CITY OF HUBER HEIGHTS
STATE OF OHIO
City Council Meeting
Regular Session
January 26, 2015
7:00 P.M.

1. **Call The Meeting To Order - Mayor Tom McMasters**

2. **Invocation - Pastor Randy Griffith Of The Free Methodist Church At 6875 Old Troy Pike, Huber Heights, Ohio**

3. **Flag Ceremony - Wayne High School Junior ROTC Honor Guard**

4. **Pledge Of Allegiance**

5. **Roll Call**

6. **Approval Of Minutes**

   A. City Council Special Meeting Minutes - December 29, 2014

   B. City Council Special Meeting Minutes - January 15, 2015

7. **Special Presentations/Announcements**

   A. Huber Heights Police Division P.R.I.D.E. Recognition Presentation - Police Chief Mark Lightner and Sergeant Chuck Taylor

   B. 2014 City Of Huber Heights Employee Of The Fourth Quarter Presentation To Ms. Elizabeth Dunivan And 2014 City Of Huber Heights Employee Of The Year Presentation To Ms. Maria Beisel - Mr. Rob Schommer, City Manager

C. DEC Acknowledgement Presentation To Mr. Bill Keethler, Vice President - Development, DEC - Mr. Rob Schommer, City Manager

D. Huber Heights Open Gov Presentation - Mr. Jim Bell, Finance Director, And Mr. Don Jones, Assistant City Manager

8. **Citizens Comments**

9. **Citizens Registered to Speak on Agenda Items**

10. **City Manager Report**

11. **Pending Business**

A. An Ordinance To Approve A Major Change To A Previously Approved Basic And Detailed Development Plan For The Artisan Walk Development Located At The North Side Of Chambersburg Road And East Side Of Bellefontaine Road (Zoning Case 14-42), And Declaring An Emergency.
(second reading)

B. An Ordinance Approving The Execution Of A Fourteenth Amendment To The Amended And Restated Development Agreement With DEC Land Co. I LLC, And Declaring An Emergency.
(third reading)

C. A Resolution Declaring It Necessary To Improve Public Streets And Easements In Sections 4-2 And 4-3 By Constructing And Installing On Certain Property Within The City Street Improvements, Water And Sewer Lines, Storm Drains, Lighting, Irrigation Lines And Signage, And All Necessary Appurtenances, And Declaring An Emergency.
(third reading)

D. An Ordinance Determining To Proceed With The Improvement Of Public Streets And Easements In Sections 4-2 And 4-3 By Constructing And Installing On Certain Property Within The City Street Improvements, Water And Sewer Lines, Storm Drains, Lighting, Irrigation Lines, Signage And All Necessary Appurtenances, And Declaring An Emergency.
(third reading)

12. **New Business**

CITY COUNCIL

A. A Motion To Appoint Shelly Huntington To The Citizens Water And Sewer Advisory Board To A Term Expiring January 1, 2018.

ADMINISTRATION
Rob Schommer, City Manager

B. A Resolution Authorizing The City Manager To Enter Into An Agreement With The Rozzi Company For The Purpose Of Providing A Municipal Fireworks Display In Celebration Of The Fourth Of July National Holiday For The Years 2015 And 2016, And Declaring An Emergency.
(first reading)

C. A Resolution Authorizing The City Manager To Solicit Bids And Award A Three Year Contract For The Provision Of Janitorial Services For City Hall, Police Building, Senior Center, And The Montgomery County Municipal Court Facility, And Declaring An Emergency.
(first reading)

D. A Resolution Authorizing The City Manager To Enter Into A Contract With The Kroger Corporation For An Exclusive Contract To Allow Kroger Naming Rights To The Aquatic Center For A Period Of Five (5) Years With Payment To The City As Provided In Exhibit A, And Declaring An Emergency.
(first reading)

E. A Resolution Authorizing The City Manager To Enter Into That Certain Memo Of Understanding To Clarify The Process By Which Accounting And Purchasing Processes Are Defined For The Music Center At The Heights By Music Event Management, Inc., The Role Of The City In That Process And The Duties Under The Facility Management Agreement, And Declaring An Emergency.
(first reading)

F. A Resolution Amending Section 3 Of Resolution No. 2015-R-6117 Regarding The Proposed Ballot Language For The May 5, 2015 Tax Levy Ballot Issue, And Declaring An Emergency.
(first reading)

HUMAN RESOURCES DEPARTMENT
Katie Knisley, Human Resources Manager

G. A Resolution Repealing Resolution No. 2015-R-6119 And Adopting The Ohio Association Of Professional Firefighters 457(B) Deferred Compensation Plan For Participation By Eligible Employees Of The City Of Huber Heights And Authorizing The City Manager To Execute Documents Necessary To Implement Such Plan, And Declaring An Emergency.
(first reading)

ECONOMIC DEVELOPMENT DEPARTMENT
Don Jones, Assistant City Manager

H. An Ordinance To Approve An Application To Initiate Foreclosure Proceedings For The Property At 5637 Copley Circle Under The Huber Heights Land Reutilization Program.
(first reading)

FINANCE DEPARTMENT
Jim Bell, Finance Director

I. A Resolution Authorizing The City Manager To Expend Funds To Cover The Costs Of Various Goods And Services Ordered By City Departments/Divisions, And Declaring An Emergency.
(first reading)

PUBLIC SAFETY DEPARTMENT - POLICE DIVISION
Mark Lightner, Police Chief and Public Services Director

J. A Resolution Declaring Certain City Property No Longer Needed For Municipal Purposes As Surplus And Authorizing Disposal Of Said Surplus Property, And Declaring An Emergency.
(first reading)

K. A Resolution Authorizing The City Manager To Purchase Vehicles For Use By The Police Division Through The Ohio Cooperative Purchasing Program, GSA AutoChoice, Or By Direct Negotiations, And Declaring An Emergency.
(first reading)

PUBLIC SERVICES DEPARTMENT - ENGINEERING DIVISION
Russ Bergman, City Engineer

L. A Resolution Authorizing The City Manager To Solicit Bids For The 2015 Street Improvement Program And Non-Concrete Work, And Declaring An Emergency.
(first reading)

M. A Resolution Accepting Certain Parcels Of Land And Easements Within The City Of Huber Heights For Public Purposes.
(first reading)

N. An Ordinance To Amend Part Nine, Title One, Chapter 911, Section 911.02 - Duty To Repair And Clean Sidewalks And Curbs Of The City Code Of Huber Heights Ohio, And Declaring An Emergency.
(first reading)

13. **City Official Reports and Comments**

14. **Executive Session**

15. **Adjournment**

AI-2801 **Minutes** A.

City Council Meeting Agenda

Meeting Date: 01/26/2015

Approval of Minutes - 12/29/14

Submitted By:	Anthony Rodgers
Department:	City Council
Council Committee Review?:	None
Date(s) of Committee Review:	N/A
Audio-Visual Needs:	None
Emergency Legislation?:	No
Motion/Ordinance/ Resolution No.:	N/A

Information

Agenda Item Description or Legislation Title

City Council Special Meeting Minutes - December 29, 2014

Purpose and Background

Approval of the minutes from the December 29, 2014 City Council Special Meeting.

Fiscal Impact

Source of Funds:	N/A
Cost:	N/A
Recurring Cost? (Yes/No):	N/A
Funds Available in Current Budget? (Yes/No):	N/A

Financial Implications:

There are no financial implications to this agenda item.

Attachments

Minutes

Huber Heights City Council

In Council Chambers
6131 Taylorsville Road December 29, 14

1. The Huber Heights City Council met in a Special Session on December 29, 2014. Mayor Tom McMasters called the meeting to order at 6:02 p.m.

2. **Pledge of Allegiance**

3. **Roll Call**

Councilmembers present for this meeting were: Mayor Tom McMasters, Lu Dale, Karen Kaleps, Tracy Dudley, Mark Campbell, Jan Vargo, Ed Lyons, Tyler Starline, and Judy Blankenship.

Mayor McMasters stated Council is all present and accounted for.

4. **Approval Of Minutes**

There were no Minutes submitted for approval.

5. **Citizens Comments**

Mr. Ron Deak, 5908 Oak Creek Trail, said Mr. Schommer responded to an email about the status of Mr. Conaway's contract with the music center which ends on December 31, 2014. Since it is now due, Mr. Conaway is required to deliver by year-end a complete set of as-builts and a maintenance plan for the City. Are they ready, so he can take a look at them? If they have not been submitted to the City, the City should prepare to go to the penalty phase and start withholding funds for him. Did Mr. Conaway obligate the City's funds for the pad without getting it approved? Did Mr. Conaway proceed without authorization from the City for the items done on the hotel lot? If so, he should have been fired on the spot or made to reimburse the funds that he did not have the authority to spend. Somehow he had the authority to interrupt the MEMI contract as indicated that they were on target for the actual overall management plan. Has MEMI booked any concerts yet? He then said the north fire station project is once again a no-bid contract for Mr. Conaway. He spoke to an attorney from another City recently who said there is nothing compelling enough to do a sole source contract for project management. The other City has not done any in three years - it is just not smart business. He asked Mr. Schommer what his source documents are that compel him to go sole source. Has Mr. Conaway given any emails or had any conversations to put it into a sole source document? In this day and age, smart decision-making using the tax dollars is prudent and paramount. He understands that Mr. Conaway offered to do due diligence at no cost. The attorney he spoke with indicated that it appears that there is a huge conflict of interest on doing something where it is impossible to be impartial. The other City would also never have allowed a contractor do due diligence and, if he fits the bill, award the contract to him. Mr. Schommer's comments that there is no one else that understands the process is laughable. He spoke to two City Managers and four City Engineers who said this is a huge conflict of interest and it is an ethics compromise. They get better results, quality and price if they put it out to bid. He then said if this goes forward, he will officially ask for an ethics investigation through Mayor McMasters and forward it to Columbus to be looked into. He asked Mayor McMasters to send to him what he needs to do this if the need arises and what format he would like it in. He would also like Mayor McMasters to email to him samples of public records requests. He has several items he would like to submit for public record requests.

Mayor McMasters said Mr. Deak can make his public records requests in any format, but he should be very specific as to what he is looking for.

Clerk of Council Anthony Rodgers stated the City's public records request form can be found online on the City's website also.

Jane Deeter, 8870 Davidgate Drive, said she echoes what the previous gentleman said. She is very concerned that the City is going this non-competitive, no-bid route. The City really does need to follow the process which is there for a reason and open it up to competitive bidding. The City needs to let other companies compete and it will probably get a better bang for the buck. It looks bad to have no-bid contracts and it really raises the question of favoritism and cronyism.

6. Citizens Registered to Speak on Agenda Items

There were no citizens registered to speak on Agenda Items.

7. City Manager Report

City Manager Rob Schommer said the pole that was in half on Brandt Pike and Fishburg Road has been repaired. He then said there was an article in the newspaper about a Dayton Performing Arts Alliance (DPAA) presentation at the music center which will be a Rodgers and Hammerstein production. DPAA is renting the facility for this production. The agreement was that because it was a DPAA event, the City would not announce it. This will be one of the first events. This is certainly not a C-class type of performance and it is not something that degrades the business of the music center. This is actually a great opportunity for the City to partner with another organization in the region to bring a heightened amount of culture and entertainment to the facility. DPAA reached out to the City about a year ago and created a new performance for the venue. In the process, they have worked out the deals with MEMI. They are renting the facility and they are paying the City a cost. The City has no costs for this show; it gets the fee for the rental. DPAA covers the costs of operating the show. This is 100% profit for the City for the rental fee. The type of operations that are spelled out in the Operations Manual - that again has come into question many times, as to whether that has been worked on and developed. In October, he mentioned that there are 96 pages of work that have been developed and put together and finalized – part of that had to do with how rentals are managed and done. He is very proud Huber Heights will be the host site for that event. He is also working with MEMI on some other things - obviously a list for the rest of the season. Many offers are out and, as he said before, towards the end of the year and the beginning of 2015, some dates will be finalized and the City will start to build those show dates and get those published. He is excited to get all of those put together. He said he received an email from Melissa McGhee on behalf of the Huber Heights Chamber of Commerce and Tyler Starline mentioned something this week about businesses and venue sponsorships. Again, that is something that MEMI is working with and he will be glad to put together packages and he is waiting on that from them. That was one of the targeted priorities - businesses and organizations that are interested in other venue sponsorships and partnership opportunities at the music center as it opens. He wants to have those packages and it ranges from the seats to different upgrade packages. All of those things will be coming out as the City puts things on sale for the shows. Everything is on track. Things are looking bright and exciting for the 2015 season.

8. Pending Business

A. An Ordinance Providing For The Renewal Of An Existing .25 Percent Levy On Income Effective January 1, 2016 And Expiring December 31, 2025, And To Submit This Ordinance To The Electorate For Approval Or Rejection And Contingent Upon Such Election Approval, Amend Section (b) Of Chapter 191.03, Income Tax, Of Title 9, Taxation, Part I, Administration To Reflect The Tax Renewal.
(second reading)

City Manager Rob Schommer stated this is the second reading and gets the city on track and on target to get the issue on the ballot for the decision to put to the voters regarding the renewal of an existing 0.25 percent income tax that is dedicated to public safety proportioned as noted. The previous language, as he explained at the last meeting, was pretty convoluted and complex. It has been simplified and that ballot language has been incorporated in this. He would encourage Council to authorize this so that the voters can make the decision for the community. City Staff will continue to get information out to the community. He asked that this be moved to a third reading.

Mayor McMasters asked Mr. Schommer to explain the breakout of how the levy will be allocated into the various funds.

Mr. Schommer said this is a 10-year renewal which calls to maintain the tax rate at 2.25% which is what it is at currently. This is income tax. The ordinance would provide for the renewal of that 0.25% effective January 1, 2016 and expiring December 31, 2025 to be applied 40.5% for police and 40.5% for fire (including emergency medical services), and 19% for the General Fund.

Mayor McMasters said this legislation will be passed to a third reading.

B. A Resolution Specifying May 5, 2015, As The Date For Submitting To The Electorate Of The City Of Huber Heights A Proposal To Provide For The Renewal Of An Existing .25% Levy On Income Effective January 1, 2016 And Expiring December 31, 2025, And Directing The Board Of Elections Of Montgomery County And Miami County Ohio To Place The Issue On The Ballot.
(second reading)

City Manager Rob Schommer stated this authorizes legislation authorizes the City to get the renewal of the income tax levy on the ballot on May 5, 2015. He said this resolution and the previous ordinance are companion pieces.

Mayor McMasters said this legislation will be passed to a third reading.

C. A Resolution Authorizing The City Manager To Expend Funds To Cover The Rental Cost And Fees For City Operations, And Declaring An Emergency.
(second reading)

Assistant City Manager Don Jones said this is the second reading of this legislation. He asked that this be passed this evening. This will allow the City to pay the rent for the month to month rental of the Tax Office and a storage area at the Huber Centre for the remainder of 2014. It also gives the City a not to exceed amount for 2015 of $34,000 which will cover the rent for all of 2015. There is no commitment that the City stay there. He asked that this be approved this evening.

Mr. Campbell moved to waive the second and third readings; Mrs. Blankenship seconded the motion. On a call of the vote, Mrs. Kaleps, Mrs. Dudley, Mr. Campbell, Mrs. Vargo, Mr. Lyons, Mrs. Starline, Mrs. Blankenship, and Mrs. Dale voted yea; none voted nay. The motion passes 8-0.

Mr. Starline moved to adopt; Mr. Lyons seconded the motion. On a call of the vote, Mrs. Dudley, Mr. Campbell, Mrs. Vargo, Mr. Lyons, Mrs. Starline, Mrs. Blankenship, Mrs. Dale, and Mrs. Kaleps voted yea; none voted nay. The motion passes 8-0.

9. New Business

CITY COUNCIL

A. A Motion To Approve New Liquor Permit #89481810015 For TJ Chumps, Inc. At 7050 Executive Boulevard, Huber Heights, Ohio 45424.

Jan Vargo of the Administration Committee stated she thought this matter was already taken care of.

Clerk of Council Anthony Rodgers said the paperwork had been expedited. This is more of a formality to approve the permit retroactively. The City had already submitted the paperwork to allow TJ Chumps to have the liquor permit in place for the grand opening this past weekend.

Mr. Schommer said technically this really is not an approval. Council is deciding whether to choose to ask for a hearing with the State of Ohio on the matter. The liquor permit has been approved. The forms that were signed were to indicate that the City had no intention of requesting a hearing. There was a timing issue due to the fact that the TJ Chumps liquor permit had to be on the ballot in November, 2014 for that particular precinct to authorize Sunday sales. The ballot language took effect 30 days after passage which put them into the December timeframe. At that point in time, it was past the last City Council Meeting. So the City had no opportunity before the deadline to the State of Ohio to get that form signed. As Anthony Rodgers indicated, the information was shared through Council.

Mrs. Vargo moved to approve the liquor permit; Mr. Lyons seconded the motion. On a call of the vote, Mr. Campbell, Mrs. Vargo, Mr. Lyons, Mr. Starline, Mrs. Blankenship, Mrs. Dale, Mrs. Kaleps, and Mrs. Dudley voted yea; none voted nay. The motion passes 8-0.

ECONOMIC DEVELOPMENT DEPARTMENT
Don Jones, Assistant City Manager

B.1. An Ordinance Declaring The Improvement To Certain Parcels Of Real Property To Be A Public Purpose And Exempt From Taxation; Establishing A Municipal Public Improvement Tax Increment Equivalent Fund And Providing For The Collection And Deposit Of Service Payments Into That Fund; Specifying The Public Infrastructure Improvements Directly Benefiting The Parcels; Authorizing Make-Whole Compensation Payments To The Bethel Local School District And The Miami Valley Career Technology Center, And Declaring An Emergency.

Assistant City Manager Don Jones stated this ordinance allows the City to create a TIF district in Miami County outside of Parktowne. He said this was discussed in 2012 as part of a larger TIF district. It was brought up again as part of the City's 2025 Plan in May, 2014. Council directed him to approach the Bethel school district to begin discussions and to make sure they were okay with whatever the City was going to do. The purpose of this TIF is to allow for additional funds for construction of a new north fire station. The school district's primary concern was the length of the TIF which is a 30-year non-school TIF. He then proposed a 75/25 10-year TIF on December 1, 2014 with the caveat that both parties could reach an agreement on the 30-year TIF. He met with them on December 8, 2014 and they reached a consensus that the 30-year TIF was acceptable. The school district's main concern was that it maximized the most cash flow to the schools. The City delivered a notice retracting the original notice and issuing a new notice to them on December 11, 2014. He met with them again on December 17, 2014. This is a 30-year non-school TIF. The schools will receive 100% of the funds that they would have received as if the TIF did not exist. The TIF will generate approximately $1.3 million to the TIF fund. It will generate approximately $3.3 million to the school district over the 30 years. He asked that Council approve this.

Mark Campbell, Chair of the Administration Committee, stated the City has been working with the Bethel Township School Board of Education for the last two years. Initially, the conversations were conceptual in nature. As it turned out, the parcel in question can be split which allowed for the City to construct a new fire station next door to a new apartment complex to be constructed and from which new TIF revenues will be generated. The type of TIF discussed with Bethel Township included about every conceivable combination. The intent was always to work out an arrangement that was best for the school district. As it turns out, the 30-year, no-school TIF, which means the schools are unaffected by the TIF, is what the parties came up with. He then said the Mayor has expressed his dislike for TIFs in general. When the City commenced negotiations with the Bethel Township School District, the Mayor interjected himself directly with the Bethel Township School District in opposing this particular TIF. Of course, he did not know what he was opposing because the discussions at that time were purely conceptual. Negotiations took off in the November/December, 2014 timeframe, once a specific parcel had been identified for the new fire station location. At the Administration Committee meeting on December 2, 2014, City Staff presented the current status of the negotiations with the school district. The presentation included the possibility of a 30-year, no-school TIF, but no decisions were made. By December 12, 2014, City Staff had finalized its recommendation of a 30-year, no-school TIF. The City gave notice to the school district that it would be passing appropriate legislation to formally commence a TIF process on December 29, 2014. On or about Sunday, December 14, 2014 or Monday, December 15, 2014, the Mayor circulated to households in the Parktowne area of Huber Heights a one-page flyer that began: “This month City Council plans to divert Bethel School money into the City coffers by creating a new TIF district.” This of course was not and is not the truth. Mayor McMasters has admitted to all of Council that it is not the truth. In the Administration Committee meeting on December 17, 2014, the Mayor was asked to correct the record. Notwithstanding the Mayor’s open admission that his flyer contained this untrue statement, he refused to clarify for the record which of course is that the Huber Heights City Council does not intend to divert any money from the Bethel School District by creating the new TIF district. Several residents who attended the December 17, 2014 meeting suggested that it would be prudent for the Mayor to clarify his statement by retracting the untruth. Because of the Mayor’s refusal to retract his untrue statements, Council is forced to make this public statement to all of the citizens of Huber Heights. Nobody is perfect. Mistakes can be made. There is no shame in admitting to a mistake. Doing so would have been the easy thing for the Mayor to do. Because he has refused, Council is forced to correct the untruth for him. Simply stated, the City Council does not plan to divert Bethel School funds into the City coffers. The action before Council tonight calls for the creation of a 30-year, no-school TIF and, if acted upon by Council tonight, this 30-year, no-school TIF will have no impact on the Bethel School district. He wished to speak directly to the citizens of Huber Heights. This Council did not choose to be in this position. If the Mayor would have simply called the City Manager before circulating his flyer, all of this could have been avoided. As stated earlier, the Mayor is entitled to his opinion and he is entitled to express his opinion. But nobody who wants to contribute to the political discussions has a right to do so knowingly put forth false and misleading information designed to sway voters’ impressions. What he has said Council is going to do is the exact opposite of what Council is, in fact, going to do. A simple retraction is all that Council had asked for. Instead, Council is forced to make the retraction for the Mayor. Once again, here it is. Mayor McMasters circulated a flyer recently that included an untruth. Mayor McMasters recognizes the false statements and has agreed that his statements are untrue. He has refused to retract his false statement. The false statement is: "This month the Huber Heights City Council plans to divert Bethel's money into the City coffers by creating a new TIF district." The correct statement and the true statement for all of the citizens of Huber Heights to know is that after almost two years of negotiations and discussions with the Bethel Township School District, the City has determined a 30-year, no-school TIF which diverts no money from the Bethel Township School District is in the best interests of the both the City and Bethel Township School District. Fortunately, in this great City and country in which we live, setting the record straight is not a crime. This Council has always worked for the best interests of the citizens and this Council will continue to do so. The citizens of Huber Heights deserve no less.

Mr. Lyons asked Mr. Schaeffer how Council would go about adopting Mr. Campbell's statement for the record.

Mr. Schaeffer said that would require a motion to ask for an amendment to the agenda to add this issue for consideration.

Mr. Lyons asked if that would be Agenda Item 9. B. 2.

Mr. Schaeffer replied yes.

Mr. Lyons asked if this would be a censure of Mayor McMasters.

Mr. Schaeffer said any public criticism, positive or negative, is a form of censure. The City Charter formally recognizes the concept of censure as not having any sort of penalty or action attached to it. The fact that the public statement has been made in putting it into the record is certainly pointing out the issues in that statement.

Mr. Lyons asked if this would be the second censure of Mayor McMasters; the first censure dealing with the City Manager's contract earlier this year.

Mr. Schaeffer replied yes.

Mr. Lyons then moved to amend the Agenda to include Agenda Item 9. B. 2.; Mrs. Dudley seconded the motion.

Mrs. Vargo said things were said, information was put out there and the community really deserves to have the truth provided to them. It is appropriate for Council to make the statement and to set the record straight because the Mayor did say some things that were not correct and not truthful and he would not take them back. Therefore, it is up to Council to set the record straight.

Mr. Starline said if this Council as a collective body wants to make a statement of what they believe is the truth; that is fine. He noted two things for the public record as well. One, he was not at the last Administration Committee meeting so he was not presented with this information and he has no knowledge of what is going on except what he has heard here from the dais tonight. Secondly, he was not briefed nor was he informed by any documents or otherwise brought to a committee meeting where he was told that this action was about to happen. The first he heard of it was right before the meeting started tonight when Mr. Lyons leaned back and said," I just want you to know and give you a heads up that tonight, we are going to censure the Mayor." None of this was discussed as he understands it in an open and public meeting. Nor was this discussed in any Executive Session that he knows of. He is simply pointing out for the record that while Mr. Campbell is welcome to express his opinions and Mr. Lyons is welcome to join in that opinion and his colleagues may or may not join in that opinion, he is still struggling in his mind since he got no briefing on this until tonight, on whether he will join in it. He knows of nothing that prepared this in the public eye until Council was up here tonight. His concern is that these actions appear to be something that has been concentrated and planned and prepped. He does not mind that Mr. Campbell has prepped remarks. That is his right and his prerogative. He does not mind if Mr. Lyons has prepared remarks – he sees them, he knows. It is okay to have prepared remarks, but the entirety of this statement looks contrived, looks prepared, and for it to have been prepared by at least five members of this Council ahead of time would be engaging in City business before Council got there. He has no proof that happened. All he has is what his gut tells him and what he is seeing. He is entitled to that opinion and he is entitled to draw that in. Based on what has been said and what has been done, this was prepared ahead of time and that to him is very troubling because that is action in the shadows which a lot of the residents have all told Council not to do. In regards to this censure action, he is sorry but he does not think that is appropriate. If Council wants to make a statement as a Council, that is its prerogative. If these two gentlemen and everyone else want to join, that is also their prerogative. But to take the step of censuring without informing all of Council ahead of time – and that includes him and he was not informed of this until now - he objects to.

Mayor McMasters said for the record, he has not admitted to any untruth in any format whatsoever. As a matter of fact, he wishes that Council had reached out to him and let him know that it had changed its mind on that Thursday and Friday because that would have actually been a good turning point for the City where Council would have actually assessed some of the things that he was objecting to and changed its mind. Everyone could have moved forward in a positive manner had they let him know that his arguments had won the day. However, they did not; so as far as he was concerned when he distributed the flyers on Saturday and Sunday, Council was on track to adopt the last notice that it had given Bethel Schools which was the 75/25 TIF. He said it would be hard to find any discussion at all where the City was prepared to give the Bethel Schools any more than 30% to 40% of that so he is extremely happy. Actually, the report that he got back from Bethel Schools was that there was a 50/50 split discussed.

Mrs. Kaleps said she agrees somewhat with Jan Vargo in suggesting that the Mayor might have had an opportunity to either correct or retract some of the points that he was making and some of the allegations that he was assuming in the letter that went out to quite a number of constituents. Council asked him if cared to do that and Council confronted him with information that seemed to be able to afford him the opportunity to correct what he had stated. She asked what was his answer – it was no.

Mayor McMasters said he said the exact same thing he said tonight as he did at the Administration Committee meeting.

Mrs. Kaleps said nothing was corrected and so everything that was disseminated out there was left to be viewed as the truth. Clearly some of those statements were not true or they were very gross misstatements. She said she is not here to necessarily censure or take that cut of action if the Mayor is ready to concede that indeed they were false statements and inappropriate for the Mayor of the City. In fact, Council put City Staff forward in a position to interact and negotiate. That is what negotiations are all about. Until all the final facts are in, it is still negotiations. At that point in time, City Staff came back with that negotiation. Mayor McMasters somewhat obstructed that process and that was not right.

Mayor McMasters said that was exactly his purpose of course. His purpose was to prevent the Council from taking anything from Bethel Schools for this project. That was what was accomplished. So, if that was an obstruction that was exactly what he did.

Mrs. Dale said she agrees with what Jan Vargo and Karen Kaleps said, but she does think that the way things are and the information that is going out – it must be very confusing to citizens. Council has to try to put forth what actually happened. They deserve to have accurate information provided to them. More importantly, Council is the governing body of the City and it needs to officially set the record straight and that is what it is trying to do here tonight. With the information that has been provided, she thinks that most of Council does not approve or endorse the Mayor's behavior. The Mayor has incorrectly represented the actions and decisions that Council has made. Council will provide the official and correct information and correct the falsities that have been out there. This is one of the things that Council is trying to do tonight. The citizens deserve to know the truth.

Mrs. Blankenship said she wanted to reiterate that a censure is the expression of formal disapproval of someone or something; typically in a formal statement and this is what we are doing. It is a formal statement because Council was disappointed in the Mayor going out ahead of anything that it had already decided and giving it out to the people and it was incorrect. Council asked him to retract it and he did not. This is just the step Council is taking to let it be known that it was not the correct information. Hopefully, everyone can move forward and work together in the future and have better communications so that these things do not happen.

On a call of the vote, Mrs. Vargo, Mr. Lyons, Mrs. Blankenship, Mrs. Dale, Mrs. Kaleps, Mrs. Dudley, and Mr. Campbell voted yea; Mr. Starline voted nay. The motion passes 7-1.

Mrs. Vargo asked if Bethel Schools will receive about $3 million over a thirty year period. What would the amount have been if it had been a 10-year TIF?

Mr. Jones said it would have been about $2.5 million.

Mr. Starline asked if Council knows with regard to this TIF in particular what its funds will be used for. It is his understanding that the intention is to use some of this money to fund the building of the new fire station. But, he also understands that there is money that has already been collected in a prior tax levy that is sitting in a capital account fund. So why do we need this TIF to fund the building of the fire station when the City already has money in the bank? The other question is whether all of the tax money that has been collected from that tax still sitting in this capital account or has some money already been advanced out for other projects?

Mr. Jones said this was discussed in May, 2014 when Council was looking at a 0.35% tax levy increase to raise a certain amount of money for the City with regards to balancing the budget. City Council, in particular Mr. Starline, suggested City Staff needed to go back and look at various ways to reduce that particular 0.35% ask to 0.255 if possible. One of the things City Staff recommended was to use the funds that were allocated to the new fire station through the 2005 income tax levy. The language on the ballot had no specific language in regards to a fire station, but the ordinance does. Per law, if the City could find another revenue source to support the fire station, it could then use a portion of those funds to give to the Fire Division to fund its operations which is largely personnel. The City could use the money that was for the fire station to staff the fire stations if it could find another revenue source. The City would be able to replace income tax money with TIF money to reduce the total increase from 0.35% to 0.25%. There are also some funds available still in the Fire Division capital fund.

Mr. Starline then said to the people who asked if the City has already funded this - the answer is yes, but the funds have that ability by law for Council to use them. This was explained earlier on as to how the City was going to do this.

Mayor McMasters said the City had a greater amount in the bank toward the capital fund prior to this year, but now it has a lesser amount because of the expectation to create this TIF?

Mr. Jones said no, what City Staff recommended to Council is that Council not place the money that would have gone in to this account and that Council not place that money in the account in 2015 going forward because the City is replacing it - the fact of the matter is that once the City gets this building up and going, it is going to have a debt service amount and whatever that amount is, will be the amount that the City is going to leave in there less what it collects from this TIF. This will not fully fund it, but a good majority of it.

Mayor McMasters said so the balance is the same last year as it is this year?

Mr. Jones replied yes.

Mayor McMasters said even though people talk about the fire station as being the purpose of creating this TIF, the language acknowledges and allows it to be used for the interchanges, the music center, and other projects that the City has identified.

Mr. Campbell moved to waive the second and third readings; Mrs. Kaleps seconded the motion. On a call of the vote, Mr. Lyons, Mr. Starline, Mrs. Blankenship, Mrs. Dale, Mrs. Kaleps, Mrs. Dudley, Mr. Campbell, and Mrs. Vargo voted yea; none voted nay. The motion passes 8-0.

Mr. Campbell moved to adopt; Mrs. Dale seconded the motion. On a call of the vote, Mr. Starline, Mrs. Blankenship, Mrs. Dale, Mrs. Kaleps, Mrs. Dudley, Mr. Campbell, Mrs. Vargo, Mr. Lyons, and Mr. Starline voted yea; none voted nay. The motion passes 8-0.

B.2. Mayor McMasters said this amended agenda item is to say that Mr. Campbell’s statement is the true facts on the situation and to discuss the censure.

Mr. Lyons moved to adopt Mr. Campbell’s previous statement for the record and censure Mayor Tom McMasters. Mrs. Dudley seconded the motion.

Mrs. Vargo said she was a little upset with Tyler Starline because he said that he had not attended the last Administration Committee meeting, which he did not. However, that was a couple of weeks ago and she is very surprised if he did not see the flyer that Council is talking about or if he did not talk to the Clerk of Council or if he did not talk to the Administration Committee Chair to bring him up to date on what happened at that meeting. Mr. Starline is making it seem as though everything that is happening tonight by Council is improper and he was not there to witness and to hear what went on. She is disappointed and she wanted to correct the implication that he put out there before Council votes.

Mr. Starline said he did talk to Anthony Rodgers and he did read the flyer. He did review information regarding that. Nothing in any of those discussions mentioned the word censure or mentioned making a formal statement here tonight to correct the record. In fact, nothing was put out for them to see. His concern is that there was no advance indication that there was going to be an effort to censure the Mayor which is a significant effort. There was nothing indicated ahead of time that there would be a formal statement made tonight and clearly the statement was pre-prepared because it was written and Mr. Campbell was reading from it. At least that is the way it appeared. He apologized if you think that he is saying there was incorrect action taken at the Administration Committee meeting or the City Council Special Meeting. There appears to have been an effort to prepare for censure tonight without informing Council ahead of time and there appears to have been an effort to make a formal statement asking Council to adopt that without Council discussing it in some other forum either in open or Executive Session. So that is his concern – not the action or inaction. His opinion on that is a separate matter. It is the process to which Council reached the point that it is at tonight.

Mrs. Vargo said it is not unusual for a Committee Chair to have statements prepared for anything that they would be reporting on. She has more than once sat here and listened to statements that she was hearing for the first time. She does not think that is unusual. There are no consequences to it.

Mr. Starline said he understands that the Chairs often have remarks. That is not his concern. It is in part that he was informed right before Council started that it planned to censure the Mayor. Mr. Lyons told him right before the City Council Meeting started that Council planned to censure the Mayor. That means that there was a plan in place and that there were efforts taken to prepare for this. Where those efforts came from were not in an open public meeting. If it was not a majority of Council that made that effort, then it does not have to be an open meeting. But the other problem that he has with it is that there were efforts made behind the scenes to do this. His concern is that this appears to be a concentrated effort that did not go through the process of Council deliberations until tonight.

Mrs. Vargo said appearances sometimes are misleading.

Mr. Starline said sometimes appearances are exactly what reality is.

Mr. Lyons said when this issue was discussed in an open meeting on December 17, 2014; input was provided by citizens who attended and made statements that the Mayor should provide a response or statement regarding the false information. The Mayor's response was that it was not going to happen. He pointed out to Mr. Starline that this is the next logical progression. The Mayor was given the opportunity to retract his statement. His comment was that it is not going to happen. So having said that, he respectfully disagrees even though the word "censure" was not used at that particular meeting that Mr. Starline did not attend, it is the next logical progression to have this discussion and this discussion should be at the City Council Meeting exactly where it is right now. It is up to his colleagues to make a decision as they see fit.

Mrs. Kaleps said there was a considerable amount of discussion at the Administration Committee meeting and it involved citizens that were in the audience. She thinks the word "censure" might have been used, but the minutes from that meeting are not ready yet. One of the suggestions was that Council have a complete committee report by the Chair that laid out what happened and the results of that discussion and whatever Council wanted to do, they would do; but there was no suggestion that it would be a specific point of action. She came tonight to ask the Mayor to retract his statement. He has refused again. She thinks it is a sad day for the City and for the political body that runs the City legislatively when it has to censure anybody. That is very sad and not good for the community as a whole; but sometimes it is the only alternative. It is an even sadder day when the Mayor advocates for the interest of other communities against the interest of the City. Worse yet, he has been doing this for most of the year with incorrect statements and misleading information which culminated in this last flyer. It is not clear if this is due to ignorance on the Mayor's part or a deliberate attempt to undermine the City's well-being. There were fabricated statements - all of which are a result of being recklessly misleading to the community as well as adjacent communities that the City needs to work with. She feels the Mayor is deliberating undermining and obstructing Council policy decisions; some of which are duly executed by expert staff and in accordance with Council's direction and instructions. For these reasons, she feels that at this point in time that there is no other alternative but to censure the Mayor for this inappropriate action and make that the appropriate reaction.

Mrs. Dale said the fact that the Mayor made a statement that Council loves the aquatic center and the music center and has put that before the interest of the school system and the fire station - that is incorrect and absurd. She believes for herself and her colleagues that this is a false statement.

Mayor McMasters said he wants to address both of the things he has objections to. As far as the interests of the City, the City is more than just an aquatic center and a music center. To bring quality people into the City, it needs a good school system. If Council continually decides to spend money, or spend money that would normally go to the schools, in order to do aquatic centers and music centers shows a higher priority for those kinds of projects. Since he pointed out that Council made that choice when it decided to go ahead with the aquatic center instead of paying off the TIF and returning the money back to the schools which was one of the options, Council has had a number of different opportunities to return money to the schools. The first was with the aquatic center – maybe no one was thinking that way. Although he takes objection to the fact that whenever the City talks about other taxing entities having that money returned to them back in 2011 when Council was talking about the aquatic center, the school district would have been asking for that money to be returned to them. So, obviously he thinks there was some conscious decision not to say it was the school district that would get that money back so that people would not know that was the choice that Council was making. The fact that Council went ahead with the music center and not with putting that money back into the schools, shows a higher priority for the music center. When Council talked about the $750,000 billboard; he advocated at that time that the City split any revenue from the billboard with the schools and set up a contract for that; since that $750,000 was going to come from money that would have been paid to the schools if the City had not set up that billboard. So the plan is to have the billboard paid for by using the TIF money that basically would have come from the schools and take any revenue from that and put it into the General Fund. When he suggested that the City put part of it into the General Fund and give part of it to the schools as a good faith measure for basically thanking them for allowing the City to build that – it falls on deaf ears. So actions speak louder than words. If you have the choice to take money from the schools and build an aquatic center or take the money and build a fire station instead of a billboard or a concession stand, then you value billboards and concessions stands more than you value fire stations.

On a call of the vote to adopt Mr. Campbell's statement as a censure of Mayor McMasters, Mrs. Blankenship, Mrs. Dale, Mrs. Kaleps, Mrs. Dudley, Mr. Campbell, Mrs. Vargo, and Mr. Lyons voted yea; Mr. Starline voted nay. The motion passes 7-1.

ADMINISTRATION
Rob Schommer, City Manager

C. A Resolution Authorizing The City Manager To Enter Into Certain Letters Of Intent To Negotiate The Purchase Of 1.76+/- Acres Of Land, Negotiate A Due Diligence Process, And Negotiate The Project Management Services To Construct A New Fire Division Facility, And Declaring An Emergency.

Mr. Campbell said before there is any discussion, he would like to recuse himself. Mr. Campbell left the Council Chambers during this recusal.

City Manager Rob Schommer said this item has taken a different direction than what he had originally put this together to discuss. He said, at the last Administration Committee meeting, there was direction given from the committee members as to what can the City do to get moving on the fire station. There have been questions. The opportunity was provided to use this meeting to have the next step move forward. He met with City Staff and found out what is the best way to show the commitment to the fire station. He said this was the direction from the committee. The City would do its due diligence, land purchase, etc. to formulate a plan to take steps to get moving towards the fire station. That is what he did. It was not shady and it was not done as alleged by Mr. Deak. Secondly, the information regarding the due diligence, the City has to find out if the land is suitable. Because of that, he reached out to the person that he knows who knows best about those things and had an initial discussion which led to what he suggested and presented as the City Manager to the Council as to what he saw to be the direction. He was not involved in the original discussions; he has been here only in the last year. He set up a timeline to discuss what had gone on in the past. When he talked about having the due diligence done and the Project Manager, there is a lot of confusion and a lot of people jumping the gun and making assumptions as to what the intentions are. He set off a few months ago discussing how the City is going to plan to move forward to bring things to Council. This is an idea to go forward. Having a Project Manager is no different than having any type of skilled professional. The work that he has seen during the last year working regularly with Mr. Conaway in producing the facility that has been done on time and within budget is the skill set that he feels most comfortable with. He said this is not an intention to proceed with no-bid construction. He wants to make sure that the City is diligent in how it formulates its RFPs and RFQs. This is a pretty big and important thing. The purpose was to bring the discussion in multiple steps. He asked Mr. Schaeffer to share some information regarding the allegations regarding the City's previous experience with Mr. Conaway.

Mr. Schaeffer said there are two points. One is that none of what is proposed for, short of a contract, requires any City action. What this legislation calls for is that if out of the work that would occur, a contract is negotiated, it would have to come back to City Council for action. This resolution identifies things that are going to happen and keeps Council informed. The other point is if a contract comes out of this, it will have to come back to Council for action. He received an email from Mr. Starline on Saturday night. Norfleet, Brown, and Petkewicz is an engineering firm. The contract is dated April 1, 2013 and it was reviewed and approved on April 22, 2013. The contract calls for the early site package for the music center and the GoodSports parcel. The April 22, 2013 motion was made by Mr. Starline. Mr. Campbell and Mrs. Kaleps were not present. The drawings show the pad site work for the GoodSports project. The scope of work within the contract resulted in drawings being prepared called for the site work to include the pad for the GoodSports project. The bid package that was prepared for the contracting community to bid upon includes the Norfleet, Brown and Petkewicz drawings which included the pad for the GoodSports project. The Charles Jergens contract bid included the pad work. The early site package bid was discussed at the July 16, 2013 Administration Committee meeting. The Charles Jergens contract was approved at the July 22, 2013 City Council Meeting. The vote was 6-0. Mr. Campbell and Mrs. Dudley were not present for that meeting. The email and the facts as he knows them do not jive very well. First, Mr. Conaway has no authority contractual or otherwise to spend any of the City's money. He cannot commit City money; he cannot direct City Staff. The email states Ken Conaway, LLC through its member Ken Conaway was directly responsible in a significant part for the decision to build the pad for the GoodSports structure. Were there discussions about the Norfleet, Brown and Petkewicz undertaking? What it should and should not cover and was Mr. Conaway part of those discussions? Of course, that is why he is there. Part of that input from Mr. Conaway was about 95% related to the music center portion of the contract scope of work with Charles Jergens because that is Ken's responsibility under his Project Manager contract. Not what happens on the GoodSports parcel. Did he have a significant impact on that decision? Was he directly responsible for the decision? Mr. Schaeffer said that is not the case. The disconnect continues. Mr. Starline claims that Ken Conaway admitted during an Administration Committee meeting that doing so was not included in the contractual documents but he made the decision at the trailer to proceed without obtaining authorization from the City Council. The disconnect is that the Administration Committee meeting minutes do not support this statement per a search of those records by the Clerk of Council. The contract documents between the City and Mr. Conaway do not support this statement. He does not have the authority to act in such a fashion. City Staff do not support the statement that Mr. Conaway made the decision to proceed without obtaining authorization from City Council. He participated in discussions with City Staff but City Staff makes the recommendation and City Council makes the decision. He discussed this with Mr. Conaway and Mr. Conaway does not agree with the statements. This is a very serious allegation that some way Ken was able to circumvent the process, City Staff and the Council to the financial detriment of the City and it is a very serious statement. The email calls it a unilateral decision. Based upon the facts that he has been able to pull together, he has seen serious problems with the allegations. He said if Mr. Starline has additional information, he would like to see it. If he is misinterpreting anything that Mr. Starline has said, he would like to hear it. If this is it, then certainly he cannot expect anything to come from this. He said Mr. Starline owes Council an explanation, if not Ken Conaway himself. Unfortunately if there is not anything more, then Council has a very similar situation to the Miami County TIF misunderstanding that it just discussed with the Mayor. There is a very serious disconnect. If this email has been distributed to third parties as the email says, it just compounds the problem. He said Tyler Starline is a knowledgeable, talented individual. He thinks Tyler will do the right thing, but he believes the ball is in his court.

Mr. Schommer said part of his presentation of why he still stands that he asked Council to consider the recommendation as he made, is that he wanted to provide that information as to the question of the lack of bidding. He said there are questions as to Mr. Conaway's previous performance. Mr. Schommer said he knows it as nothing but commendable. He wanted to make sure that an opportunity was given to basically explain Mr. Starline's concerns. He does not have those concerns. He said when Mr. Deak was at the podium making allegations and speaking about Mr. Conaway - any failures in the performance of an individual that the City is contracting with and expected to manage, if those do exist, look at the City Manager first. If Mr. Conaway is not doing his job, then the City Manager is not making sure he is. Let's look there first rather than coming up and making allegations against the individuals that the City is hiring. He said to allow City Staff to answer to any perceived inadequacies because there are always answers. He thought that was out of order and he asked that in the future that anybody that would have an issue with a particular person, that it is his obligation to make sure to manage that relationship. He said to get this fire station underway, this is the best option in his opinion. He said he could go on and on about things that Mr. Conaway does not take credit for that he should get credit for. He managed the roadway and other site work for TJ Chumps that did not cost the City a dime. That is the type of information that he wants to make sure gets out about the caliber and the abilities of the professional that he is recommending.

Mrs. Vargo of the Administration Committee said this was before the committee and the committee does recommend approval. She said Ken Conaway is not going to be the engineer or the builder or the architect for this project; he is going to manage it. He has managed three or four projects for the City and done so very, very well. He comes to all the Administration Committee meetings always prepared with a report. To think that this is a no-bid kind of thing is not true because what the City is asking him to do is to simply manage and to help the City write the RFQs and the RFPs. He has the trust of all of City Staff. He knows the projects that the City has and he knows the City and he is willing to do this at no cost. The committee recommends approval.

Mrs. Vargo moved to waive the second and third readings; Mrs. Dudley seconded the motion.

Mr. Starline said regarding the issue of Mr. Schaeffer's demand for more proof - a couple of residents that are in attendance tonight were at the Administration Committee meeting that he referenced in his email regarding whether or not Ken Conaway admitted during the meeting that doing so was not included in the contractual documents. He made the decision at the trailer to proceed. He asked if there was anyone in the audience who was in attendance at the committee meeting. He then asked if they heard this.

Mayor McMasters said he did not really want to get into this.

Mr. Starline said he will defer his defense on this. At this time, his concern with the substance of this item is that these are, in fact, no-bid contracts. Jan Vargo said these are not no-bids. He said if you read Exhibit A and Exhibit B, the documents talk about the intent to negotiate contracts. The documents also do not have anywhere in there that there will be a bid process involved. Exhibit A – the Letter of Intent to negotiate a two-part agreement – the City is actually talking about an agreement, a contract with Mr. Conaway that is not being bid to anyone else. The documents are exclusively a direct agreement with Mr. Conaway. He is not asking for this project to be stopped and he is not saying that Mr. Conaway should not ultimately be awarded the lowest and best bid, but as it relates to due diligence and the Project Manager, there are probably – and he is certain, at least one other that would be willing to submit a quote or to bid on a Project Manager status. He understands that the City is not talking about the construction process on this; it is talking about the Project Manager level of this project. He concurs with that. The problem is in this particular instance, as a matter of policy and as a matter of fiscal responsibility to the citizens, that these two components should be put out to public bid or at least some other form other than a unilateral award of the contract to Mr. Conaway. If he bids or if it is a Request for a Proposal where City Staff seek out proposals for a couple of Project Managers and a couple of companies to do the due diligence; and if Ken Conaway comes in as the lowest and best on that, let the City Staff make that recommendation. Then, Council can tell the citizens that this process for this project has been done. So the City is not saying that it feels this person is lowest and best, but it can back it up. Put it out for the quote or put it out for formal bid. But this unilateral negotiation of an agreement – he has a problem with that. He said on this project, he does not think it is best or prudent or what the City should do. The City just passed an income tax levy where it said the City is going to be good stewards of the peoples' money. He understands that legally the City does not have to bid this, but it says the City may or may not waive. That is a policy decision. His policy recommendation is that the City show the public that it is going to get the lowest and best bid. The City does that by something other than a unilateral award of contract. Therefore, this letter of intent to negotiate an agreement should not go forward. The Council should be directing City Staff to either seek out Requests for Proposals on these or to formally bid it with sealed bids. His statement is not specific to Ken and his LLC – that he cannot do this – nothing to that effect has been said. He is concerned with the process and the procedure that has been proposed. As to his legal defense, since Mr. Schaeffer brought that up, he will deal with him on that, but it will ultimately involve differences of memory and differences of witnesses, but if you think that he made that allegation with absolutely no backing or no support – that is incorrect.

Mr. Schaeffer said he did not say that; but his point is that none of the comments that he made concerning his email dealt with the comments Mr. Starline just made. They dealt with his allegations against Mr. Conaway and Mr. Conaway's LLC. The facts as he knows them are simply not supported. If Mr. Starline can provide additional information that support his facts, that would change his mind.

Mr. Starline said if he has the support of a couple of witnesses who will verify his version of it and Mr. Schaeffer has witnesses that go the other way, then there are differences of opinion.

Mr. Schaeffer said Mr. Starline's email does not address other witnesses.

Mr. Starline said he was not asked. He said Mr. Schaeffer did not contact him to follow up with him on this and he did not ask him to bring witnesses. He did not give him any indication before what he said here tonight that he had a disagreement; but he did conduct an investigation. Yet, he did not contact him.

Mr. Schommer said perhaps the meeting that Mr. Starline is referring to was one where there was some discussion about the VIP areas at the music center. To answer specifically to the bidding, on April 22, 2013, he did review and saw today that contract that talked about the GoodSports pad. That was on April 22, 2013 – vetted and passed by Council. That was not a decision by

Mr. Conaway. The contract was passed by Council. That process was followed up on July 22, 2013 with the actual contract with Jergens and that was when that work began.

Mayor McMasters asked if those drawings were brought to the Administration Committee meeting and if they were part of the minutes for any of the meetings.

Mr. Schommer said those meetings predated his tenure as City Manager; but there is a drawing that he printed online and it does show the GoodSports pad.

Mr. Falkowski said all drawings were presented to Administration Committee in multiple stages throughout the whole process presented by him and by Mr. Conaway showing the status on everything. Any large scale drawings were probably not in the minutes. He has been working on this project from the beginning. It was not Ken doing something on his own. Mr. Falkowski said he has missed maybe three meetings in the last two years, and nothing like this has been said.

Mr. Schommer said regarding the professional services aspect, there is no attempt to try to divert anything. What has been typical and standard practice, if the City wants to make sure that it answers to the community as far as lowest and the best – how far out does that extend regarding the professional services agreements because there are several that the City has where it does not do that. As the City Manager, he would hope that there is some trust and faith in his ability to carry out the goal that was set by Council. In this particular situation, he can assure you that he will check and validate that as part of his own internal due diligence in negotiating with Mr. Conaway and his services as Project Manager. He has previously and he will continue to do that. He will, in fact, check with other sources of project management to validate and verify that what he is submitting or what he is talking about fits what is a good value and what is best and lowest as far as what is best for the taxpayers. He will certainly do that and that is the way he operates anyway. He would like to get started on the due diligence and get that lot split and get the area tested. He wants to keep the momentum going and negotiate terms with updates to Council with Mr. Conaway. He will provide information regarding some other sources much like with the Y agreement that the City is in the process of finalizing – with that being a professional service as well without the formal bidding process - but still making sure that the City is making decisions that are best for the constituents.

Mr. Starline said he has heard a lot of comments regarding what was said in the meeting and he was told by the Mayor that he is not supposed to be responding to that, but if Rob is saying well he will verify on the back end by calling around to a couple of others, then let’s get that on the front end. Let’s hold off with the negotiations with him, particularly, and get a couple of quotes. Why award a unilateral contract without getting the quotes up front. If Rob just said he can do it on the back end, why can’t he do it on the front end?

Mr. Schommer said he does it as he goes through and negotiates. He would be validating and verifying some of that information, as he does with some other things. He already knows some of this because of the comparisons that he has already done. He certainly would not even make that recommendation and he guesses that came to the faith in his ability to bring quality recommendations and fulfill the goals set by this Council.

Mr. Starline said he is not saying that the City had to do it with formal bidding, but by looking at this policy-wise, the City should be putting the

Request for Proposals at the front end. That is his opinion on this particular project. There are lots of folks who can be the Project Manager for the building of a fire station; therefore, to sit there and say that the City only deals with one on this project, is not an appropriate approach.

Mr. Lyons said he was involved in conversations with residents and he wanted to clarify a couple of statements he made. He said tonight all that was going to be voted on was the due diligence. He was happy to hear from the City Attorney that no additional action will be taken on the contract. He asked Mr. Schommer, with the negotiation between him and Mr. Conaway, if there is not an agreement, then will he go through a different process. If there is an agreement, then he will bring those details back to a committee meeting. He then said he made comments about Mr. Conaway earlier this year – fantastic, professional services that he has had have been more than commendable. He then asked if the aquatic center and the amphitheater were brought in on time and on budget. The music center – the City started out with an $18 million contract and increased it to $19.3 million. City Council agreed to that and the due date for that transaction had to be extended to the new completion date. Is the $19.3 million on budget?

Mr. Jones replied it was on budget.

Mr. Lyons said he wanted to make those comments and to make sure they were accurate. He said Mr. Schommer's read ahead went over at least twice about how highly recommended Mr. Conaway is. He asked Mr. Schaeffer if Council were to go out on his contract for the lowest and best bid, would Council have to do that and open it up to all of the law firms, not just PS&E.

Mr. Schaeffer said professional contracts do not require a lowest and best standard.

Mr. Lyons said his point is Council did not do that. He said he holds Mr. Schaeffer in the same regard as he had prior to this conversation. Mr. Conaway is not the only professional service contract that Council does not go out and bid because he has noticed in three years that with his service to the community, sometimes you really do get what you pay for. That is why the tendency to renew the professional services because they do have such a high regard among the community and City Staff. The City did not send the Water Department contract out for a bid. The City did put the trash service out to bid and it went for the lowest and best. There are times where the City puts out professional services contracts for that low bid but there are other times when it goes specifically for the quality services that it gets. He appreciates everyone's faith in Mr. Conaway.

Mrs. Kaleps said in the late 1980's, the City tried to turn its financial rental commitment to some City offices that it rented out into a permanent building. Council also determined it was in dire need of a police station. At the same time, the City had a courts building that needed to be built and a fire station in the future. Those projects started with the police facility. The City did go for the bids and a Project Manager. The City got a very capable firm with the Project Manager and it rippled into all of these buildings being built under budget and saving taxpayer money. If Council had gone out every time for a new Project Manager, the City would still be here with no court building and no fire station. The City is not required to go out for bid – a Project Manager is not that case. If you have a good Project Manager that knows what they are doing and understands this community and lives and works in this community, you are almost a step ahead.

Mrs. Dale asked Mr. Schommer if this is a cost saving for the City.

Mr. Schommer said that is the purpose of having a Project Manager to save costs. He said even members of the community see Ken as a member of the staff because of the involvement and dedication that he can give to the projects in Huber Heights. He said Ken has done a good job and saved the City money. As the City Manager and seeing the growth of the music center, he is embarrassed at some of the commentary that has been made. He wanted Mr. Conaway to know that he appreciates the work that has been done.

Mayor McMasters asked about the $25,000 budget for the due diligence and how that money will be spent.

Mr. Schommer said these funds are used if there are any legal fees or any research title work that the City would have to do; in addition to soil work and other things.

On a call of the vote to waive the second and third readings, Mrs. Dale, Mrs. Kaleps, Mrs. Dudley, Mrs. Vargo, Mr. Lyons, and Mrs. Blankenship voted yea; Mr. Starline voted nay; Mr. Campbell recused. The motion passes 6-1.

Mrs. Vargo moved to adopt; Mr. Lyons seconded the motion. On a call of the vote, Mrs. Kaleps, Mrs. Dudley, Mrs. Vargo, Mr. Lyons, Mrs. Blankenship and Mrs. Dale voted yea; Mr. Starline voted nay. Mr. Campbell recused. The motion passes 6-1.

Mr. Campbell returned to the meeting.

10. City Official Reports and Comments

Mrs. Dale wished everyone a very prosperous and Happy New Year.

Mrs. Kaleps echoed the comments of Mrs. Dale and said more than anything else – health and family are important.

Mrs. Dudley concurred with the previous comments. She then said have a good night.

Mr. Campbell had nothing further this evening.

Mrs. Vargo wished everyone a Happy New Year. She sees nothing but good things in the future for Huber Heights.

Mr. Lyons had nothing further this evening.

Mr. Starline thanked the Chief of Police for the effort today for the retirement of one of the canines. This was his first canine retirement. He was expecting a cake made out of kibbles. It was a great event to hear all of the positive things the handler had to say and all of the good stories. He thanked the previous Police Chief Rob Schommer and the new Police Chief Mark Lightner for having a wonderful canine unit. He also thanked Mrs. Huber, as always, for her financial support of the canine program. She is responsible for the reimbursement of the purchases of all of the canines. He then wished everyone a Happy New Year.

Mrs. Blankenship wished everyone a Happy New Year. She said everyone wants to keep Huber Heights a bedroom community; but it has grown. She has been here over 32 years. She was so proud when she went up to a local shopping center – it was filled to the brim and people were coming from everywhere. It was such a wonderful feeling because when she moved here, she had to shop at the Upper Valley Mall or the Salem Mall. Now to see all of these people streaming here – she just thinks of good things for the City and she knows that the future is bright. Council has planned from the beginning. Huber Heights is not going to be a huge

City. It is what it is and everyone can work to make it the best that it is for people to come here and stay here.

Mayor McMasters said tonight Council has gone on record as having a disagreement with the Mayor and he does not think that has surprised anybody. He has a disagreement with Council. This last discussion actually highlights that as well. He thinks highly of Mr. Conaway, but he does not believe the City should be going into these projects where Council does not make City Staff come up with what the alternatives are. Put it in writing and tell Council what the pluses and minuses are and let other people do the pitch. He disagrees with even the way the Y contract has been renegotiated in such a manner. As in the last Administration Committee meeting, the City is pretty much stuck with either the Y or not opening the aquatic center because the City did not go out there with a full range of getting offers. He and Council have a different vision of what should be expected to make decisions on. He then wished everyone a Happy New Year.

11. Executive Session

There was no need for an Executive Session this evening.

12. Adjournment

Mayor McMasters adjourned the Special Session Council Meeting at 8:34 p.m.

__________________________ __________________________
Clerk of Council Date

__________________________ __________________________
Mayor Date

AI-2856 **Minutes** B.

City Council Meeting Agenda

Meeting Date: 01/26/2015

Approval of Minutes - 1/15/15

Submitted By:	Anthony Rodgers
Department:	City Council
Council Committee Review?:	None
Date(s) of Committee Review:	N/A
Audio-Visual Needs:	None
Emergency Legislation?:	No
Motion/Ordinance/ Resolution No.:	N/A

Information

Agenda Item Description or Legislation Title

City Council Special Meeting Minutes - January 15, 2015

Purpose and Background

Approval of the minutes from the January 15, 2015 City Council Special Meeting.

Fiscal Impact

Source of Funds:	N/A
Cost:	N/A
Recurring Cost? (Yes/No):	N/A
Funds Available in Current Budget? (Yes/No):	N/A

Financial Implications:

There are no financial implications to this agenda item.

Attachments

Minutes

Huber Heights City Council

In Council Chambers
6131 Taylorsville Road January 15, 15

1. The Huber Heights City Council met in a Special Session on January 15, 2015.

Mayor Tom McMasters called the meeting to order at 6:14 p.m.

2. Pledge of Allegiance

3. Roll Call

Councilmembers present for this meeting were: Mayor Tom McMasters, Tracy Dudley, Mark Campbell, Jan Vargo, Ed Lyons, Tyler Starline, and Judy Blankenship.

Mayor McMasters stated Council was all present with the exception of Lu Dale and Karen Kaleps. He entertained a motion to excuse their absences.

Mrs. Vargo so moved; Mr. Lyons seconded the motion. On a call of the vote, Mrs. Dudley, Mr. Campbell, Mrs. Vargo, Mr. Lyons, Mr. Starline, and Mrs. Blankenship voted yea; none voted nay. The motion passes 6-0.

4. Approval Of Minutes

There were no City Council Meeting Minutes for approval this evening.

5. Special Presentations/Announcements

There were no Special Presentations/Announcements this evening.

6. Citizens Comments

There were no citizens registered to speak this evening.

7. Citizens Registered to Speak on Agenda Items

There were no citizens registered to speak on Agenda items.

8. City Manager Report

City Manager Rob Schommer had no report this evening.

9. Pending Business

A. A Resolution Authorizing The City Manager To Enter Into That Certain Contract For Naming Rights Of The Music Center At The Heights, And Declaring An Emergency.
(second reading)

City Manager Rob Schommer said this is the second reading for the legislation to approve a contract or an agreement for a grant donation. The result of that would be the naming rights for the music center. As far as the agreement itself, as he explained to Council, he was hopeful to get it a little bit earlier via email but he was literally finalizing it and making sure because obviously this is a big step. There are a couple of key differences regarding the initial contract that was distributed; including that it is written as a grant agreement rather than a purchase agreement. This is a significant difference for the foundation because it grants money and is not purchasing. For the purpose and status of the foundation’s bylaws and existence, some of the form and substance of the agreement was changed. He said these changes were reviewed by the Administration Committee.

Mark Campbell, Chair of the Administration Committee, said earlier today as he reflected back on the last two years, he thought how better to validate the building of our music center in the direction the City is taking than to receive a donation of this size. On behalf of the Administration Committee, he thanked the foundation for the confidence shown in the future success of the City of Huber Heights. While the nation and the region have experienced a downturn in the economy since 2009, the City of Huber Heights has continued to progress forward. The wisdom this Council has shown in continuing to invest in the City and its citizens is impressive. He personally wanted to thank City Council for continuing to work with City Staff and the foundation to successfully accomplish the level of investment appreciated this evening. After realizing the original proposal would not satisfy the required funding necessary, all the parties pulled together and doubled the amount of the investment to an impressive $4 million. Council knows long-term the only way the City is going to achieve the necessary income, jobs, quality of life and the future health of the City will only be accomplished by growing the tax base and today everyone can see the fruits of these efforts. Again, congratulations to the citizens of Huber Heights and the committee wishes to thank the foundation. This has gone before the committee and the committee does recommend adoption.

Mr. Schommer said the advantage of having a foundation is the type of relationship that has developed between the City and the foundation in this agreement. It defines those types of things in terms, defines the foundation, and it talks about the contribution of the people of the foundation and the City. On page 3 is the Recognition of the Gift which defines what the name of the facility would be which has been discussed and decided upon. It also talks about the logo development; and he is prepared and ready to reveal that as well considering the approval of this agreement. It also talks about branding, promotion and publicity. Essentially, the City is agreeing to do that jointly because it is the brand. If you will recall in the development of the sign package and the discussion of the music center and its construction – the idea and concept was a co-branding opportunity. There are two, 10-year agreements; so in essence it is a $4 million agreement considering the renewal of the 10 years. It is an initial $2 million commitment and then upon completion of that renewal; an additional $2 million. After that second $2 million is completed; then the perpetuity is applied to the naming rights. In the section on Intellectual Property and Ownership, it does agree that obviously the music center logo will be approved by the foundation; but the City does own the rights to that because the City is the owner of the facility. That is agreed upon. The City has worked with the foundation and the foundation is not here tonight as the directors are out of town on business. He has worked with the foundation and he does have some communications to release and provide as both parties would in the future.

Mr. Schaeffer said paragraph 8 - Representations and Warranties - actually has been lifted right out of the previous document draft which was the naming rights agreement with the obvious changes being made dealing with the foundation as opposed to a commercial entity. With naming rights, the foundation was buying the right to put its name on it. The foundation is not buying anything and that is why the agreement was changed to a grant situation. Under sub-paragraph D - Foundation Representation – obviously this is a little bit different than it would have been had it been received from a commercial entity because the City is dealing with a foundation.

Mr. Schommer said regarding Section 10 - Default and Termination - both parties have particular things in there for protection. The main thing to focus on here is that if by chance the default occurs on the foundation's side, the foundation has agreed to meet half of the obligation from the point of default on. The next section - Dispute Resolution - is built in with standard language in case there is a dispute. One of the good things about the foundation is that there are not really many obligations on the City's part in terms of extra marketing or special promotions that go along with a business relationship. Exhibit A gets into the amounts. The payment schedule will be $200,000 per year for the two 10-year terms. The logos and signage will be included and branded as part of the music center. The sign allowance is a cost up to $50,000. The City will be covering that cost, but that cost is covered only after sponsorship monies are received. Part of the sponsorship includes an allowance for signage, branding and marketing. The value of that $50,000 is probably not going to need to be met because the minimal requirements asks or needs of the foundation do not extend beyond the general naming and presence of the facility. The foundation asked that it have the opportunity to purchase 12 tickets per show – anybody has that opportunity. He said that is the basic overview.

Mrs. Vargo said she does not understand on page 13 in the next to the last paragraph - the right to extend the agreement for the renewal term.

Mr. Schaeffer said it means that after 10 years if the foundation re-ups for another 10 years, they will owe the City $200,000 a year for another 10 years. So, at the end of 20 years, the foundation will have paid the City $4 million.

Mr. Schommer said if the foundation determines at the end of the first 10 years that it wants to go ahead and prepay, that shows the right to enact that renewal.

Mrs. Vargo asked if the foundation has to approve or agree to any of the events.

Mr. Schommer said the foundation does not touch operations in any way, shape, or form.

Mr. Schaeffer said the reason for that is that the foundation is granting; it is not buying or controlling anything.

Mrs. Dudley said this is, by far, a very generous contribution being given on behalf of the foundation. She asked if this is unprecedented, not quantifiably by just the amount, but whether it is by the trust, by the passion, by the admiration to wanting to commit to such a project.

Mr. Schommer said yes. Generally, foundations look for causes and projects. When this opportunity came up, this family is so committed to the North Dayton region. He said he will explain a little more when it is appropriate. This family foundation believed so much in what this project will do for the entire region that it wants to be a part of it.

Mr. Starline thanked Rob Schommer and Alan Schaeffer for their work on this agreement. A couple of sessions ago, he brought up things that he was looking for the City to negotiate. He appreciates what the foundation is doing in terms of the outlay of capital for the City. That is just an amazing amount; but the City is also having the assignment of risks and rewards with it. He knows that the revenue is going to be coming in - whoever the mystery foundation is. He thanked Mr. Schommer and Mr. Schaeffer for working on the details as Council went through this process and also doubling it down.

Mr. Schaeffer said this whole process has been instructive of the relationship that City Staff has with Council. Primarily, he was working with Council on this document to get it done. He received comments from Council which were very helpful. These negotiations were performed about 99% by Rob Schommer. He is the one that is bringing Council the success story.

Mayor McMasters said the first whereas states, “the foundation wishes to support the charitable and educational purposes of the City by making a grant to the City”.

Mr. Schaeffer said in a typical situation, for example, the Dayton Foundation makes a donation to the Humane Society – that money is going for a charitable purpose that is a defined purpose under the Internal Revenue Code. It is because the Humane Society has applied for and received a 501(c)(3) charitable organization status that the foundation can make that grant and then get the write off. That is how they get the charitable deduction. In this situation, the term “charitable purpose” was substituted because the recipient is a governmental public entity. The substituted words were “public purpose”; so if the foundation is going to be able to take full advantage of taking the charitable deduction, the money has to be expended for a “public purpose”. That does not include the City spending it on any political campaigns for any candidates. It does not cover situations where the recipient would be supporting or disobeying laws, rules and public policy. As long as the City is expending the money for a public purpose, the City and the foundation have met the requirements of the Internal Revenue Code.

Mayor McMasters said the contract does not say “public purpose”.

Mr. Schaeffer said he can provide more information that covers this issue.

Mr. Schommer said the foundation’s attorney is good with this language as well. The foundation is not concerned that it does not state that the City’s work is a public purpose; or obviously the foundation would have insisted it be in there.

Mayor McMasters said it defines charitable purposes as those items that are found in Section 501(c)(3) and he does not know what any of those are.

Mr. Schommer said it is a reference and the agreement does not need to regurgitate the entire Section 501(c)(3).

Mr. Schaeffer said there is an example out there, but he is having trouble finding one where the City is going to run into a problem spending money for a public purpose and not at the same time spending it for charitable purposes. He will provide more information on this for the Mayor.

Mayor McMasters said the City will need to submit a report to the foundation and since the City really does not know what needs to be in there; the foundation could come back and say that it does not really constitute a charitable purpose for the money.

Mr. Schaeffer said if the Finance Department puts anything on that list that does not constitute a charitable purpose; it is also not going to constitute a public purpose. Therefore, the City would have expended funds illegally. The City cannot spend taxpayer money for non-public purposes.

Assistant City Manager Don Jones said let’s get to the realistic situation here. The City is going to be paying MEMI with this money. MEMI is a 501(c)(3) organization by definition and by acceptance from the IRS. MEMI expends money in furtherance of its 501(c)(3) charitable purposes. So, for the City to pay MEMI to expend money for that purpose is by the definition.

Mr. Schommer said he has three asks associated with this item. Council would need a vote to amend the proposed legislation to include the contract. The Exhibit A that Council has is nameless, but he will fill-in the blanks with the name(s) which he will include upon the adoption of the piece of legislation. The second ask would be to waive the third reading. The third ask would be to adopt the legislation as amended.

Mr. Campbell moved to amend; Mrs. Blankenship seconded the motion. On a call of the vote, Mr. Campbell, Mrs. Vargo, Mr. Lyons, Mr. Starline, Mrs. Blankenship and Mrs. Dudley voted yea; none voted nay. The motion passes 6-0.

Mr. Campbell moved to waive; Mrs. Vargo seconded the motion. On a call of the vote, Mrs. Vargo, Mr. Lyons, Mr. Starline, Mrs. Blankenship, Mrs. Dudley, and Mr. Campbell. The motion passes 6-0.

Mr. Lyons moved to adopt; Mrs. Blankenship seconded the motion. On a call of the vote, Mr. Lyons, Mr. Starline, Mrs. Blankenship, Mrs. Dudley, Mr. Campbell, and Mrs. Vargo voted yea; none voted nay. The motion passes 6-0.

Mr. Schommer then said the foundation name is the Stuart Rose Family Foundation. Mr. Rose is the President and CEO of the Rex Corporation. His business is headquartered in the North Dayton area and has been for 35 years. He loves the North Dayton region. He is passionate about making sure of the sustained success of this region – this is his ability to give back and show thanks and support for everyone who has contributed to his investment in the community and sets the stage for continued growth. Mr. Schommer then said the Music Center would be called the Stuart and Mimi Rose Music Center at The Heights.

10. New Business

There was no New Business this evening.

11. City Official Reports and Comments

Mr. Lyons said what a wonderful opportunity to have a relationship with the Stuart and Mimi Rose Foundation and a beautiful check every year for 20 years for the City of Huber Heights. It is an outstanding opportunity. He thanked Mr. Schommer for his due diligence in working on the agreement. He thanked Mr. Schaeffer for everything that he has done as well as this Council for its efforts.

Mayor McMasters thanked everyone for their hard work. He thanked Stuart and Mimi Rose.

12. Executive Session

There was no need for an Executive Session this evening.

13. Adjournment

Mayor McMasters adjourned the Special Session Council Meeting at 7:00 p.m.

Clerk of Council	Date
Mayor	Date

AI-2876 **Special Presentations/Announcements** A.

City Council Meeting Agenda **Police**

Meeting Date: 01/26/2015

P.R.I.D.E. Recognition Presentation - Huber Heights Police Division

Submitted By:	Anthony Rodgers
Department:	City Council
Council Committee Review?:	None
Date(s) of Committee Review:	N/A
Audio-Visual Needs:	None
Emergency Legislation?:	No
Motion/Ordinance/ Resolution No.:	N/A

Information

Agenda Item Description or Legislation Title

Huber Heights Police Division P.R.I.D.E. Recognition Presentation - Police Chief Mark Lightner and Sergeant Chuck Taylor

Purpose and Background

Police Chief Mark Lightner and Sgt. Taylor will be recognizing the contributions of P.R.I.D.E. to the City and the Huber Heights Police Division.

P.R.I.D.E. UNIT

The Police Division is proud to announce the Citizens on Patrol Unit known as P.R.I.D.E. (Proud Residents Improving Daily Enforcement).

The program is a volunteer group of private citizens that assist the Huber Heights Police Division (HHPD). Their duties include assisting at crash scenes, crime scenes and assisting disabled motorists, to name just a few.

Members are trained in police procedures via classes taught by police personnel, and various agencies connected with law enforcement.
The PRIDE training academy lasts approximately five weeks and is conducted at the Police Division Community Room. Classes are held Tuesday and Thursday evenings from 6:00 pm to 9:45 pm, and Saturday mornings 9:00 am to 1:00 pm. In addition, trainees spend time riding with officers, and spend several hours in the Communication Center to observe the dispatchers performing their duties such as taking 911 calls and dispatching police officers and fire/EMS units.

Upon successful completion of the academy, the trainees graduate and receive their uniforms and equipment. PRIDE members perform assigned duties in pairs. Prior to graduation the trainees must establish a partnership with another trainee or a current PRIDE member without a partner. PRIDE members must volunteer four (4) hours per week for patrol. However a PRIDE member is encouraged to assist, when summoned, above and beyond the required four hours at fire/accident scenes, weather related traffic details or other emergencies as needed. Members must also be prepared to assist at community events.

To be a PRIDE member, you must be a resident or a business owner in the city of Huber Heights, possess a valid Ohio driver's license and be at least 21 years old, and possess a High School diploma or equivalent. Members are required to submit to a background check, and an oral interview, prior to being accepted. Completion of the Huber Heights Citizens Police Academy is strongly recommended.

Call or email Sgt. Charles Taylor for more information at (937) 237-3556 or Officer Ed Savard at (937) 237-3567 or by email.
PRIDE members have no power of arrest and do not carry firearms or weapons on duty.

Fiscal Impact

Source of Funds:	N/A
Cost:	N/A
Recurring Cost? (Yes/No):	N/A
Funds Available in Current Budget? (Yes/No):	N/A
Financial Implications:	

Attachments

No file(s) attached.

AI-2880 **Special Presentations/Announcements** B.

City Council Meeting Agenda **City Manager**

Meeting Date: 01/26/2015

Employee of the 4th Quarter and 2014 Employee of the Year

Submitted By: Rob Schommer

Department: City Manager

Council Committee Review?: None

Date(s) of Committee Review: N/A

Audio-Visual Needs: None **Emergency Legislation?:** No

Motion/Ordinance/ Resolution No.: N/A

Information

Agenda Item Description or Legislation Title

2014 City Of Huber Heights Employee Of The Fourth Quarter Presentation To Ms. Elizabeth Dunivan And 2014 City Of Huber Heights Employee Of The Year Presentation To Ms. Maria Beisel - Mr. Rob Schommer, City Manager

Purpose and Background

Ms. Elizabeth Dunivan, Auditor in the Finance Department, will be acknowledged as the City of Huber Heights Employee of the Quarter for the fourth quarter of 2014.

Ms. Maria Beisel, Administrative Secretary in the Police Division, will be acknowledged as the City of Huber Heights Employee of the Year for 2014.

Fiscal Impact

Source of Funds: N/A

Cost: N/A

Recurring Cost? (Yes/No): N/A

Funds Available in Current Budget? (Yes/No): N/A

Financial Implications:

Attachments

No file(s) attached.

AI-2879 **Special Presentations/Announcements** C.

City Council Meeting Agenda **City Manager**

Meeting Date:	01/26/2015

DEC Acknowledgement Presentation

Submitted By:	Rob Schommer		
Department:	City Manager		
Council Committee Review?:	None		
Date(s) of Committee Review:	N/A		
Audio-Visual Needs:	None	**Emergency Legislation?:**	No
Motion/Ordinance/ Resolution No.:	N/A		

Information

Agenda Item Description or Legislation Title

DEC Acknowledgement Presentation To Mr. Bill Keethler, Vice President - Development, DEC - Mr. Rob Schommer, City Manager

Purpose and Background

Presentation and acknowledgement of the City's relationship with DEC resulting in a $1.8 million donation to the City.

Fiscal Impact

Source of Funds:	General Fund
Cost:	+1,800,000
Recurring Cost? (Yes/No):	No
Funds Available in Current Budget? (Yes/No):	Yes
Financial Implications:	

Attachments

No file(s) attached.

AI-2882 **Special Presentations/Announcements** D.

City Council Meeting Agenda **Finance**

Meeting Date:	01/26/2015
Huber Heights Open Gov Presentation	
Submitted By:	Rob Schommer
Department:	City Manager
Council Committee Review?:	None
Date(s) of Committee Review:	N/A
Audio-Visual Needs:	None
Emergency Legislation?:	No
Motion/Ordinance/ Resolution No.:	N/A

Information

Agenda Item Description or Legislation Title

Huber Heights Open Gov Presentation - Mr. Jim Bell, Finance Director, And Mr. Don Jones, Assistant City Manager

Purpose and Background

The Finance Department was challenged early on to always look for new ways to better explain how City finances work and to always stay focused on being transparent. In these efforts, the Finance Department submitted this project, which will be very beneficial to the community to see and understand the City's finances. This project provides a virtual "online checkbook" which has recently been discussed at the State level, but also provides for interactive and real-time custom reporting. In other words, if a resident would like to run a report on monthly expenses or other financial elements, he/she will be able to do so right from the online system. Huber Heights is proud to be one of the first in the State of Ohio and the first in the region to open up its finances and make them easily accessible to the public for review.

Fiscal Impact

Source of Funds:	General Fund
Cost:	$8,500
Recurring Cost? (Yes/No):	Yes
Funds Available in Current Budget? (Yes/No):	Yes
Financial Implications:	

Attachments

No file(s) attached.

AI-2857 **Pending Business** A.

City Council Meeting Agenda

Meeting Date: 01/26/2015

ZC 14-42 - Liberty Savings Bank - Major Change - Chambersburg Road and Bellefontaine Road - Artisan Walk Development

Submitted By:	Margaret Muhl
Department:	Planning
Council Committee Review?:	Public Works Committee
Date(s) of Committee Review:	01/06/2015 and 01/20/2015
Audio-Visual Needs:	None
Emergency Legislation?:	Yes
Motion/Ordinance/ Resolution No.:	

Information

Agenda Item Description or Legislation Title

An Ordinance To Approve A Major Change To A Previously Approved Basic And Detailed Development Plan For The Artisan Walk Development Located At The North Side Of Chambersburg Road And East Side Of Bellefontaine Road (Zoning Case 14-42), And Declaring An Emergency.
(second reading)

Purpose and Background

The applicant, Liberty Savings Bank, is requesting approval of a Major Change to previously approved development plans for a residential development at property located at the north side of Chambersburg Road and east side of Bellefontaine Road (ZC 14-42). The Major Change is to previously approved Basic and Detailed Development Plans for a residential development at Artisan Walk. Two changes were requested by the applicant after the Planning Commission meeting. One was to revise the lots on the east end of the project including a new reserve lot and reducing the number of buildable lots by one in order to revise the driveway that leads to Lot 19. The next request was to revise the building materials to change from 25% masonry on the primary facade of all buildings to have 25% masonry on 50% of the buildings within the subdivision. City Staff recommended approval of the lot modification, but did not recommend approval of the masonry requirement change.

This Ordinance will need to be amended by City Council with the attached and amended Ordinance at the January 26, 2015 City Council Meeting prior to adoption of the Ordinance to reflect the changes that were agreed upon at the January 20, 2015 Public Works Committee meeting.

Fiscal Impact

Source of Funds:	N/A
Cost:	N/A
Recurring Cost? (Yes/No):	N/A
Funds Available in Current Budget? (Yes/No):	N/A
Financial Implications:	

Attachments

Ordinance

Ordinance - Amended

CITY OF HUBER HEIGHTS
STATE OF OHIO

ORDINANCE NO. 2015-O-

TO APPROVE A MAJOR CHANGE TO A PREVIOUSLY APPROVED BASIC AND DETAILED DEVELOPMENT PLAN FOR THE ARTISAN WALK DEVELOPMENT LOCATED AT THE NORTH SIDE OF CHAMBERSBURG ROAD AND EAST SIDE OF BELLEFONTAINE ROAD (ZONING CASE 14-42), AND DECLARING AN EMERGENCY.

WHEREAS, the citizens of Huber Heights require the efficient and orderly planning of land uses within the City; and

WHEREAS, the City Planning Commission has reviewed Zoning Case 14-42 and on November 18, 2014 recommended approval by a vote of 4-0 for the Major Change for the construction of a residential development; and

WHEREAS, the City Council has considered the issue.

NOW, THEREFORE, BE IT RESOLVED by the City Council of Huber Heights, Ohio that:

Section 1. The application requesting approval of a Major Change for certain property located at the north side of Chambersburg Road and east side of Bellefontaine Road (Zoning Case 14-42) is hereby approved in accordance with the Planning Commission's recommendation and following conditions and as further modified by City Council in item number 10:

1. All previous PUD regulations shall remain in full force and effect unless specifically modified herein.

2. The Detailed Development Plan for Artisan Walk, Phase I shall be the plans stamped received by the City of Huber Heights Planning Department on November 12, 2014.

3. Prior to the issuance of a permit for any of the lots within Artisan Walk, Phase I of the development, the applicant shall obtain approval of a final subdivision for the subject area.

4. All existing landscaping in Reserve Lots shall be inspected and replaced as determined by the City's Zoning Department.

5. Phase Two shall be graded and seeded as necessary to provide proper drainage and meet the City's Zoning requirements.

6. Exterior building materials shall be wood, brick, stone, fiber-cement products or vinyl siding with a minimum gauge of 0.04.

7. A minimum of 25% of the surface area of the facade shall be finished with masonry products.

8. Minimum floor area shall be as follows: one-story dwellings shall have a minimum floor area of 1,100 square feet, one and one-half story dwellings shall have a minimum floor area of 1,200 square feet, and two-story dwellings shall have a minimum floor area of 1,300 square feet.

9. Prior to the issuance of a zoning permit for any of the lots contained in Artisan Walk, Phase I, the applicant shall enter into a PUD Agreement with the City for the purpose, but not the sole purpose, of establishing the development obligations of the applicant and requiring the submittal of a performance bond, cash bond, or letter of credit to insure the installation of landscaping as approved. The bond or letter of credit shall be in an amount equal to the applicant's estimate of the cost of installation as approved by the Planning Department, and shall remain in effect until such time as the landscaping has been completed as determine by the Planning Department. Upon completion of the installation of landscaping as required by the approved landscape plan, the applicant may request release of the performance bond or letter of credit. Following an inspection by the Planning Department and upon determination by the department that the landscaping has been completed in accordance with th e

approved landscaping plan, 80% of the performance bond or letter of credit may be released. However, the performance bond or letter of credit will not be released until a maintenance bond lasting three growing seasons, or letter of credit equal to 20% of the initial performance bond or letter of credit to ensure maintenance of the landscaping, is submitted to and accepted by the Planning Department. The term of the maintenance bond shall be three growing seasons.

10. Lots 15 through 18 shall be revised as received in plans dated December 24, 2014, creating three 55 foot frontage building lots and one 55 foot frontage reserve lot for driveway purposes with said driveway being posted “no parking – private drive.”

Section 2. It is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this Ordinance were adopted in an open meeting of this Council and that all deliberations of this Council and of any of its Committees that resulted in such formal action were taken in meetings open to the public and in conformance with all legal requirements including Section 121.22 of the Ohio Revised Code.

Section 3. This Ordinance is hereby declared to be an emergency measure in order to provide for the immediate protection of the public peace, health, safety and welfare of the community and to allow for development at the earliest possible time; therefore, this Ordinance shall take full force and effect immediately upon its adoption by Council.

Passed by Council on the ______ day of ______________ , 2015;
______ Yeas; ______ Nays.

AUTHENTICATION:

________________________________	________________________________
Clerk of Council	Mayor
________________________________	________________________________
Date	Date

CITY OF HUBER HEIGHTS
STATE OF OHIO

ORDINANCE NO. 2015-O-

TO APPROVE A MAJOR CHANGE TO A PREVIOUSLY APPROVED BASIC AND DETAILED DEVELOPMENT PLAN FOR THE ARTISAN WALK DEVELOPMENT LOCATED AT THE NORTH SIDE OF CHAMBERSBURG ROAD AND EAST SIDE OF BELLEFONTAINE ROAD, (ZONING CASE 14-42), AND DECLARING AN EMERGENCY.

WHEREAS, the citizens of Huber Heights require the efficient and orderly planning of land uses within the City; and

WHEREAS, the City Planning Commission has reviewed Zoning Case 14-42 and on November 18, 2014 recommended approval by a vote of 4-0 for the Major Change for the construction of a residential development; and

WHEREAS, the City Council has considered the issue.

NOW, THEREFORE, BE IT ORDAINED by the City Council of Huber Heights, Ohio that:

Section 1. The application requesting approval of a Major Change for certain property located at the north side of Chambersburg Road and east side of Bellefontaine Road (Zoning Case 14-42) is hereby approved in accordance with the Planning Commission’s recommendation and following conditions and as further modified by City Council in item numbers 7, 10 and 11:

1. All previous PUD regulations shall remain in full force and effect unless specifically modified herein.

2. The Detailed Development Plan for Artisan Walk, Phase I shall be the plans stamped received by the City of Huber Heights Planning Department on November 12, 2014.

3. Prior to the issuance of a permit for any of the lots within Artisan Walk, Phase I of the development, the applicant shall obtain approval of a final subdivision for the subject area.

4. All existing landscaping in Reserve Lots shall be inspected and replaced as determined by the City’s Zoning Department.

5. Phase Two shall be graded and seeded as necessary to provide proper drainage and meet the City’s Zoning requirements.

6. Exterior building materials shall be wood, brick, stone, fiber-cement products or vinyl siding with a minimum gauge of 0.04.

7. A minimum of 50% of the single family homes shall have 25% of the surface area of the primary facade finished with masonry products. All single family homes shall have a minimum of 10% of the surface area of the primary façade finished with masonry products.

8. Minimum floor area shall be as follows: one-story dwellings shall have a minimum floor area of 1,100 square feet, one and one-half story dwellings shall have a minimum floor area of 1,200 square feet, and two-story dwellings shall have a minimum floor area of 1,300 square feet.

9. Prior to the issuance of a zoning permit for any of the lots contained in Artisan Walk, Phase I, the applicant shall enter into a PUD Agreement with the City for the purpose, but not the sole purpose, of establishing the development obligations of the applicant and requiring the submittal of a performance bond, cash bond, or letter of credit to insure the installation of landscaping as approved. The bond or letter of credit shall be in an amount equal to the applicant’s estimate of the cost of installation as approved by the Planning Department, and shall remain in effect until such time as the landscaping has been completed as determine by the Planning Department. Upon completion of the installation of landscaping as required by the approved landscape plan, the applicant may request release of the performance bond or letter of credit.

Following an inspection by the Planning Department and upon determination by the department that the landscaping has been completed in accordance with the approved landscaping plan, 80% of the performance bond or letter of credit may be released. However, the performance bond or letter of credit will not be released until a maintenance bond lasting three growing seasons, or letter of credit equal to 20% of the initial performance bond or letter of credit to ensure maintenance of the landscaping, is submitted to and accepted by the Planning Department. The term of the maintenance bond shall be three growing seasons.

10. Lots 15 through 18 shall be revised as received in plans dated January 21, 2015, creating three 63 foot frontage building lots and one 30 foot frontage non-buildable lot for transfer to Lot 19.

11. The existing surety for future physical improvements in the subdivision shall be reduced by $7,500.00.

Section 2. It is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this Ordinance were adopted in an open meeting of this Council and that all deliberations of this Council and of any of its Committees that resulted in such formal action were taken in meetings open to the public and in conformance with all legal requirements including Section 121.22 of the Ohio Revised Code.

Section 3. This Ordinance is hereby declared to be an emergency measure in order to provide for the immediate protection of the public peace, health, safety and welfare of the community and for the further reason that timely approval of the Major Change is critical to the economic development of these lots; therefore, this Ordinance shall take full force and effect immediately upon its adoption by Council.

Passed by Council on the ______ day of _____________ , 2015;
______ Yeas; ______ Nays.

AUTHENTICATION:

______________________________ ______________________________
Clerk of Council Mayor

______________________________ ______________________________
Date Date

AI-2853 **Pending Business** B.

City Council Meeting Agenda

Meeting Date: 01/26/2015

DEC Development Agreement - Fourteenth Amendment - Carriage Trails

Submitted By:	Donnie Jones
Department:	Economic Development
Council Committee Review?:	Administration Committee
Date(s) of Committee Review:	12/02/2014
Audio-Visual Needs:	None
Emergency Legislation?:	Yes
Motion/Ordinance/ Resolution No.:	

Information

Agenda Item Description or Legislation Title

An Ordinance Approving The Execution Of A Fourteenth Amendment To The Amended And Restated Development Agreement With DEC Land Co. I LLC, And Declaring An Emergency.
(third reading)

Purpose and Background

The City has previously paid for public infrastructure improvements to facilitate and accelerate growth and development within the Carriage Trails project. This legislation will allow the continuation of this very successful public/private partnership and provide an additional $339,000 of public infrastructure improvements from the TIF related to the development. The remainder of the cost of the public infrastructure will be paid for by special assessments on the individual lots sold and the developer. This stimulus has been very successful as 574 lots have been developed and 388 lots have been sold. This agreement will provide public infrastructure to help develop an additional 27 lots.

Fiscal Impact

Source of Funds:	TIF
Cost:	$339,000
Recurring Cost? (Yes/No):	No
Funds Available in Current Budget? (Yes/No):	No

Financial Implications:

The City will advance street, water, sewer funds to cover the cost of this public infrastructure which will be repaid over time by available TIF monies generated by the lots developed.

Attachments

Ordinance
Exhibit A
FOC

CITY OF HUBER HEIGHTS
STATE OF OHIO

ORDINANCE NO. 2014-O-

APPROVING THE EXECUTION OF A FOURTEENTH AMENDMENT TO THE AMENDED AND RESTATED DEVELOPMENT AGREEMENT WITH DEC LAND CO. I LLC, AND DECLARING AN EMERGENCY.

WHEREAS, the City heretofore entered into an Amended and Restated Development Agreement with DEC Land Co. I LLC (the "*Developer*"), dated September 21, 2009 to provide for the development of certain real property within the City, which Amended and Restated Development Agreement was subsequently amended by a First Amendment to Amended and Restated Development Agreement on February 11, 2010, by a Second Amendment to the Amended and Restated Development Agreement on April 14, 2011, by a Third Amendment to the Amended and Restated Development Agreement on September 12, 2011, by a Fourth Amendment to the Amended and Restated Development Agreement on March 26, 2012, by a Fifth Amendment to the Amended and Restated Development Agreement on June 12, 2012, by a Sixth Amendment to the Amended and Restated Development Agreement on October 22, 2012, by a Seventh Amendment to the Amended and Restated Development Agreement on February 25, 2013, by an Eighth Amendment to the Amended and Restated Development Agreement on June 27, 2013, by a Ninth Amendment to the Amended and Restated Development Agreement on September 24, 2013, by a Tenth Amendment to the Amendment to the Amended and Restated Development on December 18, 2013, by an Eleventh Amendment to the Amended and Restated Development Agreement on March 26, 2014, and by a Twelfth Amendment to the Amended and Restated Development on June 9, 2014, and by a Thirteenth Amendment to the Amended and Restated Development Agreement on July 28, 2014 (the original Amended and Restated Development Agreement, amended as described in this paragraph, is collectively referred to herein as the "Amended and Restated Development Agreement"); and

WHEREAS, pursuant to the Fourteenth Amendment to the Amended and Restated Development Agreement (Exhibit A to this Ordinance), this Council has determined to: (i) provide an additional $339,000 of Public Infrastructure Improvements TIF Related to Developer; and (ii) the other items set forth in the Fourteenth Amendment for the purpose of facilitating economic development within the City and the creation of new jobs and employment opportunities, thereby improving the economic welfare of the people of the State of Ohio and the City, all as authorized in Article VIII, Section 13 of the Ohio Constitution; and

WHEREAS, to facilitate the continued development of the Development Site, this Council finds that it is in the best interest of the City to provide for the execution and delivery of the Fourteenth Amendment to Amended and Restated Development Agreement with the Developer.

NOW, THEREFORE, BE IT ORDAINED by the City Council of Huber Heights, Ohio that:

Section 1. The Fourteenth Amendment to Amended and Restated Development Agreement by and between the City and the Developer, providing the following agreements between City and Developer including: (i) providing an additional $339,000 of Public Infrastructure Improvements TIF Related to Developer; and (ii) the other items set forth in the Fourteenth Amendment for the purpose of facilitating economic development within the City and the creation of new jobs and employment opportunities, thereby improving the economic welfare of the people of the State of Ohio and the City, all as authorized in Article VIII, Section 13 of the Ohio Constitution, in the form attached hereto as Exhibit A is hereby approved and authorized with changes therein not inconsistent with this Ordinance and not substantially adverse to this City and which shall be approved by the City Manager. The payment for the Public Infrastructure Improvements TIF Related shall be available only after the successful issuance by the City of Notes, and or Bonds, and or State SIB Loans, and or legally appropriated advances or transfers from various other City Funds to the Carriage Trails TIF Fund with sufficient proceeds to provide the additional funding. The City Manager, for and in the name of this City, is hereby authorized to execute the Fourteenth Amendment to Amended and Restated Development Agreement, provided further that the approval of changes thereto by that official, and their character as not being substantially adverse to the City, shall be evidenced conclusively by the execution thereof.

Section 2. This Council further hereby authorizes and directs the City Manager, the Director of Finance, the City Attorney, the Clerk of Council, or other appropriate officers of the City to prepare and sign all agreements and instruments and to take any other actions as may be appropriate to implement this Ordinance.

Section 3. This Council finds and determines that all formal actions of this Council and any of its committees concerning and relating to the passage of this Ordinance were taken in an open meeting of this Council or its committees and that all deliberations of this Council and of any committees that resulted in those formal actions were in meetings open to the public in compliance with the law.

Section 4. This Ordinance is declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety and welfare of the inhabitants of the City, and for the further reason that this Ordinance is required to be immediately effective to provide necessary funds for the timely completion of certain public infrastructure necessary for the continued economic development of the City; therefore, this Ordinance shall be in full force and effect immediately upon its passage.

Passed by Council on the ______ day of _____________ , 2014;
______ Yeas; ______ Nays.

AUTHENTICATION:

_____________________________ _____________________________
Clerk of Council Mayor

_____________________________ _____________________________
Date Date

CERTIFICATE

The undersigned, Clerk of Council of the City of Huber Heights, Ohio, hereby certifies that the foregoing is a true and correct copy of Ordinance No. 2014-O-______ passed by the Council of the City of Huber Heights, on December 8, 2014.

____
Clerk of Council

EXHIBIT A
FOURTEENTH AMENDMENT TO
AMENDED AND RESTATED DEVELOPMENT AGREEMENT

THIS FOURTEENTH AMENDMENT TO AMENDED AND RESTATED DEVELOPMENT AGREEMENT (the "Thirteenth Amendment") is made and entered into this _____ day of ____________, 2014 (the "Effective Date"), by and between the CITY OF HUBER HEIGHTS, OHIO (the "City"), a municipal corporation duly organized and validly existing under the Constitution and the laws of the State of Ohio (the "State") and its Charter, and DEC LAND CO. I LLC (the "Developer" and, together with the City, the "Parties"), an Ohio limited liability company, under the circumstances summarized in the following recitals (the capitalized terms not defined herein are being used herein as defined in the hereinafter referenced Amended and Restated Development Agreement).

RECITALS:

WHEREAS, the Parties heretofore entered into an Amended and Restated Development Agreement dated September 21, 2009 to provide for the development of the Property, which Amended and Restated Development Agreement was subsequently amended by the Parties by a First Amendment to Amended and Restated Development Agreement on February 11, 2010, by a Second Amendment to the Amended and restated Development Agreement on April 14, 2011, by a Third Amendment to the Amended and Restated Development Agreement on September 12, 2011, by a Fourth Amendment to the Amended and Restated Development Agreement on March 26, 2012, by a Fifth Amendment to the Amended and Restated Development Agreement on June 12, 2012, a Sixth Amendment to the Amended and Restated Development Agreement on October 22, a Seventh Amendment to the Amended and Restated Development Agreement on February 25, 2013, an Eighth Amendment to the Amended and Restated Development on June 27, 2013, a Ninth Amendment to the Amended and Restated Development on September 24, 2013, a Tenth Amendment to the Amended and Restated Development on December 18, 2013, an Eleventh Amendment to the Amended and Restated Development on March 26, 2014, and a Twelfth Amendment to the Amended and Restated Development on June 9, 2014, and a Thirteenth Amendment to the Amended and Restated Development on July 28, 2014 (the original Amended and Restated Development Agreement, amended as described in this paragraph is collectively referred to herein as the "Amended and Restated Development Agreement"); and

WHEREAS, pursuant to the Amended and Restated Development Agreement, the Parties heretofore agreed, among other matters that City would provide $10,110,000 to pay the costs of Public Infrastructure Improvements (TIF Related) for Extraordinary Projects; and

WHEREAS, the parties have determined that, to further facilitate the development of the Development Site, City will provide an additional three hundred thirty-nine thousand dollars ($339,000) ($10,449,000 in the aggregate) to pay the costs of Public Infrastructure Improvements (TIF Related) for Extraordinary Projects; and

WHEREAS, the Parties have determined to enter into this Fourteenth Amendment to provide for the continued development of the Development Site;

NOW, THEREFORE, in consideration of the premises and covenants contained herein, and to induce Developer to continue to proceed with the proposed Development, the Parties hereto agree and obligate themselves as follows:

Section 1. **Amendment to Section 4.4(f).** Section 4.4(f) is hereby amended and restated as follows:

> "(f) **Financing of the Costs of Public Infrastructure Improvements (TIF Related) for Extraordinary Project.** If Developer provides written notice to City of an extraordinary project within the Eligible TIF Area, City reserves the right, but shall not be obligated, to waive all or any portion of the requirements of this Section 4.4 and provide sufficient monies (either through a financing or otherwise) to pay the costs of the Public Infrastructure Improvements (TIF Related) as identified by Developer as necessary to facilitate such extraordinary project."

The City paid some of the costs of Public Infrastructure Improvements (TIF Related) to stimulate development in the Project. This stimulus has been very successful. 574 lots have been developed, 388 lots have been sold. The City wishes to continue to stimulate the sale of lots and the development of homes in the Project. Accordingly, the City agrees to provide three hundred thirty-nine thousand Dollars ($339,000) from the proceeds of securities heretofore issued or to be issued by City or debt incurred, or from other funds as determined by the City to pay the costs of proposed Public Infrastructure Improvements (TIF Related) for Extraordinary Projects for the development of lots for NVR, Inc. ("Ryan Homes"), M/I Homes of Cincinnati, LLC ("M/I") and The Inverness Group, Incorporated ("Inverness") pursuant to contracts between the Developer and Ryan Homes, the Developer and M/I, and the Developer and Inverness, or for other lots agreed to in writing by the City.

Developer is required to provide 27 additional lots to Inverness Group, Inc. for homes in Phase II of Section 4 and Phase III of Section 4 pursuant to a contract. Within ninety (90) days after the effective date of City legislation approving the funds (the "Legislation"), the City will have the $339,000 available to pay the costs of the Public Infrastructure Improvements (Extraordinary Projects) for these 27 lots. The Developer shall commence the construction of the additional 27 lots as soon as practicable after passage of the Legislation. Once the Public Infrastructure Improvements (Extraordinary Projects) have been approved, the parties shall enter into infrastructure agreements pursuant to subsection 4.4(c)(ii) of the Agreement.

The Parties agree to negotiate and develop in good faith a draw process for the payment of the Improvements which shall provide for the payment of the Improvements not more than once a month as the Improvements are developed, and will provide funds up to $339,000 to pay towards the costs of public infrastructure of the lots in Phase II of Section 4 and Phase III of Section 4. The parties agree to develop this draw process within 30 days after the Effective Date.

In Section 4.4(e)(iv)(A), "$10,110,000" is hereby deleted and "$10,449,000" is substituted in its place.

Section 2. **Executed Counterparts.** This Fourteenth Amendment may be executed in several counterparts, each of which shall be deemed to constitute an original, but all of which together shall constitute but one and the same instrument. It shall not be necessary in proving this Fourteenth Amendment to produce or account for more than one of those counterparts.

Section 3. **Continued Effect of Amended and Restated Development Agreement.** The Parties agree that except as expressly amended hereby, the Amended and restated Development Agreement shall continue in full force and effect. The Parties further agree that to the extent of any conflicts between this Fourteenth Amendment and the Amended and Restated Development Agreement, this Fourteenth Amendment shall govern.

IN WITNESS WHEREOF, the Parties have caused this Fourteenth Amendment to be executed in their respective names by their duly authorized representatives, all as of the date first written above.

DEC LAND CO. I LLC

By: Carriage Trails at The Heights LLC
Its: Managing Member

By: ____________________
Printed: William W. Keethler II
Title: Vice President - Development

STATE OF OHIO :
: SS.
COUNTY OF FRANKLIN :

On this _____ day of _____________, 2014, before me a Notary Public personally appeared William W. Keethler Vice President - Development of Carriage Trails at The Heights LLC, an Ohio limited liability company, Managing Member of DEC Land Co. I LLC, an Ohio limited liability company, the authorized representative of DEC Land Co. I LLC, and acknowledged the execution of the foregoing instrument, and that the same is his voluntary act and deed on behalf of DEC Land Co. I LLC and the voluntary act and deed of DEC Land Co. I LLC.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal on the date and year aforesaid.

____
Notary Public

CITY OF HUBER HEIGHTS, OHIO	**Approved as to Form:**
By:_______________________________	By: ______________________________
Printed: ______Robert Schommer____	Printed: Alan B. Schaeffer_____
Title: ________City Manager__	Title: ________Director of Law______

STATE OF OHIO :
: SS.
COUNTY OF MONTGOMERY :

On this _____ day of _____________, 2014, before me a Notary Public personally appeared Robert Schommer, the authorized representative of the City of Huber Heights, Ohio, and acknowledged the execution of the foregoing instrument, and that the same is his voluntary act and deed on behalf of the City of Huber Heights, Ohio and the voluntary act and deed of the City of Huber Heights, Ohio.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal on the date and year aforesaid.

____
Notary Public

FISCAL OFFICER'S CERTIFICATE

The undersigned, Director of Finance of the City of Huber Heights, Ohio under the foregoing Fourteenth Amendment, certifies hereby that the monies required to meet the obligations of the City during the year 2014 under the foregoing Fourteenth Amendment have been appropriated lawfully for that purpose, and are in the Treasury of the City or in the process of collection to the credit of an appropriate fund, free from any previous encumbrances. This Certificate is given in compliance with Sections 5705.41 and 5705.44, Ohio Revised Code.

Dated: ____________________, 2014

____
James Bell
Director of Finance
City of Huber Heights, Ohio

FISCAL OFFICER'S CERTIFICATE

The undersigned, Director of Finance of the City of Huber Heights, Ohio under the foregoing Fourteenth Amendment, certifies hereby that the monies required to meet the obligations of the City during the year 2014 under the foregoing Fourteenth Amendment have been appropriated lawfully for that purpose, and are in the Treasury of the City or in the process of collection to the credit of an appropriate fund, free from any previous encumbrances. This Certificate is given in compliance with Sections 5705.41 and 5705.44, Ohio Revised Code.

Dated: Dec. 2, 2014

James Bell
Director of Finance
City of Huber Heights, Ohio

AI-2854 **Pending Business** C.

City Council Meeting Agenda

Meeting Date: 01/26/2015

DEC Special Assessments - Carriage Trails - Sections 4-2 and 4-3 - Resolution of Necessity

Submitted By: Donnie Jones

Department: Economic Development

Council Committee Review?: Administration Committee

Date(s) of Committee Review: 12/02/2014

Audio-Visual Needs: None **Emergency Legislation?:** Yes

Motion/Ordinance/ Resolution No.:

Information

Agenda Item Description or Legislation Title

A Resolution Declaring It Necessary To Improve Public Streets And Easements In Sections 4-2 And 4-3 By Constructing And Installing On Certain Property Within The City Street Improvements, Water And Sewer Lines, Storm Drains, Lighting, Irrigation Lines And Signage, And All Necessary Appurtenances, And Declaring An Emergency.
(third reading)

Purpose and Background

DEC has petitioned the City to provide infrastructure improvements to owned land in Section 4-2 and 4-3 of the Carriage Trails development and to assess the property for a portion of the costs of the improvement. DEC will develop 27 lots and the City will provide $4,000 per lot in assessments to be repaid by special assessments to the lots of $300 per year for 25 years. This resolution determines the necessity of the improvements in order to facilitate the building of the 27 lots. The companion Ordinance To Proceed to this resolution authorizes the City to proceed with the construction of the improvements.

Fiscal Impact

Source of Funds: Special Assessments

Cost: $108,000

Recurring Cost? (Yes/No): No

Funds Available in Current Budget? (Yes/No): No

Financial Implications:

The City will issue bonds or notes to fund these public infrastructure improvements and will assess the property owners $300.00 per year for 25 years.

Attachments

Resolution
Exhibit A

CITY OF HUBER HEIGHTS
STATE OF OHIO

RESOLUTION NO. 2014-R-

DECLARING IT NECESSARY TO IMPROVE PUBLIC STREETS AND EASEMENTS IN SECTIONS 4-2 AND 4-3 BY CONSTRUCTING AND INSTALLING ON CERTAIN PROPERTY WITHIN THE CITY STREET IMPROVEMENTS, WATER AND SEWER LINES, STORM DRAINS, LIGHTING, IRRIGATION LINES AND SIGNAGE, AND ALL NECESSARY APPURTENANCES, AND DECLARING AN EMERGENCY.

WHEREAS, the owner of 100% of the lots and lands to be assessed for the Improvement (described in Section 2) has petitioned this Council (that Petition for Special Assessments and Affidavit is attached hereto as Exhibit A and incorporated herein by reference and is referred to herein as the "Petition") for the construction of the Improvement (as defined in Section 2), and further, that there be assessed against the real property described in the Petition certain costs of the Improvement; and

WHEREAS, this Council has heretofore directed that the plans, specifications, profiles and estimate of cost be prepared for the Improvement; and

WHEREAS, this Council has determined to adopt this Resolution to accept the Petition and approve the plans, specifications, profiles and estimate of cost of the Improvement, as prepared by ME Companies Inc., and to further provide for such other terms and provisions relating to the Improvement as are set forth in this Resolution.

NOW, THEREFORE, BE IT RESOLVED by the City Council of Huber Heights, Ohio, three-fourths of all members elected or appointed thereto concurring, that:

Section 1. This Council hereby finds that the Petition has been signed by the owners of 100% of the lots and lands to be assessed for the Improvement.

Section 2. It is declared necessary to improve public streets and easements by constructing and installing on the Property (as described in the Petition) street improvements, water and sewer lines, storm drains, lighting, irrigation lines and signage, and all necessary appurtenances (collectively, the "Improvement").

Section 3. The plans, specifications, profiles and estimate of cost of the Improvement, which have been prepared by ME Companies Inc., and which are now on file in the office of the Clerk of Council, are approved. The Improvement shall be made in accordance with, and the grade of the Improvement and of any street shall be the grade as shown on, the plans, specifications and profiles for the Improvement.

Section 4. This Council finds and determines that (a) the Improvement is conducive to the public health, convenience and welfare of this City and the inhabitants thereof and (b) the lots and lands to be assessed as described in Section 9 hereof and in the Petition are specially benefited by the Improvement.

Section 5. This Council hereby accepts the Petition. Subject to the provisions of and limitations set forth in the Petition, $108,000 of the costs of the Improvement (plus any interest on the special assessments to be computed in accordance with Section 1 of the Petition at the same rate applicable to notes or bonds to be issued by the City or other debt incurred by the City to pay for such Improvement in anticipation of the collection of the special assessments) shall be assessed against the real property described in and pursuant to the Petition. Any additional costs of the Improvement shall be paid by the land owner.

Section 6. The cost of the Improvement shall include the cost of preliminary and other surveys, plans, specifications, profiles and estimates and of printing, serving and publishing notices, resolutions and ordinances, the amount or any damages resulting from the Improvement and the interest thereon, the costs incurred in connection with the preparation, levy and collection of the special assessments, the cost of purchasing, appropriating, and otherwise acquiring any real estate or interest therein required for the Improvement, expenses of legal services including obtaining legal opinions, cost of labor and material and interest on securities issued in anticipation of the levy and collection of the special assessments, together with all necessary expenditures.

Section 7. The City Engineer is authorized and directed to prepare and file, or cause to be prepared and filed, in the office of the Clerk of Council the estimated special assessments of the cost of the Improvement described in this Resolution. Those estimated special assessments shall be based upon the estimate of cost of the Improvement now on file in the office of the Clerk of Council and shall be prepared pursuant to the provisions of this Resolution and the Petition.

Section 8. The special assessments to be levied shall be paid in twenty-five (25) annual installments of $300 (each annual installment to be payable semi-annually at the time real estate taxes in Miami County, Ohio are payable), together with interest on the unpaid principal amount of each special assessment as provided for by law, and in accordance with the Petition and the ordinance levying the final special assessments.

Section 9. This City has reviewed the plans and specifications and the associated cost estimates for the proposed Improvements as detailed in the Petition and this Council finds and determines that the average useful life of the Improvements is at least 28 years.

Section 10. The City presently intends to issue securities and incur debt in anticipation of the collection of the special assessments. The remainder of the entire cost of the Improvement, after application of the special assessments, shall be paid by the land owner. The land owner may seek reimbursement for all or a portion of the remaining costs from other City funds available for that purpose. Any such reimbursement shall be in accordance with an existing TIF Reimbursement Agreement or Development Agreement.

Section 11. This Council finds and determines that all formal actions of this Council and any of its committees concerning and relating to the adoption of this Resolution were taken in an open meeting of this Council and any of its committees, and that all deliberations of this Council and any of its committees that resulted in those formal actions were in meetings open to the public, all in compliance with the law including Section 121.22 of the Ohio Revised Code.

Section 12. This Resolution is declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety and welfare of the inhabitants of the City, and for the further reason that this Resolution is required to be immediately effective in order to enable the City to timely provide for the acquisition and construction of the Improvement; therefore, this Resolution shall be in full force and effect immediately upon its adoption.

Passed by Council on the ______ day of _____________ , 2014;
______ Yeas; ______ Nays.

AUTHENTICATION:

______________________________	______________________________
Clerk of Council	Mayor
______________________________	______________________________
Date	Date

CERTIFICATE

The undersigned, Clerk of Council of the City of Huber Heights, Ohio, hereby certifies that the foregoing is a true and correct copy of Resolution No. 2014-R-________ adopted by the Council of the City of Huber Heights, on December 8, 2014.

____
Clerk of Council

EXHIBIT A

PETITION FOR SPECIAL ASSESSMENTS AND AFFIDAVIT

October 1, 2014

To the City Council of the City of Huber Heights, Ohio:

WHEREAS, DEC Land Co. I LLC (the *"Property Owner"* and the *"Developer")*, represents that it owns certain real property (which real property represents 100% of the real property described and depicted in ATTACHMENTS A-1 and A-2 attached hereto and by reference made a part hereof and referred to herein as the *"Property")*, all of which Property is located within the City of Huber Heights, Ohio (the *"City");* and

WHEREAS, the Property Owner acknowledges that, in connection with the development of the Property, the Property will benefit from the construction and installation on the Property of certain public infrastructure improvements, including but not limited to, streets, water and sewer lines. storm drains, lighting, irrigation lines and signage, and all necessary appurtenances thereto which public infrastructure improvements are now on file in the Office of Clerk of Council and collectively referred to herein as the *"Improvement"*; and

WHEREAS, the Property Owner hereby petitions the City for the construction of the Improvement and further that a portion of the costs of the Improvement be assessed against the Property in accordance with this Petition; and

WHEREAS, the Property Owner acknowledges and agrees that the Property includes all of the real property to be assessed pursuant to this Petition, all of which Property will receive special benefits from the construction of the Improvement; and

WHEREAS, the Property Owner further deposes and states that this Petition and actions provided for herein impose burdens and obligations upon the Property and provide for special assessments to be levied upon the Property in accordance with this Petition, and that this Petition is available for inspection at the office of the Clerk of City Council; and

WHEREAS, the Property Owner requests that 100% of the special assessments be deferred as provided for herein;

NOW, THEREFORE, the Property Owner hereby petitions the City Council of the City of Huber Heights, Ohio as follows·

1. *Special Assessments.* The Property Owner states that it owns 100% of the Property. Acting pursuant to Chapter 727, Ohio Revised Code, the Property Owner petitions City Council for the construction of the Improvement, and agrees that the Property will receive special benefits from the construction of the Improvement, and

respectfully requests that $4,000 per lot completed which represents approximately 10% of the actual costs of the Improvement, including without limitation the compensation, damages and expenses of the Improvement, be assessed upon the Property. The Property Owner anticipates that the Property will be divided into twenty-seven (27) lots and that the actual costs of the Improvement will be apportioned equally among all of the lots included within the Property (with an apportionment of $4,000 per lot). To the extent the Property Owner, or its grantees or other successors with respect to the Property, does not pay the special assessments as levied in the time period provided for by Ohio law, the Property Owner acknowledges and agrees that the City may, in accordance with Ohio law, issue notes or bonds or incur other debt in anticipation of the collection of those unpaid special assessments. The Property Owner further agrees that in accordance with Ohio law, the City may increase those unpaid special assessments by an amount necessary to reflect any financing costs, including but not limited to, interest and issuance expenses, and if the City elects not to issue notes or bonds in anticipation of the collection of those unpaid special assessments, the City may increase those unpaid special assessments by an amount to reflect interest on such unpaid special assessments at an interest rate which shall be determined by the City to be substantially equivalent to the fair market rate that would have been borne by such notes or bonds. The City may also increase the unpaid assessments by an amount equal to the actual costs charged by Miami County to administer and collect the special assessments.

2. *Construction and Payment of Costs of the Improvement.* (a) The Developer shall construct the Improvement in a manner consistent with the plans and specifications for such Improvement which shall have been approved by the City, (b) the Developer shall obtain performance and payment bonds meeting the requirements of Sections 153.54 and 153.57 of the Ohio Revised Code guaranteeing the completion of the construction of the Improvement and the payment of subcontractors, material providers and laborers from all of Developer's subcontractors and material suppliers, (c) the Developer shall pay prevailing wage to laborers as determined by the Ohio Department of Commerce under Chapter 4115 of the Ohio Revised Code in connection with the construction of the Improvement, (d) the Developer shall be responsible for paying the actual costs of such Improvement prior to the time such Improvement is dedicated to and accepted by the City, (e) the Developer shall provide warranties and guarantees with respect to the workmanship of the Improvement and the correction of deficiencies, (f) the City shall, promptly following completion of construction of the Improvement and dedication to and acceptance by the City of the Improvement, pay to the Developer an amount equal to the lesser of (i) $4,000 per platted lot or (ii) 50% of the actual cost of construction of the Improvement; *provided* that the amount of such payment shall be specially assessed pursuant to this Petition, and (g) if required by the City, the City and the Developer shall enter into an Infrastructure Agreement to include the above terms in a form substantially in compliance with the May, 2010 Infrastructure Agreement currently in effect between the City and the Developer.

3. *Duration of Special Assessments.* The Property Owner hereby confirms that the special assessments (which shall be adjusted to include an amount necessary to

reflect any financing costs, including but not limited to, interest and issuance expenses on related securities issued by the City or an interest equivalent if securities are not issued) and the interest thereon be payable in twenty-five (25) annual installments of $300 of principal and interest (each annual installment to be payable semi-annually at the time real property taxes in Miami County, Ohio are payable), that the interest on the special assessments will be computed at the same interest rate applicable to the notes or bonds to be issued by the City in anticipation of collection of the unpaid special assessments or an interest equivalent, and that the annual amounts for principal and interest be computed utilizing a methodology which produces the same amount, or approximately the same amount, each year. The Property Owner hereby requests that the special assessments and interest thereon be certified to the County Auditor in order that the first installment of special assessments shall be due not later than the earliest of (a) the first date on which taxes and special assessments are due and payable in the first calendar year next following the first September 1 next following conveyance of the Property by the Property Owner to another entity or (b) the first date for 2018 on which taxes and special assessments are due and payable. Following the deferment, the special assessments will be collected in twenty-five (25) annual installments as described in this paragraph 3.

4. Payment of Special Assessments. In consideration of the Public Improvement, the Property Owner, for itself and its grantees or other successors with respect to the Property, agrees to pay promptly all special assessments levied against the lots and lands which collectively constitute the Property as they become due, and agrees that the determination by the Council of the special assessments in accordance with the terms hereof will be final, conclusive and binding upon the Property Owner and the Property. In further consideration of the Improvement, the Property Owner covenants and agrees to disclose, upon the transfer of the Property or any portion of the Property to be specially assessed for the actual costs of the Improvement, in the deed to the transferee the existence of any outstanding special assessment for the Improvement and to require that transferee covenant to disclose that information in any subsequent deed to any transferee so long as such special assessments remain unpaid. As a condition to each subsequent transfer while such special assessments remain unpaid, the Property Owner further covenants and agrees to provide expressly in the deed to any transferee (a) for the acquisition by such transferee of the Property subject to any outstanding special assessment and such transferee's assumption of responsibility for payment thereof and for the waiver by the transferee of any rights that the Property Owner has waived pursuant to this Petition and (b) the requirement that each transferee from time to time of the Property covenant to include in the deed to any subsequent transferee the conditions described in clause (a) so long as such special assessments remain unpaid.

5. Action by City Council. The Property Owner, for its successors and assigns, further consents and requests that all legislation required to be enacted to permit the Improvement to commence immediately be enacted at one City Council meeting.

6. *Waivers.* The Property Owner consents and requests that these special assessments be levied and collected without limitation as to the value of the Property, and waives all the following relating to the Improvement and the special assessments:

(a) any and all rights, benefits and privileges specified by Sections 727.03 and 727.06 of the Revised Code or by any other provision restricting these special assessments to 33-1/3% of the actual improved value of the lots and lands as enhanced by the Improvement to be made;

(b) any and all rights, benefits and privileges specified by Section 727.04 of the Revised Code or by any other provision Limiting special assessments for re-improvement when a special assessment has been levied and paid previously;

(c) any and all damages or claims for damages of whatsoever kind, character or description resulting from the Improvement or the making of the Improvement, including but not limited to all rights, benefits and privileges specified by Sections 727.18 through 727.22 and Section 727.43 of the Revised Code;

(d) any and all resolutions, ordinances and notices required for the making of the Improvement, including the notice of the adoption of the resolution of necessity and the filing of estimated special assessments, the equalization of the estimated special assessments, any increase in the cost of labor and materials over the estimated cost, the passage of the assessing ordinance, and the right to apply for deferment of the special assessments pursuant to Section 727.251 of the Revised Code, and including, but not limited to, notices authorized and required by Sections 727.13, 727.16, 727.17, 727.24 and 727.26 of the Revised Code;

(e) any limitation on the addition of interest to the special assessments specified by Section 727.301 of the Revised Code;

(f) any limitation or restriction on the levy and collection of special assessments against the Property for the Improvement as specified in Section 929.03 of the Revised Code; and

(g) any and all irregularities and defects in the proceedings.

7. *Notice.* Notice may be provided to the Property Owner at:

DEC Land Co. I, LLC
6375 Riverside Drive - Suite 200
Dublin, Ohio 43017
Attention: George L. Jenkins
Managing Member of the Managing Member

IN WITNESS WHEREOF, the Property Owner has caused this Petition to be duly executed in its name, all as of the date hereinbefore written.

SIGNED AND ACKNOWLEDGED IN THE PRESENCE OF:

Witness

Witness

DEC LAND CO. I LLC

By: Carriage Trails at The Heights LLC

Its: Managing Member

By:

Printed: William W. Keethler II

Title: Vice President – Development

STATE OFOHIO :
: SS.
COUNTY OF FRANKLIN :

On this 1st day of October, 2014, before me a Notary Public personally appeared William W. Keethler, Vice President-Development of Carriage Trails at The Heights LLC, an Ohio limited liability company, Managing Member of DEC Land Co. I LLC, an Ohio limited liability company, the authorized representative of DEC Land Co. I LLC, and acknowledged the execution of the foregoing instrument, and that the same is his voluntary act and deed on behalf of Carriage Trails at The Heights LLC and the voluntary act and deed of DEC Land Co. I LLC.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal on the date and year aforesaid.

NOTARY PUBLIC STATE OF OHIO
CASSANDRA L. RIEHLE
Notary Public, State of Ohio
My Comm. Expires Aug. 16, 2015

Notary Public

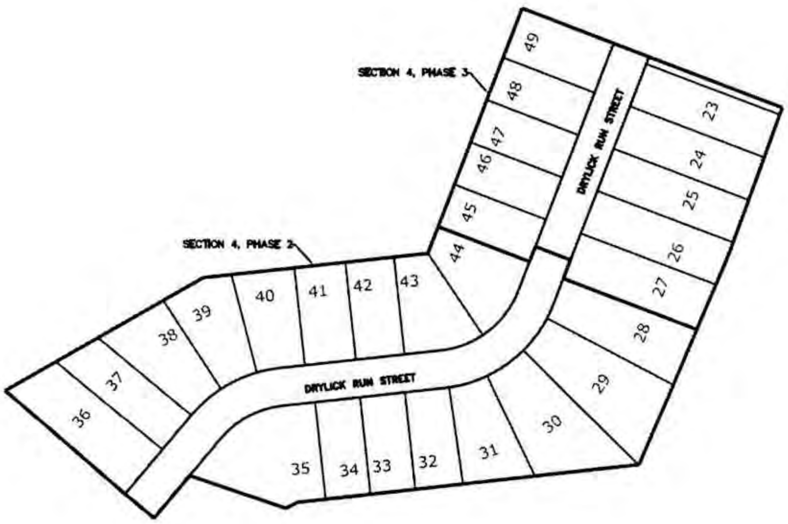
ATTACHMENT A-1

Description of the Property

Approximately 5.14 acres in Section 4 Phase II, being lots 28 through 44; and approximately 2.63 acres in Section 4 Phase III, being lots 23 through 27, and lots 45 through 49, of Carriage Trails, in the City of Huber Heights, Miami County, Ohio, as shown on Attachment A-2 attached hereto.

ATTACHMENT A-2
Depiction of the Property

IBI DEFINING THE CITIES OF TOMORROW 23 Triangle Park Cincinnati, OH 45246 Contact: Jeff Koehn 513-942-3141 ext. 232 Fax: 513-881-2263 www.ibigroup.com	HUBER HEIGHTS, OHIO CARRIAGE TRAILS SECTION 4 PHASE 2 & PHASE 3	GRAPHIC SCALE 0 100 200 (IN FEET) 1 inch = 200 ft.



J:\14-030_CT_4-2\5.9 Drawings\59civil\layouts\CT 4-3 Tif Map.dwg by:ed.roth on 09/25/2014 @ 03:05:59 pm ~ for M-E Companies, Inc.

AI-2855 **Pending Business** D.

City Council Meeting Agenda

Meeting Date: 01/26/2015

DEC Special Assessments - Carriage Trails - Sections 4-2 and 4-3 - Ordinance To Proceed

Submitted By: Donnie Jones

Department: Economic Development

Council Committee Review?: Administration Committee

Date(s) of Committee Review: 12/02/2014

Audio-Visual Needs: None **Emergency Legislation?:** Yes

Motion/Ordinance/ Resolution No.:

Information

Agenda Item Description or Legislation Title

An Ordinance Determining To Proceed With The Improvement Of Public Streets And Easements In Sections 4-2 And 4-3 By Constructing And Installing On Certain Property Within The City Street Improvements, Water And Sewer Lines, Storm Drains, Lighting, Irrigation Lines, Signage And All Necessary Appurtenances, And Declaring An Emergency.
(third reading)

Purpose and Background

DEC has requested that the City pay a portion of the costs to construct public infrastructure necessary to develop an additional 27 lots in Sections 4-2 and 4-3 of the Carriage Trails development and that the City in turn assess the property for these costs. The City will provide up to $4,000 per lot for 27 lots for a total of $108,000 and will assess the DEC-owned property $300.00 per lot per year for 25 years to recover these costs plus interest and administration costs. This ordinance is a companion to a Resolution of Necessity which must be passed as well and will allow the construction to proceed.

Fiscal Impact

Source of Funds: Special Assessments

Cost: $108,000

Recurring Cost? (Yes/No): No

Funds Available in Current Budget? (Yes/No): No

Financial Implications:

The City will issue notes or bonds to fund the improvements and will assess the property owners to pay the debt service on the bonds/notes.

Attachments

Ordinance

CITY OF HUBER HEIGHTS
STATE OF OHIO

ORDINANCE NO. 2014-O-

DETERMINING TO PROCEED WITH THE IMPROVEMENT OF PUBLIC STREETS AND EASEMENTS IN SECTIONS 4-2 AND 4-3 BY CONSTRUCTING AND INSTALLING ON CERTAIN PROPERTY WITHIN THE CITY STREET IMPROVEMENTS, WATER AND SEWER LINES, STORM DRAINS, LIGHTING, IRRIGATION LINES, SIGNAGE AND ALL NECESSARY APPURTENANCES, AND DECLARING AN EMERGENCY.

WHEREAS, this Council has adopted Resolution No. 2014-R-____ on December 8, 2014 (the "*Resolution of Necessity*"), declaring the necessity of making the Improvement described in Section 1.

NOW, THEREFORE, BE IT ORDAINED by the City Council of Huber Heights, Ohio, that:

Section 1. It is determined to proceed with the improvement of public streets and easements by constructing and installing on the Property (as described in the Petition) street improvements, water and sewer lines, storm drains, lighting, irrigation lines, signage and all necessary appurtenances (collectively, the "*Improvement*") more fully described in the plans and specifications on file in the office of the Clerk of Council.

Section 2. The Improvement shall be made in accordance with the provisions of the Resolution of Necessity (including the Petition referenced therein and attached thereto) and with the plans, specifications, profiles and estimate of cost previously approved and now on file in the office of the Clerk of Council.

Section 3. The portion of the cost of the Improvement to be assessed in accordance with the Resolution of Necessity and the related Petition shall be assessed in the manner and pursuant to the payment schedule set forth, and on the lots and lands described, in that Resolution and the related Petition.

Section 4. The City shall pay for a portion of the Improvement as set forth in the Petition and will recover these costs from the assessments described in the Petition. All other costs shall be paid by the land owner.

Section 5. All claims for damages resulting from the Improvement that have been or are legally filed shall be inquired into after completion of the Improvement, and the City Attorney is authorized and directed to institute legal proceedings in a court of competent jurisdiction to inquire into those claims.

Section 6. The estimated special assessments previously prepared and filed in the office of the Clerk of Council and in accordance with the Resolution of Necessity and the related Petition are adopted.

Section 7. The Clerk of Council shall deliver a certificate copy of this Ordinance to the County Auditor of Miami County, Ohio within 15 days after its passage.

Section 8. Subject to the provisions of Section 727.24 of the Revised Code, the City Manager is authorized and directed, as soon as the funds are available, to make and sign a contract for the Improvement in accordance with applicable law, and the Improvement shall be financed as provided in the Resolution of Necessity.

Section 9. This Council finds and determines that all formal actions of this Council and any of its committees concerning and relating to the passage of this Ordinance were taken in an open meeting of this council and any of its committees, and that all deliberations of this Council and any of its committees that resulted in those formal actions were in meetings open to the public, all in compliance with the law including Section 121.22 of the Ohio Revised Code.

Section 10. This Ordinance is declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety and welfare of the inhabitants of the City, and for the further reason that this Ordinance is required to be immediately effective in order to enable the City to timely provide for the acquisition and construction of the Improvement; therefore, this Ordinance shall be in full force and effect immediately upon its passage.

Passed by Council on the ______ day of _____________, 2014;
______ Yeas; ______ Nays.

AUTHENTICATION:

______________________________	______________________________
Clerk of Council	Mayor
______________________________	______________________________
Date	Date

CERTIFICATE

The undersigned, Clerk of Council of the City of Huber Heights, Ohio, hereby certifies that the foregoing is a true and correct copy of Ordinance No. 2014-O-________ passed by the City Council of Huber Heights, on December 8, 2014.

____
Clerk of Council

AI-2873 **New Business** A.

City Council Meeting Agenda **City Council**

Meeting Date: 01/26/2015

Citizens Water and Sewer Board Appointment - S. Huntington

Submitted By: Anthony Rodgers

Department: City Council

Council Committee Review?: Administration Committee

Date(s) of Committee Review: 01/20/2015

Audio-Visual Needs: None **Emergency Legislation?:** No

Motion/Ordinance/ Resolution No.:

Information

Agenda Item Description or Legislation Title

A Motion To Appoint Shelly Huntington To The Citizens Water And Sewer Advisory Board To A Term Expiring January 1, 2018.

Purpose and Background

City Staff recommend the appointment of Shelly Huntington to the Citizens Water and Sewer Advisory Board for a term ending January 1, 2018. A background check was completed on Mrs. Huntington and no adverse information was reported according to Human Resources.

Fiscal Impact

Source of Funds: N/A

Cost: N/A

Recurring Cost? (Yes/No): N/A

Funds Available in Current Budget? (Yes/No): N/A

Financial Implications:

Attachments

Application

RECEIVED ON:

~~NOV 1 0 2014~~

CLERK OF COUNCIL

Rodgers, Anthony

From: S Huntington <huntington_s@yahoo.com>
Sent: Wednesday, November 19, 2014 10:47 PM
To: Rodgers, Anthony
Subject: Water and Sewer Advisory Board - Huntington
Attachments: 11.19.14 Board_and_Commission_Application water-signed.pdf

Good morning, Tony,

I've attached my application for the Water and Sewer Advisory Board. I'm working on my MBA full time right now and do not need an employment situation but would really like to use my skills in service at this time. I believe that I could be an asset to the Board and it would allow me to use some of my skills in practical, real opportunities.

I noticed that there may be a spot coming open again on the Planning Commission according to their tenure dates. Is this correct? If so, I'd really like to apply for this as that is a direction that I will most likely head professionally. However, the Water and Sewer would be a wonderful experience and chance to serve either way.

Please let me know if there is anything else that will be needed or what may transpire with the Planning Commission. Thank you very much.

Shelly Huntington
660-864-6154

6131 Taylorsville Road
Huber Heights, Ohio 45424
Phone: (937) 233-1423
Fax: (937) 233-1272
www.hhoh.org
An Equal Opportunity Employer

Application For Board/Commission Membership

Qualified applicants are considered for all positions without regard to race, color, religion, sex, national origin, marital or veteran status, or disability.

PLEASE COMPLETE ALL SECTIONS AND EACH QUESTION COMPLETELY AND ACCURATELY

Board or Commission Applied For:	**Date Applied:**
Citizens Water and Sewer Advisory Board	11/20/2014

Last Name	First Name	Middle Name
Huntington	Shelly	J

Address	City	State	Zip Code
7147 Rio Vista Ct	Huber Heights	OH	45424

Home Phone Number	Daytime Phone Number	E-mail Address
660-864-6154		huntington_s@yahoo.com

EDUCATION

	SCHOOL	COURSE OF STUDY OR DEGREE EARNED
HIGH SCHOOL	Kansas City Southwest	General Studies
COLLEGE	Park University	Managerial Accounting
GRADUATE SCHOOL	Park University	Masters in Business Admin.
OTHER (Specify)		

COMMUNITY INVOLVEMENT

Please list all civic, community, or non-profit organizations to which you have belonged or currently do belong, and your dates of service.

Organization	Dates of Service
Carriage Hill Historic reenactor/volunteer	2011 to present
Boy Scouts of America	1985 to present

EMPLOYMENT HISTORY

Name of Employer	Position(s) Held	Dates of Employment
Bethel Twp / Clark Co	Administrator	12/15/13 - 8/29/14
Self-employment/ PR work	Campaign mgr, F-35 PR, church PA,	11/2011- present
Lowes	cashier	2/2013- 8/2013
Ohio Republican Com.	Field Manager	7/2012-11/2012

REFERENCES

Dick Gould - Greene County Treasurer 937-562-5017

Name Address Telephone Number

Kyle Kohler - KK Tool, Springfield, OH (new state Representative) 937-408-6411

Name Address Telephone Number

David Ladle - Director of Public Affairs LDS Church 937-545-7709

Name Address Telephone Number

STATEMENT OF INTEREST

Please tell us why you are interested in serving on this board or commission

I've lived in Ohio for the past five years, all of it in Huber Heights. I believe it is everyone's duty to serve in their community, utilizing the skills they have to improve it. I believe my experience working in government as a township Administrator as well as my degree in Accounting will give a good foundation to assist our city on the Water and Sewer Advisory Board. I am also completing a a Master's in Business Administration. Due to my course work load I'm not seeking employment at this time but I would really like to continue to grow and use these skills. Being a part of the Board would allow me to serve in my community and hone my skills simultaneously. We actively sought a home in Huber Heights after researching Dayton. I'd like to be even more a part of it's growth.

Shelf Huntington

Signature

November 20, 2014

Date

AI-2875 **New Business** B.

City Council Meeting Agenda **City Manager**

Meeting Date: 01/26/2015

Fireworks Contract - Rozzi

Submitted By:	LeeAnne Yeater
Department:	City Manager
Council Committee Review?:	Administration Committee
Date(s) of Committee Review:	1/20/2015
Audio-Visual Needs:	None
Emergency Legislation?:	Yes
Motion/Ordinance/ Resolution No.:	

Information

Agenda Item Description or Legislation Title

A Resolution Authorizing The City Manager To Enter Into An Agreement With The Rozzi Company For The Purpose Of Providing A Municipal Fireworks Display In Celebration Of The Fourth Of July National Holiday For The Years 2015 And 2016, And Declaring An Emergency.
(first reading)

Purpose and Background

This legislation approves a 2015 and 2016 contract with The Rozzi Company for the City's annual Fourth of July fireworks display.

Fiscal Impact

Source of Funds:	General Fund/Donations
Cost:	$35,000
Recurring Cost? (Yes/No):	Yes
Funds Available in Current Budget? (Yes/No):	Yes
Financial Implications:	

Attachments

Resolution
Exhibit A

CITY OF HUBER HEIGHTS
STATE OF OHIO

RESOLUTION NO. 2015-R-

AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH THE ROZZI COMPANY FOR THE PURPOSE OF PROVIDING A MUNICIPAL FIREWORKS DISPLAY IN CELEBRATION OF THE FOURTH OF JULY NATIONAL HOLIDAY FOR THE YEARS 2015 AND 2016, AND DECLARING AN EMERGENCY.

WHEREAS, the City of Huber Heights wishes to celebrate the Fourth of July national holiday with a community fireworks display; and

WHEREAS, The Rozzi Company has the experience and knowledge to provide the fireworks display; and

WHEREAS, the City of Huber Heights wishes to enter into a two year agreement with The Rozzi Company to guarantee cost and insurance rates at the 2014 rates for the years 2015 and 2016.

NOW THEREFORE, BE IT RESOLVED by the City Council of Huber Heights, Ohio that:

Section 1. The City Manager is hereby authorized to enter into a two year agreement with The Rozzi Company attached hereto as Exhibit A on behalf of the City of Huber Heights to provide and execute a Fourth of July holiday fireworks display for the years of 2015 and 2016.

Section 2. It is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this Resolution were adopted in an open meeting of this Council and that all deliberations of this Council and of any of its Committees that resulted in such formal action were taken in meetings open to the public and in conformance with all legal requirements including Section 121.22 of the Ohio Revised Code.

Section 3. The agreement with The Rozzi Company is subject to the appropriation of funds for a not to exceed amount of $35,000.00 for the year 2015 and $35,000.00 for the year 2016, and hereby approved for the purpose of providing a Fourth of July holiday fireworks display.

Section 4. This Resolution is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety, and welfare and for the further reason that time is of the essence in securing available dates for The Rozzi Company to provide the fireworks displays; therefore, this Resolution shall take full force and effort immediately upon its adoption by Council.

Passed by Council on the ______ day of ______________ , 2015;
______ Yeas; ______ Nays.

AUTHENTICATION:

________________________________	________________________________
Clerk of Council	Mayor
________________________________	________________________________
Date	Date

EXHIBIT A

FIREWORKS DISPLAY AGREEMENT

Fireworks Display Operator: The Rozzi Company, Inc.
An Ohio corporation
qualified to do business in Ohio ("Rozzi")]
P.O. Box 5
Loveland, OH 45140

Agreement Effective Date: November 11, 2014

Event: THE CITY OF HUBER HEIGHTS Fireworks Display

Event Sponsor: THE CITY OF HUBER HEIGHTS
Huber Heights, OH

Event Location: City of Huber Heights
Thomas Cloud Park
Huber Heights, OH

This Fireworks Display Agreement ("Agreement") is made as of the 11th day of November 2014 by and between **Rozzi, Inc dba Rozzi's Famous Fireworks. An Ohio corporation, 118 Karl Brown Way, Loveland, OH and THE CITY OF HUBER HEIGHTS** ("Sponsor") for the purpose of setting forth the terms and conditions by which Rozzi shall provide the Fireworks Display by which Sponsor shall pay the Contract Sum therefor. In consideration of the foregoing and of the covenants, terms, conditions below, Rozzi and Sponsor agree as follows:

1. **ENGAGEMENT OF ROZZI**: THE CITY OF HUBER HEIGHTS hereby engages Rozzi to provide to THE CITY OF HUBER HEIGHTS a Rozzi's Famous Fireworks production ("Production" or "Productions") named THE CITY OF HUBER HEIGHTS Fireworks Display at the THE CITY OF HUBER HEIGHTS events ("Events") and Rozzi accepts such engagement.
2. **TERM:**
   (a) THE CITY OF HUBER HEIGHTS engages Rozzi for a 2015 Production at THE CITY OF HUBER HEIGHTS Event, which shall take place on July 4, 2015:and THE CITY OF HUBER HEIGHTS engages Rozzi for a 2016 PRODUCTION at THE CITY OF HUBER HEIGHTS Event, which shall take place on July 4, 2016.

   The rain date for these productions will be _______, 2015 and _________, 2016

3. **SITE**: The Events and the Production(s) shall take place in the THE CITY OF HUBER HEIGHTS designated by THE CITY OF HUBER HEIGHTS and as approved by ROZZI and the local Authority having jurisdiction ("AHJ ")
4. **FEES AND EXPENSES**:
   4.1 2015 and 2016 fee. THE CITY OF HUBER HEIGHTS agrees to pay ROZZI a fee of $35,000.00 USD (the "Fee") for the 2015 Production, and $35,000 USD for the 2016 Production. THE CITY OF HUBER HEIGHTS shall pay to ROZZI 20% of the fee as a deposit no later than February 10th 2015, with respect to the 2016 production no later than February 10, 2014; the balance of the fee shall be paid no later than June 15, of the applicable year.

ROZZI RESPONSIBILITIES

1.1 Fireworks Display. Rozzi and/or its subcontractors or agents shall furnish and shoot the fireworks show at the Event Location on the Event Date specified above. Rozzi shall provide properly trained and experienced operators to set up and shoot the Fireworks Display in substantial conformance with the requirements of NFPA 1123-2006 edition ("NFPA 1123") and applicable federal, state and local laws, regulations, codes and ordinances ("Law").

1.2 Permits. Rozzi shall obtain the necessary permits for the Fireworks Display from the authority having jurisdiction ("AHJ") as required by Law.

1.3 Insurance. Rozzi shall purchase and maintain public liability and property damage insurance covering the Fireworks Display only (and not the entire Event) in the amount of Ten Million Dollars ($10,000,000.00) and upon request provide Sponsor with a certificate of insurance showing the amount of insurance in force and naming Rozzi as its insured and Sponsor as an additional insured and naming as additional insureds such other parties associated with the Event as Sponsor may reasonably request, and which are approved by Rozzi's insurer. Any additional premium associated with adding parties other than the Sponsor as additional insureds shall be added to the Contract Sum as an Additional Charge (as defined below).

SPONSOR RESPONSIBILITIES

2.1 Sponsor's Event Responsibilities. Sponsor shall have the obligations set forth in this Section 2.1-2.3 ("Sponsor Event Responsibilities"). Sponsor shall designate and secure for Rozzi an appropriate site and adequate space for the Fireworks Display ("Display Site") as required by the NFPA 1123 Table of Distances and as required by Law taking into account: (i) the requirements of the AHJ; (ii) location of the Fallout Area; proximity to airports, navigable waterways, highways and other safety and security considerations. In addition, the Sponsor shall be responsible for: (i) proper signage, crowd control, fencing, roping, police protection and security to prevent access of unauthorized persons to the Display Site and for the Event generally; (ii) the services of standby firefighters; (iii) proper permits for the Event (except the Fireworks Display); and (iv) a base Site Plan, all in keeping with the requirements of NFPA 1123, Law and the AHJ. All the foregoing obligations shall be satisfied by Sponsor to Rozzi's satisfaction in its sole and absolute discretion. Sponsor shall pay the cost incurred to meet any safety or other requirements imposed on Rozzi beyond those required by Law or the AHJ. Failure of the Sponsor to meet its Sponsor Event Responsibilities shall be considered a default of a material obligation under this Agreement.

2.2 Damages Within Fallout Area. Rozzi shall not be responsible for damage to, or destruction of, automobiles or other personal property or any injury to persons, located within 1000' of the mortars or other equipment used to fire the Fireworks Display ("Fallout Area"). Sponsor shall notify spectators who will be viewing the Fireworks Display of the risk of impending fallout from the Fireworks Display and the risk to spectators and their automobiles and other property by posting warning signs at the Event Site.

ARTICLE 3

EVENT CANCELLATION

3.1 Cancellation for Safety Considerations. Sponsor acknowledges and agrees that, subject to the authority of the AHJ, the decision to proceed with the Fireworks Display is solely that of Rozzi, and it is understood and acknowledged by the Sponsor that the decision of Rozzi (or the AHJ) not to shoot the Fireworks Display because of rain, floods, high winds, inclement weather, Sponsor's failure to meet its Sponsor Event Responsibilities or other safety considerations (collectively "Safety Considerations") shall be final and any such decision based on Safety Considerations shall not constitute a failure of performance or a breach of this Agreement by Rozzi.

3.2 Charges for Cancellation Based on Safety Considerations. Sponsor and Rozzi agree that should the Fireworks Display be canceled due to Safety Considerations, Sponsor shall pay to Rozzi as Additional Charges the following:

3.2.1 if the display equipment is left in place at the Event Site, and the Fireworks Display is fired the following night, the Additional Charge shall be 10% of the Contract Sum.

3.2.2 if the Fireworks Display is postponed for more than one night, the Additional Charge shall be 10% of the Contract Sum for each additional night that the Fireworks Display is postponed.

3.2.3 Should there be a need to disassemble the display equipment, remove it from the Event Site and reassemble it at a subsequent date as agreed upon by the parties, the Additional Charge shall be 20% of the Contract Sum.

3.2.4 Should Rozzi determine that there is a need for additional security to protect the equipment at the Event Site or elsewhere, all such costs and expenses shall be an Additional Charge.

3.2.5 In addition to the foregoing charges, should the Fireworks Display be canceled and no make up date agreed to by the parties, this Agreement shall be considered terminated and the provisions of Section 5.2 shall apply.

3.2.6 In addition to the Charges set forth in Subsections 3.2.1 through 3.2.4 above, if the Fireworks Display cancelled by Rozzi or the AHJ due to Sponsor's failure to meet its Sponsor Event Responsibilities this Agreement shall be considered terminated and the provisions of Section 5.2 shall apply.

3.3 Force Majeure. In the event of fire, accident, strike, delays, acts of God or other causes beyond the reasonable control of Rozzi, other than Safety Considerations, that would prevent it from performing the Fireworks Display, Sponsor hereby releases Rozzi from any and all performance obligations herein contained and from any and all damages or losses that result or may result from the inability to perform the Fireworks Display. In the event of such occurrence, the parties will make reasonable efforts to reschedule the Fireworks Display and the additional costs of rescheduling shall be an Additional Charge as provided in Subsections 3.2.1 through 3.2.4 above. If the parties are unable to agree on a rescheduled date for the Fireworks Display, this Agreement shall be terminated in accordance with Section 5.2 below.

ARTICLE 4

INDEMNIFICATION AND WAIVERS

4.1 Indemnification by Rozzi. To the fullest extent permitted by law, and subject to the limitations set forth in Section 1.3 above and Sections 4.3 through 4.6 below, Rozzi shall indemnify and hold Sponsor harmless from, for and against any and all claims, losses, damages and costs including reasonable attorney fees (collectively, "Losses") arising out of or relating to the Fireworks Display, provided that any such loss is attributable to bodily injury or death, or to injury to or destruction of tangible property, but only to the extent caused by the negligent act or omission of Rozzi or its subcontractors, agents or employees.

4.2 Rozzi's Liability Limited to Amount of Insurance Proceeds. Rozzi shall procure and maintain insurance as required by and set forth in Section 1.3 of this Agreement. Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, Sponsor and Rozzi agree that the total liability, in the aggregate, of Rozzi, and all Rozzi Entities to Sponsor and all Sponsor Entities for any and all claims, losses, costs, or damages whatsoever arising out of, resulting from or in any way related to the Event, the Fireworks Display or the Agreement from any cause or causes whatsoever, including but not limited to the negligence, errors or omissions, strict liability or breach of contract, or warranty express or implied, of Rozzi or any Rozzi

Entity (hereafter "Sponsor Claims"), shall not exceed the total insurance proceeds paid on behalf of or to Rozzi by Rozzi's insurers in settlement or satisfaction of Sponsor Claims under the terms and conditions of Rozzi's insurance policies applicable thereto.

4.3 Waiver of Subrogation. To the extent permitted by their respective insurers, the Sponsor and Rozzi shall waive all rights against each other and, with respect to the Sponsor, all Sponsor Claims against all Rozzi Entities, for damages caused by fire or other causes of loss to the extent covered by the insurance required to be obtained by the parties pursuant to this Agreement.

ARTICLE 5

TERMINATION

5.1 Causes for Termination. In the event Sponsor is unable to secure funds for the Event, Sponsor may notify Rozzi in writing no less than 120 days prior to the Event date.

5.2 Liquidated Damages. In the event this Agreement is terminated pursuant to Sections 3.2.5 above, Sponsor shall pay to Rozzi the total sum of 45% of the contract price for 2015 Production and 45% of the contract price for the 2016 Production. The parties agree that termination of this Agreement pursuant to Sections 3.2.5 shall result in damages and losses to Rozzi that are difficult to quantify in advance and that the amounts set forth herein to be retained by or paid to Rozzi ("Liquidated Damages") constitute a reasonable good faith estimate of such losses and damages and not a penalty.

ARTICLE 6

MISCELLANEOUS PROVISIONS

6.1 Notices. Any notice required under this Agreement will be in writing, addressed to the appropriate party at its address on the signature page and given personally, by certified mail postage prepaid, or by a nationally recognized commercial courier service. All notices shall be effective upon the date of receipt.

6.2 Survival. All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.

6.3 Severability. Any provision or part of this Agreement held to be void or unenforceable under any applicable laws or regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon the parities, who agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

6.4 Waiver. A party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.

IN WITNESS WHEREOF, the parties by themselves or their duly authorized corporate officers have executed this Agreement on the ______day of __________________, 2013.

ROZZI INC	SPONSOR
By: Nancy M Rozzi	
Its: President	
Address:	By: ______________________
City____________State___________	Its: ______________________

ADDENDUM

As required by section 1.3 Insurance, the certificate shall contain the following insured language:

The following are additional insured: The City of Huber Heights, OHIO, its elected and appointed officials, all employees, agents, volunteers, all boards, commissions and/or authorities and board members including employees, agents and volunteers thereof. Coverage shall be primary to the Additional Insured and not contributing with any other insurance or similar protection available to the Additional Insured's whether other available coverage be primary, contributing, or excess.

____

Nancy M Rozzi, President

ROZZI INC.

Date: ____________

AI-2881 **New Business** C.

City Council Meeting Agenda **City Manager**

Meeting Date: 01/26/2015

Janitorial Services Contract - Solicit Bids

Submitted By:	Rob Schommer
Department:	City Manager
Council Committee Review?:	Administration Committee
Date(s) of Committee Review:	01/20/2015
Audio-Visual Needs:	None
Emergency Legislation?:	Yes
Motion/Ordinance/ Resolution No.:	

Information

Agenda Item Description or Legislation Title

A Resolution Authorizing The City Manager To Solicit Bids And Award A Three Year Contract For The Provision Of Janitorial Services For City Hall, Police Building, Senior Center, And The Montgomery County Municipal Court Facility, And Declaring An Emergency.
(first reading)

Purpose and Background

This legislation will authorize the City Manager to solicit bids through the competitive bidding process for a janitorial services contract beginning May 1, 2015 through April 30, 2017.

Fiscal Impact

Source of Funds:	General Fund
Cost:	Not to Exceed Bid
Recurring Cost? (Yes/No):	Yes
Funds Available in Current Budget? (Yes/No):	Yes
Financial Implications:	

Attachments

Resolution

CITY OF HUBER HEIGHTS
STATE OF OHIO

RESOLUTION NO. 2015-R-

AUTHORIZING THE CITY MANAGER TO SOLICIT BIDS AND AWARD A THREE YEAR CONTRACT FOR THE PROVISION OF JANITORIAL SERVICES FOR CITY HALL, POLICE BUILDING, SENIOR CENTER, AND THE MONTGOMERY COUNTY MUNICIPAL COURT FACILITY, AND DECLARING AN EMERGENCY.

WHEREAS, the City of Huber Heights is responsible for the maintenance and cleanliness of the City Hall, Police Building, Senior Center and Montgomery County Municipal Court Facility to keep these buildings operating efficiently and safely; and

WHEREAS, the City of Huber Heights desires to contract with one company which can provide the requisite janitorial services for all of the aforementioned facilities at the most responsible price and quality of service for a period of three years from May 1, 2015 to April 30, 2017.

NOW, THEREFORE, BE IT RESOLVED by the City Council of Huber Heights, Ohio that:

Section 1. The City Manager is hereby authorized to solicit bids and award a three year contract from May 1, 2015 to April 30, 2017 for the provision of janitorial services for the City Hall, Police Building, Senior Center, and Montgomery County Municipal Court Facility.

Section 2. A copy of the bid specifications shall be on file within the Office of the Clerk of Council.

Section 3. This Resolution is hereby declared to be an emergency measure necessary in order to provide for the continued preservation of the public peace, health, safety and welfare and for the further reason that janitorial services will ensure the efficient operation and safety of the above mentioned buildings; therefore, this Resolution shall take effect immediately upon its adoption by Council.

Passed by Council on the ______ day of ______________ , 2015;
______ Yeas; ______ Nays.

AUTHENTICATION:

______________________________	______________________________
Clerk of Council	Mayor
______________________________	______________________________
Date	Date

AI-2878 **New Business** D.

City Council Meeting Agenda **City Manager**

Meeting Date: 01/26/2015

Kroger Aquatic Center Naming Rights Agreement Renewal

Submitted By:	Rob Schommer
Department:	City Manager
Council Committee Review?:	Administration Committee
Date(s) of Committee Review:	01/20/2015
Audio-Visual Needs:	None
Emergency Legislation?:	Yes
Motion/Ordinance/ Resolution No.:	

Information

Agenda Item Description or Legislation Title

A Resolution Authorizing The City Manager To Enter Into A Contract With The Kroger Corporation For An Exclusive Contract To Allow Kroger Naming Rights To The Aquatic Center For A Period Of Five (5) Years With Payment To The City As Provided In Exhibit A, And Declaring An Emergency.
(first reading)

Purpose and Background

Joint Venture Advertising has again brought the City an excellent opportunity to continue the naming rights agreement for the aquatic center with Kroger. The changes in this agreement compared to the original is an increase in length and an increase in the net amount of the sponsorship to the City. This five year agreement is a $150,000 sponsorship and keeps the well-established name as the Kroger Aquatic Center at The Heights.

Considering marketing and 2015 season preparation, City Staff request this agreement be passed as an emergency measure, as it has already been vetted and approved by Kroger.

Fiscal Impact

Source of Funds:	Sponsorship
Cost:	+$30,000 Annually
Recurring Cost? (Yes/No):	N/A
Funds Available in Current Budget? (Yes/No):	N/A
Financial Implications:	

Attachments

Resolution
Exhibit A - Part 1
Exhibit A - Part 2

CITY OF HUBER HEIGHTS
STATE OF OHIO

RESOLUTION NO. 2015-R-

AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH THE KROGER CORPORATION FOR AN EXCLUSIVE CONTRACT TO ALLOW KROGER NAMING RIGHTS TO THE AQUATIC CENTER FOR A PERIOD OF FIVE (5) YEARS WITH PAYMENT TO THE CITY AS PROVIDED IN EXHIBIT A, AND DECLARING AN EMERGENCY.

WHEREAS the City Council has extensively reviewed and negotiated with Kroger with regard to the naming rights by Kroger of the Aquatic Center.

NOW, THEREFORE, BE IT RESOLVED by the City Council of Huber Heights, Ohio that:

Section 1. The City Manager is authorized to enter into that certain contract between Kroger Corporation and the City for the right of Kroger to exclusive naming rights to the Aquatic Center on the terms as fully set forth in Exhibit A attached hereto.

Section 2. It is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this Resolution were adopted in an open meeting of this Council and that all deliberations of this Council and of any of its Committees that resulted in such formal action were in meetings open to the public and in compliance with all legal requirements including Section 121.22 of the Ohio Revised Code.

Section 3. This Resolution is hereby declared to be an emergency measure necessary for the immediate preservation of public peace, health, safety and welfare and for the reason that having Kroger in a position to perform will ensure the planned date of opening of the Aquatic Center and the timely participation of Kroger in advertising opportunities for the Aquatic Center; therefore, this Resolution shall take effect immediately upon its adoption by Council.

Passed by Council on the ______ day of _____________ , 2015;
______ Yeas; ______ Nays.

AUTHENTICATION:

______________________________	______________________________
Clerk of Council	Mayor
______________________________	______________________________
Date	Date

EXHIBIT A

HUBER HEIGHTS AQUATIC CENTER
AMENDED & RESTATED NAMING RIGHTS AGREEMENT

This Amended and Restated
Naming Rights Agreement (the "AGREEMENT") is made as of the _____ day of _________________, 2015 by and between Kroger Limited Partnership I, an Ohio partnership for its Cincinnati/Dayton Division, (the "Sponsor"), and the City of Huber Heights, Ohio (the "City") (collectively, the "Parties").

In consideration of their mutual promises, the Parties agree as follows:

RECITALS

Whereas the City and the Sponsor entered into a "Naming Rights Agreement" for the Aquatic Center on or about March 7, 2012 and;

Whereas the City and the Sponsor desire to extend the "Naming Rights Agreement" for the Aquatic Center and in doing so desire to Amend and Restate the Naming Rights Agreement originally entered into;

WHEREAS the City owns the facility known as The Aquatic Center located at 8625 Brandt Pike, , Huber Heights, Ohio (the "Aquatic Center");

WHEREAS, the City desires to grant to Sponsor the license to name the Aquatic Center and related ancillary benefits in consideration for Sponsor 's agreement to pay the Naming Rights Fee as set forth herein.

NOW, THEREFORE, in consideration of these Recitals, hereby incorporated into this Agreement, the following mutual promises, and all other good and valuable consideration, the receipt and adequacy of which are acknowledged, the Parties agree as follows:

AGREEMENT

1. DEFINITIONS As used in this Agreement, the following terms will have the following meanings:

A. "<u>Aquatic Center</u>" means the Aquatic Center located at 8625 Brandt Pike, Huber Heights, Ohio, owned by the City of Huber Heights (the "City").

B. "Aquatic Center Marks" means the Name, Logos, and/or any stylized form or combination thereof.

C. "<u>Year</u>" means the Calendar year beginning on January 1 of each calendar year and ending on December 31 in the same calendar year.

2. NAMING RIGHTS AND ANCILLARY BENEFITS

A. <u>Aquatic Center Name</u>. During the Term of this Agreement, the City hereby grants to Sponsor the exclusive license to name the Aquatic Center pursuant to the terms hereunder (the "Naming Rights"). As of the Effective Date, the official name of the Aquatic Center will be "**The Kroger**

Aquatic Center at the Heights" (the "Name"), unless amended or changed in accordance with this Agreement. Ancillary Benefits are more fully described in Exhibit A.

B. Aquatic Center Logos. During the Term of this Agreement, the Parties agree that the graphic design incorporating the Name to be used as the primary logo associated with the Aquatic Center is as set forth on Exhibit A attached (the "Primary Logo").

C. Signage and Exposure. In connection with the Naming Rights granted to Sponsor hereunder, Sponsor will be entitled to have certain signage or other forms of exposure of the Aquatic Center Marks placed in, on and around the Aquatic Center (the "Signage"); provided such Signage shall substantially consist of the Aquatic Center Marks. The appearance and location of all Signage will be mutually agreed upon by Sponsor and CITY and is subject to the approval of the City.

i. Building Signs.

a. Exterior Signage. Signs that are located on the Aquatic Center exterior by the City will display the Aquatic Center Marks as agreed upon by the parties.

b. Interior Signage. Signs that are located within the Aquatic Center by the City, will display the Aquatic Center Marks.

D. Aquatic Center Branding, Promotion and Publicity

i. Branding and Collateral Materials. In connection with the Naming Rights granted to Sponsor hereunder, CITY agrees to support the brand exposure of the Aquatic Center Marks by including the same on the official promotional website, Facebook page and other social media outlets for the promotion of the Aquatic Center.

ii. Publicity and Promotion.

a. Event Promotion. The Parties agree that each will make commercially reasonable efforts during the Term to: (i) identify the Aquatic Center by the Aquatic Center Name and Marks in all written and oral references to the Aquatic Center.

b. Third Party Media and Broadcasters. The Parties agree that each will make commercially reasonable efforts during the Term to cause the media and other third parties, including, without limitation, news outlets, web, radio and television, service providers, advertisers, promoters and sponsors, to identify the Aquatic Center by the Aquatic Center Name and Marks; provided that any failure of such third parties to refer to the Aquatic Center by the Aquatic Center Name or Marks will not be considered a breach of this Agreement by the Parties.

E. Exclusivity.

i. Exclusive Rights. The Naming Rights granted to Sponsor are exclusive to the Sponsor.

3. TERM The term of this Naming Rights Agreement will begin on February 1, 2015 (the "Effective Date") and continue through February 1, 2020 , (the "Expiration Date"), unless extended or terminated in accordance with the terms hereof (wholly, the "Term").

4. FEES AND COSTS

A. <u>Naming Rights Fee</u>. In consideration of the Naming Rights and Ancillary Benefits granted by City hereunder, Sponsor agrees to pay a Naming Rights Fee in the manner and amounts set forth in Exhibit A, attached (the "Naming Rights Fee").

ii. <u>Subsequent Name Change</u>. In the event Sponsor or its successor or assignee changes or causes the change of the Name, Logo and/or Aquatic Center Marks in accordance with the terms hereof, Sponsor agrees to pay, or cause its successor or assignee to pay, all costs and expenses associated therewith, including, without limitation, the cost and expense of: (i) removing, destroying and/or discarding signage reflecting the prior Aquatic Center Marks; (ii) preparing, producing, replacing, mounting and/or installing new or altered signage to reflect the name change; (iii) removing, destroying and/or discarding merchandise, equipment or other collateral materials related to the Aquatic Center branding, promotion and publicity displaying the prior Aquatic Center Marks; and (iii) preparing, producing, replacing and/or distributing merchandise, equipment or other collateral materials related to the Aquatic Center branding, promotion and publicity reflecting the name change.

B. <u>Payment</u>.

i. <u>Payment Due Date</u>. All payments shall be made in accord with the payment terms set forth in Exhibit A.

5. CONFIDENTIALITY AND COMMUNICATIONS

A. <u>Public Statements</u>. The parties agree to consult and cooperate with each other with respect to the timing, content, and form of any media statements, press releases or other public disclosures (the "Public Statements") made by either party related to performance under this Naming Rights Agreement. Each party further agrees that any such Public Statement will be made in furtherance of the good faith performance of this Naming Rights Agreement and the contractual relationship of the Parties. Each party agrees that it will not directly or indirectly make or encourage the making of any defamatory or disparaging statements about the other, or any statements that could reasonably be expected to impact negatively on the name, business or reputation of either party.

B. <u>Public Records Act</u>. The Parties acknowledge that any documents retained by the City in the course of City business may be subject to disclosure under the Ohio Public Records Law. The City will notify Sponsor promptly upon receipt of any such request for documents related to this Agreement. If Sponsor has any objections to the release of any documents subject to a Public Records Request, they shall notify City immediately of such objection and the Parties will cooperate in determining how to handle the request within the parameters of the law.

6. REPRESENTATIONS AND WARRANTIES

A. <u>Compliance</u>.

i. Laws and Regulations. This Agreement is subject to the terms of, and each Party hereby warrants and certifies that it will comply with, all applicable laws, statutes, rules, regulations, decisions and orders in the performance of this Agreement, including regulations and actions of applicable governmental administrative agencies

B. Cooperation. The Parties agree to cooperate in the performance of each of their obligations under this Agreement, including, but not limited to, obtaining, agreeing to, distributing and/or enforcing any waivers, rules and regulations, licenses and permits, and other required certifications related to the benefits granted hereunder.

C. Non-Infringement. Each party hereby warrants that, in the course of performance under this Agreement, it will not violate or infringe upon any proprietary rights of any third party, including, without limitation, confidential relationship, trade secrets, patent, trademark or copyright rights.

D. City Representations. The City acknowledges, represents and warrants the following:

i. The City owns the right to name the Aquatic Center, and the naming of the Aquatic Center as contemplated by this Agreement is in accord with all applicable laws, regulations and ordinances of the City;

ii. The City will operate and manage the Aquatic Center in a reasonable and prudent manner.

iii. This Agreement and all documents delivered pursuant hereto have been duly authorized and when executed and delivered by the Parties, will be a legal, valid, binding and enforceable obligation of the City; do not violate any provision of any agreement or judicial order to which the City is a party or subject; and no other consents or actions of any third parties, entities or governmental bodies or agencies is required to effectuate this Agreement or the actions of the City, CITY and Sponsor taken hereunder;

7. LIMITATION Of LIABILITY

A. Limitation of Liability.

NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, UNDER NO CIRCUMSTANCES SHALL THE PARTIES BE LIABLE TO ONE ANOTHER OR ANY OTHER PARTY FOR ANY CONSEQUENTIAL, SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, CONSEQUENTIAL OR EXEMPLARY LOSS, DAMAGE, COST OR EXPENSE, INCLUDING, WITHOUT LIMITATION, LOSS OF GOOD WILL, LOSS OF BUSINESS PROFITS COMPUTER FAILURE OR MALFUNCTION, DATA LOSS, OR LOST PROFITS AND OPPORTUNITY COSTS. THE FOREGOING LIMITATION WILL NOT APPLY TO DAMAGES AWARDED WITH RESPECT TO THIRD PARTY CLAIMS FOR WHICH THE PARTIES HAVE AN OBLIGATION TO INDEMNIFY UNDER THE AGREEMENT.

B.Disclaimer of Liability.

The Parties agree that Sponsor is not involved in the operation or management of the Aquatic Center and Sponsor is not responsible or liable for the safety of the patrons of the Aquatic Center or any injury and/or death to any person or property that may occur at the Aquatic Center.

8. DEFAULT AND TERMINATION

A. Default. The occurrence of any one or more of the following events or actions will constitute a breach of this Agreement (the "Default") by the acting or relevant party (the "Defaulting Party").

i. Corporate Cessation. Cessation of Sponsor to conduct business, or if Sponsor is subject to any attachment, execution or other judicial seizure or sale of any substantial portion of its assets, which is not discharged or revoked within ten (10) days thereof;

ii. Bankruptcy or Insolvency. The failure of Sponsor to pay its debts as they come due; filing, or having filed against it, a petition or other request for relief under federal or state bankruptcy or insolvency laws which is not discharged, dismissed or withdrawn within sixty (60) days of filing; or applying for or consenting to the appointment of a receiver for all or a substantial portion of its assets;

iii. Misrepresentation. The making of any representation or warranty by any party in this Agreement that it knows or should have known was materially false as of the Effective Date.

iv. Other Material Breach. The breach of any other material covenant, agreement, representation or warranty made under this Agreement, if such breach has not been waived in writing and has not been cured by breaching party within thirty (30) days following receipt of written notice specifying the nature of such breach, or, as agreed by the Parties, is not capable of being cured within such thirty (30) day period.

v. Default or Breach of Sponsorship Agreement. The default or breach of the Sponsorship Agreement resulting in the rightful termination thereof.

B. Right to Terminate. In the event of a Default as set forth herein, the parties not in Default (the "Non-Defaulting Party") will have the right to terminate this Agreement upon written notice to the Defaulting Party. Upon termination of this Agreement in accordance with this provision, the Parties agree that the Parties will immediately cease to use or display the Aquatic Center Marks, and the Defaulting Party will be liable to the Non-Defaulting Party for the payment of all costs and expenses incurred by the Non- Defaulting Party in removing, destroying, discarding and/or replacing all signs, materials or other uses of the Aquatic Center Marks under this Agreement.

C. Damages for Termination. If Sponsor is the defaulting party Sponsor shall pay to the City through the end of the end of the year of its default its Naming Rights Fee for that year. If the default of the Sponsor occurs in the forth year of its initial term or the forth year of its renewal term the Sponsor shall be responsible for the payment of one half of the Naming Rights Fee for the last year of the initial term or for the last year of the renewal term.

i. Aquatic Center Damage. If a Force Majeure results in the damage or destruction of the Aquatic Center and repair or reconstruction of the Aquatic Center will take longer than ninety (90) days from the time City becomes or should have become aware of the such destruction (the "Discovery Date"), then:

(a) if City gives Sponsor notice no more than ninety (90) days following the Discovery Date that the Aquatic Center will be repaired and restored within one (1) year of the Discovery Date (the "Repair Assurance"), Sponsor will have no right to terminate this Agreement, provided Sponsor will not be required to make any payments (and will be credited or refunded any payments made) of the Naming Rights Fee due hereunder from the date of any damage or destruction until the first date an Event is presented in the Aquatic Center upon the repair and restoration of the Aquatic Center following such damage or destruction; but

(b) if City fails to give Sponsor such Repair Assurance as set forth herein, Sponsor may terminate this Agreement upon written notice to City.

9. **General.**

A. Relationship of the Parties. The Parties are independent contractors and nothing contained herein will be interpreted, construed or applied in practice, in any way, as creating or establishing a partnership, agency, joint venture or employment relationship among the Parties. Each party is solely responsible for the payment of all state, federal and local taxes and complying with all laws, regulations and/or requirements related to its business, and each party reserves the sole and exclusive right and authority to handle, decide, supervise manage and control the financial and other policies related to its business and purpose.

B. Dispute Resolution.

i. The parties hereto agree that any dispute, claim, question or controversy between the parties arising from or relating to this the Agreement, its construction, operation or effect, or a breach thereof (the "Dispute(s)") that cannot be resolved through consultation and negotiation of shall be submitted to mediation ("Mediating Parties"). The cost of mediation will be shared by the Mediating Parties. After good faith efforts to resolve the controversy, claim or dispute and upon the notice of either party to initiate mediation, the Mediating Parties shall select a mutually-agreeable mediator. If the Mediating Parties cannot agree on a mediator within three (3) business days of the notice to initiate mediation, the Mediating Parties shall each select a mediator. The two mediators shall then select the mediator who will be responsible for the mediation. Within five (5) business days of selection of the mediator, each party shall submit to the mediator a written statement detailing the facts and law pertaining to the dispute and the party's position. Mediation shall begin no later than five (5) days after the submission of the written statements by the Mediating Parties or as soon thereafter as possible. A representative of each party with settlement authority must personally attend the mediation. If the Mediating Parties fail to resolve their dispute through mediation within five (5) days following the conclusion of mediation, the Mediating Parties agree that any such unresolved Dispute shall be finally resolved exclusively by binding arbitration administered by a single arbitrator of the American Arbitration Association in accordance with its Arbitration Rules (the "Rules") and taking place in Dayton, Ohio. Any judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction. Except as required by law, neither party nor the arbitrator may disclose the existence, content, results or award of any arbitration without the prior written consent of all parties. The arbitrator will have no authority to award punitive or other damages not measured by the prevailing party's actual damages. Each party shall bear its own costs and expenses, including attorneys' fees, and an equal share of the arbitrators' and administrative fees of arbitration. This dispute resolution provision shall survive the expiration or termination of the Agreement and cannot be modified except in a written agreement signed by both parties with specific reference to this arbitration provision and the intent to modify or amend it. THE PARTIES HERETO UNDERSTAND AND AGREE THAT THEY ARE ELECTING TO

RESOLVE ANY DISPUTE UNDER THIS AGREEMENT THROUGH ARBITRATION AND ARE WAIVING THEIR RIGHT TO A JURY TRIAL

C. Attorney's Fees. If any party hereto commences or engages in an action or other proceeding by or against another party to this Agreement arising out of or in connection with this Agreement, the prevailing party will be entitled to have and recover from the losing party reasonable attorneys' fees and other costs incurred in connection with the action, preparation for such action or proceeding, any appeals relating thereto and enforcing any judgments rendered in connection therewith.

D. Governing Law. This Agreement will be governed and construed in accordance with the laws of the State of Ohio without regard to conflict of law principles. Subject to the dispute resolution provision herein, any dispute arising under or in connection with this Agreement, or related to any matter thereof, will be subject to the exclusive jurisdiction of State court in the County of Montgomery County, Ohio.

E. Notices. Any notice, request, approval or consent under this Agreement will be sufficiently given if in writing and delivered in person, mailed (certified or first class), or electronically transmitted (with receipt of transmission) to the address set forth herein, or to such other address as the recipient may furnish in writing to the sender. Notice will be deemed effective upon the earlier of actual delivery or three (3) days following mailing.

F. Waiver and Amendment. No modification, amendment or waiver of any provision of this Agreement will be binding or valid unless in writing and executed by all Parties. No failure to enforce any provision of this Agreement will be construed as a waiver or thereafter prevent any party from enforcing the same or any other provision of this Agreement.

G. Equal Bargaining Power. The Parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, there will be no presumption or burden of proof favoring or disfavoring any party by virtue of the authorship of any provision of this Agreement.

H. Severability. If any portion of this Agreement is judged to be illegal, invalid or unenforceable, such portion will be given effect to the maximum extent possible by narrowing, or enforcing in part, such potion to the minimum extent necessary to make it enforceable. Any such invalidity or unenforceability will not in any way affect the validity or enforceability of the remainder of this Agreement which will continue in full force and effect.

I. Captions. The captions used in this Agreement are for convenience only and will not define, limit, or otherwise be used in the construction of this Agreement.

J. Assignment. Except in the normal course of performance under this Agreement involving the Parties' engagement of subcontractors or sublicensees to provide specific services related hereto, the Parties shall not assign or otherwise transfer any of their respective rights and obligations under this Agreement without the prior written consent of the other parties which consent shall not be unreasonably withheld; provided, however, that the Parties shall not be required to provide such consent unless and until the assignee or transferee shall agree in writing to be bound by each and every term, covenant and obligation of the assigning party hereunder. Any assignment or other transfer by Sponsor of rights and/or obligations hereunder in violation of this provision shall be a material default under this Agreement and shall be without legal force or effect and void without the requirement of further action by the Parties. In the event this Agreement is assigned in accordance with this section, and, as a result, Sponsor or its assignee or transferee proposes to change the Name, Logo and/or Aquatic Center Marks, the Parties agree that Sponsor or its assignee or transferee will be responsible for all costs and expenses associated with such proposed name change.

K. Counterparts. This Agreement may be executed in one or more counterparts, all of which will be considered one and the same agreement, and will be binding when one or more counterparts have been signed by each of the Parties and delivered, either manually or electronically, to the other party, it being understood that all Parties need not sign the same counterpart.

L. Entire Understanding. This Agreement, including all Exhibits attached to herein, constitutes the entire understanding between the Parties and supersedes all prior or contemporaneous negotiations, discuss ions, understandings and agreements, whether written or oral.

IN WITNESS WHEREOF, the parties execute this Agreement as of the first date written below.

WITNESSES

____

____

SPONSOR: The Kroger Limited Partnership

BY: Rachael Betzler
ITS: Customer Communications Mgr
Date: 1/16/15

____

____

CITY OF HUBER HEIGHTS, OHIO

BY:____________________
ITS:____________________
Date:____________________

Kroger Corporation Agreement with the City of Huber Heights

Naming Rights to "The Huber Heights Aquatic Center"

The City of Huber Heights, Ohio proposes to renew an exclusive marketing agreement with the Dayton-Cincinnati KMA.

This agreement extends the exclusive Naming Rights of the City's aquatic center located north of Shull Road at Brandt Pike...north of I-70. The term of this exclusive Naming Rights agreement is extended for a five-year period commencing in February 2015 and ending in February 2020. **Kroger** and the **City of Huber Heights** have mutual renewal first rights for another five-year term after February 2020.

The official name of the facility is known as ***"The Kroger Aquatic Center at The Heights"***

In this agreement the City of Huber Heights agrees to grant the following benefits:

1) Maintain the name and Kroger Aquatic Center logo on signage at the following locations:

- Upon the exterior of the entrance building to the aquatic center facility
- Upon the monument sign at Brandt Pike (State Route 201) at entrance to the facility
- Upon a monument sign to be developed at the entrance to the planned "The Heights" shopping complex, just north of Executive Boulevard at Brandt Pike (State Route 201)
- On the Music Center's on-site digital billboard on I-70. In a rotation of eight-second spots pertaining to Huber Heights, the Kroger Aquatic Center spots will promote hours, special events, current temperature, etc. During the off-season a variety of "Thanks for Your Patronage" and "See You Next Season" messages could be run, along with season pass pre-sale efforts.

2) The general operational season is Memorial Day weekend to Labor Day weekend of each year.

3) Press release announcing renewal of the Kroger Aquatic Center relationship with the City of Huber Heights to Dayton area media.

4) Kroger Aquatic Center featured on City of Huber Heights website and "The Heights" website, with links to Kroger.com

5) Inclusion of Kroger Aquatic Center and its activities and news in City publications, newsletters, e-mail blasts, etc.

6) Kroger and City of Huber Heights to agree that entrants to the facility be granted a one dollar discount on both adult and child admissions with a Kroger produced in-store coupon. Dialog will be ongoing as to discovery of additional mutually beneficial partnership promotions.

7) Kroger featured prominently as naming rights sponsor in $100,000 annual worth of Kroger Aquatic Center advertising/in-kind on Dayton area media, including I-70 digital billboard with 18+ DEC of 40,027 EB and 40,027 WB for a total of 80,054.

8) Kroger featured prominently as naming rights sponsor on new Key-Ads exclusive digital commercial billboard at the corner of Brandt Pike and Chambersburg Road. Kroger Aquatic Center spots will rotate with other City of Huber Heights event/activity marketing. Value included in #7 figures above. 18+ DEC of 16,767 NB and 23,805 SB for a total of 40,572.

9) 100 daily passes per season for Kroger employees to use.

10) Kroger logo to be maintained upon the inner tubes at the Kroger Aquatic Center.

11) Kroger to remain as named sponsor of the City's annual July 4th fireworks show at Thomas Cloud Park, the "Star Spangled Heights" celebration.

12) Performance review of both parties to be scheduled at mutually agreeable dates at will through the life of the contract.

In return for the above naming rights and attendant benefits, Kroger agrees to compensate the City of Huber Heights the sum of:

$35,000 cash per year for each of five years, plus a tangible $20,000 advertising support package per year. This support advertising campaign may include the following.

- Radio support
- Newspaper support
- In-store signage/public address mentions, etc.
- Other?

Investment payable as follows:

• 2015	By May 5th, 2015	$7,000
	By June 2nd, 2015	$7,000
	By June 30th, 2015	$7,000
	By July 28th, 2015	$7,000
	By August 24th, 2015	$7,000
• 2016	By May 5th, 2016	$7,000
	By June 2nd, 2016	$7,000
	By June 30th, 2016	$7,000
	By July 28th, 2016	$7,000
	By August 24th, 2016	$7,000
• 2017	By May 5th, 2017	$7,000
	By June 2nd, 2017	$7,000
	By June 30th, 2017	$7,000
	By July 28th, 2017	$7,000
	By August 24th, 2017	$7,000
• 2018	By May 5th, 2018	$7,000
	By June 2nd, 2018	$7,000
	By June 30th, 2018	$7,000
	By July 28th, 2018	$7,000
	By August 24th, 2018	$7,000
• 2019	By May 5th, 2019	$7,000
	By June 2nd, 2019	$7,000
	By June 30th, 2019	$7,000
	By July 28th, 2019	$7,000
	By August 24th, 2019	$7,000

Agreed to on this date by:

Kroger Corporation ______________________________ (Name)

______________________________ (Title)

______________________________ (Date)

City of Huber Heights ______________________________ (Name)

______________________________ (Title)

______________________________ (Date)

Kroger Aquatic Center Summer 2014

New Brandt Pike Digital Sign

Area's Largest Water Slide

I-70 Music Center Digital Sign

AI-2877 **New Business** E.

City Council Meeting Agenda **City Manager**

Meeting Date: 01/26/2015

Music Center MOU - MEMI - Accounting Practices

Submitted By: Rob Schommer

Department: City Manager

Council Committee Review?: Administration Committee

Date(s) of Committee Review: 01/20/2015

Audio-Visual Needs: None **Emergency Legislation?:** Yes

Motion/Ordinance/ Resolution No.:

Information

Agenda Item Description or Legislation Title

A Resolution Authorizing The City Manager To Enter Into That Certain Memo Of Understanding To Clarify The Process By Which Accounting And Purchasing Processes Are Defined For The Music Center At The Heights By Music Event Management, Inc., The Role Of The City In That Process And The Duties Under The Facility Management Agreement, And Declaring An Emergency.
(first reading)

Purpose and Background

In Resolution No. 2014-R-6001 passed by City Council on June 9, 2014, the City Council approved the City Manager entering into that certain Facility Management Agreement (Agreement) with Music Event Management, Inc. (MEMI) which was signed by the City Manager on June 10, 2014. The Facility Management Agreement outlines in general terms the means and methods of financial accounting and purchasing for the Music Center at the Heights. The City and MEMI desire to clarify in greater detail the respective roles of MEMI and the City for those processes.

In the included MOU, it provides for MEMI to operate as intended in the original facility management agreement; however, greater detail and clarity is provided through the MOU. As indicated in the memo and Resolution No. 2014-R-2620,Council has already taken action by approving the Facility Management Agreement and by appropriating $750,000 for implementation of the Facility Management Agreement. Nevertheless, this is a new process and it is critically important that Council, especially during this startup year of the Music Center, understand the “nuts and bolts” of how this new business that the City has undertaken is going to operate. As noted in the MOU added and passed through Resolution No. 2014-R-2620, the City anticipated at least one or more of these documents coming before Council that details the accounting functions that will be implemented by MEMI and by the City which will be applicable during the entire term of the Facility Management Agreement. This MOU is the definition of those practices and establishes policy, roles and duties for MEMI and the City regarding the finances and accounting for the operation of the Music Center.

It is necessary to establish and formalize these practices to enable the City to begin paying deposits for talent to be scheduled and begin making purchases to plan for the opening and operation of the facility. In addition to the establishment of these procedures, the City is conducting lateral, but separate efforts to establish procedures to independently review and audit the accounting procedures. This extra step is to have an independent entity review those practices considering the fact the operation of the facility is specialized. This review and auditing step will make sure the City is diligent in tracking and accounting for all expenses of the operation of the facility in order to maintain a high standard of transparency and accountability. City Staff is currently working with financial professionals to define the review and auditing process which will accompany the operational accounting practices.

It continues to be the goal to make sure the operations, policies and practices of the Music Center are of the highest standards to make certain the City protects the citizen's investment into this excellent facility. By moving forward and defining the operational accounting practices in the MOU, City Staff will immediately be able to move to the next step of opening this new business adventure, as well as establish best practices for not just operations, but review, audits and accountability.

Fiscal Impact

Source of Funds:	Music Center
Cost:	TBD
Recurring Cost? (Yes/No):	Yes
Funds Available in Current Budget? (Yes/No):	Yes
Financial Implications:	

Attachments

Resolution

CITY OF HUBER HEIGHTS
STATE OF OHIO

RESOLUTION NO. 2015-R-

AUTHORIZING THE CITY MANAGER TO ENTER INTO THAT CERTAIN MEMO OF UNDERSTANDING TO CLARIFY THE PROCESS BY WHICH ACCOUNTING AND PURCHASING PROCESSES ARE DEFINED FOR THE MUSIC CENTER AT THE HEIGHTS BY MUSIC EVENT MANAGEMENT, INC., THE ROLE OF THE CITY IN THAT PROCESS AND THE DUTIES UNDER THE FACILITY MANAGEMENT AGREEMENT, AND DECLARING AN EMERGENCY.

WHEREAS, by Resolution No. 2014-R-6001 passed by City Council on June 9, 2014, the City Council approved the City Manager entering into that certain Facility Management Agreement (Agreement) with Music Event Management, Inc. (MEMI) which was signed by the City Manager on June 10, 2014; and

WHEREAS, the Facility Management Agreement outlines in general terms the means and methods of accounting, financial reporting and purchasing for the Music Center at the Heights; and

WHEREAS, the City and MEMI desire to clarify in greater detail the respective roles of MEMI and the City in the process of accounting and purchasing duties under the Agreement.

NOW, THEREFORE, BE IT RESOLVED by the City of Huber Heights, Ohio, that:

Section 1. The City Manager is hereby authorized to negotiate and enter into the Memo of Understanding with MEMI which shall be substantially upon the terms in the proposed Memo of Understanding attached hereto as Exhibit A.

Section 2. It is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this Resolution were adopted in an open meeting of this Council and that all deliberations of this Council and of any of its Committees that resulted in such formal action were taken in meetings open to the public and in conformance with all legal requirements including Section 121.22 of the Ohio Revised Code.

Section 3. This Resolution is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety and welfare, and for the further reason that defining the accounting processes and roles of the parties is necessary to establish purchases and make deposits to artists and groups to book events and shows for the 2015 season; therefore, this Resolution shall take effect immediately upon its adoption by Council.

Passed by Council on the______day of______________, 2015;
______ Yeas; ______ Nays.

AUTHENTICATION:

______________________________ ______________________________
Clerk of Council Mayor

______________________________ ______________________________
Date Date

AI-2884 **New Business** F.

City Council Meeting Agenda **City Manager**

Meeting Date: 01/26/2015

Income Tax Levy Renewal - Proposed Ballot Language Amendment

Submitted By: Rob Schommer

Department: City Manager

Council Committee Review?: None

Date(s) of Committee Review: N/A

Audio-Visual Needs: None **Emergency Legislation?:** Yes

Motion/Ordinance/ Resolution No.:

Information

Agenda Item Description or Legislation Title

A Resolution Amending Section 3 Of Resolution No. 2015-R-6117 Regarding The Proposed Ballot Language For The May 5, 2015 Tax Levy Ballot Issue, And Declaring An Emergency.
(first reading)

Purpose and Background

With sincere apologies to Council, City Staff present another amendment to the Resolution regarding the proposed May 5, 2015 tax levy. This is in essence, the second amendment to that Resolution. And as with the first amendment, it comes to Council late and unannounced. The lateness of the amendments are in many respects beyond staff's control, but City Staff believes the amendments were/are necessary to help avoid confusion to the voters and accurately present the purpose of the renewal levy to the citizens. Resolution No. 2015-R-6177 was submitted to Council for a first reading on December 8, 2014. Well prior to that date, the Law Director had confirmed with the Montgomery County Board of Elections that the levy would be considered a renewal, as opposed to a new tax. Shortly after the first reading, the Law Director discovered that a copy of Resolution No. 2015-R-6177 had not been sent to Montgomery County Board of Elections for its prior review of the proposed ballot language for any issues. It is NOT required that the Board of Elections review proposed ballot language in advance, but this is something the Law Director does in an attempt to make sure that the proposed language in the Resolution is acceptable to the Board of Elections, and ultimately the Ohio Secretary of State. On December 16, 2014, a copy of the pending Resolution No. 2015-R-6177 was sent to the Montgomery County Board of Elections for review. The Law Director's office contacted the Board of Elections on several occasions after submitting the proposed language for the board's comments, without receiving any comments. In the meantime, Resolution No. 2015-R-6177 came to Council for a second reading on December 29, 2014. Late on January 8, 2015, (after Council packets had already been distributed), the Law Director received the comments back from the Board of Elections regarding the proposed ballot language in Resolution No. 2015-R-6177. In a rather unexpected response, the board recommended that the proposed ballot language be changed by using the term "continuation" instead of "renewal" and also recommended using the exact "purpose" language from the November 8, 2005 ballot in the 2015 ballot since the tax is a continuation. Based on these recommendations, and with the belief that the changes would be necessary to get the ballot language approved for the election, City Council amended Resolution No. 2015-R-6177 at the dais during the third reading on January 12, 2015 to read: Shall the Ordinance providing for the continuation of an existing .25% levy on income beginning January 1, 2016, for a period of ten years, to provide funds for POLICE AND FIRE, EMERGENCY MEDICAL SERVICES AND GENERAL CITY OPERATIONS, MAINTENANCE, NEW EQUIPMENT, EXTENSION AND ENLARGEMENT OF CITY, POLICE AND FIRE EMERGENCY SERVICES, NEW FACILITIES AND CAPITAL IMPROVEMENTS be passed? After the final adoption of Resolution No. 2015-R-6177, and upon having discussions with its consultants, City Staff became concerned with the change of the word "renewal" to "continuation" and the inclusion of some of the wording from the 2005 ballot. In particular, the language stating that the tax would be for “MAINTENANCE, NEW EQUIPMENT, EXTENSION AND ENLARGEMENT OF CITY, POLICE AND FIRE EMERGENCY SERVICES, NEW FACILITIES AND CAPITAL IMPROVEMENTS”. At the request of the City Manager, the Law Director contacted the Board of Elections and the Ohio Secretary of State to see if the language could be altered. The Law Director was told by both that the City does need to use the word “continuation” as opposed to “renewal”. However, with respect to the “purpose” portion of the ballot language, the Ohio Secretary of State office indicated that since this is an income tax levy as opposed to a real property tax levy, the City could eliminate some of the language in the “purpose” section of the ballot language and that it does not need to be identical to the 2005 ballot. Resolution No. 2015-R-6177, contemplated that the Secretary of State may alter the language in the ballot and provides in Section 3 “The form of the ballot to be cast at such election shall read substantially as follows (subject to final language review by the Ohio Secretary of State)….”

This language was added so that if there were some minor changes to the ballot language, the matter would not need to come back to Council for action. However, it is staff's opinion that the elimination of some of the words in the “purpose” portion of the ballot language may be deemed substantive and it would be better if the language change was officially approved by Council. Attached is a proposed Resolution amending the ballot language provision of Resolution No. 2015-R-6177 to read: Shall the Ordinance providing for the continuation of an existing .25% levy on income beginning January 1, 2016, for a period of ten years, to provide funds for police and fire, emergency medical services and general city operations, be passed? City Staff will continue to try and persuade the Ohio Secretary of State to approve the use of the word “renewal” as opposed to “continuation” in the final version of the ballot language (as the City’s consultants favor the use of renewal). If successful, such a change would not be substantive and would not require further action by Council.

Fiscal Impact

Source of Funds:	N/A
Cost:	N/A
Recurring Cost? (Yes/No):	N/A
Funds Available in Current Budget? (Yes/No):	N/A
Financial Implications:	

Attachments

Resolution

CITY OF HUBER HEIGHTS
STATE OF OHIO

RESOLUTION NO. 2015-R-

AMENDING SECTION 3 OF RESOLUTION NO. 2015-R-6117 REGARDING THE PROPOSED BALLOT LANGUAGE FOR THE MAY 5, 2015 TAX LEVY BALLOT ISSUE, AND DECLARING AN EMERGENCY.

WHEREAS, Ordinance No. 2015-O-2147, provided for submitting to the electorate of the City of Huber Heights a proposal to continue the existing .25% levy on income effective January 1, 2016 that was originally passed in November 2005; and

WHEREAS, Resolution No. 2015-R-6177, among other things, specifies May 5, 2015 as the date of the election for voter approval of Ordinance No. 2015-O-2147; and

WHEREAS, Section 3 of Resolution No. 2015-R-6177 contained proposed ballot language that was drafted after consultation with the Montgomery County Board of Election and was nearly identical to the language used in the original 2005 ballot; and

WHEREAS, subsequent to passage of Resolution No. 2015-R-6177, City Staff determined that the proposed ballot language, although acceptable to the Montgomery County Board of Elections, may not adequately set forth the intent and purpose of the tax levy renewal; and

WHEREAS, City Council wishes to proposed new ballot language for Section 3 of Resolution No. 2015-R-6177.

NOW, THEREFORE, BE IT RESOLVED by the City Council of Huber Heights, Ohio that:

Section 1. Section 3 of Resolution No. 2015-R-6177 is amended to read:

> The Board of Elections of Montgomery County and Miami County, Ohio are directed to place on the ballot, in the election to be held on May 5, 2015 for submission to the electorate of the City of Huber Heights, the question of whether Ordinance No. 2015-O-2147 shall be approved. The form of the ballot to be cast at such election shall read substantially as follows (subject to final language review and changes by the Ohio Secretary of State):
>
> Shall the Ordinance providing for the continuation of an existing .25% levy on income beginning January 1, 2016, for a period of ten years, to provide funds for police and fire, emergency medical services and general city operations be passed?

Section 2 All other provisions in Resolution No. 2015-R-6177 not changed by this Resolution shall remain in full force and effect. The Clerk of Council is authorized to certify Resolution No. 2015-R-6177 as amended and take all steps necessary to place the issue on the ballot for May 5, 2015.

Section 3. It is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this Resolution were adopted in an open meeting of this Council and that all deliberations of this Council and of any of its Committees that resulted in such formal action were taken in meetings open to the public and in conformance with all legal requirements including Section 121.22 of the Ohio Revised Code.

Section 4. This Resolution is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety and welfare of the citizens of Huber Heights and for the further reason of the need to timely submit proposed ballot language in order to meet State election filing deadlines; therefore, this Resolution shall take effect immediately upon its adoption by Council.

Passed by Council on the ______ day of _____________ , 2015;
______ Yeas; ______ Nays.

AUTHENTICATION:

_______________________________	___________________________
Clerk of Council	Mayor
_______________________________	___________________________
Date	Date

AI-2883 **New Business** G.

City Council Meeting Agenda **Human Resources**

Meeting Date: 01/26/2015

Repeal of Resolution No. 2015-R-6119 and OAPFF 457 Deferred Compensation Plan

Submitted By:	Katie Knisley
Department:	Human Resources
Council Committee Review?:	Administration Committee
Date(s) of Committee Review:	01/06/2015
Audio-Visual Needs:	None
Emergency Legislation?:	No
Motion/Ordinance/ Resolution No.:	

Information

Agenda Item Description or Legislation Title

A Resolution Repealing Resolution No. 2015-R-6119 And Adopting The Ohio Association Of Professional Firefighters 457(B) Deferred Compensation Plan For Participation By Eligible Employees Of The City Of Huber Heights And Authorizing The City Manager To Execute Documents Necessary To Implement Such Plan, And Declaring An Emergency.
(first reading)

Purpose and Background

The City has previously adopted and executed agreements with the Ohio Public Employees 457 Deferred Compensation Plan and the Ohio Municipal League 457 Deferred Compensation Plan for participation by eligible employees. The Ohio Association of Professional Firefighters 457 Deferred Compensation Plan would be an additional option for employees to choose from when selecting a deferred compensation plan. There is no cost to the City to include this plan as an additional option; it is solely between the employee and the deferred compensation plan of their choosing.

This legislation also repeals Resolution No. 2015-R-6119 adopted by City Council on January 12, 2015 as the legislation was adopted inconsistent with procedures for waiving second and third readings and adopting legislation.

Fiscal Impact

Source of Funds:	N/A
Cost:	N/A
Recurring Cost? (Yes/No):	N/A
Funds Available in Current Budget? (Yes/No):	N/A
Financial Implications:	

Attachments

Resolution
Exhibit A - Part 1
Exhibit A - Part 2
Exhibit A - Part 3
Exhibit A - Part 4

CITY OF HUBER HEIGHTS
STATE OF OHIO

RESOLUTION NO. 2015-R-

REPEALING RESOLUTION NO. 2015-R-6119 AND ADOPTING THE OHIO ASSOCIATION OF PROFESSIONAL FIREFIGHTERS 457(b) DEFERRED COMPENSATION PLAN FOR PARTICIPATION BY ELIGIBLE EMPLOYEES OF THE CITY OF HUBER HEIGHTS AND AUTHORIZING THE CITY MANAGER TO EXECUTE DOCUMENTS NECESSARY TO IMPLEMENT SUCH PLAN, AND DECLARING AN EMERGENCY.

WHEREAS, the City Council of Huber Heights passed Resolution No. 2015-R-6119 on the 12th day of January, 2015 inconsistent with procedures for waiving second and third readings and adopting legislation; and

WHEREAS, the City of Huber Heights has previously adopted and has in place the Ohio Public Employees 457 Deferred Compensation Plan and the Ohio Municipal League 457 Deferred Compensation Plan for participation by eligible employees; and

WHEREAS, it is the intent of City Council to adopt the Ohio Association of Professional Firefighters (OAPFF) 457(b) Deferred Compensation Plan as an additional option for participation by eligible employees; and

WHEREAS, the OAPFF 457 (b) Deferred Compensation Plan provides plan participants the opportunity to elect to participate in the plan managed by Morningstar Service ("Managed Accounts").

NOW, THEREFORE, BE IT RESOLVED by the City Council of Huber Heights, Ohio that:

Section 1. Resolution No. 2015-R-6119 passed by this Council on the 12th day of January, 2015 is hereby repealed.

Section 2. The City Council hereby adopts the OAPFF 457(b) Deferred Compensation Plan substantially in the form as set forth in Exhibit A attached hereto and incorporated herein by this reference.

Section 3. The City Manager is hereby authorized to execute any and all required agreements and plan documents associated and consistent with the OAPFF 457(b) Deferred Compensation Plan and Managed Accounts as may be required from time to time.

Section 4. It is found and determined that all formal actions of the Council concerning and relating to the passage of this Resolution were adopted in an open meeting of this Council, and that all deliberations of the Council and of any of its committees that resulted in such formal action, were in meetings open to the public, in compliance with all legal regulations including all lawful ordinances, resolutions and any applicable provisions of Section 121.22 of the Ohio Revised Code.

Section 5. This Resolution is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety and welfare and for the further reason that the City wants to provide employees the opportunity for participation in this deferred compensation plan at the earliest possible date; therefore, this Resolution shall take full force and effect immediately upon its adoption by Council.

Passed by Council on the______day of______________, 2015;
______ Yeas; ______ Nays.

AUTHENTICATION:

______________________________	______________________________
Clerk of Council	Mayor
______________________________	______________________________
Date	Date

EXHIBIT A

SECURITY BENEFIT®

SFR® Program Plan Application
- **401(a) Governmental**
- **457 Governmental**

Questions? Call our National Service Center at 1-800-888-2461.

Instructions

Complete the entire form to establish your plan. Please type or print.

Description of Employer

Select only one.

❍ Public K-12 School ❍ Public University/College ❍ Public Education Other
☑ Government State and Local ❍ Government Healthcare/Hospital

1. Select Plan Type

☐ 401(a) Governmental ☑ 457 Governmental

2. Provide Plan Information

Plan Name: CITY OF HUBER HEIGHTS

Plan Identification Number:

Authorized Individual Name: ROBERT (First) B (MI) SCHOMMER (Last)

Plan Address: 6131 TAYLORSVILLE ROAD (Street Address) HUBER HEIGHTS (City) OH (State) 45424 (ZIP Code)

Daytime Phone Number: 937-233-1423 Email Address:

Number of Employees: 176 Number of Eligible Employees: 176

3. Provide Employer Information

Employer Name: CITY OF HUBER HEIGHTS

Employer Identification Number: 31-6000621

Plan Contact Name: KATIE (First) (MI) KNISLEY (Last)

Daytime Phone Number: 937-237-5847 Fax Number: 937-233-1272

Email Address: kmknisley@hhoh.org

4. Provide Payroll Center Information

Payroll Center Name: CITY OF HUBER HEIGHTS

Payroll Center Address: 6131 TAYLORSVILLE ROAD (Street Address) HUBER HEIGHTS (City) OH (State) 45424 (ZIP Code)

Payroll Contact Name: JIM (First) (MI) BELL (Last)

Address: 6131 TAYLORSVILLE ROAD (Street Address) HUBER HEIGHTS (City) OH (State) 45424 (ZIP Code)

Daytime Phone Number: 937-237-5826 Fax Number: 937-233-1272

Email Address: Jbell@hhoh.org

Frequency of Payrolls: ❍ Weekly ☑ Bi-weekly ❍ Monthly ❍ Semi-monthly

Third Party Administrator (TPA) ☐ Check if utilizing TPA Services

TPA Name: N/A

If not using our document please submit a copy of your Adoption Agreement and Plan Document.

5. Investment Options

This application is for all of the funds listed below and will apply to any funds added in the future.

The Group Fixed Account or Income Plus Fund will be the default investment for any Forfeiture or Suspense Accounts. A suspense account is used to segregate assets until they can be allocated to participant accounts. A forfeiture account is used to segregate any non-vested portion of a terminated participant's balance. (Please include a Group Fixed Account Application.)

The default investment for participants who do not select an investment option for their existing account balance or future contributions will be the age appropriate T. Rowe Price Retirement fund. The default investment will be selected based upon the year the participant attains age 65. If the participant is age 65 or over, or a date of birth is not provided, the T. Rowe Price Retirement Income Fund will be used.

American Century Equity Income
American Century Growth
American Century Heritage
American Funds® EuroPacific Growth
American Funds® Fundamental Investors℠
Aston/Fairpointe Mid Cap
Aston/TAMRO Small Cap
Baron Small Cap
BlackRock® Equity Dividend
BlackRock® Mid Cap Value Opportunities
Calamos® Global Equity
Dreyfus Mid Cap Index
Dreyfus S&P 500 Stock Index
Federated Bond
Fidelity® Advisor New Insights
Fidelity® Advisor Real Estate
Franklin High Income
Goldman Sachs Small Cap Value
Guggenheim Large Cap Value
Guggenheim Macro Opportunities
Guggenheim Total Return Bond
Income Plus Fund[1]
Invesco Equity and Income
Invesco High Yield
Janus Triton
JPMorgan Small Cap Value
Loomis Sayles Global Equity and Income
Oppenheimer Equity Income
Mutual Global Discovery
Neuberger Berman Socially Responsive
PIMCO Real Return
PIMCO Small Cap StocksPLUS® AR Strategy
PIMCO Total Return
Prudential Jennison 20/20 Focus
Prudential Jennison Mid Cap Growth
Prudential Jennison Natural Resources
RidgeWorth Mid Cap Value Equity
RS Technology
T. Rowe Price Growth Stock
T. Rowe Price Retirement 2010
T. Rowe Price Retirement 2015
T. Rowe Price Retirement 2020
T. Rowe Price Retirement 2025
T. Rowe Price Retirement 2030
T. Rowe Price Retirement 2035
T. Rowe Price Retirement 2040
T. Rowe Price Retirement 2045
T. Rowe Price Retirement 2050
T. Rowe Price Retirement 2055
T. Rowe Price Retirement Income
Templeton Foreign
Templeton Global Bond
Fixed Account[1]

[1] Only one of these investment options is allowed in your plan and shall be the default investment for the forfeiture or suspense account. A separate application is required to use either of these options.

For questions please consult with your financial representative.

6. Provide Signature

The signature(s) below indicates the information provided within the application is accurate and true.

X ____________________ Signature of Authorized Individual ____________ Date (mm/dd/yyyy)

X ____________________ Signature of Authorized Individual ____________ Date (mm/dd/yyyy)

X ____________________ Signature of Authorized Individual ____________ Date (mm/dd/yyyy)

X ____________________ Signature of Authorized Individual ____________ Date (mm/dd/yyyy)

X ____________________ Signature of Authorized Individual ____________ Date (mm/dd/yyyy)

7. Registered Representative Information

Print Name of Representative ROBERT B SCHOMMER

X ____________________ Signature of Representative ____________ Date (mm/dd/yyyy)

Address 6131 TAYLORSVILLE ROAD (Street Address) HUBER HEIGHTS (City) OH (State) 45424 (ZIP Code)

Daytime Phone Number 937-233-1423 Email Address ____________

Representative License I.D. Number ____________

Print Name of Broker/Dealer ____________

Mail to:
Security Benefit
P.O. Box 750560
Topeka, Kansas 66675-0560
Fax to: 1-785-368-1772

For expedited or overnight delivery:
Security Benefit
Mail Zone 560
One Security Benefit Place
Topeka, Kansas 66636-0001

Visit us online at www.securityretirement.com

SECURITY BENEFIT®

Adoption Agreement For Governmental 457 Deferred Compensation Plan and Trust

Questions? Call our National Service Center at 1-800-888-2461.

Introduction

The Employer, a Governmental Entity, establishes a 457 Deferred Compensation Plan and Trust under this Adoption Agreement and the accompanying Basic Plan Document and Trust.

1. Employer and Plan Information

Employer EIN 31-6000621

Employer Name CITY OF HUBER HEIGHTS

Mailing Address 6131 TAYLORSVILLE ROAD (Street Address) HUBER HEIGHTS (City) OH (State) 45424 (ZIP Code)

Plan Trust EIN (Complete only if different from Employer EIN) ____

Plan Effective Date ____

The Plan Year for the Plan is the 12 months beginning on the first day of each ____ (Specify month)

Plan Name (Complete only if different from Employer Name) ____

Employer Type ☑ Political Unit (Village, City, County, State, etc.) ○ Public Hospital ○ Public School District (K-12) ○ Other (Specify Type) ____

2. Contributions To The Plan

☑ Deferral Contributions – All Participants may elect to have Deferral Contributions made to the Plan under a Salary Reduction Agreement or Enrollment Form with the Employer.

☐ Matching Contributions – The Employer will match ____% of the first ____% of Compensation deferred to the Plan under the Salary Reduction Agreement or Enrollment Form of the Employee (if different, please specify):
N/A

☐ Non-Elective Contributions – The Employer will make such Non-Elective Contributions as it determines under the Plan, to be allocated as scheduled on a separate schedule provided by the Employer with each Contribution.
(Specify Formula): N/A

☑ After-tax Roth contributions Effective Date (mm/dd/yyyy) ____

PLAN EXECUTION

By execution of this document, the Employer verifies that it is an eligible Governmental Entity and hereby establishes a 457 Deferred Compensation Plan and Trust under this Adoption Agreement and accompanying Basic Plan Document and Trust.

ROBERT B. SCHOMMER — Entity Official (Printed Name)
CITY MANAGER — Title

X ____ Signature of Entity Official   Date (mm/dd/yyyy) ____

ACCEPTANCE BY TRUSTEE

UMB Bank, n.a., hereby accepts appointment as Trustee under this 457 Deferred Compensation Plan and Trust.

X ____ Signature of Authorized Representative of Security Benefit on behalf of UMB   Date (mm/dd/yyyy) ____

Mail to:
Security Benefit
P.O. Box 750497
Topeka, Kansas 66675-0497
Fax to: 1-785-368-1772

For expedited or overnight delivery:
Security Benefit
Mail Zone 497
One Security Benefit Place
Topeka, Kansas 66636-0001

Visit us online at www.securityretirement.com

SECURITY BENEFIT®

Flexible Premium Deferred Group Unallocated Fixed Annuity

Questions? Call our National Service Center at 1-888-724-7526.

Instructions

Please type or print.

1. Provide Owner Information (Applicant – Employer)

Employer EIN 31-6000621

Employer Name CITY OF HUBER HEIGHTS

Mailing Address 6131 TAYLORSVILLE ROAD HUBER HEIGHTS OH 45424
Street Address City State ZIP Code

Daytime Phone Number 937-233-1423 E-mail

Plan Name CITY OF HUBER HEIGHTS
Complete only if different from Employer Name

2. Provide Replacement Information

Do you currently have any existing annuity or insurance policies? ☑ Yes ❍ No

Does this proposed contract replace or change any existing annuity or insurance policy? ❍ Yes ☑ No

If Yes, please list the company and policy number.

Company Name

Policy Number

3. Incentives and Other Considerations

Have you or the annuitant been offered any cash incentive or other consideration (such as free insurance) as an inducement to apply for this annuity contract? ❍ Yes ☑ No

Does the owner have an insurable interest in the annuitant? ❍ Yes ☑ No

4. Tax Identification Number Certification

Under penalties of perjury I certify that (1) The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); **and** (2) I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends or the IRS has notified me that I am no longer subject to backup withholding; **and** (3) I am a U.S. citizen or other U.S. person (as defined in the IRS Form W-9 instructions).

The Internal Revenue Service does not require your consent to any provision of this document other than the certifications required to avoid backup withholding.

X
Signature of Owner (Authorized Plan Official)

Signed at (City-State) Date (mm/dd/yyyy)

Certification Instructions: You must cross out item (2) above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest or dividends on your tax return. For contributions to an individual retirement arrangement (IRA), and generally payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct Tax Identification Number.

5. Registered Representative/Insurance Agent/Dealer Information

Will the Annuity being purchased replace any prior insurance or annuities of this or any other Company?

☑ No, to the best of my knowledge, this application is not involved in the replacement of any life insurance or annuity contract, as defined in applicable insurance department regulations.

☐ Yes. If yes, please comment below. I have complied with the requirements for disclosure and/or replacements. (Submit a copy of the Replacement Notice with this application and leave the applicant a copy of any written material presented to the applicant.)

Comments: ______________________________

____

X______________________________ ______________
Signature of Representative Date (mm/dd/yyyy)

Print Name of Representative______________________ Representative Number ______________

Mailing Address of Representative______________________ ______________ ______ ______________
Street Address City State ZIP Code

E-mail Address of Representative ______________________________

Print Name of Broker/Dealer______________________ Daytime Phone Number ______________

Please Continue ➲

State Fraud Disclosures

Any person who, with intent to defraud or knowing that he/she is facilitating fraud against an insurer, submits an application or files a claim containing a false or deceptive statement is guilty of insurance fraud. This state fraud disclosure applies to all jurisdictions except KS, MN and the states listed below.

AR Only – Any person who knowingly presents a false or fraudulent claim for payment of a loss or benefit or knowingly presents false information in an application for insurance is guilty of a crime and may be subject to fines and confinement in prison.

KY, NM, PA and WV – Any person who, knowingly and with intent to defraud any Insurance Company or other person, files an application for insurance or statement of claim containing materially false information or conceals for the purpose of misleading, information concerning any fact material thereto commits a fraudulent insurance act which is a crime and subjects such person to criminal and civil penalties.

AZ Only – Upon written request, the Company will provide additional information regarding the benefits and provisions of this annuity contract to the Owner/Applicant. If for any reason, the Owner/Applicant is not satisfied with this annuity contract, the Owner/Applicant may return the contract within 10 days, or within 30 days if the Owner/Applicant is 65 years of age or older on the date of the application for the annuity contract, after the contract is delivered and received a refund equal to the sum of the difference between the premiums paid, including any contract fees or other charges, and the amounts allocated to any separate accounts under the contract, and the value of the amounts allocated to any separate accounts under the contract on the date the returned contract is received by the Company.

CO Only – It is unlawful to knowingly provide false, incomplete, or misleading facts or information to an insurance company for the purpose of defrauding or attempting to defraud the company. Penalties may include imprisonment, fines, denial of insurance, and civil damages. Any insurance company or agent of an insurance company who knowingly provides false, incomplete, or misleading facts or information to a policyholder or claimant for the purpose of defrauding or attempting to defraud the policyholder or claimant with regard to a settlement or award payable from insurance proceeds shall be reported to the Colorado division of insurance within the department of regulatory agencies.

CT Only – Any person who, with intent to defraud or knowing that he/she is facilitating a fraud against an insurer, submits an application or files a claim containing a false or deceptive statement may be guilty of insurance fraud, as determined by a court of competent jurisdiction.

D.C. Only – WARNING: It is a crime to provide false or misleading information to an insurer for the purpose of defrauding the insurer or any other person. Penalties include imprisonment and/or fines. In addition, an insurer may deny insurance benefits, if false information materially related to a claim was provided by the applicant.

GA Only – Any person who, with intent to defraud or knowingly that he/she is facilitating fraud against an insurer, submits an application or files a claim containing a false or deceptive statement may be guilty of insurance fraud.

LA Only – Any person who knowingly presents a false or fraudulent claim for payment of a loss or benefit or knowingly presents false information in an application for insurance is guilty of a crime and may be subject to fines and confinement in prison.

MD Only – Any person who knowingly and willfully presents a false or fraudulent claim for payment of a loss or benefit or who knowingly and willfully presents false information in an application for insurance is guilty of a crime and may be subject to fines and confinement in prison.

ME Only – **It is a crime to knowingly provide false, incomplete or misleading information to an insurance company for the purpose of defrauding the company. Penalties may include imprisonment, fines or a denial of insurance benefits.**

NJ Only – Any person who includes any false and misleading information on an application for an insurance policy is subject to criminal and civil penalties.

OH Only – Any person who, with intent to defraud or knowing that he/she is facilitating fraud against an insurer, submits an application or files a claim containing a false or deceptive statement is guilty of insurance fraud.

OK Only – WARNING: Any person who knowingly, and with intent to injure, defraud or deceive any insurer, makes any claim for the proceeds of an insurance policy containing any false, incomplete or misleading information is guilty of a felony.

OR Only – Any person who, with intent to defraud or knowing that he/she is facilitating fraud against an insurer, submits an application or files a claim containing a materially false or deceptive statement may be guilty of insurance fraud.

RI Only – Any Person who knowingly presents a false or fraudulent claim for payment of a loss or benefit or knowingly presents false information in an application for insurance is guilty of a crime and may be subject to fines and confinement in prison.

TN Only – It is a crime to knowingly provide false, incomplete or misleading information to an insurance company for the purpose of defrauding the company. Penalties include imprisonment, fines and denial of insurance benefits.

TX Only – Any person who, with intent to defraud or knowing that he/she is facilitating fraud against an insurer, submits an application or files a claim containing a false or deceptive statement may be guilty of insurance fraud, as determined by a court of competent jurisdiction.

WA Only – It is a crime to knowingly provide false, incomplete, or misleading information to an insurance company for the purpose of defrauding the company. Penalties include imprisonment, fines, and denial of insurance benefits.

DE Residents please note: the contract issued based on this Application will be administered in adherence with Delaware's Civil Union and Equality Act of 2011. However, the Civil Union and Equality Act of 2011 does not supersede federal tax law and the Defense of Marriage Act which provide for disparate tax treatment between opposite-sex spouses and same-sex spouses and civil union partners.

IL Residents please note: the contract issued based on this Application will be administered in adherence with Illinois' Religious Freedom and Civil Union Act of 2011.

Important Information About Procedures for Opening a New Account

To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify and record information that identifies each person who opens an account.

What this means to you: When you open an account, we will ask for your name, address, date of birth, and other information that will allow us to identify you. We may also ask to see your driver's license or other identifying documents.

Mail to: Security Benefit • PO Box 750497 • Topeka, KS 66675-0497 or
Fax to: 1-785-368-1772
Visit us online at www.securityretirement.com

SFR® Program 457

Exhibit A - Service Agreement Fee Schedule

The following fees will be charged for services rendered under the Administrative Agreement:

Asset Based Account Fee

A unitized fee for account distribution, recordkeeping and administration will be charged in the annual amount of 0.65% of assets held in each Participant's Account. This unitized fee will be determined and may be deducted, currently or immediately in advance, pro rata on a daily basis from each Account. An additional asset-based fee of 0.10% to cover the cost of additional required recordkeeping applies daily on a prorated basis to assets held in American Funds. Future funds added to the Plan that carry similar additional administrative expenses may bear additional asset-based fees, as separately disclosed to the Client and Participants.

Loan Fees

A one time loan origination fee of $50.00 per loan will be charged to the Account of the Participant requesting the loan at the time of loan disbursement. A quarterly loan administration fee of $12.50 will also be charged to the Participant's Account for each outstanding loan.

Extraordinary Fees

If extraordinary services are required due to the failure of the Employer to perform it's duties under the Administrative Agreement, or upon the request of the Employer, an hourly extraordinary services fee may be charged to the Employer at the basic rate of $75.00 per hour.

The Employer acknowledges receipt and acceptance of this Service Agreement Fee Schedule for the SFR® Program.

By ______________________________ Name and Title ROBERT B. SCHOMMER
Signature Authorized Employer Representative

Date ______________________
(mm/dd/yyyy)

SECURITY BENEFIT®

Exhibit "B"

Loan Policy

for the

CITY OF HUBER HEIGHTS

Governmental 457 Plan

The Plan permits loans to be made to Participants. However, before any loan is made, the Plan requires that a written loan policy be established which sets forth the rules and guidelines for making Participant loans. This document shall serve as the required written loan policy.

1. Security Financial Resources, Inc. (SFR®) is authorized to administer the Participant loan program. All applications for loans shall be made by a Participant to SFR® on forms which SFR® will make available for such purpose.

2. All loan applications shall be processed by SFR® within a reasonable time after the Participant makes formal application. The Participant shall also be required to provide any supporting information requested by SFR®.

3. SFR® shall determine whether a Participant qualifies for a loan. Criteria for loan approval shall include whether adequate security has been provided for the loan, and whether the Participant agrees, as a condition for receiving the loan, to make repayments through automated processes, such as ~~direct, after tax payroll deduction by the Employer or~~ an EFT draft from a bank account.

4. The following rule(s) and limitation(s) shall apply to any loan made under this policy:

   - All loans made pursuant to this program shall be considered a directed investment from the account(s) of the Participant maintained under the Plan. As such, all payments of principal and interest made by the Participant shall be credited only to the account(s) of such Participant.

   - All loans made to a Participant pursuant to this program (and under all other plans of the Employer) shall be limited to the lesser of:

     (i) $50,000, or

     (ii) One-half (½) of the Employee's nonforfeitable account balance, or the entire nonforfeitable account balance up to $10,000, whichever is greater.

   The $50,000 limit is reduced by the excess of (a) the highest outstanding loan balance within the preceding 12-month period ending on the day before the loan, or (b) the outstanding balance on the date of the loan.

   - No loan in an amount less than $1,000 shall be granted to any Participant.

   - The Plan offers two types of loans:

     1. Residential Loan (repayment must be completed in no more than 30 years).

     2. Conventional (Regular) Loan (repayment must be completed in no more than 5 years).

        - Only one loan may be outstanding at a time. A new loan cannot be processed until the existing conventional loan is repaid in full.

        - All loans must be repaid on a level amortization basis. There are no loan extensions for leave of absence. The interest rate on loans to military personnel entitled to the protection of the Soldier's and Sailor's Relief Act shall be reduced, on application, to no more than 6%.

        - Loan origination fee is $50 per loan, deducted from the Participant's account upon issuance. A $12.50 quarterly loan maintenance fee is deducted from the Participant's account while the loan is outstanding. Loan fees may be changed by agreement of the Employer and SFR®.

5. Any loan granted or renewed under this program shall bear a reasonable rate of interest. In determining such rate of interest, the Plan shall require a rate of return commensurate with the prevailing interest rate on similar loans under like circumstances by persons in the business of lending money. Until it decides otherwise, SFR® has determined that, due to the high level of security for these loans, the lack of any risk of loss, the automated payment mechanism, and the high incentive for repayment, these factors will be satisfied by establishing the interest rate on Participant loans equal to the national Prime Lending Rate generally prevailing on loans from commercial banks to their best customers, plus 1%.

6. SFR® shall require that adequate security be provided by the Participant before a loan is granted. For this purpose, SFR® shall consider a Participant's interest under the Plan to be adequate security. The Participant shall pledge his or her Account Balance as security for any Participant loan.

7. Generally, a default shall occur upon the failure of a participant to timely remit payments under the loan when due, or upon the violation by the Participant of any other provision of the Participant's loan agreement, promissory note or other loan document, or the failure to provide or revocation of any account pledge, ~~payroll deduction~~ or EFT authorization (without promptly providing an acceptable automated substitute) or the failure to follow this loan policy. In the event of a default for failure to remit payments when due, the Participant shall be entitled to correct each default during a "grace period" for the particular default. The grace period shall commence with the date of the default and shall end on the last day of the calendar quarter which commences after the date of the default.

8. Upon any loan default and the expiration of any grace period without a cure of the default, the loan shall be deemed distributed to the Participant for tax purposes to the extent required under Section 72(p) of the Internal Revenue Code of 1986 (the "Code"). The loan shall remain outstanding until fully repaid, with interest, or until the loan is collected by offset of the Participant's Account which stands as security for the Loan. No offset shall be required until the Participant is entitled to take a distribution from the Account under the rules of Section 457(b) of the Code.

X______________________________ ______________

Authorized Signature — Date (mm/dd/yyyy)

PENSION PROTECTION ACT ('PPA") AND HEROES EARNINGS ASSISTANCE AND RELIEF TAX ACT OF 2008 ("HEART") AMENDMENT

ARTICLE I
PREAMBLE

1.1 Adoption by Service Provider. The Service Provider, on behalf of the Employer, adopts this amendment to reflect recent law changes. The effective date of the adoption will be the first Plan Year beginning after December 31, 2009.

1.2 Employer's Election. The Employer adopts all the default provisions of this Amendment except as elected in Article II. If the Employer restates their Plan, this Amendment will remain in effect until a document incorporating the provisions of PPA and the Heart Act is adopted or if the provisions become obsolete.

1.3 Supersession of inconsistent provisions. This Amendment shall supersede the provisions of the Plan to the extent those provisions are inconsistent with those of this Amendment.

ARTICLE II
EMPLOYER ELECTIONS

The Employer only needs to elect an option offered in Sections 2.2 through 2.6 if they wish to override the default provisions as elected by the Service Provider. If no selections are made the default provisions are adopted and the Employer does not need to execute this Amendment.

2.1 Default provisions. The following defaults have been elected by the Service Provider:

a. Effective for plan years beginning after December 31, 2009, nonspouse beneficiary rollovers are allowed on distributions.

b. Unforeseeable emergency distributions to a Participant's beneficiary are not allowed.

c. The option to permit in-service distributions at age 62 (with respect to amounts attributable to a money purchase pension plan, target benefit plan, or any other defined contribution plan that has received a transfer of assets from a pension plan) is not adopted.

d. Continued benefit accruals pursuant to the HEART Act provisions are not permitted.

2.2 Non-spousal rollovers (Article V) Non-spousal rollovers will be permitted after December 31, 2006 unless elected otherwise in the section below. Section V of this Amendment provides that all such distributions are permitted after December 31, 2009.

a. The following option is elected instead of the default:

1. [✓] Non-spousal rollovers are not allowed.

2. [ ] Non-spousal rollovers are allowed effective ______________ (not earlier than January 1, 2009 but no later than January 1, 2011).

2.3 Unforeseeable Emergencies (Article VI). Distributions for unforeseeable emergencies will not be paid to a Participant's beneficiary unless elected below:

a. [✓] Unforeseeable emergency distributions are allowed for beneficiary expenses pursuant to Reg. Sections 1.457-6(c)(2)(i), (ii) and (iii).

2.4 In-service distributions (Article VII). In-service distributions at age 62 will not be allowed unless elected below:

a. [✓] In-service distributions will be allowed for Participants at age 62 (generally applies only for money purchase plans but may apply to any other defined contribution plans that have received a transfer of assets from a pension plan including a target benefit plan) effective as of the first day of the 2010 Plan Year unless another date is elected below:

1. [ ] ______________ may not be earlier than the first day of the 2007 Plan Year)

OR,

2. [✓] The Plan already provides for in-service distributions and the restrictions set forth in the Plan (as to age and distribution frequency) apply to those distributions made at age 62.

2.5 Continued Benefit Accruals (Article XIV) Continued benefit accruals for the HEART Act (Section 14.2) will not apply unless elected below:

a. [ ] The provisions of Amendment Section 14.2 apply.

2.6 Final 415 Regulations. Regular compensation for services, commissions, bonuses or other similar payments that would have been payable to a Participant before termination, are automatically included in compensation if paid within the later of (i) end of the Plan Year in which separation of service occurs or (ii) within two and one-half (2 ½) months after separation of service. In addition, the following amounts paid within the same period will be Compensation (select all that apply):

a. [✓] payments for accrued leave, including sick leave and/or vacation time, the Participant would have had available had employment continued.

b. [ ] amounts received from a non-qualified, unfunded deferred compensation plan that would have been payable if employment had continued but only to the extent includible in gross income.

ARTICLE III
PARTICIPANT DISTRIBUTION NOTIFICATION

3.1 180-day notification period. For any distribution notice issued in Plan Years beginning after December 31, 2006, any reference to the 90-day maximum notice period prior to a distribution pursuant to Code Sections 402(f), 411(a)(11) or 417 will become 180 days.

3.2 Notice of right to defer distribution. For any distribution notice issued in Plan Years beginning after December 31, 2006, the description of a Participant's right, if any, to defer receipt of a distribution will describe the consequences of failing to defer receipt of the distribution. For notices issued before the 90th day after the issuance of Treasury regulations (unless future Revenue Service guidance requires otherwise) the notice will include a description indicating the investment options available under the Plan, including any applicable fees, if the Participant elects to defer distribution.

ARTICLE IV
ROLLOVER OF AFTER-TAX/ROTH AMOUNTS

4.1 Direct rollover to qualified plan/403(b) plan. If applicable, for taxable years beginning after December 31, 2006, a Participant may elect to transfer employee (after-tax) or Roth elective deferral contributions by means of a direct rollover to a qualified plan or to a 403(b) plan that agrees to account separately for amounts so transferred, including accounting separately for the portion of such distribution which is includible in gross income and the portion of such distribution which is not includible in gross income.

ARTICLE V
DIRECT ROLLOVER OF NON-SPOUSAL DISTRIBUTION

5.1 **Non-spouse beneficiary rollover right.** For distributions after December 31, 2006, and unless otherwise elected in Section 2.3 of this Amendment, for distributions after December 31, 2006, a non-spouse beneficiary who is a "designated beneficiary" under Code Section 401(a)(9)(E) and the regulations hereunder, by a direct trustee-to-trustee transfer ("direct rollover") may roll over all or any portion of his or her distribution to an individual retirement account the beneficiary establishes for purposes of receiving the distribution. In order to be able to roll over the distribution, the distribution otherwise must satisfy the definition of an eligible rollover distribution.

5.2 **Certain requirements not applicable.** Although a non-spouse beneficiary may roll over directly a distribution as provided in Section 5.1, any distribution made prior to January 1, 2010 is not subject to the direct rollover requirements of Code Section 401(a)(31) (including Code Section 401(a)(31(B), the notice requirements of Code Section 401(f) or the mandatory withholding requirements of Code Section 3405(c)). If a non-spouse beneficiary receives a distribution from the Plan, the distribution is not eligible for a "60-day" rollover.

5.3 **Trust beneficiary.** If the Participant's named beneficiary is a trust, the Plan may make a direct rollover to an individual retirement account on behalf of the Trust, provided the trust satisfies the requirements to be a designated beneficiary within the meaning of Code Section 401(a)(9)(E).

5.4 **Required minimum distributions not eligible for rollover.** A non-spouse beneficiary may not roll over an amount which is a required minimum distribution, as determined under applicable Treasury regulations and other Revenue Service guidance. If the participant dies before his or her required beginning date and the non-spouse beneficiary rolls over to an IRA the maximum amount eligible for rollover, the beneficiary may elect to use either the 5-year rule or the life expectancy rule, pursuant to Treas. Reg. Section 1.401(a)(9)-3, A-4(c) in determining the required minimum distributions from the IRA that receives the non-spouse beneficiary's distribution.

ARTICLE VI
DISTRIBUTION TO BENEFICIARY FOR UNFORESEEABLE EMERGENCY

6.1 **Beneficiary based distribution.** If elected in Amendment Section 2.3.a, Participants faced with an unforeseeable emergency pursuant to Treas. Reg. Section 1.457-6(c)(2), includes a severe financial hardship of the Participant's primary beneficiary under the Plan. Such event must be one that would constitute an unforeseeable emergency if it occurred with respect to the Participant's spouse or dependent as defined by and within the requirements established by the Internal Revenue Code. For purposes of this Article, a Participant's "primary beneficiary under the Plan" is an individual who is named as a beneficiary under the Plan and has an unconditional right to all or a portion of the Participant's account balance under the Plan upon the Participant's death.

ARTICLE VII
IN-SERVICE PENSION DISTRIBUTIONS

7.1 **Age 62 distributions**. If elected in Amendment Section 2.4.a, then beginning as of the date specified in such Section, if the Plan is a money purchase pension plan, a target benefit plan or any other defined contribution plan that has received a transfer of assets from a pension plan, a participant who has attained age 62 and who has not separated from employment may elect to receive a distribution of his or her vested account balance (or in case of a transferee plan, of the transferred account balance).

ARTICLE VIII
DIRECT ROLLOVER TO ROTH IRA

8.1 **Roth IRA rollover.** For taxable years beginning after December 31, 2007, a Participant may elect to transfer distributions from a qualified plan, 403(b) or governmental 457(b) directly into a Roth IRA. The conversion will be subject to the Roth IRA conversion rules and the taxable portion of the rollover amount is taxed at the time of the conversion.

ARTICLE IX
QUALIFIED DOMESTIC RELATIONS ORDERS (QDRO's)

9.1 **Permissible QDRO's**. Effective April 6, 2007, a domestic relations order that otherwise satisfies the requirements for a qualified domestic relations order ("QDRO") will not fail to be a QDRO: (i) solely because the order is issued after or revises another domestic relations order or QDRO; or (ii) solely because the time at which the order is issued, including issuance after the annuity starting date or after the Participant's death.

9.2 **Other QDRO requirements apply**. A domestic relations order described in the Basic Plan Document is subject to the same requirements and protections that apply to QDRO's.

ARTICLE X
PUBLIC SAFETY EMPLOYEES

10.1 **Health and Long-term care Insurance.** For Plan Years beginning after December 31, 2009, a Participant who is an Eligible Retired Public Safety Officer may elect to receive a tax free distribution from the Plan each calendar year up to the lesser of (1) the amount paid by such Participant for Qualified Health Insurance Premiums of the Participant, his or her spouse, or dependents (as defined in IRC Section 152) for such taxable year, or (2) $3000.00. Such distribution must be made from one or more accounts or sources that would otherwise be taxable when distributed, and payment of the premiums must made directly to the provider of the accident or health insurance plan or qualified long-term care insurance contract by deduction from a distribution from the Plan.

For purposes of this amendment, the term "Eligible Retired Public Safety Officer" means an individual who, by reason of Disability or attainment of Normal Retirement Age, is separated from service as a Public Safety Officer with the Employer. The term "Public Safety Officer" shall have the same meaning given such term by section 1204(9)(A) of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796b(9)(A)). Finally, the term "Qualified Health Insurance Premiums" means premiums for coverage for the Eligible Retired Public Safety Officer, his spouse, and dependents, by an accident or health insurance plan or Qualified Long-Term Care Insurance Contract (as defined in IRC Section 7702B(b)).

For the purposes of the limitations on distribution in this Section 10.1 all eligible retirement plans of the Employer shall be treated as a single plan. The election made by the Eligible Retired Public Safety Officer described in this amendment must be made after separation from service with respect to amounts not yet distributed from the Plan.

ARTICLE XI
PERMISSIVE SERVICE CREDIT

11.1 Service credit rules. Eligible members are allowed to transfer funds from their 457(b) plan to purchase additional service credit in a governmental defined benefit plan prior to severance from employment. Furthermore, such service credit rules are clarified so that state and local governmental employees may purchase enhanced benefits and benefits for which there is no performance of actual service. Upon distribution, the rules applicable to defined benefit plans will apply to any amounts attributable to transfers of 457(b) plan assets.

ARTICLE XII
VOLUNTARY EARLY RETIREMENT AND RETENTION PLANS

12.1 Voluntary early retirement. A voluntary early retirement plan that makes payments or supplements as part of the benefit, a retirement-type subsidy, or as a social security supplement in coordination with a defined benefit plan maintained by a state, local government or local educational agency is treated as a bona fide severance plan to the extent such payments could have been made under the terms of the defined benefit plan. Also, the payments are not subject to the limits of IRC Section 457 and the plan is treated as a welfare plan for purposes of ERISA, if applicable. In addition, the plan is exempt from any restrictions under the Age Discrimination in Employment Act that might otherwise apply.

12.2 Employment retention plan. An arrangement to pay, upon termination of employment, compensation to an employee for service with a local educational agency or a tax-exempt educational association that primarily represents employees of local educational agencies for the purpose of retaining the employee or rewarding the employee for past service, is an employment retention plan. As such, the plan will be treated as one that does not provide for a deferral of compensation to the extent such benefits do not exceed twice the applicable dollar limit on deferrals under section 457 (e)(15)(A).

ARTICLE XIII
EXPANDED PARTICIPATION

13.1 Expansion of participation. An individual who received a distribution of up to $3,500 under Section 457(e)(9) as in effect prior to the Small Business Job Protection Act of 1996("SBJPA") is not precluded from participating in an eligible deferred compensation plan under Code Section 457.

ARTICLE XIV
HEART ACT PROVISIONS

14.1 Death benefits. In the case of a death occurring on or after January 1, 2007, if a Participant dies while performing qualified military service (as defined in Code Section 414(u)), the survivors of the Participant are entitled to any additional benefits (other than benefit accruals relating to the period of qualified military service) provided under the Plan as if the Participant had resumed and then terminated employment on account of death.

14.2 Benefit accrual. If the Employer so elects in Amendment Section 2.5 , then for benefit accrual purposes, the Plan treats an individual who dies or becomes disabled on or after January 1, 2007 (as defined under the terms of the Plan) while performing qualified military service with respect to the Employer as if the individual had resumed employment in accordance with the individual's reemployment rights under USERRA, on the day preceding death or disability (as the case may be) and terminated employment on the actual date of death or disability.

a. Determination of benefits. The Plan will determine the amount of employee contributions and the amount of elective deferrals of an individual treated as reemployed under this Section 14.2 for purposes of applying paragraph Code Section 414(u)(8)(c) on the basis of the individual's average actual employee contributions or elective deferrals for the lesser of: (i) the 12-month period of service with the Employer immediately prior to qualified military service; or (ii) if service with the Employer is less than 12-months, the actual length of continuous service with the Employer.

14.3 Differential wage payments. For years beginning after December 31, 2008, (i) an individual receiving a differential wage payment, as defined by Code Section 3401(h)(2), is treated as an employee of the employer making the payment, (ii) the differential wage payment is treated as compensation, and (iii) the Plan is not treated as failing to meet the requirements of any provision described in Code Section 414(u)(1)(c) by reason of any contribution or benefit which is based on the differential wage payment.

14.4 Severance from employment. Notwithstanding Section 14.3(i), an individual is treated as having been severed from employment during any period the individual is performing service in the uniformed services described in Code Section 3401(h)(2)(A).

a. Nondiscrimination requirement. Section 14.3(iii) applies only if all employees of the Employer performing service in the uniformed services as previously described are entitled to receive differential wage payments (as defined in Code Section 3401(h)(2)) on a reasonably equivalent terms and, if eligible to participate in a retirement plan maintained by the employer, to make contributions based on the payments on reasonably equivalent terms.

ROTH 457 AMENDMENT
SMALL BUSINESS JOBS ACT OF 2010 ("SBJA")

ARTICLE I
PREAMBLE

1.1 Adoption and effective date of amendment. This amendment of the Plan is adopted to reflect amended Code Section 402A, as enacted by the Small Business Jobs Act of 2010 ("SBJA"). This amendment is intended as a good faith compliance with the requirements of the Act and guidance issued thereunder, and shall be interpreted in a manner consistent with such guidance. The amendment shall be effective as of the date indicated below.

1.2 Employer's Election. As of the effective date, the Employer adopts the provisions as elected under Article II. These provisions will remain in effect until a document incorporating the provisions of "SBJA" is adopted or if the provisions become obsolete.

1.3 Supersession of inconsistent provisions. This amendment shall supersede the provisions of the Plan to the extent those provisions are inconsistent with the provisions of this amendment.

ARTICLE II
ADOPTION AGREEMENT ELECTIONS

2.1 **Effective Date.** Roth Elective Deferrals are permitted under the Plan as of ________________, 20__. (Enter a date no earlier than January 1, 2011).

2.2 **Unforeseeable Emergency.** A Participant may receive a distribution from their Roth Elective Deferral account in the event of an unforeseeable emergency.

ARTICLE III
ROTH ELECTIVE DEFERRALS

3.1 Roth Elective Deferrals are permitted. The Plan's definitions and terms shall be amended as follows to allow for Roth Elective Deferrals as of the effective date entered at 2.1. Roth Elective Deferrals shall be treated in the same manner as Elective Deferrals for all Plan purposes. The Employer may, in operation, implement deferral election procedures provided such procedures are communicated to Participants and permit Participants to modify their elections at least once each Plan Year.

3.2 Elective Deferrals. For years beginning after January 1, 2011, the term "Elective Deferrals" includes Pre-tax Elective Deferrals and Roth Elective Deferrals.

3.3 Pre-Tax Elective Deferrals. "Pre-Tax Elective Deferrals" means a Participant's Elective Deferrals which are not includible in the Participant's gross income at the time deferred and have been irrevocably designated as Pre-Tax Elective Deferrals by the Participant in his or her deferral election. A Participant's Pre-Tax Elective Deferrals will be separately accounted for, as will gains and losses attributable to those Pre-Tax Elective Deferrals.

3.4 Roth Elective Deferrals. "Roth Elective Deferrals" means a Participant's Elective Deferrals that are includible in the Participant's gross income at the time deferred and has been irrevocably designated as Roth Elective Deferrals by the Participant in his or her deferral election. A Participant's Roth Elective Deferrals will be separately accounted for, as will gains and losses attributable to those Roth Elective Deferrals. The Plan must also maintain a record of a Participant's investment in the contract (i.e., designated Roth contributions that have not been distributed). Roth Elective Deferrals are not considered Employee Contributions for Plan purposes.

3.5 Ordering Rules for Distributions. The Administrator operationally may implement an ordering rule procedure for withdrawals from a Participant's accounts attributable to Pre-Tax Elective Deferrals or Roth Elective Deferrals. Such ordering rules may specify whether the Pre-Tax Elective Deferrals or Roth Elective Deferrals are distributed first. Furthermore, such procedure may permit the Participant to elect which type of Elective Deferrals shall be distributed first.

3.6 Corrective distributions attributable to Roth Elective Deferrals. For any Plan Year in which a Participant may make both Roth Elective Deferrals and Pre-Tax Elective Deferrals, the Administrator operationally may implement an ordering rule procedure for the distribution of Excess Deferrals (Code Section 402(g)), and Excess Annual Additions (Code Section 415). Such ordering rules may specify whether the Pre-Tax Elective Deferrals or Roth Elective Deferrals are distributed first, to the extent such type of Elective Deferrals was made for the year. Furthermore, such procedure may permit the Participant to elect which type of Elective Deferrals shall be distributed first.

3.7 Operational Compliance. The Plan Administrator will administer Roth Elective Deferrals in accordance with applicable regulations or other binding authority not reflected in this amendment. Any applicable regulations or other binding authority shall supersede any contrary provisions of this amendment. Total contributions to the Elective Deferral account will not exceed the annual deferral limit plus any applicable catch-up provision.

This amendment has been executed this ________ day of ______________________, 20__.

Name of Plan: ____

Security Benefit Plan #:____________

EMPLOYER

Name of Employer: ___________________________

By: ________________________________

Date signed:_____________________________

SECURITY BENEFIT®

Basic Plan Document For Governmental 457 Deferred Compensation Plan and Trust

BASIC PLAN DOCUMENT FOR GOVERNMENTAL 457 DEFERRED COMPENSATION PLAN AND TRUST

The Employer named on an Adoption Agreement for this 457 Deferred Compensation Plan and Trust, by executing the Adoption Agreement, establishes a 457 Plan intended to conform to and qualify under Code §457 of the Internal Revenue Code of 1986, for a Governmental Entity described in Code §457(e)(1)(A). If the Employer adopts this Plan as a restated Plan in substitution for, and in amendment of, an existing plan, the provisions of this Plan, as a restated Plan, apply solely to an Employee who severs employment with the Employer on or after the restated Effective Date of the Employer's Plan. If an Employee severs employment with the Employer prior to the restated Effective Date, that Employee is entitled to benefits under the Plan as the Plan existed on the date of the Employee's severance from employment.

This Basic Plan Document establishes the provisions of the Plan, and upon execution of the Adoption Agreement by the trustee, also includes an agreement establishing a Trust under the provisions of Article VIII below, which is intended to be qualified under Code §457(g) to hold the assets of the Plan. With the consent of SDI, Plan assets may also (or instead) be held by one or more different trustees under a separate trust agreement or in the form of one or more annuity contracts issued by a duly qualified insurance company, provided that any such separate trust or annuity contract also satisfies the requirements of Code §§ 401(f) and 457(g), and provided finally that in the event of a conflict between this Plan (other than Article VIII) and such separate trust or annuity contract, the provisions of this Plan shall control.

ARTICLE I – DEFINITIONS

1.01 **"Account"** means the bookkeeping account maintained with respect to each Participant which reflects the value of the deferred Compensation credited to the Participant, including all Deferred Compensation contributed for the Participant, the earnings or loss of the Fund (net of Fund expenses) allocable to the Participant, any transfers for the Participant's benefit, and any distribution made to the Participant or the Participant's Beneficiary. If a Participant has more than one Beneficiary at the time of the Participant's death, then a separate Account shall be maintained for each Beneficiary. The Account includes any account established under Articles III and VII for rollover contributions and plan-to-plan transfers made for a Participant, the account established for a Beneficiary after a Participant's death, and any account or accounts established for an alternate payee (as defined in section 414(p)(8) of the Code).

1.02 **"Beneficiary"** means the designated person who is entitled to receive benefits under the Plan after the death of a Participant.

1.03 **"Code"** means the Internal Revenue Code of 1986, as now in effect or as hereafter amended. All citations to sections of the Code are to such sections as they may from time to time be amended or renumbered.

1.04 **"Compensation"** means all cash compensation for services to the Employer, including salary, wages, fees, commissions, bonuses, and overtime pay, that is includible in the Employee's gross income for the calendar year, plus amounts that would be cash compensation for services to the Employer includible in the Employee's gross income for the calendar year but for a compensation reduction election under section 125, 132(f), 401(k), 403(b), or 457(b) of the Code (including an election to defer compensation under Article II. The Plan Administrator will take into account only Compensation actually paid for the relevant period. A Compensation payment includes Compensation paid by the Employer through another person under the common paymaster provisions in Code §§3121 and 3306.

1.05 **"Deferred Compensation"** means the total amount of all contributions made to the Plan on behalf of the Participant for a Plan Year, including Elective Deferrals and, if permitted, Matching Contributions and Employer Contributions.

1.06 **"Effective Date"** of this Plan is the date specified in the Employer's Adoption Agreement. However, the Plan applies to the applicable Plan provision any delayed effective date permitted by the Code, by Treasury regulation, or by other guidance published in the Internal Revenue Bulletin.

1.07 **"Elective Deferrals"** are salary reduction contributions and cash or deferred contributions the Employer contributes to the Trust on behalf of an eligible Employee, irrespective of whether, in the case of cash or deferred contributions, the contribution is at the election of the Employee.

1.08 **"Employee"** means each natural person, whether appointed or elected, who is employed and designated by the Employer as a common law employee, excluding any employee who is included in a unit of employees covered by a collective bargaining agreement that does not specifically provide for participation in the Plan. The Plan excludes leased employees (Code §414(n)).

1.09 **"Employer"** means each State governmental entity which adopts this Plan by executing and Adoption Agreement.

1.10 **"Includible Compensation"** means an Employee's actual wages in box 1 of Form W-2 for a year for services to the Employer, but subject to a maximum of $200,000 (or such higher maximum as may apply under section 401(a)(17) of the Code) and increased (up to the dollar maximum) by any compensation reduction election under section 125, 132(f), 401(k), 403(b), or 457(b) of the Code (including an election to defer Compensation under Article II.

1.11 **"Independent Contractor"** means any individual who performs service for the Employer and who the Employer does not treat as an Employee or a leased employee. If the Employer provides contributions for any Independent Contractors under the Plan, references to Employee in the Plan will include Independent Contractors.

1.12 **"Normal Retirement Age"** means any age designated by the Participant: (a) on or after the earlier of age 65 or the age at which the Participant has the right to retire and receive, under any basic defined benefit or money purchase pension plan of the Employer, immediate retirement benefits without actuarial or similar reduction because of retirement before some later specified age, and (b) not later than age 70 ½. Any Plan Participant who is a qualified police or firefighter as described in Code §415(b)(2)(H)(ii)(I) may designate a normal retirement age between age 40 and age 70 ½.

1.13 **"Participant"** means an individual who is currently or who has previously received contributions under the Plan and who has not received a distribution of his or her entire benefit under the Plan. Only individuals who perform services for the Employer as a common law Employee or, where specified by the Employer, as an Independent Contractor, may receive contributions under the Plan.

1.14 **"Plan"** means the 457 Deferred Compensation Plan established or continued by the Employer in the form of an Adoption Agreement and this Plan and Trust Agreement. The Employer will designate the name of the Plan in its Adoption Agreement. The Plan maintained by each adopting Employer is a separate Plan, independent from the plan of any other employer adopting this or a similar 457 Plan. All section references within the Plan are Plan section references unless the context clearly indicates otherwise.

1.15 **"Plan Administrator"** is the Employer unless the Employer designates another person to hold the position of Plan Administrator. The Employer may alternatively designate another person or organization to perform duties assigned to the Plan Administrator under this Agreement.

1.16 **"Plan Year"** means the 12 month fiscal year of the Plan, which is the calendar year unless otherwise specified in the Employer's Adoption Agreement.

1.17 **"Salary Reduction Agreement"** means an enrollment form or other written agreement between the Employee and the Employer, by which the Employer reduces the Employee's Compensation for Compensation not available as of the date of the election and contributes the amount as an Elective Deferral to the Employee's Account.

1.18 **"SDI"** means Security Distributors, Inc., which has provided this sample plan document and which receives contributions made under the plan for the purchase of trust account or annuity contract investment products it distributes and makes available under the Plan. SDI is an affiliate of Security Benefit Corporation.

1.19 **"Service"** means any period of time the Employee is in the employ of the Employer. In the case of an independent contractor, Service means any period of time the independent contractor performs services for the Employer on an independent contractor basis. A common law employee terminates Service (other than by death) when he/she has a Severance from Employment or has retired. An independent contractor terminates Service (other than by death) when his contract(s) with the Employer, under which he/she performs services, expires, unless the Employer anticipates a renewal of the contractual relationship. The Employer anticipates renewal if it intends to contract for the services provided under the expired contract and neither the Employer nor the independent contractor has eliminated the independent contractor as a potential provider of such services under the new contract. Furthermore, the Employer anticipates renewal if the Employer intends to contract with the independent contractor under a new contract conditioned on the Employer's need for the services provided under the expired contract or the Employer's availability of funds. Notwithstanding the preceding provisions of this Section 1.19, the Plan Administrator will consider an independent contractor terminated from Service on the date twelve months after his contract for services expires, provided the independent contractor has not performed services for the Employer as an independent contractor nor as a common law employee within such twelve-month period.

1.20 **"Severance from Employment"** means the date that the Employee dies, retires, or otherwise has a severance from employment with the Employer, as determined by the Plan Administrator (and taking into account guidance issued under the Code).

1.21 **"State"** means a State (treating the District of Columbia as a State as provided under §7701(a)(10)), a political subdivision of a State, and any agency or instrumentality of a State.

1.22 **"Trust"** means the Trust created under Article VIII of this Plan. The Trust created and established under the adopting Employer's Plan is a separate Trust, independent of the trust of any other Employer adopting this 457 Deferred Compensation Plan. Where the context of a specific provision of this Plan requires (other than Article VIII), any separate trust, custodial agreement, or annuity contract shall be considered the Trust for that provision.

1.23 **"Trust Agreement"** means a written agreement (or declaration) made by and between the Employer and the Trustee under which the Trust Fund is maintained, including the provisions of Article VIII below.

1.24 **"Trustee"** means UMB Bank, n.a., or such other person or persons who as Trustee execute the Employer's Adoption Agreement, or any successor in office who in writing accepts the position of Trustee. Where the context of a specific provision of this Plan requires (other than Article VIII), any trustee under a separate trust agreement, custodian under a custodial agreement, or insurance company that issues annuity contracts shall be considered the Trustee.

1.25 **"Trust Fund"** means the trust fund created under and subject to the Trust Agreement.

1.26 **"Valuation Date"** means the last day of the Plan Year and such other times as the assets of the Plan may be valued. The Plan Administrator will allocate Employer contributions and forfeitures for a particular Participant as of the Valuation Date next following the date of remittance to the Trust, at least once each Plan Year on the last Valuation Date of that Plan Year.

ARTICLE II – PARTICIPATION IN PLAN

2.01 **ELIGIBILITY FOR DEFERRAL CONTRIBUTIONS.** Unless otherwise provided in an Adoption Agreement, each Employee becomes eligible to participate in the Plan for the purpose of making Elective Deferrals immediately upon the later of the Effective Date of this Plan or upon the date he/she becomes an Employee.

2.02 **ELECTION REQUIRED FOR PARTICIPATION.** An Employee may elect to become a Participant by executing an election to defer a portion of his or her Compensation (and have that amount contributed as an Elective Deferral on his or her behalf) and filing a Salary Reduction Agreement with the Plan Administrator. The Salary Reduction Agreement form shall be provided by the Plan Administrator and shall require the Employee to agree to be bound by all the terms and conditions of the Plan. The Plan Administrator may establish a minimum deferral amount, and may change such minimums from time to time. The Salary Reduction Agreement (or a separate form obtained at that time) shall also include designation of investment funds and a designation of Beneficiary. Any such election shall remain in effect until a new election is filed.

2.03 **COMMENCEMENT OF PARTICIPATION.** An Employee shall become a Participant as soon as administratively practicable following the date the Employee files a participation election pursuant to Section 2.02. Such election shall become effective no earlier than the calendar month following the month in which the election is made. A new Employee may defer compensation payable in the calendar month during which the Participant first becomes an Employee if an agreement providing for the deferral is entered into on or before the first day on which the Participant performs services for the Employer.

2.04 **ELIGIBILITY FOR MATCHING AND NON-ELECTIVE CONTRIBUTIONS.** If Matching Contributions or Non-Elective Contributions may be made to the Plan, as elected in the Adoption Agreement, the Employer shall determine, in it's discretion, which Employees shall be eligible to receive such contributions. This determination may be made by classification, by establishing service and/or age requirements consistent with the requirements of the Code, if any, under the terms of individual employment agreements or collective bargaining agreements, or by the Employer individually selecting employees as eligible to receive allocations of Matching Contributions or Non-Elective Contributions. Eligibility conditions may be attached to the Adoption Agreement as an addendum thereto.

2.05 **CONTRIBUTIONS MADE PROMPTLY.** Elective Deferrals by the Participant under the Plan shall be transferred to the Trust Fund within a period that is not longer than is reasonable for the proper administration of the Participant's Account. For this purpose, Elective Deferrals shall be treated as contributed within a period that is not longer than is reasonable for the proper administration if the contribution is made to the Trust Fund within 15 business days following the end of the month in which the amount would otherwise have been paid to the Participant.

2.06 **AMENDMENT TO SALARY REDUCTION AGREEMENT.** Subject to other provisions of the Plan, a Participant may at any time revise his or her Salary Reduction Agreement, including a change of the amount of his or her Elective Deferrals, his or her investment direction and his or her designated Beneficiary. Unless the election specifies a later effective date, a change in the amount of the Elective Deferrals shall take effect as of the first day of the next following month or as soon as administratively practicable if later. A change in the investment direction shall take effect as of the date provided by the Plan Administrator on a uniform basis for all Employees. A change in the Beneficiary designation shall take effect when the election is accepted by the Plan Administrator.

2.07 **LEAVE OF ABSENCE.** Unless an election is otherwise revised, if a Participant is absent from work by leave of absence, Elective Deferrals under the Plan shall continue to the extent that Compensation continues.

2.08 **DISABILITY.** A disabled Participant may elect Elective Deferrals during any portion of the period of his or her disability to the extent that he or she has actual Compensation (not imputed Compensation and not disability benefits) from which to make contributions to the Plan and has not had a Severance from Employment.

ARTICLE III – CONTRIBUTIONS/LIMITATIONS ON CONTRIBUTIONS

3.01 **CONTRIBUTION FORMULAS.** The Employer will contribute to the Plan on behalf of each Participant the amount determined by application of the contribution formula(s) elected by the Employer in its Adoption Agreement. The formulas may provide for the following types of contributions:

Deferral Contributions. If Deferral Contributions are elected, the Employer will contribute for each Participant the amount, if any, by which the Participant has elected to reduce his/her Compensation for the Plan Year under his/her Salary Reduction Agreement on file with the Plan Administrator. A Participant may make an election to defer Compensation for a month only if the Participant makes an agreement to defer before the beginning of such month.

Employer Matching Contributions. If Matching Contributions are elected, the Employer will contribute for each Participant it determines to be eligible for Matching Contributions the amounts determined under the formula specified in the Adoption Agreement. Matching Contributions shall be fully vested when made and allocated to a Participant's Account.

Employer Non-Elective Contributions. If Employer Non-Elective Contributions are elected, the Employer shall contribute to the Trust such an amount or amounts as it determines, in it's sole discretion, to be allocated to those Employees it determines to be eligible for such contributions. If no contribution allocation formula is specified in the Adoption Agreement, Non-Elective Contributions shall be allocated in accordance with an allocation schedule determined in its sole discretion by the Employer. Non-elective Contributions shall be fully vested when made and allocated to a Participant's Account.

3.02 **BASIC ANNUAL CONTRIBUTION LIMITATION.** The maximum amount of a Participant's Deferred Compensation under the Plan for any calendar year shall not exceed the lesser of (i) the Applicable Dollar Amount or (ii) the Participant's Includible Compensation for the calendar year. The Applicable Dollar Amount is the amount established under section 457(e)(15) of the Code applicable.

3.03 **AGE 50 CATCH-UP DEFERRED COMPENSATION CONTRIBUTIONS.** A Participant who will attain age 50 or more by the end of the calendar year is permitted to elect an additional amount of Deferred Compensation, up to the maximum age 50 catch-up Deferred Compensation for the year. The maximum dollar amount of the age 50 catch-up Deferred Compensation is the applicable dollar amount determined under section 414(v)(2)(B)(i) of the Code, as made applicable by section 457(e)(18) of the Code.

3.04 **SPECIAL SECTION 457 CATCH-UP LIMITATION.** If the applicable year is one of a Participant's last 3 calendar years ending before the year in which the Participant attains Normal Retirement Age and the amount determined under this Section 3.04 exceeds the amount computed under Sections 3.02 and 3.03, then the Deferred Compensation limit under this Article III shall be the lesser of:

(a) An amount equal to 2 times the Section 3.02 Applicable Dollar Amount for such year; or

(b) The sum of:

(1) An amount equal to (A) the aggregate Section 3.02 limit for the current year plus each prior calendar year beginning after December 31, 2001 during which the Participant was an Employee under the Plan, minus (B) the aggregate amount of Compensation that the Participant deferred under the Plan during such years, plus

(2) An amount equal to (A) the aggregate limit referred to in section 457(b)(2) of the Code for each prior calendar year beginning after December 31, 1978 and before January 1, 2002 during which the Participant was an Employee (determined without regard to Sections 3.03 and 3.04), minus (B) the aggregate contributions to Pre-2002 Coordination Plans for such years.

However, in no event can the deferred amount be more than the Participant's Compensation for the year.

3.05 **SPECIAL RULES.** For purposes of this Article III, the following rules shall apply:

(a) If the Participant is or has been a participant in one or more other eligible plans within the meaning of section 457(b) of the Code, then this Plan and all such other plans shall be considered as one plan for purposes of applying the foregoing limitations of this Article III. For this purpose, the Plan Administrator shall take into account any other such eligible plan maintained by the Employer and shall also take into account any other such eligible plan for which the Plan Administrator receives from the Participant sufficient information concerning his or her participation in such other plan.

(b) In applying Section 3.04, a year shall be taken into account only if (i) the Participant was eligible to participate in the Plan during all or a portion of the year and (ii) Compensation deferred, if any, under the Plan during the year was subject to the Basic Annual Limitation described in Section 3.02 or any other plan ceiling required by section 457(b) of the Code.

(c) For purposes of Section 3.04(b)(2)(B), "contributions to Pre-2002 Coordination Plans" means any employer contribution, salary reduction or elective contribution under any other eligible Code section 457(b) plan, or a salary reduction or elective contribution under any Code section 401(k) qualified cash or deferred arrangement, Code section 402(h)(1)(B) simplified employee pension (SARSEP), Code section 403(b) annuity contract, and Code section 408(p) simple retirement account, or under any plan for which a deduction is allowed because of a contribution to an organization described in section 501(c)(18) of the Code, including plans, arrangements or accounts maintained by the Employer or any employer for whom the Participant performed services. However, the contributions for any calendar year are only taken into account for purposes of Section 3.04(b)(2)(B) to the extent that the total of such contributions does not exceed the aggregate limit referred to in section 457(b)(2) of the Code for that year.

(d) For purposes of Sections 3.02, 3.03 and 3.04, an individual is treated as not having deferred compensation under a plan for a prior taxable year to the extent Excess Deferrals under the plan are distributed, as described in Section 3.06. To the extent that the combined deferrals for pre-2002 years exceeded the maximum deferral limitations, the amount is treated as an Excess Deferral for those prior years.

3.06 **CORRECTION OF EXCESS DEFERRALS.** If the Deferred Compensation on behalf of a Participant for any calendar year exceeds the limitations described above, or the Deferred Compensation on behalf of a Participant for any calendar year exceeds the limitations described above when combined with other amounts deferred by the Participant under another eligible deferred compensation plan under section 457(b) of the Code for which the Participant provides information that is accepted by the Plan Administrator, then the Deferred Compensation, to the extent in excess of the applicable limitation (adjusted for any income or loss in value, if any, allocable thereto), shall be distributed to the Participant.

3.07 **PROTECTION OF PERSONS WHO SERVE IN A UNIFORMED SERVICE**. An Employee whose employment is interrupted by qualified military service under Code section 414(u) or who is on a leave of absence for qualified military service under Code section 414(u) may elect to make additional Elective Deferrals upon resumption of employment with the Employer equal to the maximum Elective Deferrals that the Employee could have elected during that period if the Employee's employment with the Employer had continued (at the same level of Compensation) without the interruption or leave, reduced by the Elective Deferrals, if any, actually made for the Employee during the period of the interruption or leave. This right applies for five years following the resumption of employment (or, if sooner, for a period equal to three times the period of the interruption or leave).

3.08 **ELIGIBLE ROLLOVER CONTRIBUTIONS TO THE PLAN.**

(a) A Participant who is an Employee and who is entitled to receive an eligible rollover distribution from another eligible retirement plan may request to have all or a portion of the eligible rollover distribution paid to the Plan. The Plan Administrator may require such documentation from the distributing plan as it deems necessary to effectuate the rollover in accordance with section 402 of the Code and to confirm that such plan is an eligible retirement plan within the meaning of section 402(c)(8)(B) of the Code.

(b) For purposes of Section 3.08(a), an eligible rollover distribution means any distribution of all or any portion of a Participant's benefit under another eligible retirement plan, except that an eligible rollover distribution does not include (1) any installment payment for a period of 10 years or more, (2) any distribution made as a result of an unforeseeable emergency or other distribution which is made upon hardship of the employee, or (c) for any other distribution, the portion, if any, of the distribution that is a required minimum distribution under section 401(a)(9) of the Code. In addition, an eligible retirement plan means an individual retirement account described in section 408(a) of the Code, an individual retirement annuity described in section 408(b) of the Code, a qualified trust described in section 401(a) of the Code, an annuity plan described in section 403(a) or 403(b) of the Code, or an eligible governmental plan described in section 457(b) of the Code, that accepts the eligible rollover distribution.

(c) The Plan shall establish and maintain for the Participant a separate account for any eligible rollover distribution paid to the Plan from any eligible retirement plan that is not an eligible governmental plan under section 457(b) of the Code. In addition, the Plan shall establish and maintain for the Participant a separate account for any eligible rollover distribution paid to the Plan from any eligible retirement plan that is an eligible governmental plan under section 457(b) of the Code.

ARTICLE IV – TIME AND METHOD OF PAYMENT OF BENEFITS

4.01 **DISTRIBUTIONS AT RETIREMENT OR OTHER SEVERANCE FROM EMPLOYMENT.** Upon retirement or other Severance from Employment (other than due to death), a Participant is entitled to receive a distribution of his or her Account under any form of distribution permitted under Section 4.03 commencing at the date elected under Section 4.02. If a Participant does not elect otherwise, the distribution shall be paid as soon as practicable following Normal Retirement Age or, if later, following retirement or other Severance from Employment and payment shall be made in monthly installments of the minimum annual payments described in paragraph (b) of Section 4.03.

4.02 **ELECTION OF BENEFIT COMMENCEMENT DATE.** A Participant may elect to commence distribution of benefits at any time after retirement or other Severance from Employment by an election filed before the date on which benefits are to commence. However, in no event may distribution of benefits commence later than the date described in Section 4.08.

4.03 **FORMS OF DISTRIBUTION.** In an election to commence benefits under Section 4.02, a Participant entitled to a distribution of benefits under this Article may elect to receive payment in any of the following forms of distribution:

(a) a lump sum payment of the total Account or

(b) annual installment payments through the year of the Participant's death, the amount payable each year at least equal to a fraction of the Account equal to one divided by the distribution period set forth in the Uniform Lifetime Table at section 1.401(a)(9)-9, A-2, of the Income Tax Regulations for the Participant's age on the Participant's birthday for that year. If the Participant's age is less than age 70, the distribution period is at least 27.4 plus the number of years that the Participant's age is less than age 70. At the Participant's election, this annual payment can be made in monthly, quarterly, semi-annual or annual installments. The Account for this calculation (other than the final installment payment) is the balance of the Account as of the end of the year prior to the year for which the distribution is being calculated. Payments shall commence on the date elected under Section 4.02. For any year, the Participant can elect distribution of a greater amount (not to exceed the amount of the remaining Account) in lieu of the amount calculated using this formula.

4.04 **DEATH BENEFIT DISTRIBUTIONS.** Commencing in the calendar year following the calendar year of the Participant's death, the Participant's Account shall be paid to the Beneficiary in a lump sum.

Alternatively, if the Beneficiary with respect to the Participant's Account is a natural person, at the Beneficiary's election, distribution can be made in annual installments (calculated in a manner that is similar to installments under Section 4.03) with the distribution period determined under this paragraph. If the Beneficiary is the Participant's surviving spouse, the distribution period is equal to the Beneficiary's life expectancy using the single life table in section 1.401(a)(9)-9, A-1, of the Income Tax Regulations for the spouse's age on the spouse's birthday for that year. If the Beneficiary is not the Participant's surviving spouse, the distribution period is the Beneficiary's life expectancy determined in the year following the year of the Participant's death using the single life table in section 1.401(a)(9)-9, A-1, of the Income Tax Regulations for the Beneficiary's age on the Beneficiary's birthday for that year, reduced by one for each year that has elapsed after that year. For any year, a Beneficiary can elect distribution of a greater amount (not to exceed the amount of the remaining Account) in lieu of the amount calculated using this formula.

4.05 **ACCOUNTS OF $5,000 OR LESS.** Notwithstanding Sections 4.02, 4.03 and 4.04, if the balance of a Participant's Account is not in excess of $5,000 (or the dollar limit under section 411(a)(11) of the Code, if greater) on the date that payments commence under Section 4.03 or on the date of the Participant's death, then payment shall be made to the Participant (or to the Beneficiary if the Participant is deceased) in a lump sum equal to all the Participant's Account as soon as practicable following the Participant's retirement, death, or other Severance from Employment. Effective March 28, 2005, however, no mandatory distribution shall be made to or for the benefit of a Participant (or Beneficiary) whose account balance is greater than $1,000 unless the Participant (or Beneficiary) either elects to have such distribution paid directly to an Eligible Retirement Plan in a direct rollover or elects to receive the distribution directly in accordance with the Plan.

4.06 **AMOUNT OF ACCOUNT.** Except as provided in Section 4.03, the amount of any payment under this Article IV shall be based on the balance of the Account on the preceding Valuation Date.

4.07 **REVOCATION OF PRIOR ELECTION.** Any election made under this Article IV may be revoked at any time.

4.08 **LATEST DISTRIBUTION DATE.** In no event shall any distribution under this Article IV begin later than the later of (a) April 1 of the year following the calendar year in which the Participant attains age 70½ or (b) April 1 of the year following the year in which the Participant retires or otherwise has a Severance from Employment. If distributions commence in the calendar year following the later of the calendar year in which the Participant attains age 70½ or the calendar year in which the Severance from Employment occurs, the distribution on the date that distribution commences must be equal to the annual installment payment for the year that the Participant has a Severance from Employment determined under paragraph (b) of Section 4.03 and an amount equal to the annual installment payment for the year after Severance from Employment determined under paragraph (b) of Section 4.03 must also be paid before the end of the calendar year of commencement.

4.09 **IN-SERVICE DISTRIBUTIONS FROM ROLLOVER ACCOUNT.** If a Participant has a separate account attributable to rollover contributions to the plan, the Participant may at any time elect to receive a distribution of all or any portion of the amount held in the rollover account.

4.10 **UNFORESEEABLE EMERGENCY DISTRIBUTION.**

(a) Distribution. If the Participant has an unforeseeable emergency before retirement or other Severance from Employment, the Participant may elect to receive a lump sum distribution equal to the amount requested or, if less, the maximum amount determined by the Plan Administrator to be permitted to be distributed under this Section 4.10.

(b) Unforeseeable emergency defined. An unforeseeable emergency is defined as a severe financial hardship of the Participant resulting from: an illness or accident of the Participant, the Participant's spouse, or the Participant's dependent (as defined in section 152(a)); loss of the Participant's property due to casualty (including the need to rebuild a home following damage to a home not otherwise covered by homeowner's insurance, e.g., as a result of a natural disaster); the need to pay for the funeral expenses of the Participant's spouse or dependent (as defined in section 152(a) of the Code); or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the Participant. For example, the imminent foreclosure of or eviction from the Participant's primary residence may constitute an unforeseeable emergency. In addition, the need to pay for medical expenses, including non-refundable deductibles, as well as for the cost of prescription drug medication, may constitute an unforeseeable emergency. Except as otherwise specifically provided in this Section 4.10, neither the purchase of a home nor the payment of college tuition is an unforeseeable emergency.

(c) Unforeseeable emergency distribution standard. A distribution on account of unforeseeable emergency may not be made to the extent that such emergency is or may be relieved through reimbursement or compensation from insurance or otherwise, by liquidation of the Participant's assets, to the extent the liquidation of such assets would not itself cause severe financial hardship, or by cessation of deferrals under the plan.

(d) Distribution necessary to satisfy emergency need. Distributions because of an unforeseeable emergency may not exceed the amount reasonably necessary to satisfy the emergency need (which may include any amounts necessary to pay any federal, state, or local income taxes or penalties reasonably anticipated to result from the distribution).

4.11 **MANDATORY DISTRIBUTIONS FOR CERTAIN ACCOUNTS OF $5,000 OR LESS.** At the direction of the Plan Administrator, a Participant's total Account shall be paid in a lump sum as soon as practical following the direction if (a) the total Account does not exceed $5,000 (or the dollar limit under section 411(a)(11) of the Code, if greater), (b) the Participant has not previously received a distribution of the total amount payable to the Participant under this Section 5.11 and (c) no Deferred Compensation has been contributed for the Participant during the two-year period ending immediately before the date of the distribution. Effective March 28, 2005, however, no mandatory distribution shall be made to or for the benefit of a Participant whose account balance is greater than $1,000 unless the Participant (or Beneficiary) either elects to have such distribution paid directly to an Eligible Retirement Plan in a direct rollover or elects to receive the distribution directly in accordance with the Plan.

4.12 **ROLLOVER DISTRIBUTIONS.**

(a) A Participant or the surviving spouse of a Participant (or a Participant's former spouse who is the alternate payee under a domestic relations order, as defined in section 414(p) of the Code) who is entitled to an eligible rollover distribution may elect, at the time and in the manner prescribed by the Plan Administrator, to have all or any portion of the distribution paid directly to an eligible retirement plan specified by the Participant in a direct rollover.

(b) For purposes of this Section 4.12, an eligible rollover distribution means any distribution of all or any portion of a Participant's Account, except that an eligible rollover distribution does not include (a) any installment payment under Section 4.03 for a period of 10 years or more (b) any distribution made under Section 4.10 as a result of an unforeseeable emergency, or (c) for any other distribution, the portion, if any, of the distribution that is a required minimum distribution under section 401(a)(9). In addition, an eligible retirement plan means an individual retirement account described in section 408(a) of the Code, an individual retirement annuity described in section 408(b) of the Code, a qualified trust described in section 401(a) of the Code, an annuity plan described in section 403(a) or 403(b) of the Code, or an eligible governmental plan described in section 457(b) of the Code, that accepts the eligible rollover distribution.

ARTICLE V – PLAN ADMINISTRATOR - DUTIES WITH RESPECT TO PARTICIPANTS' ACCOUNTS

5.01 **PLAN ADMINISTRATOR.** The Employer is the Plan Administrator unless the Employer designates another person to hold the position of Plan Administrator. Alternatively, the Plan Administrator may designate one or more persons or organizations to perform some of the duties of the Plan Administrator. The Plan Administrator may be a Participant in the Plan. The Plan Administrator may appoint a Committee to assist in carrying out his responsibilities and duties. The Plan Administrator and the members of the Committee will serve without compensation for services, but the Employer will pay all expenses of the Plan Administrator and Committee.

5.02 **TERM.** The Plan Administrator will serve until his successor is appointed.

5.03 **POWERS.** In case of a vacancy in the position of the Plan Administrator, the Employer will exercise any and all of the powers, authority, duties and discretion conferred upon the Plan Administrator pending the filling of the vacancy.

5.04 **GENERAL.** The Plan Administrator will have the following powers and duties:

(a) To select a Committee to assist the Plan Administrator;

(b) To select a Secretary for the Committee, who need not be a member of the Committee;

(c) To determine the rights of eligibility of an Employee to participate in the Plan and the value of a Participant's Account;

(d) To adopt rules of procedure and regulations necessary for the proper and efficient administration of the Plan provided the rules are not inconsistent with the terms of this Prototype Plan;

(e) To construe and enforce the terms of the Plan and the rules and regulations it adopts, including interpretation of the Plan documents and documents related to the Plan's operation;

(f) To direct the distribution of a Participant's Account;

(g) To review and render decisions respecting a claim for (or denial of a claim for) a benefit under the Plan;

(h) To furnish the Employer with information which the Employer may require for tax or other purposes;

(i) To establish a policy in making distributions for unforeseeable emergencies;

(j) To engage the services of any person to invest any Account under this Plan and to direct such person to make payment to a Participant of his Account;

(k) To comply with the reporting and disclosure rules, if any, applicable to the Plan; and

(l) To establish, in its sole discretion, a policy (see Section 5.04(A)) which the Trustee must observe in making loans, if any, to Participants and Beneficiaries.

The Plan Administrator must exercise all of its powers, duties and discretion under the Plan in a uniform and nondiscriminatory manner. The Plan Administrator shall have total and complete discretion to interpret and construe the Plan and to determine all questions arising in the administration, interpretation and application of the Plan. Any determination the Plan Administrator makes under the Plan is final and binding upon any affected person.

5.05 **PLAN LOANS.** A Participant who is an Employee may apply for and receive a loan from his or her Account as provided in this Section 5.05. The Plan Administrator will establish procedures for the extension of Plan Loans, which shall incorporate the following limitations and restrictions:

(a) Any such loan may not be for an amount less than the minimum amount specified by the Administrator. If not specified by the Administrator, the minimum loan amount shall be $1,000.

(b) No loan to a Participant hereunder may exceed the lesser of:

(1) $50,000, reduced by the greater of (i) the outstanding balance on any loan from the Plan to the Participant on the date the loan is made or (ii) the highest outstanding balance on loans from the Plan to the Participant during the one-year period ending on the day before the date the loan is approved by the Administrator (not taking into account any payments made during such one-year period), or

(2) one half of the value of the Participant's vested Account (as of the Valuation Date immediately preceding the date on which such loan is approved by the Administrator).

For purposes of this Section 5.05, any loan from any other plan maintained by a participating employer shall be treated as if it were a loan made from the Plan, and the Participant's vested interest under any such other plan shall be considered a vested interest under this Plan; provided, however, that the provisions of this paragraph shall not be applied so as to allow the amount of a loan under this Section 5.05 to exceed the amount that would otherwise be permitted in the absence of this paragraph.

(c) The terms of the loan shall:

(1) require level amortization with payments not less frequently than quarterly throughout the repayment period, except that alternative arrangements for repayment may apply in the event that the borrower is on a bona fide unpaid leave of absence for a period not to exceed one year for leaves other than a qualified military leave within the meaning of section 414(u) of the Code or for the duration of a leave which is due to qualified military service;

(2) require that the loan be repaid within five years unless the Participant certifies in writing to the Administrator that the loan is to be used to acquire any dwelling unit which within a reasonable time is to be used (determined at the time the loan is made) as a principal residence of the Participant; and

(3) except as otherwise provided in a separate loan policy or annuity contract, provide for interest at a rate equal to one percentage point above the prime rate as published in a nationally recognized newspaper designated by the Plan Administrator that publishes the prime rate daily on the first business day of the month in which the loan is approved by the Administrator.

(d) Any loan to a Participant under the Plan shall be secured by the pledge of the portion of the Participant's interest in the Plan invested in such loan.

(e) In the event that a Participant fails to make a loan payment under this Section 4 by the end of the calendar quarter after the calendar quarter in which payment was due, a default on the loan shall occur. In the event of such default, (i) all remaining payments on the loan shall be immediately due and payable, (ii) the Plan Administrator shall apply the portion of the Participant's interest in the Plan held as security for the loan in satisfaction of the loan on the date of Severance from Employment. In addition, the Plan Administrator may take any legal action it considers necessary or appropriate to enforce collection of the unpaid loan, with the costs of any legal proceeding or collection to be charged to the Account of the Participant.

(f) Notwithstanding anything elsewhere in the Plan to the contrary, in the event a loan is outstanding hereunder on the date of a Participant's death, his or her estate shall be his or her Beneficiary as to the portion of his or her interest in the Plan invested in such loan (with the Beneficiary or Beneficiaries as to the remainder of his or her interest in the Plan to be determined in accordance with otherwise applicable provisions of the Plan).

(g) The Participant shall be required, as a condition to receiving a loan, to enter into an irrevocable agreement authorizing the Employer to make payroll deductions from his or her Compensation as long as the Participant is an Employee and to transfer such payroll deduction amounts to the Trustee in payment of such loan plus interest. Alternatively, the Employer may require the Participant to authorize loan payments by electronic fund transfers (EFTs), or make other arrangements for the automated payment of loan installments when due. A Participant may prepay the entire outstanding balance of his loan at any time, but may not make a partial prepayment.

5.06 **AUTHORIZED REPRESENTATIVE.** The Plan Administrator may authorize any one of the members of the Committee, if any, or the Committee's Secretary, to sign on its behalf any notices, directions, applications, certificates, consents, approvals, waivers, letters or other documents.

5.07 **INDIVIDUAL ACCOUNTS.** The Plan Administrator will maintain a separate Account in the name of each Participant to reflect the value of the Participant's Deferred Compensation under the Plan. The Plan Administrator will maintain records of its activities.

5.08 **VALUE OF PARTICIPANT'S ACCOUNT.** The value of each Participant's Account will consist of his accumulated Deferred Compensation, as adjusted for earnings (or losses) pursuant to this Section 5.08, including any transfers accepted by the Plan pursuant to Section 7.04. All Participant Accounts shall be treated for contribution and income allocation purposes as segregated investment Accounts. A segregated investment Account receives all income it earns and bears all expense or loss it incurs. The Plan Administrator will adopt procedures for determining income or loss of a segregated investment Account in a manner which reasonably reflects investment directions occurring after the last Valuation Date.

5.09 **ACCOUNT CHARGED** The Plan Administrator will charge all distributions made to a Participant or to his Beneficiary, or transferred under Section 7.04 from his Account, against the Account of the Participant when made.

5.10 **PARTICIPANT DIRECTION OF INVESTMENT.** Subject to the consent of the Plan Administrator, a Participant will have the right to direct the investment or re-investment of the assets comprising the Participant's Account. The Plan Administrator will account separately for the Participant-directed Accounts in segregated investment Accounts. The Participant's right to direct investment does not give the Participant any vested interest or secured or preferred position with respect to assets over which he/she has investment responsibility. If a Participant fails to exercise the right to direct investment of his Accounts, the Accounts shall be invested (along with any suspense accounts in the Plan) in a "safe" investment fund designated by the Employer.

5.11 **LIABILITY.** The Employer will not be liable to pay benefits to a Participant under Article IV in excess of the value of the Participant's Account and neither the Employer nor the Plan Administrator will be liable for losses arising from depreciation or shrinkage in the value of any investments acquired under this Plan.

ARTICLE VI – PARTICIPANT ADMINISTRATIVE PROVISIONS

6.01 **BENEFICIARY DESIGNATION.** A Participant from time to time may designate, in writing, any person(s) (including a trust or other entity), contingently or successively, to whom the Trustee will pay the Participant's Account (including any life insurance proceeds payable to the Participant's Account) in the event of death. A Participant also may designate the form and method of payment of his/her Account. The Plan Administrator will prescribe the form for the Participant's written designation of Beneficiary and, upon the Participant's filing the form with the Plan Administrator, the form effectively revokes all designations filed prior to that date by the same Participant. A divorce decree, or a decree of legal separation, revokes the Participant's designation, if any, of his/her spouse as his/her Beneficiary under the Plan unless the decree or a QDRO provides otherwise. The foregoing revocation provision applies only with respect to a Participant whose divorce or legal separation becomes effective on or following the date the Employer executes this Plan.

6.02 **NO BENEFICIARY DESIGNATION.** If a Participant fails to name a Beneficiary in accordance with Section 6.01, or if the Beneficiary named by a participant predeceases him, then the Plan Administrator will pay the Participant's remaining Account in accordance with Article IV in the following order of priority, to:

(a) The Participant's surviving spouse; or

(b) The Participant's estate.

If the Beneficiary survives the Participant, but dies prior to distribution of the Participant's entire Account, the Trustee will pay the remaining Account to the Beneficiary's estate unless: (1) the Participant's Beneficiary designation provides otherwise; (2) or the Beneficiary has properly designated a beneficiary. A Beneficiary only may designate a beneficiary for the Participant's Account remaining at the Beneficiary's death, if the Participant has not previously designated a successive contingent beneficiary and the Beneficiary's designation otherwise complies with the Plan terms. The Plan Administrator will direct the Trustee as to the method and to whom the Trustee will make payment under this Section 6.02.

6.03 **MODIFICATION OF SALARY REDUCTION AGREEMENT.** A Participant may modify his/her Salary Reduction Agreement to change the amount of Deferred Compensation not yet earned (including the reduction of future salary reductions to zero) by executing a new Salary Reduction Agreement. Any amendment will become effective no earlier than the beginning of the calendar month commencing after the date he/she executes the new Salary Reduction Agreement. Upon filing a new Salary Reduction Agreement, it will revoke all Salary Reduction Agreements filed prior to that date. The Employer or Plan Administrator may restrict the Participant's right to modify his Salary Reduction Agreement in any taxable year.

6.04 **INFORMATION PROVIDED BY THE PARTICIPANT.** Each Employee enrolling in the Plan should provide to the Plan Administrator at the time of initial enrollment, and later if there are any changes, any information necessary or advisable for the Plan Administrator to administer the plan, including, without limitation, whether the Employee is a participant in any other eligible plan under Code section 457(b).

6.05 **ADDRESS FOR NOTIFICATION.** Each Participant and each Beneficiary of a deceased Participant must file with the Plan Administrator from time to time, in writing, his post office address and any change of post office address. Any communication, statement or notice addressed to a Participant, or Beneficiary, at his last post office address filed with the Plan Administrator, or as shown on the records of the Employer, binds the Participant, or Beneficiary, for all purposes of this Plan.

ARTICLE VII – AMENDMENT, TERMINATION, TRANSFERS

7.01 **AMENDMENT BY EMPLOYER.** The Employer has the right at any time and from time to time:

(a) To amend this Plan and Trust Agreement in any manner it deems necessary or advisable in order to continue the status of this Plan as a Code §457 Plan; and

(b) To amend this Plan and Trust Agreement in any other manner.

The Employer must make all amendments in writing. Each amendment must state the date to which it is either retroactively or prospectively effective. The Employer also may not make any amendment which affects the rights, duties or responsibilities of the Trustee or the Plan Administrator without the written consent of the affected Trustee or the Plan Administrator.

7.02 **AMENDMENT BY SDI.** SDI may amend this Plan at any time by written instrument to continue the qualification of this Plan as a 457 Deferred Compensation Plan, or to facilitate the administrative operation of the Plan. Upon such amendment, SDI shall promptly notify the Employer of the Amendment in writing.

7.03 **TERMINATION.** The Employer has the right, at any time, to terminate this Plan. Upon termination of the Plan, the provisions of the Plan (other than provisions permitting continued deferrals) remain operative until distribution of all Accounts.

7.04 **PLAN-TO-PLAN TRANSFERS TO THE PLAN.** At the direction of the Employer, the Plan Administrator may permit a class of Participants who are participants in another eligible governmental plan under section 457(b) of the Code to transfer assets to the Plan as provided in this Section 7.04. Such a transfer is permitted only if the other plan provides for the direct transfer of each Participant's interest therein to the Plan. The Plan Administrator may require in its sole discretion that the transfer be in cash or other property acceptable to the Plan Administrator. The Plan Administrator may require such documentation from the other plan as it deems necessary to effectuate the transfer in accordance with section 457(e)(10) of the Code and section 1.457-10(b) of the Income Tax Regulations and to confirm that the other plan is an eligible governmental plan as defined in section 1.457-2(f) of the Income Tax Regulations. The amount so transferred shall be credited to the Participant's Account and shall be held, accounted for, administered and otherwise treated in the same manner as Deferred Compensation contributed for the Participant under the Plan, except that the transferred amount shall not be considered Deferred Compensation under the Plan in determining the maximum deferral under Article III.

7.05 **PLAN-TO-PLAN TRANSFERS FROM THE PLAN.**

(a) At the direction of the Employer, the Plan Administrator may permit a class of Participants and Beneficiaries to elect to have all or any portion of their Account transferred to another eligible governmental plan within the meaning of section 457(b) of the Code and section 1.457-2(f) of the Income Tax Regulations. A transfer is permitted under this Section 7.05(a) for a Participant only if the Participant has had a Severance from Employment with the Employer and is an employee of the entity that maintains the other eligible governmental plan. Further, a transfer is permitted under this Section 7.05(a) only if the other eligible governmental plan provides for the acceptance of plan-to-plan transfers with respect to the Participants and Beneficiaries and for each Participant and Beneficiary to have an amount deferred under the other plan immediately after the transfer at least equal to the amount transferred.

(b) Upon the transfer of assets under this Section 7.05, the Plan's liability to pay benefits to the Participant or Beneficiary under this Plan shall be discharged to the extent of the amount so transferred for the Participant or Beneficiary. The Plan Administrator may require such documentation from the receiving plan as it deems appropriate or necessary to comply with this Section 7.05 (for example, to confirm that the receiving plan is an eligible governmental plan under paragraph (a) of this Section 7.05, and to assure that the transfer is permitted under the receiving plan) or to effectuate the transfer pursuant to section 1.457-10(b) of the Income Tax Regulations.

7.06 **PERMISSIVE SERVICE CREDIT TRANSFERS.**

(a) If a Participant is also a participant in a tax-qualified defined benefit governmental plan (as defined in section 414(d) of the Code) that provides for the acceptance of plan-to-plan transfers with respect to the Participant, then the Participant may elect to have any portion of the Participant's Account transferred to the defined benefit governmental plan. A transfer under this Section 7.06(a) may be made before the Participant has had a Severance from Employment.

(b) A transfer may be made under Section 7.06(a) only if the transfer is either for the purchase of permissive service credit (as defined in section 415(n)(3)(A) of the Code) under the receiving defined benefit governmental plan or a repayment to which section 415 of the Code does not apply by reason of section 415(k)(3) of the Code.

ARTICLE VIII – TRUST PROVISIONS FOR GOVERNMENTAL 457 PLAN

8.01 **ACCEPTANCE; OTHER TRUSTS OR ANNUITIES.** Upon execution of the Adoption Agreement, the Trustee accepts the Trust created under this Plan and Trust and agrees to perform the duties and obligations imposed by this agreement for assets held hereunder. The Employer may also establish with the consent of SDI other trusts or custodial accounts to hold assets for the Plan or enter into one or more annuity contracts to provide benefits under the Plan, provided that such other trusts, custody accounts or annuity contracts satisfy the applicable requirements of Code §§ 401(f) and 457(g). The Employer may specify rules for the division of contributions or transfer of Plan assets between trusts, custodial accounts and contracts it authorizes under this Plan. The responsibilities of the other trustees, custodians or insurers shall not be governed by this Article VIII, but shall be governed by the other agreements, and the Trustee hereunder shall have no responsibility therefore. Any other trustee, custodian or insurer shall have no responsibility for the actions of the Trustee hereunder.

8.02 **RECEIPT OF CONTRIBUTIONS.** The Trustee is accountable to the Employer for the funds contributed to it by the Employer or the Plan Administrator, but the Trustee does not have any duty to see that the contributions received comply with the provisions of the Plan.

8.03 **FULL INVESTMENT POWERS.** The Trustee has full discretion and authority with regard to the investment of the Trust, except with respect to a Trust asset under Participant direction of investment, in accordance with Section 8.10. The Trustee is authorized and empowered, but not by way of limitation, with the following powers, rights and duties:

(a) To invest any part or all of the Trust in any common or preferred stocks, open-end or closed-end mutual funds, put and call options traded on a national exchange, United States retirement plan bonds, corporate bonds, debentures, convertible debentures, commercial paper, U. S. Treasury bills, U. S. Treasury notes and other direct or indirect obligations of the United States Government or its agencies, improved or unimproved real estate situated in the United States, limited partnerships, insurance contracts of any type, mortgages, notes or other property of any kind, real or personal, and to buy or sell options on common stock on a nationally recognized options exchange with or without holding the underlying common stock, as a prudent man would do under like circumstances. Any investment made or retained by the Trustee in good faith will be proper but must be of a kind constituting a diversification considered by law suitable for trust investments;

(b) To retain in cash so much of the Trust as it may deem advisable to satisfy liquidity needs of the Plan and to deposit any cash held in the Trust in a bank account at reasonable interest;

(c) To invest, if the Trustee is a bank or similar financial institution supervised by the United States or by a State, in any type of deposit of the Trustee (or a bank related to the Trustee within the meaning of Code §414(b)) at a reasonable rate of interest, or the Trustee may invest in a common trust fund as described in Code §584, or in a collective investment fund, the provisions of which the Trust incorporates by this reference, which the Trustee (or its affiliate, as defined in Code §1504) or any other bank maintains exclusively for the collective investment of money contributed by the bank (or its affiliate) or by any other trustee in its capacity as trustee or custodian of an eligible employee benefit plan, which common trust fund or collective investment fund further conforms to the rules of the Comptroller of the Currency;

(d) To manage, sell, contract to sell, grant options to purchase, convey, exchange, transfer, abandon, improve, repair, insure, lease for any term even though commencing in the future or extending beyond the term of the Trust, and otherwise deal with all property, real or personal, in such manner, for such considerations and on such terms and conditions as the Trustee will decide;

(e) To credit and distribute the Trust as directed by the Plan Administrator of the Plan. The Plan Administrator may direct the Trustee to distribute to the Plan Administrator or directly to a Participant or to a Beneficiary under the Plan. The Trustee will not be obliged to inquire as to whether any payee or distributee is entitled to any payment or whether the distribution is proper or within the terms of the Plan, or as to the manner of making any payment or distribution. The Trustee will be accountable only to the Plan Administrator for any payment or distribution made by it in good faith on the order or direction of the Plan Administrator;

(f) To borrow money, to assume indebtedness, extend mortgages and encumber by mortgage or pledge;

(g) To compromise, contest, arbitrate or abandon claims and demands, in its discretion;

(h) To have with respect to the Trust all of the rights of an individual owner, including the power to give proxies, to participate in any voting trusts, mergers, consolidations or liquidations, and to exercise or sell stock subscriptions or conversion rights;

(i) To lease for oil, gas and other mineral purposes and to create mineral severances by grant or reservation; to pool or unitize interest in oil, gas and other minerals; and to enter into operating agreements and to execute division and transfer orders;

(j) To hold any securities or other property in the name of the Trustee or its nominee, with depositories or agent depositories or in another form as it may deem best, with or without disclosing the trust relationship;

(k) To perform any and all other acts in its judgment necessary or appropriate for the proper and advantageous management, investment and distribution of the Trust;

(l) To retain any funds or property subject to any dispute without liability for the payment of interest, and to decline to make payment or delivery of the funds or property until final adjudication is made by a court of competent jurisdiction;

(m) To file all tax returns required of the Trustee;

(n) To furnish to the Employer and the Plan Administrator an periodic statement of account showing the condition of the Trust and all investments, receipts, disbursements and other transactions effected by the Trustee during the Plan Year covered by the statement and also stating the assets of the Trust held at the end of the Plan Year, which accounts will be conclusive on all persons, including the Employer and the Plan Administrator, except as to any act or transaction concerning which the Employer or the Plan Administrator files with the Trustee written exceptions or objections within 90 days after the receipt of the accounts; and

(o) To begin, maintain or defend any litigation necessary in connection with the administration of the Trust, except that the Trustee will not be obliged or required to do so unless indemnified to its satisfaction.

8.04 **RECORDS AND STATEMENTS.** The records of the Trustee pertaining to the Trust will be open to the inspection of the Plan Administrator and the Employer at all reasonable times and may be audited from time to time by any person or persons as the Employer or Plan Administrator may specify in writing. The Trustee will furnish the Plan Administrator with whatever information relating to the Trust the Plan Administrator considers necessary.

8.05 **FEES AND EXPENSES FROM FUND.** The Trustee will receive reasonable annual compensation in accordance with its fee schedule as published from time to time. The Trustee will pay all fees and expenses reasonably incurred by it in its administration of the Trust unless the Employer pays the fees and expenses.

8.06 **PROFESSIONAL AGENTS.** The Trustee may employ and pay from the Trust reasonable compensation to agents, attorneys, accountants and other persons to advise the Trustee as in its opinion may be necessary. The Trustee may delegate to any agent, attorney, accountant or other person selected by it any non-Trustee power or duty vested in it by the Trust, and the Trustee may act or refrain from acting on the advice or opinion of any agent, attorney, accountant or other person so selected. The Trustee has employed SDI and it's affiliate, Security Financial Resources, Inc., as agents hereunder to perform certain non-discretionary services for the Trust and the Trustee.

8.07 **DISTRIBUTION OF CASH OR PROPERTY.** The Trustee may make distribution under the Plan in cash or property, or partly in each, at its fair market value as determined by the Trustee.

8.08 **REVOCATION.** The Employer may revoke this Trust at any time by giving the Trustee 30 days' written notice in advance.

8.09 **VALUATION OF TRUST.** The Trustee will value the Trust as of the last day of each Plan Year to determine the fair market value of the Trust assets, and the Trustee will value the Trust on such other date(s) as directed by the Plan Administrator.

8.10 **PARTICIPANT DIRECTION OF INVESTMENT.** Participants in the Plan may direct the investment of all their Accounts in the Trust. The Trustee agrees to accept investment direction delivered to SDI in any manner SDI will accept from time to time under rules it may establish.

8.11 **PARTIES TO LITIGATION.** Only the Trustee will be a necessary party to any court proceeding involving the Trustee or the Trust. Any final judgment entered in any proceeding will be conclusive upon the Trustee. If the Trustee undertakes or defends any litigation arising in connection with Trust, the Employer agrees to indemnify Trustee against Trustee's costs, expenses and liabilities (including, without limitation, attorneys' fees and expenses) relating thereto and to be primarily liable for such payments. If the Employer does not pay such costs, expenses and liabilities in a reasonably timely manner, Trustee may obtain payment from the Trust.

8.12 **THIRD PARTY.** No person dealing with the Trustee will be obliged to see to the proper application of any money paid or property delivered to the Trustee, or to inquire whether the Trustee has acted pursuant to any of the terms of the Trust. Each person dealing with the Trustee may act upon any notice, request or representation in writing by the Trustee, or by the Trustee's duly authorized agent, and will not be liable to any person whomsoever in so doing. The certificate of the Trustee that it is acting in accordance with the Trust will be conclusive in favor of any person relying on the certificate.

8.13 **SUCCESSOR TRUSTEE.** Any corporation which succeeds to the trust business of the Trustee, or results from any merger or consolidation to which the Trustee is a party, or is the transferee of substantially all the Trustee's assets, will be the successor to the Trustee under this Trust. The successor Trustee will possess all rights, duties and powers under this Trust as if the successor Trustee were the original Trustee. Neither the Trustee nor the successor Trustee need provide notice to any interested person of any transaction resulting in a successor Trustee. The successor Trustee need not file or execute any additional instrument or perform any additional act to become successor Trustee.

8.14 **RESIGNATION AND REMOVAL OF TRUSTEE.** The Employer or SDI may remove any acting Trustee of this Trust upon 60 days' written notice and appoint a successor Trustee. The Trustee may resign upon providing 60 days' written notice to the Employer and SDI.

8.15 **INTERPRETATION OF TRUST PROVISIONS.** The Trustee will decide all matters of construction, interpretation and application of this Article VIII and the decision of the Trustee will control, be binding and conclusive.

8.16 **INVALIDITY OF ANY TRUST PROVISION.** If any clause or provision of this Article VIII proves to be or is adjudged to be invalid or void for any reason, such void or invalid clause or provision will not affect any of the other provisions of this Article VIII and the balance of the Trust provisions will remain operative.

8.17 **VOTING OF SECURITIES.** On behalf of the Trustee, SDI shall vote proxies for any securities held in the Trust which are not voted by the Trustee in any manner which SDI determines, in its discretion. Although SDI may solicit voting instructions from the Participants, SDI may issue or refuse to issue proxies as it deems appropriate, even if instructions are received from the Participants, without such determination considered to be a fiduciary act or conducted in a fiduciary capacity. SDI may further vote proxies as "present" at any meeting of shareholders for the purpose of establishing a quorum, and to register such shares as voted, while abstaining or directing abstention on all or any issues on which shares may be voted at such meeting.

8.18 **TRUST FUND—EXCLUSIVE BENEFIT RULE.** All amounts of Deferred Compensation, all property and rights purchased with such amounts, and all income attributable to such amounts, property, or rights shall be held and invested in the Trust Fund in accordance with this Plan and the Trust Agreement. The Trust Fund (and any other trust or annuity contract established under the Plan) shall be established pursuant to a written agreement that constitutes a valid trust (or annuity contract). The Trustee shall ensure that all investments, amounts, property, and rights held under the Trust Fund are held for the exclusive benefit of Participants and their Beneficiaries. The Trust Fund shall be held in trust pursuant to the Trust Agreement for the exclusive benefit of Participants and their Beneficiaries and defraying reasonable expenses of the Plan and of the Trust Fund. It shall be impossible, prior to the satisfaction of all liabilities with respect to Participants and their Beneficiaries, for any part of the assets and income of the Trust Fund to be used for, or diverted to, purposes other than for the exclusive benefit of Participants and their Beneficiaries.

ARTICLE IX – MISCELLANEOUS

9.01 **NON-ASSIGNABILITY.** Except as provided in Section 9.02 and 9.03, the interests of each Participant or Beneficiary under the Plan are not subject to the claims of the Participant's or Beneficiary's creditors; and neither the Participant nor any Beneficiary shall have any right to sell, assign, transfer, or otherwise convey the right to receive any payments hereunder or any interest under the Plan, which payments and interest are expressly declared to be non-assignable and non-transferable.

9.02 **DOMESTIC RELATION ORDERS.** Notwithstanding Section 9.01, if a judgment, decree or order (including approval of a property settlement agreement) that relates to the provision of child support, alimony payments, or the marital property rights of a spouse or former spouse, child, or other dependent of a Participant is made pursuant to the domestic relations law of any State ("domestic relations order"), then the amount of the Participant's Account shall be paid in the manner and to the person or persons so directed in the domestic relations order. Such payment shall be made without regard to whether the Participant is eligible for a distribution of benefits under the Plan. The Plan Administrator shall establish reasonable procedures for determining the status of any such decree or order and for effectuating distribution pursuant to the domestic relations order.

9.03 **IRS LEVY.** Notwithstanding Section 9.01, the Plan Administrator may pay from a Participant's or Beneficiary's Account the amount that the Plan Administrator finds is lawfully demanded under a levy issued by the Internal Revenue Service with respect to that Participant or Beneficiary or is sought to be collected by the United States Government under a judgment resulting from an unpaid tax assessment against the Participant or Beneficiary.

9.04 **MISTAKEN CONTRIBUTIONS.** If any contribution (or any portion of a contribution) is made to the Plan by a good faith mistake of fact, then within one year after the payment of the contribution, and upon receipt in good order of a proper request approved by the Plan Administrator, the amount of the mistaken contribution (adjusted for any income or loss in value, if any, allocable thereto) shall be returned directly to the Participant or, to the extent required or permitted by the Plan Administrator, to the Employer.

9.05 **PAYMENTS TO MINORS AND INCOMPETENTS.** If a Participant or Beneficiary entitled to receive any benefits hereunder is a minor or is adjudged to be legally incapable of giving valid receipt and discharge for such benefits, or is deemed so by the Plan Administrator, benefits will be paid to such person as the Plan Administrator may designate for the benefit of such Participant or Beneficiary. Such payments shall be considered a payment to such Participant or Beneficiary and shall, to the extent made, be deemed a complete discharge of any liability for such payments under the Plan.

9.06 **PROCEDURE WHEN DISTRIBUTEE CANNOT BE LOCATED.** The Plan Administrator shall make all reasonable attempts to determine the identity and address of a Participant or a Participant's Beneficiary entitled to benefits under the Plan. For this purpose, a reasonable attempt means (a) the mailing by certified mail of a notice to the last known address shown on Employer's or the Plan Administrator's records, (b) notification sent to the Social Security Administration or the Pension Benefit Guaranty Corporation (under their program to identify payees under retirement plans), and (c) the payee has not responded within 6 months. If the Plan Administrator is unable to locate such a person entitled to benefits hereunder, or if there has been no claim made for such benefits, the Trust Fund shall continue to hold the benefits due such person.

9.07 **EFFECT ON OTHER PLANS.** This Plan does not affect benefits under any other retirement, pension, or benefit plan or system established for the benefit of the Employer's Employees, and participation under this Plan does not affect benefits receivable under any such plan or system, except to the extent provided in such plan or system.

9.08 **WORD USAGE**. Words used in the masculine will apply to the feminine where applicable, and wherever the context of the Plan dictates, the plural will be read as the singular and the singular as the plural.

9.09 **STATE LAW.** The laws of the state of the Employer's principal place of business will determine all questions arising with respect to the provisions of this Prototype Plan, except to the extent Federal law supersedes State law.

9.10 **EMPLOYMENT NOT GUARANTEED.** Nothing contained in this Plan, or any modification or amendment to the Plan, or in the creation of any Account, or the payment of any benefit, gives any Employee, Employee-Participant or any Beneficiary any right to continue employment, any legal or equitable right against the Employer, or Employee of the Employer, or its agents, or against the Plan Administrator, except as expressly provided by the Plan.

9.11 **NOTICE, DESIGNATION, ELECTION, CONSENT AND WAIVER.** All notices under the Plan and all Participant or Beneficiary designations, elections, consents or waivers must be in writing and made in a form the Plan Administrator specifies or otherwise approves. To the extent permitted by Treasury regulations or other applicable guidance, any Plan notice, election, consent or waiver may be transmitted electronically. Any person entitled to notice under the Plan may waive the notice or shorten the notice period except as otherwise required by the Code.

Security Benefit
Governmental 457 Plan Administrative Agreement

This Administrative Agreement (hereinafter "Agreement") is executed this ______________________ day of ______________________ 20 ______ by and among Security Financial Resources, Inc. ("SFR") and ____ ("Employer").

WHEREAS, Employer has established a Section 457 Deferred Compensation Plan ("Plan") and is authorized to appoint a Plan Trustee and other service providers; and

WHEREAS, Employer desires to appoint UMB Bank, n.a. as Trustee and utilize SFR as a service provider in connection with administration of the Plan; and

WHEREAS, SFR is authorized to accept the appointment of UMB Bank, n.a. as Trustee and desires to provide such services subject to the terms and conditions set forth herein;

NOW, THEREFORE, the parties agree as follows:

1.0 **Designation of UMB Bank, n.a. as Trustee and SFR as Service Provider.**

1.1 Employer hereby appoints UMB Bank, n.a., as Trustee of the trust created under the Plan. Employer acknowledges that it and the Plan Participants will direct the investment of all Plan assets, and that plan investments and all other duties of the Trustee under the Plan are non-discretionary and/or directed by others. The Employer finally acknowledges that UMB Bank has authorized SFR to accept this appointment and has appointed SFR and affiliates as its agents, to perform the duties specified below under the Plan and Trust, so that UMB Bank serves strictly as a passive trustee.

1.2 Employer hereby appoints SFR as provider of plan recordkeeping and related plan administrative services to the Plan. SFR shall provide the services and functions set forth in this Agreement.

2.0 **Responsibilities of SFR.** SFR will provide the following recordkeeping and related plan administrative services, which services shall include the following:

2.1 Document Preparation. SFR will provide a Basic Plan Document and an Adoption Agreement to Employer, for review and approval. The Employer will exercise its ultimate responsibility for the documents, reviewing them to assure that the documents reflect the intended operation of the Plan by the Employer. These documents shall govern the Plan.

2.2 Participant Records. SFR will establish and maintain a record for each Participant reflecting the date, amount and type of each transaction in the Participant's account. The Employer will determine which of its Employees are eligible to participate in the Plan, and SFR shall be entitled to rely on Employer eligibility determinations.

2.3 Participant Inquiries. SFR will provide an interactive voice response (IVR) telephone system, an Internet Web site, and customer service representatives during normal business hours for Plan Participants to inquire about their account and any applicable Plan features such as loans and in-service distributions (without regard to any other plan sponsored by the Employer unless SFR also provides similar services to the other plan). SFR's IVR and Internet access systems will be the primary methods of communication to SFR by Plan participants. They allow Participant account inquiries and allow Participants to conduct many transactions for their accounts over the telephone or Internet. These services are generally available 24 hours a day, 7 days a week.

Participants may also direct questions to SFR's customer service representatives during normal business hours. Standard written confirmations of all change requests will be sent to the participant at the address on file. No confirmation of inquiries will be provided.

2.4 Contributions and Loan Payments. SFR will process all contributions and loan payments made to the Plan, and will allocate these receipts among the various investment options selected by the Participant in the Plan. Contribution allocations shall be credited as though invested at the price of the underlying investment on the date that processing of the contribution is completed by SFR in accordance with the Plan document and valuation frequency.

2.5 Plan Investments. In one or more Plan application forms to SDI, the Client has agreed to a list of mutual funds and group annuity contracts as the investment options for investment of Plan assets under the terms of the Plan. Actual plan investment allocations between available investment options will be directed by Plan Participants (or such other person as is designated in the Adoption Agreement). SFR has selected mutual funds and other plan investments to make available under the Plan in a proprietary fund selection process. This process includes considerations beyond the appropriateness of the investments for retirement plan investments. SFR is not a registered investment advisor and cannot endorse these funds. Its selection of funds cannot be considered to be investment advice.

Client further understands that SFR will evaluate funds in the Plan under one or more programs described to and accepted by Client using quantitative and qualitative measurements developed by SFR, its affiliates or third parties as proprietary processes which may or may not measure the appropriateness of the investments for the Plan. These processes may result in deletion of particular investment options from the Plan, or the addition of other investment options to the Plan. Unless Client objects to any of these changes, they will be executed by SFR without specific authorization by the Client. SFR will give the Client at least 60 days' notice of any addition, deletion, or merger of any investment fund then offered as an investment option under the Plan, or such lesser time as permitted by the fund, and the Client will be deemed to consent to the change, unless the Client gives to SFR a written notice of refusal of the change by the end of the 60 day notice period. If SFR does not agree to the objection of the Client either party may terminate this Agreement under the provisions of section 4.1 below.

2.6 Investment Fees Earned by SFR and Affiliates, No Offsets. Client acknowledges that SFR and its affiliates may receive investment management and other fees and expense reimbursements from the investment funds included in the Plan, including payments from outside fund providers. Client also acknowledges that these fees have been separately disclosed to the Client through prospectuses and other disclosure documents, or an estimate or illustration of the total of such fees. Fees may include investment management fees (for funds managed by an affiliate of SFR), 12b-1 fees, service, distribution and accounting fees which relate to the distribution, marketing and subaccounting activities performed by SFR for the funds, in addition to the services provided in this agreement. Client understands that the Fee Schedule attached to this Agreement will consist of fees that have been adjusted to reflect the expected receipt of such outside fees by SFR or an affiliate. SFR will retain these investment fees without an offsetting reduction of the fees to be paid by the Client under this Agreement.

2.7 Plan Enrollment. SFR will develop Plan enrollment procedures specifying all of the tasks that must be completed, and the party responsible for completing the task, in order to enroll eligible employees in the Plan. If the Plan is an existing Plan and SFR will take over the duties of the prior recordkeeper of the Plan, the procedures will be for enrollment and conversion of the Plan and will include all the tasks necessary to transfer the Plan assets to the investment options for the Plan and the transfer of Plan data to SFR. These tasks may include tasks for SFR, the Employer and any prior recordkeeper.

2.8 Ongoing Employee Communications. SFR will provide employee enrollment and communications materials and services for Plan participants. The Employer agrees to assist SFR as reasonably requested in communicating with Employees.

2.9 Investment of Existing Account Assets. Participants will direct the investment of their existing Plan assets by use of SFR's IVR, or through SFR's Internet web site. Participants also may submit written investment instructions to SFR. Investment transfers shall be conducted at the prices of the underlying investments on the date that processing of the investment transfer request is completed by SFR, in accordance with Plan rules. Participants may also obtain assistance in directing investment of their existing plan assets by calling SFR's customer service representatives during normal business hours.

2.10 Investment of Future Contributions. Participants may separately direct the investment of future Plan contributions by SFR's IVR or SFR's Internet web site. Participants also may submit written investment instructions to SFR. SFR will process all investment allocation requests for future contributions allocated to Participant accounts according to the Plan Document, with any restrictions therein. Participants may also obtain assistance in directing investment of their future Plan contributions by calling SFR's customer service representatives during normal business hours.

2.11 Other Plan Data. SFR will process other changes related to the daily administration of the Plan such as Participant name and address changes.

2.12 Participant Loans. If loans are allowed under plan rules, SFR will process and maintain all Participant loans, including the generation of checks for new loans, the recordkeeping of interest and principal payments, and the generation and submission of all information returns and other reports required by the Internal Revenue Code ("Code") and regulations thereunder relating to such loans. All checks for new loans will be mailed to the participant. If Plan loans are allowed, the Employer adopts the written Loan Policy attached to this Agreement.

☐ Check box if Plan loans are not allowed.

2.13 Distributions. All benefit payments and withdrawals will be made only upon receipt of all necessary written information and any required authorization from the Employer. SFR will process all benefit payments and withdrawals, including the withholding and submission of taxes and the generation and submission of all information returns and other reports required by the Code and regulations thereunder, relating to such benefit payments and withdrawals. The amount of the benefit payment or withdrawal shall be based on the price of the underlying investment on the date that processing of the request is completed by SFR. All benefit payments and withdrawals shall be distributed to the participant.

2.14 Participant Statements. Participant statements will be provided by SFR on a quarterly basis, and will be mailed directly to the participant's address on file.

2.15 Contribution Limit Testing. Sections 457(b) and 414(v) of the Code limit the total deferrals that can be allocated to a participant's account in a 457 plan for any plan year. Excess contributions will be distributed to participants in the manner provided by applicable IRS regulations, and the Plan Documents. Although all 457 plans must be combined for the limits, SFR can only test plans for which it maintains or receives participant contributions.

2.16 Management Reports. SFR will prepare annual management reports.

2.17 Forms and Procedures. SFR will provide the Employer with certain sample administrative forms. In addition, SFR will provide additional materials that may also assist the Employer to satisfy its obligations.

2.18 Technical Assistance. Technical and consulting services are available for the Employer upon request. Staff members are available to assist the Employer with plan amendments, determining the effect of any new legislation on the Plan, QDROs and other Plan related issues. SFR is not able to provide legal services to the Employer.

2.19 Voting of Shares. The Employer acknowledges that although the Trustee would normally be responsible for the voting of any shares of stock held in the Plan Trust, including mutual fund shares, the Trustee has delegated the responsibility to vote to SFR or an affiliate. Share proxies may be voted as "Present" for any meeting of shareholders so that the records will show that the shares have been voted.

2.20 Plan Termination and Filings, or Plan Transfers. In the event of a termination or replacement of SFR as recordkeeper of the Plan or merger of the Plan into another plan with another recordkeeper, SFR will complete the liquidation and transfers of assets and records within 90 days; provided that SFR shall not be responsible for delays in such liquidation and transfer arising from events outside of its control.

2.21 Other Assistance. SFR may agree in writing to provide additional services as may be reasonably requested by the Employer to assist it in the administration of the Plan.

2.22 Basic Service Enhancements. SFR will provide to the Employer any future service enhancements that SFR makes available in its basic package of recordkeeping services it offers to new and existing Employers comparable to the Employer. Although any modification in the basic duties of SFR as set forth in this Service Agreement must be reflected in an amendment to the Agreement or 60 days advance written notice from SFR, the manner of providing these services may change through supplemental written processing procedures provided by SFR, by announcement of enhancements by SFR and acceptance of the enhancements by Employer (or failure to object) or by any other clearly established course of dealing between SFR and the Employer.

3.0 **Responsibilities of Employer**. Employer acknowledges that it has retained responsibility for the following Plan Sponsor duties:

3.1 Plan Document. SFR will provide a draft Basic Plan Document and an Adoption Agreement. The Employer agrees to review, correct and adopt these documents and any required plan amendments or restatements as provided in the documents. The Employer is ultimately responsible for the accuracy and qualification of these documents. Any changes to the documents will be promptly provided to SFR.

3.2. Participant and Plan Data. The Employer will provide to SFR contribution data in advance of or with the actual contribution within all applicable regulatory deadlines. Also, the Employer will provide other relevant data to SFR to assist SFR in carrying out its responsibilities under this Agreement. Data will be provided in a format acceptable to SFR, in magnetic or electronic media, unless otherwise agreed by SFR. Should the Employer fail to deliver (or cause to be delivered) accurate information on a timely basis to SFR, SFR will not be responsible for meeting regulatory deadlines.

3.3 Fee Billing and Payment. SFR will charge fees for its services in accordance with the Fee Agreement(s) (Exhibit "A") attached to this Agreement.

Unless otherwise agreed to in writing, the Fee Schedule shall remain in effect in the amounts described in Exhibit "A" for a term of two plan years in which SFR is providing recordkeeping services, and will continue thereafter unless changed by notice from SFR. Any changes to the fee agreement will be supplied to the Employer 60 days prior to the change's effective date.

3.4 Hold Harmless for Other Providers. If the Plan Document or Plan administrative services were previously provided by the Employer or another third party provider, the Employer agrees that SFR and affiliates shall not be responsible for any failure of the prior Plan Document or administrative services to comply with the requirements for governmental deferred compensation plans under Section 457 of the Code and the regulations issued thereunder. SFR is also not responsible for the accuracy and completeness of participant and payroll data provided by the Employer or any third party payroll vendor. The Employer is responsible for reviewing any new Plan Document provided by SFR and assuring that it is consistent with the provisions of the prior Plan Document and the established operational and administrative procedures for the Plan. Employer agrees to hold SFR and its affiliates harmless from any claim asserted against any of them for any of these reasons, and will further indemnify them from any cost and expense they incur, including reasonable attorneys fees, due to the assertion of such a claim.

4.0 **Miscellaneous.**

4.1 Termination. Employer or SFR may terminate this Agreement at any time, upon sixty (60) days' prior written notice to the other party. SFR agrees to deliver to Employer or its designee, all records reasonably necessary for the continuing recordkeeping of the Plan in the standard SFR format.

4.2 Notices. Notices or other communications given pursuant to this Agreement shall be hand delivered, mailed by first class mail, postage prepaid or via an overnight mail service (such as Federal Express), addressed as follows, or as changed by notice:

a) To SFR: Security Financial Resources, Inc.
Attn.: Retirement Plan Services
One Security Benefit Place
Topeka, Kansas 66636-0001

b) To Employer: ______________________________

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4.3 Entire Agreement; Supplements and Amendments. This Agreement generally constitutes the entire agreement between the parties, merging all prior presentations, discussions and negotiations. It may be modified by additional letter or other written side agreements executed by all parties contemporaneously with this Agreement, which may modify its provisions or meanings. It may be further supplemented, but not modified, by SFR from time to time with written procedures that provide a description of the ordinary processes for the parties to fulfill their obligations hereunder, which shall not exclude extraordinary processing in appropriate situations that produces comparable results. Finally, this Agreement may be amended at any time, but only by written agreement signed by all parties hereto.

4.4 Paragraph Headings. Paragraph headings are provided for reference purposes only and are not made a part of this Agreement.

4.5 Assignment. Some or all of the rights and duties of SFR hereunder may be assigned to an affiliate, or to any successor through merger, reorganization, or sale of assets. Some duties of SFR also may be performed by others under subcontract, without the release of SFR for responsibility for such services. SFR may, by letter or other writing, agree to extend this Agreement to any other plan of the Employer or plans sponsored by organizations acquiring or acquired by the Employer through merger or purchase of assets. Otherwise, no party may assign this Agreement nor any rights or duties hereunder without the written consent of the other party.

4.6 Governing Law. Except to the extent governed by federal law, this Agreement shall be governed by and constructed according to the Laws of the State of Kansas.

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

Effective Date: ______________________________

EMPLOYER

By: ______________________________

Title: ______________________________

SECURITY FINANCIAL RESOURCES, INC.

By: ______________________________

Title: ______________________________

PLAN SPONSOR INVESTMENT ADVISORY SERVICES AGREEMENT

This investment advisory services agreement and the exhibit(s) hereto (the "Agreement") is entered into as of ___________________, 20__("Effective Date") by and between Morningstar Associates, LLC, a Delaware limited liability company and an investment adviser registered under the Investment Advisers Act of 1940, with its principal place of business at 22 West Washington Street, Chicago, Illinois 60602 ("Morningstar"), and ____________________, ("Plan Sponsor") a ______________________ corporation with its principal place of business at ______________.

WHEREAS Plan Sponsor maintains the __________________ (the "Plan"), a defined contribution plan that is intended to comply with certain provisions of the Employee Retirement Income Security Act of 1974 ("ERISA"); and

WHEREAS Plan Sponsor has entered into a separate written agreement with Security Financial Resources, Inc. (the "Service Provider") to provide daily valuation, recordkeeping and other administrative services to the Plan, including access to Morningstar's investment advisory services, if Plan Sponsor so elects; and

WHEREAS Plan Sponsor wishes to have Morningstar provide certain investment advisory services to and for the benefit of the Participants in Plan Sponsor's Plan, and Morningstar is willing to provide Plan Sponsor with such investment advisory services, subject to the terms and conditions of this Agreement;

NOW, THEREFORE, in consideration of the mutual promises set forth herein, Morningstar and Plan Sponsor hereby agree as follows:

1. DEFINITIONS The following definitions shall apply to this Agreement and to any exhibit(s) attached hereto

- **Advice Service** shall mean making recommendations regarding the investment allocation of the assets in a Participant's Plan account, within the meaning of section 3(21)(A) of ERISA. The Advice Service shall be made available to the Participants through Morningstar® Retirement Manager℠ specifically selected by Plan Sponsor pursuant to this Agreement.
- **Advisory Services** shall mean individually or collectively the Advice Service and the Managed Accounts Service, provided, however, that the Plan and Participants shall only receive those Advisory Services specifically selected by Plan Sponsor pursuant to this Agreement. The Advisory Services specifically exclude analysis of or advice regarding the potential local, state or federal tax consequences resulting from any investment advice or recommendation provided by Morningstar.
- **Initial Delivery Date** shall mean that date on which the Managed Accounts Service is made available to the Plan and its Participants pursuant to the terms of this Agreement.
- **Managed Accounts Service** shall mean Fund specific discretionary investment advisory service provided to a Participant by Morningstar. The Managed Accounts Service specifically excludes

analysis of or advice regarding the potential local, state or federal tax consequences resulting from any investment advice or recommendation provided by Morningstar.

- **Morningstar Services** shall mean the services to be performed or delivered by Morningstar, other than the Managed Accounts Service, and includes the various modules described in this Agreement.
- **Participant** shall mean an individual who is enrolled or is eligible to enroll in any Plan offering the Managed Accounts Service or Morningstar Services (and collectively with Managed Accounts Service, the "Services"). The parties acknowledge and agree that Morningstar reserves the right to exclude any Participant whose current age is greater than his or her retirement age.

2. MORNINGSTAR OBLIGATIONS

a. Morningstar shall:

(i) Provide the Managed Accounts Service and the Morningstar Services to the Plan and its Participants pursuant to the terms and provisions of this Agreement;

(ii) Act as a fiduciary to the Plan pursuant to section 3(38) of ERISA only to the extent of its provision of the Managed Accounts Service to Participants, and not as a plan administrator or in any other capacity; and

(iii) Retain final control and authority over the Managed Accounts Service and Morningstar Services provided to the Participants.

b. No Liability for Plan Benefits In providing the Managed Accounts Service, Morningstar shall not be liable for any benefits due, or claimed to be due, under the Plan.

c. Standard of Care Morningstar will provide the Managed Accounts Service at all times in good faith, and will use reasonable care, consistent with industry practices of similarly situated advisors, in providing the Managed Accounts Service. Morningstar does not guarantee that the Managed Accounts Service will be delivered without interruption, timely, error-free, or secure. Errors may occur in the software-based Managed Accounts Service as a result of programming errors, database errors, or other causes. Morningstar will provide the Managed Accounts Service with that degree of prudence, diligence, care, and skill which a prudent person rendering similar services as an investment advisor would exercise under similar circumstances. The provisions of this Agreement shall not be interpreted to imply any other obligation on the part of Morningstar to observe any other standard of care. Under certain circumstances, the federal and state securities laws impose liabilities on persons who act in good faith and nothing contained in this Agreement should be construed as a waiver or limitation of your rights under such laws.

3. PLAN SPONSOR OBLIGATIONS

a. Appointment of Morningstar as Investment Manager: Plan Sponsor, in its capacity as named fiduciary of the Plan, hereby appoints Morningstar as an "investment manager" with respect to any Participant who has an account within the Plan, and has elected to enroll in the Investment Management Services. Morningstar shall provide Investment Management Services to such Participants by taking into account the Participant's age and the normal retirement age under the Plan, but shall not be required to take into account risk tolerances, other investments held outside the Plan, or other individual preferences of such Participant, unless such information is provided by the Participant.

b. Provision of Data Plan Sponsor agrees to provide or cause Service Provider to provide accurate and timely data and understands that Morningstar will rely on such data to provide the Managed Accounts Service. Morningstar shall not have any liability for Service Provider's or Plan Sponsor's failure to timely inform Morningstar or Service Provider, as applicable, of any changes to the Plan or Participant data. Therefore, Plan Sponsor shall or shall cause Service Provider to:

   i. Provide all necessary Participant census data and updates as requested by Morningstar or Service Provider in order for Morningstar to provide the Managed Accounts Service;

   ii. Provide Plan information and rules to Service Provider that are necessary for set-up services and promptly notify Service Provider with any updates to this information if changes are made; and

   iii. Promptly provide to Service Provider any changes to Plan investment options or transaction rules.

c. Selection of Plan Investment Options. Plan Sponsor shall:

   i. Select investment options offered under the Plan;

   ii. Monitor and periodically review Plan investment options;

   iii. Determine if changes to Plan investment options are necessary; and

   iv. If Plan Sponsor so elects, ensure that the Plan qualifies for ERISA Section 404(c) protection and meets all applicable requirements of the regulations issued under Section 404(c).

d. ERISA Compliance Plan Sponsor represents that the Plan is subject to, and will be administered in material compliance with ERISA. With respect to the Investment Management Services, Plan Sponsor hereby appoints Morningstar as Investment Manager to the Plan, as defined by ERISA section 3(38), and Morningstar hereby acknowledges that it is a fiduciary with respect to the Investment Management Services.

e. Cooperation Plan Sponsor shall fully cooperate with Morningstar in Morningstar's provision of the Services, in such manner as Morningstar may from time to time reasonably request. Such cooperation shall include accurately communicating to Participants the scope of the Services, and, in certain instances, the Participants' ultimate responsibility for investment decisions.

f. Disclosure to Participants In addition to any disclosure required of Plan Sponsor in the applicable exhibit(s), Plan Sponsor shall disclose to Participants, or will cause Service Provider to disclose, in the Plan (a) the amount of any charges to the Participant's Plan account, (b) whether or not such charges will be imposed if the Participant does not use the Managed Accounts Service, and (c) that any such charges may be allocated among various service providers to the Plan, including but not limited to Morningstar, to compensate them for the services they provide to the Plan. Upon Morningstar's request, Plan Sponsor shall provide Morningstar with copies of such disclosure, or shall direct Service Provider to provide such copies.

g. Errors Plan Sponsor shall promptly notify Service Provider of any errors, incompleteness or untimeliness in any of the data, analyses, opinions or other information contained in the Services about which Plan Sponsor becomes aware.

h. Fund Universe The initial universe of funds for the Plan (the "Fund Universe") must be provided (or have previously been provided) to Morningstar by the Service Provider no later than twelve (12) weeks prior to the Initial Delivery Date. Plan Sponsor agrees and acknowledges that any funds not included in the Fund Universe shall not be included in the recommendation given by Morningstar, and that any funds added to the Fund Universe after such date may not be included within the Services on the Initial Delivery Date.

If, after the Initial Delivery Date, Plan Sponsor intends to add funds to the Fund Universe or make a change to the investment options available for the Services, it shall cause Service Provider to give Morningstar fourteen (14) days' prior written notice thereof, which notice shall include the name of the fund, the fund type (i.e. open-end fund or custom fund) and the fund identifier, such as the ticker symbol or cusip, as may be applicable. If custom data collection is required, Morningstar requires twelve (12) weeks prior notice.

A Plan has a sufficient set of funds if all of the following conditions are met:

1. There is at least one Core Blend fund OR there is at least one Core Value fund and at least one Core Growth fund; AND
2. There is at least one Core Stable Value fund OR there is at least one Cash fund and at least one Core Bond.

Plan Sponsor acknowledges that all funds within a Plan's Fund Universe must be covered in Morningstar Inc.'s database in order for such Fund to be included in the Managed Accounts Service. The Plan Sponsor acknowledges that the Service Provider may require additional time to complete the Fund Set Up.

i. Proxy Voting Plan Sponsor represents that with respect to proxies attributable to securities held in Plan accounts, the Plan provides that the Plan Sponsor, the Plan trustee or the Participants shall be responsible for voting such proxies. Plan Sponsor agrees that Morningstar shall have no responsibility or liability for such proxy voting.

4. RULE 408(b)(2) DISCLOSURE

a. Services Morningstar agrees to provide the Advisory Services and Morningstar Services defined in Section 1 above.

b. Morningstar's Status Morningstar is a registered investment adviser registered with the United States Securities and Exchange Commission. In performing the Services, Morningstar agrees to act as a fiduciary, as more particularly described in Sections 2.a.(ii), 3.a., and 3.d above.

c. Compensation

i. As direct compensation for the Advisory Services and Morningstar Services, Morningstar receives fees described in Section 9 below.

ii. In addition, Morningstar receives a fixed annual licensing fee from Service Provider to make the Advisory Services and Morningstar Services available to Plan Sponsors. The fixed annual licensing fee is solely Service Provider's responsibility and is not an obligation of the Plan or Plan Sponsor. The amount of compensation paid to Morningstar by Service Provider does not change based upon any particular fund recommended by Morningstar.

iii. Morningstar does not receive any other indirect compensation, such as 12b-1 or shareholder servicing fees from the underlying investment options included in the Advisory Services.

5. USE AND PROMOTION

a. The Managed Accounts Service shall be made available only to retirement plans duly established under the laws of the United States of America and to Participants that are citizens and/or legal residents of United States of America or its territories.

b. The Managed Accounts Service, or any portion thereof, may be used by Plan Sponsor and its Participants only for effecting retirement planning for Participants that elect to receive the Managed Accounts Service. Any other use by the Plan Sponsor, including commercial use for the benefit of another person, is prohibited under this Agreement and shall be a material breach of this Agreement. Plan Sponsor shall take all commercially reasonable actions to ensure that there is no unauthorized use by its employees, agents, independent contractors, vendors or other third parties. Plan Sponsor shall immediately notify Morningstar of any actual or potential unauthorized use of which Plan Sponsor becomes aware. Plan Sponsor agrees to cooperate and provide reasonable assistance to Morningstar in connection with preventing and stopping any unauthorized use, of the data, analyses, opinions and other information contained in the Services.

c. Approval of Promotion. Plan Sponsor may not mention or refer to Morningstar, the Advisory Services, the Morningstar Services, any of Morningstar's Intellectual Property or any of Morningstar's web sites in any correspondence, public announcements, advertising, marketing or promotional materials, announcements or events (collectively, the "Promotion Material") without Morningstar's prior written approval, except if such material was provided to Plan Sponsor for its incorporation into such Promotion Material. Plan Sponsor shall incorporate appropriate notice, attribution and disclaimer language into the Promotion Material, as Morningstar may specify in its review of the Promotion Material. Plan Sponsor shall have a limited license to use the Morningstar name, trademarks, service marks (the "Morningstar Marks") identified herein but, in each instance, only in the manner and format specified by Morningstar in writing in advance. The Morningstar Marks include:

Morningstar® Retirement Manager℠
Morningstar®
MORNINGSTAR®
Morningstar® Investment Profile™

Any Promotion Material using the Morningstar name or the Morningstar Marks shall include the following disclosure:

"The Morningstar name and trademarks are used, under license, from Morningstar Associates, LLC. Morningstar Associates, LLC is a registered investment adviser and a wholly owned subsidiary of Morningstar, Inc. Morningstar Associates, LLC is not an affiliate of Plan Sponsor."

6. CONFIDENTIALITY The parties acknowledge that in the course of their dealings hereunder, each may acquire information about the other, its business activities and operations, its technical information and its trade secrets, all of which are proprietary and confidential (the "Confidential Information"). Each party hereby agrees that: (a) all Confidential Information (including, but not limited to the terms of this Agreement) remains the exclusive property of the disclosing party; (b) it shall maintain, and shall use prudent methods to cause its employees and agents to maintain (and not to otherwise copy, publish, disclose or use other than as contemplated under this Agreement), the confidentiality and secrecy of the disclosing party's Confidential Information; and (c) it shall return or destroy all copies of the disclosing party's Confidential Information upon request of the disclosing party. Notwithstanding the foregoing, Confidential Information shall not include any information to the extent it: (i) is or becomes a part of the public domain through no act or omission on the part of the receiving party; (ii) is disclosed to third parties by the disclosing party without restriction on such third parties; (iii) is in the receiving party's possession, without actual or constructive knowledge of an obligation of confidentiality with respect thereto, at or prior to the time of disclosure under this Agreement; (iv) is independently developed by the receiving party without reference to the disclosing party's Confidential Information; (v) is released from confidential treatment by

written consent of the disclosing party; or (vi) is required to be disclosed by court of competent jurisdiction; provided the receiving party gives the disclosing party prior written notice of such proposed disclosure sufficient to enable the disclosing party to obtain an appropriate protective order, if it so desires.

7. OWNERSHIP Notwithstanding the rights granted under this Agreement, Plan Sponsor acknowledges and agrees that: (i) Morningstar retains sole and exclusive ownership over and all data, analyses, opinions, software, developments, inventions, processes, formulas, technology, designs, drawings, engineering, hardware configuration information or other information contained in the Services ("Intellectual Property"), except the data referred to in (ii) below, and that the Services and all data, analyses, opinions and other information contained in it include valuable copyrighted and proprietary material of Morningstar; (ii) Morningstar, Inc. retains sole and exclusive ownership rights in certain data contained within each the Services (the "Morningstar Data") and that the Morningstar Data contain the valuable copyrighted and proprietary material of Morningstar, Inc. (iii) Morningstar or Morningstar, Inc, as applicable, retains sole and exclusive ownership over the Intellectual Property; (iv) the Services and Intellectual Property are being made available to the Plan Sponsor for the express purposes and use set forth herein and nothing contained herein transfers to Plan Sponsor any ownership interest in the Intellectual Property or the Services and any software, pictures, images, materials, changes, materials, or other works of authorship provided contained therein or Intellectual Property; and (v) Plan Sponsor shall not have any rights in and to the Morningstar Services and Intellectual Property, except as specifically granted by this Agreement. Plan Sponsor has no right to make derivative works of the Services, the Morningstar Data or the Intellectual Property in any form for use in any medium currently in existence or under development, now or in the future.

Plan Sponsor shall not, at any time during or after the term of this Agreement: (i) contest or assist any third party in contesting the validity or enforceability of Morningstar's ownership of all right, title and interest in and to the Services and all corresponding intellectual property rights, or in Morningstar, Inc.'s ownership of all right, title and interest in and to the Morningstar Data and all corresponding intellectual property rights thereto; (ii) use the Intellectual Property, except as specifically authorized by this Agreement; (iii) use any trademark, service mark, trade name or corporate name that is a colorable imitation or confusingly similar to any of the Intellectual Property, except as expressly authorized by Morningstar in writing in advance; or (iv) contest or assist any third party in contesting the validity or enforceability of the Intellectual Property or the ownership of all right, title and interest in and to the Intellectual Property. To the extent Plan Sponsor is authorized to use any of the Intellectual Property, such use shall inure to the benefit of Morningstar or Morningstar, Inc., as appropriate. Plan Sponsor shall, at all times during or after the term of this Agreement, execute any documents and take such other actions reasonably requested by Morningstar to confirm or protect Morningstar's and Morningstar, Inc.'s right, title and interest in and to the Morningstar Data or the Intellectual Property, as applicable, and any corresponding intellectual property rights.

8. TERM AND TERMINATION

a. Term The term of this Agreement ("Initial Term") shall begin on the Effective Date and shall continue for one (1) year from the Initial Delivery Date unless the term ends earlier as otherwise provided for under this Section 8. This Agreement shall automatically renew for successive periods of one

(1) year each ("Renewal Term") after the Initial Term and each Renewal Term unless either party provides written notice of non-renewal to the other party no later than ninety (90) days prior to the expiration of the Initial Term or any Renewal Term, as the case may be.

b. Termination Upon Default or Insolvency If either party defaults in the performance of, or is in non-compliance with, any provision contained in this Agreement (including, but not limited to, any uncured insolvency or the like), and such default is not cured within thirty (30) days after written notice thereof is given to the defaulting party, the party giving such notice may then give further written notice which shall terminate this Agreement as of the date specified in such notice.

c. Termination upon Termination of Agreement between Morningstar and Service Provider or Plan Sponsor and Service Provider This Agreement will terminate automatically upon (i) the termination of the agreement between Morningstar and the Service Provider under which Morningstar provides the Service Provider with certain retirement services, including, but not limited to, any of the Managed Accounts Service or Morningstar Services described herein, or (ii) the termination of the agreement between Plan Sponsor and Service Provider under which Service Provider provides certain recordkeeping and administrative services to the Plan.

d. Termination Upon Breach of Fiduciary Duty This Agreement may be terminated by either party upon written notice if the other is in breach of its fiduciary duties under ERISA.

e. Effect of Termination Upon expiration or termination of this Agreement for any reason, all rights granted to Plan Sponsor hereunder shall terminate immediately and all Participants shall no longer have access to the Managed Accounts Service or the Morningstar Services. Expiration or termination of this Agreement for any reason shall not affect the Participants' obligation to pay any and all fees and other amounts due and payable or relieve Plan Sponsor of any liability for breach of this Agreement.

9. FEES AND BILLING

a. Fees There is no fee due from the Plan, the Plan Sponsor or Participants to either the Service Provider or Morningstar in connection with the use of Morningstar Retirement Manager. During the term of this Agreement (including any Renewal Term), for the Managed Accounts Service, the Participants and/or the Plan Sponsor, as the case may be, shall pay the applicable fees that are set forth on the Fee Schedule attached hereto and made part hereof.

b. Collection Authorization and Payment Terms The parties hereby agree that Service Provider shall deduct all applicable fees from the Participant accounts. The parties agree and acknowledge that Service Provider shall deduct and remit the applicable Managed Accounts Fees from the Participant accounts in periodic installments in arrears and is hereby authorized to deduct such fees and remit the fees to Morningstar, the Solicitor, and the Administrator, in accordance with the Fee Schedule.

10. REPRESENTATIONS AND WARRANTIES

a. Representations of Morningstar Morningstar represents and warrants to Plan Sponsor that it is an investment adviser registered with the Securities and Exchange Commission under the Investment Advisers Act of 1940 and, to Morningstar's knowledge (a) it has all rights in and to all the Intellectual Property necessary to market, distribute the Managed Accounts Service and the Morningstar Services in accordance with the terms of this Agreement; (b) this Agreement is binding on Morningstar; and (c) Morningstar's entry into this Agreement does not violate any prior obligation or agreement of Morningstar.

Morningstar represents and warrants to Plan Sponsor that the Investment Management Services will (a) apply generally accepted investment theories; (b) be diversified to minimize risk of large losses; (c) be designed to provide varying degrees of long-term appreciation and capital preservation through a mix of equity and fixed income based on participant's age, retirement date or life expectancy; and (d) change the asset allocation and associated risk levels over time to become more conservative with increasing age.

b. Representations of Plan Sponsor Plan Sponsor represents and warrants to Morningstar that (a) Plan Sponsor has the authority and power to enter into and comply with its obligations under this Agreement and the rights and licenses necessary to enter into and perform its obligations under this Agreement; (b) this Agreement is binding on Plan Sponsor; (c) Plan Sponsor's entry into this Agreement does not violate any prior obligation or agreement of Plan Sponsor; (d) the individual signing this Agreement and any exhibit(s) thereto on behalf of Plan Sponsor is a named fiduciary of Plan or is authorized to sign on behalf of the Plan Sponsor in its capacity as a named fiduciary of Plan and is authorized to sign on behalf of the Plan Sponsor; (e) consistent with the terms and conditions contained in all governing documents of Plan Sponsor's Plan with respect to the voting of proxies, Plan Sponsor, the Plan Trustee (or its agent) or Participants will vote proxies for securities held in any investment account for which Morningstar may provide advice hereunder, and (f) the instruments under which the Plan is maintained authorize the use of Plan assets to pay any fees for which the Participant is responsible as provided in this Agreement.

11. DISCLAIMERS

a. Data Disclaimer Morningstar will use commercially reasonable efforts to ensure that the data, analysis, opinion, and other information contained in the Services are correct. Although gathered from sources believed to be reliable, Plan Sponsor acknowledges that Morningstar cannot guarantee the accuracy of the data or information used to provide the Services. The completeness and timeliness of all data and information used to provide the Services is dependent upon the sources of such data and information, which are outside of Morningstar's control.

b. Disclaimer of Warranties EXCEPT AS EXPRESSLY SET FORTH IN SECTION 10 ABOVE, MORNINGSTAR PROVIDES NO WARRANTIES, EITHER EXPRESS, IMPLIED OR OTHERWISE WITH RESPECT TO THE SERVICES DELIVERED PURSUANT TO THIS AGREEMENT, OR THE SOFTWARE COMPRISING THE SERVICES, AND TO THE EXTENT PERMITTED BY LAW, INCLUDING ERISA, MORNINGSTAR DISCLAIMS THE IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE AND MERCHANTABILITY WITH RESPECT TO SUCH SERVICES.

c. Acknowledgement of Limitations on Recommendations Plan Sponsor acknowledges and agrees that in formulating recommendations through the Managed Accounts Service, Morningstar will only consider investment options offered by the Plan Sponsor's Plan. As a result, the Managed Accounts Service may not be comprehensive because it may not recommend use of investment options that otherwise might be appropriate investments but that are not offered through Plan Sponsor's Plan.

12. LIMITATION OF LIABILITY The following Limitations of Liability shall be applicable:

Limitation of Damages EXCEPT AS OTHERWISE PROVIDED BY LAW (INCLUDING BUT NOT LIMITED TO ERISA), AND EXCEPT FOR DAMAGES ARISING AS A RESULT OF A PARTY'S WILLFUL MISCONDUCT OR BREACH OF FIDUCIARY DUTY, EACH PARTY'S AGGREGATE LIABILITY FOR ANY DIRECT DAMAGES ARISING UNDER OR IN ANY WAY RELATING TO THIS AGREEMENT, THE MANAGED ACCOUNTS SERVICE, AND MORNINGSTAR SERVICES PROVIDED HEREUNDER (WHETHER ARISING IN CONTRACT, TORT, OR ANY OTHER LEGAL THEORY) SHALL BE LIMITED TO ONE MILLION DOLLARS ($1,000,000).

EXCEPT AS OTHERWISE PROVIDED BY LAW, AND FOR DAMAGES ARISING FROM A PARTY'S WILLFUL MISCONDUCT, IN NO EVENT WILL THAT PARTY BE LIABLE TO THE OTHER FOR ANY PUNITIVE, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR SIMILAR DAMAGES, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

Nothing in this Agreement is intended to or shall waive any rights to which Plan Sponsor is specifically entitled under the securities laws of the United States.

13. INDEMNIFICATION

a. Indemnification by Morningstar Morningstar agrees to indemnify, defend and hold harmless the Plan Sponsor and its and their successors and assigns, and its and their directors, officers and employees, from and against any and all third party claims, demands, suits, actions, and any and all damages, losses, liabilities, taxes, penalties, fines, charges costs and expenses, including reasonable attorneys' fees, (individually a "Loss" and collectively "Losses") arising from Morningstar's breach of the fiduciary duty imposed pursuant to this Agreement. Morningstar's indemnification obligation shall not apply to any Loss or Losses arising out of or relating to a Loss due to any of the following: (i) the financial performance of any investment option included in a defined contribution plan; (ii) any violation of law, rules, or regulations by a party other than Morningstar in connection with such investment option; (iii) the fault or negligence of, or violation of rules or regulations by Plan Sponsor or (iv) the delivery or transmission by the Service Provider, the Plan Sponsor or the Participant of incorrect, inaccurate, or incomplete Participant data. Plan Sponsor shall provide prompt written notice of any claim, action, or proceeding giving rise to such obligation, shall reasonably cooperate with its defense and/or settlement efforts and shall grant Morningstar at Morningstar's option, sole control of the defense and/or settlement of such claim, action, or proceeding. This indemnification obligation shall survive any termination of this Agreement.

b. Indemnification by Plan Sponsor Plan Sponsor agrees to indemnify, defend and hold harmless Morningstar and its and their successors and assigns, and its and their directors, officers and employees, from and against any and all third party claims, demands, suits, actions, and any and all damages, losses, liabilities, taxes, penalties, fines, charges costs and expenses, including reasonable attorneys' fees, (individually a "Loss" and collectively "Losses") arising from Plan Sponsor's breach of its fiduciary obligations under the Plan, or its use of the Intellectual Property provided hereunder in any manner not specifically authorized hereunder. Plan Sponsor's indemnification obligation shall not apply to any Loss or Losses arising out of or relating to a Loss due to any of the following: (i) the financial performance of any investment option included in a defined contribution plan; (ii) any violation of law, rules, or regulations by a party other than Plan Sponsor in connection with such investment option; or (iii) the fault or negligence of, or violation of rules or regulations by Morningstar. Morningstar shall provide prompt written notice of any claim, action, or proceeding giving rise to such obligation, shall reasonably cooperate with its defense and/or settlement efforts and shall grant Plan Sponsor at Plan Sponsor's option, sole control of the defense and/or settlement of such claim, action, or proceeding. This indemnification obligation shall survive any termination of this Agreement.

14. ENHANCEMENTS AND MODIFICATIONS Morningstar reserves the right in its sole discretion to enhance, modify, or provide upgrades (collectively "Changes") of the Managed Accounts Service or Morningstar Services from time to time.

15. ACCESS AND TECHNICAL REQUIREMENTS

Morningstar shall provide Participants with access to Morningstar Retirement Manager via Service Provider's web site through an HTTP connection, which connection shall be established and maintained by Service Provider for Plan Sponsor's benefit.

Technical Requirements for access to Morningstar Retirement Manager:

Browsers:

- Microsoft® Internet Explorer 6.0 and above
- America Online 9.0 and above
- Apple Macintosh Safari
- Firefox 1.5 and above

System Requirements:

- Windows®
- Mac® OS X® with Safari browser
- JavaScript and Cookies must be enabled
- Adobe Acrobat (for printing reports from the Retirement Manager Web site)
- Sun's Java Plug-in - J2SE Java Runtime Environment (JRE) version 1.4.2 or higher

Security:

- 128 bit encryption

Pop-ups:

- In order to view certain pages in the Retirement Manager site, pop-ups must be enabled.

Morningstar reserves the right to change the above-referenced technical requirements as certain browser versions become obsolete or outdated or as new versions are released.

16. RESEARCH, EDUCATION, AND MEASUREMENT MODULES

Plan Sponsor will be provided access to Morningstar's Research Module, Education Module and Measurement Module. The Research Module will consist of reports and information concerning Funds within the Fund Universe. The Education Module will consist of articles, information and interactive planning tools. The Research Module and the Education Module will be made available to the Plan Sponsor and Participants that have agreed to receive the Managed Accounts Service, and may not be offered outside of this Agreement. The Measurement Module will be made available to the Service Provider who may then provide access to the Plan Sponsor. Morningstar reserves the right in its sole discretion to modify, add, or delete data points in the Research Module, the Education Module, and the Measurement Module.

17. INVESTMENT PROCESS AND RESTRICTIONS

a. Investment Process Upon receipt from the Service Provider of personal and financial data for a Participant ("Participant Data"), if a Participant has selected the Managed Accounts Service, Morningstar will use the Funds made available by the Plan Sponsor to create a portfolio with an asset allocation composition (each a "Participant Portfolio").

Morningstar will analyze the Funds to determine which particular Funds will be assigned to a Participant Portfolio. If the Participant has indicated an instruction that his or her Participant Portfolio not include a particular Fund ("Restriction") which Morningstar deems unreasonable, Morningstar shall not be required to deliver a Participant Portfolio for that Participant.

b. Company Stock Morningstar shall have no duty to provide investment advisory services with respect to securities issued by a Plan Sponsor ("Company Stock") that cannot be sold in the ordinary course of business due to a Plan provision or instruction from the Plan Sponsor ("Restricted Company Stock"). Restricted Company Stock shall not be included within a Participant Portfolio and Morningstar shall have no liability for any loss arising from such Restricted Company Stock.

With respect to Company Stock that can be sold without any restrictions ("Non-restricted Company Stock"), upon the Participant's direction, the Participant Portfolio shall reflect Morningstar's recommendation that Non-restricted Company Stock be sold at a preset percentage each quarter, or immediately if directed to do so by the Participant or if the Non-restricted Company Stock reaches a preset threshold. These sales of Company Stock will also include any new Non-restricted Company Stock that is allocated automatically to the Participant Portfolio. In addition, Morningstar will recommend that the Participant Portfolio exclude any future contributions of Company Stock.

Participants may elect to retain a certain percentage of their Plan account balances in Non-restricted Company Stock, in which case such retained Non-restricted Company Stock shall not be included within a Participant Portfolio. Morningstar shall have no duty to provide investment advisory services with respect to such retained Non-restricted Company Stock, and shall have no liability for any loss arising from the retained Non-restricted Company Stock.

c. Self-directed Brokerage Accounts Morningstar shall have no duty to provide the Managed Accounts Service with respect to assets held within a Self-directed Brokerage Account, if available under the Plan.

18. RETIREMENT STRATEGY REPORT

Morningstar may provide information about the Advisory Services to the Participants though a Retirement Strategy Report in its standard design with current supported plan types and functionality and any subsequent global modifications, enhancements, or upgrades. Plan Sponsor has authorized Service Provider to deliver to Morningstar such Participant data as is required to create and deliver the Retirement Strategy Report to Participants. Morningstar agrees that it shall not use any such Participant data for any purpose other than providing the services expressly described herein. If requested, Plan Sponsor will provide Morningstar with the company logo to be used in this Retirement Strategy Report and otherwise where appropriate, for marketing purposes.

19. MISCELLANEOUS

a. Notices All notices or other communications shall be in writing and be delivered in person, or sent by certified mail, return receipt requested, overnight courier service, facsimile or e-mail to such addresses or numbers as may be stipulated in writing by the parties pursuant hereto. Unless otherwise provided, notice will be effective on the date it is officially recorded as delivered by return receipt or equivalent or by facsimile confirmation date.

b. Entire Understanding; Partial Invalidity This Agreement, along with any exhibit(s) or other attachments hereto, sets forth the entire understanding between the parties and supersedes any and all oral or written agreements between the parties as to the subject matter of this Agreement. If any provision of this Agreement shall to any extent be held to be invalid or unenforceable, the remainder of the Agreement, or the application of such provisions as to which it is not held to be invalid or unenforceable, shall not be affected thereby, and each provision shall be valid and be enforced to the fullest extent permitted by law.

c. Modification This Agreement may be modified if mutually agreed upon by both parties.

d. Assignment The parties' benefits and obligations in this Agreement shall not be assigned without the prior written consent of the other party. This Agreement shall apply to, inure to the benefit of, and be binding upon the parties hereto and upon their permitted successors in interest and assigns. The parties acknowledge that there are no intended third party beneficiaries of this Agreement.

e. No Waiver; Force Majeure The failure of one party to require the other to perform hereunder shall in no way affect the first party's right to require such performance thereafter, nor shall the waiver by either party of a breach of any Agreement provision be deemed a waiver of any succeeding breach of that provision or a waiver of the provision itself. In no event shall one party be liable to the other for any delay or failure to perform hereunder if the delay or failure is due to causes beyond the reasonable control of that party.

f. Injunctive Relief Each party acknowledges that the other's legal remedies (including the payment of damages) would not adequately compensate the non-breaching party for the other's breach of this Agreement regarding ownership, use, copying, distribution, confidentiality or nondisclosure, as applicable, of the Morningstar Services or the Advisory Services (or any part thereof), the Intellectual Property, or Confidential Information and that it would suffer continuing, irreparable injury as a direct result of such breach. Therefore, in the event of any such breach or threatened breach, the non-breaching party may seek entry of any injunctive relief necessary to prevent or cure such breach (including temporary and preliminary relief, and relief by order of specific performance), without posting of bond or other security or proof of irreparable harm.

g. Arbitration Any dispute under this Agreement shall be settled by binding arbitration in Chicago, Illinois before a panel of three impartial arbitrators under the rules of the American Arbitration Association. Such panel shall consist of an actuary, an attorney and an employee benefit consultant, each of whom shall have had at least ten (10) years of professional experience in the administration of participant-directed defined contribution plans similar to the Plan. In any such arbitration, each party shall bear its own costs, expenses and attorneys' fees. The arbitration award may be enforced in any court having jurisdiction over the parties and the subject matter of the arbitration, and the parties irrevocably submit to the nonexclusive jurisdiction of the Superior Court of the State of Illinois, and the United States District Court for the Northern District of Illinois, in any action to enforce an arbitration award.

h. Choice of Law and Venue Except as provided in Section 19.g., all disputes arising under this Agreement or its performance shall be determined exclusively under the laws of the State of Illinois without regard to its conflict of laws provisions.

i. Acknowledgment of Receipt of Morningstar's Disclosure Statement Plan Sponsor acknowledges that it has received Morningstar's Form ADV Part 2 prior to entering into this Agreement.

j. Survival of Rights Termination or cancellation of this Agreement for any reason shall not relieve either party of obligations that accrued prior to termination or cancellation, or of obligations that by their nature are intended to survive this Agreement, including but not limited to obligations in connection with warranties, confidential information and indemnification.

k. Counterparts This Agreement may be signed in two counterparts, which together shall form a single agreement as if both parties had executed the same document.

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the date set forth above.

______________________ (Plan Sponsor)	Morningstar Associates, LLC
By: ______________________	By: [signature]
Name: ______________________	Name: Thomas Idzorek
Title: ______________________	Title: President
Date: ______________________	Date: ______________________

Managed by Morningstar
Entity Agreement

Employer wishes to provide Plan Participants the opportunity to elect to participate in the Managed by Morningstar service ("Managed Accounts"). Generally, Managed Accounts provides individualized investment management of Plan Participant accounts by providing ongoing review of the allocation assignments from the available investments. Managed Accounts also provides automatic adjustments and rebalancing to the allocation assignments. Allocation assignments are developed based on the Plan Participant investment profiles and goals.

The service fee for Managed Accounts and associated services is described in the attached Fee Schedule (the "Program Fee"). The Program Fee will be withdrawn from Plan Participant accounts pro rata on a quarterly basis. The Program Fee will be waived for ninety (90) days from the date of the Plan Participant's enrollment (the "Waiver Period"). During the Waiver Period, Security Distributors, Inc. ("SDI") will pay Morningstar Associates, LLC and the Solicitor the fees described in the individual Investment Advisory Agreement for the Managed Accounts service. Employer approves the Program Fee and authorizes the withdrawal and distribution of the Program Fee from the accounts of Plan Participants who elect to participate in Managed Accounts.

Managed Accounts will be provided pursuant to an individual Investment Advisory Agreement between the Plan Participant and Morningstar. Employer acknowledges that it has had an opportunity to review the form of this agreement, which Morningstar may change from time to time. Employer further acknowledges that SDI will provide certain non-discretionary administrative services to Participants enrolled in Managed Accounts and will receive a specified portion of the Program Fee as payment for providing these administrative services. Employer acknowledges and agrees that neither SDI nor any of its affiliates provides or is responsible for Managed Accounts. Finally, Employer agrees to release on behalf of the Plan and Plan Participants, SDI and its affiliates from claims arising out of Managed Accounts, except for claims related to errors and omissions of SDI in providing such administrative services.

Employer: CITY OF HUBER HEIGHTS
Company Name

By: ______________________
Name

Its: CITY MANAGER
Title

FOR INTERNAL USE ONLY
Plan Number (s) approved: ______________________

38-09873-13
(R 1-2-09)

MORNINGSTAR®

SECURITY BENEFIT®

Managed by Morningstar Fee Schedule

This Fee Schedule reflects the Program Fee and Program Fee Allocation agreed to between Morningstar and me.

1. Program Fee

	Annual Percentage Rate*
All account values	**1.00%**

*Please note that there is an $8.00 annual minimum.

2. Program Fee Allocation

You authorize the Administrator to pay from the Program Fee to each of Morningstar, Administrator, and Solicitor the amounts illustrated below:

	Morningstar	Administrator	Solicitor
All account values	0.25%	0.25%	0.50%

My signature below indicates my understanding of the terms of this Fee Schedule.

Signature

ROBERT B. SCHOMMER

Print Name

Date

One Security Benefit Place · Topeka, Kansas 66636-0001 · securitybenefit.com · 1.800.888.2461 x 6161

Security Distributors, Inc.

AI-2867 **New Business** H.

City Council Meeting Agenda **Economic Development**

Meeting Date: 01/26/2015

Land Reutilization Program - 5637 Copley Circle

Submitted By: Trisha Reents

Department: Economic Development

Council Committee Review?: Public Works Committee

Date(s) of Committee Review: 01/20/2015

Audio-Visual Needs: None **Emergency Legislation?:** No

Motion/Ordinance/ Resolution No.:

Information

Agenda Item Description or Legislation Title

An Ordinance To Approve An Application To Initiate Foreclosure Proceedings For The Property At 5637 Copley Circle Under The Huber Heights Land Reutilization Program.
(first reading)

Purpose and Background

This agenda item is to discuss approval of an application to initiate foreclosure proceedings for the property at 5637 Copley Circle under the Huber Heights Land Reutilization Program.

The property has been verified with the Montgomery County Auditor and does meet the criteria for the program. It is vacant and has been delinquent on property taxes for at least 2 years. Approval of this application by City Council will begin the process with Montgomery County to begin the foreclosure process.

Fiscal Impact

Source of Funds: Applicant

Cost: $2,500

Recurring Cost? (Yes/No): No

Funds Available in Current Budget? (Yes/No): Yes

Financial Implications:

Applicant places a $500.00 deposit. Applicant pays all court costs.

Attachments

Application

Ordinance

HUBER HEIGHTS
Come Grow With Us!

Application for Rapid Foreclosure

Parcel Number: P70 01508 0013 Date: 12/16/2014

Applicant Name: Meyora Investments LLC *Use name you would like on Deed

Address: 1310 Glennelle Dr.

City: Dayton State: Ohio Zip: 45417

Phone #: 614-282-2334 Cell #: 614-282-2334

Email Address: traci@meyora.com

Property Information- Contact the Zoning Department before submitting application to determine if your plans for the property are permitted in the zoning district. 937-237-5815

Address of Property: 5637 COPLEY CIR

Type of Property: Vacant Lot Lot with Structure

Reason for Acquiring Property:

☐ Yard Extension ☐ New Home Construction ☐ Parking

☐ Garage ☑ Rehab of Existing Structure

Other:
property is now vacant.

Rehabilitation of Existing Structure/ New Construction Information:

Does this project comply with current Zoning? Yes No

Type of Ownership: Individual Corporation Nonprofit

Parcels currently owned in Huber Heights:

Address: n/a

Address: n/a

1/20 PW
1/26 Council

**Please attach list if more than two.*

CK # 5491

Rct # 475479

$500.00 DEPOSIT REQUIRED WITH APPLICATION

Please initial each statement below:

______ I attest that the information in this application is accurate

______ I attest that property I own in the City of Huber Heights is current on Property Taxes.

______ I attest that I have the authority to apply on behalf of the applicant organization.

______ I understand that the City of Huber Heights reserves the right to reject any proposal without cause.

______ I understand that the tax foreclosure process may take 12 to 24 months or longer.

______ I understand the $500.00 deposit is not refundable if I change my mind.

______ I understand the $500.00 is a deposit only, and the final cost may be $2,000.00 or more.

______ I understand I am responsible for obtaining all necessary permits for rehabilitation, construction or demolition of the property.

______ I understand the Zoning Code violations on the property will be my responsibility to abate once I take ownership.

______ I understand the final cost is not payable in installments.

______ I understand it is my responsibility to verify that my plans for the parcel are acceptable with the Zoning Department.

______ I have attached a copy of my current State ID or Driver's License.

Applicant's Signature: ______________________ Date: 12/16/2014

Print: Meyora Investments LLC, representative LeTracia Martin

Make check payable to:
City of Huber Heights

Return to:
City of Huber Heights
6131 Taylorsville Road
Huber Heights, OH 45424
Attn. Zoning Department

Contact us at 937-233-1423

1/5/14 - H2O Service
- Turned off
- Account unpaid

Mont Cty Treasurer
$13,431.97 DUE
Unpaid since 2008

CITY OF HUBER HEIGHTS
STATE OF OHIO

ORDINANCE NO. 2015-O-

TO APPROVE AN APPLICATION TO INITIATE FORECLOSURE PROCEEDINGS FOR THE PROPERTY AT 5637 COPLEY CIRCLE UNDER THE HUBER HEIGHTS LAND REUTILIZATION PROGRAM.

WHEREAS, economic development and revitalization has been and continues to be a goal of the City of Huber Heights; and

WHEREAS, the City of Huber Heights has adopted and implemented the procedure set forth in Chapter 5722 of the Ohio Revised Code as amended to facilitate the effective reutilization of non-productive land situated with the boundaries of the City of Huber Heights in order to foster the return of such non-productive land to tax generating status and/or the devotion to public use, in the Huber Heights Land Reutilization Program (the “Program”); and

WHEREAS, the City has received an application and applicable deposit for certain property located at 5637 Copley Circle (the “Property”) to be included in the Program; and

WHEREAS, pursuant to the Program, City Staff has determined that the Property is eligible for inclusion in the Program; and

WHEREAS, pursuant to the Program, Huber Heights City Council is to make the final approval.

NOW, THEREFORE, BE IT ORDAINED by the City Council of Huber Heights, Ohio that:

Section 1. The application to include the Property in the Program is approved.

Section 2. The City Manager or his designee is authorized to request the Montgomery County Treasurer to initiate the foreclosure proceedings for the Property pursuant to the provision of Chapter 5722 of the Ohio Revised Code and the Program and to take any and all action necessary to complete such foreclosure pursuant to the Program.

Passed by Council on the ______ day of _____________ , 2015;
______ Yeas; ______ Nays.

AUTHENTICATION:

______________________________	______________________________
Clerk of Council	Mayor
______________________________	______________________________
Date	Date

AI-2872 **New Business** I.

City Council Meeting Agenda **Finance**

Meeting Date:	01/26/2015

Amnesty

Submitted By:	Anthony Rodgers		
Department:	City Council		
Council Committee Review?:	Administration Committee		
Date(s) of Committee Review:	01/20/2015		
Audio-Visual Needs:	None	**Emergency Legislation?:**	Yes
Motion/Ordinance/ Resolution No.:			

Information

Agenda Item Description or Legislation Title

A Resolution Authorizing The City Manager To Expend Funds To Cover The Costs Of Various Goods And Services Ordered By City Departments/Divisions, And Declaring An Emergency.
(first reading)

Purpose and Background

This legislation gives authorization to pay invoices for goods and services where a purchase order was not properly obtained in advance of the purchases.

Fiscal Impact

Source of Funds:	N/A
Cost:	N/A
Recurring Cost? (Yes/No):	N/A
Funds Available in Current Budget? (Yes/No):	N/A
Financial Implications:	

Attachments

Resolution
Attachment A
Amnesty Backup

CITY OF HUBER HEIGHTS
STATE OF OHIO

RESOLUTION NO. 2015-R-

AUTHORIZING THE CITY MANAGER TO EXPEND FUNDS TO COVER THE COSTS OF VARIOUS GOODS AND SERVICES ORDERED BY CITY DEPARTMENTS/DIVISIONS, AND DECLARING AN EMERGENCY.

WHEREAS, various City Departments/Divisions have procured goods and services from various vendors; and

WHEREAS, the Departments/Divisions either did not obtain a purchase order prior to the purchase or if a purchase order was obtained it was not sufficient to cover the costs of said goods or services; and

WHEREAS, the City of Huber Heights has a moral obligation to pay the invoices for these said goods and services since it is either in possession of the goods or it has already utilized the service; and

WHEREAS, there are sufficient funds in the respective Department/Division budgets to cover the costs incurred for the various goods and services.

NOW, THEREFORE, BE IT RESOLVED by the City Council of Huber Heights, Ohio that:

Section 1. The City Manager is hereby authorized to approve the payments for the goods and services listed in Attachment A as moral obligations of the City.

Section 2. This Resolution is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety and welfare and for the further reason that the timely processing and payment of these invoices will maintain the good relationships enjoyed between the City and the various vendors; therefore, this Resolution shall take full force and effect immediately upon its adoption by Council.

Passed by Council on the ______ day of _____________ , 2015;
______ Yeas; ______ Nays.

AUTHENTICATION:

_______________________________	_______________________________
Clerk of Council	Mayor
_______________________________	_______________________________
Date	Date

ATTACHMENT A

Department/Division	Vendor	Total Cost	Cost Not Encumbered by P.O.
Fire	Steve Goetz – purchase order after service date	$438.84	$438.84
Legal	Young, Pryor, Lynn & Jerardi – purchase order after service date	$6,666.67	$6,666.67

Huber Heights Fire Division

MEMORANDUM

Date: January 8, 2015

To: Rob Schommer, City Manager

From: Mark S Ashworth, Fire Chief for Chief Ashworth

Subject: Amnesty Request for PO #142051

The attached invoice is for tuition reimbursement for Firefighter/Paramedic Steve Goetz where the date of the start of the class and the authorization to attend the class conflict. As a result the dates of the purchase order and the invoice conflict, therefore

At this time, amnesty is being requested. Funding is available as indicated by the PO number that was already issued; the amnesty request is for not meeting the timeline as required by City Policy.

Approved

Respectfully Submitted,
Mark S. Ashworth
Fire Chief

HUBER HEIGHTS FIRE DIVISION
TUITION REIMBURSEMENT REQUEST FORM

PR# 6275

EMPLOYEE NAME	TITLE
STEVE GOETZ	FIREFIGHTER / PARAMEDIC
ACCREDITED COLLEGE	PO#
SINCLAIR COMMUNITY COLLEGE	142051

COURSE NAME/ NUMBER	NUMBER CREDIT/ SEMESTER HOURS	COURSE START DATE	COURSE END DATE	FINAL GRADE	COST PER HOUR	TOTAL COST
FIRE OFFICER II	3	11/3/14	12/10/14	A	~~99.05~~	438.84
FST 2252					146.28	

TOTAL REIMBURSEMENT REQUESTED

EMPLOYEE SIGNATURE [signature]	DATE 11/7/14
APPROVAL FIRE CHIEF [signature]	DATE 11/7/14
APPROVAL CITY MANAGER*	DATE

*** CONTRACT EMPLOYEES DO NOT REQUIRE CITY MANAGER APPROVAL**

EMPLOYEE MUST SUBMIT THIS FORM AT LEAST TWO WEEKS PRIOR TO THE START OF THE SEMESTER/ QUARTER FOR APPROVAL. ONCE THE COURSE HAS BEEN APPROVED, FIRE ADMINISTRATION WILL SECURE A PURCHASE ORDER IN THE EMPLOYEE'S NAME.

JAN 05 2015

REIMBURSEMENT COVERS THE COST OF COURSE ONLY AND NOT BOOKS OR OTHER RELATED ITEMS.

THE EMPLOYEE IS RESPONSIBLE FOR COMPLYING WITH ALL CONDITIONS REQUIRED FOR TUITION REIMBURSEMENTS AS LISTED BELOW:

1. EMPLOYEE IS FULL-TIME AND HAS COMPLETED PROBATIONARY PERIOD.
2. COURSE IS JOB RELATED.
3. REQUESTS TO ATTEND COURSE WITH EXPENSES TO BE REIMBURSED BY THE CITY MUST BE APPROVED IN ADVANCE OF TAKING THE COURSE BY THE FIRE CHIEF AND IF MID-MANAGEMENT, THE CITY MANAGER. A PURCHASE ORDER MUST BE OBTAINED IN ADVANCE OF COURSE REGISTRATION.
4. REIMBURSEMENT WILL BE MADE TO THE EMPLOYEE ONLY AFTER RECEIPT OF EVIDENCE OF SATISFACTORY COMPLETION OF THE COURSE. SATISFACTORY COMPLETION WILL BE CONSIDERED NO LESS THAN A "C" OR EQUIVALENT GRADE AND ORIGINAL PROOF OF PAYMENT SUBMITTED WITHIN THIRTY (30) DAYS OF COMPLETION OF COURSE.
5. EMPLOYEES WHO TERMINATE CITY EMPLOYMENT WITHIN ONE YEAR OF COMPLETION OF A REIMBURSED COURSE OR TRAINING WILL BE REQUIRED TO REIMBURSE THE CITY FOR EXPENSES INCURRED. THE CITY MANAGER IS AUTHORIZED TO WAIVE THIS REQUIREMENT UNDER UNUSUAL AND JUSTIFIABLE CIRCUMSTANCES.
6. MAXIMUM ALLOWABLE BENEFIT PER EMPLOYEE ANNUALLY IS $1500.00 PROVIDED FUNDS ARE AVAILABLE.

DATE RECEIPT WAS SUBMITTED FOR REIMBURSEMENT 1/5/15

ATTACH THE ORIGINAL RECEIPT AND A COPY OF GRADES

LOG OUT | MAIN MENU | STUDENTS MENU | HELP | CONTACT US

CURRENT STUDENTS

Welcome Steven!

Grades

Sinclair Community College

The grade report shown should be considered an official grade report issued by Sinclair Community College. If a printed copy of your official grade report is needed, please use the print function on your browser.

0309151 Steven Goetz

Advisor

Liberal-Arts Counselors

Term	Term GPA
Fall 14	4.000

Course Section	Title	Grd 1	Grd 2	Grd 3	Grd 4	Grd 5	Grd 6	Final Grd	Credits	CEUs
FST-2252-111	FIRE OFFICER II							A	3.00	

LOG OUT | MAIN MENU | STUDENTS MENU | HELP | CONTACT US

SINCLAIR COMMUNITY COLLEGE

Student Term Statement

Sinclair Community College
Bursar Office 10-244
444 West Third Street
Dayton, OH 45402

Steven A. Goetz
3613 Cedarwood Ln
Beavercreek, OH 45430-1703

Name	Steven A. Goetz
Student ID	0309151
Total Balance	$0.00
Total Amount Due	$0.00
Payment Due Date	
Amount Enclosed	

Account Activity Summary - Fall 14

	Charges	
	Tuition by Section	$438.84
	Fees	$40.00
+	**Total Charges**	**$478.84**
-	**Payments**	**$478.84**
=	**Fall 14 Balance**	**$0.00**
=	**Total Amount Due**	**$0.00**
	Total Balance	**$0.00**

Course Schedule

Section	Course Title	Credits	CEUs	Days	Times	Classroom	Start/End Dates
FST-2252-111	FIRE OFFICER II	3.00		MW	6:00-10:00 PM	20 142	11/3/2014-12/10/2014

Account Activity Details - Fall 14

Name	Steven A. Goetz
Student ID	0309151

Tuition by Section

Section	Course Title	Amount	Billing Credits	CEUs	Status
FST-2252-111	FIRE OFFICER II	$438.84	3.00		Add
Total					**$438.84**

Fees

Description	Amount
LATE REGISTRATION FEE	$30.00
Fire Science Tech Lab Fee	$10.00
Total	**$40.00**

Payments

Receipt Number	Date	Amount	Pay Method	Reference Number
001084502	11/7/2014	$478.84	Visa	2910
Total				**$478.84**

Balance **$0.00**

« Student Services
« Bursar
Current Fee Schedule

Fees

Fee Name	Fee
Registration Fee for first-time registrants	**$20.00**
Late Registration Fee (Nonrefundable)	**$30.00**
Online Classes	**$7.50 per credit hour (extra fee beyond tuition)**
Transcripts (Each)	**$5.00**
Transcripts (Same Day Services)	**$10.00**
Returned Check Fee	**$25.00**
Tartan Card Deposits (Bursar Office Transactions) Cash/Credit/Check	**$10.00 minimum on all forms of payment; $50.00 max on checks**

Tuition and Fees (Beginning 14SU Term)

Per Credit Hour Fee	Montgomery County Residents	Other Ohio Residents	Out-of-State and International Students
Instructional Fee	**$84.78**	**$84.78**	**$84.78**
General Fee	**$14.25**	**$14.25**	**$14.25**
Out-of County Surcharge	------	**$47.25**	------
Out-of-State Surcharge	------	------	**$183.37**
Total Tuition and Fees Per Credit Hour	**$99.03**	**$146.28** ✓	**$282.40**

Note: The college reserves the right to change without notice statements concerning rules, policies, fees, curricula, courses, or other matters.

Laboratory fees are determined for individual classes.

Any additional costs for programs can be found in the Online Course Schedule Planner for each individual class that requires payment of additional fees. The Online Course Schedule Planner can be found at http://www.sinclair.edu/schedule/

APPLY NOW
CAMPUS VISIT
REQUEST INFORMATION

LOCATIONS
Dayton
Courseview
Englewood
Huber Heights
Preble County
Online
Wright-Patterson AFB

STUDENT SERVICES
Academic Advising
Bookstore
Bursar & College Cashier
Career Services
Financial Aid & Scholarships
Registration & Student Records
Veteran Services

RESOURCES
About Sinclair
Athletics
Arts & Culture
Course Catalog
Donors
Employment
Library

CONTACT
1.800.315.3000
info@sinclair.edu
finaid@sinclair.edu

Employee Directory

HUBER HEIGHTS
Come Grow With Us!

City of Huber Heights
6131 Taylorsville Road
Huber Heights, OH 45424

Memorandum

To: Robert Schommer, City Manager

From: LeeAnne Yeater, Administrative Assistant

Date: January 12, 2015

Re: Amnesty Legislation

Young, Pryor, Lynn & Jerardi (Bob Couglin) submitted the last invoice for 2014 and there was not enough funds in the purchase order to pay the invoice. There is an existing 2015 purchase order that can cover the cost.

Thank you for your attention to this matter.

Approved
[signature] 1/12/15

STATEMENT

LAW OFFICES
YOUNG, PRYOR, LYNN & JERARDI, LLP
FIRST NATIONAL PLAZA SUITE 800
130 WEST SECOND STREET
DAYTON OHIO 45402-1501
(937) 224-1981

City of Huber Heights
6131 Taylorsville Road
Huber Heights, Ohio 45424
ATTN: lyeater@hhoh.org

January 8, 2015

FEDERAL I D #31-0615572

For legal services rendered by Robert B. Coughlin, as prosecutor, for the City of Huber Heights, Ohio.

December of 2014	$6,666.67
TOTAL AMOUNT DUE:	**$6,666.67**

AI-2870 **New Business** J.

City Council Meeting Agenda **Police**

Meeting Date: 01/26/2015

Disposal of Surplus Property - Police Division

Submitted By:	Anthony Rodgers
Department:	City Council
Council Committee Review?:	Administration Committee
Date(s) of Committee Review:	01/20/2015
Audio-Visual Needs:	None
Emergency Legislation?:	Yes
Motion/Ordinance/ Resolution No.:	

Information

Agenda Item Description or Legislation Title

A Resolution Declaring Certain City Property No Longer Needed For Municipal Purposes As Surplus And Authorizing Disposal Of Said Surplus Property, And Declaring An Emergency.
(first reading)

Purpose and Background

The Police Division is in possession of three vehicles no longer needed for municipal purposes. The vehicles are slated for trade-in at a local dealership.

Fiscal Impact

Source of Funds:	N/A
Cost:	N/A
Recurring Cost? (Yes/No):	N/A
Funds Available in Current Budget? (Yes/No):	N/A

Financial Implications:

The value received for trade-in will be applied to the purchase of new Police Division cars.

Attachments

Resolution

CITY OF HUBER HEIGHTS
STATE OF OHIO

RESOLUTION NO. 2015-R-

DECLARING CERTAIN CITY PROPERTY NO LONGER NEEDED FOR MUNICIPAL PURPOSES AS SURPLUS AND AUTHORIZING DISPOSAL OF SAID SURPLUS PROPERTY, AND DECLARING AN EMERGENCY.

WHEREAS, the City of Huber Heights is in possession of three vehicles assigned to the Police Division; and

WHEREAS, the property is no longer needed for municipal purposes; and

WHEREAS, the vehicles have been slated for trade-in towards the purchase of a new vehicle at a local car dealership.

NOW, THEREFORE, BE IT RESOLVED by the City Council of Huber Heights, Ohio that:

Section 1. Consistent with the provisions of the Ohio Revised Code Section 721.15 and applicable City codified ordinances and purchasing procedures, the following equipment is declared surplus, no longer needed for municipal purposes and authorization is hereby provided to dispose of the property consistent with the provisions of the Huber Heights Codified Ordinances.

ITEM	SERIAL NUMBER	ASSET TAG
2003 Chevy Trail Blazer	1GNDS13S532252048	PO1274
2002 Ford Explorer	1FMZU72K22UD48845	PO1344
2007 Chevy Impala	2G1WS55R379418702	PO1295

Section 2. This Resolution is hereby declared to be an emergency measure necessary to for the immediate preservation of the public peace, health, safety and welfare and for the further reason that the vehicles are awaiting trade-in; therefore, this Resolution shall be in full force and effect immediately upon its adoption by Council.

Passed by Council on the ______ day of _____________ , 2015;
______ Yeas; ______ Nays.

AUTHENTICATION:

______________________________ ______________________________
Clerk of Council Mayor

______________________________ ______________________________
Date Date

AI-2871 **New Business** K.

City Council Meeting Agenda **Police**

Meeting Date: 01/26/2015

Purchase of New Vehicles - Police Division

Submitted By:	Anthony Rodgers
Department:	City Council
Council Committee Review?:	Administration Committee
Date(s) of Committee Review:	01/20/2015
Audio-Visual Needs:	None
Emergency Legislation?:	Yes
Motion/Ordinance/ Resolution No.:	

Information

Agenda Item Description or Legislation Title

A Resolution Authorizing The City Manager To Purchase Vehicles For Use By The Police Division Through The Ohio Cooperative Purchasing Program, GSA AutoChoice, Or By Direct Negotiations, And Declaring An Emergency.
(first reading)

Purpose and Background

The Police Division must purchase vehicles each year in order to maintain a proper vehicle fleet rotation, which is critical to the operations of the Police Division.

Fiscal Impact

Source of Funds:	Police Budget
Cost:	$98,000
Recurring Cost? (Yes/No):	No
Funds Available in Current Budget? (Yes/No):	Yes

Financial Implications:

Failure to maintain the vehicle fleet rotation would impact the operations of the Police Division.

Attachments

Resolution

CITY OF HUBER HEIGHTS
STATE OF OHIO

RESOLUTION NO. 2015-R-

AUTHORIZING THE CITY MANAGER TO PURCHASE VEHICLES FOR USE BY THE POLICE DIVISION THROUGH THE OHIO COOPERATIVE PURCHASING PROGRAM, GSA AUTOCHOICE, OR BY DIRECT NEGOTIATIONS, AND DECLARING AN EMERGENCY.

WHEREAS, there is an ongoing need to purchase vehicles for use by the Police Division of the City of Huber Heights in order to provide continued service to the citizens; and

WHEREAS, purchases greater than $15,000 require authorization by the City Council; and

WHEREAS, there is a current offer to purchase new vehicles under the Ohio state term bid pricing, GSA pricing, or direct negotiations.

NOW, THEREFORE, BE IT RESOLVED by the City Council of Huber Heights, Ohio that:

Section 1. The City Manager is hereby authorized to order and purchase the vehicles either through the State bidding process, GSA Autochoice, or by direct negotiation with dealers in order to allow that the City obtain the lowest and best proposal for said vehicles.

Section 2. The City Manager is hereby authorized to contract for the purchase of four (4) vehicles by the Police Division at a cost not to exceed $98,000.

Section 3. Consistent with the provisions of the City Charter and the Huber Heights Codified Ordinances, the competitive bidding requirements are hereby waived.

Section 4. The authorization granted herein does ratify action previously taken by City Staff to ensure these contract prices can be taken advantage of by the City.

Section 5. This Resolution is hereby declared to be an emergency measure necessary to for the immediate preservation of the public peace, health, safety and welfare and for the further reason that a proper vehicle fleet is critical to the Police Division; therefore, this Resolution shall be in full force and effect immediately upon its adoption by Council.

Passed by Council on the ______ day of ______________ , 2015;
______ Yeas; ______ Nays.

AUTHENTICATION:

________________________________	________________________________
Clerk of Council	Mayor
________________________________	________________________________
Date	Date

AI-2866 **New Business** L.

City Council Meeting Agenda **Engineering**

Meeting Date: 01/26/2015

2015 Street Program - Solicit Bids

Submitted By:	Hanane Eisentraut		
Department:	Engineering	**Division:**	Engineering
Council Committee Review?:	Public Works Committee		
Date(s) of Committee Review:	01/20/2015		
Audio-Visual Needs:	None	**Emergency Legislation?:**	Yes
Motion/Ordinance/ Resolution No.:			

Information

Agenda Item Description or Legislation Title

A Resolution Authorizing The City Manager To Solicit Bids For The 2015 Street Improvement Program And Non-Concrete Work, And Declaring An Emergency.
(first reading)

Purpose and Background

This legislation will allow the City Manager to solicit bids for the 2015 Street Program. The Local Street Capital improvement Fund will be utilized to construct this project at a cost not to exceed $1,300,000. Plans and specifications will be prepared by the Engineering Division.

Fiscal Impact

Source of Funds:	Local Street Capital Improvement Fund
Cost:	$1,300,000
Recurring Cost? (Yes/No):	No
Funds Available in Current Budget? (Yes/No):	Yes
Financial Implications:	

Attachments

Resolution
Exhibit A

CITY OF HUBER HEIGHTS
STATE OF OHIO

RESOLUTION NO. 2015-R-

AUTHORIZING THE CITY MANAGER TO SOLICIT BIDS FOR THE 2015 STREET IMPROVEMENT PROGRAM AND NON-CONCRETE WORK, AND DECLARING AN EMERGENCY.

WHEREAS, City Staff have identified certain streets within the City which are in urgent need of repair; and

WHEREAS, the Public Works Committee has reviewed the necessity of repairing these streets and have favorably endorsed this listing; and

WHEREAS, Council has determined to proceed with the street program, as described in Exhibit A, during the 2015 construction season including reconstruction of the streets identified on the list, related underground utility repair costs, roadway earthwork and miscellaneous base and drainage work.

NOW, THEREFORE, BE IT RESOLVED by the City Council of Huber Heights, Ohio that:

Section 1. The City Manager is hereby authorized to solicit bids for the 2015 Street Improvement Program for the non-concrete work as described in Exhibit A attached hereto. The cost of this portion of the 2015 Street Improvement Program will not exceed $ 1,300,000.00.

Section 2. This Resolution is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety and welfare and for the further reason that it is imperative that bids be secured in a timely manner for this transportation improvement project in order to begin reconstruction work to enhance public safety for motorists and pedestrians on the City's streets; therefore, this Resolution shall be in full force and effect immediately upon its adoption by Council.

Passed by Council on the ______ day of _____________ , 2015;
______ Yeas; ______ Nays.

AUTHENTICATION:

______________________________ ______________________________
Clerk of Council Mayor

______________________________ ______________________________
Date Date

EXHIBIT A
CITY OF HUBER HEIGHTS
2015 STREET IMPROVEMENTS
PRELIMINARY LIST

1	Alter Road	from Hemingway (NI) to Celestine (EI) Base Repair, cold planing, curb and gutter replacement, asphalt repaving
2	Blackfoot Street	from Navajo (SI) to dead end Base Repair, cold planing, asphalt repaving
3	Bridgewater Road	from Taylorsville (NI) North to MCD driveway Entrance (Exclude bridge) Base Repair, cold planing, asphalt repaving
4	Cannondale Lane	from Deer Valley (NI) to Cul-de-sac Base Repair, cold planing, curb and gutter replacement, asphalt repaving
5	Chambersburg Road	from 200' West of Harshmanville to Celestine (WI) Base Repair, cold planing, curb and gutter replacement, asphalt repaving
6	Chatfield Place	from Deer Valley (SI) to Cul-de-sac Base Repair, cold planing, curb and gutter replacement, asphalt repaving
7	Cosner Drive	from Brandt (EI) to dead end Base Repair, cold planing, curb and gutter replacement, asphalt repaving
8	Deer Valley Drive	from Charlesgate (SI) to Trowbridge (WI) Base Repair, cold planing, curb and gutter replacement, asphalt repaving
9	Executive Boulevard	from Brandt (WI) to 5570 L.F west Base Repair, cold planing, curb and gutter replacement, asphalt repaving
10	Grovehill Drive	from Montague (EI) to Citadel (WI) Base Repair, cold planing, curb and gutter replacement, asphalt repaving

EXHIBIT A
CITY OF HUBER HEIGHTS
2015 STREET IMPROVEMENTS
PRELIMINARY LIST

11	Harshmanville Road	from Longford (SI) to Chambersburg (NI) Base Repair, cold planing, curb and gutter replacement, asphalt repaving
12	Hemingway Road	from Haddon (EI) to Alter (WI) Base Repair, cold planing, curb and gutter replacement, asphalt repaving
13	Loblolly Drive	from Trowbridge (EI) to dead end Base Repair, cold planing, curb and gutter replacement, asphalt repaving
14	Montague Road	from Larcomb (SI) to Grovehill (SI) Base Repair, cold planing, curb and gutter replacement, asphalt repaving
15	Mount Hood	from Taylorsville (NI) to beginning of width change Base Repair, cold planing, curb and gutter replacement, asphalt repaving
16	Pennyston Avenue	from Pitcairn (WI) to Old Troy Pike (EI) Base Repair, cold planing, curb and gutter replacement, asphalt repaving
17	Powell Road	from Old Troy Pike West to FOP Entrance Base Repair, cold planing, curb and gutter replacement, asphalt repaving
18	Rittenhouse Drive	from Tomberg (EI) to Harshmanville (WI) Base Repair, cold planing, curb and gutter replacement, asphalt repaving
19	Rittenhouse Drive	from Harshmanville (EI) to Rice (WI) Base Repair, cold planing, curb and gutter replacement, asphalt repaving
20	San Juan Court	from Brandt (WI) to San Fernando (EI) Base Repair, cold planing, asphalt repaving

AI-2868 **New Business** M.

City Council Meeting Agenda **Engineering**

Meeting Date: 01/26/2015

Acceptance of Deeds and Easements

Submitted By:	Marlene Pullen		
Department:	Engineering	**Division:**	Engineering
Council Committee Review?:	Public Works Committee		
Date(s) of Committee Review:	01/20/2015		
Audio-Visual Needs:	None	**Emergency Legislation?:**	No
Motion/Ordinance/ Resolution No.:			

Information

Agenda Item Description or Legislation Title

A Resolution Accepting Certain Parcels Of Land And Easements Within The City Of Huber Heights For Public Purposes.
(first reading)

Purpose and Background

Each year, the City receives various deeds and easements for public right-of-ways and other purposes from private individuals and corporations for public usage throughout the City. It is necessary for City Council to accept these lands for the stated purpose. This list does not generally include plats or subdivisions which are accepted by Council at the time the work is complete within these plats.

Fiscal Impact

Source of Funds:	N/A
Cost:	N/A
Recurring Cost? (Yes/No):	N/A
Funds Available in Current Budget? (Yes/No):	N/A
Financial Implications:	

Attachments

Resolution
Exhibit A

CITY OF HUBER HEIGHTS
STATE OF OHIO

RESOLUTION NO. 2015-R-

ACCEPTING CERTAIN PARCELS OF LAND AND EASEMENTS WITHIN THE CITY OF HUBER HEIGHTS FOR PUBLIC PURPOSES.

WHEREAS, owners of various lands have offered deeds and easements to the City for various public purposes; and

WHEREAS, City Council wishes to accept these parcels and easements in order to provide City services to residents and motorists in the community.

NOW THEREFORE, BE IT RESOLVED: by the City Council of Huber Heights that:

Section 1. Easements and deeds as shown in Exhibit A attached hereto are accepted for public purposes as described therein.

Section 2. The City Manager is hereby directed to advise affected departments and divisions of the City of this public acceptance of these lands and easements so that proper maintenance can be performed.

Section 3. The Resolution shall take effect thirty (30) days after its adoption by Council.

Passed by Council on the ______ day of ______________ , 2015;
______ Yeas; ______ Nays.

AUTHENTICATION:

______________________________	______________________________
Clerk of Council	Mayor
______________________________	______________________________
Date	Date

EXHIBIT A

Recorded Deeds and Easements 2014

Name	File #	Date Rec.	Purpose
Andrew K. and Amy J. Loff	2014-00012514	3/13/14	Water Main Easement
Baps Dayton, LLC	2014-00012515	3/13/14	Water Main Easement
John W. and Esther Kaye Snow	2014-00012513	3/13/14	Water Main Easement
Paul J. and Carol L. Tatone	2014-00046553	9/5/14	Easement for right-of-way

AI-2869 **New Business** N.

City Council Meeting Agenda **Engineering**

Meeting Date: 01/26/2015

Proposed Amendments - Section 911.02 - Duty To Repair Curbs and Sidewalks - Bikepaths - Huber Heights Codified Ordinances

Submitted By:	Marlene Pullen		
Department:	Engineering	**Division:**	Engineering
Council Committee Review?:	Public Works Committee		
Date(s) of Committee Review:	01/20/2015		
Audio-Visual Needs:	None	**Emergency Legislation?:**	Yes
Motion/Ordinance/ Resolution No.:			

Information

Agenda Item Description or Legislation Title

An Ordinance To Amend Part Nine, Title One, Chapter 911, Section 911.02 - Duty To Repair And Clean Sidewalks And Curbs Of The City Code Of Huber Heights Ohio, And Declaring An Emergency.
(first reading)

Purpose and Background

City Staff finds it necessary to add a section to the City Code for responsibility and repair of bikepaths since there will be such sections of sidewalk in the City. This amendment will make clear the duty and repair issues for residents.

Fiscal Impact

Source of Funds:	N/A
Cost:	N/A
Recurring Cost? (Yes/No):	N/A
Funds Available in Current Budget? (Yes/No):	N/A
Financial Implications:	

Attachments

Ordinance

CITY OF HUBER HEIGHTS
STATE OF OHIO

ORDINANCE NO. 2015-O-

TO AMEND PART NINE, TITLE ONE, CHAPTER 911, SECTION 911.02 - DUTY TO REPAIR AND CLEAN SIDEWALKS AND CURBS OF THE CITY CODE OF HUBER HEIGHTS OHIO, AND DECLARING AN EMERGENCY.

WHEREAS, the City of Huber Heights has adopted rules and regulations for sidewalks and which are codified in Chapter 911 at Section 911.02; and

WHEREAS, City Staff has reviewed the current sidewalk provisions of the Huber Heights Code, and has recommended a change; and

WHEREAS, the City Council of Huber Heights has determined that it is in the best interest of the citizens of Huber Heights to amend a certain provision of Chapter 911 as provided herein.

NOW, THEREFORE, BE IT ORDAINED by the City Council of Huber Heights, Ohio, that:

Section 1. Part Nine, Title One, Chapter 911, Section 911.02, “Duty to Repair and Clean Sidewalks and Curbs” of the City Code of Huber Heights, Ohio, is hereby amended to add Section (e) to read as follows:

(e) Concrete sidewalk that is located in front of a zoned residential property and is designated by the City as a Bikepath is to be repaired or replaced by the City when such repairs are selected or required by the City. A City Bikepath is defined as an 8’ wide concrete sidewalk located within the street right-of-way and is part of a designated path that is to be used for bicycles or pedestrians. It is located outside the traveled way and physically separate from motorized vehicular traffic. The Bikepath also may be used by skaters, joggers, users of manual and motorized wheelchairs, and other authorized motorized and non-motorized users. Maintenance such as cleaning and snow removal is to be provided by the property owner of the lot in which the Bikepath is located.

Section 2. This Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety and welfare and in order to help residents with sidewalk and curb duty and repair issues at the earliest possible time; therefore, this Ordinance shall take full force and effect immediately upon its adoption by Council.

Passed by Council on the ______ day of _____________ , 2015;
______ Yeas; ______ Nays.

AUTHENTICATION:

______________________________	______________________________
Clerk of Council	Mayor
______________________________	______________________________
Date	Date