work on the Property until it has received written approval, permits and permissions from DWM and applicable governmental body or regulatory agency, as may be required for such work. Plans for improvements or alterations of the Greenspace Area shall be reviewed to comport with and shall be expressly conditioned upon DWM's confirmation that such improvements or alternations do not conflict with, restrict, impair or threaten the safety, security and efficient operations, repairs and improvements to the Property for water and sewer purposes. All improvements shall comply with DWM's operational, safety and security requirements.
- C. Permitted Improvements shall mean the the permitted improvements listed in Section III. A., as approved in writing by DWM in accordance with Section III. B, above.
- D. Title to all Permitted Improvements of such a nature as cannot be removed without substantial damage to the Property, or some portion thereof, shall vest in DWM upon completion of construction or installation. All removable fixtures shall be the property of DPR and removed upon the termination of this MOU. A pavilion or other structure shall not be considered removable.

IV. DWM Responsibilities

DWM shall have the following responsibilities:

- A. Maintain in good order and repair the pavilion, as generally depicted in Exhibit "B".
- B. Inspect, oversee and enforce this MOU for all work and uses of the Greenspace Area.
- C. Operate and maintain at DWM's expense all security gates, security equipment and surveillance cameras and fencing for purposes of enforcing security measures for



use of the Greenspace Area. There shall be three gates on the Property that control and define access to the Greenspace Area and, conversely restrict unauthorized access to restricted operational and secured areas of the Property. A gate shall be located at the entrance to the Property from the public road, which shall be open to the public access during permitted hours. A second gate shall be located before the access road located along Peachtree Creek, which may be closed from time to time for operational and security purposes. A third gate located closest to the City's critical facilities will be permanently closed to public access and restricted for authorized personnel only. Security fencing shall be installed and maintained by DWM to define the Greenspace Area and restrict access to areas beyond the Greenspace Area. Surveillance cameras and other security equipment shall be installed, operated and maintained by DWM. All fencing and surrounding areas shall be maintained to provide a clear view of all secured boundaries.

- D. Operate and maintain at its expense the main, paved access road through the Property, as depicted in Exhibit "B" ("Access Road").
- E. Remove dead or hazardous trees (as determined by DWM) from the Greenspace Area.
- F. Close the Greenspace Area for operational, security, or emergency needs or as may be necessary for future System maintenance, repairs or improvements. DWM shall provide advanced notice to DPR when the Greenspace Area needs to be closed for such purposes, but no less than three business days; provided, however, that the Greenspace Area may be closed immediately and without notice for emergency or security purposes without further notice to DPR or the public.

V. DPR Responsibilities

DPR shall have the following responsibilities:

- A. Pursue and engage in fundraising and community support initiatives for enhancing the Greenspace Area, consistent with this MOU, as may be deemed appropriate or desired by DPR.
- B. Provide routine maintenance and repairs so that the Greenspace Area remains in a safe and attractive condition for public use and so that all Permitted Improvements are maintained in good order and repair, including all landscaping, mowing and trails within the Greenspace Area.
- C. Other than to achieve implementation of this MOU, DPR shall not add, remove or demolish or substantially change, in whole or in part, any improvements, vegetation, natural features, located within the Greenspace Area, or alter the topography, without the prior written consent of the Commissioner, who may, in her/his discretion, condition such consent upon the obligation of DPR to replace the same by an improvement specified in such consent, or perform work to rehabilitate or mitigate any impacts to vegetation, natural features, or topography



- D. Serve as the major catalyst for interested parties to be involved with the Greenspace Area through advocacy, volunteer, and/or fundraising activities.
- E. Notify the Commissioner within twenty-four hours upon discovering a safety, sanitary, and/or maintenance issue that needs to be addressed within the Greenspace Area.
- F. Notify the Commissioner within three hours of learning of any issue regarding or arising on the Property that involves the media or the police or fire departments or emergency medical services.
- G. Make certain that all funds committed by or to DPR for use regarding the Greenspace Area are used effectively, efficiently for the Greenspace Area.

VI. Contractors Performing Work on the Property

- A. DPR shall require all contractors performing any work on behalf of DPR related to this MOU to sign an agreement with DPR that includes the following indemnification provision:

“Indemnification and Hold Harmless Clause”

1. Releases and Indemnification: Contractor hereby releases and shall indemnify, defend, and hold harmless the City of Atlanta, its elected officials, officers, agents, employees, authorized representatives, successors, and assigns from and against any and all suits, actions, legal or administrative proceedings, claims, debts, demands, damages, liabilities, injuries, obligations, losses, judgments, charges, interest, attorneys’ fees, costs, causes of action of every kind and character, whether in law or equity, and expenses of every kind or nature, whether arising before or after the termination of this Agreement and in any manner directly or indirectly caused, occasioned, or contributed to in whole or in part, or claimed to be caused, occasioned, or contributed to in whole or in part, by reason of any act, omission, fault or negligence whether active or passive of Contractor, its officers, employees, agents, subcontractors or of anyone acting under its direction or control or on its behalf in connection with or incidental to this Agreement.
2. Negligence and Waiver: Contractor’s aforesaid release, indemnity, and hold harmless obligations, or portions or applications thereof, shall apply even in the event of the fault or negligence, whether active or passive, or strict liability of the parties released, indemnified or held harmless to the fullest extent permitted by law, but in no event shall they apply to liability caused by the willful misconduct or sole negligence of the party released, indemnified, or



held harmless. Contractor specifically waives any immunity provided against this indemnity by any industrial insurance or workers' compensation statute. Contractor further agrees that this agreement to indemnify, defend, and hold harmless the parties released shall not be limited to the limits or terms of the insurance, if any, required under this Agreement. This Indemnification and Hold Harmless provision shall survive any termination or expiration of this Agreement.

- B. The following insurance requirements must be met by every contractor that performs work related to the Greenspace Area for or on behalf of DPR, and shall be included in a contract between DPR and each of its contractors. Insurance requirements are based on information received as of the date of this MOU. DWM reserves the right to adjust or waive any or all requirements based on receipt of additional information pertinent to this MOU.
1. DPR shall not allow its contractors or subcontractors to commence any work of any kind pursuant to this MOU until all Insurance requirements contained in this MOU shall have been complied with, and until evidence of such compliance satisfactory to DWM as to form and content has been filed with DWM. The Accord Certificate of Insurance or a pre-approved substitute is the required form in all cases where reference is made to a Certificate of Insurance or an approved substitute.
 2. Any and all companies providing insurance required pursuant to this MOU must meet the minimum financial security requirements set forth below. These requirements conform to the ratings published by A.M. Best & Company in the current Best's Key Rating Guide - Property - Casualty. The ratings for each company must be indicated on the Accord Certificate of Insurance form. For all contracts, regardless of size, companies providing Insurance under this MOU must have a current:
 - i. Best's rating not less than A-; and current;
 - ii. Best's Financial Size Category not less than Class IX; and
 - iii. Authorization issued by the Insurance Commissioner, State of Georgia, to conduct and transact insurance contracts.

If the issuing company does not meet these minimum requirements, or for any other reason shall be or become unsatisfactory to DWM, written notification shall be mailed by DWM to DPR, who shall promptly itself, or require its contractor to, obtain a new policy issued by an insurer acceptable to DWM, and shall submit evidence of the same to DWM as required herein.



3. Workers' Compensation and Employer's Liability Insurance

Every contractor and subcontractor that performs work related to the Property for or on behalf of DPR shall procure and maintain Workers' Compensation and Employer's Liability Insurance in the following limits, such insurance to cover each and every employee who is or may be engaged in work related to the Greenspace Area:

Workers' Compensation Statutory

Employer's Liability

Bodily Injury by Accident/Disease \$100,000 each accident

Bodily Injury by Accident/Disease \$100,000 each employee

Bodily Injury by Accident/Disease \$500,000 policy limit

4. Automobile Liability Insurance

Every contractor that performs work related to the Greenspace Area for or on behalf of DPR shall procure and maintain Automobile Liability Insurance with not less than \$500,000 Bodily Injury and Property Damage combined single limit. The following extensions of coverage shall be provided and shall be indicated on the Certificate of Insurance:

1. Comprehensive Form
2. Owned, Hired, Leased and Non-owned vehicles to be covered.

In the event the contractor or subcontractor does not own any automobiles in the corporate name, non-owned and hire automobile coverage will be maintained in the amount indicated above.

5. Upon failure of DPR to ascertain that each of its contractors and subcontractors furnishes, delivers, and maintains such insurance as herein provided, this MOU, at the election of DWM, may be declared forthwith suspended, discontinued, or terminated. Failure of a DPR's contractor or subcontractor to take out and/or to maintain any required insurance shall not relieve DPR, its contractors or subcontractors, from any liability under this MOU, nor shall these requirements be construed to conflict with the obligation of this MOU concerning indemnification.

6. The City of Atlanta shall be covered as an additional insured under any and all Insurance required pursuant to this MOU, and such insurance shall be primary with respect to the additional insured.



Confirmation of this shall appear on the Accord Certificate of Insurance and on any and all applicable Insurance policies.

7. Each and every agent acting as Authorized Representative on behalf of a company affording coverage pursuant to this MOU shall warrant when signing the Accord Certificate of Insurance that specific authorization has been granted by the company for the agent to bind coverage as required and to execute the Accord Certificate of Insurance as evidence of such coverage. In addition, each every agent shall warrant when signing the Accord Certificate of Insurance that the agent is licensed to do business in the State of Georgia and that the company or companies are currently in good standing in the State of Georgia.

VII. Term of MOU

This MOU will commence as of the Effective Date of its full execution, as shall be reflected on the first page of the MOU, and the MOU will continue in effect for five (5) years, unless earlier terminated by a Party. Upon mutual agreement of the Parties, the Parties may renew this MOU for one additional five-year term.

VIII. Suspension of Work and Termination of MOU

- A. In the event that DWM determines that any work being performed on the Property, or any failure to perform work on the Property, or any use of the Property is inconsistent with this MOU, DWM shall immediately notify DPR in writing. DPR shall have three (3) days from said notice to develop and implement a corrective plan, which shall be provided to DWM and meet with the DWM's approval. DWM may provide additional time to correct such conditions in the event that corrective action has begun within said three (3) days but cannot be completed within that time period, and shall make such determination based upon the seriousness of the matter, the safety implications of the matter, and the amount of time that it would reasonably take to implement that type of correction. DWM shall be reasonable with regard to granting extensions of time if DPR indicates that it needs additional time and is making a good faith effort to implement the corrective action.
 1. DPR shall use its best efforts to implement the corrective action within the time set forth by DWM in its written notice. In the event that DPR needs additional time to implement the corrective action, it shall request an extension of time for a defined time period.
 2. In the event that DPR does not make a good faith effort to implement the corrective action within the time frame established by the DWM,



either originally or in an extension of time, DWM shall have the right to suspend the offending project until the corrective action is implemented, at no cost to DWM.

3. In the event that the offending action is a failure to perform work, including but not limited to maintenance work, and in the event that DPR does not make a good faith effort to implement the corrective action within the time frame established by DWM, either originally or in an extension of time, DWM shall have the right to perform the work or direct that the work be performed. DPR shall reimburse DWM for the reasonable cost of performing the work.
 4. In the event that DWM and DPR disagree about the corrective action to be implemented, the Parties shall attend Alternative Dispute Resolution ("ADR") in an attempt to resolve the matter. The work at issue shall be suspended until the completion of the ADR.
 5. Should the Parties be unable to resolve the corrective action issue after ADR, the DWM shall have the right to terminate this MOU for cause, at no cost to the DWM.
- B. In the event that the DWM determines that any work on or use of the Property creates a safety or security hazard, DWM may suspend DPR's use of the Greenspace Area and shall bear no cost associated with the suspension, effective upon receipt of written notice from DWM to DPR. DWM shall immediately notify DPR, in writing and by telephone that use of the Greenspace Area has been suspended and the corrective action required. Use of the Property shall remain suspended until the corrective action is implemented.
- C. Either Party shall have the right to terminate this MOU without cause at any time prior to the MOU's expiration by giving written notice to the other Party at least thirty (30) days prior to the date such termination is to be effective, and such termination shall be at no cost to either of the Parties. In any event, DPR may terminate this MOU on the basis of insufficient funds to operate and maintain the Greenspace Area, upon providing DWM thirty (30) days written notice.

IX. Miscellaneous Provisions

- A. Entire MOU. This MOU supersedes all prior discussions and Agreements or MOUs among the parties with respect to the subject matter hereof. This MOU shall not be modified or amended in any respect except by written instrument executed by or on behalf of the Parties in the same manner as this MOU is executed and specifically referencing such a modification or amendment.



- B. Binding effect. This MOU shall injure to the benefit of and be binding upon the Parties hereto, their heirs, successors, executors and assigns.
- C. Severability. In the event any provision or portion of this MOU is held by any Court of competent jurisdiction to be invalid or unenforceable, such holding shall not affect the remainder hereof, and the remaining provisions shall continue in full force and effect to the same extent as would have been the case had such invalid or unenforceable provisions or portion never been a part hereof.
- D. Further assurances. On and after the Effective Date, each Party shall, at the request of any other, make, execute and deliver or obtain and deliver all such certificates, resolutions and other instruments and documents, and shall do or cause to be done all such other things which any Party may reasonably require to effectuate the provisions and the intentions of this MOU.
- E. Exhibits. Each and every exhibit referred to or otherwise mentioned in this MOU is attached to this MOU and is, and shall be, construed to be made a part of this MOU by such reference or other mention at each point at which such reference or other mention occurs, in the same manner and with the same effect as if each exhibit were set forth in full at length every time it is referred to or otherwise mentioned.
- F. Rights cumulative. Except as expressly limited by the terms of this MOU, all rights, powers and privileges conferred hereunder shall be cumulative and not restrictive of those provided at law or in equity.
- G. Notices. All notices, requests, demands or other communications required or permitted to be given hereunder shall be in writing and shall be addressed and delivered by hand or by certified mail, return receipt requested, or by UPS Next Day Air Note or overnight courier, or by hand delivery by reputable courier, to each Party at the addresses set forth below. Any such notice, request, demand or other communication shall be considered given or delivered, as the case may be, on the date of receipt. Rejection or other refusal to accept or inability to deliver because of changed address of which proper notice was not given shall be deemed to be receipt of the notice, request, demand or other communication. By giving prior written notice thereof, any Party may from time to time and at any time change its address for notices hereunder. Legal counsel for the respective Parties may send to the other Parties any notices, requests, demands or other communications required or permitted to be given hereunder by such Party.

a. To DWM: Commissioner of Watershed Management



72 Marietta St.
Atlanta, Georgia 30303

b. and Chief Operating Officer
Office of the Mayor, Suite 2400
55 Trinity Avenue
Atlanta, Georgia 30303

c. with a copy to: DWM Attorney
68 Mitchell St., SW
Suite 4100
Atlanta, Georgia 30303

d. DPR [insert]

- H. Assignment. The interests of the Parties may not be assigned without prior written consent from the other party.
- I. Governing law. This MOU, and the rights and obligations of the parties hereunder, shall be governed by and construed in accordance with the laws of the State of Georgia, without giving effect to principles of conflicts of laws thereof. The Parties hereby fix jurisdiction and venue for any action brought with respect to this MOU in Fulton County, Georgia.
- J. No partnership. This MOU shall not be interpreted or construed to create an association, joint venture or partnership between the Parties, nor to impose any partnership obligations or liabilities on any Party. Furthermore, no Party shall have any right, power or authority to enter into any MOU or undertaking of or on behalf of, to act as or be an agent or representative of, or to otherwise bind any other Party.
- K. Time is of the essence. Time is and shall be of the essence in this MOU.
- L. Waiver. The failure of any Party to seek redress for any violation of, or to insist upon the strict performance of, any term of this MOU will not prevent a subsequent violation of this MOU from being actionable by such Party.



IN WITNESS WHEREOF, DWM and DPR have caused this MOU to be executed by their duly authorized officials, the day and year first above written.

**Chief Operating Officer
Approved:**

Chief Operating Officer

**City of Atlanta Department of Parks and
Recreation**

By: _____
George Dusenbury,
Commissioner

**City of Atlanta Department of Watershed
Management**

Jo Ann J. Macrina,
Commissioner

APPROVED AS TO FORM:

City Attorney

RCS# 3113
11/04/13
2:13 PM

Atlanta City Council

ADOPT CONSENT AGENDA SECTION I:ALL ITEMS
 EXCEPT 13-R-3691
 CONSENT I

YEAS: 13
NAYS: 0
ABSTENTIONS: 0
NOT VOTING: 2
EXCUSED: 0
ABSENT 1

Y Smith	Y Archibong	Y Moore	NV Bond
Y Hall	Y Wan	Y Martin	Y Watson
Y Young	Y Shook	Y Bottoms	B Willis
Y Winslow	Y Adrean	Y Sheperd	NV Mitchell

ADOPT

+

		11-04-13
ITEMS ADOPTED ON CONSENT	ITEMS ADOPTED ON CONSENT	ITEMS ADVERSED ON CONSENT
1. 13-O-1320	32. 13-R-3688	48. 13-R-3706
2. 13-O-1321	33. 13-R-3687	49. 13-R-3707
3. 13-O-1322	34. 13-R-3688	50. 13-R-3708
4. 13-O-1323	35. 13-R-3591	51. 13-R-3709
5. 13-O-1343	36. 13-R-3635	52. 13-R-3710
6. 13-O-1328	37. 13-R-3692	53. 13-R-3711
7. 13-O-1332	38. 13-R-3693	54. 13-R-3713
8. 13-O-1330	39. 13-R-3698	55. 13-R-3714
9. 13-O-1338	40. 13-R-3699	56. 13-R-3715
10. 13-O-1344	41. 13-R-3700	57. 13-R-3716
11. 13-O-1297	42. 13-R-3701	58. 13-R-3717
12. 13-O-1316	43. 13-R-3702	59. 13-R-3718
13. 13-O-1317	44. 13-R-3703	60. 13-R-3719
14. 13-O-1318	45. 13-R-3704	61. 13-R-3720
15. 13-O-1327	46. 13-R-3705	62. 13-R-3721
16. 13-R-0458	47. 13-R-3712	63. 13-R-3722
17. 13-R-0102		64. 13-R-3723
18. 13-R-3632		65. 13-R-3724
19. 13-R-3684		66. 13-R-3725
20. 13-R-3679		67. 13-R-3726
21. 13-R-3694		68. 13-R-3727
22. 13-R-3695		69. 13-R-3728
23. 13-R-3696		70. 13-R-3729
24. 13-R-3697		71. 13-R-3730
25. 13-R-3682		72. 13-R-3731
26. 13-R-3683		73. 13-R-3732
27. 13-R-3673		
28. 13-R-3677		
29. 13-R-3685		
30. 13-R-3686		
31. 13-R-3687		