

CITY OF HUBER HEIGHTS
STATE OF OHIO

City Council Work Session
Hybrid In-Person/Remote Meeting

June 22, 2021
6:00 P.M.
City Hall – Council Chambers – 6131 Taylorsville Road

1. **Call Meeting To Order/Roll Call**

2. **Approval of Minutes**

   A. June 8, 2021

3. **Work Session Topics Of Discussion**

   A. City Manager Report

   B. Purchase of Crash Attenuator - Public Works Division

   C. Increase Spending Limits - Agile Networks - Police Division

   D. Bulletproof Vest Grant - Police Division

   E, 2022 Tax Budget

   F. Issuance of Bonds

   G. Horizon Line Development, Inc. - Development Agreement

H. Enterprise Fleet Management Services

I. Energy Performance Project - Change Order #3

J. Dial Park Improvements

K. Liquor Permit #03207030300 - Bob Evans - 7670 Brandt Pike

L. Request For Proposals - City Manager Search

4. **Adjournment**

AI-7672 **Topics of Discussion** **B.**

Council Work Session

Meeting Date:	06/22/2021		
Purchase of Crash Attenuator - Public Works Division			
Submitted By:	Linda Garrett		
Department:	Public Works	**Division:**	Public Works
Council Committee Review?:	Council Work Session	**Date(s) of Committee Review:**	06/22/2021
Audio-Visual Needs:	None	**Emergency Legislation?:**	No
Motion/Ordinance/ Resolution No.:			

Agenda Item Description or Legislation Title

Purchase of Crash Attenuator - Public Works Division

Purpose and Background

The Public Works Division is requesting authorization to purchase one (1) Scorpion II crash attenuator.

Fiscal Impact

Source of Funds:	226.401.5740
Cost:	$25,995
Recurring Cost? (Yes/No):	No
Funds Available in Current Budget? (Yes/No):	Yes
Financial Implications:	

Attachments

Resolution

CITY OF HUBER HEIGHTS
STATE OF OHIO

RESOLUTION NO. 2021-R-

AUTHORIZING THE CITY MANAGER TO PURCHASE ONE (1) SCORPION II CRASH ATTENTUATOR AND APPURTENANT EQUIPMENT THERETO FOR THE PUBLIC WORKS DIVISION AND WAIVING THE FORMAL BIDDING REQUIREMENTS.

WHEREAS, the City of Huber Heights Public Works Division recognizes its obligation and need to safely maintain City properties and for efficient operations; and

WHEREAS, pricing for a Scorpion II crash attenuator and appurtenant equipment meeting the specifications of the Public Works Division is available through the sole source distributor A&A Safety, 1126 Ferris Road, Amelia, Ohio, 45102-4080; and

WHEREAS, the funds for purchase are available within the Public Works Division capital funds for Fiscal Year 2021.

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

Section 1. In accordance with Section 171.12(a)(1) of the Huber Heights Codified Ordinances, Council hereby waives the requirements to formally bid the purchase of one (1) Scorpion II crash attenuator.

Section 2. The City Manager is hereby authorized to purchase one (1) Scorpion II crash attenuator and appurtenant equipment thereto for the Public Works Division from A&A Safety for Fiscal Year 2021 in an amount not to exceed $26,000.00.

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 in meetings open to the public and in compliance with all legal requirements including Section 121.22 of the Ohio Revised Code.

Section 4. This Resolution shall go into effect upon its passage as provided by law and the Charter of the City of Huber Heights.

Passed by Council on the _____ day of _____ , 2021;
_____ Yeas; _____ Nays.

Effective Date:

AUTHENTICATION:

_____ _____
Clerk of Council Mayor

_____ _____
Date Date

AI-7651 **Topics of Discussion** C.

Council Work Session

Meeting Date: 06/22/2021

Increase Spending Limits - Agile Networks - Police Division

Submitted By:	Maria Beisel		
Department:	Police	**Division:**	Police
Council Committee Review?:	Council Work Session	**Date(s) of Committee Review:**	06/22/2021
Audio-Visual Needs:	None	**Emergency Legislation?:**	No
Motion/Ordinance/ Resolution No.:			

Agenda Item Description or Legislation Title

Increase Spending Limits - Agile Networks - Police Division

Purpose and Background

Agile Networks supplies crucial phone and radio connections to Montgomery County, Englewood and Vandalia as primary and secondary communications links. Two additional circuits have been added to link Huber Heights to the RDC Primary and RDC Secondary. This work necessitates an increase in the 2021 spending limits for Agile Networks to $30,000.

Fiscal Impact

Source of Funds:	911 Fund
Cost:	$30,000
Recurring Cost? (Yes/No):	Yes
Funds Available in Current Budget? (Yes/No):	Yes

Financial Implications:

Anticipated increase was expected, but not available during planning for the 2021 City Budget. Funds are available in 911 Fund.

Attachments

Resolution

CITY OF HUBER HEIGHTS
STATE OF OHIO

RESOLUTION NO. 2021-R-

TO INCREASE THE NOT TO EXCEED AMOUNT FOR VENDOR AGILE NETWORKS

WHEREAS, the citizens of Huber Heights require the efficient and effective delivery of municipal services, and

WHEREAS, the Police Division utilizes sole source services through Agile Networks for crucial phone and radio connections to Montgomery County, Vandalia and Englewood; and two additional circuits have been added to link Huber Heights to the Montgomery County Regional Dispatch Center.

WHEREAS, all City expenditures in excess of $25,000 require authorization by City Council.

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

Section 1. City Council authorizes the increased spending limit with vendor Agile Networks at a not to exceed cost of $30,000.00 for Fiscal Year 2021.

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 shall go into effect upon its passage as provided by law and the Charter of the City of Huber Heights.

Passed by Council on the _____ day of _____ , 2021;
_____ Yeas; _____ Nays.

Effective Date:

AUTHENTICATION:

_____ _____
Clerk of Council Mayor

_____ _____
Date Date

AI-7670 **Topics of Discussion** D.

Council Work Session

Meeting Date: 06/22/2021

Bulletproof Vest Grant - Police Division

Submitted By: Matt Dulaney

Department: Police **Division:** Police

Council Committee Review?: Council Work Session **Date(s) of Committee Review:** 06/22/2021

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

Motion/Ordinance/ Resolution No.:

Agenda Item Description or Legislation Title

Bulletproof Vest Grant - Police Division

Purpose and Background

The purpose of this agenda item is to apply for a grant from the U.S. Department of Justice and accept reimbursement of monies towards the purchase of bulletproof vests. The grant will reimburse up to 1/2 of the cost ($800.00 cap) towards new body armor purchased for both new hires and officers who are due for new vests. The grant will determine the number of vests it covers depending on the funds available. Each vest purchased has a five-year expiration.

Fiscal Impact

Source of Funds: Police Fund

Cost: $13,500

Recurring Cost? (Yes/No): No

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

Financial Implications:

This is an approximate amount needed for 14 new vests. The grant will determine how many vests will be covered, and the grant will reimburse one half of the amount of each vest covered up to a capped cost of $800 for each vest.

Attachments

Resolution

CITY OF HUBER HEIGHTS
STATE OF OHIO

RESOLUTION NO. 2021-R-

AFFIRMING THE CITY MANAGER'S APPLICATION FOR AND AUTHORIZING THE ACCEPTANCE OF GRANT FUNDS FROM THE BUREAU OF JUSTICE ASSISTANCE BULLETPROOF VEST PARTNERSHIP FOR THE PURPOSE OF PURCHASING REPLACEMENT PROTECTIVE BODY ARMOR.

WHEREAS, the City of Huber Heights supports the need for additional police related equipment, specifically bulletproof vests; and

WHEREAS, the U.S Bureau of Justice Assistance provides the allocation of funding in the form of the Bulletproof Vest Partnership program for purchasing new or additional bulletproof vests; and

WHEREAS, the Bureau of Justice Assistance Bulletproof Vest Partnership Act of 2000 requires that funding priority be given to jurisdictions with populations under 100,000; and

WHEREAS, the Huber Heights Police Division has been a past recipient of Bulletproof Vest Partnership funds which provide for a 50 percent reimbursement to the City for the purchase of bulletproof vests; and

WHEREAS, the required submittal deadline for submitting a grant application to the Bureau of Justice Assistance Bulletproof Vest Program was asynchronous to the Huber Heights City Council meeting schedule.

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

Section 1. The City of Huber Heights hereby endorses and supports the submission of an application for the Bulletproof Vest Partnership program and authorizes the necessary actions to implement said grant, if approved by the U.S. Bureau of Justice Assistance.

Section 2. The City Manager's June 10, 2021 application to the Bulletproof Vest Partnership program is hereby affirmed and, if awarded, is further authorized to enter into an agreement with the U.S. Bureau of Justice Assistance to administer the grant to implement the Bulletproof Vest Partnership program.

Section 3. Reimbursement made to the Police Division under this grant will be re-appropriated to the Police Fund.

Section 4. 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 5. This Resolution shall go into effect upon its passage as provided by law and the Charter of the City of Huber Heights.

Passed by Council on the _____ day of _____ , 2021;
_____ Yeas; _____ Nays.

Effective Date:

AUTHENTICATION:

_____ _____
Clerk of Council Mayor

_____ _____
Date Date

AI-7678 **Topics of Discussion** **E,**

Council Work Session

Meeting Date: 06/22/2021

2022 Tax Budget

Submitted By: Jim Bell

Department: Finance **Division:** Accounting

Council Committee Review?: Council Work Session

Date(s) of Committee Review: 06/22/2021

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

Motion/Ordinance/ Resolution No.:

Agenda Item Description or Legislation Title

2022 Tax Budget

Purpose and Background

This legislation is a formality to adopt the 2022 Tax Budget. The resolution is to adopt the Tax Budget for Fiscal Year 2022 and this adoption is the beginning of the budget process. The Miami County Auditor is requesting that the City submit the Tax Budget as a proof of the need for Miami County's distribution of property taxes and Local Government Fund revenue to the City. A public hearing on the 2022 Tax Budget is scheduled for the June 28, 2021 City Council Meeting. The 2022 Tax Budget is required to be submitted to the Miami County Auditor by July 20, 2021. City Staff respectfully request a first reading and adoption of the legislation at the June 28, 2021 City Council Meeting as non-emergency legislation.

Fiscal Impact

Source of Funds: Various Funds

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 at this time. This preliminary 2022 Tax Budget only provides revenue estimates. This will not be the final 2022 Appropriations Budget which will be presented to City Council later this year.

Attachments

Resolution

Exhibit A

CITY OF HUBER HEIGHTS
STATE OF OHIO

RESOLUTION NO. 2021-R-

ADOPTING A PRELIMINARY TAX BUDGET FOR REVENUES OF THE CITY OF HUBER HEIGHTS, OHIO FOR THE PERIOD BEGINNING JANUARY 1, 2022 AND ENDING DECEMBER 31, 2022.

WHEREAS, a budget process is required by the State of Ohio for each local government to demonstrate the need for taxes which it plans to levy and which is used in most counties to allocate the Local Government Fund to jurisdictions within the County; and

WHEREAS, some County Budget Commissions require a Preliminary Tax Budget to be submitted by municipalities within their jurisdictions in July of each year; and

WHEREAS, the Montgomery County Budget Commission has waived the requirement to file a Preliminary Tax Budget; and

WHEREAS, the Miami County Budget Commission requires the City to file a Preliminary Tax Budget: and

WHEREAS, the Preliminary Tax Budget has been made conveniently available to public inspection for at least ten (10) days by having at least two (2) copies thereof on file in the Office of the Director of Finance; and

WHEREAS, the Council has held a public hearing on said Tax Budget of which public notice was given by publication not less than ten (10) days previous to the date thereof; and

WHEREAS, such Tax Budget must be adopted on or before the fifteenth day of July; and

WHEREAS, the City Council of the City of Huber Heights finds the Tax Budget for the year 2022, as proposed and made part hereof, satisfactory and acceptable; and

WHEREAS, the Preliminary Tax Budget is not a final budget, and is used primarily as an estimate and to show that the municipality will still need its share of the Local Government Fund money that is distributed by the County Budget Commissions.

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

Section 1. The Preliminary Tax Budget of the City of Huber Heights for the Fiscal Year beginning January 1, 2022 is hereby approved as set forth in Exhibit A hereto.

Section 2. The Director of Finance is hereby authorized and directed to submit the approved Preliminary Tax Budget for 2022 and a certified copy of this Resolution to the Miami County Auditor in accordance with statute and also send a copy to the Montgomery County Auditor.

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 in meetings open to the public and in compliance with all legal requirements including Section 121.22 of the Ohio Revised Code.

Section 4. This Resolution shall go into effect upon its passage as provided by law and the Charter of the City of Huber Heights.

Passed by Council on the _____ day of _____ , 2021;
_____ Yeas; _____ Nays.

Effective Date:

AUTHENTICATION:

Clerk of Council	Mayor
Date	Date

EXHIBIT A

CITIES/VILLAGES TAX BUDGET-2022

Council of the City of Huber Heights,
To: Montgomery County Auditor:
Miami County Auditor:

_____, 2021

The Council of said City hereby submits its annual Budget for the year commencing January 1st, **2022** for consideration of the Montgomery and Miami County Budget Commissions pursuant to Section 5705.281 of the Revised Code.

_____
Director of Finance

FUND	Estimated Unencumbered Balance January 1, 2022	Property Taxes	Undivided Local Govt & LGRA Funds	Other Sources	Total
#101 GENERAL FUND	$8,756,033.00			$11,190,500.00	$19,946,533.00
SPECIAL REVENUE FUNDS					
#202 Motor Vehicle	$384,668.00	$0.00	$0.00	$320,776.00	$705,444.00
#203 Gasoline Tax	$1,969,794.00	$0.00	$0.00	$2,781,537.00	$4,751,331.00
#207 Lighting Districts	$532,896.00	$0.00	$0.00	$330,108.00	$863,004.00
#209 Police Fund	$372,781.00		$0.00	$7,376,123.00	$7,748,904.00
#210 Fire Operating	$426,665.00		$0.00	$7,158,919.00	$7,585,584.00
#211 Drug Enforcement	$2,190.00	$0.00	$0.00	$2,000.00	$4,190.00
#212 Law Enforcement	$10,108.00	$0.00	$0.00	$9,600.00	$19,708.00
#214 State Highway Maint.	$35,629.00	$0.00	$0.00	$199,640.00	$235,269.00
#216 County Permissive Tax	$180,216.00	$0.00	$0.00	$94,000.00	$274,216.00
#217 City Permissive Tax	$539,147.00	$0.00	$0.00	$260,000.00	$799,147.00
#218 Park & Recreation	$234,045.00	$0.00	$0.00	$1,328,600.00	$1,562,645.00
#219 Nature Works Grant Fund	$0.00	$0.00	$0.00	$0.00	$0.00
#222 CDBG	$0.00	$0.00	$0.00	$0.00	$0.00
#226 Local Street Operating	$2,656,361.00	$0.00	$0.00	$2,252,143.00	$4,908,504.00
#238 Byrne Memorial	$0.00	$0.00	$0.00	$0.00	$0.00
#240 Montgomery County TIF	$4,835,418.00	$0.00	$0.00	$1,990,838.00	$6,826,256.00
#242 Law Enforcement Assistance	$0.00	$0.00	$0.00	$0.00	$0.00
#243 Miami County TIF	$921,607.00	$0.00	$0.00	$927,254.00	$1,848,861.00
#244 Miami County TIF DEC Fund	$59.00	$0.00	$0.00	$925,928.00	$925,987.00
#245 Miami County West TIF Fund	$138,476.00	$0.00	$0.00	$140,460.00	$278,936.00
#246 Mont. County Central TIF Fund	$10,831.00	$0.00	$0.00	$10,000.00	$20,831.00
#247 Mont. County South TIF Fund	$227,662.00	$0.00	$0.00	$153,600.00	$381,262.00
#248 Miami Cty North Firehouse TIF F	$59,229.00	$0.00	$0.00	$60,130.00	$119,359.00
#291 American Rescue Plan Fund	$3,750,000.00	$0.00	$0.00	$3,750,000.00	$7,500,000.00
Total Special Revenue	$17,287,782.00	$0.00	$0.00	$30,071,656.00	$47,359,438.00
DEBT SERVICE FUNDS					
#305 Sp. Assess. Bond Ret.	$636,787.00	$0.00	$0.00	$1,380,568.00	$2,017,355.00
#308 General Bond Ret.	$346,446.00	$0.00	$0.00	$2,370,898.00	$2,717,344.00
Total Debt Service	$983,233.00	$0.00	$0.00	$3,751,466.00	$4,734,699.00

The Montgomery and Miami County Auditor's Office will provide the Property Tax and Local Government Revenue. Please do not include these amounts in your estimates.
This Budget must be adopted by the Council or other legislative body on or before July 15, 2021, and two copies must be submitted to the County Auditor by July 20, 2021.

CITIES/VILLAGES TAX BUDGET

FUND	Unencumbered Balance January 1, 2022	Property Taxes	Undivided Local Govt & LGRA Funds	Other Sources	Total
CAPITAL PROJECTS					
#406 Capital Improvements	$5,091,061.00	$0.00	$0.00	$1,408,806.00	$6,499,867.00
#410 Transformative Economic Dev	$1,258,632.00	$0.00	$0.00	$11,974,500.00	$13,233,132.00
#421 Issue 2	$12,182.00	$0.00	$0.00	$0.00	$12,182.00
#427 EDGE	$0.00	$0.00	$0.00	$20,000.00	$20,000.00
#431 Fire Capital/Equip.	$686,943.00	$0.00	$0.00	$733,646.00	$1,420,589.00
#433 Local Street Capital	$2,100,917.00	$0.00	$0.00	$1,783,230.00	$3,884,147.00
#434 Federal Equity Sharing	$29,017.00	$0.00	$0.00	$20,800.00	$49,817.00
#436 Asist to Firefighter	$0.00	$0.00	$0.00	$0.00	$0.00
#437 Energy Conservation Grant	$25.00			$20.00	$45.00
#454 Carriage Trails Infrastructure	$204,771.00	$0.00	$0.00	$500,010.00	$704,781.00
Total Capital Proj	$9,383,548.00	$0.00	$0.00	$16,441,012.00	$25,824,560.00
ENTERPRISE FUNDS					
#501 Water Operating	$5,215,020.00	$0.00	$0.00	$6,687,139.00	$11,902,159.00
#502 Water Construction	$0.00	$0.00	$0.00	$0.00	$0.00
#503 Water R & I	$604,824.00	$0.00	$0.00	$77,500.00	$682,324.00
#504 Water Util. Res.	$1,180,751.00	$0.00	$0.00	$1,098,000.00	$2,278,751.00
#505 Water Bond Service	$624,313.00	$0.00	$0.00	$1,961,108.00	$2,585,421.00
#506 Water Bond Reserve	$1,275,547.00	$0.00	$0.00	$900.00	$1,276,447.00
#551 Sewer Operating	$10,262,940.00	$0.00	$0.00	$4,387,500.00	$14,650,440.00
#552 Sewer Acq/Construction	$247,291.00	$0.00	$0.00	$160,834.00	$408,125.00
#571 Storm Water Management	$396,839.00	$0.00	$0.00	$672,500.00	$1,069,339.00
Total Ent/Utility	$19,807,525.00	$0.00	$0.00	$15,045,481.00	$34,853,006.00
INTERNAL SERVICE FUNDS	$0.00	$0.00	$0.00	$0.00	$0.00
TRUST & FIDUCIARY					
#723 Fire Insurance Deposit	$0.00	$0.00	$0.00	$0.00	$0.00
#732 Unclaimed Monies	$0.00	$0.00	$0.00	$0.00	$0.00
#802 Cash Surety Fund	$162,875.00	$0.00	$0.00	$225,000.00	$387,875.00
Total Trust & Fiduciary	$162,875.00	$0.00	$0.00	$225,000.00	$387,875.00
BUDGET GRAND TOTAL	$56,380,996.00	$0.00	$0.00	$76,725,115.00	$133,106,111.00

Exhibit of Bonds, Notes, and Certificates of Indebtedness Outstanding January 1st of the Coming Year,
and Bond Retirement Fund Requirements, for the coming year. CITIES/VILLAGES TAX BUDGET-2022

Purpose of Bonds and Notes	Council of the City of Huber Heights, Date of Issue		Amount Outstanding 1/1/2022	Amount Required for Principal & Interest in 2022	Amount Required from Other Sources in 2022	Total Required from Property Taxes in 2022
INSIDE 10 MILL LIMIT	January 1st, 2022 for consideration of the					
2007 Various Purpose - Brandt VI Refunded 2017	Spec. Assess.	12-Dec-17	$548,950.00	$90,850.00	$90,850.00	$0.00
2008 Carriage Trails Parkway Refunded 2017	Spec. Assess.	12-Dec-17	$4,502,050.00	$609,250.00	$609,250.00	$0.00
2017 Carriage Trails Infrastructure	Spec. Assess.	18-May-17	$2,801,452.50	$129,990.00	$129,990.00	$0.00
2017 Red Buckeye Drive	Spec. Assess.	12-Dec-17	$2,256,650.00	$64,650.00	$64,650.00	$0.00
2017 Carriage Trails Special Assessment Infrastructure	Spec. Assess.	12-Dec-17	$537,600.00	$89,000.00	$89,000.00	$0.00
TOTAL			$10,646,702.50	$983,740.00	$983,740.00	$0.00
2013 Income Tax Revenue Bonds - Rec Center	G.O. - TIF	08-Nov-13	$9,595,600.00	$547,712.50	$547,712.50	$0.00
TOTAL			$9,595,600.00	$547,712.50	$547,712.50	$0.00
2010B Various Purpose - Carriage Trails Blvd Final Coat	G.O. - TIF	28-Oct-10	$558,550.50	$62,725.00	$62,725.00	$0.00
2010B Various Purpose - Carriage Trails - DEC Infrastructure	G.O. - TIF	28-Oct-10	$891,852.00	$101,319.00	$101,319.00	$0.00
2010B Various Purpose - Carriage Trails - 09 BAN	G.O. - TIF	28-Oct-10	$1,665,179.88	$187,555.92	$187,555.92	$0.00
2010B Various Purpose - Carriage Trails - 10 BAN DEC Infrastructure	G.O. - TIF	28-Oct-10	$2,504,838.62	$282,130.08	$282,130.08	$0.00
2008 Public Access Acquisition Bond Refunded 2017	G.O. - TIF	12-Dec-17	$1,060,900.00	$144,850.00	$144,850.00	$0.00
2015 Capital Facilities Notes - 3rd Fire Station	G.O. - TIF	01-Dec-15	$2,247,060.00	$197,880.00	$197,880.00	$0.00
2017 Carriage Trails Note Retirement - TIF	G.O. - TIF	18-May-17	$4,860,226.00	$366,399.50	$366,399.50	$0.00
2017 Carriage Trails DEC Amendment #19 - TIF	G.O. - TIF	18-May-17	$993,489.50	$76,760.50	$76,760.50	$0.00
2017 Various Purpose - Music Center - TIF	G.O. - TIF	18-May-17	$11,090,802.50	$517,280.00	$517,280.00	$0.00
2017 Carriage Trails TIF Infrastructure	G.O. - TIF	12-Dec-17	$2,195,250.00	$77,350.00	$77,350.00	$0.00
2020 Land Acquisition Notes - Non-Tax BAN	G.O. - TIF	18-Nov-20	$3,543,000.00	$3,578,332.00	$3,578,332.00	$0.00
2020 Land Acquisition Notes - Taxable BAN	G.O. - TIF	18-Nov-20	$4,262,000.00	$4,287,501.00	$4,287,501.00	$0.00
2021 Various Purpose - Music Center/Veterans Memorial	G.O. - TIF	01-Jun-21	$7,730,000.00	$511,150.00	$511,150.00	$0.00
TOTAL			$43,603,149.00	$10,391,233.00	$10,391,233.00	$0.00
OUTSIDE 10 MILL LIMIT:						
1995 Water Revenue Bonds	Revenue	15-Sep-1995	$6,105,000.00	$1,205,000.00	$1,205,000.00	$0.00
2013B Taxable Bonds - Water Meter Reimb.	Revenue	3-Oct-2013	$700,260.00	$165,260.00	$165,260.00	$0.00
2013A Improvement Bonds - Water Tower Financing	Revenue	3-Oct-2013	$6,213,093.76	$175,125.00	$175,125.00	$0.00
2013A Improvement Bonds - Water Line Construction & Expansion	Revenue	3-Oct-2013	$892,125.02	$25,150.00	$25,150.00	$0.00
2007 Various Purpose - Sewer Construction Refunded 2017	Revenue	12-Dec-17	$463,250.00	$72,600.00	$72,600.00	$0.00
2014 Water System Refunding Bonds - Refund 2005 Water Rev. Bds.	Revenue	09-Oct-14	$9,843,337.50	$253,862.50	$253,862.50	$0.00
TOTAL			$24,217,066.28	$1,896,997.50	$1,896,997.50	$0.00
SIB Loan 410 - State Rt 202/I-70 Interchange Refinanced 4/25/13		1/1/2004	1,101,051.18	$95,743.58	$95,743.58	$0.00
SIB Loan 510 -State Rt 201/I-70 Interchange Refinanced 4/25/13		1/1/2004	571,124.03	$49,662.96	$49,662.96	$0.00
SIB Loan 140017 - Music Center Parking Facility		9/15/2014	3,574,122.71	$274,932.51	$274,932.51	$0.00
SIB Loan 190017 - Carriage Trails Improvements 2019		6/15/2019	1,033,649.18	$82,442.65	$82,442.65	$0.00
SIB Loan 200007 - Carriage Trails & Windbrooke Improvements 2020		12/16/2019	1,324,580.00	$95,773.48	$95,773.48	$0.00
TOTAL			7,604,527.10	$598,555.18	$598,555.18	$0.00

CITIES/VILLAGES TAX BUDGET

Schedule A

Summary of Amounts required from General Property Tax approved by Budget Commission and County Auditor's Estimated Tax Rates

FUND Include only those funds which are requesting general prop. tax revenue	Amt. approved by Budget Comm. inside 10M Limitation	County Auditor's Estimate of Tax Rate to be Levied
GOVERNMENTAL FUNDS		
GENERAL FUND		
POLICE FUND		
FIRE FUND		
BOND RETIREMENT FUND		
Note: to be completed by County Auditor		
TOTAL ALL FUNDS		

CITIES/VILLAGES TAX BUDGET
Schedule B
Levies Outside 10 Mill Limitation Exclusive of Debt Levies

FUND	Maximum Rate Authorized to be Levied	County Auditor's Estimate of Yield of Levy (Carry to Schedule A, Column II)
GENERAL FUND:		
Current Expense Levy authoried by voters on ____/____/____ not to exceed _____ years.		
TOTAL GENERAL FUND OUTSIDE 10 MILL LIMIT		
SPECIAL LEVIES FUNDS:		
Police Levy authorized by voters on 6/8/82 not to exceed CONTINUING years.	2.37	
Police Levy authorized by voters on 6/8/83 not to exceed CONTINUING years.	0.63	
Police Levy authorized by voters on 5/7/85 not to exceed CONTINUING years.	1.50	
Police Levy authorized by voters on 11/3/81 not to exceed CONTINUING years.	1.00	
Fire Levy authorized by voters on 11/3/81 not to exceed CONTINUING years.	0.79	
Fire Levy authorized by voters on 11/3/81 not to exceed CONTINUING years.	0.37	
Fire Levy authorized by voters on 6/7/83 not to exceed CONTINUING years.	0.29	
Fire Levy authorized by voters on 5/8/84 not to exceed CONTINUING years.	0.42	
Fire Levy authorized by voters on 11/6/84 not to exceed CONTINUING years.	0.17	
Fire Levy authorized by voters on 5/7/85 not to exceed CONTINUING years.	2.25	

AI-7677 **Topics of Discussion** F.

Council Work Session

Meeting Date: 06/22/2021

Issuance of Bonds

Submitted By: Jim Bell

Department: Finance

Council Committee Review?: Council Work Session **Date(s) of Committee Review:** 06/22/2021

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

Motion/Ordinance/ Resolution No.:

Agenda Item Description or Legislation Title

Issuance of Bonds

Purpose and Background

This legislation is to authorize the refunding of existing bonds in the amount of $7,000,00 at lower interest rates, not extending the original term of the bonds, and providing an estimated savings of $1,400,000, or an average annual savings of $83,000. The current interest rate on the 2013 bonds is 4.59% and the estimated new interest rate is 2.30% (as of 6/16/21). These notes were originally issued in 2013 to fund the construction of the aquatic center and will mature in 2038.

Fiscal Impact

Source of Funds: Bonds

Cost: $7,000,000

Recurring Cost? (Yes/No): No

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

Financial Implications:

The current bonds were originally issued in 2013 to fund the construction of the aquatic center. The City has the ability to call these bonds and refinance them in the maximum principal amount of $7,000,000 for the purpose of paying the costs of refunding these bonds previously issued by the City and recognize significant savings by virtue of lower interest rates.

Attachments

Ordinance

CITY OF HUBER HEIGHTS
STATE OF OHIO

ORDINANCE NO. 2021-O-

PROVIDING FOR THE ISSUANCE AND SALE OF BONDS IN THE MAXIMUM PRINCIPAL AMOUNT OF $7,000,000 FOR THE PURPOSE OF PAYING THE COSTS OF REFUNDING BONDS PREVIOUSLY ISSUED BY THE CITY FOR THE PURPOSE OF PAYING THE COSTS OF IMPROVING THE CITY'S MUNICIPAL RECREATION FACILITIES BY CONSTRUCTING, EQUIPPING AND FURNISHING A MULTI-PURPOSE MUNICIPAL RECREATION COMPLEX TO INCLUDE AMONG OTHER THINGS AN AQUATIC CENTER, ATHLETIC PLAYING FIELDS, OUTDOOR AMPHITHEATER, RECREATIONAL TRAILS, PICNIC SHELTERS, PLAYGROUNDS, DOG PARK, AND RELATED FACILITIES, INCLUDING THE ACQUISITION OF REAL PROPERTY AND INTERESTS THEREIN AND IMPROVING THE SITE THEREFORE, TOGETHER WITH ALL DRIVEWAYS, ROADS, PARKING FACILITIES, AND OTHER NECESSARY APPURTENANCES THERETO.

WHEREAS, pursuant to Section 10.04 of the City's Charter (which Section was effective as of January 1, 1984), this Council shall not have the power to adopt and levy a City income tax without the approval of a majority vote of the electors voting on such issue at a general, primary or special election; and

WHEREAS, by a majority vote of the electors on November 6, 1984, a general municipal income tax was levied at the effective rate of one percent (1%) (the "*1984 General Income Tax*") for the purposes of general municipal operations, maintenance, new equipment, extension and enlargement of municipal services and facilities and capital improvements of the City (the "*General Municipal Income Tax Purpose*"); and

WHEREAS, by a majority vote of the electors on November 4, 2008, the 1984 General Income Tax was reduced by twenty-five one-hundredths percent (0.25%) to an effective rate of seventy-five one-hundredths percent (0.75%) (the "*General Income Tax*"); and

WHEREAS, pursuant to Ordinance No. 2013-O-2068 passed October 14, 2013 (the "*2013 Bond Ordinance*"), bonds in the principal amount of $8,235,000, dated November 8, 2013 (the "*2013 Bonds*"), were issued for the purpose of paying the costs of improving the City's municipal recreation facilities by constructing, equipping and furnishing a multi-purpose municipal recreation complex to include among other things an aquatic center, athletic playing fields, outdoor amphitheater, recreational trails, picnic shelters, playgrounds, dog park, and related facilities, including the acquisition of real property and interests therein and improving the site therefor, together with all driveways, roads, parking facilities, and other necessary appurtenances thereto; and

WHEREAS, this City Council finds and determines that it will be in the City's best interest to issue bonds in accordance with Section 3, Article XVIII of the Ohio Constitution, Chapter 133 of the Ohio Revised Code and the Charter of the City in the maximum principal amount of $7,000,000 (the "*Bonds*"), which Bonds will be supported by the General Income Tax, in order to refund at a lower rate of interest all or a portion of the outstanding 2013 Bonds (collectively, the "*Outstanding 2013 Bonds*"), which Outstanding 2013 Bonds are subject to prior redemption at the option of the City at a redemption price of 100% of par plus any accrued interest to their redemption date, and to pay any expenses relating to that refunding and the issuance of the Bonds; and

WHEREAS, pursuant to a majority vote of the electors, the City also levies an additional one and fifty one-hundredths percent (1.50%) income tax, but the proceeds from the collection of that additional tax are not generally available for the General Municipal Income Tax Purpose and will not be pledged pursuant to this Ordinance in connection with the Bonds; and

WHEREAS, pursuant to Ordinance No. 2003-O-1409 passed April 28, 2003 (the "*Montgomery County Area TIF Ordinance*") and Ohio Revised Code Section 5709.40, this Council has exempted from taxation certain Improvements (as that term is defined in Ohio Revised Code Section 5709.40) to certain parcels of real property located within the City, required the owners

of those parcels to pay service payments in lieu of real property taxes (the "*Service Payments*") in respect of those Improvements, and identified certain public infrastructure improvements that directly benefit those parcels of real property; and

WHEREAS, pursuant to Ordinance No. 2005-O-1589 passed August 22, 2005 (the "*Miami County Area TIF Ordinance*" and collectively with the Montgomery County Area TIF Ordinance, the "*TIF Ordinances*") and Ohio Revised Code Section 5709.40, this Council has exempted from taxation certain Improvements to certain parcels of real property located within the City, required the owners of those parcels to pay Service Payments in respect of those Improvements, and identified certain public infrastructure improvements that directly benefit those parcels of real property; and

WHEREAS, this Council has heretofore determined that the Permanent Improvement will directly benefit the parcels of real property described in the TIF Ordinances and the Permanent Improvement is determined to be a Phase II Improvement (as defined in the TIF Ordinances); and

WHEREAS, pursuant to the TIF Ordinances and Ohio Revised Code Section 5709.43, the respective Service Payments received by the City have been and shall continue to be deposited in the Montgomery County Municipal Public Improvement Tax Increment Equivalent Fund and the Miami County Municipal Public Improvement Tax Increment Equivalent Fund, and may, but will not be required to, be used to pay debt charges on the Bonds; and

WHEREAS, this Council has requested that the Director of Finance, as fiscal officer of this City, certify the estimated life or period of usefulness of the Permanent Improvement described in Section 2 and the maximum maturity of the Bonds described in Section 2; and

WHEREAS, the Director of Finance has certified to this City Council that the estimated life or period of usefulness of the Permanent Improvement is at least five (5) years and that the maximum maturity of the Bonds is December 1, 2038; and

WHEREAS, a public hearing relating to the Permanent Improvement described in Section 2 and the plan of finance for the Permanent Improvement, including the issuance of the Bonds, was held by this City Council commencing at 10:30 a.m. on June 24, 2021, at the offices of this City Council, 6131 Taylorsville Road, Huber Heights, Ohio, following reasonable public notice published in advance of such hearing, all in accordance with Section 147(f) of the Internal Revenue Code of 1986, as amended, and the requisite "public approval" required by that Section 147(f) is hereby granted by this Ordinance.

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

Section 1. Definitions and Interpretation. In addition to the words and terms elsewhere defined in this Ordinance, unless the context or use clearly indicates another or different meaning or intent:

"*Act*" means, collectively, the laws of the State, including, without limitation, Section 3, Article XVIII of the Ohio Constitution and Chapter 133 of the Ohio Revised Code.

"*Additional Bonds*" means any additional bonds or other obligations of the City which may be subsequently issued and payable solely from the General Income Tax Receipts on a parity with the Bonds including Additional Bonds in anticipation of which notes have been issued. In no event shall general obligation notes or bonds of the City which may be payable from the General Income Tax be treated as Additional Bonds.

"*Authorized Denominations*" means the denomination of $5,000 or any integral multiple in excess thereof.

"*Bond Proceedings*" means, collectively, this Ordinance, the Certificate of Award, the Continuing Disclosure Agreement, the Purchase Agreement, the Registrar Agreement and such other proceedings of the City, including the Bonds, that provide collectively for, among other things, the rights of holders and beneficial owners of the Bonds.

"*Bond Register*" means all books and records necessary for the registration, exchange and transfer of Bonds as provided in Section 5.

"*Bond Registrar*" means a bank or trust company authorized to do business in the State and designated by the Director of Finance in the Certificate of Award pursuant to Section 4 as the initial authenticating agent, bond registrar, transfer agent and paying agent for the Bonds under the Registrar Agreement and until a successor Bond Registrar shall have become such pursuant to the provisions of the Registrar Agreement and, thereafter, "*Bond Registrar*" shall mean the successor Bond Registrar.

"*Bonds*" means, collectively, the Serial Bonds and the Term Bonds, each as is designated as such in the Certificate of Award.

"*Book entry form*" or "*book entry system*" means a form or system under which (a) the ownership of beneficial interests in the Bonds and the principal of and interest and any premium on the Bonds may be transferred only through a book entry, and (b) physical Bond certificates in fully registered form are issued by the City and payable only to a Depository or its nominee as registered owner, with the certificates deposited with and "immobilized" in the custody of the Depository or its designated agent for that purpose. The book entry maintained by others than the City is the record that identifies the owners of beneficial interests in the Bonds and that principal and interest.

"*Certificate of Award*" means the certificate authorized by Section 6, to be executed by the Director of Finance, setting forth and determining those terms or other matters pertaining to the Bonds and their issuance, sale and delivery as this Ordinance requires or authorizes to be set forth or determined therein.

"*City*" means the City of Huber Heights, Ohio.

"*City Manager*" means the City Manager of the City or any person serving in an interim or acting capacity with respect to that office.

"*Clerk of Council*" means the Clerk of Council of the City or any person serving in an interim or acting capacity with respect to that office.

"*Closing Date*" means the date of physical delivery of, and payment of the purchase price for, the Bonds.

"*Code*" means the Internal Revenue Code of 1986, as amended, the Regulations (whether temporary or final) under that Code or the statutory predecessor of that Code, and any amendments of, or successor provisions to, the foregoing and any official rulings, announcements, notices, procedures and judicial determinations regarding any of the foregoing, all as and to the extent applicable. Unless otherwise indicated, reference to a section of the Code includes any applicable successor section or provision and such applicable regulations, rulings, announcements, notices, procedures and determinations pertinent to that section.

"*Continuing Disclosure Agreement*" means the Continuing Disclosure Agreement which shall constitute the continuing disclosure agreement made by the City for the benefit of the holders and beneficial owners of the Bonds in accordance with the Rule, as it may be modified from the form on file with the Clerk of Council and executed by the City Manager and the Director of Finance, all in accordance with Section 11(c).

"*Depository*" means any securities depository that is a clearing agency registered pursuant to the provisions of Section 17A of the Securities Exchange Act of 1934, operating and maintaining, with its Participants or otherwise, a book entry system to record ownership of beneficial interests in the Bonds or the principal of and interest and any premium on the Bonds, and to effect transfers of the Bonds, in book entry form, and includes and means initially The Depository Trust Company (a limited purpose trust company), New York, New York.

"*Director of Finance*" means the Director of Finance of the City or any person serving in an interim or acting capacity with respect to that office.

"*Escrow Agreement*" means the Escrow Agreement between the City and the Escrow Trustee, as it may be modified from the form on file with the Clerk of Council and executed by the City Manager and the Director of Finance, all in accordance with Section 12.

"*Escrow Fund*" means the City of Huber Heights, Ohio – Series 2021 General Income Tax Refunding Escrow Fund created pursuant to Section 12 and in accordance with the Escrow Agreement.

"*Escrow Trustee*" means a bank or trust company authorized to do business in the State and designated by the Director of Finance in the Certificate of Award pursuant to Section 12 as the initial escrow trustee for the Refunded Bonds under the Escrow Agreement and until a successor Escrow Trustee shall have become such pursuant to the provisions of the Escrow Agreement and, thereafter, "*Escrow Trustee*" shall mean the successor Escrow Trustee.

"*Financing Costs*" shall have the meaning given in Section 133.01 of the Ohio Revised Code.

"*General Income Tax*" means the portion of the City's municipal income tax collected by the City pursuant to the Codified Ordinances Chapter 192 and the General Income Tax Ordinance at the effective rate of seventy-five one-hundredths percent (0.75%) and which is allocated to the General Fund for General Municipal Income Tax Purpose.

"*General Income Tax Bond Fund*" means the General Income Tax Bond Fund continued by Section 8 of this Ordinance.

"*General Income Tax Ordinance*" means, collectively, Section 10.04 of the City's Charter, Ordinance No. 84-0-157 passed by the electorate of the City at the general election held on November 6, 1984, as amended by Ordinance No. 2008-O-1754 passed by this Council on August 13, 2008, together providing for the current General Income Tax at the rate of seventy-five one-hundredths percent (0.75%).

"*General Income Tax Receipts*" means the moneys received by the City from the General Income Tax.

"*General Municipal Income Tax Purpose*" means, collectively, general municipal operations, maintenance, new equipment, extension and enlargement of municipal services and facilities and capital improvements of the City.

"*Interest Payment Dates*" means, unless otherwise specified in the Certificate of Award, June 1 and December 1 of each year that the Bonds are outstanding, commencing on the date specified in the Certificate of Award.

"*Mandatory Redemption Date*" shall have the meaning set forth in Section 3(b).

"*Mandatory Sinking Fund Redemption Requirements*" shall have the meaning set forth in Section 3(e)(i).

"*Original Purchaser*" means the purchaser of the Bonds specified in the Certificate of Award.

"*Participant*" means any participant contracting with a Depository under a book entry system and includes securities brokers and dealers, banks and trust companies and clearing corporations.

"*Principal Payment Dates*" means, unless otherwise specified in the Certificate of Award, December 1 in each of the years as determined necessary by the Director of Finance in the Certificate of Award; *provided* that the first Principal Payment Date shall occur no later than the earliest maturity date of the Refunded Bonds, and *provided further* that in no case shall the final Principal Payment Date of the Bonds exceed the maximum maturity limitation referred to in the preambles hereto, all of which determinations shall be made by the Director of Finance in the Certificate of Award in such manner as to be in the best interest of and financially advantageous to the City.

"*Purchase Agreement*" means the Bond Purchase Agreement between the City and the Original Purchaser, as it may be modified from the form on file with the Clerk of Council and executed by the City Manager and the Director of Finance, all in accordance with Section 6.

"*Redemption Date*" means the date designated by the Director of Finance in the Certificate of Award as the earliest practicable date on which the Refunded Bonds shall be redeemed in accordance with Section 12, *provided* that such Redemption Date shall be no later than ninety (90) days following the Closing Date.

"*Refunded Bonds*" means, collectively, the principal maturities of the Outstanding 2013 Bonds to be determined by the Director of Finance in the Certificate of Award as the maturities the refunding of which will be in the best interest of and financially advantageous to the City.

"*Registrar Agreement*" means the Bond Registrar Agreement between the City and the Bond Registrar, as it may be modified from the form on file with the Clerk of Council and executed by the City Manager and the Director of Finance, all in accordance with Section 4.

"*Regulations*" means Treasury Regulations issued pursuant to the Code or to the statutory predecessor of the Code.

"*Rule*" means Rule 15c2-12 prescribed by the SEC pursuant to the Securities Exchange Act of 1934.

"*SEC*" means the Securities and Exchange Commission.

"*Serial Bonds*" means those Bonds designated as such and maturing on the dates set forth in the Certificate of Award, bearing interest payable on each Interest Payment Date and not subject to mandatory sinking fund redemption.

"*State*" means the State of Ohio.

"*Term Bonds*" means those Bonds designated as such and maturing on the date or dates set forth in the Certificate of Award, bearing interest payable on each Interest Payment Date and subject to mandatory sinking fund redemption.

The captions and headings in this Ordinance are solely for convenience of reference and in no way define, limit or describe the scope or intent of any sections, subsections, paragraphs, subparagraphs or clauses hereof. Reference to a section means a section of this Ordinance unless otherwise indicated.

Section 2. Authorized Principal Amount and Purpose; Application of Proceeds. This City Council determines that it is necessary and in the best interest of the City to issue bonds of this City in the maximum principal amount of $7,000,000 (the "*Bonds*") for the purpose of paying the costs of refunding bonds previously issued by the City for the purpose of paying the costs of improving the City's municipal recreation facilities by constructing, equipping and furnishing a multi-purpose municipal recreation complex to include among other things an aquatic center, athletic playing fields, outdoor amphitheater, recreational trails, picnic shelters, playgrounds, dog park, and related facilities, including the acquisition of real property and interests therein and improving the site therefor, together with all driveways, roads, parking facilities, and other necessary appurtenances thereto (the "*Permanent Improvement*"). The Permanent Improvement will directly benefit the parcels of real property described in the respective TIF Ordinances and the Permanent Improvement is hereby determined to be a Phase II Improvement (as defined in the TIF Ordinances). The Bonds shall be issued pursuant to the Act, the Charter of the City, this Ordinance and the Certificate of Award.

The principal amount of Bonds to be issued shall not exceed the maximum principal amount specified in this Section 2 and shall be an amount determined by the Director of Finance in the Certificate of Award to be the principal amount of Bonds that is required to be issued at this time for the purpose stated in this Section 2, taking into account the costs of refunding the Refunded Bonds, other City moneys available for the purpose, the estimates of the Financing Costs and the interest rates on the Bonds. The Refunded Bonds shall be determined by the Director of Finance in the Certificate of Award as the maturities of the Outstanding 2013 Bonds, the refunding of which will be in the best interest of and financially advantageous to the City.

The proceeds from the sale of the Bonds received by the City (or withheld by the Original Purchaser on behalf of the City) shall be paid into the proper fund or funds, and those proceeds are hereby appropriated and shall be used for the purpose for which the Bonds are being issued, including without limitation but only to the extent not paid by others, the payment of the costs of

issuing and servicing the Bonds, printing and delivery of the Bonds, legal services including obtaining the approving legal opinion of bond counsel, fees and expenses of any municipal advisor, paying agent, escrow trustee, verification consultant, bidding agent and rating agency, any fees or premiums relating to municipal bond insurance or other security arrangements determined necessary by the Director of Finance, and all other Financing Costs and costs incurred incidental to those purposes. The Certificate of Award and the Purchase Agreement may authorize the Original Purchaser to withhold certain proceeds from the purchase price of the Bonds to provide for the payment of Financing Costs related to the Bonds on behalf of the City. Any portion of those proceeds received by the City representing premium (after payment of any Financing Costs identified in the Certificate of Award, and in the Purchase Agreement and/or the Registrar Agreement) shall be used to pay costs of refunding the Refunded Bonds and/or be paid into the General Income Tax Bond Fund, with such determination being made by the Director of Finance in the Certificate of Award, consistent with the Director of Finance's determination of the best interest of and financial advantages to the City. Any portion of those proceeds received by the City representing accrued interest shall be paid into the General Income Tax Bond Fund.

Section 3. Denominations; Dating; Principal and Interest Payment and Redemption Provisions. The Bonds shall be issued in one lot and only as fully registered bonds, in Authorized Denominations, but in no case as to a particular maturity date exceeding the principal amount maturing on that date. The Bonds shall be dated as provided in the Certificate of Award, *provided* that their dated date shall not be more than sixty (60) days prior to the Closing Date.

(a) Interest Rates and Payment Dates. The Bonds shall bear interest at the rate or rates per year (computed on the basis of a 360-day year consisting of twelve 30-day months) as shall be determined by the Director of Finance, subject to subsection (c) of this Section 3, in the Certificate of Award. Interest on the Bonds shall be payable at such rate or rates on the Interest Payment Dates until the principal amount has been paid or provided for. The Bonds shall bear interest from the most recent date to which interest has been paid or provided for or, if no interest has been paid or provided for, from their date.

(b) Principal Payment Schedule. The Bonds shall mature or be payable pursuant to Mandatory Sinking Fund Redemption Requirements on the Principal Payment Dates in principal amounts as shall be determined by the Director of Finance, subject to subsection (c) of this Section 3, in the Certificate of Award, which determination shall be in the best interest of and financially advantageous to the City.

Consistent with the foregoing and in accordance with the determination of the best interest of and financial advantages to the City, the Director of Finance shall specify in the Certificate of Award (i) the aggregate principal amount of Bonds to be issued as Serial Bonds, the Principal Payment Date or Dates on which those Bonds shall be stated to mature and the principal amount thereof that shall be stated to mature on each such Principal Payment Date, and (ii) the aggregate principal amount of Bonds to be issued as Term Bonds, the Principal Payment Date or Dates on which those Bonds shall be stated to mature, the principal amount thereof that shall be stated to mature on each such Principal Payment Date, the Principal Payment Date or Dates on which Term Bonds shall be subject to mandatory sinking fund redemption (each a "*Mandatory Redemption Date*") and the principal amount thereof that shall be payable pursuant to Mandatory Sinking Fund Redemption Requirements on each Mandatory Redemption Date.

(c) Conditions for Establishment of Interest Rates and Principal Payment Dates and Amounts. The rate or rates of interest per year to be borne by the Bonds, and the principal amount of Bonds maturing or payable pursuant to Mandatory Sinking Fund Redemption Requirements on each Principal Payment Date, shall be such as to demonstrate a net present value savings to the City due to the refunding of the Refunded Bonds, after taking into account all expenses related to that refunding and the issuance of the Bonds.

(d) Payment of Debt Charges. The debt charges on the Bonds shall be payable in lawful money of the United States of America without deduction for the services of the Bond Registrar as paying agent. Principal of and any premium on the Bonds shall be payable when due upon presentation and surrender of the Bonds at the designated corporate trust office of the Bond Registrar. Interest on a Bond shall be paid on each Interest Payment Date by check or draft mailed to the person in whose name the Bond was registered, and to that person's address appearing, on the Bond Register at the close of business on the 15th day of the calendar month next preceding that Interest Payment Date. Notwithstanding the foregoing, if and so long as the

Bonds are issued in a book entry system, principal of and interest and any premium on the Bonds shall be payable in the manner provided in any agreement entered into by the Director of Finance, in the name and on behalf of the City, in connection with the book entry system.

(e) Redemption Provisions. The Bonds shall be subject to redemption prior to stated maturity as follows:

(i) Mandatory Sinking Fund Redemption of Term Bonds. If any of the Bonds are issued as Term Bonds, the Term Bonds shall be subject to mandatory redemption in part by lot and be redeemed pursuant to mandatory sinking fund redemption requirements, at a redemption price of 100% of the principal amount redeemed, plus accrued interest to the redemption date, on the applicable Mandatory Redemption Dates and in the principal amounts payable on those Dates, for which provision is made in the Certificate of Award (such Dates and amounts being referred to as the "*Mandatory Sinking Fund Redemption Requirements*").

The aggregate of the moneys to be deposited with the Bond Registrar for payment of principal of and interest on any Term Bonds on each Mandatory Redemption Date shall include an amount sufficient to redeem on that Date the principal amount of Term Bonds payable on that Date pursuant to the Mandatory Sinking Fund Redemption Requirements (less the amount of any credit as hereinafter provided).

The City shall have the option to deliver to the Bond Registrar for cancellation Term Bonds in any aggregate principal amount and to receive a credit against the then current or any subsequent Mandatory Sinking Fund Redemption Requirement (and corresponding mandatory redemption obligation) of the City, as specified by the Director of Finance, for Term Bonds stated to mature on the same Principal Payment Date and bearing interest at the same rate as the Term Bonds so delivered. That option shall be exercised by the City on or before the 45th day preceding any Mandatory Redemption Date with respect to which the City wishes to obtain a credit, by furnishing the Bond Registrar a certificate, signed by the Director of Finance, setting forth the extent of the credit to be applied with respect to the then current or any subsequent Mandatory Sinking Fund Redemption Requirement for Term Bonds stated to mature on the same Principal Payment Date and bearing interest at the same rate as the Term Bonds so delivered. If the certificate is not timely furnished to the Bond Registrar, the current Mandatory Sinking Fund Redemption Requirement (and corresponding mandatory redemption obligation) shall not be reduced. A credit against the then current or any subsequent Mandatory Sinking Fund Redemption Requirement (and corresponding mandatory redemption obligation), as specified by the Director of Finance, also shall be received by the City for any Term Bonds which prior thereto have been redeemed (other than through the operation of the applicable Mandatory Sinking Fund Redemption Requirements) or purchased for cancellation and canceled by the Bond Registrar, to the extent not applied theretofore as a credit against any Mandatory Sinking Fund Redemption Requirement, for Term Bonds stated to mature on the same Principal Payment Date and bearing interest at the same rate as the Term Bonds so delivered, redeemed or purchased and canceled.

Each Term Bond so delivered, or previously redeemed, or purchased and canceled, shall be credited by the Bond Registrar at 100% of the principal amount thereof against the then current or subsequent Mandatory Sinking Fund Redemption Requirements (and corresponding mandatory redemption obligations), as specified by the Director of Finance, for Term Bonds stated to mature on the same Principal Payment Date and bearing interest at the same rate as the Term Bonds so delivered, redeemed or purchased and canceled.

(ii) Optional Redemption. The Bonds of the maturities and interest rates specified in the Certificate of Award (if any are so specified) shall be subject to optional redemption by and at the sole option of the City, in whole or in part in integral multiples of $5,000, on the dates and at the redemption prices (expressed as a percentage of the principal amount to be redeemed), plus accrued interest to the redemption date, to be determined by the Director of Finance in the Certificate of Award; *provided* that the redemption price for any optional redemption date shall not be greater than 103%.

If optional redemption of Term Bonds at a redemption price exceeding 100% of the principal amount to be redeemed is to take place as of any Mandatory Redemption Date applicable to those Term Bonds, the Term Bonds, or portions thereof, to be redeemed optionally shall be selected by lot prior to the selection by lot of the Term Bonds of the same maturity (and interest rate within a maturity if applicable) to be redeemed on the same date by operation of the Mandatory Sinking Fund Redemption Requirements. Bonds to be redeemed pursuant to this paragraph shall be redeemed only upon written notice from the Director of Finance to the Bond Registrar, given upon the direction of the City by passage of an ordinance or adoption of a resolution. That notice shall specify the redemption date and the principal amount of each maturity (and interest rate within a maturity if applicable) of Bonds to be redeemed, and shall be given at least 45 days prior to the redemption date or such shorter period as shall be acceptable to the Bond Registrar.

(iii) Partial Redemption. If fewer than all of the outstanding Bonds are called for optional redemption at one time and Bonds of more than one maturity (or interest rate within a maturity if applicable) are then outstanding, the Bonds that are called shall be Bonds of the maturity or maturities and interest rate or rates selected by the City. If fewer than all of the Bonds of a single maturity (or interest rate within a maturity if applicable) are to be redeemed, the selection of Bonds of that maturity (or interest rate within a maturity if applicable) to be redeemed, or portions thereof in amounts of $5,000 or any integral multiple thereof, shall be made by the Bond Registrar by lot in a manner determined by the Bond Registrar. In the case of a partial redemption of Bonds by lot when Bonds of denominations greater than $5,000 are then outstanding, each $5,000 unit of principal thereof shall be treated as if it were a separate Bond of the denomination of $5,000. If it is determined that one or more, but not all, of the $5,000 units of principal amount represented by a Bond are to be called for redemption, then, upon notice of redemption of a $5,000 unit or units, the registered owner of that Bond shall surrender the Bond to the Bond Registrar (A) for payment of the redemption price of the $5,000 unit or units of principal amount called for redemption (including, without limitation, the interest accrued to the date fixed for redemption and any premium), and (B) for issuance, without charge to the registered owner, of a new Bond or Bonds of any Authorized Denomination or Denominations in an aggregate principal amount equal to the unmatured and unredeemed portion of, and bearing interest at the same rate and maturing on the same date as, the Bond surrendered.

(iv) Notice of Redemption. The notice of the call for redemption of Bonds shall identify (A) by designation, letters, numbers or other distinguishing marks, the Bonds or portions thereof to be redeemed, (B) the redemption price to be paid, (C) the date fixed for redemption, and (D) the place or places where the amounts due upon redemption are payable. The notice shall be given by the Bond Registrar on behalf of the City by mailing a copy of the redemption notice by first-class mail, postage prepaid, at least 30 days prior to the date fixed for redemption, to the registered owner of each Bond subject to redemption in whole or in part at the registered owner's address shown on the Bond Register maintained by the Bond Registrar at the close of business on the 15th day preceding that mailing. Failure to receive notice by mail or any defect in that notice regarding any Bond, however, shall not affect the validity of the proceedings for the redemption of any Bond.

(v) Payment of Redeemed Bonds. In the event that notice of redemption shall have been given by the Bond Registrar to the registered owners as provided above, there shall be deposited with the Bond Registrar on or prior to the redemption date, moneys that, in addition to any other moneys available therefor and held by the Bond Registrar, will be sufficient to redeem at the redemption price thereof, plus accrued interest to the redemption date, all of the redeemable Bonds for which notice of redemption has been given. Notice having been mailed in the manner provided in the preceding paragraph hereof, the Bonds and portions thereof called for redemption shall become due and payable on the redemption date, and, subject to the provisions of Sections 3(d) and 5, upon presentation and surrender thereof at the place or places specified in that notice, shall be paid at the redemption price, plus accrued interest to the redemption date. If moneys for the redemption of all of the Bonds and portions thereof to be redeemed, together with accrued interest thereon to the redemption date, are held by the Bond Registrar on the redemption date, so as to be available therefor on that date and, if notice

of redemption has been deposited in the mail as aforesaid, then from and after the redemption date those Bonds and portions thereof called for redemption shall cease to bear interest and no longer shall be considered to be outstanding. If those moneys shall not be so available on the redemption date, or that notice shall not have been deposited in the mail as aforesaid, those Bonds and portions thereof shall continue to bear interest, until they are paid, at the same rate as they would have borne had they not been called for redemption. All moneys held by the Bond Registrar for the redemption of particular Bonds shall be held in trust for the account of the registered owners thereof and shall be paid to them, respectively, upon presentation and surrender of those Bonds; *provided* that any interest earned on the moneys so held by the Bond Registrar shall be for the account of and paid to the City to the extent not required for the payment of the Bonds called for redemption.

Section 4. Execution and Authentication of Bonds; Appointment of Bond Registrar. The Bonds shall be signed by the City Manager and the Director of Finance, in the name of the City and in their official capacities, *provided* that either or both of those signatures may be a facsimile. The Bonds shall be issued in the Authorized Denominations and numbers as requested by the Original Purchaser and approved by the Director of Finance, shall be numbered as determined by the Director of Finance in order to distinguish each Bond from any other Bond, and shall express upon their faces the purpose, in summary terms, for which they are issued and that they are issued pursuant to the Act, the Charter of the City, this Ordinance and the Certificate of Award.

The Director of Finance is hereby authorized to designate in the Certificate of Award a bank or trust company authorized to do business in the State to act as the initial Bond Registrar. The City Manager and the Director of Finance shall sign and deliver, in the name and on behalf of the City, the Registrar Agreement between the City and the Bond Registrar, in substantially the form as is now on file with the Clerk of Council. The Registrar Agreement is approved, together with any changes or amendments that are not inconsistent with this Ordinance and not substantially adverse to the City and that are approved by the City Manager and the Director of Finance on behalf of the City, all of which shall be conclusively evidenced by the signing of the Registrar Agreement or amendments thereto. The Director of Finance shall provide for the payment of the services rendered and for reimbursement of expenses incurred pursuant to the Registrar Agreement, except to the extent paid or reimbursed by the Original Purchaser and/or the Bond Registrar pursuant to the Certificate of Award, the Purchase Agreement and/or the Registrar Agreement, from the proceeds of the Bonds to the extent available and then from other money lawfully available and appropriated or to be appropriated for that purpose.

No Bond shall be valid or obligatory for any purpose or shall be entitled to any security or benefit under the Bond Proceedings unless and until the certificate of authentication printed on the Bond is signed by the Bond Registrar as authenticating agent. Authentication by the Bond Registrar shall be conclusive evidence that the Bond so authenticated has been duly issued, signed and delivered under, and is entitled to the security and benefit of, the Bond Proceedings. The certificate of authentication may be signed by any authorized officer or employee of the Bond Registrar or by any other person acting as an agent of the Bond Registrar and approved by the Director of Finance on behalf of the City. The same person need not sign the certificate of authentication on all of the Bonds.

Section 5. Registration; Transfer and Exchange; Book Entry System.

(a) Bond Register. So long as any of the Bonds remain outstanding, the City will cause the Bond Registrar to maintain and keep the Bond Register at its designated corporate trust office. Subject to the provisions of Sections 3(d) and 11(c), the person in whose name a Bond is registered on the Bond Register shall be regarded as the absolute owner of that Bond for all purposes of the Bond Proceedings. Payment of or on account of the debt charges on any Bond shall be made only to or upon the order of that person; neither the City nor the Bond Registrar shall be affected by any notice to the contrary, but the registration may be changed as provided in this Section 5. All such payments shall be valid and effectual to satisfy and discharge the City's liability upon the Bond, including interest, to the extent of the amount or amounts so paid.

(b) Transfer and Exchange. Any Bond may be exchanged for Bonds of any Authorized Denomination upon presentation and surrender at the designated corporate trust office of the Bond Registrar, together with a request for exchange signed by the registered owner

or by a person legally empowered to do so in a form satisfactory to the Bond Registrar. A Bond may be transferred only on the Bond Register upon presentation and surrender of the Bond at the designated corporate trust office of the Bond Registrar together with an assignment signed by the registered owner or by a person legally empowered to do so in a form satisfactory to the Bond Registrar. Upon exchange or transfer the Bond Registrar shall complete, authenticate and deliver a new Bond or Bonds of any Authorized Denomination or Denominations requested by the owner equal in the aggregate to the unmatured principal amount of the Bond surrendered and bearing interest at the same rate and maturing on the same date.

If manual signatures on behalf of the City are required, the Bond Registrar shall undertake the exchange or transfer of Bonds only after the new Bonds are signed by the authorized officers of the City. In all cases of Bonds exchanged or transferred, the City shall sign and the Bond Registrar shall authenticate and deliver Bonds in accordance with the provisions of the Bond Proceedings. The exchange or transfer shall be without charge to the owner, except that the City and Bond Registrar may make a charge sufficient to reimburse them for any tax or other governmental charge required to be paid with respect to the exchange or transfer. The City or the Bond Registrar may require that those charges, if any, be paid before the procedure is begun for the exchange or transfer. All Bonds issued and authenticated upon any exchange or transfer shall be valid obligations of the City, evidencing the same debt, and entitled to the same security and benefit under the Bond Proceedings as the Bonds surrendered upon that exchange or transfer. Neither the City nor the Bond Registrar shall be required to make any exchange or transfer of (i) Bonds then subject to call for redemption between the 15th day preceding the mailing of notice of Bonds to be redeemed and the date of that mailing, or (ii) any Bond selected for redemption, in whole or in part.

(c) Book Entry System. Notwithstanding any other provisions of this Ordinance, if the Director of Finance determines in the Certificate of Award that it is in the best interest of and financially advantageous to the City, the Bonds may be issued in book entry form in accordance with the following provisions of this Section 5.

The Bonds may be issued to a Depository for use in a book entry system and, if and as long as a book entry system is utilized: (i) the Bonds may be issued in the form of a single, fully registered Bond representing each maturity, and, if applicable, each interest rate within a maturity, and registered in the name of the Depository or its nominee, as registered owner, and immobilized in the custody of the Depository or its designated agent for that purpose, which may be the Bond Registrar; (ii) the beneficial owners of Bonds in book entry form shall have no right to receive Bonds in the form of physical securities or certificates; (iii) ownership of beneficial interests in book entry form shall be shown by book entry on the system maintained and operated by the Depository and its Participants, and transfers of the ownership of beneficial interests shall be made only by book entry by the Depository and its Participants; and (iv) the Bonds as such shall not be transferable or exchangeable, except for transfer to another Depository or to another nominee of a Depository, without further action by the City.

If any Depository determines not to continue to act as a Depository for the Bonds for use in a book entry system, the Director of Finance may attempt to establish a securities depository/book entry relationship with another qualified Depository. If the Director of Finance does not or is unable to do so, the Director of Finance, after making provision for notification of the beneficial owners by the then Depository and any other arrangements deemed necessary, shall permit withdrawal of the Bonds from the Depository, and shall cause Bond certificates in registered form and Authorized Denominations to be authenticated by the Bond Registrar and delivered to the assigns of the Depository or its nominee, all at the cost and expense (including any costs of printing), if the event is not the result of City action or inaction, of those persons requesting such issuance.

The Director of Finance is hereby authorized and directed, to the extent necessary or required, to enter into any agreements, in the name and on behalf of the City, that the Director of Finance determines to be necessary in connection with a book entry system for the Bonds.

Section 6. Sale of the Bonds to the Original Purchaser. The Director of Finance is authorized to sell the Bonds at private sale to the Original Purchaser at a purchase price, not less than 97% of the aggregate principal amount thereof, as shall be determined by the Director of Finance in the Certificate of Award, plus accrued interest (if any) on the Bonds from their date to the Closing Date, and shall be awarded by the Director of Finance with and upon such other

terms as are required or authorized by this Ordinance to be specified in the Certificate of Award, in accordance with law and the provisions of this Ordinance and the Purchase Agreement.

The Director of Finance shall sign and deliver the Certificate of Award and shall cause the Bonds to be prepared and signed and delivered, together with a true transcript of proceedings with reference to the issuance of the Bonds, to the Original Purchaser upon payment of the purchase price.

The City Manager and the Director of Finance shall sign and deliver, in the name and on behalf of the City, the Purchase Agreement between the City and the Original Purchaser, in substantially the form as is now on file with the Clerk of Council, providing for the sale to, and the purchase by, the Original Purchaser of the Bonds. The Purchase Agreement is approved, together with any changes or amendments that are not inconsistent with this Ordinance and not substantially adverse to the City and that are approved by the City Manager and the Director of Finance on behalf of the City, all of which shall be conclusively evidenced by the signing of the Purchase Agreement or amendments thereto.

The Mayor, the City Manager, the Director of Finance, the City Attorney, the Clerk of Council and other City officials, as appropriate, are each authorized and directed to sign any transcript certificates, financial statements and other documents and instruments and to take such actions as are necessary or appropriate to consummate the transactions contemplated by this Ordinance. The actions of the Mayor, the City Manager, the Director of Finance, the City Attorney, the Clerk of Council or other City official, as appropriate, in doing any and all acts necessary in connection with the issuance and sale of the Bonds are hereby ratified and confirmed.

Section 7. Bonds are Special Obligations and Provisions for Levy and Collection of General Income Tax. The Bonds are special obligations of the City, and the principal of and interest (and any premium) on the Bonds and any Additional Bonds are payable solely from the General Income Tax Receipts, and such payment is secured by a pledge of General Income Tax Receipts as provided by the Act and this Ordinance.

The City has heretofore levied and covenants that it shall continue to collect the General Income Taxes for so long as the Bonds and any Additional Bonds are outstanding. The City hereby covenants and agrees that, for so long as the Bonds and any Additional Bonds are outstanding, it shall not suffer the repeal, amendment or any other change in this Ordinance or the General Income Tax Ordinance that in any way materially and adversely affects or impairs (a) the sufficiency of the General Income Tax Receipts levied and collected or otherwise available for the payment of the Bonds and any Additional Bonds or (b) the pledge or the application of the General Income Tax Receipts to the payment of the Bonds and any Additional Bonds.

The Bonds do not constitute a general obligation debt or a pledge of the full faith or credit or property taxing power of the City. Nothing herein shall be construed as requiring the City to use or apply to the payment of principal of and interest (and any premium) on the Bonds any funds or revenues from any source other than General Income Tax Receipts. Nothing herein, however, shall be deemed to prohibit the City, of its own volition, from using, to the extent that it is authorized by law to do so, any other resources for the fulfillment of any of the terms, conditions or obligations of this Ordinance or of the Bonds.

If the City shall pay or cause to be paid and discharged the Bonds, the covenants, agreements and other obligations of the City hereunder and in the Bonds shall be discharged and satisfied. The City shall be considered to have caused a Bond to be paid and discharged if the City has placed in escrow, and pledged for the payment of debt charges on such Bond, money or direct or guaranteed obligations of the United States, or a combination of those obligations, determined by an independent firm experienced in making such determinations to be sufficient, with the interest or other investment income accruing on those direct or guaranteed obligations, for the payment of debt charges on that Bond. For purposes of this section, "*direct obligations of or obligations guaranteed as to payment by the United States*" includes rights to receive payment or portions of payments of the principal of or interest or other investment income on those obligations, and other obligations fully secured as to payment by those obligations and the interest or other investment income on those obligations.

All of the agreements, covenants and duties under this Ordinance are hereby established as duties specifically enjoined by law or resulting from an office, trust or station upon this City within the meaning of Section 2731.01 of the Revised Code.

Section 8. Continuation of General Income Tax Bond Fund and Application of General Income Tax Receipts. The General Income Tax Bond Fund is hereby continued as of the date of initial delivery of the Bonds as a bond retirement fund or an account of a bond retirement fund established pursuant to Revised Code Sections 133.01(D) and 5705.09 for payment of debt service and Financing Costs related to the Bonds and Additional Bonds, and shall be maintained by the Director of Finance in the custody of the City. The Director of Finance is hereby authorized to maintain, or permit the maintenance of, such separate accounts in that Fund, and such separate subaccounts in any account, as is determined to be in the best interest of the City. Any moneys on deposit in the General Income Tax Bond Fund shall be invested to the extent permitted by law.

To the extent other moneys, including Service Payments, have not been appropriated and made available for the purpose, the City hereby covenants, subject and pursuant to the Constitution and laws of the State, to appropriate and pay from the General Income Tax Receipts into the General Income Tax Bond Fund on or before each Interest Payment Date and Principal Payment Date an amount which, after giving effect to any amounts then on deposit in the General Income Tax Bond Fund, including any interest earnings retained in that Fund, would result in an amount sufficient to pay the interest and principal due and payable on all outstanding Bonds and Additional Bonds on that next respective Interest Payment Date and Principal Payment Date. For that purpose, in each year while the Bonds and any Additional Bonds are outstanding, to the extent other moneys, including Service Payments, have not been appropriated and made available for the purpose, this Council will appropriate General Income Tax Receipts required to pay the principal of and interest (and any premium) on the Bonds and any Additional Bonds in that year. Further, this Council will give effect to such appropriations in all ordinances it passes or resolutions it adopts thereafter in that year appropriating money for expenditure and encumbrance and limit the other appropriations of General Income Tax Receipts in that year to the amount available after deducting the amount required to pay the principal of and interest (and any premium) on the Bonds and any Additional Bonds in that year to the extent other moneys, including Service Payments, have not been appropriated and made available for those principal, interest and premium payments.

Any portion of the General Income Tax Receipts not otherwise required to be deposited into the General Income Tax Bond Fund in accordance with this section shall be used to meet other obligations of the City as may be lawfully discharged from the General Income Tax.

Section 9. Additional Bonds. The City shall have the right from time to time to issue Additional Bonds on a parity with the Bonds, which Additional Bonds shall be payable solely from the General Income Tax Receipts, and such payment shall be secured by a pledge of and a lien on the General Income Tax Receipts as provided by the Act and by an ordinance passed by this Council authorizing the issuance of those Additional Bonds. Before any Additional Bonds are issued, the City shall be required to furnish a certificate of the Director of Finance showing that the aggregate amount of General Income Tax Receipts received during the fiscal year immediately preceding the issuance of those Additional Bonds is at least equal to 300% of the largest amount required to be paid in any succeeding calendar year to meet estimated interest and principal maturities of the Bonds, any Additional Bonds delivered after the Bonds, and those Additional Bonds proposed to be issued, or in the event that the Additional Bonds proposed to be issued are to be issued as bond anticipation notes, the largest amount required to be paid in any succeeding calendar year to meet the estimated interest and principal maturities of the bonds anticipated by those bond anticipation notes (the "*Coverage Test*").

Junior lien or other subordinate bonds payable from the General Income Tax Receipts may be issued without limitation.

The Additional Bonds shall bear such designation as may be necessary to distinguish them from the Bonds or other Additional Bonds having different provisions and shall have maturities, interest rates, interest payment dates, redemption provisions, denominations and other provisions as provided in the ordinances hereafter adopted providing for the issuance of the Additional Bonds; *provided*, *however*, that those terms and provisions shall not be inconsistent with this Ordinance to the extent it governs the issuance and terms of Additional Bonds.

Section 10. Federal Tax Considerations. The City covenants that it will use, and will restrict the use and investment of, the proceeds of the Bonds in such manner and to such extent as may be necessary so that (a) the Bonds will not (i) constitute private activity bonds or arbitrage bonds under Sections 141 or 148 of the Code or (ii) be treated other than as bonds the interest on which is excluded from gross income under Section 103 of the Code, and (b) the interest on the Bonds will not be an item of tax preference under Section 57 of the Code.

The City further covenants that (a) it will take or cause to be taken such actions that may be required of it for the interest on the Bonds to be and remain excluded from gross income for federal income tax purposes, (b) it will not take or authorize to be taken any actions that would adversely affect that exclusion, and (c) it, or persons acting for it, will, among other acts of compliance, (i) apply the proceeds of the Bonds to the governmental purpose of the borrowing, (ii) restrict the yield on investment property, (iii) make timely and adequate payments to the federal government, (iv) maintain books and records and make calculations and reports and (v) refrain from certain uses of those proceeds, and, as applicable, of property financed with such proceeds, all in such manner and to the extent necessary to assure such exclusion of that interest under the Code.

The Director of Finance or any other officer of the City having responsibility for issuance of the Bonds is hereby authorized (a) to make or effect any election, selection, designation, choice, consent, approval, or waiver on behalf of the City with respect to the Bonds as the City is permitted to or required to make or give under the federal income tax laws, including, without limitation thereto, any of the elections available under Section 148 of the Code, for the purpose of assuring, enhancing or protecting favorable tax treatment or status of the Bonds or interest thereon or assisting compliance with requirements for that purpose, reducing the burden or expense of such compliance, reducing the rebate amount or payments or penalties with respect to the Bonds, or making payments of special amounts in lieu of making computations to determine, or paying, excess earnings as rebate, or obviating those amounts or payments with respect to the Bonds, which action shall be in writing and signed by the officer, (b) to take any and all other actions, make or obtain calculations, make payments, and make or give reports, covenants and certifications of and on behalf of the City, as may be appropriate to assure the exclusion of interest from gross income and the intended tax status of the Bonds, and (c) to give one or more appropriate certificates of the City, for inclusion in the transcript of proceedings for the Bonds, setting forth the reasonable expectations of the City regarding the amount and use of all the proceeds of the Bonds, the facts, circumstances and estimates on which they are based, and other facts and circumstances relevant to the tax treatment of the interest on and the tax status of the Bonds. The Director of Finance or any other officer of the City having responsibility for issuance of the Bonds is specifically authorized to designate the Bonds as "qualified tax-exempt obligations" if such designation is applicable and desirable, and to make any related necessary representations and covenants.

Each covenant made in this section with respect to the Bonds is also made with respect to all issues any portion of the debt service on which is paid from proceeds of the Bonds (and, if different, the original issue and any refunding issues in a series of refundings), to the extent such compliance is necessary to assure exclusion of interest on the Bonds from gross income for federal income tax purposes, and the officers identified above are authorized to take actions with respect to those issues as they are authorized in this Section to take with respect to the Bonds.

Section 11. Official Statement, Rating, Bond Insurance, Continuing Disclosure and Financing Costs.

(a) Primary Offering Disclosure -- Official Statement. The City Manager and the Director of Finance are each authorized and directed, on behalf of the City and in their official capacities, to (i) prepare or cause to be prepared, and make or authorize modifications, completions or changes of or supplements to, a disclosure document in the form of an official statement relating to the original issuance of the Bonds in substantially the form as is now on file with the Clerk of Council, (ii) determine, and to certify or otherwise represent, when the official statement is to be "deemed final" (except for permitted omissions) by the City as of its date or is a final official statement for purposes of paragraph (b) of the Rule, (iii) use and distribute, or authorize the use and distribution of those official statements and any supplements thereto in connection with the original issuance of the Bonds, and (iv) complete and sign those official statements and any supplements thereto as so approved, together with such certificates,

statements or other documents in connection with the finality, accuracy and completeness of those official statements and any supplements, as they may deem necessary or appropriate.

(b) Application for Rating or Bond Insurance. If, in the judgment of the Director of Finance, the filing of an application for (i) a rating on the Bonds by one or more nationally-recognized rating agencies, or (ii) a policy of insurance from a company or companies to better assure the payment of principal of and interest on the Bonds, is in the best interest of and financially advantageous to this City, the Director of Finance is authorized to prepare and submit those applications, to provide to each such agency or company such information as may be required for the purpose, and to provide further for the payment of the cost of obtaining each such rating or policy, except to the extent otherwise paid or reimbursed pursuant to the Purchase Agreement and/or the Registrar Agreement, from the proceeds of the Bonds to the extent available and otherwise from any other funds lawfully available and that are appropriated or shall be appropriated for that purpose. The Director of Finance is hereby authorized, to the extent necessary or required, to enter into any agreements, in the name of and on behalf of the City, that the Director of Finance determines to be necessary in connection with the obtaining of that bond insurance.

(c) Agreement to Provide Continuing Disclosure. For the benefit of the holders and beneficial owners from time to time of the Bonds, the City agrees to provide or cause to be provided such financial information and operating data, audited financial statements and notices of the occurrence of certain events, in such manner as may be required for purposes of the Rule. The City Manager and the Director of Finance are each authorized and directed to complete, sign and deliver the Continuing Disclosure Agreement, in the name and on behalf of the City, in substantially the form as is now on file with the Clerk of Council. The Continuing Disclosure Agreement is approved, together with any changes or amendments that are not inconsistent with this Ordinance and not substantially adverse to the City and that are approved by the City Manager and the Director of Finance on behalf of the City, all of which shall be conclusively evidenced by the signing of the Continuing Disclosure Agreement or amendments thereto.

The Director of Finance is further authorized and directed to establish procedures in order to ensure compliance by the City with its Continuing Disclosure Agreement, including timely provision of information and notices as described above. Prior to making any filing required under the Rule, the Director of Finance shall consult with and obtain legal advice from, as appropriate, the City Attorney and bond or other qualified independent special counsel selected by the City. The Director of Finance, acting in the name and on behalf of the City, shall be entitled to rely upon any such legal advice in determining whether a filing should be made. The performance by the City of its Continuing Disclosure Agreement shall be subject to the annual appropriation of any funds that may be necessary to perform it.

(d) Financing Costs. The expenditure of the amounts necessary to pay any Financing Costs in connection with the Bonds, to the extent not paid by the Original Purchaser and/or the Bond Registrar in accordance with the Certificate of Award, the Purchase Agreement and/or the Registrar Agreement, is authorized and approved, and the Director of Finance is authorized to provide for the payment of any such amounts and costs from the proceeds of the Bonds to the extent available and otherwise from any other funds lawfully available that are appropriated or shall be appropriated for that purpose.

Section 12. Call for Redemption; Escrow Trustee; Escrow Agreement and Escrow Fund. To provide for the payment of the principal of and interest on the Refunded Bonds, the Director of Finance is hereby authorized to designate in the Certificate of Award a bank or trust company authorized to do business in the State to act as the Escrow Trustee. The City Manager and the Director of Finance shall sign and deliver, in the name and on behalf of the City, the Escrow Agreement between the City and the Escrow Trustee, in substantially the form as is now on file with the Clerk of Council. The Escrow Fund provided for in the Escrow Agreement is hereby created. The Escrow Agreement is approved, together with any changes or amendments that are not inconsistent with this Ordinance and not substantially adverse to the City and that are approved by the City Manager and the Director of Finance, on behalf of the City, all of which shall be conclusively evidenced by the signing of the Escrow Agreement or amendments thereto. The Director of Finance shall provide for the payment of the services rendered and for reimbursement of expenses incurred pursuant to the Escrow Agreement, except to the extent paid or reimbursed by the Original Purchaser in accordance with the Certificate of Award, from the

proceeds of the Bonds to the extent available and then from other money lawfully available and appropriated or to be appropriated for that purpose.

Acting pursuant to the 2013 Bond Ordinance which authorized the 2013 Bonds, the Refunded Bonds, as determined by the Director of Finance in the Certificate of Award to be refunded and called for redemption, are hereby called for redemption on the earliest practicable date as set forth in the Certificate of Award (the "*Redemption Date*") at the required redemption price of the principal amount thereof, and the Director of Finance is hereby authorized and directed to cause those Refunded Bonds to be called for redemption on the Redemption Date and arrange for the notice of redemption to be given in accordance with the applicable provisions of the 2013 Bond Ordinance.

For informational purposes, a certified copy of this Ordinance shall be sent by the Director of Finance to the current bond registrar for the Refunded Bonds.

In order to provide for the payment of (a) the interest on the Refunded Bonds on each interest payment date following the Closing Date and through the Redemption Date, (b) the principal and mandatory sinking fund payments (if any in each case) of the Refunded Bonds maturing on or prior to the Redemption Date, and (c) the principal of the Refunded Bonds to be called for redemption on the Redemption Date, the City covenants and agrees with the Escrow Trustee and with the owners of the Refunded Bonds that the City will take, and will cause the Escrow Trustee to take, all steps required by the terms of the Escrow Agreement to carry out such payments. The City will provide from the proceeds of the Bonds and other available funds in accordance with this Ordinance, moneys and investments sufficient to pay in full (a) the interest on the Refunded Bonds on each interest payment date following the Closing Date and through the Redemption Date, (b) the principal and mandatory sinking fund payments (if any in each case) of the Refunded Bonds maturing on or prior to the Redemption Date, and (c) the principal of the Refunded Bonds to be called for redemption on the Redemption Date. The City covenants and agrees with the Escrow Trustee and with the owners of the Refunded Bonds that the City will take, and will cause the Escrow Trustee to take, all steps required by the terms of this Ordinance, the 2013 Bond Ordinance and the Escrow Agreement to carry out such payments so that the Refunded Bonds are not deemed to be outstanding.

There shall be delivered to the Escrow Trustee for the Escrow Fund proceeds to be received from the sale of the Bonds and other available funds which shall be held in cash, or, if and to the extent determined by the Director of Finance to be financially advantageous to the City, invested in United States Treasury Obligations ("*Treasury Securities*"), State and Local Government Series ("*SLG Securities*") or other direct obligations of, or obligations guaranteed as to both principal and interest by, the United States (direct obligations and guaranteed obligations together with the Treasury Securities and the SLG Securities, collectively, the "*Securities*"). For purposes of this paragraph, "*direct obligations of, or obligations guaranteed as to both principal and interest by, the United States*" includes rights to receive payment or portions of payments of the principal of or interest or other investment income on (i) those obligations and (ii) other obligations fully secured as to payment by those obligations and the interest or other investment income on those obligations.

The moneys in the Escrow Fund which shall be held in cash and Securities (if any) may, if and to the extent determined by the Director of Finance to be financially advantageous to the City, be certified by an independent public accounting firm of national reputation in a written report (the "*Verification Report*") to be of such maturities or redemption dates and interest payment dates, and to bear such interest, as will be sufficient together with any moneys in the Escrow Fund to be held in cash as contemplated by the Verification Report, without further investment or reinvestment of either the principal amount thereof or the interest earnings therefrom, to cause the Refunded Bonds to be deemed to be not outstanding as provided for in the 2013 Bond Ordinance. The balance of the proceeds to be received from the sale of the Bonds, less any amount thereof contemplated by the Verification Report to be held in cash in the Escrow Fund and less any amount otherwise provided for herein, shall be used for the payment of costs related to the refunding and the issuance of the Bonds. The Director of Finance is hereby authorized to retain and designate in the Certificate of Award an independent public accounting firm of national reputation to prepare and deliver the Verification Report.

At the direction of the Director of Finance, the Escrow Trustee or the Original Purchaser is authorized to apply and subscribe for SLG Securities on behalf of the City. Further, if the

Director of Finance determines that it would be in the best interest of and financially advantageous to the City to purchase Treasury Securities for deposit into the Escrow Fund, the Director of Finance or any other officer of the City, on behalf of the City and in their official capacity, may purchase and deliver such obligations, engage the services of a municipal advisor, bidding agent or similar entity for the purpose of facilitating the bidding, purchase and delivery of such obligations for, and any related structuring of, the Escrow Fund, execute such instruments as are deemed necessary to engage such services for such purpose, and provide further for the payment of the cost of obtaining such services, except to the extent paid by the Original Purchaser in accordance with the Certificate of Award, from the proceeds of the Bonds to the extent available and otherwise from any other funds lawfully available and that are appropriated or shall be appropriated for that purpose.

Any such moneys, and Securities (if any), in addition thereto contemplated by the Verification Report to be held in cash, shall be held by the Escrow Trustee in trust and committed irrevocably to the payment of the principal of and interest on the Refunded Bonds.

Section 13. Bond Counsel. The legal services of the law firm of Squire Patton Boggs (US) LLP are hereby retained. Those legal services shall be in the nature of legal advice and recommendations as to the documents and the proceedings in connection with the authorization, sale and issuance of the Bonds and rendering at delivery related legal opinions, all as set forth in the form of engagement letter from that firm which is now on file in the office of the Clerk of Council. In providing those legal services, as an independent contractor and in an attorney-client relationship, that firm shall not exercise any administrative discretion on behalf of this City in the formulation of public policy, expenditure of public funds, enforcement of laws, rules and regulations of the State, any county or municipal corporation or of this City, or the execution of public trusts. For those legal services, that firm shall be paid just and reasonable compensation and shall be reimbursed for actual out-of-pocket expenses incurred in providing those legal services. To the extent they are not paid or reimbursed pursuant to the Purchase Agreement and/or the Registrar Agreement, the Director of Finance is authorized and directed to make appropriate certification as to the availability of funds for those fees and any reimbursement and to issue an appropriate order for their timely payment as written statements are submitted by that firm. The amounts necessary to pay those fees and any reimbursement are hereby appropriated from the proceeds of the Bonds, if available, and otherwise from available moneys in the General Fund.

Section 14. Municipal Advisor. The services of Bradley Payne, LLC., as municipal advisor, are hereby retained. The municipal advisory services shall be in the nature of financial advice and recommendations in connection with the issuance and sale of the Bonds. In rendering those municipal advisory services, as an independent contractor, that firm shall not exercise any administrative discretion on behalf of the City in the formulation of public policy, expenditure of public funds, enforcement of laws, rules and regulations of the State, the City or any other political subdivision, or the execution of public trusts. That firm shall be paid just and reasonable compensation for those municipal advisory services and shall be reimbursed for the actual out-of-pocket expenses it incurs in rendering those municipal advisory services. To the extent they are not paid or reimbursed pursuant to the Purchase Agreement and/or the Registrar Agreement, the Director of Finance is authorized and directed to make appropriate certification as to the availability of funds for those fees and any reimbursement and to issue an appropriate order for their timely payment as written statements are submitted by that firm. The amounts necessary to pay those fees and any reimbursement are hereby appropriated from the proceeds of the Bonds, if available, and otherwise from available moneys in the General Fund.

Section 15. Satisfaction of Conditions for Bond Issuance. This City Council determines that all acts and conditions necessary to be done or performed by the City or to have been met precedent to and in the issuing of the Bonds in order to make them legal, valid and binding special obligations of the City have been performed and have been met, or will at the time of delivery of the Bonds have been performed and have been met, in regular and due form as required by law; that the General Income Tax Receipts of the City are pledged for the timely payment of the debt charges on the Bonds; that no statutory or constitutional limitation of indebtedness or taxation will have been exceeded in the issuance of the Bonds; and that the Bonds are being authorized and issued pursuant to the Act, the Charter of the City, this Ordinance, the Certificate of Award and other authorizing provisions of law.

Section 16. Compliance with Open Meeting Requirements. This City Council finds and determines that all formal actions of this City Council and any of its committees concerning and relating to the passage of this Ordinance were taken in an open meeting of this City Council or any of its committees, and that all deliberations of this City Council and of 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 17. Effective Date. This Ordinance shall go into effect upon its passage as provided by law and the Charter of the City of Huber Heights.

Passed by Council on the _____ day of _____, 2021;
_____ Yeas; _____ Nays.

Effective Date :

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. 2021-O-_____ passed by the City Council of the City of Huber Heights, on _____, 2021.

_____
Clerk of Council

AI-7669 **Topics of Discussion** **G.**

Council Work Session

Meeting Date: 06/22/2021

Horizon Line Development, Inc. - Development Agreement

Submitted By: Bryan Chodkowski

Department: Economic Development

Council Committee Review?: Council Work Session **Date(s) of Committee Review:** 06/22/2021

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

Motion/Ordinance/ Resolution No.:

Agenda Item Description or Legislation Title

Horizon Line Development, Inc. - Development Agreement

Purpose and Background

The City and Horizon Line Development, Inc. have reached terms for a development agreement. The agreement includes the sale of 42 of the 52 acres of the Lehman Farm property. Following its sale, the property will be developed into 232 units of market rate multi-family housing with 7 acres dedicated for commercial/retail/restaurant uses. Total investment is estimated at $30 million. In addition to profits from the land sale, the City calculates the project will generate more than $5.9 million in property tax revenue through 2052.

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

Summary Information

Resolution

Exhibit A

HUBER HEIGHTS
Come Grow With Us!

City of Huber Heights
6131 Taylorsville Rd.
Huber Heights, OH 45424

937.233.1423
937.233.1272 fax

www.hhoh.org

TO: Scott P. Falkowski,
Interim City Manager

FROM: Bryan RH Chodkowski,
Assistant City Manager

DATE: June 10, 2021

RE: Development Agreement with Horizon Line Development, LLC

BLUF: Through this agreement, the City will gross $3.6M in proceeds from the sale of land and pave the way for more than $30M in taxable development.

Through on-going negotiations, the City has reached mutually agreeable terms for the sale of 42 acres to Horizon Line Development, LLC for the City-owned property located at the northwest corner of Executive Blvd and State Route 201-Brandt Pike. The proposed development includes 232 market rate multi-family residential units and 7 acres of commercial/retail uses. When completed, the project will represent more $30M in new taxable development.

Construction of this project is estimated to begin in May 2022. When completed, the project will collect more than $5.9M in tax dollars through the Montgomery County TIF. Additional elements of the project include a cooperative effort on stormwater management designed to increase development potential on properties located further west owner by the Newbauer family and TJH Holdings.

It is my recommendation that the City enter into the proposed development agreement with Horizon Line Development, LLC.

Should you have any questions or concerns on this matter, please do not hesitate to contact me.

CITY OF HUBER HEIGHTS
STATE OF OHIO

RESOLUTION NO. 2021-R-

AUTHORIZING THE EXECUTION OF DEVELOPMENT AGREEMENT WITH HORIZON LINE DEVELOPMENT, LLC.

WHEREAS, the City and Horizon Line Development, LLC (the "Developer") plan to enter into a development agreement (the "Agreement"); and

WHEREAS, the Agreement provides for the development of +/-42 acres of real property owned by the City located at the northwest intersection of Executive Boulevard and State Route 201 – Brandt Pike (herein referred to as the "Property"); and

WHEREAS, the Developer proposes to construct, or cause to be constructed, +/- 232 units of market rate multi-family housing as well as develop +/- 7 acres for commercial/retail uses (the "Project"); and

WHEREAS, the City and Developer have determined to enter in Agreement (Exhibit A attached hereto) to provide for the construction of the Project and associated development incentives including the provision of related real property tax exemptions; and

WHEREAS, to facilitate economic development within the City and the development of the Project, thereby improving the economic welfare of the people of the State of Ohio, City of Huber Heights, this Council finds that it is in the best interest of the City to provide for the execution and delivery of the Agreement.

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

Section 1. The Agreement by and between the City and Developer providing for the construction of the Project and the provision of development incentives including the provision of related real property tax exemption for the purposes 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, City of Huber Heights in the form attached as Exhibit A is hereby approved and authorized with changes therein not inconsistent with this Resolution and not substantially adverse to this City and which shall be approved by the City Manager. The City Manager, for and in the name of this City, is hereby authorized to execute the 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. The Council further hereby authorizes and directs the City Manager, Director of Finance, City Attorney, Clerk of Council, or other such appropriate offices of the City to prepare and sign all agreements and instruments and to take any other actions as may be appropriate to implement this Resolution.

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 in meetings open to the public and in compliance with all legal requirements including Section 121.22 of the Ohio Revised Code.

Section 4. This Resolution shall go into effect upon its passage as provided by law and the Charter of the City of Huber Heights.

Passed by Council on the _____ day of _____ , 2021;
_____ Yeas; _____ Nays.

Effective Date:

AUTHENTICATION:

_____	_____
Clerk of Council	Mayor
_____	_____
Date	Date

Exhibit A

DEVELOPMENT AGREEMENT

by and between

CITY OF HUBER HEIGHTS, OHIO

and

HORIZON LINE DEVELOPMENT, LLC

relating to

EXECUTIVE DRIVE
MIXED-USE DEVELOPMENT

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dated as of

_____, 2021

TABLE OF CONTENTS

Page

RECITALS 1

ARTICLE I
DEFINITIONS

Section 1.1 Use of Defined Terms 5
Section 1.2 Definitions 5
Section 1.3 Interpretation 7

ARTICLE II
GENERAL AGREEMENT AND TERM

Section 2.1 General Agreement Among Parties 8
Section 2.2 Term of Agreement 8

ARTICLE III
REPRESENTATIONS AND COVENANTS OF THE PARTIES

Section 3.1 Representations and Covenants of the City 9
Section 3.2 Representations and Covenants of the Developer 10

ARTICLE IV
PURCHASE AND SALE OF THE HORIZON LINE PROPERTY

Section 4.1 Sale and Purchase 12
Section 4.2 Purchase Price 12
Section 4.3 Due Diligence Documents 12
Section 4.4 Evidence of Title 13
Section 4.5 Survey 14
Section 4.6 Subdivision Plat 15
Section 4.7 Escrow Agent 15
Section 4.8 Real Estate Taxes and Assessments 15
Section 4.9 Conditions to Closing 16
Section 4.10 Best and Concurrent Efforts 18
Section 4.11 Closing Date 18
Section 4.12 Broker Fee 18
Section 4.13 Closing Expenses 18
Section 4.14 Possession 19

ARTICLE V
DEVELOPMENT PROJECTS

Section 5.1 General 20
Section 5.2 Development Project 20
Section 5.3 Submittal of Plans for Development Project 20
Section 5.4 Installation of Utilities and Roadways 21
Section 5.5 Primary Developer Obligations 24
Section 5.6 Permits 25
Section 5.7 Fees, Charges and Taxes 25
Section 5.8 Provision of City Services 25
Section 5.9 Insurance and Bonds 26

TABLE OF CONTENTS
(continued)

Page

Section 5.10	Compliance with Laws	26
Section 5.11	Expeditious Completion of Development Project	26
	ARTICLE V COMMUNITY REINVESTMENT AREA	
Section 6.1	General	28
Section 6.2	Community Reinvestment Area	28
Section 6.3	Information Reporting	30
Section 6.4	Non-Discriminatory Hiring Policy	30
	ARTICLE VI EVENTS OF DEFAULT; REMEDIES	
Section 7.1	Developer Default	32
Section 7.2	City Default	32
Section 7.3	Remedies	33
Section 7.4	Other Rights and Remedies; No Waiver by Delay	38
Section 7.5	Force Majeure	39
	ARTICLE VII MISCELLANEOUS	
Section 8.1	Assignment	40
Section 8.2	Binding Effect	40
Section 8.3	Captions and Headings	41
Section 8.4	Day for Performance	41
Section 8.5	Developer Mortgagee Rights	41
Section 8.6	Document Submissions to the City	42
Section 8.7	Entire Agreement	42
Section 8.8	Executed Counterparts	42
Section 8.9	Extent of Covenants; Conflict of Interest; No Personal Liability	42
Section 8.10	Governing Law	43
Section 8.11	Limits on Liability	43
Section 8.12	No Third-Party Beneficiary	43
Section 8.13	Notices	44
Section 8.14	Recitals and Exhibits	44
Section 8.15	Severability	44
Section 8.16	Survival of Representations and Warranties	45
	SIGNATURES	46

Exhibit A -	Legal Description and/or Depiction of the City Parcel
Exhibit B -	Legal Description and/or Depiction of the Horizon Line Property
Exhibit C -	Depiction of the Horizon Line Development Project

TABLE OF CONTENTS
(continued)

Page

(END OF TABLE OF CONTENTS)

HORIZON LINE DEVELOPMENT AGREEMENT

This HORIZON LINE DEVELOPMENT AGREEMENT (this "*Agreement*") is made and entered into this _____ day of _____, 2021 (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 **HORIZON LINE DEVELOPMENT, LLC**, an Ohio limited liability company (the "*Developer*" and together with the City, the "*Parties*" and each of the Parties individually referred to herein as a "*Party*"), under the circumstances summarized in the following recitals (terms used but not defined in the Recitals shall have the meaning set forth in Section 1.2):

RECITALS

WHEREAS, the City currently owns approximately 51.5979 acres of real property located at 7125 Executive Boulevard, Huber Heights, Ohio, commonly known as Parcel No. P70 03190 0005 and more particularly described as the "City Parcel" on **EXHIBIT A** attached hereto and incorporated herein by reference (the "*City Parcel*").

WHEREAS, the City desires to sell, convey, assign, and transfer to Developer and Developer desires to purchase from City all of City's right, title and interest in and to a certain portion of the City Parcel consisting of approximately 42 acres, as legally described and/or depicted on **EXHIBIT B** attached hereto and incorporated herein by reference (the "*Horizon Line Property*").

WHEREAS, the Developer proposes to construct, or cause to be constructed, on the Horizon Line Property an approximate 232-unit apartment development project and dedicate approximately 7 acres of the Horizon Line Property for the development of retail/commercial outlots for future development, as depicted on the Concept Plan (the "*Concept Plan*") set forth on **EXHIBIT C** attached hereto and incorporated herein by reference (the "*Horizon Line Development Project*"); and

WHEREAS, the City has determined that the construction of the Horizon Line Development Project is expected to result in the creation of employment opportunities within the City, provide additional commercial and retail amenities to the citizens of the City, and create various types of housing for its residents; and

WHEREAS, the City desires to pass any and all legislation and/or City Codified Ordinances necessary to designate and establish the Horizon Line Property as a new Community Reinvestment Area ("*CRA*") and provide certain CRA tax exemptions for the Horizon Line Property and Horizon Line Development Project; and

WHEREAS, the Parties have determined to enter into this Agreement to provide for the purchase and sale of the Horizon Line Property, the construction of the Horizon Line Development Project, and the provision of related real property CRA tax exemptions;

NOW, THEREFORE, in consideration of the premises and covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto agree and obligate themselves as follows:

(END OF RECITALS)

ARTICLE I

DEFINITIONS

Section 1.1 Use of Defined Terms. In addition to the words and terms defined elsewhere in this Agreement or by reference to another document, the words and terms set forth in Section 1.2 shall have the meanings set forth in Section 1.2 unless the context or use clearly indicates another meaning or intent.

Section 1.2 Definitions. As used herein:

"***Agreement***" means this Horizon Line Development Agreement, dated as of the Effective Date, by and between the City and the Developer.

"***City***" means the City of Huber Heights, Ohio, an Ohio municipality.

"***City Attorney***" means the City Attorney of the City.

"***City Codified Ordinances***" means the Codified Ordinances of the City, as amended and supplemented from time to time.

"***City Council***" means the City Council of the City.

"***City Default***" shall have the meaning set forth in Section 7.2.

"***City Manager***" means the City Manager of the City.

"***County***" means the County of Montgomery, Ohio.

"***County Auditor***" means the County Auditor of the County.

"***County Recorder***" means the County Recorder of the County.

"***CRA Resolution***" means a Resolution adopted by City Council which designates and establishes the Horizon Line Property as a new CRA and provides certain CRA tax exemptions to the Horizon Line Property and Horizon Line Development Project.

"***CRA Statute***" means, collectively, Sections 3735.65 through 3735.70 of the Ohio Revised Code, and those sections as each may hereafter be amended from time to time.

"***Developer***" means Horizon Line Development, LLC, an Ohio limited liability company.

"***Developer Default***" shall have the meaning set forth in Section 7.1.

"***Developer Mortgage***" shall have the meaning set forth in Section 8.5.

"***Developer Mortgagee***" shall have the meaning set forth in Section 8.5.

"***Effective Date***" means the date as defined in the preamble of this Agreement.

"***Notice Address***" means:

as to the City:	City of Huber Heights, Ohio 6131 Taylorsville Road Huber Heights, Ohio 45424 Attention: City Manager Telephone: (937) 233-1423 Facsimile: (937) 233-1272
With a duplicate to:	City of Huber Heights-Law Department 2700 Kettering Tower Pickrel Schaeffer & Ebeling Dayton, Ohio 45423 Attention: Law Director Telephone: (937) 223-1130
as to the Developer:	Horizon Line Development, LLC Attention: Kevin M. Brokaw 2211 Medina Road, Suite 100 Medina, Ohio 44256 Telephone: (216) 570-7055 Email: brokawdevelopment@outlook.com
With a duplicate to:	The Law Offices of Phillip A. Helon Attn: Phillip A. Helon, Esq. 2211 Medina Road, Suite 100 Medina, Ohio 44256 Telephone: (216) 978-7463 Email: pah@helonlaw.com

"***Parties***" means, collectively, the City and the Developer.

"***Primary Developer***" means the Developer, or such successor in interest to the Developer in respect of any portion of the Horizon Line Property, who will be primarily responsible for completing the Horizon Line Development Project on the Horizon Line Property.

"***Real Property Tax Exemption Recipient***" shall have the meaning set forth in Section 5.2(c).

"***State***" means the State of Ohio.

Section 1.3 Interpretation. Any reference in this Agreement to the City or to any officers of the City includes those entities or officials succeeding to their functions, duties or responsibilities pursuant to or by operation of law or lawfully performing their functions.

Any reference to a section or provision of the Constitution of the State, a section, provision or chapter of the Ohio Revised Code, or a section or provision of the City Codified Ordinances includes the section, provision or chapter as modified, revised, supplemented or superseded from time to time; *provided*, that no amendment, modification, revision, supplement or superseding section, provision or chapter will be applicable solely by reason of this paragraph if it constitutes in any way an impairment of the rights or obligations of the Parties under this Agreement.

Unless the context indicates otherwise, words importing the singular number include the plural number, and vice versa; the terms "*hereof*", "*hereby*", "*herein*", "*hereto*", "*hereunder*" and similar terms refer to this Agreement; and the term "*hereafter*" means after, and the term "*heretofore*" means before, the date of this Agreement. Words of any gender include the correlative words of the other gender unless the sense indicates otherwise. References to articles, sections, subsections, clauses, exhibits or appendices in this Agreement, unless otherwise indicated, are references to articles, sections, subsections, clauses, exhibits or appendices of this Agreement.

(END OF ARTICLE I)

ARTICLE II

GENERAL AGREEMENT AND TERM

Section 2.1 General Agreement Among Parties. For the reasons set forth in the Recitals hereto, which Recitals are incorporated herein by reference as a statement of the public purposes of this Agreement and the intended arrangements between the Parties, the Parties intend to and shall cooperate in the manner described herein to facilitate the design, financing, construction, acquisition and installation of the Horizon Line Development Project.

Section 2.2 Term of Agreement. This Agreement shall become effective as of the Effective Date and will continue until the Parties' respective obligations set forth herein have been fulfilled, unless earlier terminated in accordance with this Agreement.

(END OF ARTICLE II)

ARTICLE III

REPRESENTATIONS AND COVENANTS OF THE PARTIES

Section 3.1 Representations and Covenants of the City. The City represents and covenants that:

(a) It is a municipal corporation duly organized and validly existing under the Constitution and applicable laws of the State and its Charter.

(b) It is not in violation of or in conflict with any provisions of the laws of the State or of the United States of America applicable to it that would impair its ability to carry out its obligations contained in this Agreement.

(c) It is legally empowered to execute, deliver and perform this Agreement and to enter into and carry out the transactions contemplated by this Agreement. That execution, delivery and performance does not and will not violate or conflict with any provision of law applicable to it, including its Charter, and does not and will not conflict with or result in a default under any agreement or instrument to which it is a party or by which it is bound.

(d) This Agreement has, by proper action, been duly authorized, executed and delivered by it and all steps necessary to be taken by it have been taken to constitute this Agreement, and its covenants and agreements contemplated herein, as its valid and binding obligations, enforceable in accordance with their terms.

(e) There is no litigation pending or threatened against or by it wherein an unfavorable ruling or decision would materially adversely affect its ability to carry out its obligations under this Agreement.

(f) It will do all things in its power in order to maintain its existence or assure the assumption of its obligations under this Agreement by any successor public body.

(g) The Parties agree that the City shall not levy any assessments on the Horizon Line Property which are not levied on all of the surrounding property in a fair and equitable manner, except those assessments if any requested by Petition from the then current owner of the Horizon Line Property.

(h) Ordinance No. _____ passed by City Council on _____, 20___ authorizing the execution and delivery of this Agreement, has been duly passed and is in full force and effect as of the Effective Date.

Section 3.2 Representations and Covenants of the Developer. The Developer represents and covenants that:

(a) It is a for profit limited liability company duly organized and validly existing under the applicable laws of the State.

(b) It is not in violation of or in conflict with any provisions of the laws of the State or of the United States of America applicable to it that would impair its ability to carry out its obligations contained in this Agreement.

(c) It is legally empowered to execute, deliver and perform this Agreement and to enter into and carry out the transactions contemplated by this Agreement. That execution, delivery and performance does not and will not violate or conflict with any provision of law applicable to the Developer and does not and will not conflict with or result in a default under any agreement or instrument to which it is a party or by which it is bound.

(d) This Agreement has, by proper action, been duly authorized, executed and delivered by it and all steps necessary to be taken by it have been taken to constitute this Agreement, and its covenants and agreements contemplated herein, as its valid and binding obligations, enforceable in accordance with their terms.

(e) There is no litigation pending or threatened against or by it wherein an unfavorable ruling or decision would materially adversely affect its ability to carry out its obligations under this Agreement.

(f) It will do all things in its power in order to maintain its existence or assure the assumption of its obligations under this Agreement by any successor entity.

(g) It, each of its members, each spouse of its members, each child of its members, and each political action committee affiliated with the Developer complies with Ohio Revised Code Section 3517.13 limiting political contributions.

(END OF ARTICLE III)

ARTICLE IV

PURCHASE AND SALE OF THE HORIZON LINE PROPERTY

Section 4.1 Sale and Purchase. On the terms and subject to the conditions set forth in this Agreement, the City shall sell, convey, assign, and transfer to Developer and Developer shall purchase from the City all of the City's right, title and interest in and to the Horizon Line Property, together with all improvements, easements, appurtenant rights, privileges, reservations, rights-of-way, licenses and permits owned by the City and relating to the Horizon Line Property or its operation, and including all other fixtures attached or pertaining to such land, buildings and improvements and further including all mineral rights to the extent, if any, owned by the City and all of the City's right title and interest, if any, to all highways, streets, roads, avenues, alleys, strips and gores in, on, across, in front of, contiguous to, abutting or adjoining the same. Fee simple title to the Horizon Line Property shall be conveyed to Developer by good and sufficient quitclaim deed (the "*Deed*"), free and clear of any and all tenancies, liens and encumbrances, whatsoever, except taxes both general and special not yet due and payable, zoning ordinances, if any, and the Permitted Encumbrances (as defined below).

Section 4.2 Purchase Price. The purchase price ("*Purchase Price*") for the Horizon Line Property shall be $90,000 per developable acre, as determined by the Survey (defined below), which is estimated to be $3,780,000 based upon an assumed 42 developable acres. The Purchase Price, subject to such prorations, credits, allowances, or other adjustments as provided for in this Agreement, shall be payable by Developer into escrow on the Closing Date (defined below) by cashier's check or wire transfer of federal funds.

Section 4.3 Due Diligence Documents. Within ten (10) business days of the Effective Date, the City shall deliver to Developer copies of all leases, service agreements, permits, warranties, all utility vendor information and account information, all records relating to

management, leasing, operating statements, real estate taxes, assessments, insurance, rents, maintenance, repairs, capital improvements and services, all development, financial, feasibility, title, survey, environmental, wetlands, structural, engineering, mechanical, soil, geological and/or other reports in the City's possession relating to the Horizon Line Property or its condition (collectively referred to herein as the "*Due Diligence Documents*"). Developer shall treat such materials as confidential and shall not, except as required by law, disclose the same to anyone other than Developer's advisors, attorneys, and consultants in connection with this transaction, whom the Developer shall ensure will sign a confidentiality agreement that is satisfactory to the City prior to the disclosure of the documents. Notwithstanding any provision of this Agreement to the contrary, the foregoing confidentiality agreement shall survive any termination of this Agreement for a period of two (2) years.

Section 4.4 Evidence of Title. Upon execution of this Agreement, Developer shall cause _____ (the "*Title Company*") to issue its A.L.T.A. Commitment for Owner's Policy of Title Insurance with respect to the Horizon Line Property (the "*Title Commitment*"). The Title Company shall deliver to the Developer and the City simultaneously the Title Commitment, as well as an Insured Closing Letter from the National Underwriter insuring the actions of its agent. The Title Commitment shall reflect Developer as the Proposed Insured, an Insured Amount equal to the Purchase Price, and be certified to the Closing Date. The title policy to be issued pursuant to the Title Commitment (the "*Owners Policy*") shall insure in Developer fee simple title, subject only to the following encumbrances (collectively, the "*Permitted Encumbrances*") (i) taxes and assessments, both general and special, that have become a lien, but are not yet due and payable, and (ii) all easements, rights-of-way, covenants, conditions, restrictions, zoning ordinances, and other limitations of record which are not objected to by Developer pursuant to this Section. The Owners Policy shall be issued as soon as practicable after the Closing Date.

Developer is hereby granted a period of sixty (60) days from receipt of the Title Commitment and Survey (the "*Notification Date*"), within which to give written notice of objection to any defect of title or other matter of record which will adversely affect Developer's intended use of the Horizon Line Property (each, an "*Objection*"). In the event Developer submits any Objections, the City shall thereafter possess a period of fifteen (15) days from the Notification Date (the "*Cure Period*") within which to (i) cure the Objections, at the City's sole cost and expense, or (ii) notify Developer that it will not cure the Objections. Should the City be unable or unwilling to cure any Objection within the Cure Period, Developer, in its sole discretion, may (i) accept title to the Horizon Line Property subject to the Objections, waive the provisions of this Section, and proceed to consummate the transaction pursuant to this Agreement, without abatement of the Purchase Price; or (ii) rescind this transaction and, thereafter the parties shall stand in the same place and stead as if no agreement had been entered into and shall possess no further obligation hereunder. Any matters of record not objected to by Developer, or which Developer accepts as provided above, shall be deemed to be "*Permitted Encumbrances*." Notwithstanding anything to the contrary contained herein, in no event shall any monetary lien or encumbrance affecting the Horizon Line Property be deemed a Permitted Encumbrance and the City shall be required to remove and/or satisfy all monetary liens or encumbrances affecting the Horizon Line Property prior to or at Closing so that the same do not appear on the final Owners Policy.

Section 4.5 Survey. Within five (5) days after the Effective Date, the City shall deliver to Developer copies of the most recent survey of the Horizon Line Property in the City's possession or control. Developer shall obtain, at Developer's sole cost and expense, an updated survey of the Horizon Line Property, prepared in conformity with current ALTA/NSPS standards for "Class-A" surveys and certified to Developer and the Title Company by a duly licensed land surveyor or

professional engineer, showing the Horizon Line Property to be consistent with **EXHIBIT B** attached hereto and incorporated herein ,all items referenced in the Commitment, and such other items as Developer may reasonably request (the "*Survey*").

Section 4.6 Subdivision Plat. Prior to Closing, the City, as owner, will cause a subdivision plat of the City Parcel mutually acceptable to the City and Developer and in substantial accordance with **EXHIBIT B** attached hereto and incorporated herein creating the Horizon Line Property as a separate legal parcel of real property, with right-of-way dedications, lot consolidations and lot splits, to be prepared and submitted to the City's Planning Commission, reflecting the intent of the City and the Developer hereunder (the "*Subdivision Plat*"). The City will pay for the cost of the Subdivision Plat and shall diligently pursue regulatory approval of the Subdivision Plat. The legal description for the legal parcel that will contain the Horizon Line Property will be established by the Survey and incorporated into the Subdivision Plat. The Subdivision Plat will be amended by the Parties as necessary to dedicate public roads upon completion.

Section 4.7 Escrow Agent. The Title Company shall serve as escrow agent for this transaction (the "*Escrow Agent*"), subject to its standard conditions of acceptance of escrow, provided, however, that said Escrow Agent shall use this Agreement as its escrow instructions, and wherever the terms, conditions and provisions of this Agreement vary from, modify or are different than said Escrow Agent's standard conditions of acceptance of escrow, then the terms, conditions and provisions of this Agreement shall govern.

Section 4.8 Real Estate Taxes and Assessments. Real estate taxes and assessments (both general and special) and other similar items will be adjusted ratably as of the Closing Date. All real property taxes, charges and assessments which are due and payable or have become a lien on the Horizon Line Property on or before Closing will be paid by the City. All current real

property taxes levied against the Horizon Line Property will be prorated and adjusted on a due date basis, payable in arrears. At or before Closing, the City will pay all delinquent taxes on the Horizon Line Property including penalties, interest and other charges. In the event that the actual real property tax bill is different than the amount used for proration, Developer and the City shall readjust the proration between themselves at such time as the actual amount is known. Developer shall forward the new real property tax bill to the City, and upon receipt the City and Developer shall make any applicable adjustment.

Section 4.9 Conditions to Closing. It is specifically understood and agreed between Developer and the City that the obligation of Developer to consummate and close this transaction is conditioned and contingent upon the following conditions, any one or all of which may be waived in whole or in part in writing by the Developer in the Developer's sole discretion (collectively, the "*Conditions to Closing*"):

(a) Developer determining that the Horizon Line Property is acceptable to Developer, and all due diligence investigations shall be satisfactory to Developer, including, without limitation, all leases, service agreements, permits, warranties, structural and soil analysis, surveys, environmental analysis, wetland analysis, title examination and/or any other due diligence deemed necessary by Developer in its sole discretion.

(b) The City shall have performed all covenants, agreements and obligations and complied with all conditions required by this Agreement to be performed or complied with by the City.

(c) All of the City's representations and warranties shall be true and correct in all material respects.

(d) The recording of the Subdivision Plat by the City.

(e) Developer obtaining a final and non-appealable subdivision site plan approval for the Horizon Line Development Project from City Council substantially in accordance with the concept Plan set forth on **EXHIBIT C** attached hereto and incorporated herein (the "*Site Plan Approval*").

(f) Developer obtaining the approval, passage and/or recording of a municipal planned unit development zoning district mutually acceptable to the City and Developer which properly zones the Horizon Line Property for Developer's intended use as mixed-use multifamily residential and commercial/retail outlots in accordance with the Concept Plan (the "*MPUD*").

(g) Developer obtaining all necessary permits and approvals from all levels of government having jurisdiction over the Horizon Line Property to allow the Developer to commence and complete the building and development of the Horizon Line Development Project on the Horizon Line Property consistent with the Concept Plan and detailed development plan(s) for the Horizon Line Development Project.

(h) The Parties written approval of the design of the Stub Road and the Stub Road Budget (as defined below).

(i) The Parties written approval of the Retention Facility Plans (as defined below).

(j) Passage of the CRA Resolution by City, Council, City Boards and/or Commissions in accordance with the ordinary exercise of their respective rights and duties, all pursuant to and in accordance with the pertinent City Codified Ordinances, granting real property tax exemptions of up to 50% for up to 15 years for the Horizon Line Property.

(k) All of the Title Company's requirements shall have been satisfied such that the Title Company shall have agreed to issue the Title Insurance Policy insuring Developer's purchase of the Horizon Line Property, subject only to the Permitted Exceptions.

Section 4.10 Best and Concurrent Efforts. The Parties acknowledge the importance and priority of the Horizon Line Development Project. As such, the Parties agree, specific to the terms and conditions as provided for in Section 4.9 of this agreement, to provide their best and concurrent efforts to meet their respective obligations herein. Should either Party fail to present best and concurrent efforts in fulfillment of their respective obligations under this Agreement, such failure may be deemed a default of this Agreement as further described in Section VII below.

Section 4.11 Closing Date. The consummation of the purchase and sale of the Horizon Line Property (the "*Closing*") shall occur at the offices of Escrow Agent, or in such other place or manner mutually acceptable to the parties, no later than ninety (90) days after the satisfaction, in Developer's sole discretion, of the Conditions of Closing, or such other date as the parties may mutually agree to in writing (the "*Closing Date*"). The Closing Date shall be established by delivery of written notice by Developer to the City, stating the time and date of Closing (the "*Closing Notice*"). Notwithstanding the foregoing, Developer may accelerate Closing by providing the City with written notice thereof no later than five (5) days prior to the date of such accelerated Closing Date.

Unless extended by the parties, in the event that the Closing Date has not occurred on or before the date which is twelve (12) months after the Effective Date, either the City or the Developer may terminate this Agreement upon no less than thirty (30) days written notice to the other party irrespective of any financial expenditure, investment or other use of resources on the party of any party. The City and the Developer each agree to use good faith efforts to diligently pursue the satisfaction of the Conditions to Closing and schedule the Closing Date.

Section 4.12 Broker Fee. The City and Developer acknowledge and agree no real estate brokers will be due a commission as a result of the consummation of the transactions contemplated by this Agreement, except for the fee payable to Tom Kretz of Irongate Realtors, Inc. (the "*Broker*")

in an amount equal to two percent (2%) of the gross Purchase Price (the "*Fee*"). The City and Developer acknowledge and agree that the payment of the Fee shall be split equally (50/50) between the City and Developer and payable to the Broker at Closing.

Section 4.13 Closing Expenses. the City shall bear the following fees and expenses incurred in connection with the Closing: (i) recording fees to discharge obligations affecting the Horizon Line Property required to be discharged by the City under this Agreement, (ii) the conveyance or transfer taxes (if any), (iii) the cost of issuance of the Commitment, (iv) the cost of issuance of the Title Insurance Policy, (v) one-half (1/2) of the Broker Fee, and (vi) one-half (1/2) of the escrow fee. Developer shall bear the following fees and expenses incurred in connection with the Closing: (i) the recording fees incurred in connection with filing the Deed, (ii) all of the costs of any requested endorsements or lender's title insurance, (iii) one-half (1/2) of the Broker Fee, (iv) one-half (1/2) of the escrow fee, and (v) the cost of the Survey. Each party shall bear its own legal expenses.

Section 4.14 Possession. Possession and occupancy of the Horizon Line Property shall be delivered to the Developer on the date of title transfer; provided, however, that from and after the Effective Date, Developer shall have the right to: (i) enter upon the Horizon Line Property upon twenty-four (24) hours advance notice at Developer's sole risk, cost and expense for the purpose of making any tests, surveys, studies, analysis, inspections, engineering or other operations necessary, incidental or convenient to Developer in connection with Developer's intended use of the Horizon Line Property; and (ii) publicly market the Horizon Line Property for sale and/or lease, including, but not limited to the placement of signage on the Horizon Line Property, provided that any and all such signage complies with all Applicable Laws. Developer shall restore the Horizon Line Property to its condition prior to the time any such tests, surveys, studies, analyses, inspections, engineering or other operations were conducted upon the Horizon

Line Property by Developer and shall hold the City harmless from all claims, damages, costs and expenses arising from such access.

(END OF ARTICLE IV)

ARTICLE V

HORIZON LINE DEVELOPMENT PROJECT

Section 5.1 General. The Developer agrees that it will proceed in good faith and with all reasonable dispatch to design, finance and construct, or cause to be designed, financed and constructed, the Horizon Line Development Project and to perform any and all of its duties and obligations relating to the Horizon Line Development Project in a manner consistent with this Agreement, subject to market conditions as they may exist from time to time during the term of this Agreement.

Section 5.2 Development Project. The Parties acknowledge and agree that the Horizon Line Development Project that will be developed, or caused to be developed, by the Developer and is expected to be approved by the City (which approval will not be unreasonably conditioned, delayed or withheld) is as follows:

The Developer will construct an approximate 232 multi-family housing complex on the Horizon Line Property. The Horizon Line Development Project is targeted for completion and available for occupancy in May of 2024.

The Developer anticipates that approximately 100 temporary jobs will be created in connection with the construction of the Horizon Line Development Project and approximately 5 permanent jobs will be created at the Horizon Line Development Project when it is fully completed and occupied. The Developer also anticipates that the Horizon Line Development Project will have a market valuation for purposes of real property taxation of at least $30,000,000.

Section 5.3 Submittal of Plans for Development Project. For the Horizon Line Development Project, the Developer shall prepare and submit a preliminary site plan, architectural renderings and related development plans to the City, in such detail as is reasonably necessary for review and approval by appropriate City Boards or Commissions in accordance with the ordinary

exercise of their respective rights and duties, all pursuant to and in accordance with the pertinent City Codified Ordinances. Such submittal of materials shall be made to the City no later than sixty (60) days from the Effective Date of this Agreement.

Section 5.4 Installation of Utilities and Roadways. The Developer shall be responsible for the following with respect to the Horizon Line Development Project:

(a) Water. Except as otherwise provided herein, at no cost to the City, it shall be the obligation of the Developer to construct the water lines, hydrants, valves, and related appurtenances within the Horizon Line Development Project, which water lines, hydrants, valves, and related appurtenances shall be installed and inspected pursuant to plans and specifications approved by the City Engineer in accordance with the City's standard requirements.

(b) Sanitary Sewer. Except as otherwise provided herein, at no cost to the City, it shall be the obligation of the Developer to construct the sanitary sewer lines and related appurtenances within the Horizon Line Development Project, which sanitary sewer lines and related appurtenances shall be installed and inspected pursuant to plans and specifications approved by the City Engineer in accordance with the City's standard requirements and will be dedicated to the City contemporaneously with the recording of a perpetual easement granted by the City to Developer, for the benefit of the Horizon Line Property, for connection to and use of such sanitary sewer lines and related appurtenances.

(c) Storm Sewer. Except as otherwise provided herein, at no cost to the Developer, the City shall identify and provide to the Developer, for the benefit of the Horizon Line Property and in accordance with the project schedule for the Horizon Line Development Project, mutually acceptable storm sewer drainage easements and will dedicate a storm sewer collection system and related offsite and detention and/or retention ponds to the Developer, for the benefit of the Horizon

Line Property, which will be designated on the detailed development plan(s) and plat(s) for the Horizon Line Development Project (the "*Retention Facilities*").

The purpose and intent of the Retention Facilities is to provide a cooperative effort to collect and control an appropriate amount of storm water to maximize the development potential of the Horizon Line Property in addition to supporting storm water management needs associated with the future development of parcels P70 01829 0004 and P70 04002 0049. The exact location and size of such storm sewer drainage easements and Retention Facilities, which may, in part or whole, be located off-site, shall be determined by the detailed development plan(s) and final plat(s) as mutually approved by the City and Developer, consistent with the zoning thereof, as herein provided, engineering standards and all other applicable rules and regulations (the "*Retention Facility Plans*"). Except for underground storm sewer pipes, the Developer shall be responsible for a proportionate share of the landscaping, maintenance, repair of the Retention Facilities, (including but not limited to easements and ponds) serving the Horizon Line Property, which proportionate share shall be based upon the ratio of the total square footage of all impervious surfaces on the Horizon Line Property to the total square footage of all the impervious surfaces on all other real property utilizing the offsite and detention and/or retention ponds constructed after the Effective Date of this Agreement. Specific to this subsection, nothing herein shall preclude the Parties from amending or altering the terms and conditions defining the responsibilities for the landscaping, maintenance, and repair of the Retention Facilities pending the final site location, design, and construction of the Retention Facilities. Any such amendments or alterations shall be in writing and approved by the Parties.

The Parties covenant and agree that all roadway, utility and other construction and development work undertaken by such Party (or a third party upon the direction of a Party) will be designed and performed in such a manner as not to disrupt or otherwise interfere with any then

existing storm sewer drainage systems (surface, field tile or other) on or off of the Horizon Line Property.

(d) Roadways. Except as otherwise provided herein, all roads within the Horizon Line Development Project shall be constructed by the Developer as needed for its intended use of the Horizon Line Development Project. All roads shall be constructed in accordance with the City standards as applicable to the type of road being constructed and all private roads shall be constructed in accordance with final development plans and permits approved by the City. All roads shall be reviewed, inspected and approved by the City.

(e) Cross Easements for Utility Services. The Parties agree among themselves to grant, without charge, reciprocal cross-easements or easements to public or private utilities, as appropriate, for construction of utilities described in this Section 5.4, or other public or private utilities to service the Horizon Line Development Project; *provided*, *however*, that all easements shall be within or adjacent to the various proposed public roads or driveway rights-of-way, as set forth on the revised basic development plan for the Horizon Line Development Project, except as may otherwise be reasonably necessary to assure utility services to all parts of the Horizon Line Development Project. Easements for surface drainage shall follow established water courses, unless otherwise agreed to by the affected Party. The Developer shall restore any easement areas to a condition which is reasonably satisfactory to the City promptly following any construction work by it. The City shall restore any easement areas following any construction work by the City in accordance with the City Codified Ordinances.

(f) Dedication. All public utilities and public roadways (including related rights-of-way) installed and/or constructed within the Horizon Line Development Project (except certain portions of the storm sewer improvements referenced in Section 5.4(c) which may hereafter be identified by the City and the utility cross easements described in Section 4.4(e)) shall be dedicated

(free and clear of any liens, encumbrances and restrictions except as may be permitted in writing by the City) to the City and recorded with the County Recorder at such time as is consistent with the City Codified Ordinances and the terms of this Agreement. Upon the dedication of the said infrastructure , the City shall reimburse Developer the amount of $400,000 for the cost of designing, engineering and constructing the Retention Facilities; which are intended to service and support properties other than the Horizon Line Property as previously described herein. The Parties acknowledge that the terms and conditions set forth in this subsection are contingent upon those terms and conditions as provided for in subsection 5.4c of this Agreement. As such, any amendment or alteration to subsection 5.4c of this Agreement, made in accordance with the provisions of said subsection, may also amend or alter the terms and conditions of this subsection.

(g) The Parties acknowledge that the Horizon Line Property needs to be rezoned to permit the Horizon Line Development Project and the Parties agree to work together with the appropriate City Boards or Commissions in accordance with the ordinary exercise of their respective rights and duties, all pursuant to and in accordance with the pertinent City Codified Ordinances to complete this rezoning process as soon as practicable.

Section 5.5 Developer Obligations. The Developer shall be responsible for developing the Horizon Line Development Project in accordance with the detailed development plans, as may be modified from time to time, and as such plans are approved by the City as hereinbefore provided. Except as otherwise provided in this Agreement, the Developer shall provide all funds necessary to develop the Horizon Line Property and to design, finance and construct the Horizon Line Development Project. Unless a later date applies to a given obligation, as expressly set forth in this Agreement, the obligations under this Agreement of the Developer shall, as to the Horizon Line Development Project, commence at such time as fee simple title to the Horizon Line Property is transferred to the Developer as evidenced by the recordation of the deed(s) to said parcel(s).

Section 5.6 Permits. Prior to commencing construction of the Horizon Line Development Project, the Developer shall obtain all necessary permits from all levels of government having jurisdiction thereover to allow the Developer to build and develop the Horizon Line Development Project consistent with the detailed development plan(s) for the Horizon Line Development Project. Standards for permit approval shall comply with all applicable standards (as may be set forth in City Codified Ordinances or elsewhere) at the time of zoning permit application or, in the case of the City administrative plan review requirements, at the time of application for those predevelopment permits.

Section 5.7 Fees, Charges and Taxes. The Developer shall, as and when customarily payable to the City on projects comparable to the Horizon Line Development Project, pay the then current standard fees in connection with any construction of the Horizon Line Development Project, which fees shall include, but not be limited to, fees for the provision of water, sanitary sewer and storm sewer services, and which fees, the City agrees, will be determined in a manner consistent and uniform with the manner of fee determination on projects comparable to the Horizon Line Development Project. The Developer acknowledges and agrees that the City reserves the right to adjust the standard fees described in this Section 5.7 from time to time in a manner consistent and uniform with the manner of fee determination on projects comparable to the Horizon Line Development Project. The Developer shall also ensure that any other standard fees, sales and use taxes, if any, and license and inspection fees necessary for the completion of the Horizon Line Development Project shall be timely paid.

Section 5.8 Provision of City Services. The City agrees to provide to the Horizon Line Development Project all City services usually and customarily provided by the City, including but not limited to, fire and police protection and road maintenance on dedicated and accepted public

streets; *provided however*, the City shall not be required to construct and install improvements related to the provision of those services except as otherwise provided herein.

Section 5.9 Insurance and Bonds. Insurance and bonds shall be provided by the Developer or its contractors and subcontractors during the course of development of the Horizon Line Development Project only if and as otherwise required by the City Codified Ordinances and other applicable development regulations.

Section 5.10 Compliance with Laws. In connection with the construction of the Horizon Line Development Project and in performing its obligations under this Agreement, the Developer agrees that it shall comply with, and require all of its employees, agents, contractors and consultants to comply with, all applicable federal, state, county, municipal (including City Codified Ordinances) and other governmental statutes, laws, rules, orders, regulations, ordinances, judgments, decrees and injunctions of any court, board, agency, commission, office or other authority of any nature whatsoever for any governmental unit (federal, state, county, district, municipal, city or otherwise) whether now or hereafter in existence affecting the Horizon Line Development Project or any part thereof, or the construction, use, alteration or operation thereof, or any part thereof, whether now or hereafter enacted and in force, and all permits, licenses and authorizations and regulations relating thereto, and all covenants, agreements, restrictions and encumbrances contained in any instruments, either of record or legally binding upon the Developer, at any time in force affecting the Horizon Line Development Project or any part thereof (collectively, the "*Applicable Laws*").

Section 5.11 Expeditious Completion of the Horizon Line Development Project. The Parties agree that the expeditious completion of the Horizon Line Development Project will benefit both Parties. To that end, the Parties agree to act in good faith and in a cooperative manner to complete the Horizon Line Development Project in accordance with the terms of this Agreement.

The City also agrees to act in good faith and diligently review the various applications and other matters which must be approved by the City as compliant with applicable laws and regulations in connection with the Horizon Line Development Project; *provided*, *however*, the Developer acknowledges and agrees that the various approvals of the City relating to planning and zoning described in this Article IV shall not be effective until approved by the appropriate body as contemplated hereby. The Parties each agree that the City shall have no responsibility relative to the marketing or sale of the real property or improvements thereto within the Horizon Line Development Project.

(END OF ARTICLE VI)

ARTICLE VI

COMMUNITY REINVESTMENT AREA

Section 6.1 General. The Parties acknowledge that the provision of real property tax exemptions in respect of the Horizon Line Property will be important to facilitate the construction of the Horizon Line Development Project.

Section 6.2 Community Reinvestment Area. The Parties agree that:

(a) Pursuant to a CRA Resolution, the City can provide real property tax exemptions of up to 50% for up to 15 years for real property located within a CRA.

(b) To facilitate the construction of the Horizon Line Development Project and to create employment opportunities within the City and in consideration for the Developer's covenants set forth herein, the City has determined to provide for certain real property tax exemptions in connection with the construction of the Horizon Line Development Project. The Parties agree to work together with the appropriate City Boards or Commissions in accordance with the ordinary exercise of their respective rights and duties, all pursuant to and in accordance with the pertinent City Codified Ordinances to pass a CRA Resolution granting real property tax exemptions of up to 50% for up to 15 years for the Horizon Line Property for as soon as practicable.

(c) Provided that the CRA Resolution for the Horizon Line Property has been passed by City Council, the Developer agrees related to the Horizon Line Development Project to file with the City, promptly following the issuance (which issuance will not be unreasonably conditioned, withheld or delayed) by the City of a certificate of occupancy for the Horizon Line Development Project, but in no event not later than ninety (90) days thereafter, a real property tax exemption application to the City which shall include at least the following information:

(i) Confirmation that construction of the Horizon Line Development Project has been completed and a certificate of occupancy has been issued therefor,

(ii) Confirmation that the Horizon Line Development Project has been constructed to include at least approximately the number of units described in Section 5.2, and

(iii) Confirmation that the Horizon Line Development Project created at least approximately the number of temporary and permanent jobs as described in Section 5.2.

The Developer acknowledges and agrees that failure to complete and timely submit such an application may form the basis for the City to disapprove the granting of a real property tax exemption in respect of the Horizon Line Property. The Parties acknowledge that the CRA Statute provides that the real property tax exemption only applies to the structure or structures to be constructed upon the Horizon Line Property.

Provided that the CRA Resolution for the Horizon Line Property has been passed by City Council, the City agrees that promptly following confirmation of an application filed in accordance with this Section 6.2(c), the City will approve a 50% - 15-year real property tax exemption in respect of the Horizon Line Property, all in accordance with the CRA Resolution. The Developer acknowledges that the City will review the Horizon Line Development Project throughout the term of the real property tax exemption to determine whether the Horizon Line Development Project is in compliance with the parameters set forth in Section 5.2. The Developer further agrees that if the City determines in good faith that the Horizon Line Development Project has failed to maintain the minimum number of jobs or minimum amount of fair market valuation (both as described in Section 5.2), or in the event the Owner fails to make any required Minimum Service payment, the City may thereafter take action to reduce the applicable exemption percentage and/or the term of the real property tax exemption. The remedies set forth in this paragraph shall not be subject to the 30 notice or arbitration provisions under section 6 of this Agreement.

The City agrees that for so long as the Developer or successor Owner of the Horizon Line Property is the recipient of a real property tax exemption in accordance with this Section 6.2(c) (a "*Real Property Tax Exemption Recipient*") and that Real Property Tax Exemption Recipient is complying with the terms of this Section 6.2(c), and then notwithstanding the occurrence of a Developer Default or any other default hereunder by actions or inactions of the Developer (provided that such default is not caused by the action or inaction of that Real Property Tax Exemption Recipient), other than the Horizon Line Development Project failing to maintain the minimum number of jobs or minimum amount of fair market valuation (both as described in Section 5.2), the City shall not take action to reduce the exemption percentage and/or the term of the real property tax exemption as such would apply to the Real Property Tax Exemption Recipient.

Section 6.3 Information Reporting. The Developer covenants to cooperate in all reasonable ways with, and provide necessary and reasonable information to, the designated tax incentive review council to enable that tax incentive review council to review and determine annually during the term of this Agreement the Developer's compliance with the terms of this Agreement. Any information supplied to such tax incentive review council will be provided solely for the purpose of monitoring the Developer's compliance with this Agreement.

The Developer further covenants to cooperate in all reasonable ways with, and provide necessary and reasonable information to the City to enable the City to submit the status report required by Ohio Revised Code Section 5709.40(I) to the Director of the Ohio Development Services Agency on or before March 31 of each year the exemption for the Horizon Line Property provided by the CRA Ordinance is in effect. Any information supplied to the City will be provided solely for the purpose of enabling the City to comply with this requirement.

Section 6.4 Non-Discriminatory Hiring Policy. With respect to operations within the City, the Developer will comply with the City's policies adopted pursuant to Ohio Revised Code

Section 5709.832 to ensure that recipients of tax exemptions (under the TIF Ordinance and the CRA Statute) practice nondiscriminatory hiring in its operations. In furtherance of that policy, the Developer will agree that it will not deny any individual employment solely on the basis of race, religion, sex, disability, color, national origin or ancestry.

(END OF ARTICLE VI)

ARTICLE VII

EVENTS OF DEFAULT; REMEDIES

Section 7.1 Developer Default. Any one or more of the following shall constitute a Developer Default under this Agreement:

(a) Default by the Developer in the due and punctual performance or observance of any material obligation under this Agreement and such default is not cured within thirty days after written notice from the City, *provided* that if the default is of a non-monetary nature and cannot reasonably be cured within thirty days, a Developer Default shall not be deemed to occur so long as the Developer commences to cure the default within the thirty day period and diligently pursues the cure for completion within a reasonable time;

(b) Any representation or warranty made by the Developer in this Agreement is false or misleading in any material respect as of the time made;

(c) The filing by the Developer of a petition for the appointment of a receiver or a trustee with respect to it or any of its property;

(d) The making by the Developer of a general assignment for the benefit of creditors;

(e) The filing of a voluntary petition in bankruptcy or the entry of an order for relief pursuant to the federal bankruptcy laws, as the same may be amended from time to time, with the Developer as debtor; or

(f) The filing by the Developer of an insolvency proceeding with respect to such party or any proceeding with respect to such party for compromise, adjustment or other relief under the laws of any country or state relating to the relief of debtors.

Section 7.2 City Default. Any one or more of the following shall constitute a City Default under this Agreement:

(a) Default by the City in the due and punctual performance or observance of any material obligation under this Agreement and such default is not cured within thirty days after written notice from the Developer, *provided* that if the default is of a non-monetary nature and cannot reasonably be cured within thirty days, a City Default shall not be deemed to occur so long as the City commences to cure the default within the thirty day period and diligently pursues the cure for completion within a reasonable time;

(b) Any representation or warranty made by the City in this Agreement is false or misleading in any material respect as of the time made; or

(c) The filing of a voluntary petition in bankruptcy or the entry of an order for relief pursuant to the federal bankruptcy laws, as the same may be amended from time to time, with the City as debtor.

Section 7.3 Remedies.

In the event that the Developer shall create or suffer a Developer Default under this Agreement which remains uncured as aforesaid, or in the event that the City shall create or suffer a City Default under this Agreement which remains uncured as aforesaid, or in the event of any dispute arising out of or relating to this Agreement which does not necessarily rise to the level of a default hereunder, then absent facts or circumstances which compel a Party's pursuit of immediate injunctive or other equitable relief, the Parties agree to and shall first proceed as follows:

(a) In lieu of the Parties' respective rights to a jury trial and the right to assert a claim for punitive damages and other matters more particularly described herein, any actions, disputes, claims, counterclaims, or controversies ("*Dispute*" or "*Disputes*"), between the Parties, arising out of, relating to, or in connection with this Agreement, including with respect to the formation,

applicability, breach, termination, validity or enforceability thereof, and including any claim based on or arising from an alleged tort, shall be finally settled by arbitration.

(b) The binding arbitration shall be conducted by one arbitrator, in accordance with the arbitration provisions of Chapter 2711 of the Ohio Revised Code, in effect at the time of the arbitration, except as they may be modified herein or by mutual agreement of the Parties. The seat of the arbitration shall be Montgomery County, Ohio.

(c) All defenses, including, but not limited to, those defenses based on statutes of limitation, estoppel, waiver, latches, and similar doctrines, that would otherwise be applicable to a civil action brought by a Party, shall be applicable in any such arbitration proceeding, and the commencement of an arbitration proceeding with respect to this Agreement shall be deemed the commencement of an action for such purposes.

(d) Within fifteen (15) days after any Party has given written notice to any other Party of a demand for arbitration of a Dispute, the Parties shall appoint a mutually agreeable neutral arbitrator, who shall determine the resolution of the Dispute. If the Parties do not reach an agreement on the sole arbitrator, then each Party shall appoint an arbitrator, and then the two independent arbitrators shall jointly select a third neutral arbitrator.

(e) The arbitrator(s) shall hold a hearing (the "*Arbitration Hearing*") within forty-five (45) days from the date of selection or appointment.

(f) The Arbitration Hearing shall commence at a date, time, and place, agreed between the Parties and the arbitrator(s), in Montgomery County, Ohio. The arbitrator(s) shall give the Parties written notice of the date, time, and place of the Arbitration Hearing not less than fifteen (15) days in advance.

(g) The Arbitration Hearing shall be limited to one day; provided, however, for good cause shown, the arbitrator(s) may continue the Arbitration Hearing for one additional day. Thereafter, the Arbitration Hearing may be continued by mutual agreement of the Parties.

(h) The arbitrator(s) shall afford each party reasonable and equal opportunity to present any material and relevant evidence, to call and cross-examine witnesses, and to present its arguments at the Arbitration Hearing. The discovery proceedings of the arbitration shall otherwise be conducted in general conformity with the evidence rules of the Commercial Arbitration Rules of the American Arbitration Association. The arbitration shall proceed as an ad hoc arbitration and shall not be administered by, or be filed with, the American Arbitration Association.

(i) The arbitrator(s) shall have all the powers and duties proscribed by section 2711.06 of the Ohio Revised Code. In addition, the arbitrator(s) shall have the power to award to the prevailing party its costs and expenses, including its reasonable legal fees and other costs of legal representation, as determined by the arbitrator(s). The arbitrator(s) may also award pre-award and post-award interest for the same period of time and at the same rate as allowed between private parties to a civil suit under Ohio law. Interest shall be compounded monthly.

(j) The arbitrator(s) shall render his or her decision and award on each Dispute (collectively, the "*Award*") based solely on the evidence presented, on the substantive law of the State of Ohio, as applicable to each Dispute and as argued by the Parties, and consistent with the provisions of this Agreement, as interpreted by the arbitrator. The arbitrator may not award punitive damages, treble damages, penalties, and may not, without the written consent of the Parties, consolidate the Dispute with any other demands for arbitration.

(k) The Award shall be final and binding on the Parties. The Parties undertake to carry out the Award without delay and waive their right to any form of recourse based on grounds other than those contained in Chapter 2711 of the Ohio Revised Code insofar as such waiver can validly

be made. Judgment upon the award may be entered by a court of competent jurisdiction under Chapter 2711 of the Ohio Revised Code.

(l) The Award shall be in writing and contain (a) the names of the Parties and their representatives and the date and place of any hearing, (b) a summary of the Disputes arbitrated and resolved, (c) the damages and other relief granted, if any, and (d) a brief explanation of the reasons for the Award. The Award shall be dated and signed by the arbitrator(s). Unless the Parties so request, the arbitrator(s) shall not prepare findings of fact and conclusions of law. All monetary amounts in an Award shall be paid within thirty (30) days of the date of mailing or delivery of the Award.

(m) The arbitrator(s) shall endeavor to render the Award and mail or otherwise deliver same to each party within twenty (20) days after the close of the Arbitration Hearing, or, if post-hearing briefs are submitted, within twenty (20) days after the due date for submission of such briefs.

(n) Any proceeding pursuant to this Agreement, except for the alternative mediation described below, shall be an arbitration proceeding subject to interpretation and enforcement under Chapter 2711 of the Ohio Revised Code and other applicable law of the State of Ohio. The arbitrator(s) shall have all powers granted to arbitrators and the Award shall be enforceable as would an arbitrators' award, pursuant to the applicable statute. If any part of this Agreement is in conflict with any mandatory requirement of applicable law, the statute shall govern, the conflicting part hereof shall be reformed and construed to the maximum extent possible in conformance with applicable law, and this Agreement shall remain otherwise unaffected and enforceable. The Award may be appealed, vacated or modified only on the grounds specified by applicable law.

(o) The Parties agree to have the option to attempt to resolve any Dispute by mediation, prior to arbitration as set forth above, subject to the confidentiality, privilege, and all other

applicable provisions of Chapter 2710 of the Ohio Revised Code, and on the following additional terms:

(i) The Parties agree to select a mutually agreeable mediator within fifteen (15) days after either Party has given written notice to the other of demand for mediation of a Dispute.

(ii) The mediation shall be conducted at a mutually agreeable place in Montgomery County, Ohio.

(iii) The mediation shall be conducted at a mutually agreeable date, within thirty (30) days from the appointment of the mediator.

(iv) At least five (5) days prior to the mediation conference, the Parties shall submit to each other and to the mediator a statement of the Dispute, identifying with reasonable particularity the basis for each claim, demand, and defense.

(v) The mediation shall be attended in person by the Parties' respective counsel and designated representative with full authority to settle the Dispute.

(vi) The costs and expenses of the mediation and the mediator's fee shall be shared equally or proportionately by the Parties, with each party to bear its own attorney's fees.

(vii) The foregoing mediation is optional and may be exercised at the discretion of the Parties, but it is not a condition precedent to the above described arbitration.

(p) Each of the Parties hereto represents and warrants that it has the authority to enter into this provision.

(q) This provision constitutes the entire agreement among the Parties with respect to the subject matter hereof and supersedes all prior agreements and understandings, both written and oral, among the Parties with respect to the subject matter hereof.

(r) The Parties agree to keep confidential, and not to disclose or use for other purpose other than if necessitated during the arbitration or mediation proceedings contemplated herein, any confidential and proprietary information of the other party, including this Agreement.

(s) This provision shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and permitted assigns, including successive as well as immediate successors and assigns.

(t) This provision shall be construed and enforced in accordance with the laws of the State of Ohio applicable to agreements to be made and performed entirely within such State.

(u) If any provision of this provision is determined to be invalid, illegal, or unenforceable, the remaining provisions of this provision shall remain in full force, if the essential terms and conditions of this provision remain valid, binding and enforceable.

Section 7.4 Other Rights and Remedies; No Waiver by Delay. The Parties each have the further right to institute any actions or proceedings (including, without limitation, actions for specific performance, injunction or other equitable relief) as it may deem desirable for effectuating the purposes of, and its remedies under, this Agreement; *provided*, that any delay by any Party in instituting or prosecuting any actions or proceedings or otherwise asserting its rights under this Agreement will not operate as a waiver of those rights or to deprive it of or limit those rights in any way; nor will any waiver in fact made by either Party with respect to any specific default or breach by any other Party under this Agreement be considered or treated as a waiver of the rights of that Party with respect to any other defaults by the other Party or with respect to the particular default or breach except to the extent specifically waived in writing. It is the further intent of this provision that no Party should be constrained, so as to avoid the risk of being deprived of or limited in the exercise of any remedy provided in this Agreement because of concepts of waiver, laches,

or otherwise, to exercise any remedy at a time when it may still hope otherwise to resolve the problems created by the default involved.

Section 7.5 Force Majeure. Except as otherwise provided herein, no Party will be considered in default in or breach of its obligations to be performed hereunder if delay in the performance of those obligations is due to unforeseeable causes beyond its control and without its fault or negligence, including but not limited to, acts of God, acts of terrorism or of the public enemy, acts or delays of the other party, fires, floods, unusually severe weather, epidemics, freight embargoes, unavailability of materials, strikes or delays of contractors, subcontractors or materialmen but not including lack of financing capacity; it being the purpose and intent of this paragraph that in the event of the occurrence of any such enforced delay, the time or times for performance of obligations shall be extended for the period of the enforced delay; *provided*, *however*, that the Party seeking the benefit of the provisions of this Section must, within a reasonable period following commencement of the enforced delay, notify the other Party in writing of the delay and of the cause of the delay and of the duration of the delay or, if a continuing delay and cause, the estimated duration of the delay, and if the delay is continuing on the date of notification, within thirty (30) days after the end of the delay, notify the other Parties in writing of the duration of the delay. Delays or failures to perform due to lack of funds shall not be deemed unforeseeable delays.

(END OF ARTICLE VII)

ARTICLE VIII

MISCELLANEOUS

Section 8.1 Assignment. This Agreement may not be assigned without the prior written consent of the non-assigning Party; *provided*, *however*, that the Developer may assign its rights and responsibilities under this Agreement to any affiliate of Horizon Line; *provided*, *further*, any assignment shall not have an effective date earlier than the date title to the parcel upon which such Horizon Line Development Project is to be constructed is/are transferred to the affiliate as evidenced by the recordation of the deed(s) to said parcel(s).

Once the Horizon Line Development Project has been completed, the Developer may sell the Horizon Line Property and assign this Agreement to an unrelated third party, which has the financial resources and expertise to own and operate the Horizon Line Development Project, with the written consent of the City, which consent will not be unreasonably conditioned, delayed or withheld.

Section 8.2 Binding Effect. The provisions of this Agreement are binding upon the successors or permitted assigns of the Parties, including successive successors and assigns. The Parties acknowledge that all matters subject to the approval of City Council will be approved or disapproved in City Council's sole discretion. All rights, remedies, and interests held, created in, or received by Developer in this Agreement or in any agreement attached to or entered into pursuant to this Agreement, shall, unless the same are specifically and expressly reserved by this Agreement to Developer, be rights, remedies, and interests automatically transferred by Developer to an affiliate of Developer with, and at such time as, the deed to any parcel upon which Horizon Line Development Project is to be constructed is executed and delivered by Developer; *provided*, *however*, that the automatic transfer of such rights, remedies, and interests described in this

sentence are herein limited to the rights, remedies, and interests as they relate to and affect the Horizon Line Development Project owned by the Developer.

Section 8.3 Captions and Headings. The captions and headings in this Agreement are solely for convenience of reference and in no way define, limit or describe the scope of the intent of any article, section, subsection, clause, exhibit or appendix of this Agreement.

Section 8.4 Day for Performance. Wherever herein there is a day or time period established for performance and the day or the expiration of the time period is a Saturday, Sunday or legal holiday, then the time for performance will be automatically extended to the next business day.

Section 8.5 Developer Mortgagee Rights. The City hereby acknowledges that, from time to time during the development of the Horizon Line Development Project and the Developer will obtain financing in connection with the Horizon Line Development Project which will be secured in whole or in part by assignments, pledges or mortgages of the Developer's interests in the Horizon Line Property (each a "*Developer Mortgage*"). In connection therewith, the City agrees to and shall cooperate with the Developer to provide to the holder of any such Developer Mortgage (each a "*Developer Mortgagee*") such reasonable factual representations and/or consents regarding this Agreement and/or the Developer's rights hereunder as such Developer Mortgagee may request from time to time. By way of example, such reasonable factual representations and/or consents may take the form of: (a) estoppel certificates certifying that this Agreement is unmodified and in full force and effect (or if there have been modifications that it is in full force and effect as modified and stating the modifications), that neither the City nor the Developer is in default in the performance of any obligations under this Agreement (or specifying any such default of which the City has knowledge), and certifying as to other facts as reasonably requested by such Developer Mortgagee; and/or (b) consents to the collateral assignment of certain

of the Developer's rights under or in respect of this Agreement. Any such requested assurance and/or consent shall be in a form reasonably approved by the City, and the City shall endeavor reasonably to respond to any such request in a prompt and timely manner. The Developer shall pay on behalf of the City any reasonable fees and expenses incurred by the City in connection with any request pursuant to this Section.

Section 8.6 Document Submissions to the City. Except as otherwise required by the City Codified Ordinances, any documents required to be submitted to the City pursuant to this Agreement shall be submitted to the City Manager or such other City department as may be directed by the City Manager.

Section 8.7 Entire Agreement. This Agreement, including the exhibits and the corollary agreements contemplated hereby, embodies the entire agreement and understanding of the Parties relating to the subject matter herein and therein and may not be amended, waived or discharged except in an instrument in writing executed by the Parties.

Section 8.8 Executed Counterparts. This Agreement may be executed in several counterparts, each of which will be deemed to constitute an original, but all of which together constitute but one and the same instrument. It is not necessary in proving this Agreement to produce or account for more than one of those counterparts.

Section 8.9 Extent of Covenants; Conflict of Interest; No Personal Liability. All covenants, obligations and agreements of the Parties contained in this Agreement are effective to the extent authorized and permitted by applicable law. No member, official or employee of the City shall have a personal interest, direct or indirect, in this Agreement, nor shall any such member, official or employee participate in any decision relating to this Agreement that affects his personal interest or the interests of any corporation, partnership or association in which he is, directly or indirectly, interested. No covenant, obligation or agreement may be deemed to be a covenant,

obligation or agreement of any present or future member, officer, agent, director, member or employee of the City or the Developer, or its successors or permitted assigns, other than in his or her official capacity, and neither the members of the legislative body of the City nor any official executing this Agreement nor any present or future member, officer, agent, director or employee of the Developer, or its successors or permitted assigns, are liable personally under this Agreement or subject to any personal liability or accountability by reason of the execution hereof or by reason of the covenants, obligations or agreements of the City and the Developer contained in this Agreement.

Section 8.10 Governing Law. This Agreement is governed by and is to be construed in accordance with the laws of the State of Ohio or applicable federal law. All claims, counterclaims, disputes and other matters in question between the City, its agents and employees and the Developer, its employees and agents, arising out of or relating to this Agreement or its breach will be decided in a court of competent jurisdiction within Montgomery County, Ohio.

Section 8.11 Limits on Liability. Notwithstanding any clause or provision of this Agreement to the contrary, in no event will the City or the Developer, or its successors or permitted assigns, be liable to each other for punitive, special, consequential or indirect damages of any type and regardless of whether those damages are claimed under contract, tort (including negligence and strict liability) or any other theory of law unless otherwise expressly agreed by the Party against which the damages could be assessed.

Section 8.12 No Third-Party Beneficiary. Except relative to a permitted assignee pursuant to an assignment effected pursuant to Section 8.1, nothing expressed or mentioned in or to be implied from this Agreement is intended or shall be construed to give to any person other than the Parties, any legal or equitable right, remedy, power or claim under or with respect to this Agreement or any covenants, agreements, conditions and provisions contained herein. This

Agreement and all of those covenants, agreements, conditions and provisions are intended to be, and are, for the sole and exclusive benefit of the Parties hereto, as provided herein. With the exception of the Parties and any assignee effected pursuant to Section 8.1, it is not intended that any other person or entity shall have standing to enforce, or the right to seek enforcement by suit or otherwise of any provision of this Agreement whatsoever.

Section 8.13 Notices. Except as otherwise specifically set forth in this Agreement, all notices, demands, requests, consents or approvals given, required or permitted to be given hereunder must be in writing and will be deemed sufficiently given if actually received by email, or if hand-delivered or sent by recognized, overnight delivery service or by certified mail, postage prepaid and return receipt requested, addressed to the recipient at the Notice Address, or to another address of which the recipient has previously notified the sender in writing, and the notice will be deemed received upon actual receipt, unless sent by certified mail, in which case the notice will be deemed to have been received when the return receipt is received, signed or refused. Any process, pleadings, notice or other papers served upon any Party must be sent by registered or certified mail at its Notice Address, or to another address or addresses as may be furnished by one party to the other.

Section 8.14 Recitals and Exhibits. The Parties acknowledge and agree that the facts and circumstances as described in the Recitals hereto and the information contained in the Exhibits hereto are an integral part of this Agreement and as such are incorporated herein by reference.

Section 8.15 Severability. If any provision of this Agreement, or any covenant, obligation or agreement contained herein is determined by a court to be invalid or unenforceable, that determination will not affect any other provision, covenant, obligation or agreement contained herein, each of which will be construed and enforced as if the invalid or unenforceable portion were not contained herein. If any provision, covenant, obligation or agreement contained herein

is subject to more than one interpretation, a valid and enforceable interpretation is to be used to make this Agreement effective. That invalidity or unenforceability will not affect any valid and enforceable application, and each provision, covenant, obligation or agreement will be deemed to be effective, operative, made, entered into or taken in the manner and to the full extent permitted by law.

Section 8.16 Survival of Representations and Warranties. All representations and warranties of the Parties in this Agreement shall survive the execution and delivery of this Agreement.

(END OF ARTICLE VIII – SIGNATURE PAGES TO FOLLOW)

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

CITY OF HUBER HEIGHTS, OHIO

By: _____

Printed: Robert B. Schommer

Title: City Manager

Approved as to Form and Correctness:

By: _____

Printed: Gerald McDonald

Title: City Attorney

STATE OF OHIO)
) SS:
COUNTY OF MONTGOMERY)

On this _____ day of _____, 2021, before me a Notary Public personally appeared Robert B. 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

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

HORIZON LINE DEVELOPMENT, LLC,
an Ohio limited liability company

By: _____

Printed: _____

Title: _____

STATE OF OHIO)
) SS:
COUNTY OF MEDINA)

On this _____ day of _____, 2021, before me a Notary Public personally appeared _____, the Manager of Horizon Line Development, LLC, an Ohio limited liability company, and acknowledged the execution of the foregoing instrument, and that the same is his voluntary act and deed on behalf of Horizon Line Development, LLC.

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 Agreement, certifies hereby that the moneys required to meet the obligations of the City during the year ____ under the foregoing Agreement 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 Ohio Revised Code Sections 5705.41 and 5705.44.

Dated: _____, 2021

_____

James A. Bell
Director of Finance
City of Huber Heights, Ohio

EXHIBIT A
LEGAL DESCRIPTION AND/OR DEPICTION OF THE CITY PARCEL

EXHIBIT B
LEGAL DESCRIPTION AND/OR DEPICTION OF THE HORIZON LINE PROPERTY

EXHIBIT C
DEPICTION OF
HORIZON LINE DEVELOPMENT PROJECT

AI-7653 **Topics of Discussion** **H.**

Council Work Session

Meeting Date: 06/22/2021

Enterprise Fleet Management Services

Submitted By: Bryan Chodkowski

Department: Finance

Council Committee Review?: Council Work Session **Date(s) of Committee Review:** 06/22/2021

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

Motion/Ordinance/ Resolution No.:

Agenda Item Description or Legislation Title

Enterprise Fleet Management Services

Purpose and Background

The City maintains a light and medium duty vehicle fleet of approximately 100 vehicles. More than a third of the fleet is ten or more years old. Maintaining a fleet of this size and age facilitates higher maintenance expenses, greater fuel consumption, and operational inefficiency. Consistently budgeting capital funds to keep the fleet up-to-date can be problematic due to the size, scope, and nature of all the City's capital infrastructure/improvement considerations.

As a method of reducing maintenance expenses, lowering fuel costs, increasing operational efficiency, and minimizing demands on the City's capital improvement budget; City Staff are recommending the City enter into an open-ended master lease with Enterprise Fleet Maintenance to provide light and medium duty vehicles to the City.

Fiscal Impact

Source of Funds: Various Funds

Cost: N/A

Recurring Cost? (Yes/No): Yes

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

Financial Implications:

The City will utilize monies already budgeted, or which would normally be included in future budgets, to fund this program. Compared to current fleet operational expenses, this program is estimated to save the City $100,000 annually through 2031.

Attachments

Summary Information

Resolution

Exhibit A

HUBER HEIGHTS
Come Grow With Us!

City of Huber Heights
6131 Taylorsville Rd.
Huber Heights, OH 45424

937.233.1423
937.233.1272 fax

www.hhoh.org

TO: Scott P. Falkowski,
Interim City Manager

FROM: Bryan RH Chodkowski,
Assistant City Manager

DATE: June 3, 2021

RE: Open-Ended Lease with Enterprise Fleet Management

BLUF: The City can operate a more efficient vehicle fleet at a predictable annual expense while saving the City an estimated $1 million.

As you are aware, the City has been in discussions with Enterprise Fleet Management, Inc. regarding our vehicle fleet. Currently, the City maintains a fleet of 100 light and medium duty vehicles. 39% of our vehicles are 10 years old or older. These older vehicles represent higher maintenance expenses, increased fuel consumption, and organizational inefficiency. Additionally, acquiring vehicles through cash payment can greatly increase annual budget figures and fluctuate significantly from budget year to budget year.

Enterprise Fleet Management offers an open-ended lease program which may help address the above issues. The program covers all light and medium duty vehicles, including pursuit-rated vehicles effective this year. Unlike conventional dealer leases; this program allows the City to customize vehicles, eliminates wear & tear provisions, and provides life cycle flexibility.

Based on the fleet analysis prepared by Enterprise, the City's participation in this program could result in an average annual savings of approximately $100,000 over the next 10 years when compared to our current fleet maintenance practices. This estimated savings does not consider gains in operational efficiency. I have attached additional information about this program to this memorandum for your review.

It is my recommendation that the City partner with Enterprise through this program as a means to improve our light and medium duty vehicle fleet while reducing our on-going vehicle ownership expenses.

Should you have any questions or concerns on this matter, please do not hesitate to contact me.






enterprise

FLEET MANAGEMENT

FLEET SYNOPSIS | CITY OF HUBER HEIGHTS

City of Huber Heights
6131 Taylorsville Road.
Huber Heights, Ohio 45424

Enterprise Fleet Management, Inc.
600 Corporate Park Drive
St. Louis, MO 63105
314-512-5000 Main
314-518-5583 Fax

Jeremy Baldwin
Sr. Account Executive
4600 McAuley PL #510
Cincinnati, OH 45242
513-314-9633
Jeremy.P.Baldwin@efleets.com

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FLEET SYNOPSIS | CITY OF HUBER HEIGHTS

Impact of Partnership

THE SITUATION

The City of Huber Heights is looking for a solution to better manage its aging fleet.

- 39% of the current light and medium duty fleet is over 10 years old.
- Older vehicles have higher fuel costs, maintenance costs, and tend to be unreliable.
- It would take 10 years to cycle out the entire fleet at current acquisition rate.

THE OBJECTIVES

Enterprise Fleet Management's proposal is to save city resources and budget dollars through a managed vehicle program.

- Utilize an open-end lease* as a funding mechanism, allowing the City to acquire additional vehicles while avoiding a large capital budget outlay.
- Replace aged vehicles with newer models to increase fuel efficiency and reduce maintenance expense. Maintenance and repairs can be outsourced to local businesses to further stimulate economic growth and the integration of more fuel efficient vehicles will reduce carbon footprint.
- Establish a proactive replacement plan that maximizes potential equity at time of resale, reduces operational expenses, and increases safety.

*An open-end lease means there are no early termination, mileage, or abnormal wear and tear penalties. Leases are written to a residual balance to preserve cash flow. The City receives flexibility of ownership, as well as net equity from sale at time of disposal.

THE RESULTS

By partnering with Enterprise Fleet Management, it is estimated that the City of Huber Heights will reduce maintenance costs by 22%. Leveraging an open-end lease maximizes cash flow and recognizes equity from vehicles sold. Furthermore, the City will leverage Enterprises Fleet Management's ability to sell vehicles at an average of 111% above Black Book values. By shifting from reactively replacing inoperable vehicles to planning vehicle purchases, the City will be able to replace 39 of its oldest vehicles within a year and save approximately $204,214



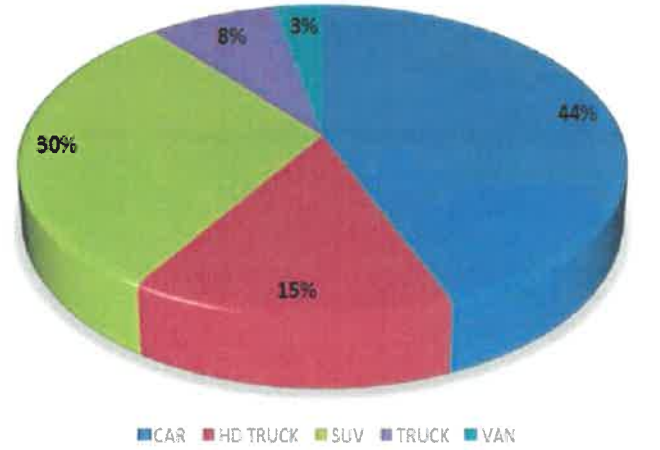
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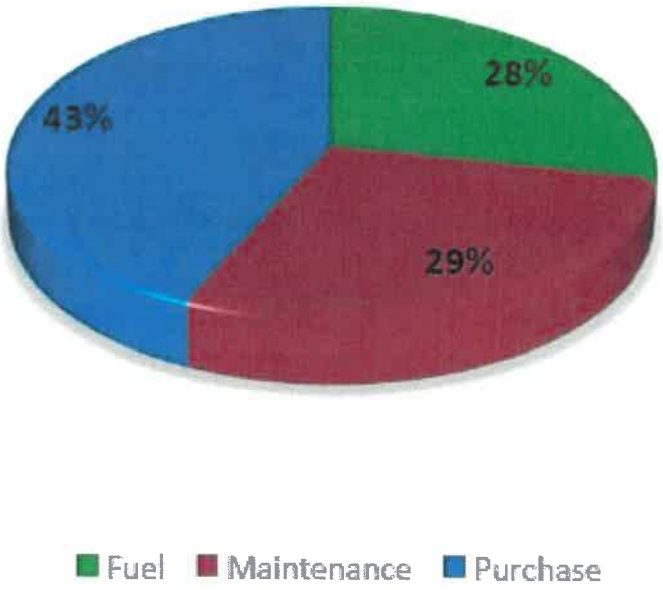
SUPPORTING EVIDENCE | CITY OF HUBER HEIGHTS

* Fiscal Year 2021 = 10 years old and older, or odometer over 100,000
* Fiscal Year 2022 = 8 years old and older, or odometer over 80,000
* Fiscal Year 2023 = 6 years old and older, or odometer over 60,000
* Fiscal Year 2024 = 4 years old and older, or odometer over 40,000
* Fiscal Year 2025 = Remaining Vehicles
* Underutilized = Annual Mileage less than 2,500

Fleet Costs Analysis

Vehicle Types





Open-End Lease Benefits: Not your Dealership Style Lease

- Unlimited Mileage
- No Abnormal Wear & tear Clauses
- Customize the Vehicle with any Aftermarket Equipment you need
- Greater Replacement Cycle with Less Cash
- Greater Flexibility of Ownership
- Flexible Life Cycle
- All Gain on Resale is yours

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REFERENCES | CITY OF HUBER HEIGHTS

CURRENT PARTNERS (regional)

- City of Monroe
- Beavercreek Township
- Miami University
- City of Sharonville
- Clermont County
- City of Xenia
- City of Miamisburg
- Central State University
- Warren County Public Health

REFERENCES

Below is a list of three client/customer references including company name, contact person, and telephone number.

Company Name: City of Monroe

Business Phone #: 513-727-8953

Contact Person: Lt. David Chasteen, Deputy Chief of Police

Company Name: City of Sharonville

Business Phone #: 513-563-1144

Contact Person: Jim Lukas- CAO

Company Name: City of Miamisburg

Business Phone #: 937-866-3303

Contact Person: Jennifer Johns, Finance Director

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CITY OF HUBER HEIGHTS
STATE OF OHIO

RESOLUTION NO. 2021-R-

AUTHORIZING THE CITY MANAGER TO EXECUTE AN OPEN-ENDED LEASE AGREEMENT WITH ENTERPRISE FLEET MANAGEMENT.

WHEREAS, the City maintains a vehicle fleet of approximately 100 light and medium duty vehicles; and

WHEREAS, more than a third of vehicles in the light and medium duty fleet are 10 or more years old; and

WHEREAS, the City seeks to find cost effective ways to provide for a more up-to-date fleet; and

WHEREAS, a more up-to-date vehicle fleet would reduce maintenance expenses, reduce fuel consumption, and increase operational efficiency.

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

Section 1. The City Manager is hereby authorized and directed to execute an open-ended lease agreement with Enterprise Fleet Management and any related vehicle schedules, said lease to be substantially similar to the attached "Exhibit A" and approved as to form and content by the Law Director.

Section 2. The City Manager, or his designee, is further authorized and directed to execute any other documents and instruments necessary to fulfill the obligations and intent of Exhibit A, provided such documents conform to the approval of the Law Director as to form and content.

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 in meetings open to the public and in compliance with all legal requirements including Section 121.22 of the Ohio Revised Code.

Section 4. This Resolution shall go into effect upon its passage as provided by law and the Charter of the City of Huber Heights.

Passed by Council on the _____ day of _____ , 2021;
_____ Yeas; _____ Nays.

Effective Date:

AUTHENTICATION:

_____ _____
Clerk of Council Mayor

_____ _____
Date Date

Exhibit A

enterprise
FLEET MANAGEMENT

MASTER EQUITY LEASE AGREEMENT

This Master Equity Lease Agreement is entered into this _____ day of _____, by and between Enterprise FM Trust, a Delaware statutory trust ("Lessor"), and the lessee whose name and address is set forth on the signature page below ("Lessee").

1. LEASE OF VEHICLES: Lessor hereby leases to Lessee and Lessee hereby leases from Lessor the vehicles (individually, a "Vehicle" and collectively, the "Vehicles") described in the schedules from time to time delivered by Lessor to Lessee as set forth below ("Schedule(s)") for the rentals and on the terms set forth in this Agreement and in the applicable Schedule. References to this "Agreement" shall include this Master Equity Lease Agreement and the various Schedules and addenda to this Master Equity Lease Agreement. Lessor will, on or about the date of delivery of each Vehicle to Lessee, send Lessee a Schedule covering the Vehicle, which will include, among other things, a description of the Vehicle, the lease term and the monthly rental and other payments due with respect to the Vehicle. The terms contained in each such Schedule will be binding on Lessee unless Lessee objects in writing to such Schedule within ten (10) days after the date of delivery of the Vehicle covered by such Schedule. Lessor is the sole legal owner of each Vehicle. This Agreement is a lease only and Lessee will have no right, title or interest in or to the Vehicles except for the use of the Vehicles as described in this Agreement. This Agreement shall be treated as a true lease for federal and applicable state income tax purposes with Lessor having all benefits of ownership of the Vehicles. It is understood and agreed that Enterprise Fleet Management, Inc. or an affiliate thereof (together with any subservicer, agent, successor or assign as servicer on behalf of Lessor, "Servicer") may administer this Agreement on behalf of Lessor and may perform the service functions herein provided to be performed by Lessor.

2. TERM: The term of this Agreement ("Term") for each Vehicle begins on the date such Vehicle is delivered to Lessee (the "Delivery Date") and, unless terminated earlier in accordance with the terms of this Agreement, continues for the "Lease Term" as described in the applicable Schedule.

3. RENT AND OTHER CHARGES:

(a) Lessee agrees to pay Lessor monthly rental and other payments according to the Schedules and this Agreement. The monthly payments will be in the amount listed as the "Total Monthly Rental Including Additional Services" on the applicable Schedule (with any portion of such amount identified as a charge for maintenance services under Section 4 of the applicable Schedule being payable to Lessor as agent for Enterprise Fleet Management, Inc.) and will be due and payable in advance on the first day of each month. If a Vehicle is delivered to Lessee on any day other than the first day of a month, monthly rental payments will begin on the first day of the next month. In addition to the monthly rental payments, Lessee agrees to pay Lessor a pro-rated rental charge for the number of days that the Delivery Date precedes the first monthly rental payment date. A portion of each monthly rental payment, being the amount designated as "Depreciation Reserve" on the applicable Schedule, will be considered as a reserve for depreciation and will be credited against the Delivered Price of the Vehicle for purposes of computing the Book Value of the Vehicle under Section 3(c). Lessee agrees to pay Lessor the "Total Initial Charges" set forth in each Schedule on the due date of the first monthly rental payment under such Schedule. Lessee agrees to pay Lessor the "Service Charge Due at Lease Termination" set forth in each Schedule at the end of the applicable Term (whether by reason of expiration, early termination or otherwise).

(b) In the event the Term for any Vehicle ends prior to the last day of the scheduled Term, whether as a result of a default by Lessee, a Casualty Occurrence or any other reason, the rentals and management fees paid by Lessee will be recalculated in accordance with the rule of 78's and the adjusted amount will be payable by Lessee to Lessor on the termination date.

(c) Lessee agrees to pay Lessor within thirty (30) days after the end of the Term for each Vehicle, additional rent equal to the excess, if any, of the Book Value of such Vehicle over the greater of (i) the wholesale value of such Vehicle as determined by Lessor in good faith or (ii) except as provided below, twenty percent (20%) of the Delivered Price of such Vehicle as set forth in the applicable Schedule. If the Book Value of such Vehicle is less than the greater of (i) the wholesale value of such Vehicle as determined by Lessor in good faith or (ii) except as provided below, twenty percent (20%) of the Delivered Price of such Vehicle as set forth in the applicable Schedule, Lessor agrees to pay such deficiency to Lessee as a terminal rental adjustment within thirty (30) days after the end of the applicable Term. Notwithstanding the foregoing, if (i) the Term for a Vehicle is greater than forty-eight (48) months (including any extension of the Term for such Vehicle), (ii) the mileage on a Vehicle at the end of the Term is greater than 15,000 miles per year on average (prorated on a daily basis) (i.e., if the mileage on a Vehicle with a Term of thirty-six (36) months is greater than 45,000 miles) or (iii) in the sole judgment of Lessor, a Vehicle has been subject to damage or any abnormal or excessive wear and tear, the calculations described in the two immediately preceding sentences shall be made without giving effect to clause (ii) in each such sentence. The "Book Value" of a Vehicle means the sum of (i) the "Delivered Price" of the Vehicle as set forth in the applicable Schedule minus (ii) the total Depreciation Reserve paid by Lessee to Lessor with respect to such Vehicle plus (iii) all accrued and unpaid rent and/or other amounts owed by Lessee with respect to such Vehicle.

(d) Any security deposit of Lessee will be returned to Lessee at the end of the applicable Term, except that the deposit will first be applied to any losses and/or damages suffered by Lessor as a result of Lessee's breach of or default under this Agreement and/or to any other amounts then owed by Lessee to Lessor.

(e) Any rental payment or other amount owed by Lessee to Lessor which is not paid within twenty (20) days after its due date will accrue interest, payable on demand of Lessor, from the date due until paid in full at a rate per annum equal to the lesser of (i) Eighteen Percent (18%) per annum or (ii) the highest rate permitted by applicable law (the "Default Rate").

(f) If Lessee fails to pay any amount due under this Agreement or to comply with any of the covenants contained in this Agreement, Lessor, Servicer or any other agent of Lessor may, at its option, pay such amounts or perform such covenants and all sums paid or incurred by Lessor in connection therewith will be repayable by Lessee to Lessor upon demand together with interest thereon at the Default Rate.

(g) Lessee's obligations to make all payments of rent and other amounts under this Agreement are absolute and unconditional and such payments shall be made in immediately available funds without setoff, counterclaim or deduction of any kind. Lessee acknowledges and agrees that neither any Casualty Occurrence to any Vehicle nor any defect, unfitness or lack of governmental approval in, of, or with respect to, any Vehicle regardless of the cause or consequence nor any breach by Enterprise Fleet Management, Inc. of any maintenance agreement between Enterprise Fleet Management, Inc. and Lessee covering any Vehicle regardless of the cause or consequence will relieve Lessee from the performance of any of its obligations under this Agreement, including, without limitation, the payment of rent and other amounts under this Agreement.

4. USE AND SURRENDER OF VEHICLES: Lessee agrees to allow only duly authorized, licensed and insured drivers to use and operate the Vehicles. Lessee agrees to comply with, and cause its drivers to comply with, all laws, statutes, rules, regulations and ordinances and the provisions of all insurance policies affecting or covering the Vehicles or their use or operation. Lessee agrees to keep the Vehicles free of all liens, charges and encumbrances. Lessee agrees that in no event will any Vehicle be used or operated for transporting hazardous substances or persons for hire, for any illegal purpose or to pull trailers that exceed the manufacturer's trailer towing recommendations. Lessee agrees that no Vehicle is intended to be or will be utilized as a "school bus" as defined in the Code of Federal Regulations or any applicable state or municipal statute or regulation. Lessee agrees not to remove any Vehicle from the continental United States without first obtaining Lessor's written consent. At the expiration or earlier termination of this Agreement with respect to each Vehicle, or upon demand by Lessor made pursuant to Section 14, Lessee at its risk and expense agrees to return such Vehicle to Lessor at such place and by such reasonable means as may be designated by Lessor. If for any reason Lessee fails to return any Vehicle to Lessor as and when required in accordance with this Section, Lessee agrees to pay Lessor additional rent for such Vehicle at twice the normal pro-rated daily rent. Acceptance of such additional rent by Lessor will in no way limit Lessor's remedies with respect to Lessee's failure to return any Vehicle as required hereunder.

5. COSTS, EXPENSES, FEES AND CHARGES: Lessee agrees to pay all costs, expenses, fees, charges, fines, tickets, penalties and taxes (other than federal and state income taxes on the income of Lessor) incurred in connection with the titling, registration, delivery, purchase, sale, rental, use or operation of the Vehicles during the Term. If Lessor, Servicer or any other agent of Lessor incurs any such costs or expenses, Lessee agrees to promptly reimburse Lessor for the same.

6. LICENSE AND CHARGES: Each Vehicle will be titled and licensed in the name designated by Lessor at Lessee's expense. Certain other charges relating to the acquisition of each Vehicle and paid or satisfied by Lessor have been capitalized in determining the monthly rental, treated as an initial charge or otherwise charged to Lessee. Such charges have been determined without reduction for trade-in, exchange allowance or other credit attributable to any Lessor-owned vehicle.

7. REGISTRATION PLATES, ETC.: Lessee agrees, at its expense, to obtain in the name designated by Lessor all registration plates and other plates, permits, inspections and/or licenses required in connection with the Vehicles, except for the initial registration plates which Lessor will obtain at Lessee's expense. The parties agree to cooperate and to furnish any and all information or documentation, which may be reasonably necessary for compliance with the provisions of this Section or any federal, state or local law, rule, regulation or ordinance. Lessee agrees that it will not permit any Vehicle to be located in a state other than the state in which such Vehicle is then titled for any continuous period of time that would require such Vehicle to become subject to the titling and/or registration laws of such other state.

8. MAINTENANCE OF AND IMPROVEMENTS TO VEHICLES:

(a) Lessee agrees, at its expense, to (i) maintain the Vehicles in good condition, repair, maintenance and running order and in accordance with all manufacturer's instructions and warranty requirements and all legal requirements and (ii) furnish all labor, materials, parts and other essentials required for the proper operation and maintenance of the Vehicles. Any alterations, additions, replacement parts or improvements to a Vehicle will become and remain the property of Lessor and will be returned with such Vehicle upon such Vehicle's return pursuant to Section 4. Notwithstanding the foregoing, so long as no Event of Default has occurred and is continuing, Lessee shall have the right to remove any additional equipment installed by Lessee on a Vehicle prior to returning such Vehicle to Lessor under Section 4. The value of such alterations, additions, replacement parts and improvements will in no instance be regarded as rent. Without the prior written consent of Lessor, Lessee will not make any alterations, additions, replacement parts or improvements to any Vehicle which detract from its economic value or functional utility. Lessor will not be required to make any repairs or replacements of any nature or description with respect to any Vehicle, to maintain or repair any Vehicle or to make any expenditure whatsoever in connection with any Vehicle or this Agreement.

(b) Lessor and Lessee acknowledge and agree that if Section 4 of a Schedule includes a charge for maintenance, (i) the Vehicle(s) covered by such Schedule are subject to a separate maintenance agreement between Enterprise Fleet Management, Inc. and Lessee and (ii) Lessor shall have no liability or responsibility for any failure of Enterprise Fleet Management, Inc. to perform any of its obligations thereunder or to pay or reimburse Lessee for its payment of any costs and expenses incurred in connection with the maintenance or repair of any such Vehicle(s).

9. SELECTION OF VEHICLES AND DISCLAIMER OF WARRANTIES:

(a) LESSEE ACCEPTANCE OF DELIVERY AND USE OF EACH VEHICLE WILL CONCLUSIVELY ESTABLISH THAT SUCH VEHICLE IS OF A SIZE, DESIGN, CAPACITY, TYPE AND MANUFACTURE SELECTED BY LESSEE AND THAT SUCH VEHICLE IS IN GOOD CONDITION AND REPAIR AND IS SATISFACTORY IN ALL RESPECTS AND IS SUITABLE FOR LESSEE'S PURPOSE. LESSEE ACKNOWLEDGES THAT LESSOR IS NOT A MANUFACTURER OF ANY VEHICLE OR AN AGENT OF A MANUFACTURER OF ANY VEHICLE.

(b) LESSOR MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, WITH RESPECT TO ANY VEHICLE, INCLUDING, WITHOUT LIMITATION, ANY REPRESENTATION OR WARRANTY AS TO CONDITION, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, IT BEING AGREED THAT ALL SUCH RISKS ARE TO BE BORNE BY LESSEE. THE VEHICLES ARE LEASED "AS IS," "WITH ALL FAULTS." All warranties made by any supplier, vendor and/or manufacturer of a Vehicle are hereby assigned by Lessor to Lessee for the applicable Term and Lessee's only remedy, if any, is against the supplier, vendor or manufacturer of the Vehicle.

Initials: EFM_____ Customer_____

(c) None of Lessor, Servicer or any other agent of Lessor will be liable to Lessee for any liability, claim, loss, damage (direct, incidental or consequential) or expense of any kind or nature, caused directly or indirectly, by any Vehicle or any inadequacy of any Vehicle for any purpose or any defect (latent or patent) in any Vehicle or the use or maintenance of any Vehicle or any repair, servicing or adjustment of or to any Vehicle, or any delay in providing or failure to provide any Vehicle, or any interruption or loss of service or use of any Vehicle, or any loss of business or any damage whatsoever and however caused. In addition, none of Lessor, Servicer or any other agent of Lessor will have any liability to Lessee under this Agreement or under any order authorization form executed by Lessee if Lessor is unable to locate or purchase a Vehicle ordered by Lessee or for any delay in delivery of any Vehicle ordered by Lessee.

10. RISK OF LOSS: Lessee assumes and agrees to bear the entire risk of loss of, theft of, damage to or destruction of any Vehicle from any cause whatsoever ("Casualty Occurrence"). In the event of a Casualty Occurrence to a Vehicle, Lessee shall give Lessor prompt notice of the Casualty Occurrence and thereafter will place the applicable Vehicle in good repair, condition and working order; provided, however, that if the applicable Vehicle is determined by Lessor to be lost, stolen, destroyed or damaged beyond repair (a "Totaled Vehicle"), Lessee agrees to pay Lessor no later than the date thirty (30) days after the date of the Casualty Occurrence the amounts owed under Sections 3(b) and 3(c) with respect to such Totaled Vehicle. Upon such payment, this Agreement will terminate with respect to such Totaled Vehicle.

11. INSURANCE:

(a) Lessee agrees to purchase and maintain in force during the Term, insurance policies in at least the amounts listed below covering each Vehicle, to be written by an insurance company or companies satisfactory to Lessor, insuring Lessee, Lessor and any other person or entity designated by Lessor against any damage, claim, suit, action or liability:

(i) Commercial Automobile Liability Insurance (including Uninsured/Underinsured Motorist Coverage and No-Fault Protection where required by law) for the limits listed below (Note - $2,000,000 Combined Single Limit Bodily Injury and Property Damage with No Deductible is required for each Vehicle capable of transporting more than 8 passengers):

State of Vehicle Registration	Coverage
Connecticut, Massachusetts, Maine, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, and Vermont	$1,000,000 Combined Single Limit Bodily Injury and Property Damage - No Deductible
Florida	$500,000 Combined Single Limit Bodily Injury and Property Damage or $100,000 Bodily Injury Per Person, $300,000 Per Occurrence and $50,000 Property Damage (100/300/50) - No Deductible
All Other States	$300,000 Combined Single Limit Bodily Injury and Property Damage or $100,000 Bodily Injury Per Person, $300,000 Per Occurrence and $50,000 Property Damage (100/300/50) - No Deductible

(ii) Physical Damage Insurance (Collision & Comprehensive): Actual cash value of the applicable Vehicle. Maximum deductible of $500 per occurrence - Collision and $250 per occurrence - Comprehensive).

If the requirements of any governmental or regulatory agency exceed the minimums stated in this Agreement, Lessee must obtain and maintain the higher insurance requirements. Lessee agrees that each required policy of insurance will by appropriate endorsement or otherwise name Lessor and any other person or entity designated by Lessor as additional insureds and loss payees, as their respective interests may appear. Further, each such insurance policy must provide the following: (i) that the same may not be cancelled, changed or modified until after the insurer has given to Lessor, Servicer and any other person or entity designated by Lessor at least thirty (30) days prior written notice of such proposed cancellation, change or modification, (ii) that no act or default of Lessee or any other person or entity shall affect the right of Lessor, Servicer, any other agent of Lessor or any of their respective successors or assigns to recover under such policy or policies of insurance in the event of any loss of or damage to any Vehicle and (iii) that the coverage is "primary coverage" for the protection of Lessee, Lessor, Servicer, any other agent of Lessor and their respective successors and assigns notwithstanding any other coverage carried by Lessee, Lessor, Servicer, any other agent of Lessor or any of their respective successors or assigns protecting against similar risks. Original certificates evidencing such coverage and naming Lessor, Servicer, any other agent of Lessor and any other person or entity designated by Lessor as additional insureds and loss payees shall be furnished to Lessor prior to the Delivery Date, and annually thereafter and/or as reasonably requested by Lessor from time to time. In the event of default, Lessee hereby appoints Lessor, Servicer and any other agent of Lessor as Lessee's attorney-in-fact to receive payment of, to endorse all checks and other documents and to take any other actions necessary to pursue insurance claims and recover payments if Lessee fails to do so. Any expense of Lessor, Servicer or any other agent of Lessor in adjusting or collecting insurance shall be borne by Lessee.

Lessee, its drivers, servants and agents agree to cooperate fully with Lessor, Servicer, any other agent of Lessor and any insurance carriers in the investigation, defense and prosecution of all claims or suits arising from the use or operation of any Vehicle. If any claim is made or action commenced for death, personal injury or property damage resulting from the ownership, maintenance, use or operation of any Vehicle, Lessee will promptly notify Lessor of such action or claim and forward to Lessor a copy of every demand, notice, summons or other process received in connection with such claim or action.

(b) Notwithstanding the provisions of Section 11(a) above: (i) if Section 4 of a Schedule includes a charge for physical damage waiver, Lessor agrees that (A) Lessee will not be required to obtain or maintain the minimum physical damage insurance (collision and comprehensive) required under Section 11(a) for the Vehicle(s) covered by such Schedule and (B) Lessor will assume the risk of physical damage (collision and comprehensive) to the Vehicle(s) covered by such Schedule; provided, however, that such physical damage waiver shall not apply to, and Lessee shall be and remain liable and responsible for, damage to a covered Vehicle caused by wear and tear or mechanical breakdown or failure, damage to or loss of any parts, accessories or components added to a covered

Vehicle by Lessee without the prior written consent of Lessor and/or damage to or loss of any property and/or personal effects contained in a covered Vehicle. In the event of a Casualty Occurrence to a covered Vehicle, Lessor may, at its option, replace, rather than repair, the damaged Vehicle with an equivalent vehicle, which replacement vehicle will then constitute the "Vehicle" for purposes of this Agreement; and (ii) if Section 4 of a Schedule includes a charge for commercial automobile liability enrollment, Lessor agrees that it will, at its expense, obtain for and on behalf of Lessee, by adding Lessee as an additional insured under a commercial automobile liability insurance policy issued by an insurance company selected by Lessor, commercial automobile liability insurance satisfying the minimum commercial automobile liability insurance required under Section 11(a) for the Vehicle(s) covered by such Schedule. Lessor may at any time during the applicable Term terminate said obligation to provide physical damage waiver and/or commercial automobile liability enrollment and cancel such physical damage waiver and/or commercial automobile liability enrollment upon giving Lessee at least ten (10) days prior written notice. Upon such cancellation, insurance in the minimum amounts as set forth in 11(a) shall be obtained and maintained by Lessee at Lessee's expense. An adjustment will be made in monthly rental charges payable by Lessee to reflect any such change and Lessee agrees to furnish Lessor with satisfactory proof of insurance coverage within ten (10) days after mailing of the notice. In addition, Lessor may change the rates charged by Lessor under this Section 11(b) for physical damage waiver and/or commercial automobile liability enrollment upon giving Lessee at least thirty (30) days prior written notice.

12. INDEMNITY: To the extent permitted by state law, Lessee agrees to defend and indemnify Lessor, Servicer, any other agent of Lessor and their respective successors and assigns from and against any and all losses, damages, liabilities, suits, claims, demands, costs and expenses (including, without limitation, reasonable attorneys' fees and expenses) which Lessor, Servicer, any other agent of Lessor or any of their respective successors or assigns may incur by reason of Lessee's breach or violation of, or failure to observe or perform, any term, provision or covenant of this Agreement, or as a result of any loss, damage, theft or destruction of any Vehicle or related to or arising out of or in connection with the use, operation or condition of any Vehicle. The provisions of this Section 12 shall survive any expiration or termination of this Agreement. Nothing herein shall be deemed to affect the rights, privileges, and immunities of Lessee and the foregoing indemnity provision is not intended to be a waiver of any sovereign immunity afforded to Lessee pursuant to the law.

13. INSPECTION OF VEHICLES; ODOMETER DISCLOSURE; FINANCIAL STATEMENTS: Lessee agrees to accomplish, at its expense, all inspections of the Vehicles required by any governmental authority during the Term. Lessor, Servicer, any other agent of Lessor and any of their respective successors or assigns will have the right to inspect any Vehicle at any reasonable time(s) during the Term and for this purpose to enter into or upon any building or place where any Vehicle is located. Lessee agrees to comply with all odometer disclosure laws, rules and regulations and to provide such written and signed disclosure information on such forms and in such manner as directed by Lessor. Providing false information or failure to complete the odometer disclosure form as required by law may result in fines and/or imprisonment. Lessee hereby agrees to promptly deliver to Lessor such financial statements and other financial information regarding Lessee as Lessor may from time to time reasonably request.

14. DEFAULT; REMEDIES: The following shall constitute events of default ("Events of Default") by Lessee under this Agreement: (a) if Lessee fails to pay when due any rent or other amount due under this Agreement and any such failure shall remain unremedied for ten (10) days; (b) if Lessee fails to perform, keep or observe any term, provision or covenant contained in Section 11 of this Agreement; (c) if Lessee fails to perform, keep or observe any other term, provision or covenant contained in this Agreement and any such failure shall remain unremedied for thirty (30) days after written notice thereof is given by Lessor, Servicer or any other agent of Lessor to Lessee; (d) any seizure or confiscation of any Vehicle or any other act (other than a Casualty Occurrence) otherwise rendering any Vehicle unsuitable for use (as determined by Lessor); (e) if any present or future guaranty in favor of Lessor of all or any portion of the obligations of Lessee under this Agreement shall at any time for any reason cease to be in full force and effect or shall be declared to be null and void by a court of competent jurisdiction, or if the validity or enforceability of any such guaranty shall be contested or denied by any guarantor, or if any guarantor shall deny that it, he or she has any further liability or obligation under any such guaranty or if any guarantor shall fail to comply with or observe any of the terms, provisions or conditions contained in any such guaranty; (f) the occurrence of a material adverse change in the financial condition or business of Lessee or any guarantor; or (g) if Lessee or any guarantor is in default under or fails to comply with any other present or future agreement with or in favor of Lessor, The Crawford Group, Inc. or any direct or indirect subsidiary of The Crawford Group, Inc.. For purposes of this Section 14, the term "guarantor" shall mean any present or future guarantor of all or any portion of the obligations of Lessee under this Agreement.

Upon the occurrence of any Event of Default, Lessor, without notice to Lessee, will have the right to exercise concurrently or separately (and without any election of remedies being deemed made), the following remedies: (a) Lessor may demand and receive immediate possession of any or all of the Vehicles from Lessee, without releasing Lessee from its obligations under this Agreement; if Lessee fails to surrender possession of the Vehicles to Lessor on default (or termination or expiration of the Term), Lessor, Servicer, any other agent of Lessor and any of Lessor's independent contractors shall have the right to enter upon any premises where the Vehicles may be located and to remove and repossess the Vehicles; (b) Lessor may enforce performance by Lessee of its obligations under this Agreement; (c) Lessor may recover damages and expenses sustained by Lessor, Servicer, any other agent of Lessor or any of their respective successors or assigns by reason of Lessee's default including, to the extent permitted by applicable law, all costs and expenses, including court costs and reasonable attorneys' fees and expenses, incurred by Lessor, Servicer, any other agent of Lessor or any of their respective successors or assigns in attempting or effecting enforcement of Lessor's rights under this Agreement (whether or not litigation is commenced) and/or in connection with bankruptcy or insolvency proceedings; (d) upon written notice to Lessee, Lessor may terminate Lessee's rights under this Agreement; (e) with respect to each Vehicle, Lessor may recover from Lessee all amounts owed by Lessee under Sections 3(b) and 3(c) of this Agreement (and, if Lessor does not recover possession of a Vehicle, (i) the estimated wholesale value of such Vehicle for purposes of Section 3(c) shall be deemed to be $0.00 and (ii) the calculations described in the first two sentences of Section 3(c) shall be made without giving effect to clause (ii) in each such sentence); and/or (f) Lessor may exercise any other right or remedy which may be available to Lessor under the Uniform Commercial Code, any other applicable law or in equity. A termination of this Agreement shall occur only upon written notice by Lessor to Lessee. Any termination shall not affect Lessee's obligation to pay all amounts due for periods prior to the effective date of such termination or Lessee's obligation to pay any indemnities under this Agreement. All remedies of Lessor under this Agreement or at law or in equity are cumulative.

15. ASSIGNMENTS: Lessor may from time to time assign, pledge or transfer this Agreement and/or any or all of its rights and obligations under this Agreement to any person or entity. Lessee agrees, upon notice of any such assignment, pledge or transfer of any amounts due or to become due to Lessor under this Agreement to pay all such amounts to such assignee, pledgee or transferee. Any such assignee, pledgee or transferee of any rights or obligations of Lessor under this Agreement will have all of the rights and obligations that have been assigned to it. Lessee's rights and interest in and to the Vehicles are and will continue

at all times to be subject and subordinate in all respects to any assignment, pledge or transfer now or hereafter executed by Lessor with or in favor of any such assignee, pledgee or transferee, provided that Lessee shall have the right of quiet enjoyment of the Vehicles so long as no Event of Default under this Agreement has occurred and is continuing. Lessee acknowledges and agrees that the rights of any assignee, pledgee or transferee in and to any amounts payable by the Lessee under any provisions of this Agreement shall be absolute and unconditional and shall not be subject to any abatement whatsoever, or to any defense, setoff, counterclaim or recoupment whatsoever, whether by reason of any damage to or loss or destruction of any Vehicle or by reason of any defect in or failure of title of the Lessor or interruption from whatsoever cause in the use, operation or possession of any Vehicle, or by reason of any indebtedness or liability howsoever and whenever arising of the Lessor or any of its affiliates to the Lessee or to any other person or entity, or for any other reason.

Without the prior written consent of Lessor, Lessee may not assign, sublease, transfer or pledge this Agreement, any Vehicle, or any interest in this Agreement or in and to any Vehicle, or permit its rights under this Agreement or any Vehicle to be subject to any lien, charge or encumbrance. Lessee's interest in this Agreement is not assignable and cannot be assigned or transferred by operation of law. Lessee will not transfer or relinquish possession of any Vehicle (except for the sole purpose of repair or service of such Vehicle) without the prior written consent of Lessor.

16. MISCELLANEOUS: This Agreement contains the entire understanding of the parties. This Agreement may only be amended or modified by an instrument in writing executed by both parties. Lessor shall not by any act, delay, omission or otherwise be deemed to have waived any of its rights or remedies under this Agreement and no waiver whatsoever shall be valid unless in writing and signed by Lessor and then only to the extent therein set forth. A waiver by Lessor of any right or remedy under this Agreement on any one occasion shall not be construed as a bar to any right or remedy, which Lessor would otherwise have on any future occasion. If any term or provision of this Agreement or any application of any such term or provision is invalid or unenforceable, the remainder of this Agreement and any other application of such term or provision will not be affected thereby. Giving of all notices under this Agreement will be sufficient if mailed by certified mail to a party at its address set forth below or at such other address as such party may provide in writing from time to time. Any such notice mailed to such address will be effective one (1) day after deposit in the United States mail, duly addressed, with certified mail, postage prepaid. Lessee will promptly notify Lessor of any change in Lessee's address. This Agreement may be executed in multiple counterparts (including facsimile and pdf counterparts), but the counterpart marked "ORIGINAL" by Lessor will be the original lease for purposes of applicable law. All of the representations, warranties, covenants, agreements and obligations of each Lessee under this Agreement (if more than one) are joint and several.

17. SUCCESSORS AND ASSIGNS; GOVERNING LAW: Subject to the provisions of Section 15, this Agreement will be binding upon Lessee and its heirs, executors, personal representatives, successors and assigns, and will inure to the benefit of Lessor, Servicer, any other agent of Lessor and their respective successors and assigns. This Agreement will be governed by and construed in accordance with the substantive laws of the State of Missouri (determined without reference to conflict of law principles).

18. NON-PETITION: Each party hereto hereby covenants and agrees that, prior to the date which is one year and one day after payment in full of all indebtedness of Lessor, it shall not institute against, or join any other person in instituting against, Lessor any bankruptcy, reorganization, arrangement, insolvency or liquidation proceedings or other similar proceeding under the laws of the United States or any state of the United States. The provisions of this Section 18 shall survive termination of this Master Equity Lease Agreement.

19. NON-APPROPRIATION: Lessee's funding of this Agreement shall be on a Fiscal Year basis and is subject to annual appropriations. Lessor acknowledges that Lessee is a municipal corporation, is precluded by the County or State Constitution and other laws from entering into obligations that financially bind future governing bodies, and that, therefore, nothing in this Agreement shall constitute an obligation of future legislative bodies of the County or State to appropriate funds for purposes of this Agreement. Accordingly, the parties agree that the lease terms within this Agreement or any Schedules relating hereto are contingent upon appropriation of funds. The parties further agree that should the County or State fail to appropriate such funds, the Lessor shall be paid all rentals due and owing hereunder up until the actual day of termination. In addition, Lessor reserves the right to be paid for any reasonable damages. These reasonable damages will be limited to the losses incurred by the Lessor for having to sell the vehicles on the open used car market prior to the end of the scheduled term (as determined in Section 3 and Section 14 of this Agreement).

IN WITNESS WHEREOF, Lessor and Lessee have duly executed this Master Equity Lease Agreement as of the day and year first above written.

LESSEE: City of Huber Heights

Signature: _____

By: _____

Title: _____

Address: _____

_____

_____

Date Signed: _____, _____

LESSOR: Enterprise FM Trust
By: Enterprise Fleet Management, Inc. its attorney in fact

Signature: _____

By: Bryan Lenihan

Title: Director Fleet Management

Address: 4600 McAuley PL #510
Cincinnati, OH 45242

_____

Date Signed: _____, _____

Initials: EFM_____ Customer_____

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AI-7671 **Topics of Discussion** I.

Council Work Session

Meeting Date: 06/22/2021

Energy Performance Project - Change Order #3

Submitted By: Bryan Chodkowski

Department: Finance

Council Committee Review?: Council Work Session

Date(s) of Committee Review: 06/22/2021

Audio-Visual Needs: None

Emergency Legislation?: No

Motion/Ordinance/ Resolution No.:

Agenda Item Description or Legislation Title

Energy Performance Project - Change Order #3

Purpose and Background

The City has an opportunity to add approximately $360,000 worth of capital improvements to the current Guaranteed Energy Savings Performance Contract with ESG. This additional scope of work directly benefits the Fire Division and will address needed capital maintenance items at both Station 22 and Station 23. Costs associated with proposed Change Order #3 would be covered by funds already available to the Fire Division through the Fire Fund (Fund 201) and the Fire Capital Equipment Fund (Fund 437). If approved, the implementation of Change Order #3 is not anticipated to extend beyond or delay the original contract schedule.

Fiscal Impact

Source of Funds: Fire Fund/Fire Capital Equipment Fund

Cost: $30,000

Recurring Cost? (Yes/No): Yes

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

Financial Implications:

This expense will be off-set by resources which are already included in the City's annual budget.

Attachments

Summary Information

Resolution

Exhibit A

Exhibit B

HUBER HEIGHTS
Come Grow With Us!

City of Huber Heights
6131 Taylorsville Rd.
Huber Heights, OH 45424

937.233.1423
937.233.1272 fax

www.hhoh.org

TO: Scott P. Falkowski,
Interim City Manager

FROM: Bryan RH Chodkowski,
Assistant City Manager

DATE: June 11, 2021

RE: GESPC Change Order #3 -
Additional Fire Division Capital Improvements

CC: James Bell,
Finance Director

BLUF: In approving Change Order #3, the City could add needed improvements for the Fire Division without additional budgetary constraints to the City.

As we previously discussed and outlined in the attached memo from Chief Knisley, the City has an opportunity to add approximately $360,000 worth of capital improvements to our current Guaranteed Energy Savings Performance Contract with ESG. This additional scope of work directly benefits the Fire Division and will address needed capital maintenance items at both Station 22 and Station 23. It has been discussed with Chief Knisley and Finance Director Bell that the costs associated with proposed Change Order #3 would be covered by funds already available to the Fire Division through the Fire Fund (Fund 201) and the Fire Capital Equipment Fund (Fund 437). If approved, the implementation of Change Order #3 is not anticipated to extend beyond or delay the original contract schedule.

It is my recommendation, and that of Chief Knisley, that the City approve Change Order #3 to our current Guaranteed Energy Savings Performance Contract with ESG. Be advised that if approved, associated legislation to amend the corresponding lease agreement with U.S. Bancorp Government Leasing and Finance, Inc is anticipated.

Should you have any questions or concerns on this matter, please do not hesitate to bring them to my attention.

Huber Heights Fire Division

TO: Assistant City Manager Bryan Chodkowski

FROM: Keith Knisley, Fire Chief

DATE: June 2, 2021

RE: Station Improvements

Last year we began discussions into larger building improvement projects and possible integration into the current work being performed by ESG.

Station 22 and Station 23 are quickly approaching twenty-six years old and are starting to show their wear. We have been completing small pieces of renovations or repairs over the past few years, with new roofing, interior painting, and replacing small areas of concrete, and replacing bay door openers. For this project we mainly focused on the remaining larger ticket items that need replacement.

We have identified the need for replacement of the following large ticket items which are original to the construction and renovations that occurred in 1995:

50	Windows
12	Overhead bay doors and tracks
8	Galvanized metal entry doors
2	Emergency generators for Station 22 and Station 23
1	Fire alarm system Station 23

Having two fire stations that are both about twenty-six years old, we will continue to have many areas that are coming due for repairs, however participation in this program will greatly assist the Division to tackle about $350,000 of needed upgrades at one time.

I greatly appreciate your assistance in helping to identify a funding mechanism for the Division to be able to complete these large repairs and upgrades at one time, as with our normal improvement budgeting process, these repairs could take up to seven years.

CITY OF HUBER HEIGHTS
STATE OF OHIO

RESOLUTION NO. 2021-R-

APPROVING CHANGE ORDER #3 TO A GUARANTEED ENERGY SAVINGS PERFORMANCE CONTRACT (GESPC) WITH ENERGY SYSTEMS GROUP (ESG).

WHEREAS, City Council adopted Resolution No. 2020-R-6921 which authorized the City Manager to enter into an GESPC with ESG; and

WHEREAS, subsequent to the execution and implementation of the GESPC, additional capital improvements in support of Fire Division operations were identified at Stations 22 and 23; and

WHEREAS, this additional scope work is estimated at $360,141 in improvements to be supported through an annual appropriation of $30,000 from resources already consistently included in the annual operating budget over the next 15 years; and

WHEREAS, the approval of Change Order #3 will not delay or prolong work in progress under the original GESPC with the work defined in Change Order #3 being complete under the original GESPC schedule.

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

Section 1. Council hereby approves Change Order #3 as generally described in Exhibit A, attached hereto as if incorporated herein, in the amount of $360,141 for the purposes of amending the final scope and price for a GESPC.

Section 2. The City Manager is further authorized and directed, upon its review and approval by the Law Director, to execute Change Order #3 with ESG; attached hereto as Exhibit B as if incorporated herein.

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 in meetings open to the public and in compliance with all legal requirements including Section 121.22 of the Ohio Revised Code.

Section 4. This Resolution shall go into effect upon its passage as provided by law and the Charter of the City of Huber Heights.

Passed by Council on the _____ day of _____ , 2021;
_____ Yeas; _____ Nays.

Effective Date:

AUTHENTICATION:

_____ _____
Clerk of Council Mayor

_____ _____
Date Date

City of Huber Heights
Change Order #3

This Change Order amends Section D (Scope of work by ECM) of Exhibit A (Scope of Work). ECM #6 will added as detailed below.

ECM #6: Fire Division Facility Upgrades at Stations #22 & 23

1. Replace select steel entry doors (both stations).
    a. Remove and dispose of existing frames, doors, and hardware.
    b. Provide and install new units.
    c. All doors and frames are hollow metal, galvanized, primed and painted custom color to be selected by owner.
    d. All doors include replacement threshold, sweep, and weather-strip.
    e. All doors include heavy duty enclosures and other hardware to match existing configurations.
    f. Glazing (where applicable) is 1" insulated, clear, and low-E.
    g. Station #22 doors/frames included are as follows:
        i. East sleeping quarters, 40" x 86" RH, flush (no window).
        ii. Kitchen, 40" x 86" RHR, with 22" x 36" half glass with internal raise/tilt vinyl blinds in manufacturer's standard white (currently a 10" x 10" window)
        iii. Rear east near bay door, 40" x 86" RHR, with 10" x 10" window
        iv. Training, 40" x 86" RHR, with 10" x 10" window
        v. Storage, 40" x 86" LH, flush (no window)
    h. Station #23 doors/frames included are as follows:
        i. Back west, 40" x 86" LH, flush (no window)
        ii. Office, 40" x 88" LHR, with 22" x 64" full glass with internal raise/tilt vinyl blinds in manufacturer's standard white
        iii. Kitchen, 40" x 88" LH, with 22" x 36" half glass with internal raise/tilt vinyl blinds in manufacturer's standard white

2. Replace all windows (Stations #22 & 23).
    a. Remove and dispose of existing units.
    b. Provide and install new units.
    c. All windows are Pella Lifestyle line, wood, with aluminum external cladding.
    d. Glazing is insulated (double pane, triple where integrated blinds are included), low-E, Argon filled.
    e. Standard screens are included on operable units.
    f. Owner is responsible for removing and replacing blinds and/or any other items that would interfere with replacement of the windows.
    g. Pella manufacturer's warranty is 10 years on materials other than glass, 20 year on glass seal failures, and 2 years on labor to replace warranted materials.
    h. Station #22:
        i. Interior finish is Pella standard Golden Oak stained.

ii. Exterior aluminum cladding color is from Pella's standard options of white, brown, black, or fossil and TBD prior to order.
iii. Blind color is Pella standard white
iv. Hardware color is Pella standard Champagne

i. Station #23
i. Interior finish is Pella standard painted white.
ii. Exterior aluminum cladding color is from Pella's standard options of white, brown, black, or fossil and TBD prior to order.
iii. Hardware color is Pella's standard Champagne.

j. Station #22 includes the following units. Frame sizes are approximate pending final field measurement prior to order.
- (25) 47" x 47" operable awning with integrated
- (5) 23" x 23" fixed (no blinds)
- (2) 23" x 47" fixed with integrated blinds
- (4) 35" x 47" fixed with integrated blinds
- (1) 94" x 47" operable awning (two wide) with integrated blinds

k. Station #23 includes the following units. Frame sizes are approximate pending final field measurement prior to order.
- (2) 37" x 69.5" double hung
- (4) 35.5" x 73.25" double hung
- (1) 35" x 35" fixed

3. Replace standby generators (Stations #22 & 23).
a. Disconnect, remove and dispose of existing generators and Automatic Transfer Switches (ATS).
b. Provide and install new generators and Automatic Transfer Switches.
c. Existing concrete pads will be used but extended as needed to accommodate footprint and conduit entry point for new generators. Install footer as necessary and tie into existing pad with re-bar and/or dowels.
d. Provide, set and secure new Cummins natural gas generators.
e. Generators include 120V 20A block heater, 120V 20A battery charger, E-stop switch, extension oil drain, and extension coolant drain.
f. Includes electrical/construction permits as necessary. Does not include environmental permitting of any kind.
g. Start-up and commissioning.
h. Includes 5 year manufacturer's warranty.
i. Station #22 specifics are as listed below:
i. Generator is a 70 KW Cummins model #C70N6.
ii. Factory matched ATS is a 200A in a NEMA 1 enclosure mounted internal to the building same location as existing.
iii. Replace 225A cable from generator to ATS to accommodate smaller size of ATS which will be mounted to meet top (exiting) conduit.
iv. Tie in existing 200A disconnect re-using conduit and conductor.
j. Station #23 specifics are as listed below:

i. Generator is a 30 KW Cummins model #C30N6.
ii. Factory matched ATS is a 100A in a NEMA 1 enclosure mounted internal to the building same location as existing.
iii. Tie in existing disconnect re-using conduit and conductor.

4. Replace fire alarm system (Station #23 only).
    a. Replace the existing Simplex conventional fire alarm system with a Fire-Lite addressable system.
    b. Replace existing conventional initiating devices with addressable devices in the same location re-using existing wiring.
    c. Replace existing horn/strobes and strobe only devices.
    d. Add new devices as necessary to result in a complete system.
    e. Obtain permit and inspection as necessary by local jurisdiction.
    f. The following devices make up the new system:
        - (1) Fire-Lite ES50X control panel
        - (7) addressable heat detectors
        - (3) relay modules
        - (6)addressable manual pull stations
        - (4) strobe only devices
        - (1) document box
        - (4) batteries
        - (4) low frequency horn/strobes
        - (1) voice dialer
        - (7) addressable smoke detectors
        - (3) addressable duct detectors
        - (4) monitoring modules
        - (6) horn/strobes
        - (1) FCPS24 FS 6 power supply
        - (2) CO detectors
        - (4) smoke detector/CO combo devices
        - (4) sounder bases
    g. Repair or replacement of existing damaged wire is not included.
    h. The replacement system has been configured to be consistent with current applicable codes and local requirements. Unforeseen changes to said codes and requirements resulting in rejection of the permit may result in additional charges for reconfiguration.
    i. Drywall repair due to relocation/removal of equipment or smaller size replacement components is not included. Owner has agreed to assume responsibility for drywall repair and painting.

5. Replace overhead bay doors (Stations #22 & 23).
    a. Remove and dispose of existing doors, tracks, and associated accessories.
    b. Provide and install new doors, tracks, and associated accessories.
    c. Re-use existing openers and associated safety systems.
    d. Station #22:

i. Replace four (4) front and four (4) rear overhead bay doors, 14’ x 14’ nominal.
ii. 14’ x 14’ nominal, Amarr model #2742.
iii. 2” full steel wrap urethane insulated, R-19.
iv. Front doors: 2 lowest sections are solid, next 3 sections are ¼” clear tempered glass, top 2 sections are solid.
v. Rear doors: 2 lowest sections are solid, next 2 sections are ¼” clear tempered glass, top 3 sections are solid.
vi. Exterior of solid panels to be powder coated to match door color at Owner’s Station #25 to the extent feasible, to be selected from standard Sherwin Williams color chart if not able to provide RGB code or paint specification from existing.
vii. Interior of solid panels to be standard factory finish.

e. Station #23:
i. Replace two (2) front and two (2) rear overhead bay doors, 14’ x 14’ nominal.
ii. 14’ x 14’ nominal, Amarr model #2742.
iii. 2” full steel wrap urethane insulated, R-19.
iv. Front doors: 2 lowest sections are solid, next 3 sections are ¼” clear tempered glass, top 2 sections are solid.
v. Rear doors: 2 lowest sections are solid, next 2 sections are ¼” clear tempered glass, top 3 sections are solid.
vi. Exterior of solid panels to be powder coated to match door color at Owner’s Station #25 to the extent feasible, to be selected from standard Sherwin Williams color chart if not able to provide RGB code or paint specification from existing.
vii. Interior of solid panels to be standard factory finish.

There is no impact to projected energy savings as a result of this Change Order.

There is no impact to the project completion date as a result of this Change Order as long as it is executed by 7/1/21.

DRAFT

AIA® Document G701™ – 2017

Change Order

PROJECT: *(Name and address)*
City of Huber Heights
6131 Taylorsville Road
Huber Heights, OH 45424

CONTRACT INFORMATION:
Contract For: Energy Savings Performance Contract

Date: October 16, 2020

CHANGE ORDER INFORMATION:
Change Order Number: 03

Date: June 9, 2021

OWNER: *(Name and address)*
City of Huber Heights
Interim City Manager - Scott Falkowski
6131 Taylorsville Road
Huber Heights, OH 45424

ARCHITECT: *(Name and address)*
N/A

CONTRACTOR: *(Name and address)*
Energy Systems Group, LLC
9877 Eastgate Court
Newburgh, IN 47630

THE CONTRACT IS CHANGED AS FOLLOWS:
(Insert a detailed description of the change and, if applicable, attach or reference specific exhibits. Also include agreed upon adjustments attributable to executed Construction Change Directives.)
This Change Order will affect the Fire Stations #22 and 23. Please see the attached Attachment 1, detailed scope of work, that will act as the amendment of Exhibit A, Section D of the original contract language.

The original Contract Sum was	$	2,996,587.00
The net change by previously authorized Change Orders	$	2,829.67
The Contract Sum prior to this Change Order was	$	2,999,416.67
The Contract Sum will be increased by this Change Order in the amount of	$	360,141.00
The new Contract Sum including this Change Order will be	$	3,359,557.67

The Contract Time will be unchanged by Zero (0) days.
The new date of Substantial Completion will be

NOTE: This Change Order does not include adjustments to the Contract Sum or Guaranteed Maximum Price, or the Contract Time, that have been authorized by Construction Change Directive until the cost and time have been agreed upon by both the Owner and Contractor, in which case a Change Order is executed to supersede the Construction Change Directive.

NOT VALID UNTIL SIGNED BY THE ARCHITECT, CONTRACTOR AND OWNER.

ARCHITECT	CONTRACTOR	OWNER
N/A	Energy Systems Group, LLC	City of Huber Heighs, Ohio
(Firm name)	*(Firm name)*	*(Firm name)*
SIGNATURE	SIGNATURE	SIGNATURE
PRINTED NAME AND TITLE	Jarrett E. Simon, Vice President PRINTED NAME AND TITLE	PRINTED NAME AND TITLE
DATE	DATE	DATE

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User Notes: (3B9ADA13)

AI-7683		**Topics of Discussion**	J.
Council Work Session			
Meeting Date:	06/22/2021		
Dial Park Improvements			
Submitted By:	Scott Falkowski		
Department:	City Manager		
Council Committee Review?:	Council Work Session	**Date(s) of Committee Review:**	06/08/2021 and 06/22/2021
Audio-Visual Needs:	None	**Emergency Legislation?:**	No
Motion/Ordinance/ Resolution No.:			

Agenda Item Description or Legislation Title

Dial Park Improvements

Purpose and Background

City Council approved a Request For Proposals (RFP) process for the construction for the Dial Park Trails and Bike Amenities Project. This legislation allows for the awarding of contracts for said construction. The City Council had a first reading of this legislation at the June 14, 2021 City Council Meeting and the legislation was passed to a second reading at the June 28, 2021 City Council Meeting. The City will be holding a Town Hall Meeting on June 24, 2021 to get additional input from residents regarding the Dial Park Improvements.

Fiscal Impact

Source of Funds:	Parks and Recreation Fund
Cost:	$725,000
Recurring Cost? (Yes/No):	No
Funds Available in Current Budget? (Yes/No):	No
Financial Implications:	

Attachments

Proposal

Resolution

AMERICAN RAMP COMPANY

PROGRESSIVE BIKE RAMPS

Velosolutions

REQUEST FOR PROPOSALS FOR

RFP 21-002-P&R

INSTALLATION OF DIAL PARK TRAILS AND BIKE AMENITIES

CITY OF HUBER HEIGHTS, OH



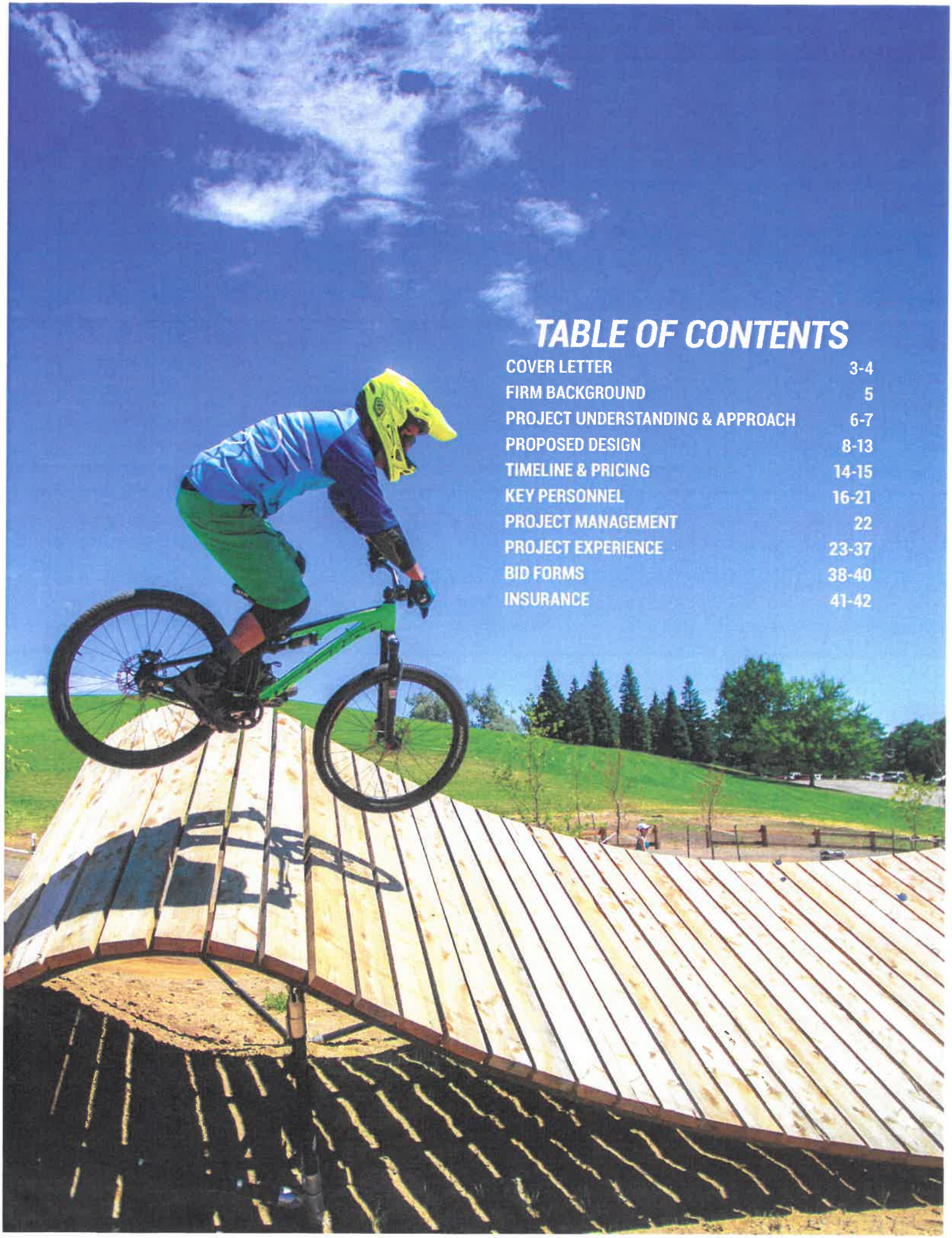


TABLE OF CONTENTS

COVER LETTER	3-4
FIRM BACKGROUND	5
PROJECT UNDERSTANDING & APPROACH	6-7
PROPOSED DESIGN	8-13
TIMELINE & PRICING	14-15
KEY PERSONNEL	16-21
PROJECT MANAGEMENT	22
PROJECT EXPERIENCE	23-37
BID FORMS	38-40
INSURANCE	41-42

COVER LETTER

Dear City of Huber Heights project team and stakeholders,

American Ramp Company is excited for the opportunity to build a great bike facility for the City of Huber Heights. ARC is the world's most experienced and respected action sports design-build team. We have been creating public spaces for bikers and skaters for 20 years while always striving to make every project as new and exciting as the last. We have completed over 3,000 projects stretching across every state in the US and over 40 countries around the world. We have built more hard surface pumptracks and bike facilities than any other company in the nation. We are honored the City of Huber Heights is interested in partnering with us.

This is a project we have been anticipating for some time and have developed a great understanding of this project over the years by helping with the initial design and planning of this park. We are confident in our team's ability and experience to design and construct the highest quality: multi-use trails, skills course, bicycle playground, and asphalt pumptrack.

We have an excellent design process that the users and stakeholders will enjoy being a part of and we will walk you through every step. Multiple American Ramp Company staff have visited the site and have a great idea of what the vision is for the park. Our build team has an extensive amount of experience doing projects with very similar scope. They will bring your design to reality with efficiency. They are all great spirited people who have passion for these types of project and want to make this an exciting and fun experience for everyone involved.

We thank you for the opportunity to be a part of this amazing project. Please do not hesitate to give me a call should you have any questions regarding our proposal or your project in general.

Respectfully,

John Hunter
Vice President
john@americanrampcompany.com
417-206-6816

American Ramp Company
601 S McKinley Ave
Joplin, MO 64801

Proud Member: PTBA Professional Trail Builders Association

COVER LETTER (CONTINUED)

A statement describing the Contractor's legal structure (e.g. corporation, partnership) and providing federal tax identification number and principle place of business.

American Ramp Company is a corporation headquartered out of Joplin, MO with satellite offices in Redding, CA and Orlando, FL.

FEIN - 35-2353308

A statement that the person signing the quote certifies that he or she is the person in the Contractor's organization who has actual authority to make decisions as to matters relating to this RFP and to bind the Contractor.

John Hunter has complete authorization to make decisions as to matters relating to this RFP and to bind contractual agreements for American Ramp Company. John Hunter is the Vice President and an owner of American Ramp Company.

A statement that the quote meets the minimum qualifications set forth in this RFP and accepts all requirements and terms and conditions contained in this RFP.

The quote we have proposed meets the minimum qualifications set forth in this RFP and accepts all requirements and terms and conditions contained in this RFP.

A statement that the Contractor does not discriminate in its employment practice with regard to race, color, age, religion, sex, veteran status, sexual preference, national origin, or disability

American Ramp Company is an EOE organization and has an Affirmative Action Plan in place.

A statement that no attempt has been made or will be made by the Contractor to induce any other person or firm to submit or not submit a quote.

American Ramp Company nor any of its employees have attempted or will attempt to induce or interfere with any other person or firm to submit or not submit a quote for this RFP.

A statement that indicates whether the Contractor or any of its agents has a possible conflict of interest with any city employee involved in the RFP and any ensuing Contract(s) or any other conflict of interest and, if so, an explanation of the conflict must be given.

American Ramp Company or any of its agents have no known conflicts of interest with any city employee involved in the RFP and any ensuing Contract(s) or any other conflict of interest.

FIRM BACKGROUND

AMERICAN RAMP COMPANY

PROGRESSIVE BIKE RAMPS

American Ramp Company and our bike focused brand Progressive Bike Ramps is a professional design-build firm geared to create custom bike recreation areas with emphasis on innovation and sustainability. With over 250+ bike park projects in 8 years, we have become an industry leader in sustainable bike recreation, striving to create world class parks that provide a healthy and active space for cyclists of all ages and skill levels.

For each project, American Ramp Company provides professional design services to create designs unique to each community. Our design team of Bike Park Specialists and Visual Artists work directly with stakeholders and community groups to assess opportunities and constraints of the future bike recreation sites. Once completed, this fun and creative process provides each community with an actionable plan to take their project from concept to reality.

Our specialized team of builders work to construct your project from start to finish and our sustainable features are manufactured in our 57,000 square foot facility allowing us to provide you with factory direct pricing and service on a large scale.

We are committed to bring the full depth of our expertise to each project and offer these turnkey services to ensure each park is designed and built to the highest standards.

Velosolutions

In 2012, Velosolutions built the world's first asphalt pump track and initiated the growth of the global pump track community. Today, our tracks are loved by beginners and pro athletes because of their unique design that provides fun, progress, and challenge for everyone.

With our long-lasting expertise in the sports industry, we are recognized as the pump track authority by the UCI and other governing bodies.

Experience
- 300+ projects around the world has enabled us to develop the skill-set to design the most exciting, challenging yet safe tracks for all riders.

Innovation
- The desire to make our sport accessible to everyone around the world pushes us to further improve the design and construction methods on every project.

Sustainability
- We believe in green technologies and live by sustainable practices, implanting nature in the core of our value proposition.

Passion
- Our experienced team of sports enthusiasts knows exactly how to combine the needs of our clients with the sophisticated expectations of the riders.

PROJECT UNDERSTANDING

American Ramp Company is committed to the scope of the design and installation process as specified in the RFP.

Our understanding of your proposed project is to provide you with a turnkey design and construction of a sustainable bike park including multi-use trails, skills course, bicycle playground and an asphalt pumptrack. The intended use ranges from beginner through advanced skill levels. American Ramp Company prides itself for having developed numerous bicycle skills courses that provide users with the space to learn basic bike handling skills and are friendly for strider bike use. As well as large scale bike parks that are great for all skill levels.

DESIGN

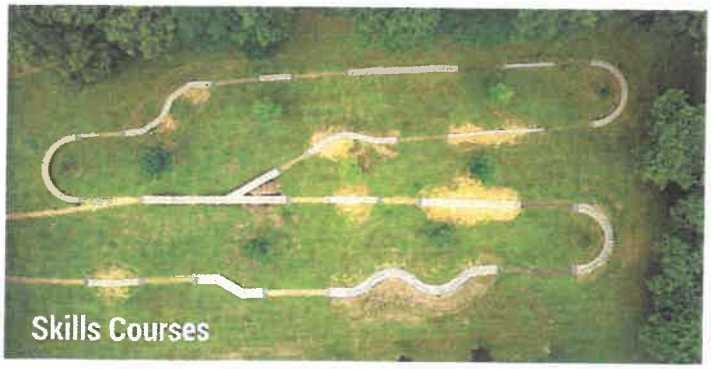
Our desire is for the City and community to have complete confidence in the final design of the bike park facility. Once the City has approved our design concept, following any revisions necessary, we will create a final feature list and begin production.

INSTALLATION

During the installation phase, our team will be able to self-perform all work, providing factory direct manufacturing of features and in-house specialty crews to perform installation and dirt work. We will employ the full depth of our knowledge, experience, and expertise to ensure that the build process is efficient and successful. Because each aspect of construction will be performed directly by our crews, we'll be able to ensure the highest quality end product so that this park remains a destination for riders for generations to come.


Bicycle Playgrounds


Asphalt Pumptracks


Skills Courses


Multi-Use Trails

PROJECT APPROACH

Our goal will be to provide Huber Heights and its residents with a world class bike-optimized facility that accurately reflects the diligent efforts of the city staff and stakeholders that have brought this project to fruition.

The City and project stakeholders will be engaged and informed throughout the process to ensure the implementation of a successful project within the available budget that provides experiences the local ridership is looking for.

Our collaborative, intentional and educational approach to this process will keep your team fully informed of the options and the thought processes behind each design decision that is made. Our team of Bike Park Designers and Visual Artists will work directly with City Staff and stakeholders to assess opportunities and constraints of the site and provide detailed expert analysis that will be shared and discussed in depth with your team.

Not only does our approach ensure the best possible outcome for design but serves as training for City Staff that provides your team with an in-depth understanding of the end product, equipping you with the knowledge you'll need to successfully manage these new and exciting amenities once they are built.

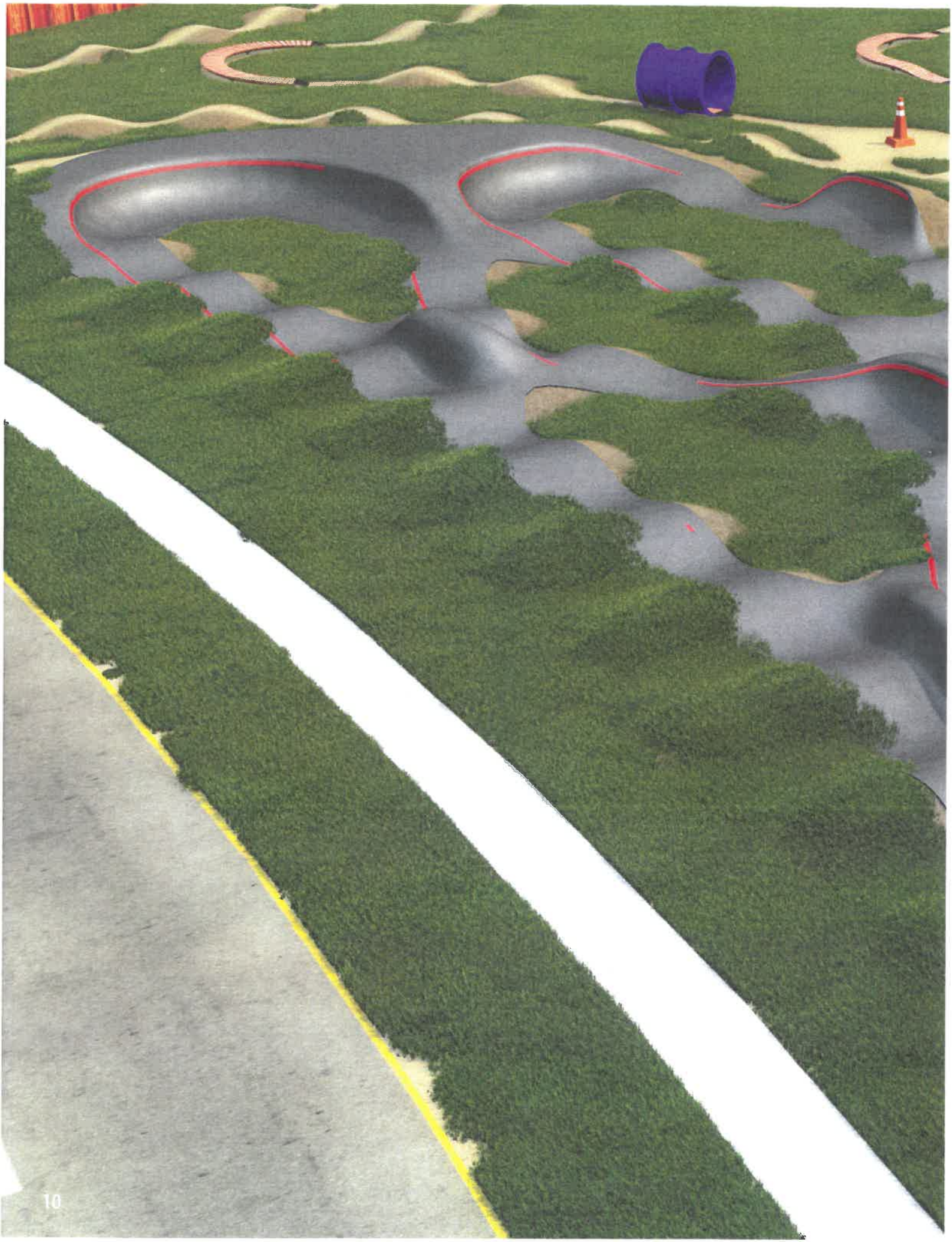
We'll carry this interactive and informative approach through to construction to provide further training. Your staff's knowledge and understanding of how the park is constructed will be invaluable for long term maintenance and operations.



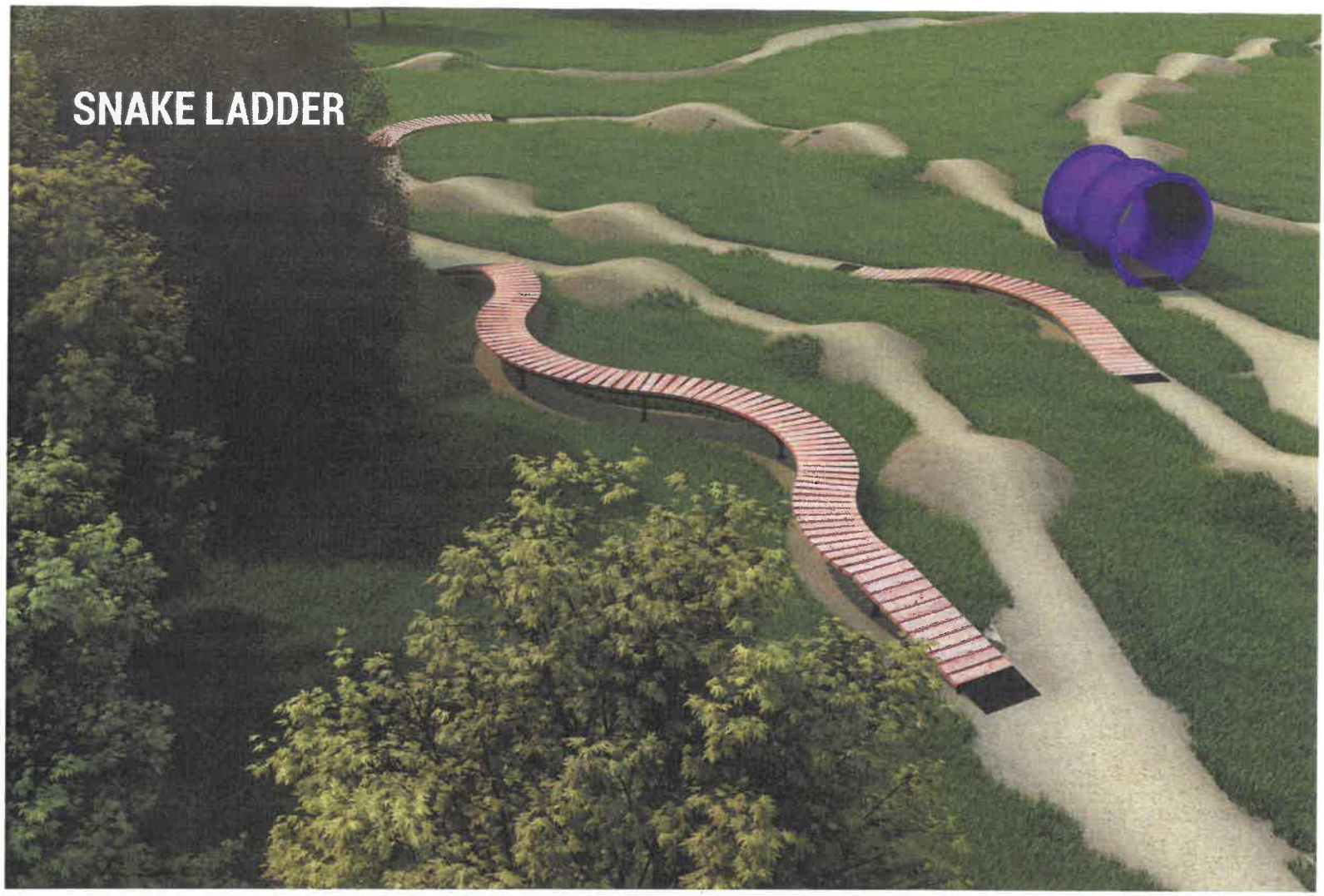
Site Top View

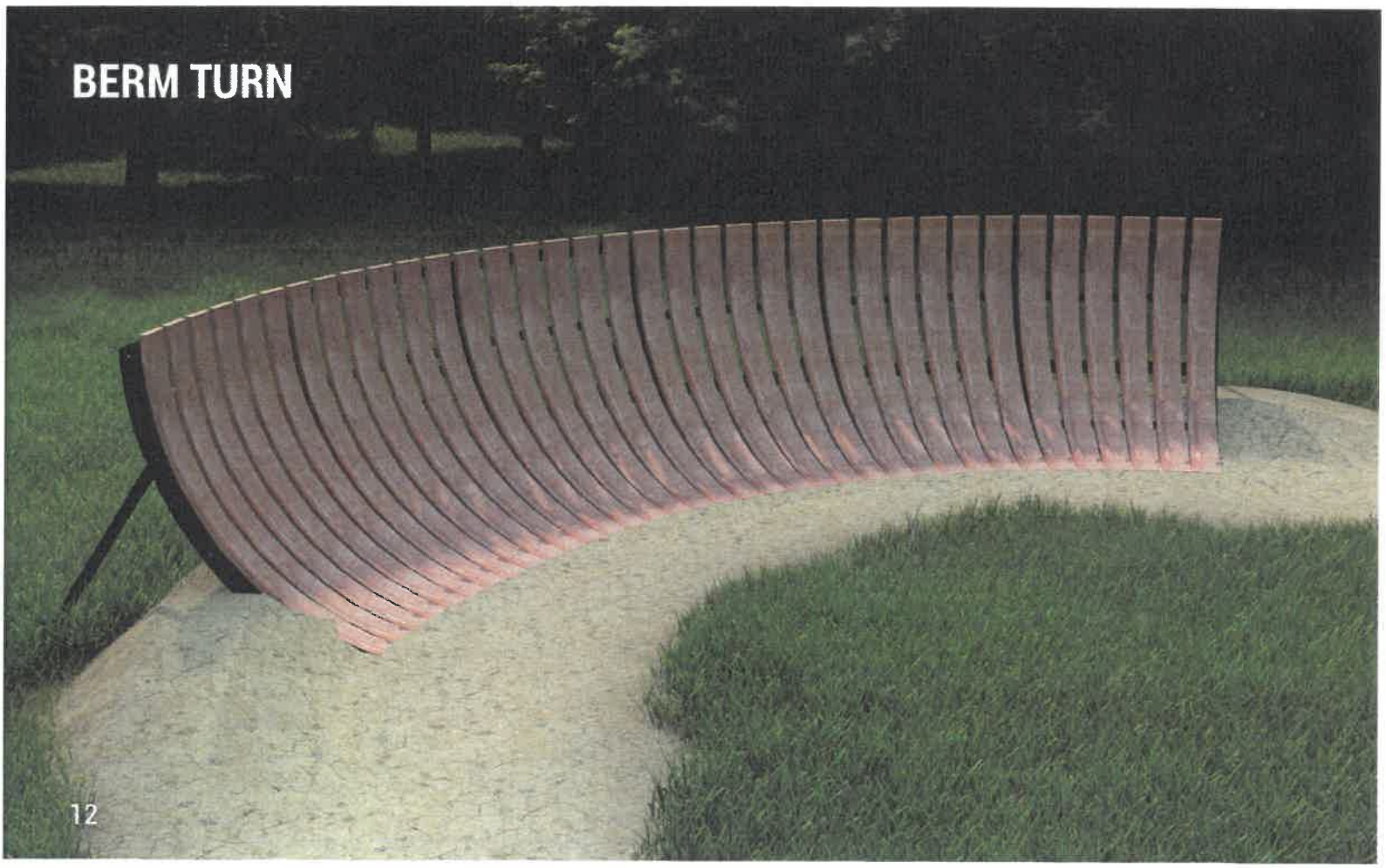
PROPOSED DESIGN



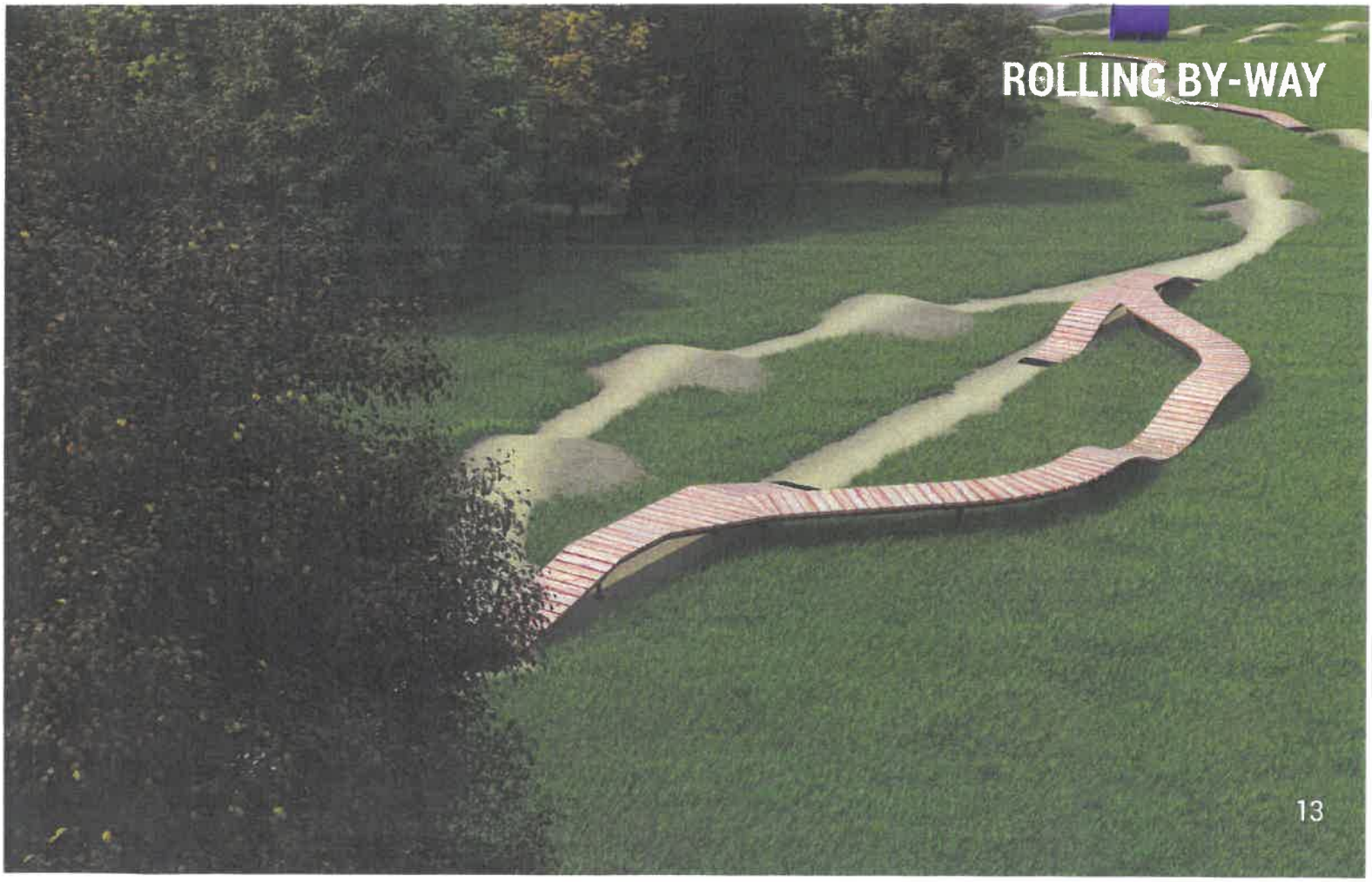





SNAKE LADDER


BERM TURN


BICYCLE PLAYGROUND/
VELOSOLUTIONS PUMP TRACK


ROLLING BY-WAY

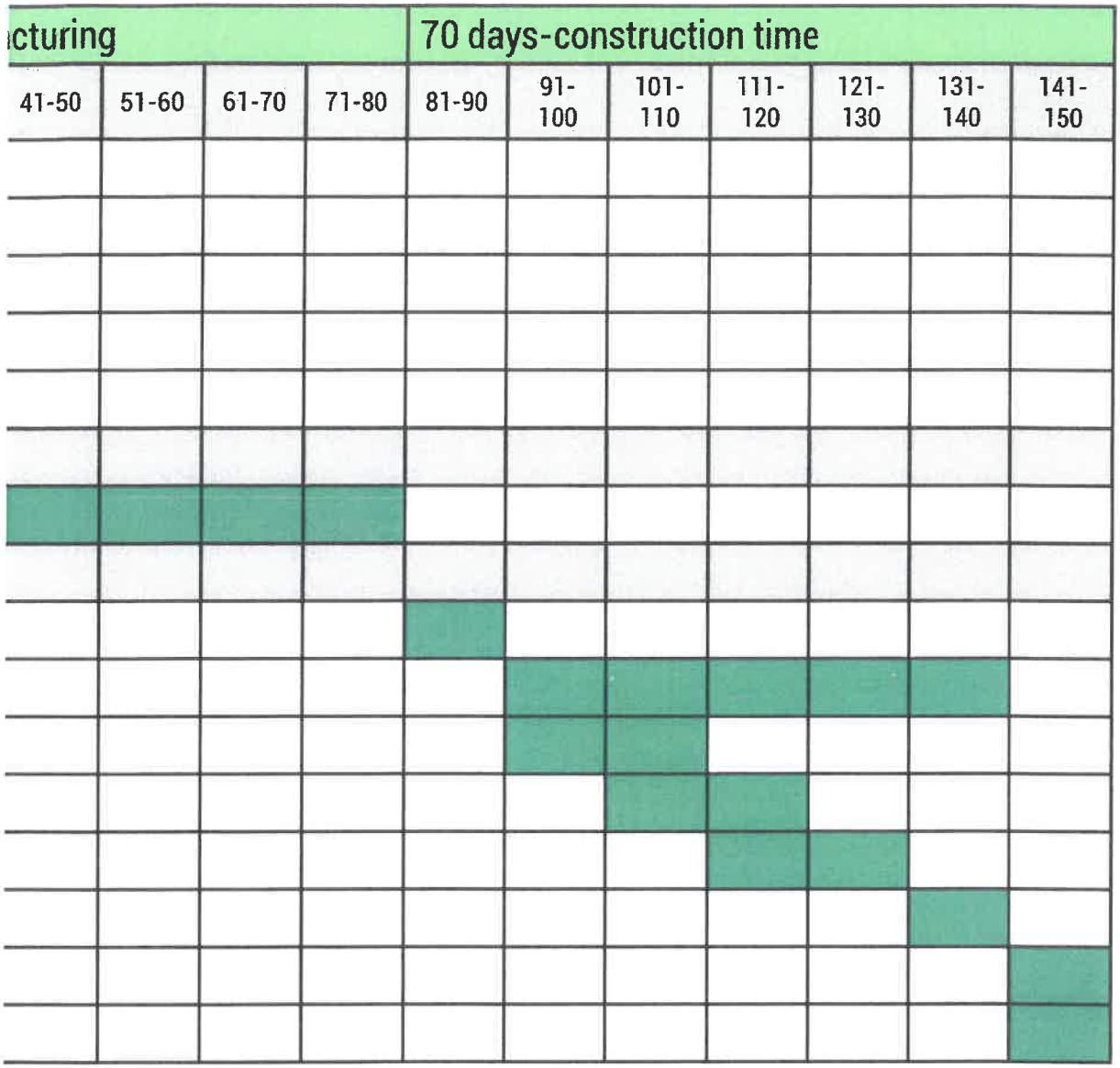
TIMELINE

*This schedule is subject to change based on actual dates contract is awarded and design is approved.

Task Description		80 days- planning/manu			
Phase 1: Design		1-10	11-20	21-30	31-40
1.1	Design Starts				
1.2	Conceptual Design Review				
1.3	Design Changes Made				
1.5	3D Renderings Created, Final Design Presented, Deliverables				
1.6	Final Design Reveiwed and Approved				
Phase 2: Manufacturing					
2.1	Manufacturing of Sustainable Bicycle Playground & Bike Skills Features				
Phase 3: Construction & Installation					
3.1	Mobilization				
3.2	Site Preparation, Mass Grading, Fine Grading, Berming				
3.3	Drainage, Form Work				
3.4	Asphalt Pumptrack - Asphalt Application, Packing, Smoothing				
3.5	Bike Skills Features Installation				
3.6	Punch Walk, Substantial Completion				
3.7	Punch List Repairs				
3.8	Closeout, Final Walk and Sign Off				

PRICING

ITEM	COST
Trail	$89,271
Bicycle Skills Park	$251,150
Bicycle Playground	$51,720
Velosolutions Asphalt Pump Track	$276,359
Total	**$668,500**


cturing
70 days-construction time
41-50
51-60
61-70
71-80
81-90
91-100
101-110
111-120
121-130
131-140
141-150

KEY PERSONNEL



Claudio Caluori

LEAD BIKE DESIGNER/PRO RIDER

Claudio Caluori founded Velosolutions because cycling–in any form–has always been a big part of his life. The sport has taken Claudio to many places around the world, both as a professional racer and a track builder. He has learned many life lessons along the way and has experienced first-hand how pump tracks positively change lives for every community in which Velosolutions works. From Roma in Lesotho through Aranyaprathet in Thailand, all the way to Zurich and New York City– Claudio has seen pumptracks bring people into sports and bring people together.



- Seven-time Swiss National Champion
- Former World Cup Racer.
- Owner of Gstaad-Scott mountain bike racing team
- Decades of experience in the cycling industry
- Responsible for over 100 Velosolutions pumptracks around the world with exclusive asphalt technique
- Announcer for Red Bull Crashed Ice and Mountain Bike World Cup Series



Megan Bradley

LANDSCAPE DESIGNER/BIKE PARK DESIGNER

Megan brings a unique collection of experience and knowledge to our team. She is a National Champion Mountain Biker with a degree in Landscape Architecture and a Lead Bike Park Designer. Megan will be a critical player in the overall layout and integration of any biking component of this project from both a rider perspective but also as a Landscape Professional. Megan will work to maximize the positive impact this facility brings to the community while minimizing the impact to the environment. Megan is also passionate about creating opportunities to bring more people to mountain biking and helping to diversify the sport.



- Champion Mountain Bicyclist since 2014, rider since 2008
- Master of Landscape Architecture, Berkeley
- Action sports park designer since 2018
- Female Athlete of the Year: University of California, Berkeley 2016; Mountain Bike Rider of the Year: Interbike International Bike Expo 2016; National Champion Cat 1 MX Mountain Biking: Mammoth, CA 2016; Omnium Champion: WCCC Mountain Bike Series 2014, 2105, 2016, 2017.
- Extensive experience in GIS, Rhino, AutoCAD, Photoshop, Illustrator, and InDesign.



Alex Fowler

ACTION SPORTS DESIGNER/BUILDER

Alex grew up going to great lengths in order to race and ride his bike. He would spend countless hours on public transportation, often traveling great distances just to go ride his bike. After his childhood experience and spending a decade traveling the world on the pro BMX race circuit, Alex discovered first-hand how difficult it is for the majority of people to go ride. His goal is to bring cycling closer to every community and he is willing to go to great lengths to ensure that everyone has a safe place to ride locally. Alex graduated from the California State University at Monterey Bay with a Bachelor of Arts degree in Communications & Sport Management. For several years he worked on many of the UCI BMX Supercross tracks, as well as the BMX course used in the Rio 2016, Olympic games.



- Professional BMX rider since 2009
- Professional designer and builder for since 2010
- Involved in design and build for Rio 2016 Olympic BMX course, largest BMX track in the US, US Olympic training center, Sea Otter Classic, Google, Suburu, Fox, Specialized Bicycles, elite level competition venues, top notch mountain bike parks and pumptracks around the world.
- BS Degree in Communications and Sport Management, California State University
- Extensive experience on heavy equipment in building parks and supervising crews



Andras Hordos

CIVIL ENGINEER/BMX RIDER

Andrew came to the United States in 2006 to begin work for American Ramp Company in design and Civil Engineering. As a BMX rider growing up in Budapest, Hungary, Andrew had the opportunity to ride and experience a variety of street style terrain. His love for design and engineering was largely inspired by the rich Eastern European architecture and history he was exposed to during his formative years in Hungary and surrounding countries. Andrew has been a part of over 100 action sports projects and has unrivaled insight for the Civil Engineering considerations included in skate and bike park projects. Andrew will work with the creative design team and overall project team to identify challenges and opportunities to ensure the final design optimizes the site and functions with other amenities included in the park master plan.



- BMX and ramp builder since 2005
- Skatepark designer since 2006
- Master of Civil Engineer Degree from Budapest University of Technology and Economics, Hungary
- Structural Engineering and Construction and Building Management
- Extensive experience in Pro Engineer CAD software, 3D Designer and Photoshop image editing software



Nathan Bemo
PRESIDENT/OWNER

With a passion for skateboarding and a desire to work somewhere that didn't require him wearing a tie, Nathan Bemo founded American Ramp Company (ARC) in 1998. What started out as just a couple of guys in a garage has evolved into an action sports development company with worldwide impact. As an avid skater, Nathan's focus for ARC is to design and build innovative skateparks and bike parks.



- Skateboarder since 1986, mountain biker since 2009
- Built and ran skatepark from 1994-1998
- Founded American Ramp Company in 1998
- Responsible for 1000s of skateparks in 43 countries
- BS Business (and minor in Total Quality Management) from Missouri Southern State University, 1998; Contractor's license holder in multiple states

ALL KIDS BIKE .org
AMBASSADOR



John Hunter

VICE PRESIDENT/OWNER

Focused on the development of spaces that get more people excited about action sports John has led the creative direction of countless project and product launches. Over the years John has contributed to publications and been a speaker at recreation conferences throughout the country. His development of the Bicycle Playground concept has led to the creation of a new type of facility that acts as an easy first step for any community looking to invest in cycling infrastructure.



- Avid Mountain Biker since 2009
- Over 11 years of experience in the development of parks and recreation infrastructure
- Actively working with Strider Sprots to launch biking program for public schools to make sure all kids can ride by first grade
- Has been a part of hundreds of skate and bike park projects in communities around the world
- Developing the youngest generation of bikers by championing Bicycle Playground parks

ALL KIDS BIKE .org

AMBASSADOR

PROJECT MANAGEMENT

Bike Parks are a relatively new amenity. There is a lot of trial and error on perfecting the process of effectively designing and constructing a full-scale bike park that is high quality, easy to maintain, and completed efficiently. Progressive Bike Ramps has been pushing to get better and better for the past 10 years and we have been doing just that!

We have a well-manicured process and specific people in place to make sure everything runs smoothly, and milestones are hit on time.

Throughout the design and build processes, our team will keep your staff thoroughly informed while diligently working to identify opportunities to reduce costs and ensure that the available budget is maximized, creating the optimal bike recreation area for your community. Before submitting the final design plans, our team will provide value engineering to further maximize the budget by utilizing locally available resources and materials.

Internally, we have developed cutting edge approaches to sustainable design and construction that are referenced as best practices industry wide. These include but are not limited to our prefabricated features, asphalt pumptracks, contoured skills trail construction, natural feature armoring, and various soil stabilization techniques.

With an understanding of a public agency's limited resources for ongoing maintenance, we will identify opportunities to implement these minimal maintenance approaches throughout your park design to reduce the maintenance burden and long-term cost of ownership.



EXPERIENCE



FEATURED PROJECTS

PROJECT	CITY	PROJECT COMPLETE
Runway Bike Park	Springdale, AR	September 2018
Ruby Hill Bike Park	Denver, CO	June 2016
Railyard Bike Park	Rogers, AR	August 2020
Tom Brown Park	Tallahassee, FL	May 2019
Riverfront Skate & Bike Park	Fort Smith, AR	October 2017
Snake Hollow Bike Park	St. George, UT	November 2018

RUNWAY BIKE PARK

In 2017 we began initial discussions with the Jones Center in Springdale, AR about developing a high profile regional destination bike park. Those talks were the foundation of the Jones Center's Runway Bike Park in Springdale, AR. From the beginning, we had a vision of an experience with rider progression built-in to the design of the space. The 2.75 acre park includes a bicycle playground, multi-level skill lines, a competition-level Velosolutions Asphalt Pumptrack, and the iconic Huey helicopter retrofitted as a ride-through feature.

Quinton Harris | General Manager | qharris@jonesnet.org | 479-756-8090

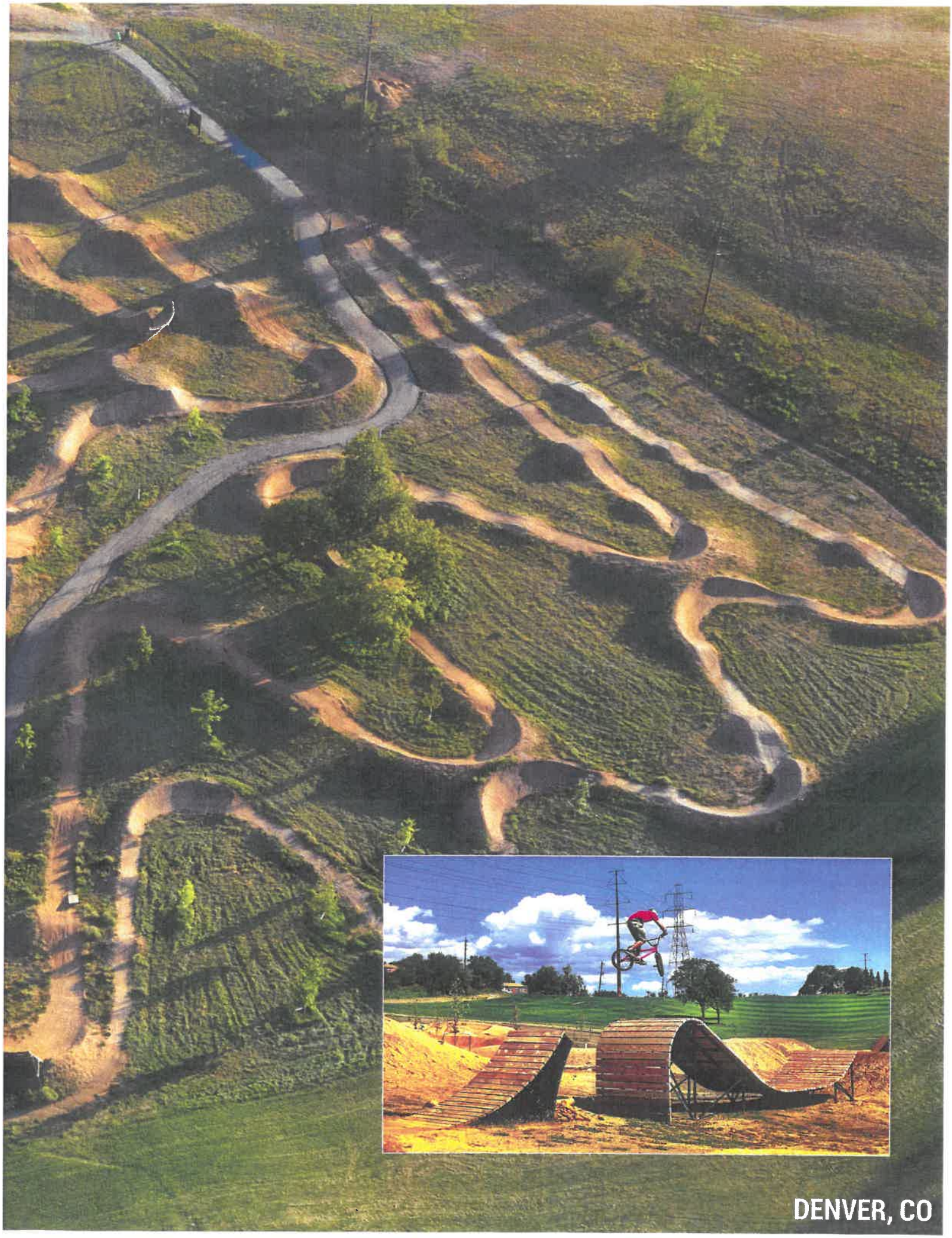






SPRINGDALE, AR





DENVER, CO

RAILYARD BIKE PARK

The City of Rogers, AR Railyard Bike Park has been a regional destination since its development. From the beginning, it was designed as a top-tier mountain bike experience highly utilizing PBR purpose-built bike features integrated to ensure longevity and the optimal ride experience. In 2020, the city of Rogers contracted with us again to convert the park from a natural surface park to an entirely paved asphalt bike park - transforming this iconic public park into a year-round heavy hitter and lowering the maintenance load of the city.

Lance Jobe | City Engineer | ljobe@rogersar.gov | 479-621-1186




ROGERS, AR



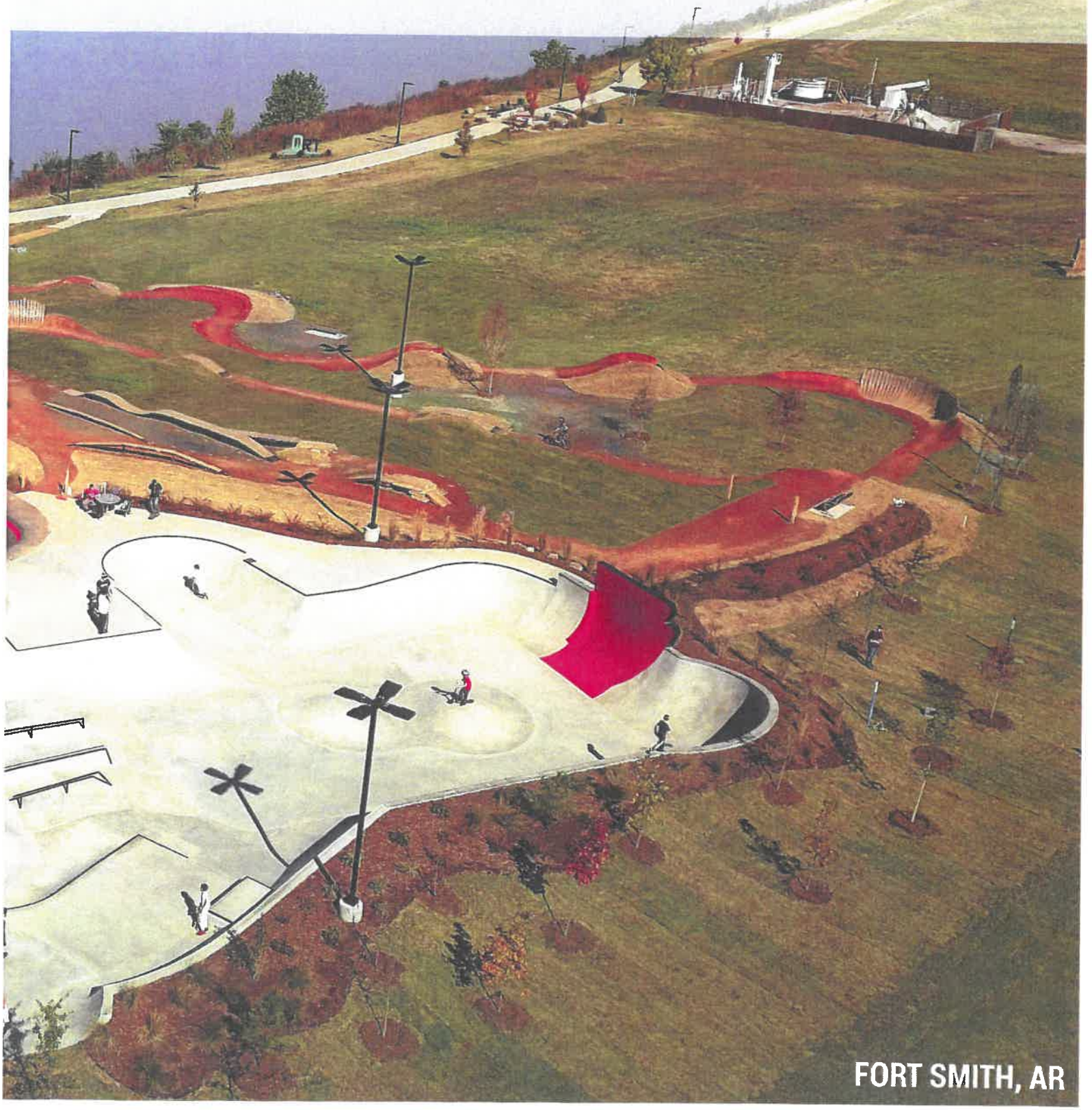

TALLAHASSEE, FL



RIVERFRONT SKATE & BIKE PARK

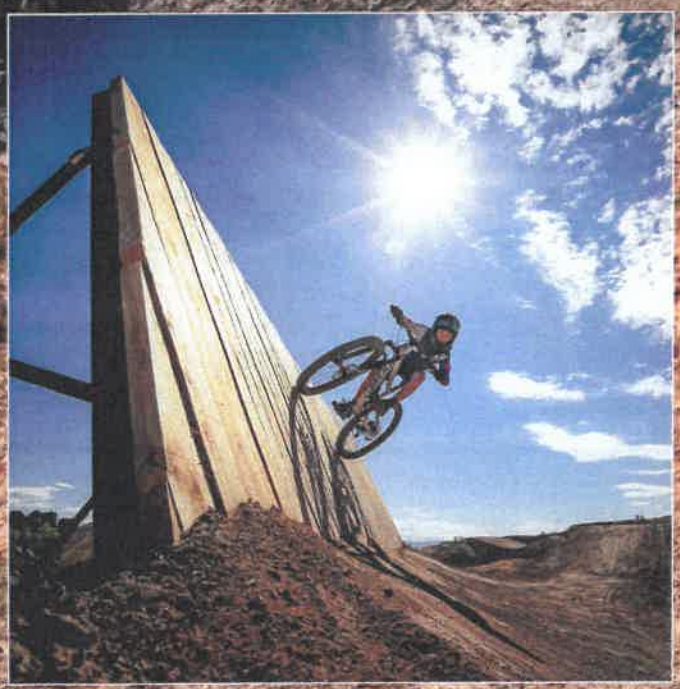
We were contracted to masterplan and build this cutting edge all-wheeled park integration that incorporates both skatepark and bike park amenities into one destination. There are four major sections to this park, but by far two of the favorites are the skatepark and the connected asphalt pumptrack. Our creative team designed unique local features in the park including a huge skateable state of Arkansas and a giant ridable arrow sticking out of the skatepark! The grand opening had 2,000 people in attendance and the park continues to be an icon for action sports in Arkansas and beyond. We take pride in building parks like Fort Smith's that become a gathering place for every wheeled sport.

Doug Reinert | Director of Parks and Recreation | dreinert@fortsmithar.gov | 479.784.1006

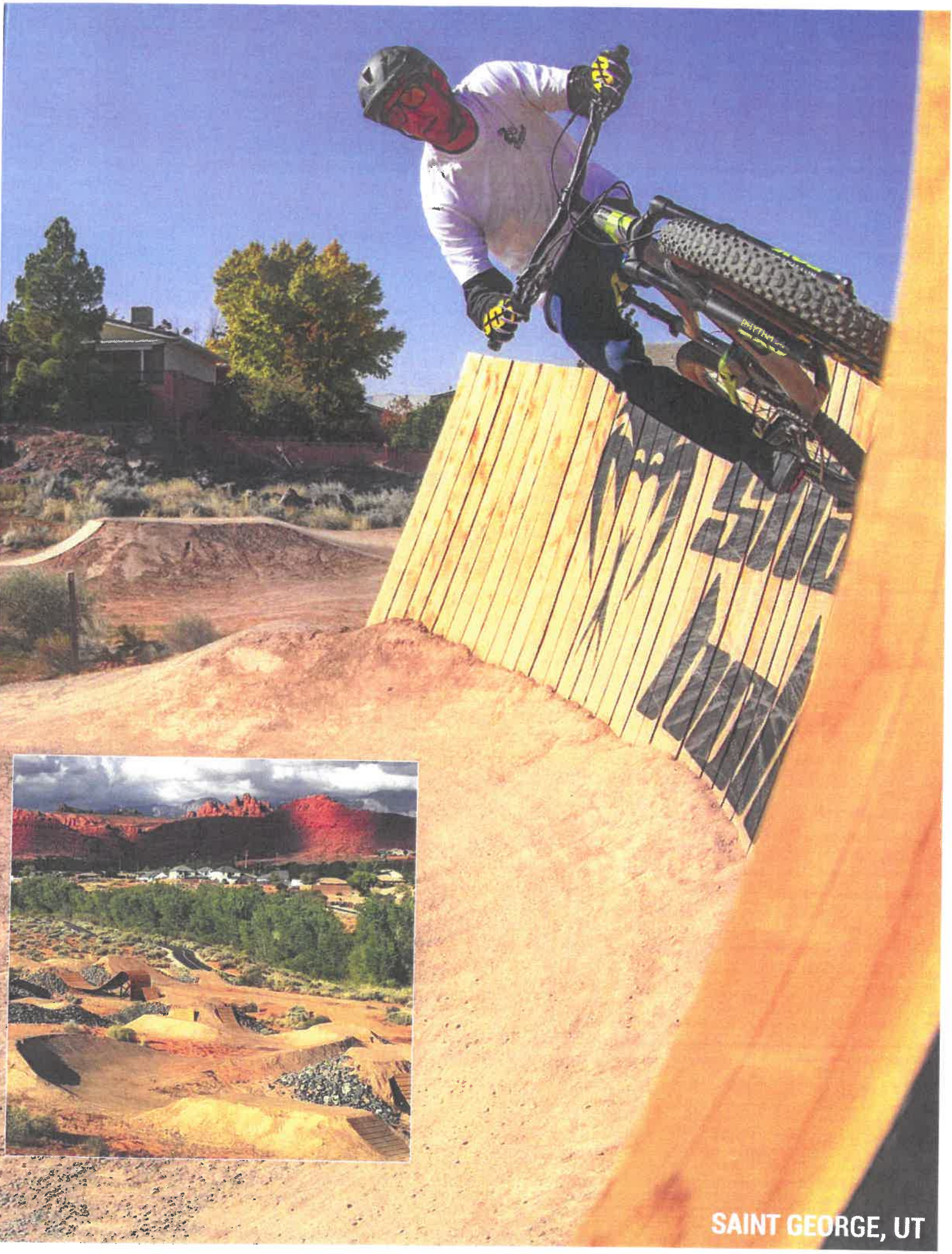


FORT SMITH, AR



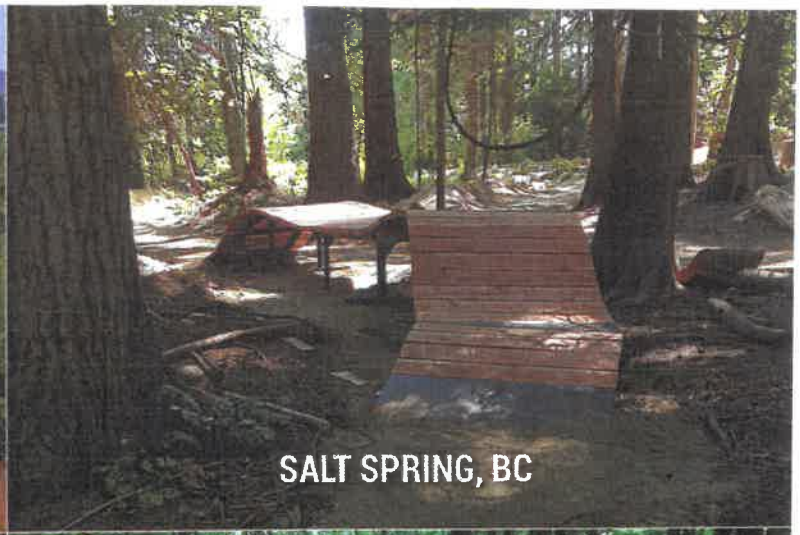


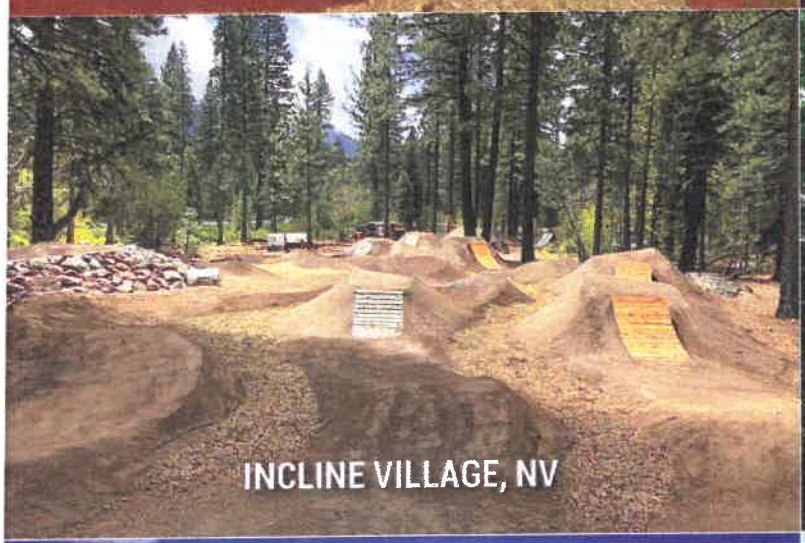


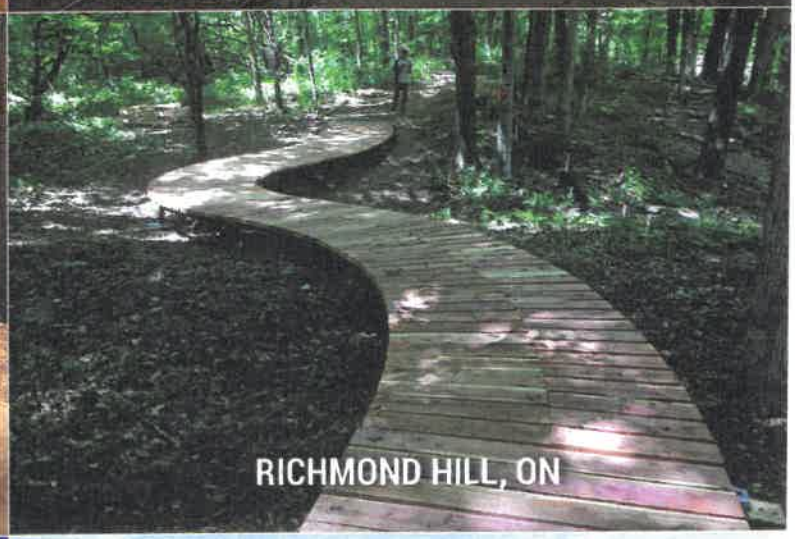


SAINT GEORGE, UT


KNOXVILLE, TN


SALT SPRING, BC


INCLINE VILLAGE, NV

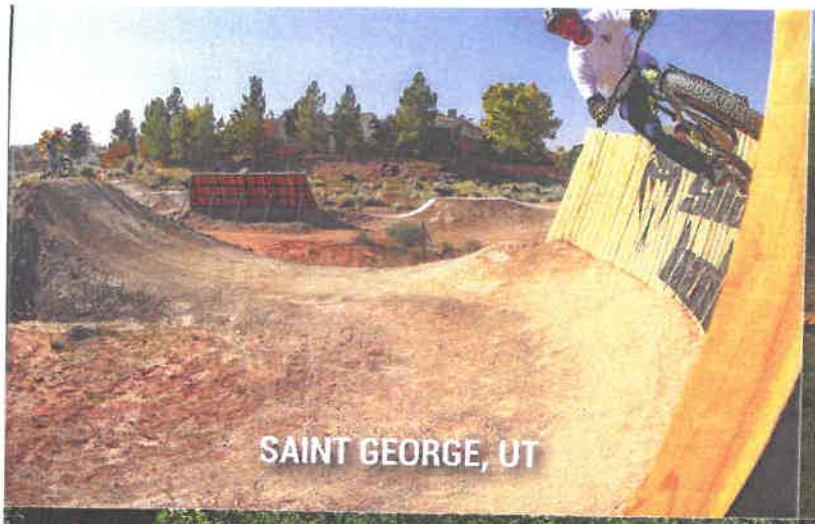

RICHMOND HILL, ON


CHICAGO, IL (BIG MARSH)

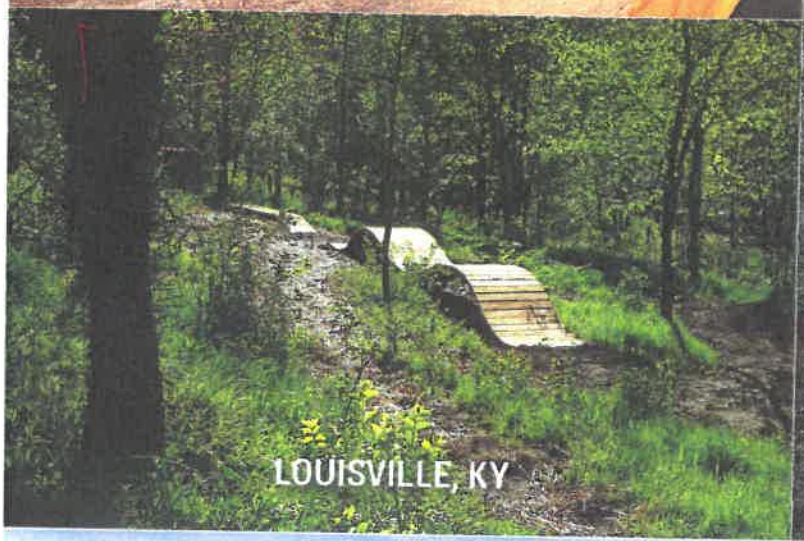

HEREDIA, COSTA RICA

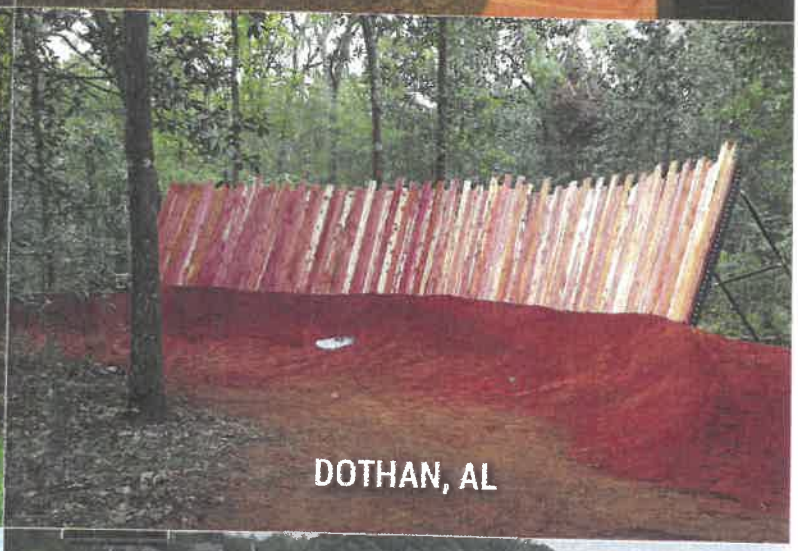

COLORADO SPRINGS, CO

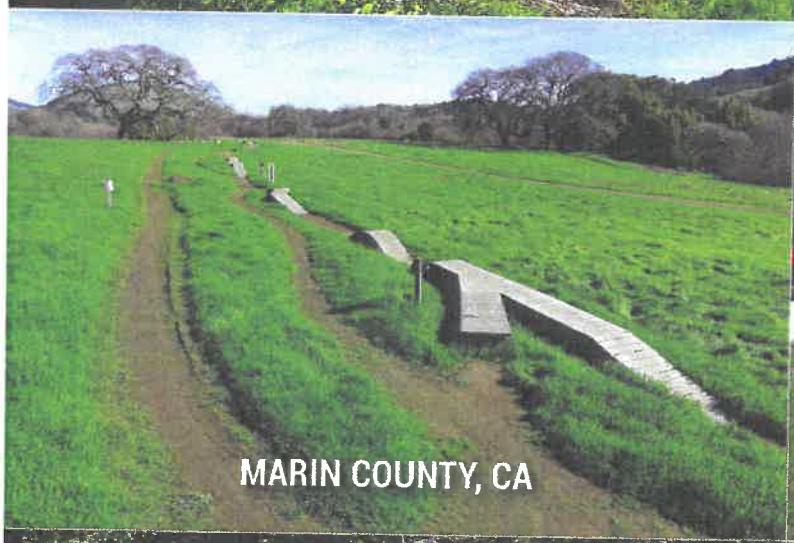

LONDON, KY

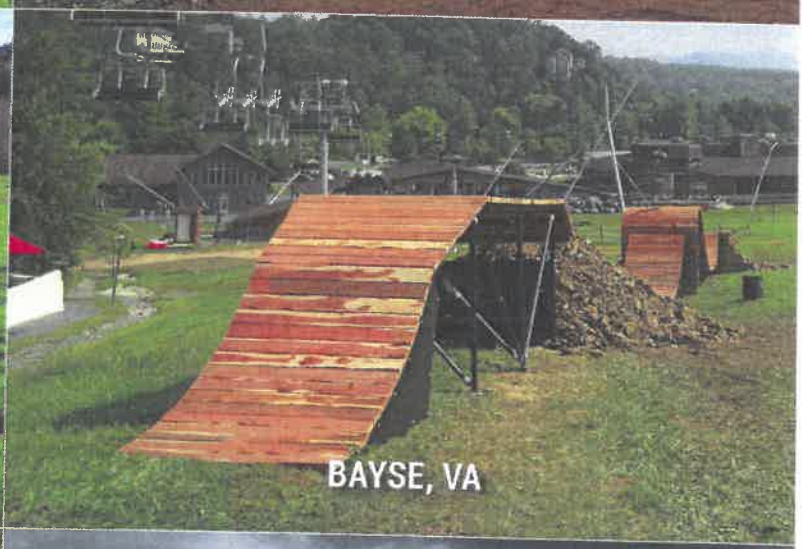

SAINT GEORGE, UT


CREIGHTON, SK


LOUISVILLE, KY


DOTHAN, AL


MARIN COUNTY, CA


BAYSE, VA


BENTONVILLE, AR


CASTLE ROCK, CO

CITY OF HUBER HEIGHTS
STATE OF OHIO

RESOLUTION NO. 2021-R-

AUTHORIZING THE CITY MANAGER TO ENTER INTO CONTRACTS FOR THE DIAL PARK TRAILS AND BIKE AMENITIES PROJECT.

WHEREAS, City Council under Resolution No. 2021-R-6999 has previously authorized the securing of bids for construction and installation of multi-use trails, a bicycle skills park, a bicycle playground, and an asphalt pump track in Dial Park; and

WHEREAS, bids were properly received on June 3, 2021.

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 contract for the Dial Park Trails and Bike Amenities Project with American Ramp Company as the lowest and best bidder at a cost not to exceed $725,000.00 on the terms and conditions as substantially set forth in the specifications of the contract.

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 shall go into effect upon its passage as provided by law and the Charter of the City of Huber Heights.

Passed by Council on the _____ day of _____ , 2021;
_____ Yeas; _____ Nays.

Effective Date:

AUTHENTICATION:

_____ _____
Clerk of Council Mayor

_____ _____
Date Date

AI-7662 **Topics of Discussion** **K.**

Council Work Session

Meeting Date: 06/22/2021

Liquor Permit #03207030300 - Bob Evans - 7670 Brandt Pike

Submitted By: Anthony Rodgers

Department: City Council

Type of Liquor Permit: New

Motion/Ordinance/ Resolution No.:

Agenda Item Description

Liquor Permit #03207030300 - Bob Evans - 7670 Brandt Pike

Review and Comments - Police Division

The Police Division has no objections to the approval of this liquor permit.

Review and Comments - Fire Division

The Fire Division has no objections to the approval of this liquor permit.

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

Liquor Permit

NOTICE TO LEGISLATIVE AUTHORITY

OHIO DIVISION OF LIQUOR CONTROL
6606 TUSSING ROAD, P.O. BOX 4005
REYNOLDSBURG, OHIO 43068-9005
(614)644-2360 FAX(614)644-3166

TO

03207030300 PERMIT NUMBER	NEW TYPE	BOB EVANS RESTAURANTS LLC DBA BOB EVANS RESTAURANT 519 7670 BRANDT PK HUBER HGTS OH 45424
ISSUE DATE		
05 12 2021 FILING DATE		
D1 D2 PERMIT CLASSES		
57 TAX DISTRICT 083 A C97473 RECEIPT NO.		

FROM 06/03/2021

PERMIT NUMBER	TYPE	
ISSUE DATE		
FILING DATE		
PERMIT CLASSES		
TAX DISTRICT	RECEIPT NO.	

MAILED 06/03/2021 RESPONSES MUST BE POSTMARKED NO LATER THAN. 07/06/2021

IMPORTANT NOTICE

PLEASE COMPLETE AND RETURN THIS FORM TO THE DIVISION OF LIQUOR CONTROL WHETHER OR NOT THERE IS A REQUEST FOR A HEARING.

REFER TO THIS NUMBER IN ALL INQUIRIES A NEW 0320703-0300
(TRANSACTION & NUMBER)

(MUST MARK ONE OF THE FOLLOWING)

WE REQUEST A HEARING ON THE ADVISABILITY OF ISSUING THE PERMIT AND REQUEST THAT THE HEARING BE HELD ☐ IN OUR COUNTY SEAT. ☐ IN COLUMBUS.

WE DO NOT REQUEST A HEARING. ☐
DID YOU MARK A BOX? IF NOT, THIS WILL BE CONSIDERED A LATE RESPONSE.

PLEASE SIGN BELOW AND MARK THE APPROPRIATE BOX INDICATING YOUR TITLE:

(Signature) (Title)- ☐ Clerk of County Commissioner (Date)
☐ Clerk of City Council
☐ Township Fiscal Officer

CLERK OF HUBER HGTS CITY COUNCIL
6131 TAYLORSVILLE RD
HUBER HGTS OHIO 45424

Ohio | Department of Commerce

Mike DeWine, Governor
Jon Husted, Lt. Governor

Division of Liquor Control
Sheryl Maxfield, Director

Rev 2/10/2021

Dear Local Legislative Authority Official:

Please find enclosed the legislative notice that is being sent to you regarding the applied for liquor permit as captioned on the notice. You **must**, within 30 days from the "mailed" date listed on the notice under the bar code:

- Notify the Division whether you object and want a hearing or not; or
- Ask for your one-time only, 30-day extension.
    - Any requests for a one-time, 30-day extension will be reviewed by the Division upon timely receipt. If granted, your additional 30-days runs from the expiration of the original 30-day period.

To be considered **timely**, your above response **must** be:

FAXED to the Division no later than 30 days after the "mailed" date (this is the date listed after the "responses must be postmarked no later than." You can fax your response to: (614) 644 – 3166

EMAILED to the Division no later than 30 days after the "mailed" date (this is the date listed after the "responses must be postmarked no later than." You can email your response to: LiquorLicensingMailUnit@com.state.oh.us

POSTMARKED, if mailed, no later than the date listed on the notice after "responses must be postmarked no later than." You can mail your response to

Ohio Division of Liquor Control
Attn: Licensing Unit
6606 Tussing Road
PO Box 4005
Reynoldsburg, Ohio 43068-9005

In an effort to speed up processing times and reduce paper, the Division respectfully asks that you either fax or email the above notice. In a similar effort, please note that the Division is no longer sending ownership information with this legislative notice. If you want to know who owns the applied for permit you can find that information in two ways:

- Go to https://www.comapps.ohio.gov/liqr/liqr_apps/PermitLookup/PermitHolderOwnership.aspx and enter the permit number listed on the legislative notice; or

- Contact your police department or county sheriff, if you are a township fiscal officer or county clerk, as the Division sends the applicable law enforcement agency the pertinent ownership disclosure information when it notifies them of the permit application.

AI-7684 **Topics of Discussion** L.

Council Work Session

Meeting Date: 06/22/2021

Request For Proposals - City Manager Search

Submitted By: Anthony Rodgers

Department: City Council

Council Committee Review?: Council Work Session

Date(s) of Committee Review: 03/16/2021 and 05/03/2021 and 06/22/2021

Audio-Visual Needs: None

Emergency Legislation?: No

Motion/Ordinance/ Resolution No.:

Agenda Item Description or Legislation Title

Request For Proposals - City Manager Search

Purpose and Background

This agenda item is to have an initial discussion regarding the draft Request For Proposal (RFP) for the City Manager search process (see attached).

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

Draft Request For Proposals

City of Huber Heights
6131 Taylorsville Rd.
Huber Heights, OH 45424

937.233.1423
937.233.1272 fax

www.hhoh.org

REQUEST FOR PROPOSALS
And
INSTRUCTIONS
RFP 21-001-CC

City of Huber Heights
City Manager Search Firm Proposal

The City of Huber Heights, a municipal corporation, is seeking proposals from qualified firms to conduct an executive search for the Huber Heights, Ohio City Manager position.

Attached to this RFP are the listed Instructions for Bidders/Offerors in the first ten (10) pages of this document. All potential bidders must thoroughly review and certify their understanding of the Instructions and this RFP process.

GENERAL INSTRUCTIONS TO BIDDERS/OFFERORS

For the purposes of this Document, the terms "Bid" and Proposal" have the same meaning, and the terms "Bidder, Offeror, Contractor, Vendor" are intended to mean the company or firm who is the respondent Bidder for this RFP.

- The following instructions are to be considered an integral part of this proposal. Unless otherwise requested, three (3) complete copies of the written proposal need be submitted. The person signing the bid/proposal form must initial any changes or corrections made to this proposal.
- No proposal may be withdrawn or modified in any way after the bid/proposal-opening deadline. ***Quotes must remain valid for ninety (90) days after the quote date*.** Quotes submitted with a less than ninety (90) day validity will be found non-responsive and will not be considered.
- All bids/proposals must be a final cost.
- Bids/Proposals will be received no later than 10:00 a.m. on Monday, August 2, 2021 at the City of Huber Heights 6131 Taylorsville Road, Huber Heights, Ohio 45424 at which time they will be opened and publicly read aloud. Bids/proposals received after the above date and time, or in any other location other than the City of Huber Heights City Hall as noted above will not be considered.
- A Request for Proposal packet may be obtained from the City of Huber Heights 6131 Taylorsville Road, Huber Heights, Ohio 45424 or from www.hhoh.org
- If descriptive literature is attached to the bid/proposal, bidder's name must appear on all sheets.
- A cover letter must be attached in the form of a standard business letter containing the Contractor's name, address and telephone number and must be signed with an original signature, in ink, by an individual authorized to legally bind the Contractor. The letter must contain the following information:
    - A statement describing the Contractor's legal structure (e.g. corporation, partnership) and providing federal tax identification number and principle place of business.
    - A statement that the person signing the quote certifies that he or she is the person in the Contractor's organization who has actual authority to make decisions as to matters relating to this RFP and to bind the Contractor.

- A statement that the quote meets the minimum qualifications set forth in this RFP and accepts all requirements and terms and conditions contained in this RFP.
- A statement that the Contractor does not discriminate in its employment practice with regard to race, color, age, religion, sex, veteran status, sexual preference, national origin, or disability
- A statement that no attempt has been made or will be made by the Contractor to induce any other person or firm to submit or not submit a quote.
- A statement that indicates whether the Contractor or any of its agents has a possible conflict of interest with any city employee involved in the RFP and any ensuing Contract(s) or any other conflict of interest and, if so, an explanation of the conflict must be given.

- **Communication:** If there is any question whatsoever regarding any portion of the instructions or specifications, it shall be the bidder's responsibility to seek clarification immediately from the City of Huber Heights **No later than close of business on Friday, July 23, 2021** unless otherwise stated in the documents.

All questions shall be submitted in writing or via e-mail to the attention of Anthony C. Rodgers, Clerk of Council, at arodgers@hhoh.org. If mailed, the address is as follows: City of Huber Heights ATTN: RFP 21-001-CC, 6131 Taylorsville Road, Huber Heights, OH 45424. Answer(s) to all questions will be answered after the deadline for questions has expired, and posted to the City's website, if applicable and feasible.

It shall be the bidder's responsibility to check the City's website (www.hhoh.org) for any and all addendums or modifications.

Under no circumstances should respondents contact City personnel or officials outside of the opportunity provided herein.

- **Proprietary Information**: Any information contained in the RFP response that is proprietary must be clearly designated. Marking of the entire response as proprietary will neither be accepted nor honored. The City cannot guarantee that all such material noted remains proprietary, particularly if it becomes a significant consideration in contract award. Information will be kept confidential only to the extent allowed by Public Records Laws of Ohio.

- Any variation from the specifications must be clearly stated by the bidder in writing and submitted with his/her proposal.

- The apparent silence of any specifications or any supplement specifications to any details or the omission of a detailed description concerning any point shall be regarded as meaning that only the best commercial practices are to prevail, and that only materials of first quality and correct type, size and design are to be used. All workmanship is to be of first quality. All interpretations of this specification shall be made upon the basis of this statement.

- The following bid shall be awarded to one bidder based on the specifications as provided for in Chapter 171 of the Codified Ordinances of Huber Heights so the City can determine the "lowest and best proposal". An award shall be made to one vendor for the total bid. Unit prices and extensions will be verified and total checked. Unit price extension and net total must be shown. Unit price shall prevail unless otherwise stated in the proposal.

- Section 171.04 of the Codified Ordinances of Huber Heights provides for a process and description for opening, tabulating and awarding responses to RFP/bids as stated in reference:

  (a) In the case of sealed competitive bids, the bids shall be opened and tabulated publicly by the Purchasing Agent. An investigation of the responsibility of the bidders and the responsiveness of the bid shall be made as the Purchasing Agent deems necessary. The Purchasing Agent shall determine the lowest and best bid. The Purchasing Agent may reject all bids if the Purchasing Agent determines that it is in the best interest of the City to do so.

  (b) In the case of competitive proposals, the responses shall be opened publicly by the Purchasing Agent. The City may discuss the responses with the proposers to clarify responses and to obtain information needed by the City to determine the lowest and best proposal. An investigation of the responsibility of the proposers and the responsiveness of the proposal shall be made as Purchasing Agent deems necessary. The Purchasing Agent shall determine the lowest and best proposal. The Purchasing Agent may reject all proposals if the Purchasing Agent determines that it is in the best interest of the City to do so.

  (c) In the case of two-step competitive proposals, the technical responses shall be opened publicly by the Purchasing Agent. The City may discuss the responses with the proposers to clarify responses and to obtain information needed by the City to determine qualified proposers. An investigation of the responsibility of the proposers and the responsiveness of the proposal shall be made as the Purchasing Agent deems necessary.

  The Purchasing Agent shall determine the qualified proposers. The qualified proposers shall then be invited to submit price proposals which shall be opened publicly by the Purchasing Agent. The City may discuss responses with the proposers to clarify responses and to obtain information needed by the City to determine the lowest and best proposal. If appropriate, the City may request best and final offers. The Purchasing Agent shall then determine the lowest and best proposal. The Purchasing Agent may reject all proposals if the Purchasing Agent determines that is in the best interest of the City to do so.

- The City of Huber Heights reserves the right to accept, reject or waive any irregularities in the proposal and/or any and all bids received for the work contemplated herein and to accept or reject any or all proposals and/or bids. The proposal and/or bids will be compared on the basis of the total cost of the project and the award will be made to the lowest and best bidder (or bidders), provided the proposal and/or bid is reasonable and is in the best interest of the City (owner) to accept. In determining the lowest and best bid the City (owner), in its sole discretion, may consider factors, including but not limited to, the bidder's work history, (including work done under other names), experience, conduct and

performance on previous contracts, management skills, ability to execute the contract properly, customer satisfaction, work on comparable projects, ability to timely complete the work in accordance with the contract documents, the Bidder's financial condition and facilities, and the Bidder's compliance with federal, state, and local laws, rules, and regulations, (including but not limited to the Prevailing Wage Laws, Occupational Safety and Health Act, and the State of Ohio's Equal Employment Opportunity Commission requirements, as may be applicable).

- The City desires delivery of the material or services specified at the earliest possible time after the date of award. An unreasonable delivery proposal may be cause for disqualifying a bid. Each bidder shall state a definite time and avoid using terms such as "ASAP" or "approximately so many days".

- **Insurance:** The Contractor will maintain the following insurance from insurer(s) rated A- or better by A.M. Best in amounts sufficient to protect the Contractor and Owner from claims under Workers Compensation Acts and any other claims for property damage and/or bodily injury, including death, which may arise from the performance of the Work under this Subcontract, whether the Work is performed by the Subcontractor, its subcontractor, or anyone directly or indirectly employed by either of them.

  Limits of coverage to be as follows:

(a)	Workers' Compensation	Statutory
	Employers Liability/Ohio Stop Gap	$ 1,000,000
(b)	Commercial General Liability:	
	Bodily injury/property damage per occurrence	$ 1,000,000
	General Aggregate	$ 2,000,000
	Products/Completed Operations Aggregate	$ 2,000,000
(c)	Commercial Automobile Liability:	
	Combined Single Limit (including Owned, Hired, and Non-Owned Autos)	$1,000,000
(d)	Excess/Umbrella Liability (over Employer's Liability, General Liability, and Auto)	$ 1,000,000

Liability policy requirements. The General Liability policy must be written on the current edition of ISO form CG 00 01 or equivalent. The policy shall have no modifications limiting coverage for contractual liability, damage to work performed by subcontractors, residential construction, earth movement, explosion, collapse, or underground damage. The policy shall be endorsed to provide that the General Aggregate Limit applies separately to each of the insured Contractor's projects. The Owner (including its officers, directors and employees) shall be named as Additional Insured on the General Liability policy on ISO form CG 20 10 11 85 or its equivalent, affording coverage to Additional Insured(s) for claims arising out of both ongoing and completed operations.

Owner shall also receive coverage as an additional insured Contractor's Auto Liability policy. Contractor's policies shall be primary insurance as respects Owner, and any other insurance policy that Owner may have in effect shall be deemed excess and not contributory. The General Liability policy affording coverage to Owner as Additional Insured must be maintained for three (3) years after completion of the project. If any of the Work is performed by subcontractors, Contractor shall be responsible for ensuring subcontractors comply with these insurance requirements, and extend coverage to both Contractor and Owner as additionally insured.

Installation Floater. Contractor shall purchase and maintain an Installation Floater, covering loss or damage to materials and/or equipment suffered during the course of the Work. This insurance shall include the interests of the Owner, Contractor and any Subcontractors. The policy shall be written on special form and shall cover all materials specified for the job, whether onsite, offsite or in transit.

The Contractor will submit to the Owner certificates of insurance (including a certificate of compliance from the Ohio Bureau of Workers' Compensation for Ohio subcontractors) certifying that the insurance policies required by this agreement are in force and shall be maintained for the duration of the Project. Contractor shall also provide copies of additional insured endorsement(s) as required herein. Full copies of policies shall be provided upon Owner's request. Certificates shall reflect Owner's status as an additional insured and shall provide that Owner is to be provided thirty (30) days advance written notice in the case of cancellation or nonrenewal of the required policies (10 days if cancelled due to nonpayment of premium).

Until said certificate of insurance is properly executed and delivered to the City, the Contractor shall not move its equipment or laborers onto the premises or begin performance of the work specified under an awarded agreement. If the Contractor fails to provide the required insurance, the City of Huber Heights shall have the right to disqualify the Contractor. **Proof of insurance should be included in the submitted bid documents.**

- **References**: Contractor must provide five (5) references of customers with successful implementations of similar size and scope with work performed within the past five (5) years. Please include name, address, contact and phone number. If sub-contractors or business partners will be used in conjunction with the installation or maintenance of this project, please provide references as stipulated above. **References should be included in bid documents**

- **Inspection**: It is understood within this agreement that any problems such as equipment failure, unspecified maintenance, lack of performance and any other conditions outlined in the scope of service not performed by the Contractor will be under immediate review by the City of Huber Heights.

- **License and Permits**: It shall be the responsibility of the successful bidder to obtain all licenses and permits required to perform this service at no additional

cost to the City of Huber Heights.

- **Timeline**: Provide an estimated, standard timeline for installation, implementation and creative design services. **Timeline should be included in bid documents.**

- **Configuration and Pricing**: Bidder must itemize all charges for individually identifiable components of the proposed system, including all associated installation, programming and training if applicable. Bidder must include charges for all components required to connect any applicable applications.

RFP Checklist:

Please review and check off these 10 most important items to consider when responding to an RFP for the City of Huber Heights:

	Read the *entire* document. Note critical items such as: mandatory requirements; supplies/services required; submittal dates; number of copies required for submittal; contract requirements (i.e., contract performance, insurance requirements, performance and/or reporting requirements, etc.).
	Note the procedures for communication with the City during the RFP process. All communication during the RFP process must be in writing. Offerors should not contact City personnel or officials outside of the opportunity provided in the document.
	Attend the pre-proposal conference if one is offered. These conferences provide an opportunity to ask clarifying questions, obtain a better understanding of the project, or to notify the City of any ambiguities, inconsistencies, or errors in the RFP.
	Take advantage of the "question and answer" period. Submit your questions by the due date listed and view the answers given in the formal "addenda" issued for the RFP. All addenda issued for an RFP are posted on the City's website and will include all questions asked and answered concerning the RFP.
	Follow the format required in the RFP when preparing your response. Provide point-by-point responses to all sections in a clear and concise manner.
	Provide complete answers/descriptions. Read and answer **all** questions and requirements. Don't assume the City or the evaluating staff will know what your company capabilities are or what items/services you can provide, even if you have previously contracted with the City of Huber Heights. The proposals are evaluated based solely on the information and materials provided in your response.
	Use the forms provided, if any. e.g., bidders' submittal page, reference forms, attachment forms, etc.
	Before submitting your response, check the City's website at: www.hhoh.org to see whether any addenda were issued for the RFP.

	Review and read the RFP document again to make sure that you have addressed all requirements. Your original response and the requested copies must be identical and be complete. The copies are provided to the evaluating staff members and will be used to score your response.
	Submit your response on time. Note all the dates and times listed in the RFP and be sure to submit all required items on time. Late proposal responses are ***never*** accepted.

Please Note:

All potential contractors are strongly urged to submit supporting documentation as to their qualifications to perform the Scope of Work.

Certificate of Insurance, Reference List and Timeline must be attached.

If additional comments or conditions are desired, please attach a separate sheet providing details.

Include all proposed equipment specifications; showing manufacturer name, model, etc. depicting unit specifications and other pertinent information.

Certification:

The undersigned on the Bid Proposal certifies that the Instructions to Bidder has been carefully examined, is thoroughly familiar with the terms and specifications applicable to and made part of this Request for Proposal, and understands and is capable of meeting the provisions within to the quality, type and grade of work requested. The undersigned further certifies the prices shown in the schedule of items contained within the Proposal/Bid are in accordance with the conditions, terms and specifications of the proposal and that any exception taken thereto may disqualify the bid.

_____ _____
Signature Date

_____ _____
Print Name Title

_____ _____
Email Address Phone

_____
Company Name

City of Huber Heights Request for Proposals

RFP 21-001-CC

Advertised as: City Manager Search Firm Proposal

Release Date: Wednesday, June 30, 2021

Closing Date: Monday, August 2, 2021 at 10:00 a.m.

The City of Huber Heights, a municipal corporation, is seeking proposals from qualified firms to conduct an executive search for the Huber Heights, Ohio City Manager position.

1. General Information

1.1. The City of Huber Heights invites qualified firms to submit proposals to conduct an executive search for the Huber Heights, Ohio City Manager position. Proposals shall be submitted in accordance with the Documents and Requirements as set forth in this formal "Request for Proposals." The Contract that will result from this “Request for Proposals” will include what is indicated in Section 4 “Scope of Work” of this RFP.

1.2. A City Review and Selection Committee will evaluate the proposals submitted.

1.3. During evaluation, the City Review and Selection Committee reserves the right, where it may serve the City's best interest, to request additional information or clarification from the Offeror, or to allow corrections of errors or omissions. Oral interviews may be conducted by the City Review and Selection Committee for the Contractors who submit a Proposal and were short listed.

1.4. Submission of a proposal indicates acceptance by the Offeror of the conditions contained in this Request for Proposals, unless clearly and specifically noted in the proposal submitted and confirmed in the resultant contract between the City of Huber Heights and the Contractor selected.

1.5. There is no expressed or implied intent or obligation for the City of Huber Heights to reimburse responding firms for any expenses incurred in preparing proposals, as well as, travel expenses during interviews in response to this Request for Proposals.

1.6. The City of Huber Heights shall reserve the right to terminate any agreement resultant from this solicitation and subsequent action for cause but not limited to inadequacy of performance.

2. Contact Person/Communication

2.1. Until the receipt and opening of proposals, the proposers’ principal contact with the City of Huber Heights will be as listed below. All questions are to be submitted in writing and potential Bidders will receive copies of all questions and answers except for the questions that are considered proprietary. Questions will only be received through Friday, July 23, 2021.

Mr. Anthony C. Rodgers, MPA
Clerk of Council
City of Huber Heights
6131 Taylorsville Road.
Huber Heights, Ohio 45424
937-233-1423
Email: arodgers@hhoh.org

2.2. All contacts and communication regarding the proposal should be with the above named individual only. Bidders contacting other City Staff or Officials may be disqualified for doing so.

3. Background Information

3.1. The City of Huber Heights, a municipal corporation, is seeking qualified firms to conduct an executive search for the Huber Heights, Ohio City Manager position.

4. Scope of Work

4.1. Purpose: The City of Huber Heights is seeking the assistance of a professional executive search firm to assist the Mayor and the City Council to develop a candidate profile; advertise the position; directly solicit candidates; review initial candidates with the Mayor and the City Council; present a written report on background, strengths, accomplishments, video interviews, and reference lists on each recommended finalist; facilitate the interview process and provide suggested interview questions; coordinate psychological assessments; coordinate all correspondence, travel arrangements, and record keeping; solicit community, City Staff, Mayor, and City Council input; and conduct detailed and professional reference checks on recommended finalists, as requested.

4.2. Experience Requirements: Each respondent shall, within the past twenty-four (24) months, have worked with a public entity like the City of Huber Heights to conduct executive recruitments and shall, within the past twenty-four (24) months, placed at least one (1) executive candidate with a public governmental entity or other similar entity.

4.3. The following is a list of provisions and requirements falling under the expected Scope of Work:

a) Develop a comprehensive City Manager position profile based upon information and input obtained from the community, City Staff, Mayor, and City Council.

b) Develop a marketing strategy that utilizes professional contacts throughout the geographical area identified and supplement the candidate identification process through selected advertising, use of internet, use of media, and direct solicitation of known desirable candidates.

c) Implement a screening process that narrows the field of candidates to those that most closely match the needs of the City and the City Manager position profile, including discussing results of preliminary reference checks on top candidates. The extent of the screening to be conducted

by the respondent will be determined by the Huber Heights City Council.

d) Assist in conducting the interviews with the top candidates that meet the stated criteria.

e) Deliver a product in the form of a search report that recommends the top group of candidates and provides the City with detailed information about the candidates' backgrounds and experience from interviews and other sources.

f) Assist in the interview and selection process, including developing suggested interview questions.

g) Assist in establishing a process for the recruitment for the City Manager position, including a timeline for various actions during the recruitment process.

5. RFP Requirements:

5.1. Submitting RFP Proposal packages:

a) Offeror will submit a comprehensive and thorough written plan for conducting an executive search process for the Huber Heights, Ohio City Manager position. Pricing must be listed on the proposal, and no sales tax should be included.

6. Evaluation of Proposals and Required Information

6.1. Proposals submitted will be evaluated by the City Review and Selection Committee.

6.2. The Committee may call for oral interviews. The City reserves the right to retain all proposals submitted and use and idea in a proposal regardless of whether or not said proposal is selected.

6.3. The evaluation factors considered in the selection process will weigh heavily into the City's decision-making process. These evaluation requirements are considered to be minimum requirements. More points may be awarded for exceeding the minimum requirements.

7. Right to Reject Proposals

7.1. Submission of proposals indicates acceptance by the Offering Firm of the Conditions contained in this RFP, unless clearly and specifically noted in the proposal submitted and confirmed in the subsequent Agreement between the City of Huber Heights and the selected firm.

7.2. The City of Huber Heights reserves the right to reject any or all proposals and to award to the proposer the City determines to be most qualified and whose award of the contract will be in the best interests of the City.

7.3. Late proposals will not be accepted. Offerors are held responsible that their proposals arrive at the City of Huber Heights on or before the designated date and time.

8. Withdrawal of Proposals

8.1. Requests to withdraw proposals received after the date and time set for bid opening will not be considered. Only requests to withdraw proposals prior to that date and time will be considered.

9. Contract Termination

9.1. The City of Huber Heights reserves the right to terminate any subsequent Agreement or Contract as a result of this RFP if the Contractor does not perform as required by the Terms and Conditions therein.

*** END OF DOCUMENT ***