Commission Memorandum

REPORT TO: Honorable Mayor and City Commission

FROM: Chris Kukulski, City Manager

SUBJECT: **Supplemental memorandum on Action Item #13 for September 24, 2012:** Authorize City Manager to Sign an Addendum to the Story Mansion Buy/Sell Agreement extending the date for closing until March 29, 2013.

MEETING DATE: September 24, 2012

AGENDA TYPE: **Action (4/5 vote of the Commission Required)**

NEW SUGGESTED MOTION: After considering the staff memorandum and public comment, I hereby move to authorize the City Manager to sign the Addendum labeled "Version 9 21 12" extending the date of closing for the sale of the Story Mansion to March 29, 2013.

Supplemental Memorandum: On September 20, 2012 you received a staff memorandum and materials for action item #13 on the agenda for September 24th. This report supplements those materials.

After the report was provided to you Exergy Friends of the Story Mansion (Friends) provided comments on the City's proposed Addendum to the Agreement to Sell and Purchase Real Estate (the "Agreement.") After review by the City Attorney, I recommend the Commission adopt the version attached to this supplemental memorandum incorporating Friends suggestions to all sections of the Addendum except Section 3 relating to the date of closing. All changes other than those requested in Section 3 are technical adjustments to ensure the Addendum complies with the original Agreement.

As for Section 3, Friends requests the Commission consider extending the closing date until no later than June 28, 2013 with a date of March 29, 2013 where Friends will use its best effort to close the sale. Friends suggest the following alternative language for Section 3 (existing language to be stricken is shown in ~~strikeout~~ and new language to be added is shown as underlined):

7. **Closing and Possession Dates.** Subject to the terms and conditions herein, the closing of the transaction contemplated by this Agreement shall take place after advance written notice to Seller from Buyer of no less than ten (10) business days~~, but in no event later than June 30, 2012~~ ("Closing Date"). Buyer agrees to make good faith efforts to secure all necessary funding and close the transaction on or before a target Closing Date of March 29, 2013, but in no event shall the Closing Date be later than June 28, 2013. Seller shall deliver possession and occupancy to the Buyer on the beginning of the day following the Closing Date.

If the Commission desires to include the language proposed by Friends I suggest the following alternative motion: "*After considering the staff memorandum and public comment, I hereby move to authorize the City Manager to sign the Addendum labeled "Version 9 21 12" incorporating Friends' request for changes to Section 3 of the Addendum extending the date of closing for the sale of the Story Mansion to June 29, 2013."*

Attachments to this Supplemental Memorandum:

- Addendum to the Agreement to Sell and Purchase Real Estate for the Story Mansion (Version 9 21 12);

Report compiled on: September 21. 2012

ADDENDUM TO THE AGREEMENT TO SELL AND PURCHASE REAL ESTATE
VERSION 9 21 12

THIS ADDENDUM ("Addendum") is made, effective as of the date of parties signatures below by THE CITY OF BOZEMAN, City Hall, 121 North Rouse Avenue, Bozeman, Montana 59715 ("Seller"), and EXERGY FRIENDS OF THE STORY MANSION, a Montana non-profit corporation, PO Box 6767, Bozeman, Montana 59771-6767 ("Buyer").

In consideration of the mutual promises, the money consideration hereinafter described, and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Buyer agree as follows:

1. On May 31, 2012, the Buyer and Seller entered into an Agreement to Sell and Purchase Real Estate (the "Agreement") for the purchase and sale of Land and Improvements commonly known as the Story Mansion property. The parties now desire to extend the Closing Date by amending Section 7 of the Agreement and to memorialize the satisfaction of certain contingencies, recognize that other contingencies are still outstanding and must be satisfied prior to closing, and provide the conditions under which the Seller agrees to extend the Closing Date.

2. On September 13, 2012, Buyer delivered to the Seller a letter requesting "an additional six months to secure the funding necessary to accomplish the purchase of the Story Mansion property, with a purchase date absolutely no later than June 30, 2013."

3. Section 7 of the Agreement shall be amended to read as follows:

    7. **Closing and Possession Dates.** Subject to the terms and conditions herein, the closing of the transaction contemplated by this Agreement shall take place after advance written notice to Seller from Buyer of no less than ten (10) business days, but in no event later than ~~June 30, 2012~~ March 29, 2013 ("Closing Date"). Seller shall deliver possession and occupancy to the Buyer on the beginning of the day following the Closing Date.

4. Buyer recognizes and agrees that all contingencies listed in Paragraph 12(a) (Inspection) of the Agreement have been satisfied or are waived. All other conditions precedent, including but not limited to those set out in Paragraph 12(c) (Management Agreement), Paragraph 12(d) (Financial Disclosure), and Paragraph 12(e) (Other Conditions Precedent), remain in full force and effect.

5. Buyer agrees that should it fail to close within the time period listed in Section 7 all improvements Buyer made to the Story Park regarding landscaping and irrigation, and any of Buyer's improvements to the Story Mansion shall become the property of the Seller. In such a case, Buyer hereby agrees to waive all claims for reimbursement from the Seller for any improvements it made to the Story Mansion or Story Park.

6. Buyer agrees to reimburse Seller the amount of $15,803.79 as described in Section 3 of the Agreement within thirty (30) days of execution of this Addendum. Failure to provide payment for the Carriage House expenses within the above time shall be cause for Seller to terminate the Agreement. Buyer's payment to Seller of the reimbursement amount as set forth in this Section shall fully discharge Buyer's obligations under Section 3 of the Agreement.

7. All other provisions of the Agreement not in conflict with this Addendum shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Agreement to Sell and Purchase Real Estate effective as of the date of the Seller's signature below.

BUYER:

_______________, 2012

Exergy Friends of the Story Mansion

by: ___________________________________

its: ___________________________________

SELLER:

_______________, 2012

City of Bozeman

by: ___________________________________

its: ___________________________________

Commission Memorandum

REPORT TO: Honorable Mayor and City Commission

FROM: Chris Kukulski, City Manager

SUBJECT: Authorize City Manager to Sign an Addendum to the Story Mansion Buy/Sell Agreement extending the date for closing until March 29, 2013.

MEETING DATE: September 24, 2012

AGENDA TYPE: **Action (4/5 vote of the Commission Required)**

RECOMMENDATION: Authorize the City Manager to sign the attached Addendum extending the date of closing for the sale of the Story Mansion to March 29, 2013.

SUGGESTED MOTION: After considering the staff memorandum and public comment, I hereby move to authorize the City Manager to sign the Addendum extending the date of closing for the sale of the Story Mansion to March 29, 2013.

BACKGROUND: On May, 31, 2012, the City and Exergy Friends of the Story Mansion (EFSM) entered into an Agreement to Sell and Purchase Real Estate for the sale of the Story Mansion (the "Agreement"). The Commission authorized the sale through the adoption of Ordinance 1821. The Agreement is an attachment to Ordinance 1821. Please see: http://weblink.bozeman.net/WebLink8/DocView.aspx?id=49704&dbid=0). The original date for closing was June 30, 2012 and was pushed back upon request of EFSM by my authorization for a limited period of time.

During this summer I had several discussions with representatives from EFSM regarding the date of the closing; now, EFSM requests the City agree to extend the date of closing for an extended period of time – upwards of six to nine months. See the attached letter from Andrew Epple, president of EFSM. EFSM specifically requests "that the City of Bozeman provide EFSM with an additional six months to secure the funding necessary to accomplish the purchase of the Story Mansion property, with a purchase date absolutely no later than June 30, 2013." The City Attorney and I believe extension of the closing date for this length of time requires Commission action and approval of an addendum memorializing the extension.

If the Commission is interested in extending the closing date, I recommend you authorize me to sign an addendum to the Agreement. The "Addendum" as drafted by the City Attorney is attached and addresses the following:

- Extend the closing date until March 29, 2013 by amending Section 7 of the Agreement. I choose March 29, 2013 as that date is the Friday of the week that is six months from the date of your meeting. **The Commission may adjust this date**.
- Recognize and agree that all contingencies listed in the Agreement have been met except for Section 12(d) (requirement for Friends to provide financial disclosures).
- Require Friends to agree that should they fail to close by the date listed all improvements made by Friends to the Story Mansion shall become the property of the City and Friends will waive all claims for reimbursement for the improvements. These are improvements related to landscaping, irrigation, etc.
- Require Friends to provide $15,803.79 to the City as required by Section 3 of the Agreement within 30 days of execution of the Addendum.
- Require that should Friends fail to close the $1,000.00 "credit" paid by Friends to the city will be kept by the City as forfeited earnest money.

<u>The decision to extend the closing date is a decision of the Commission and, like all other decisions regarding the Agreement, requires a 4/5 vote of the Commission.</u>

Representatives from EFSM will be at the meeting to answer questions you may have.

FISCAL EFFECTS: The closing date was originally scheduled for FY2012 and because of the delay the general fund's "beginning balance" entering into the current fiscal year is $391,222 less than anticipated. Because the closing date was to occur prior to the end of FY2012, revenues and expenditures related to Story Mansion operations were not included in the FY2013 budget. Also attached to this memorandum is a spreadsheet from Finance detailing the revenues and expenses related to the Story Mansion for FY 2010, FY 2011 and FY 2012.

UNRESOLVED ISSUES: None other than identified above.

ALTERNATIVES: As determined by the City Commission.

Attachments:

- Addendum to the Agreement to Sell and Purchase Real Estate for the Story Mansion;
- Letter from Exergy Friends of the Story Mansion, dated September 13, 2012; and
- Revenues and Expenses related to the Story Mansion since 2009.

Report compiled on: September 18. 2012

ADDENDUM TO THE AGREEMENT TO SELL AND PURCHASE REAL ESTATE

THIS ADDENDUM ("Addendum") is made, effective as of the date of parties signatures below by THE CITY OF BOZEMAN, City Hall, 121 North Rouse Avenue, Bozeman, Montana 59715 ("Seller"), and EXERGY FRIENDS OF THE STORY MANSION, a Montana non-profit corporation, c/o Exergy Integrated Systems, 40 West 14th Street, Suite 4A, Helena, Montana 59601 ("Buyer").

In consideration of the mutual promises, the money consideration hereinafter described, and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Buyer agree as follows:

1. On May, 31, 2012, the Buyer and Seller entered into an Agreement to Sell and Purchase Real Estate for the sale of the Story Mansion from Buyer to Seller (the "Agreement"). The parties now desire to extend the date of closing by amending Section 7 of the Agreement and to memorialize the satisfaction of certain contingencies, recognize that other contingencies are still outstanding and must be satisfied prior to closing, and provide the conditions under which the Seller agrees to extend the date of closing.

2. On September 13, 2012, Buyer delivered to the Seller a letter requesting "an additional six months to secure the funding necessary to accomplish the purchase of the Story Mansion property, with a purchase date absolutely no later than June 30, 2013.

3. Section 7 of the Agreement shall be amended to read as follows:

   7. **Closing and Possession Dates.** Subject to the terms and conditions herein, the closing of the transaction contemplated by this Agreement shall take place after advance written notice to Seller from Buyer of no less than ten (10) business days, but in no event later than ~~June 30, 2012~~ March 29, 2013 ("Closing Date"). Seller shall deliver possession and occupancy to the Buyer on the beginning of the day following the Closing Date.

4. Buyer and Seller recognize and agree all contingencies listed in the Agreement have been met except Section 12(d) (Financial Disclosure).

5. Buyer agrees that failure to close by the time period listed in Section 7 shall entitle the Seller to keep the $1,000.00 credit listed in Section 2(b)(i) of the Agreement as forfeited earnest money.

6. Buyer agrees that should it fail to close within the time listed in Section 7 all improvements Buyer made to the Story Park regarding landscaping and irrigation, and any of Buyer's improvements to the Story Mansion shall become the property of the Seller. In such a case, Buyer hereby agrees to waive all claims for reimbursement from the Seller for any improvements it made to the Story Mansion or Story Park.

7. Buyer agrees to provide Seller $15,803.79 as described in Section 3 of the Agreement within thirty (30) days of execution of this Addendum. Failure to provide payment for the Carriage House expenses within the above time shall be cause for Seller to terminate the Agreement.

8. All other provisions of the Agreement not in conflict with this Addendum shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Agreement to Sell and Purchase Real Estate effective as of the date of the Seller's signature below.

BUYER:

_______________, 2012 Exergy Friends of the Story Mansion

by: ___________________________________

its: ___________________________________

SELLER:

_______________, 2012 City of Bozeman

by: ___________________________________

its: ___________________________________

The Story.
FRIENDS of THE
STORY MANSION

Post Office Box 6767
BOZEMAN MT 59771
FRIENDSofTHESTORY.ORG
friendsofthestory@yahoo.com

September 13, 2012

Mr. Chris Kukulski
City Manager, City of Bozeman
P.O. Box 1230
Bozeman, MT 59715

RE: Story Mansion Purchase

Dear Chris:

Last month it was reported that Exergy Friends of the Story Mansion (EFSM) would be in a position to purchase the Story Mansion from the City of Bozeman by September 15, 2012. This anticipated closing date was set based on an expectation that Exergy Development Group, LLC, our major donor, would provide us with their planned gift of approximately $408,000 by now, enabling us to close our real estate transaction with the City.

In a letter to me dated September 7, 2012, Mr. James Carkulis advised EFSM that, for a variety of reasons, Exergy Development Group needs to delay its planned contribution to EFSM. As a result, EFSM is not in a position to close on our purchase agreement with the City at this time.

In his letter, Mr. Carkulis states: "Our commitment to helping Exergy Friends of the Story Mansion purchase the Story property and restore both the 2nd and 3rd floors of the Mansion and the Carriage House remains undiminished." He further states: "We expect Exergy to soon regain its leadership position in the renewable energy industry," and "We plan to provide the funds necessary to close your purchase agreement well within … six months time… ."

EFSM remains confident that Exergy Development Group will indeed be a major donor in helping us achieve our goals, as well as the City's, with regard to purchasing and restoring the Mansion property. In fact, Exergy has recently made a $20,000 contribution to our non-profit organization to help us complete payment for all of the landscaping and irrigation work accomplished this summer in close cooperation with the City of Bozeman.

In the meantime, however, EFSM will not be sitting by idly waiting for Exergy's contribution to come through. Our Board of Directors has just committed to three courses of action to keep us moving forward in this period of transition. First, we are initiating a significant fundraising effort to identify additional major donors, to complement Exergy's contributions, or to provide a foundation of funding for our organization in the event Exergy's contribution does not materialize. Second, we are reactivating our Membership Committee to embark on a membership drive and re-energize our community outreach efforts. Third, we are actively engaging in a marketing campaign in an effort to secure more bookings at the Story through this fall and into 2013.

With these thoughts and actions in mind, EFSM respectfully requests that the City of Bozeman provide EFSM with an additional six months to secure the funding necessary to accomplish the purchase of the Story Mansion property, with a purchase date absolutely no later than June 30, 2013.

Thank you in advance for your consideration of this request, Chris. Please let me know if you have any questions or need any additional information. We look forward to hearing back from you soon.

Sincerely,

Andrew Epple

Andrew Epple, President
Exergy Friends of the Story Mansion

Gordon 'Corky' Brittan, Vice President
Jane Klockman, Secretary
Peter Bogy, Acting Treasurer
Jerry Coffey, Member
Elizabeth Darrow, Member
Peggy Beltrone, Member

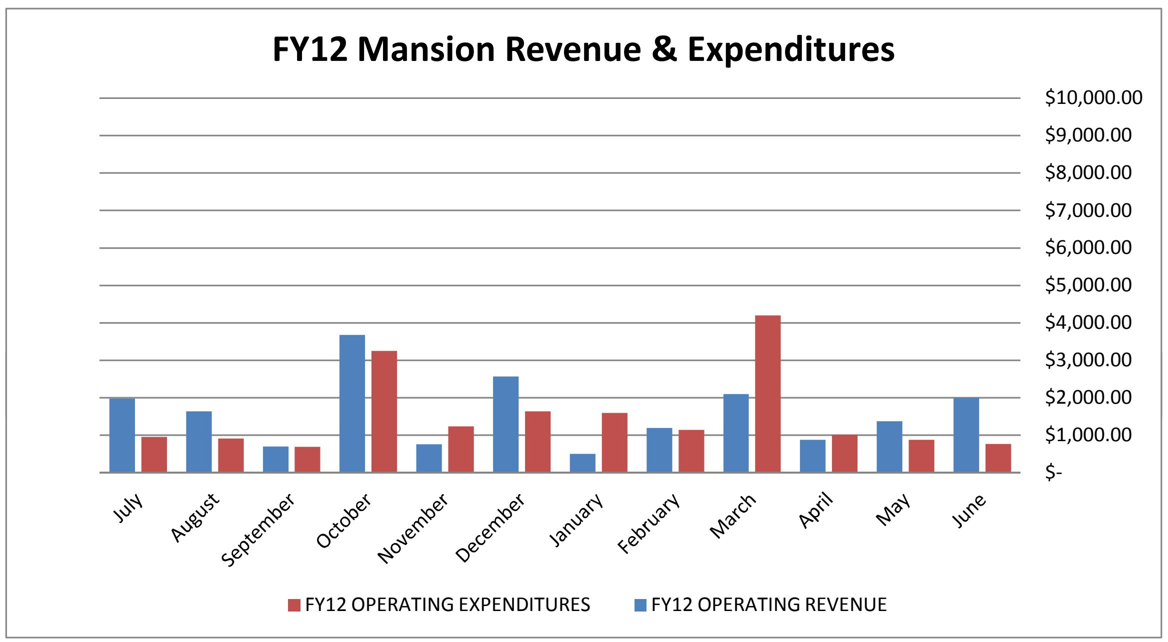
Story Mansion Special Revenue - 189
FY12

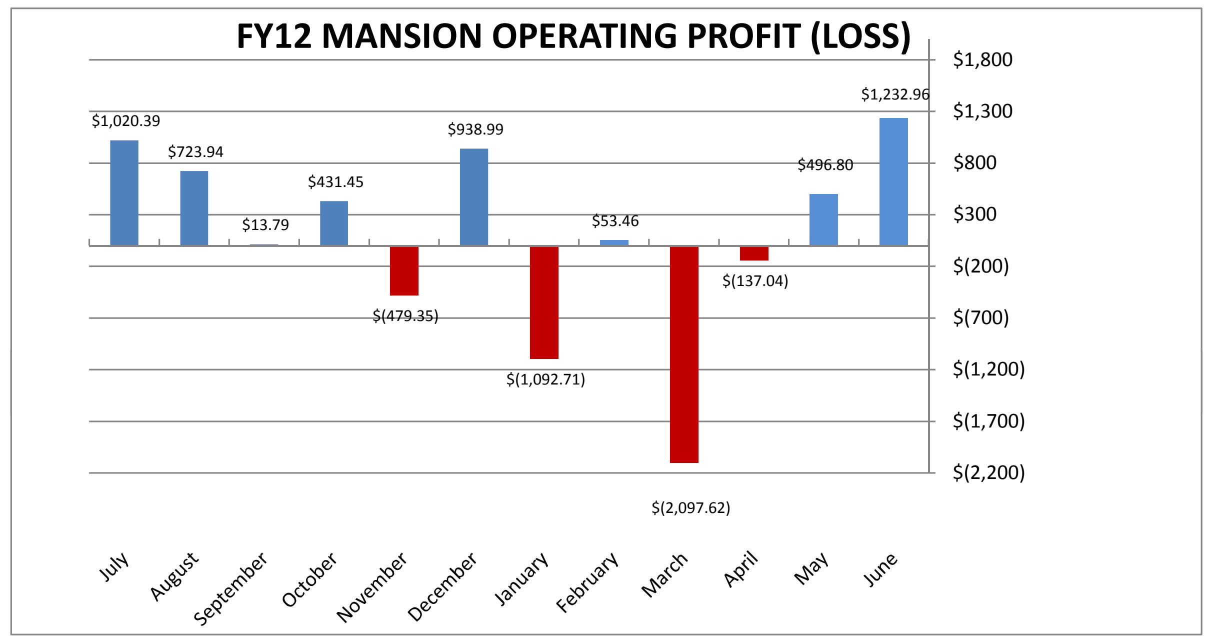
Revenue	June	May	April	March	February	January	December	November	October	September	August	July	FYTD Total
Rental Income	$ 2,000.00	$ 1,375.00	$ 875.00	$ 2,100.00	$ 1,195.00	500.00	2,572.50	755.00	$ 3,680.00	$ 700.00	$ 1,635.00	$ 1,975.00	$ 19,362.50
Damage Reimbursement					$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
FY12 OPERATING REVENUE	$ 2,000.00	$ 1,375.00	$ 875.00	$ 2,100.00	$ 1,195.00	$ 500.00	$ 2,572.50	$ 755.00	$ 3,680.00	$ 700.00	$ 1,635.00	$ 1,975.00	**$ 19,362.50**

**Expenditures do not include: Any City staff time allocations, liability or property Insurance premiums, insurance related repairs, or grant related improvements

Expenditures	June	May	April	March	February	January	December	November	October	September	August	July	FYTD Total
Supplies & Materials							$ 12.87	$ 98.59				$ 105.20	$ 216.66
Repair & Maintenance				$ 3,043.00	$ 12.50			$ 225.00			$ 105.00		$ 3,385.50
Utilities	$ 569.37	$ 681.53	$ 740.37	$ 957.95	932.37	$ 1,021.04	$ 996.97	$ 760.76	$ 497.71	$ 492.17	$ 459.23	$ 580.37	$ 8,689.84
Contracted Services	$ 197.67	$ 196.67	$ 271.67	$ 196.67	$ 196.67	$ 571.67	$ 508.67	$ 150.00	$ 569.04	$ 194.04	$ 346.83	$ 269.04	$ 3,668.64
Advertising													$ -
Taxes & Assessments									$ 486.04				$ 486.04
Other							$ 115.00		$ 1,695.76				$ 1,810.76
FY12 OPERATING EXPENDITURES	$ 767.04	$ 878.20	$ 1,012.04	$ 4,197.62	$ 1,141.54	$ 1,592.71	$ 1,633.51	$ 1,234.35	$ 3,248.55	$ 686.21	$ 911.06	$ 954.61	$ 18,257.44

	June	May	April	March	February	January	December	November	October	September	August	July	FYTD Total
FY12 OPERATING PROFIT (LOSS)	$ 1,232.96	$ 496.80	$ (137.04)	$ (2,097.62)	$ 53.46	$ (1,092.71)	$ 938.99	$ (479.35)	$ 431.45	$ 13.79	$ 723.94	$ 1,020.39	**$ 1,105.06**





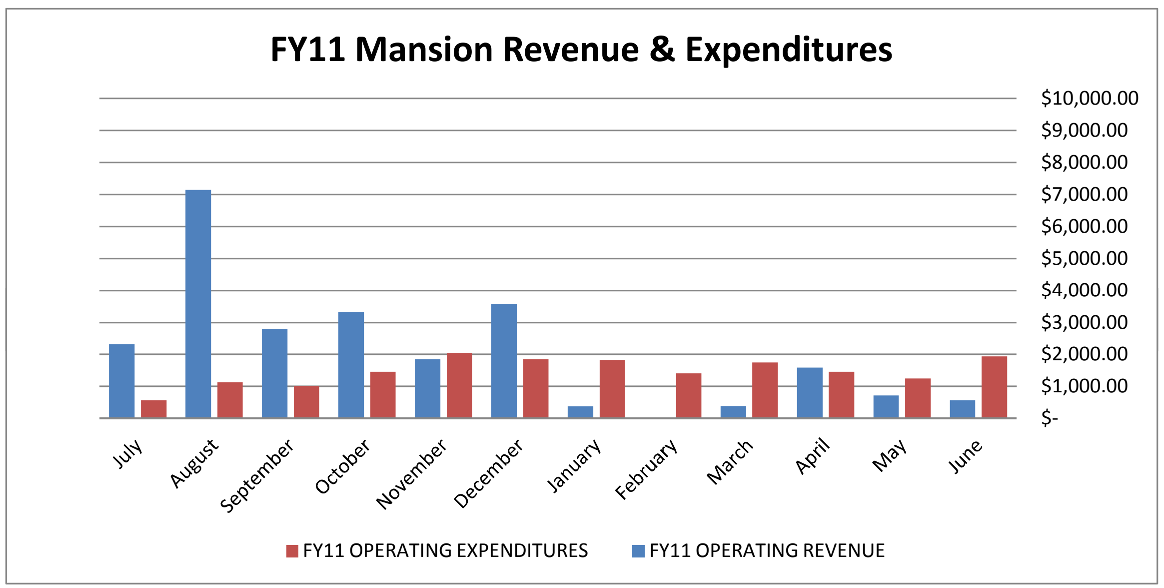
Story Mansion Special Revenue - 189
FY11

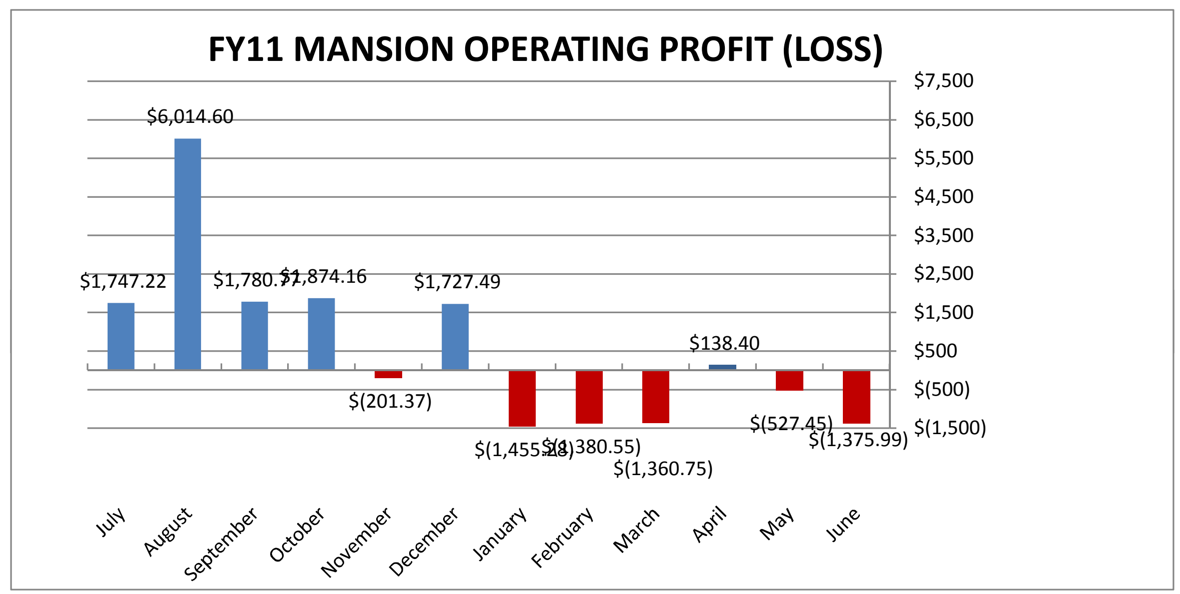
Revenue	June	May	April	March	February	January	December	November	October	September	August	July	FYTD Total
Rental Income	$ 565.00	$ 722.50	$ 1,594.25	$ 393.25	$ 25.00	375.00	3,580.00	1,845.00	$ 3,335.00	$ 2,796.25	$ 7,142.50	$ 2,318.75	$ 24,692.50
Damage Reimbursement					$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
FY11 OPERATING REVENUE	$ 565.00	$ 722.50	$ 1,594.25	$ 393.25	$ 25.00	$ 375.00	$ 3,580.00	$ 1,845.00	$ 3,335.00	$ 2,796.25	$ 7,142.50	$ 2,318.75	**$ 24,692.50**

**Expenditures do not include: Any City staff time allocations, liability or property Insurance premiums, insurance related repairs, or grant related improvements

Expenditures	June	May	April	March	February	January	December	November	October	September	August	July	FYTD Total
Supplies & Materials	$ 40.81	$ 61.04	$ 22.92	$ 19.98	$ 25.35	$ -	$ 187.47	$ 158.51	$ 98.82	$ 151.64	$ 188.51	$ 49.53	$ 1,004.58
Repair & Maintenance	$ 1,044.99			$ 399.87	$ -	$ -	$ (25.00)	$ -	$ -	$ 43.04	$ 174.06	$ -	$ 1,636.96
Utilities	$ 661.15	$ 794.87	$ 938.89	$ 1,140.11	1,186.16	$ 1,261.24	$ 1,185.22	$ 685.37	$ 565.32	$ 578.48	$ 492.44	$ 522.00	$ 10,011.25
Contracted Services	$ 194.04	$ 194.04	$ 269.04	$ 194.04	$ 194.04	$ 569.04	$ 389.82	$ 432.95	$ 515.90	$ 242.32	$ 272.89	$ -	$ 3,468.12
Advertising		$ 200.00	$ 225.00		$ -	$ -	$ -	$ -	$ 280.80	$ -	$ -	$ -	$ 705.80
Taxes & Assessments					$ -	$ -	$ -	$ 211.06	$ -	$ -	$ -	$ -	$ 211.06
Other					$ -	$ -	$ 115.00	$ 558.48	$ -	$ -	$ -	$ -	$ 673.48
FY11 OPERATING EXPENDITURES	$ 1,940.99	$ 1,249.95	$ 1,455.85	$ 1,754.00	$ 1,405.55	$ 1,830.28	$ 1,852.51	$ 2,046.37	$ 1,460.84	$ 1,015.48	$ 1,127.90	$ 571.53	$ 17,711.25

	June	May	April	March	February	January	December	November	October	September	August	July	FYTD Total
FY11 OPERATING PROFIT (LOSS)	$ (1,375.99)	$ (527.45)	$ 138.40	$ (1,360.75)	$ (1,380.55)	$ (1,455.28)	$ 1,727.49	$ (201.37)	$ 1,874.16	$ 1,780.77	$ 6,014.60	$ 1,747.22	**$ 6,981.25**





Story Mansion Special Revenue - 189
FY10

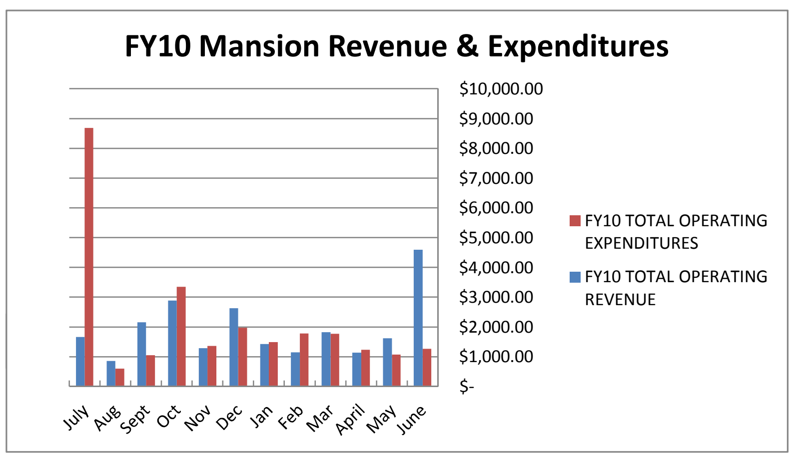
Revenue	June	May	April	Mar	Feb	Jan	Dec	Nov	Oct	Sept	Aug	July	FYTD Total
Rental Income	$ 4,591.25	$ 1,622.50	$ 1,138.26	$ 1,825.00	$ 1,151.25	$ 573.12	$ 2,626.25	$ 1,287.00	$ 2,887.50	$ 2,158.75	$ 858.75	$ 1,657.50	$ 22,377.13
Damage Reimbursement						$ 850.00							$ 850.00
FY10 TOTAL OPERATING REVENUE	$ 4,591.25	$ 1,622.50	$ 1,138.26	$ 1,825.00	$ 1,151.25	$ 1,423.12	$ 2,626.25	$ 1,287.00	$ 2,887.50	$ 2,158.75	$ 858.75	$ 1,657.50	**$ 23,227.13**

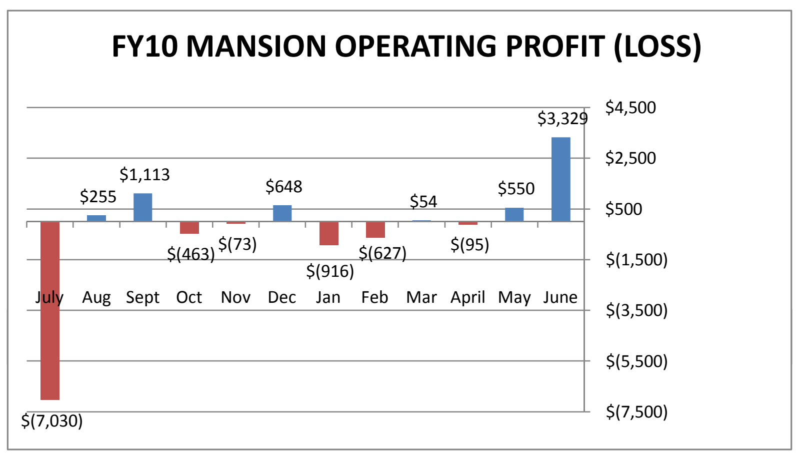
**Expenditures do not include: Any City staff time allocations, liability or property Insurance premiums, insurance related repairs, or grant related improvements

Expenditures	June	May	April	Mar	Feb	Jan	Dec	Nov	Oct	Sept	Aug	July	FYTD Total
Supplies & Materials	$ 235.71	$ 114.23	$ 161.18	$ -	$ 58.97	$ 19.48	$ 6.74	$ 49.48	$ 168.45	$ 51.38	$ 102.00	$ 7,764.20	$ 8,731.82
Repair & Maintenance	$ -	$ -	$ 67.00	$ 190.97	$ 154.95	$ -	$ -	$ 250.00	$ 1,656.40	$ 162.50	$ 220.10	$ 149.00	$ 2,850.92
Utilities	$ 634.65	$ 918.53	$ 970.41	$ 1,540.98	$ 1,446.45	$ 105.43	$ 1,537.31	$ 1,060.13	$ 1,122.80	$ 321.42	$ 282.00	$ 258.00	$ 10,198.11
Contracted Services	$ 392.32	$ 39.55	$ 35.00	$ 39.55	$ 118.00	$ 1,364.03	$ 318.76	$ -	$ -	$ 452.85	$ -	$ 400.95	$ 3,161.01
Advertising						$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Taxes & Assessments						$ -	$ -	$ -	$ 402.60	$ -	$ -	$ -	$ 402.60
Other						$ -	$ 115.00	$ -	$ -	$ 58.02	$ -	$ 115.00	$ 288.02
FY10 TOTAL OPERATING EXPENDITURES	$ 1,262.68	$ 1,072.31	$ 1,233.59	$ 1,771.50	$ 1,778.37	$ 1,488.94	$ 1,977.81	$ 1,359.61	$ 3,350.25	$ 1,046.17	$ 604.10	$ 8,687.15	**$ 25,632.48**

	June	May	April	Mar	Feb	Jan	Dec	Nov	Oct	Sept	Aug	July	FYTD Total
FY10 OPERATING PROFIT (LOSS)	$ 3,328.57	$ 550.19	$ (95.33)	$ 53.50	$ (627.12)	$ (915.82)	$ 648.44	$ (72.61)	$ (462.75)	$ 1,112.58	$ 254.65	$ (7,029.65)	**$ (2,405.35)**

July Supplies & Materials Includes Table Purchase of:	*$ 3,017.10*
July Supplies & Materials Includes Chair Purchase of:	*$ 2,263.20*
	$ 5,280.30





9/18/2012