



**CITY OF HUBER HEIGHTS
STATE OF OHIO
City Council Meeting
Regular Session
May 22, 2023
6:00 P.M.**

City Hall - Council Chambers - 6131 Taylorsville Road - Huber Heights, Ohio

- 1. Call The Meeting To Order - Mayor Jeff Gore**
- 2. Invocation - Pastor Randy Griffith Of The Free Methodist Church At 6875 Old Troy Pike, Huber Heights, Ohio**
- 3. Flag Ceremony - Wayne High School Junior ROTC Honor Guard**
- 4. Pledge Of Allegiance**
- 5. Roll Call**
- 6. Approval Of Minutes**
 - A. City Council Meeting Minutes - May 8, 2023**
- 7. Special Presentations/Announcements**
- 8. Citizens Comments**
- 9. Citizens Registered To Speak On Agenda Items**
- 10. City Manager Report**

11. **Pending Business**

- A. An Ordinance Establishing The ARPA First Responders Grant Fund.
(second reading)
- B. An Ordinance Amending Ordinance No. 2007-O-1687 Regarding Certain Limitations In Accepting Cash Sureties To Be Deposited In The #802 Cash Surety Fund.
(second reading)
- C. An Ordinance Amending Chapter 193 – Transient Guest Tax, Section 193.02 – State Definitions Incorporated Of The Huber Heights Codified Ordinances.
(second reading)

12. **New Business**

CITY COUNCIL

Anthony Rodgers, Clerk Of Council

- A. A Motion To Appoint Thomas Underwood To The Military And Veterans Commission For A Term Ending December 31, 2024.

ADMINISTRATION

Bryan Chodkowski, Interim City Manager

- B. A Resolution Consenting To A Sublease Of The YMCA Property.
(first reading)
- C. A Resolution Declaring Certain City Property Located At The Rose Music Center No Longer Needed For Municipal Purposes As Surplus And Authorizing Sale Of Said Surplus Property.
(first reading)
- D. A Resolution Authorizing The City Manager To Execute A Waiver Of Potential Conflict/CRA Agreement Between The City Of Huber Heights And Charles V. Simms Development Corporation And Simms The Gables Of HH, Ltd. For The Residential Development Known As The Gables.
(first reading)
- E. A Resolution Authorizing The City Manager To Enter Into A Community Reinvestment Area Agreement With Charles Simms Development Under Certain Terms And Conditions.
(first reading)

- F. A Resolution Authorizing The City Manager To Participate In The Ohio Association Of Public Treasurers 2024 Workers' Compensation Group Retrospective Program Administered By Sedgwick.
(first reading)
- G. A Resolution Amending The City Of Huber Heights "Pick Up" Of A Portion Of The Statutorily Required Contribution To The Ohio Police And Fire Pension Fund For Qualifying And Participating Members Of The Huber Heights Fire Division.
(first reading)
- H. An Ordinance Amending Ordinance No. 2022-O-2562 By Making Supplemental Appropriations For Expenses Of The City Of Huber Heights, Ohio For The Period Beginning January 1, 2023 And Ending December 31, 2023.
(first reading)
- I. A Resolution To Increase The Not To Exceed Amount For Lennon & Company, CPA For Additional Professional Services For The Finance Department In Calendar Year 2023.
(first reading)
- J. An Ordinance Authorizing The Execution Of A Master Lease-Purchase Agreement And Related Payment Schedule For The Purpose Of Acquiring An Emergency Medical Vehicle For Use By The City, And Declaring An Emergency.
(first reading)
- K. An Ordinance Authorizing The Execution Of A Master Lease-Purchase Agreement And Related Payment Schedule For The Purpose Of Acquiring A Street Sweeper For Use By The City, And Declaring An Emergency.
(first reading)

13. **City Official Reports And Comments**

14. **Executive Session**

15. **Adjournment**

AI-9216

Minutes A.

City Council Meeting

Meeting Date: 05/22/2023

Approval Of Minutes - 05/08/2023

Submitted By: Anthony Rodgers

Department: City Council

Council Committee Review?: None

Date(s) of Committee Review: N/A

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

Motion/Ordinance/ N/A

Resolution No.:

Agenda Item Description or Legislation Title

City Council Meeting Minutes - May 8, 2023

Purpose and Background

Approval of the minutes from the May 8, 2023 City Council Meeting.

Fiscal Impact

Source of Funds: N/A

Cost: N/A

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

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

Financial Implications:

There are no financial implications to this agenda item.

Attachments

Minutes

1. Call The Meeting To Order - Mayor Jeff Gore

The Huber Heights City Council met in a Regular Session on May 8, 2023. Mayor Jeff Gore called the meeting to order at 6:00 p.m.

2. Invocation - Mr. Nick Brusky

The Invocation was given by Mr. Tim Cahill, Miami Valley Young Marines Chaplain.

3. Pledge Of Allegiance

4. Roll Call

Present: Richard Shaw, Kathleen Baker, Mark Campbell, Nancy Byrge, Glenn Otto, Ed Lyons, Anita Kitchen, Don Webb, Jeff Gore

5. Approval Of Minutes

A. City Council Meeting Minutes - April 24, 2023

The minutes for the April 24, 2023 City Council Meeting were approved by the Huber Heights City Council as submitted.

6. Special Presentations/Announcements

A. National Police Week Mayoral Proclamation Presentation To The Huber Heights Police Division - Mayor Jeff Gore

Mayor Gore read the proclamation for National Police Week and presented the proclamation to Police Chief Mark Lightner and representatives of the Huber Heights Police Division.

Police Chief Lightner said National Police Week is the week when the nation pays tribute to, recognizes, and acknowledges all the men and women in law enforcement who have paid the ultimate sacrifice. He said these police officers have lost their lives trying to do what all of us do and that is to make the place where we work and live a better place. He said it is not only about those who paid the ultimate sacrifice, he also wants to thank the men standing here and the men and women on the street in Huber Heights who are out every day risking their lives to make Huber Heights a better place. He said he has spent the past thirty years in this Police Division and he has met a lot of great officers. The Huber Heights Police Division personnel in attendance introduced themselves. Police Chief Lightner said the community is fortunate to have a fine group of men and women patrolling the streets in the City.

B. Special Recognition Mayoral Proclamation Presentation To J. Keagan Miller, Unit Commander, Miami Valley Young Marines - Mayor Jeff Gore

Mayor Jeff Gore read the proclamation for special recognition and presented the proclamation to J. Keagan Miller , Miami Valley Young Marines Unit Commander, along with a Key to the City.

Mrs. Nancy Byrge said, on behalf of the Huber Heights Community Cares non-profit, she is proud that Mr. Miller is a Hometown Hero, and she cannot think of anyone that deserves the award more. She said Mr. Miller has done so much not only for Huber Heights but also for the Miami Valley.

Mayor Gore said Keagan Miller is friends with and has relationships with a lot of members of Council, and he offered Councilmembers the opportunity to comment.

Mrs. Kitchen said she is blessed that Keagan Miller is part of the FOA family that has helped and supported FOA over the years. She thanked Mr. Miller for his leadership and for everything he does to help.

Mr. Otto said this recognition was extremely well deserved, and it was an honor to write a recommendation for Mr. Miller for the award.

7. Citizens Comments

Mr. Jeff Morford reviewed the duties of City Council and he listed the abundance of businesses, goods and services, and health care facilities in Huber Heights. He said Huber Heights has grown to the size that it needs to be divided into wards with an elected representative so the residents have a voice. He said Councilmembers' votes as elected officials should be a direct reflection of the community and personal beliefs and goals should not be taken into account. He discussed his efforts to go door to door to encourage residents to speak out. He asked Council to randomly survey ward representatives regarding Huber Heights and the annexation.

Minister Todd Hawley, Sr. of the Apostolic House of Prayer said he represents a church trying to be a help to the community of Huber Heights and the Miami Valley. He extended an invitation to the drive-through prayer held at 5300 Brandt Pike on Saturday, May 20, 2023 from 12:00 p.m. to 2:00 p.m. to the public and first responders of the Fire Division and the Police Division. He said the church is trying to find ways to provide spiritual help in times of need.

8. Citizens Registered To Speak On Agenda Items

Clerk of Council Anthony Rodgers said there is one citizen registered to speak on Item 10-E.

9. City Manager Report

Interim City Manager Bryan Chodkowski said Safety Town enrollment is now open. He said anyone with a kindergartner who might be interested should sign up today. He said the program will run June 5-9, 2023 as well as June 12-16, 2023. He said Safety Town is held at Valley Forge Elementary School and is a fun, educational experience. He said for more information contact Officer Nick Lambert at (937) 237-5367 or by email. He said information is also available on the City's website. He said the Dayton Metro Library on Chambersburg Road closed on May 6, 2023 to prepare to relocate to 6243 Brandt Pike. He said the new location is 27,000 square feet and the second-largest branch in the library system. He said there is a community celebration and grand opening planned for June 2, 2023 and the library will be open for regular business starting Monday, June 5, 2023. He gave an update on the 2022 Water Main Replacement Program and he said Phase 2 began last week and is expected to last about seven weeks. He said Phases 3 and 4 are forthcoming. He said residents will receive notice 48 to 72 hours prior to the work start date for each phase. He said more information is available on the City's website by visiting the Engineering Division page. He said the widening of Old Troy Pike is continuing to move forward. He said there will be an addition of a northbound lane from what was

Huber Court north to the I-70 eastbound on ramp. He said a portion of Merily Way will be widened to accommodate traffic flow through that area. He said Council should expect to see the request for award of that contract on the June 26, 2023 City Council Meeting agenda.

Mr. Otto said a month ago he asked for an update on the current status of the Brandt Pike Revitalization Project at Marian Meadows and Mr. Chodkowski said he would be bringing that information to Council, and he had not heard anything,

Mr. Chodkowski said City Staff had talked about providing a presentation to Council at one of the two Council Work Sessions in May, and it was his intent to bring it forward at the next Council Work Session providing the agenda will allow it.

Mr. Otto said, in reference to the recent failure of the tax levy, a public meeting was held at City Hall and questions were asked about potential cuts if there were failures. He said Mr. Chodkowski responded that these proposed cuts would be discussed, and those potential cuts would be put out if the levy failed. He asked when Council could expect to receive those proposed cuts.

Mr. Chodkowski said the discussion will begin about specifically identified reductions in service at the City Staff meeting on May 16, 2023. He said City Staff will put together a list of recommended cuts and service reductions and will bring it forward to Council in advance of the measure headed towards the general election in November, 2023.

Mr. Otto asked if Council will have that information in early June, 2023.

Mr. Chodkowski said all of that information will be available as soon as City Staff can make it available for Council to review and evaluate.

Mr. Otto said he had noticed that there has been a Police Division presence for a couple of months during public meetings and he asked if anyone knows why. He said it seems odd to him.

Mr. Chodkowski said what he can share is that there was a concern about safety, and he wanted to address that concern, so he asked that police officers be present for the foreseeable future at these public meetings until the concerns brought to his attention were not concerns any longer. He said that is why there has been a police officer in attendance.

Mrs. Byrge asked with the failure of the levy being by a margin of less than one percent, had Mr. Chodkowski heard anything about a recount or does the City have to wait until the election is certified before any discussion of a recount?

Mr. Chodkowski said that any recount would be following the certification of the election, but at this point, City Staff are going to move forward under the assumption that even if a recount were to happen, the margin would prevail for the opposition to the tax levy and City Staff are preparing the strategy for the November, 2023 election.

Mrs. Byrge asked, if any cuts would occur, would the cuts happen after 2025?

Mr. Chodkowski said those issues would be policy and procedure discussions that Council is going to need to discuss. He said the intent was to go forward with this measure so the community could have an opportunity to consider the measure and do so without the threat of service reduction. He said there is time for the community to still consider this measure without the loss of service, and City Staff want to be mindful in the recommendations made to Council about how to present this measure going forward, because the last thing City Staff want to do is to recommend a condition to Council that does not represent the best interests of the City with respect to services being provided and when those services might have to change. He said that is why City Staff are trying to be mindful about the commentary and about how information is presented on the levy.

Mrs. Byrge said she received a couple of emails from residents, and these residents are concerned about the water main replacement and road work going on and that they

will be blocked out of their driveways. She asked if provisions would be made to make sure residents can get in and out.

Mr. Chodkowski said every resident should be able to enter and leave their property at their leisure during construction without significant delay. He said any citizens that contact Mrs. Byrge should be directed to the Engineering Division with their concerns about access.

Mr. Lyons said he was contacted by a resident asking about Huber Heights Police Division overtime and he said this resident was giving him information. He said he wanted to check and verify or debunk the information. He asked, regarding Huber Heights Police Division mandatory overtime, if Mr. Chodkowski could give an idea of how much overtime is mandatory and a general idea of how much that dollar amount was for the last couple of years to give him an idea of what that looks like.

Mr. Chodkowski said City Staff will put together that information for Mr. Lyons.

Mr. Shaw said a while back, Council had inquired about preliminary soil boring work that was done on soil corrosion. He asked if there are any updates?

Mr. Chodkowski said he does not have an update from the City Engineer, but it is his understanding that the report is supposed to be available this week. He said he would follow up with the City Engineer tomorrow morning and communicate back out to Council about what that update entails.

Mr. Shaw said he would second Mr. Lyons' request regarding a full staffing update from the Huber Heights Police Division regarding overtime, how many officers have been hired, and the current status. He said there has been some discussion regarding the failed levy, and he said it is his opinion that the marketing firm or tactics used in the previous go-round should not be used again. He said these are comments he has shared with the City Manager prior to the most recent levy failure, and he would like to make sure that this action is a policy decision moving forward, that this entity is not used, and the City finds other means of marketing and providing facts for the residents.

Mayor Gore said once that time comes or once there is more information from the City Manager, that issue could definitely be put on a Council Work Session agenda for discussion,

Mr. Otto said he had received similar requests to what Mr. Lyons had referred to concerning the Police Division, and with Mr. Shaw's comments, he said he joins both of them in that request.

Mayor Gore said he thinks that is a good idea as well, and he told Mr. Chodkowski that Council looks forward to that report.

10. Pending Business

- A. An Ordinance To Approve A Rezoning From Planned Commercial (PC) To Agriculture (A) For The Property Located Behind And North Of 8101 Old Troy Pike And Further Identified As Parcel Number P70 02025 0012 On The Montgomery County Auditor's Map And To Accept The Recommendation Of The Planning Commission (Case RZ 23-03).
(second reading)

Mr. Chodkowski said this legislation would approve a Basic Development Plan and Rezoning for the acreage north of Camping World and west of Lowe's with the intent of fostering a campground development at that location. He said it was the recommendation that this item be adopted.

Mr. Webb moved to adopt; Mrs. Kitchen seconded the motion. On a call of the vote, Ms. Baker, Mr. Campbell, Mrs. Byrge, Mr. Otto, Mrs. Kitchen, Mr. Webb, and Mr. Shaw voted yea; Mr. Lyons voted nay. The motion passes 7-1.

- B. An Ordinance To Approve A Major Change To The Basic Development Plan For The Property Located At 7730 Brandt Pike And Further Identified As Parcel Number P70 02114 0003 On The Montgomery County Auditor's Map And To Accept The Recommendation Of The Planning Commission (Case MJC 23-07).
(second reading)

Mr. Chodkowski said this legislation would allow for the Rezoning of the property and approval of a Major Change for what is the former bank in front of Walmart to be converted into a Flying Ace Car Wash.

Mrs. Byrge moved to adopt; Ms. Baker seconded the motion.

Mr. Webb asked Mr. Chodkowski if all the covenants were met for Walmart.

Mr. Chodkowski said to the best of his knowledge the covenants were met, and he deferred the question to City Planner Aaron Sorrell.

Mr. Sorrell said Flying Ace is working with Walmart on any issues, and they have worked with Walmart in the past and do not feel there are any issues. He said he had instructed Flying Ace that the Detailed Development Plan review through the Planning Commission would not begin until those covenants are met.

Mrs. Byrge said at the Planning Commission meeting and at the Council Work Session, there was conversation about signage, a left turn lane for better traffic control, and a gate to the car wash. She asked why those types of things are not included in the Decision Record so these issues can be tracked long-term.

Mr. Sorrell said the gate is in the Decision Record. He said it is part of the ordinance as a condition. He said the others items are not site-related and are within the public right of way, and the City is going to handle those issues separately.

On a call of the vote, Mr. Campbell, Mrs. Byrge, Mr. Otto, Mrs. Kitchen, Mr. Webb, Mr. Shaw, and Ms. Baker voted yea; Mr. Lyons voted nay. The motion passes 7-1.

- C. An Ordinance To Approve A Rezoning From Planned Employment Park (PEP) To Planned Mixed Use (PM) For The Property Located At 7125 Executive Boulevard And Further Identified As Parcel Numbers P70 03190 0080 And P70 03190 0081 And A Basic Development Plan For Parcel Number P70 01820 0003 And Lot #1 And Lot #4 Of The Pride One Subdivision On The Montgomery County Auditor's Map And To Accept The Recommendation Of The Planning Commission (Case RZ BDP 23-08).
(second reading)

Mr. Chodkowski said this matter would authorize a Rezoning of certain pieces of property as well as provide for a Basic Development Plan approval at the location of a portion of the Lehman farm on the north side of Executive Boulevard. He said in follow up to Council's dialogue at the last Council Work Session, there are some additional concept drawings to demonstrate communication with the developer. He said a representative of the developer is present to answer any questions Council may have before the vote is taken. He said the Clerk of Council has copies of the updated information to provide Council.

Mr. Sorrell gave a PowerPoint presentation and he reviewed the residential buildings behind the commercial area. He said parking structures are set back to provide some transition from the commercial areas to the residential areas then to the smaller neighborhood type of residential in the rear of the site. He said there have been some slight changes to the elevation of the house design. He said the barn doors are no longer garage doors, and the doors are more contemporary. He said as the Planning Commission works with the applicant through the Detailed Development Plan phase, the Planning Commission will work with the applicant on exterior cladding and make it more Huberesque. He said the way the two 50 unit residential buildings are designed, the buildings are effectively stacked townhouses so there are two-story units stacked on top of each other. He said there is drive-in parking underneath the

buildings as well as covered parking. He said the end caps are single-story units. He said the conversation with the developer after the Council Work Session was positive, and the developer understands Council's desires as far as making this project a contemporary development as well as fulfilling the desire of the community entertainment district and marketing to a younger demographic.

Mrs. Byrge moved to adopt; Mr. Campbell seconded the motion.

Mrs. Byrge said that plan is quite a change from the original plan, and she asked if it is safe to approve the Basic Development Plan knowing the changes have been brought today.

Mr. Sorrell said the discussion at the Planning Commission about the Rezoning from Planned Employment to Planned Mixed Use and the Basic Development Plan was more about density. He said he tried to be up front that he thought the details would change as the project evolved, but the developer was in a tight timeline to get to closing and the developer was really just looking for density entitlements as well as access points.

Mrs. Byrge thanked the developer for his flexibility.

Mr. Webb thanked the developer on coming forth with the revised concept plan so quickly.

Mr. Campbell thanked the Mayor and Mr. Shaw for voicing their opinions on what had been proposed. He said because of that feedback, this plan is what Council is seeing tonight. He thanked the developer for expediting this project and getting the images right. He asked Mr. Chodkowski how he feels about this project.

Mr. Chodkowski said this development is a good project and it is a good balance of what Council wanted, what the market is going to bear, and it supports the City's ability to move forward with what it is wanting to do which is to increase the bar/restaurant/tavern vibe. He said there is still additional acreage on the Lehman Farm property to develop and this project puts both the City and the developer in a good position to pivot and it provides a draw for more commercial. He said this layout and design gives the City the best of both worlds in either continuing residential or pivoting to the future commercial and retail, so he is very happy.

Mr. Shaw thanked the developer for listening to Council's concerns. He said the Planning Commission still has a great task ahead when it comes to the Detailed Development Plan. He said he knows he and other Councilmembers may be in attendance to those meetings to make sure this project will get from Point A to Point B successfully. He said this legislation will get his support in hopes of a continuing dialogue in the future to make this development a successful venture.

Mr. Iarussi said he appreciated the compliments. He said the company anticipates it will get into the details, and there are details to be figured out. He said this plan, what has been shown from the two buildings in the front from a conceptual standpoint, is right on, but architecturally the details and the materiality have to blend and work together.

Mr. Campbell said when the other developer assigned this project to the new developer, Council extended the process. He asked if this closing was on schedule.

Mr. Chodkowski said the agreement requires closing on or before May 15, 2023 and it is his understanding that the developer is on schedule to close.

Mr. Campbell asked how many acres the developer was purchasing and how many acres does that leave?

Mr. Chodkowski said the City originally acquired 52 acres, plus or minus. He said two acres have been sold to Sheetz on the southeast corner of the site, leaving the City with 50 acres. He said this sale is approximately 17 acres, leaving 33 acres to be developed.

On a call of the vote, Mrs. Byrge, Mrs. Kitchen, Mr. Webb, Mr. Shaw, Ms. Baker,

and Mr. Campbell voted yea; Mr. Otto and Mr. Lyons voted nay. The motion passes 6-2.

- D. An Ordinance To Approve A Rezoning From General Office (O-1) To Commercial (B-1) For The Property Located At 6740 Brandt Pike And Further Identified As Parcel Number P70 00705 0001 On The Montgomery County Auditor's Map And To Accept The Recommendation Of The Planning Commission (Case RZ 23-09).
(second reading)

Mr. Chodkowski said this Rezoning would empower the reuse of a vacant office building to be repurposed for a laundry facility.

Mayor Gore said the Council Work Session recommendation was to adopt this item.

Mrs. Byrge moved to adopt; Ms. Baker seconded the motion.

Mrs. Byrge asked if the applicant expressed any desire to put in dry cleaning machines.

Mr. Sorrell said no, and he was specific that dry cleaning it is not permitted there. He said the City is dealing with the effects of a dry cleaner down the street and he does not want to perpetuate that problem for the next generation.

On a call of the vote, Mr. Otto, Mrs. Kitchen, Mr. Webb, Mr. Shaw, Ms. Baker, Mr. Campbell, and Mrs. Byrge voted yea; Mr. Lyons voted nay. The motion passes 7-1.

- E. A Motion To Refer Case RZ BDP 22-35 Back To The Planning Commission For Additional Review And Recommendation Regarding A Rezoning To Planned Industrial (PI) And A Basic Development Plan For The Property Located At The Southeast Corner Of Technology Boulevard And Artz Road And Further Identified As Parcel Number P70 03903 0007 On The Montgomery County Auditor's Map.

Mr. Chodkowski said this project is for a tractor/trailer facility, and there was discussion about the existing plan which was approved by the Planning Commission and recommended to this body which was a smaller use footprint. He said there was discussion at this level regarding a larger footprint, and further discussion from City Council indicated there might be a desire to remand this case back to the Planning Commission, and this item is in response to that discussion. He said there was no recommendation for action at the Council Work Session.

Mayor Gore explained the options which are to proceed with the smaller option and vote on it, send it back to the Planning Commission to look at the plan for the larger lot, or make a motion to approve the larger lot as it stands without sending it back to the Planning Commission, which would be a Major Change and would take a supermajority vote to approve. He asked how the Council wanted to proceed.

Mr. Otto said he would be okay with any option, pushing it through as a smaller package, sending it back to Planning Commission for a larger package, or if some prefer, to pull it all together. He said his concern was for Mr. Dusa and his team who have been in and out of here since January, 2023 and that is far too long. He said there may be members of Council who do not like trucking-type activities. He said if that is the case, he would like that made known so Council can move on and not do it. He said this process is time and money for Mr. Dusa and Council have received approval from the Planning Commission once and Council continues to debate it. He said Council needs to make a decision soon.

Mayor Gore said he agrees with Mr. Otto 100 percent.

Mrs. Byrge said she is concerned about sending it back to the Planning Commission because of the capacity change. She said the majority of Council concerns were voiced about the operation of the business, not the size. She asked Mr. Sorrell why the Planning Commission's opposition to overnight stays was not included in the Decision Record.

Mr. Sorrell said the original application stated there would not be any overnight stays. He said it did not evolve until this last letter that was received. He said he did not think it was an issue, and during the discussion with the Planning Commission, it was expressed again that there would not be overnight stays. He said not to speak for the Planning Commission, but his gut tells him if overnight stays were included it probably would not move forward out of the Planning Commission.

Mr. Dusa asked if Item 10-F is an option and he asked how to proceed through this process.

Mayor Gore explained that Item 10-F is the legislation that was proposed a while ago, so the legislation has to be dealt with. He said this item is to approve a motion to send it back to the Planning Commission. He said if that motion fails, then Council would be left with someone to make a motion to approve the legislation presented the first time or approved as last discussed.

Mr. Dusa said he is willing to do whatever it is that Council needs. He said the reason the overnight stays were left out was that Council came up with issues, and he was asked to come up with a larger version. He said when he came back with the letter, he brought those things up. He said there is somewhat of a technicality because that plan is not what was approved. He requested that if this case has to go back to the Planning Commission, could Council be specific as to what Council is asking to be approved and to not open up this whole thing again unless Council wants the Planning Commission to do so. He said if it is the size, fine, and if it is the size and security, then state exactly what it is.

Mayor Gore said if the motion is made on Item 10-E, it would be very specific as to what is being reviewed. He said just the size is what is being asked to be reviewed.

Mr. Otto said there has been a lot of conversation and a lot of back and forth, and he feels Mr. Dusa had reached across the fence to make way to get the project done. He asked Mr. Dusa if he had a preference on the size or expanded footprint.

Mr. Dusa said obviously the way they will get a return is to have spaces to rent. He said they have the land for it, but they were advised when they started out to not take out too much and they can always go back if they find it is a success. He said he could live with going back to the Planning Commission as he would have a better return with more spaces.

Mr. Otto made a motion to refer Case RZ BDP 22-35 back to the Planning Commission for additional review and recommendation; Mrs. Kitchen seconded the motion.

Mayor Gore stated this review is for the larger size lot as that is the only reason it would go back to the Planning Commission.

Mr. Webb asked Mr. Sorrell to give a brief synopsis of his understanding of what Council is asking the Planning Commission to do.

Mr. Sorrell replied that the Planning Commission is being asked to review a new Basic Development Plan and Rezoning that would have 31 semi-truck parking spaces as opposed to 12 spaces along with the required automobile parking for the commercial repair facility. He said he would see if Mr. Dusa wants to do a Combined Basic and Detailed Development Plan to save time; however, until the sewer extension is completed, he cannot get a sewer tap anyway. He said the commercial part will not come online until, at best case, the end of the year.

On a call of the vote, Mr. Lyons, Mrs. Kitchen, Mr. Webb, Mr. Shaw, Ms. Baker, Mr. Campbell, and Mr. Otto voted yea; Mrs. Byrge voted nay. The motion passes 7-1.

- F. An Ordinance To Approve A Rezoning To Planned Industrial (PI) And Basic Development Plan For The Property Located At The Southeast Corner Of Technology Boulevard And Artz Road And Further Identified As Parcel Number P70 03903 0007 On The Montgomery County Auditor's Map And Accepting The Recommendation Of The Planning Commission (Case RZ BDP 22-35).
(third reading)

Mr. Rodgers said this item requires a motion to postpone action until the results of the Planning Commission review are returned to Council and then Council can revisit this case at that time.

Mr. Webb moved to postpone action on Case RZ BDP 22-35 until the results of the Planning Commission review are returned to Council; Mrs. Kitchen seconded the motion. On a call of the vote, Mrs. Kitchen, Mr. Webb, Mr. Shaw, Ms. Baker, Mr. Campbell, Mrs. Byrge, Mr. Otto, and Mr. Lyons voted yea; none voted nay. The motion passes 8-0.

11. New Business

CITY COUNCIL

Anthony Rodgers, Clerk Of Council

- A. A Motion To Appoint Lee Cromer To The Property Maintenance Review Board For A Term Ending December 31, 2026.

Mr. Rodgers said this was the recommendation of the City's interview panel and the Human Resources background check has been completed.

Mayor Gore said the Council Work Session recommendation was to adopt this item.

Mr. Shaw moved to adopt; Mr. Otto seconded the motion. On a call of the vote, Mr. Webb, Mr. Shaw, Ms. Baker, Mr. Campbell, Mrs. Byrge, Mr. Otto, Mr. Lyons, and Mrs. Kitchen voted yea; none voted nay. The motion passes 8-0.

ADMINISTRATION

Bryan Chodkowski, Interim City Manager

- B. A Resolution Waiving Huber Heights Softball Baseball Association Field Lease Fees For Calendar Year 2023.
(first reading)

Mr. Chodkowski said this item waives the HHSBA's fees for this year for capital improvement investments HHSBA made outside the scope of the lease last year.

Mayor Gore said the Council Work Session recommendation was to adopt this item.

Mr. Campbell moved to adopt; Ms. Baker seconded the motion. On a call of the vote, Mr. Shaw, Ms. Baker, Mr. Campbell, Mrs. Byrge, Mr. Otto, Mr. Lyons, Mrs. Kitchen, and Mr. Webb voted yea; none voted nay. The motion passes 8-0.

- C. A Resolution Authorizing The City Manager To Enter Into An Agreement To Provide Insurance Coverage For General Liability, Property, Boiler And Machinery, Inland Marine, Automobile, Crime, Law Enforcement Liability, Public Officials' Liability, And Other Necessary Insurance Coverage For The City Of Huber Heights, Ohio, Waiving The Competitive Bidding Requirements, And To Cover The Costs Of Services Ordered By The City.
(first reading)

Mr. Chodkowski said this matter provides for an extension of the City's current insurance policy while waiting for other firms to quote coverage. He said the Council Work Session recommendation was to adopt this item.

Mr. Campbell moved to adopt; Mr. Webb seconded the motion.

Mr. Shaw asked why there was a delay when this coverage is set to expire in three days.

Mr. Chodkowski said the insurance providers are constantly asking that the City update the information with more specificity about what it is the City is insuring. He said two of the things requiring the delay included questions about IT infrastructure and security and additional training the Fire Division wanted to put into place, so there were additional technical details that were needed. He said there have been a lot of questions and follow up with multiple agencies asking the questions and some asking for more details.

Mr. Shaw confirmed that the City is buying two-month gap coverage until quotes are received.

On a call of the vote, Ms. Baker, Mr. Campbell, Mrs. Byrge, Mr. Otto, Mr. Lyons, Mrs. Kitchen, Mr. Webb, and Mr. Shaw voted yea; none voted nay. The motion passes 8-0.

D. A Resolution Authorizing The City Manager To Execute A Lease For 6015 Brandt Pike.
(first reading)

Mr. Chodkowski said this matter provides for a new lease for a tenant at the former CR Dayton property, and he said it was recommended that this item be adopted.

Mrs. Byrge moved to adopt; Mrs. Kitchen seconded the motion. On a call of the vote, Mr. Campbell, Mrs. Byrge, Mr. Otto, Mr. Lyons, Mrs. Kitchen, Mr. Webb, Mr. Shaw, and Ms. Baker voted yea; none voted nay. The motion passes 8-0.

E. An Ordinance Establishing The ARPA First Responders Grant Fund.
(first reading)

Mr. Chodkowski said the City was the recipient of ARPA First Responder Grant funds, and as a result, the City is required to establish this fund for tracking purposes. He said it was the recommendation that this item be moved to a second reading.

Mayor Gore said this item will be passed to a second reading.

F. An Ordinance Amending Ordinance No. 2007-O-1687 Regarding Certain Limitations In Accepting Cash Sureties To Be Deposited In The #802 Cash Surety Fund.
(first reading)

Mr. Chodkowski said this item empowers the City to do business in a more versatile way. He said it was the recommendation at the Council Work Session that this item be passed to a second reading.

Mayor Gore said this item will be passed to a second reading.

G. An Ordinance Authorizing Transfers Between Various Funds Of The City Of Huber Heights, Ohio And Amending Ordinance No. 2022-O-2562 By Making Supplemental Appropriations For Expenses Of The City Of Huber Heights, Ohio For The Period Beginning January 1, 2023 And Ending December 31, 2023.
(first reading)

Mr. Chodkowski said the Council Work Session recommendation was to waive the second reading and to adopt this item.

Mrs. Byrge moved to waive the second reading; Ms. Baker seconded the motion. On a call of the vote, Mrs. Byrge, Mr. Otto, Mrs. Kitchen, Mr. Webb, Mr. Shaw, Ms. Baker, and Mr. Campbell voted yea; Mr. Lyons voted nay. The motion passes 7-1.

Mr. Webb moved to adopt; Mrs. Byrge seconded the motion. On a call of the vote, Mr. Otto, Mrs. Kitchen, Mr. Webb, Mr. Shaw, Ms. Baker, Mr. Campbell, and Mrs. Byrge voted yea; Mr. Lyons voted nay. The motion passes 7-1.

- H. A Resolution Authorizing The City Manager To Enter Into An Agreement With Plattenburg & Associates For Additional Services Relating To Compliance Under The Operations And Maintenance Agreement Between The City Of Huber Heights And Veolia Water.
(first reading)

Mr. Chodkowski said this item is for a five-year audit contract to ensure the terms and conditions of the agreement with Veolia Water are met with respect to each party's commitment. He said the Council Work Session recommendation was to adopt this item.

Mrs. Byrge moved to adopt; Mr. Otto seconded the motion. On a call of the vote, Mr. Lyons, Mrs. Kitchen, Mr. Webb, Mr. Shaw, Ms. Baker, Mr. Campbell, Mrs. Byrge, and Mr. Otto voted yea; none voted nay. The motion passes 8-0.

- I. An Ordinance Amending Chapter 193 – Transient Guest Tax, Section 193.02 – State Definitions Incorporated Of The Huber Heights Codified Ordinances.
(first reading)

Mr. Chodkowski said this legislation amends the City's definition of uses which would qualify for the Transient Guest Tax to include properties that might be commonly listed under Airbnb or VRBO.

Mayor Gore said this item will be passed to a second reading.

- J. A Resolution Authorizing The City Manager To Enter Into A Contract For Preparation Of Engineering Plans And Specifications For The Design Of New Well #7 At The Rip Rap Road Water Treatment Plant.
(first reading)

Mr. Chodkowski said this item would allow the City to begin the identification and design work for new Well #7. He said it was the recommendation that this item be adopted.

Ms. Baker moved to adopt; Mr. Webb seconded the motion. On a call of the vote, Mrs. Kitchen, Mr. Webb, Mr. Shaw, Ms. Baker, Mr. Campbell, Mrs. Byrge, Mr. Otto, and Mr. Lyons voted yea; none voted nay. The motion passes 8-0.

- K. A Final Resolution For ODOT To Resurface Brandt Pike (State Route 201) From The South Corporation Limit To Fishburg Road.
(first reading)

Mr. Chodkowski said this legislation empowers the City to partner with the Ohio Department of Transportation (ODOT) for the purpose of resurfacing Brandt Pike from the south corporation line to Fishburg Road. He said the Council Work Session recommendation was to adopt this item.

Mr. Campbell moved to adopt; Ms. Baker seconded the motion. On a call of the vote, Mr. Webb, Mr. Shaw, Ms. Baker, Mr. Campbell, Mrs. Byrge, Mr. Otto, Mr. Lyons,

and Mrs. Kitchen voted yea; none voted nay. The motion passes 8-0.

- L. A Resolution Authorizing The City Manager To Solicit, Advertise And Receive Bids From Qualified Firms For The 2023 Water Main Replacement Program.
(first reading)

Mr. Chodkowski said it was the recommendation at the Council Work Session to adopt this item.

Mrs. Byrge moved to adopt; Mrs. Kitchen seconded the motion. On a call of the vote, Mr. Shaw, Ms. Baker, Mr. Campbell, Mrs. Byrge, Mr. Otto, Mr. Lyons, Mrs. Kitchen, and Mr. Webb voted yea; none voted nay. The motion passes 8-0.

12. City Official Reports And Comments

Mrs. Byrge said she would like to request a moratorium on storage facilities be placed on the next Council Work Session agenda.

Ms. Baker said she agrees.

Mrs. Byrge said when she was watching the Planning Commission meeting, Aaron Sorrell was doing a spectacular job of explaining the differences and everything, but when he went to the screen, his voice was lost. She asked if a microphone could be obtained that would travel with him.

Mr. Rodgers said there is a hand held microphone and a clip on microphone, but Mr. Sorrell may not have been aware of it. He said he will show Mr. Sorrell how to operate the microphones.

Mr. Webb referred to a Facebook post from the Huber Heights Police Division which is timely and a good reminder for the City. He said the post was about establishing a 9:00 p.m. routine which includes removing valuables from vehicles; locking vehicle doors; and closing and locking garage doors, exterior doors and windows. He said it seems so simple, but there are more and more reports of car thefts. He said the simplest things can make a huge difference to the Police Division as far as manpower and allocation. He asked residents to visit the Police Division Facebook page.

13. Executive Session

There was no need for an Executive Session.

14. Adjournment

Mayor Gore adjourned the Regular Session City Council Meeting at 7:19 p.m.

Clerk of Council

Date

Mayor

Date

AI-9217

Pending Business A.

City Council Meeting

City Manager

Meeting Date: 05/22/2023

ARPA First Responders Grant Fund

Submitted By: Jim Bell

Department: Finance

Division: Accounting

Council Committee Review?: Council Work
Session

Date(s) of Committee Review: 05/02/2023

Audio-Visual Needs: None

Emergency Legislation?: No

**Motion/Ordinance/
Resolution No.:**

Agenda Item Description or Legislation Title

An Ordinance Establishing The ARPA First Responders Grant Fund.
(second reading)

Purpose and Background

This legislation will establish the ARPA First Responders Grant Fund to track all grant revenue and reimbursement of Fire Fund expenditures for personnel and behavioral health services in 2023 and 2024. The City of Huber Heights is expected to receive funding in the next month as reports are submitted detailing appropriate expenses to be reimbursed.

Fiscal Impact

Source of Funds: N/A

Cost: N/A

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

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

Financial Implications:

Attachments

Ordinance

CITY OF HUBER HEIGHTS
STATE OF OHIO

ORDINANCE NO. 2023-O-

ESTABLISHING THE ARPA FIRST RESPONDERS GRANT FUND.

WHEREAS, the State of Ohio has allocated \$70,000,000.00 in funding for the ARPA First Responder Wellness, Recruitment, Retention and Resiliency Grant Program; and

WHEREAS, the City Council of Huber Heights, Ohio authorized the application and acceptance of the aforementioned grant funds in Resolution No. 2022-R-7136; and

WHEREAS, the City of Huber Heights has been approved to receive \$547,093.34 in grant funds to hire one full-time fire fighter/paramedic and one full-time captain; and

WHEREAS, the City of Huber Heights has been approved to receive \$287,600 in grant funds for a wellness coordinator position and behavioral health services; and

WHEREAS, the City has determined the need to create the ARPA First Responders Grant Fund to account for the grant monies to be received, and to reimburse the expenses incurred in the Fire Fund for personnel expenses in 2023 and 2024 of the three new positions, in addition to the behavioral health services expenses.

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

Section 1. There is hereby created and established the new ARPA First Responders Grant Fund which shall be maintained separately from all other City funds to account for the grant revenue received and reimbursement of appropriate Fire Fund expenditures as described above.

Section 2. It is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this Ordinance were adopted in an open meeting of this Council and that all deliberations of this Council and of any of its Committees that resulted in such formal action were 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 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 _____, 2023;
____ Yeas; ____ Nays.

Effective Date:

AUTHENTICATION:

Clerk of Council

Mayor

Date

Date

AI-9218

Pending Business B.
City Manager

City Council Meeting

Meeting Date: 05/22/2023

Cash Surety Fund - Amendment

Submitted By: Jim Bell

Department: Finance

Division: Accounting

Council Committee Review?: Council Work
Session

Date(s) of Committee Review: 05/02/2023

Audio-Visual Needs: None

Emergency Legislation?: No

**Motion/Ordinance/
Resolution No.:**

Agenda Item Description or Legislation Title

An Ordinance Amending Ordinance No. 2007-O-1687 Regarding Certain Limitations In Accepting Cash Sureties To Be Deposited In The #802 Cash Surety Fund.
(second reading)

Purpose and Background

City Council passed Ordinance No. 2007-O-1687 on February 12, 2007 establishing the Cash Surety Fund. The purpose of this fund is to provide a fund for cash surety bonds provided to the City to guarantee performance or compliance with certain City ordinances, or as surety to insure compliance with certain City ordinances. That Ordinance placed a limit of \$20,000 on a cash surety, however, there is no limitation on the amount the City can accept with respect to performance bonds or letters of credit. City Staff and the Law Director recommend amending Ordinance No. 2007-O-1687 to eliminate Section 4, thereby placing no limit on the amount of a cash surety the City will accept.

Fiscal Impact

Source of Funds: N/A

Cost: N/A

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

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

Financial Implications:

Attachments

Ordinance

CITY OF HUBER HEIGHTS
STATE OF OHIO

ORDINANCE NO. 2023-O-

AMENDING ORDINANCE NO. 2007-O-1687 REGARDING CERTAIN LIMITATIONS IN
ACCEPTING CASH SURETIES TO BE DEPOSITED IN THE #802 CASH SURETY FUND.

WHEREAS, on February 12, 2007, City Council passed Ordinance No. 2007-O-1687 creating the
#802 Cash Surety Fund; and

WHEREAS, the purpose of the #802 Cash Surety Fund is to provide a fund for cash surety bonds
provided to the City to guarantee performance or compliance with certain City Ordinances, or as
surety to insure compliance with certain City Ordinances; and

WHEREAS, Ordinance No. 2007-O-1687 provided that the City would not accept a cash surety in
excess of twenty thousand dollars (\$20,000.00); and

WHEREAS, there is no limitation on the amount the City can accept with respect to performance
bonds or letter of credit.

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

Section 1. Section 4 of Ordinance No. 2007-O-1687 is hereby eliminated such that there is no
limit on the amount of cash surety the City will accept and deposit in the #802 Cash Surety Fund.

Section 2. It is hereby found and determined that all formal actions of this Council concerning
and relating to the passage of this Ordinance were adopted in an open meeting of this Council and
that all deliberations of this Council and of any of its Committees that resulted in such formal action
were 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 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 _____, 2023;
_____ Yeas; _____ Nays.

Effective Date:

AUTHENTICATION:

Clerk of Council

Mayor

Date

Date

AI-9219

**Pending Business C.
City Manager**

City Council Meeting

Meeting Date: 05/22/2023

Transient Guest Tax - Hotel Definition

Submitted By: Geri Hoskins

Department: Planning

Division: Planning

Council Committee Review?: Council Work
Session

Date(s) of Committee Review: 05/02/2023

Audio-Visual Needs: None

Emergency Legislation?: No

**Motion/Ordinance/
Resolution No.:**

Agenda Item Description or Legislation Title

An Ordinance Amending Chapter 193 – Transient Guest Tax, Section 193.02 – State Definitions Incorporated Of The Huber Heights Codified Ordinances.
(second reading)

Purpose and Background

This ordinance will update the definition of "hotel" for the Transient Guest Tax to allow the City to collect the tax on short-term rentals within Huber Heights.

Fiscal Impact

Source of Funds: N/A

Cost: N/A

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

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

Financial Implications:

Attachments

Ordinance

CITY OF HUBER HEIGHTS
STATE OF OHIO

ORDINANCE NO. 2023-O-

AMENDING CHAPTER 193 – TRANSIENT GUEST TAX, SECTION 193.02 – STATE DEFINITIONS INCORPORATED OF THE HUBER HEIGHTS CODIFIED ORDINANCES.

WHEREAS, the State of Ohio expanded the definition of “hotel” in 2020 to include establishments of fewer than five rooms; and

WHEREAS, the City desires to expand its definition of “hotel” for the purpose of the Transient Guest Tax; and

WHEREAS, the City Council has considered the issue.

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

Section 1. Chapter 193 – Transient Guest Tax, Section 193.02 – State Definitions Incorporated of the Huber Heights Codified Ordinances is amended to read as follows:

193.02 – State definitions incorporated

The definition of “hotel” set forth in Ohio R.C. 5739.01 and expanded by Ohio R.C. 5739.091, and the definition of “transient guest” as set forth in Ohio R.C. 5739.01 are incorporated herein by reference.

Section 2. All other provisions of Chapter 193 – Transient Guest Tax of the Huber Heights Codified Ordinances not expressly amended herein remain in full force and effect.

Section 3. It is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this Ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and of any of its Committees that resulted in such formal action were 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 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 _____, 2023;
_____ Yeas; _____ Nays.

Effective Date:

AUTHENTICATION:

Clerk of Council

Mayor

Date

Date

AI-9247

**New Business A.
City Council**

City Council Meeting

Meeting Date: 05/22/2023

Military And Veterans Commission Appointment - T. Underwood

Submitted By: Anthony Rodgers

Department: City Council

Council Committee Review?: Council Work Session

Date(s) of Committee Review: 05/16/2023

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

**Motion/Ordinance/
Resolution No.:**

Agenda Item Description or Legislation Title

A Motion To Appoint Thomas Underwood To The Military And Veterans Commission For A Term Ending December 31, 2024.

Purpose and Background

The City Council interview panel recommends the appointment of Thomas Underwood to the Military and Veterans Commission for a term ending December 31, 2024. A background check on Mr. Underwood has been processed through Human Resources.

Fiscal Impact

Source of Funds: N/A

Cost: N/A

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

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

Financial Implications:

Attachments

Application - T. Underwood



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

Application For City Boards and Commissions

RECEIVED ON:

APR 20 2023

CLERK OF COUNCIL

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

**PLEASE COMPLETE ALL SECTIONS AND EACH QUESTION
COMPLETELY AND ACCURATELY**

Board or Commission Applied For: Military and Veterans Commission	Date Applied: 20 April 2023
---	---------------------------------------

UNDERWOOD	THOMAS	LEWIS
Last Name	First Name	Middle Name
8924 EMERALDGATE DRIVE	HUBER HEIGHTS	OH
Address	City	State
CELL: 937-901-5269	None	TLUNDERDOG@MSN.COM
Home Phone Number	Daytime Phone Number	E-mail Address

EDUCATION

	SCHOOL	COURSE OF STUDY OR DEGREE EARNED
HIGH SCHOOL	EFFINGHAM COUNTY	DIPLOMA 1988
COLLEGE	COLORADO CHRISTIAN UNIVERSITY	ORG-MGMT/PRO-MGMT 2011
GRADUATE SCHOOL		
OTHER (Specify)		

COMMUNITY INVOLVEMENT

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

Organization	Dates of Service
N/A	N/A

EMPLOYMENT HISTORY

Name of Employer	Position(s) Held	Dates of Employment
MacAulay Brown	Lead INTEL Analyst	Aug 2013 - Aug 2017
SRC Inc.	Supervisor, EW Analysis	Aug 2017 - PRES

REFERENCES

Larry Johnson	6637 Charlesgate Rd., Huber Hgts, OH 45424	937-825-3316
Name	Address	Telephone Number
Troy Eden	3230 US Route 36, Greenville 45331	937-321-1616
Name	Address	Telephone Number
Tim Brown	5076 Buttercup Drive, Tipp City, OH 45371	937-776-5856
Name	Address	Telephone Number

STATEMENT OF INTEREST

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

Having served 20-years in the Air Force, I got to witness first hand what it was like to have camaraderie, loyalty, trust, and respect for one another. I MISS IT TERRIBLY!!! With the current divide in our country, state, and local cities, what values are we (as a nation) sharing with the younger generation. I want to be a part of an organization that can make a difference. And where better to start, than none other than my local community. I am a big proponent of "Lead by example". If I can aid my fellow committee members in honoring and advocating for the veteran's in our community, while simultaneously showcasing the aforementioned values, we can possibly start a trend that may be reciprocated by others in the community.

REQUIREMENTS AND APPLICANT STATEMENT

Are you at least 18 years of age? ☒ Yes ☐ No

Do you currently reside in the City of Huber Heights? ☒ Yes ☐ No

Have you resided in the City of Huber Heights for at least one year prior to making this application? ☒ Yes ☐ No

Are you a registered voter? ☒ Yes ☐ No

Are you willing to sign a release to allow the City of Huber Heights to perform a background screening and criminal records check? ☒ Yes ☐ No

I certify that all of the information furnished in this application and its addenda are true and complete to the best of my knowledge. I understand that the City of Huber Heights may investigate the information I have furnished and I realize that any omissions, misrepresentation or false information in this application and/or its addenda may lead to revocation of any volunteer appointment.

I hereby acknowledge that I, voluntarily and of my own free will, have applied for a volunteer position with the City of Huber Heights with the understanding that the City may use a variety of screening procedures to evaluate my qualifications and suitability for appointment. I have been advised that these screening procedures might include, but are not limited to, interviews, criminal record checks, driving records checks and reference checks. I also acknowledge that any such screening procedures, as reasonably required by the City of Huber Heights, are prerequisites to my appointment to a volunteer position with the City of Huber Heights.

In addition, I also hereby understand that the City of Huber Heights cannot guarantee the confidentiality of the results of, or information obtained through the aforementioned screening procedures. Decisions of the Ohio Supreme Court regarding the Ohio Public Records Act indicate that, with certain enumerated exceptions, records maintained by a governmental entity are a matter of public record and, should a proper request be made by a member of the public for such records, the governmental entity would be required to make such records available to that member of the public within a reasonable time. Additionally, all information furnished in this application is subject to disclosure under the Ohio Public Records Act.

Therefore, in consideration of my application being reviewed by the City of Huber Heights, under no legal disability, and on behalf of my heirs and assigns, hereby release and agree to hold harmless the City of Huber Heights and any of its agents, employees, or related officials from any and all liability, whatever the type and nature resulting from the administration of any such screening procedures and/or release of the results therefrom.

Thomas L Underwood

20 April 2023

Signature

Date

AI-9240

**New Business B.
City Manager**

City Council Meeting

Meeting Date: 05/22/2023

Huber Heights YMCA - Sublease Assignment

Submitted By: Bryan Chodkowski

Department: City Manager

Council Committee Review?: Council **Date(s) of Committee Review:** 05/16/2023
Work
Session

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

**Motion/Ordinance/
Resolution No.:**

Agenda Item Description or Legislation Title

A Resolution Consenting To A Sublease Of The YMCA Property.
(first reading)

Purpose and Background

Per Ordinance No. 2004-O-1480 which spells out the terms and conditions of the City's 99-year ground lease with the YMCA, the YMCA has the right to sublease its spaces to other users with the City's consent. Presently, the YMCA sublets space for use as a dialysis center to Bio-Medical Applications of Ohio, Inc; to which the City previously consented. Through the course of various business transactions, Bio-Medical Applications of Ohio's parent company, Fresenius Medical Care Centerville Home, LLC, wishes to now sublease the same space to The Ohio State University to operate the same dialysis center. This proposed legislation represents the City's consent for the change of subleases.

Fiscal Impact

Source of Funds: N/A

Cost: N/A

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

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

Financial Implications:

Attachments

Resolution

Exhibit A

CITY OF HUBER HEIGHTS
STATE OF OHIO

RESOLUTION NO. 2023-R-

CONSENTING TO A SUBLEASE OF THE YMCA PROPERTY.

WHEREAS, the City leased certain real property located at 7521 Shull Road, Huber Heights, Montgomery County, Ohio to the Young Men's Christian Association of Greater Dayton, aka YMCA of Dayton, Ohio (the "YMCA") pursuant to an Agreement of Lease (as amended, the "Land Lease") dated March 23, 2004 which lease provided that the City is to consent to future subleases; and

WHEREAS, the YMCA constructed a building on the leased property and leased approximately 15,932 square feet of space in the building (the "Leased Premises") to Kettering Adventist Healthcare "Kettering"), as tenant pursuant to a Lease Agreement dated April 9, 2004; and

WHEREAS, Kettering subleased the Leased Premises to Dayton Regional Dialysis, Inc. ("Dayton Regional") pursuant to a sublease agreement dated October 27, 2004; and

WHEREAS, Dayton Regional has sold the dialysis clinic operating in the Leased Premises to Bio-Medical Applications of Ohio, Inc. ("BMA"), an affiliate of Fresenius Medical Care North America, which is the largest dialysis services provider in the world; and

WHEREAS, in connection with the sale to BMA, Dayton Regional assigned the lease to BMA pursuant to an Assignment and Assumption of Sublease dated December 29, 2010, between Dayton Regional, BMA, Kettering and the YMCA; and

WHEREAS, Fresenius Medical Care Centerville Home, LLC, as successor-in-interest to BMA wishes to sublease the Leased Premises to The Ohio State University, an instrumentality of the State of Ohio and an educational institution created under Ohio law, on behalf of Wexner Medical Center Comprehensive Transplant Center.

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

Section 1. The City hereby (i) acknowledges and ratifies its prior consent to the Prime Lease, and (ii) acknowledges that its prior consent to all subleases and assignments which predate this legislation.

Section 2. This Resolution hereby provides the City's consent to the Sublease Agreement (the "Sublease Agreement") between Fresenius Medical Care Centerville Home, LLC and The Ohio State University on behalf of Wexner Medical Center Comprehensive Transplant Center which is attached hereto as Exhibit A.

Section 3. The City Manager is hereby authorized and directed to sign consent of the Sublease Agreement.

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 _____, 2023;
_____ Yeas; _____ Nays.

Effective Date:

AUTHENTICATION:

Clerk of Council

Mayor

Date

Date

EXHIBIT A

SUBLEASE AGREEMENT

THIS SUB-SUBLEASE AGREEMENT (the “**Sub-Sublease**”) is made as of the last date of signature on the signature page and is effective as of May 15, 2023 (the “**Effective Date**”) between Fresenius Medical Care Centerville Home, LLC, as successor-in-interest to Bio-Medical Applications of Ohio, Inc. (hereinafter called “**Sub-Sublessor**”), and The Ohio State University, an instrumentality of the State of Ohio and an educational institution created under Ohio law, on behalf of Wexner Medical Center Comprehensive Transplant Center (hereinafter called “**Sub-Sublessee**”) upon the following circumstances:

RECITALS

_____**WHEREAS**, Kettering Adventist Healthcare (the “**Sublessor**”) and YMCA of Dayton, Ohio (“**Master Lessor**”) entered into a written Lease Agreement (“**Prime Lease**”) dated April 9, 2004 for certain property containing approximately 15,000 square feet located at 7251 Shull Road, Huber Heights, Ohio (the “**Premises**”)

WHEREAS, Sublessor and Sub-Sublessor entered into a Lease Agreement dated October 27, 2004, as amended, (the “**Prime Sublease**”) for the Premises; and

WHEREAS, the Prime Lease and Prime Sublease require the consent of the Master Lessor, Sublessor and the City of Huber Heights to this Sub-Sublease to Sub-Sublessee, which consents are attached hereto as **Exhibit “B”**;

WHEREAS Sub-Sublessor is desirous of subleasing a portion of the Premises to Sub-Sublessee and Sub-Sublessee is desirous of subleasing a portion of the Premises from Sub-Sublessor, under such terms and conditions as hereinafter defined;

NOW, THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto mutual agree, and intend to be legally bound, as follows:

1. Sub-Subleased Premises. Sub-Sublessor, in consideration of the rents and covenants hereinafter set forth, does hereby demise, let and lease to Sub-Sublessee, and Sub-Sublessee does hereby hire, take and lease from Sub-Sublessor, on the terms and conditions hereinafter set forth, approximately 220 rentable square feet (200 usable square feet) of space in the Premises as more fully described in **Exhibit “A”** attached hereto and made a part hereof by reference (the “**Sub-Subleased Premises**”).

2. Term. The Term of this Sub-Sublease shall commence on the Effective Date and shall expire on the earlier of a) July 31, 2025 or b) the termination date of the Prime Sublease, unless sooner terminated pursuant to the terms of this Sub-Sublease. At any time after the date which is one (1) year from the Effective Date, either party may terminate this Sub-Sublease without penalty upon ninety (90) days’ written notice to the other party. In the event of early termination, Sub-sublessee will receive prorated funds for the difference between early termination date and July 31, 2025.**3. Usage of Sub-Subleased Premises.** The Sub-Subleased Premises may be used by Sub-Sublessee during the following times:

Space may be used the third Thursday of each month from 8:00am to 5:00pm

4. Rent. During the Term of this Sub-Sublease, Sub-Sublessee shall pay to Sublessor as Rent the sum of \$1,138.50 per year, paid annually, with the first payment due on or before the Effective Date, and each subsequent payment due on or before the anniversary of the Effective Date. If the Effective Date is prior to the date of execution of the Sub-Sublease, the first Rent payment, including, but not limited to, all past due Rent, shall be due within ten (10) days after execution of the Sub-Sublease. Rent shall increase each year during the Term of this Sub-Sublease by 3%.

Rent payments, including the first Rent payment, shall be remitted to Sub-Sublessor at the following address on or before the due date:

Fresenius Medical Care
Bio-Medical Applications
P.O. Box 101518
Atlanta, GA 30392

or at such other place that Sublessor may from time to time designate in writing.

The Sub-Sublessee agrees to pay 0% of Sub-Sublessor's charges for utilities, insurance and common area maintenance expenses, operating expenses, real estate taxes, repairs, capital improvements, internet, copier fee, janitorial services, parking. The parties hereto agree that the percentage noted above in this Section is 0% because the rental rate is a "gross" rental rate and, therefore, is inclusive of all costs and expenses described in this section.

5. Permitted Use. The Sub-Subleased Premises may be used by Sub-Sublessee for medical office uses and for the examination of Sub-Sublessee's patients, provided that such examination is undertaken solely as part of Sub-Sublessee's medical practice.

6. Condition and Acceptance of Sub-Subleased Premises. Sub-Sublessee shall accept possession of the Sub-Subleased Premises in their "as is" condition existing as of the Effective Date. Sub-Sublessee's occupancy of the Sub-Subleased Premises shall be conclusive evidence of Sub-Sublessee's acceptance of all improvements constituting the Sub-Subleased Premises.

7. Default. Sub-Sublessee's failure to perform or observe any term, provision, covenant, agreement or condition of this Sub-Sublease shall constitute an event of default. Upon the occurrence of any event of default, Sub-Sublessor may terminate Sublessee's right to possession of the Sub-Subleased Premises by giving written notice to Sub-Sublessee and recover from Sub-Sublessee the following sums:

(i) unpaid rent and other charges that had been earned or owed to Sub-Sublessor at the time of termination of this Sub-Sublease

8. Holding Over. Any holding over of the Sub-Subleased Premises by Sublessee shall only be permitted with the prior written consent of both Sub-Sublessor, Sublessor, and Master Lessor.

9. Subleasing and Assignment. Sub-Sublessee shall not sell, assign, hypothecate, pledge, further sublease or otherwise transfer this Sublease without the prior written consent of Sub-Sublessor, Sublessor, and Master Lessor, which may be granted or withheld for any reason in their absolute and sole discretion.

10. *Compliance With Laws.* Sub-Sublessee shall comply with all applicable statutes, laws, ordinances, regulations, rules, or orders of any governmental or quasi-governmental entity, body, agency, commission, board, or official applicable to the Premises and/or Sub-Sublessee's use thereof.

Sub-Sublessor and Sub-Sublessee agree that any benefits bestowed upon either party hereto do not require, are not in payment for, and are not in any way contingent upon the referral (as that term is defined in 42 U.S.C. Section 1395(nn) or 42 U.S.C. Section 1320a-7(b)) or admission of, or any other arrangement for the provision of, any item or service offered by either Sub-Sublessor or Sub-Sublessee in any facility or health care operation controlled, owned, managed or operated by either Sub-Sublessor or Sublessee. The terms of this Sub-Sublease set forth herein have been negotiated in good faith through arms-length bargaining, represent a fair market value transaction, have not been determined in a manner that takes into account (directly or indirectly) the value or volume of any referrals and are commercially reasonable even if no referral were made between the parties.

11. *Responsibility.* Subject to the state debt and appropriation provisions of the Ohio Constitution, Article II, §22, Article VIII §§ 1-4, Ohio Revised Code Chapter 2743, Ohio Revised Code §126.07, §131.33 and §3345.40, Sublessee shall be responsible for any claims, liability, loss, damage, or expenses resulting from Sublessee's occupancy and use of the Sub-Subleased Premises, except those claims, liabilities, losses, damages or expenses caused by Sub-Sublessor's, Sublessor's, or Master Lessor's gross negligence.

12. *Subordination to Prime Lease.* Without the necessity of any additional document being executed by Sublessee for the purpose of effecting a subordination, this Sub-Sublease shall at all times be subject and subordinate to the Sublease and the Prime Lease. Sub-Sublessor and Sub-Sublessee shall at all times during the term of this Sub-Sublease, comply with the terms of the Prime Lease that affect Sub-Sublessee's use of the Premises, subject to the specific terms hereof.

13. *Notice.* All notices under this Sub-Sublease shall be made in writing and sent by prepaid certified mail with return receipt requested or by a nationally recognized overnight delivery service (e.g. Federal Express, DHL, United Parcel Service) with charges prepaid or charged to the sender's account and sent to the following addresses:

If to Sub-Sublessor: Fresenius Medical Care North America
Reservoir Woods
920 Winter Street
Waltham, MA 02451- 1457
Attention: Transaction Management

If to Sub-Sublessee: The Ohio State University
Planning, Architecture and Real Estate
1534 N. High Street
Columbus, OH 43201
Attn: Lease Administrator

With a Copy to: The Ohio State University
on behalf of Wexner Medical Center –
Comprehensive Transplant Center
395 W. 12th Avenue, First Floor
Columbus, OH 43210
Attn: Administrator

All notices shall be effective on delivery if delivery is confirmed by the delivery service. Any correctly addressed notice that is refused, unclaimed, or undeliverable because of an act or omission of the party to be notified shall be considered to be effective as of the first date that the notice was refused, unclaimed, or considered undeliverable by the postal authorities or overnight delivery service. Either party may change its notice address by giving the other party thirty (30) days prior written notice of the change in any manner permitted by this Section.

14. *Amendments.* No amendment, change or modification of this Sub-Sublease shall be valid and binding unless such amendment, change or modification is reflected in a fully executed written agreement.

15. *Governing Law.* This Sub-Sublease shall be governed by the laws of the state where the Premises are located.

16. *Shared Values.* As stated in the Fresenius Medical Care Code of Ethics and Business Conduct, Sub-Sublessor upholds the values of quality, honesty and integrity, innovation and improvement, respect and dignity, as well as lawful conduct, especially with regards to anti-bribery and anti-corruption. Sub-Sublessor upholds these values in its own operations, as well as in its relationships with business partners. Sub-Sublessor's continued success and reputation depends on a common commitment to act accordingly. Together with Sub-Sublessee, Sub-Sublessor is committed to uphold these fundamental values by adherence to applicable laws and regulations.

17. *Signage.* Sub-sublessee shall be permitted to post temporary wayfinding signage on the third Thursday of each month.

18. *Counterparts.* This Sublease may be executed in one or more counterparts, each of which together shall be deemed an original, but all of which together shall constitute one and the same instrument.

19. *Incorporation of Recitals.* The Recitals portion of this Sub-Sublease is hereby incorporated by this reference to the same extent and as fully as though it were here rewritten in its entirety.

IN WITNESS WHEREOF, the parties hereto have executed this Sublease as of the day and year last written below.

SUB-SUBLESSOR:

Fresenius Medical Care Centerville Home, LLC

Name: Foster Ball
Title: Director, Real Estate Transaction Management
Date:

SUB-SUBLESSEE:

The Ohio State University
on behalf of Wexner Medical Center
Comprehensive Transplant Center

Name: Amanda Hoffsis
Title: Vice President of Planning, Architecture and Real
Estate
Date:

Exhibit "A"
Premises

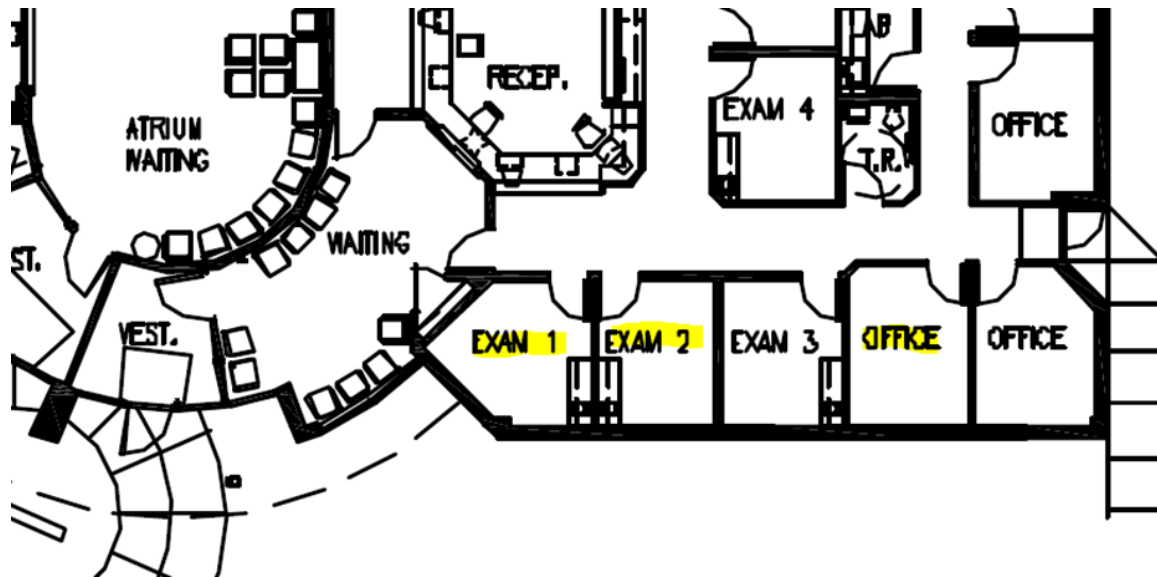


EXHIBIT "B"

CONSENT OF SUBLESSOR

Sublessor hereby gives its consent to the Sub-Sublease between Fresenius Medical Care Centerville Home, LLC and The Ohio State University on behalf of Wexner Medical Center Comprehensive Transplant Center. This consent in no way modifies the provisions of the Prime Sublease or releases the Sub-Sublessor from its obligations or responsibilities under the Prime Sublease.

SUBLESSOR:

Kettering Adventist Healthcare

Name:

Title:

Date:

EXHIBIT “B (con’t)

CONSENT OF MASTER LESSOR

Master Lessor hereby gives its consent to the Sub-Sublease between Fresenius Medical Care Centerville Home, LLC and The Ohio State University on behalf of Wexner Medical Center Comprehensive Transplant Center. This consent in no way modifies the provisions of the Prime Lease or releases the Sub-Sublessor from its obligations or responsibilities under the Prime Lease.

MASTER LESSOR:

YMCA of Dayton, Ohio

Name:

Title:

Date:

EXHIBIT “B (con’t)

CONSENT OF THE CITY OF HUBER HEIGHTS

The City of Huber Heights hereby gives its consent to the Sub-Sublease between Fresenius Medical Care Centerville Home, LLC and The Ohio State University on behalf of Wexner Medical Center Comprehensive Transplant Center.

MASTER LESSOR:

The City of Huber Heights

Name:

Title:

Date:

AI-9242

**New Business C.
City Manager**

City Council Meeting

Meeting Date: 05/22/2023

Disposal Of Surplus Property - Rose Music Center

Submitted By: Bryan Chodkowski

Department: City Manager

Council Committee Review?: Council Work Session
Date(s) of Committee Review: 05/16/2023

Audio-Visual Needs: None
Emergency Legislation?:

**Motion/Ordinance/
Resolution No.:**

Agenda Item Description or Legislation Title

A Resolution Declaring Certain City Property Located At The Rose Music Center No Longer Needed For Municipal Purposes As Surplus And Authorizing Sale Of Said Surplus Property.
(first reading)

Purpose and Background

A Resolution Declaring Certain City Property Located At The Rose Music Center No Longer Needed For Municipal Purposes As Surplus And Authorizing Sale Of Said Surplus Property.
(first reading)

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

Information
Resolution

MEMI

MUSIC & EVENT MANAGEMENT INC.

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

Bryan,

Thank you for discussing MEMI's interest in purchasing two pieces of concession equipment that are being moved out of the VIP concession area. This equipment is being moved to provide space for different equipment that is much more useful for serving the food and beverage items sold in that concession area. There is a 2-compartment sink and a freezer in the VIP concession that are being moved out to create room for this equipment. I have attached a quote for these two items from Wasserstrom. They have quoted me a price that they would sell that same aged product from their inventory. I would like to offer to purchase this equipment for 10% over what Wasserstrom has quoted.

2-Compartment sink	\$440
Freezer	\$4,400

I would also like to purchase the handicap platform lift that has been in the storage container for several years. I have done my best to find this same type of lift but have had trouble finding it listed in any new ADA equipment catalogs. I have provided the cost of a new lift that is the closest product to what you have. The new price is \$6,565, would you consider selling it to MEMI for \$3,000?

I appreciate the chance to discuss the purchasing of this equipment. Please call me with any questions.

Thank you,



Matt Dunne
General Manager
Music & Event Management, Inc.
513-616-2638
mdunne@memi.biz

Quote

04/24/2023



To:
Rose Music Center at the Heights
Kevin Crawford
6800 Executive Blvd.
Huber Heights , Oh 45424

Project:
Rose Music Center at the Heights-
Used Sink

From:
The Wasserstrom Company
Coleman Lucas
4500 E Broad St
Columbus, OH 43213
614-228-6525
614-737-8256 (Contact)

Please review the following quotation for the Food Service Equipment, Supplies (Smallwares) and Services within the above referenced project. This quotation is strictly per the plan and written specifications. Prices are valid for thirty days from the date of this quotation and include no sales taxes. Sales taxes if applicable will be added to your invoice. By law, a valid sales tax exemption certificate must be on file with us or you will be charged the current applicable sales tax rate. All merchandise is priced coordinated, consolidated and delivered to the first destination only unless specified otherwise below. This quotation is not valid unless it is signed by an officer of The Wasserstrom Company.

SPECIAL NOTE ON PRICING – Due to extreme pricing volatility due to tariffs on material commonly used by manufacturers of food service equipment; i.e., steel, aluminum and other materials commonly used in the making of food service equipment, all pricing will be reviewed at the time the order is actually received by The Wasserstrom Company. We reserve the right to adjust our quotation and pass along any unforeseen increases with prior notification to our customer.

Item	Qty	Description	Sell	Sell Total
1	1 ea	SINK Custom Model No. USED 2 COMP SINK UNIT Used, two compartment sink with 24" drain boards both sides, drawer under each drainboard, faucet, undershelf under drain boards, 5" backsplash, 9+ years old, decent condition	\$400.00	\$400.00
ITEM TOTAL:				\$400.00
Total				\$400.00

Rose Music Center at the Heights- Used
Sink

Rose Music Center at the Heights

Initial: _____
Page 1 of 3

Equipment Terms: 50% to place order; 45% 7 days prior to delivery and 5% net 30 days

Requires approved credit application or prepayment with your check, Electronic Funds Transfer or other acceptable method of payment. An approved credit application must be on file prior to the activation of your open account.

Smallwares Terms: 50% to place order; balance net 30 days Requires approved credit application or prepayment with your check, Electronic Funds Transfer or other acceptable method of payment. An approved credit application must be on file prior to the activation of your open account.

All orders are subject to credit department approval.

Return Policy: Custom Merchandise, Custom Fabrication, Special Order Merchandise, Decorative Heat Lamps & Furniture are **Non-Returnable**. Should you need to return an item, contact your sales representative or Wasserstrom Customer Service at (614) 737-8400 to obtain a Return Authorization Number which will speed the process and ensure that your account will be properly credited. All returns are subject to prevailing restocking fees and shipping. Buyer will be responsible for the original shipping cost, any accumulated storage fees, return shipping costs, restocking charges, cancellation charges and any repairs to damaged products. Merchandise must be returned in the original packing. Returns must be initiated within **24 Hours** of receipt of the shipment unless arranged for otherwise.

Standard Delivery:

- All orders will be shipped as a standard delivery unless otherwise noted on the quote.
- Your order will be delivered curbside, via Parcel or LTL Carrier.
- You will be responsible for removing the shipment from the truck.
- You will be responsible for bringing the equipment into your location.
- Carriers are **NOT** responsible for unloading and/or inside delivery.

Suspected Damaged and Shortage Merchandise: The Wasserstrom Company works hard to ensure that your merchandise arrives in perfect condition. All shipments are inspected for quantity and quality when they are packed. All shipments are in perfect condition when they leave the point of origin. However, damage can occur during shipping. If you suspect or encounter any damage upon your thorough inspection at the time of arrival, please follow the below instructions to avoid additional cost:

- **INSPECT** the delivery at the time of arrival.
- **DO NOT** set the delivery aside for inspection at a later date.
- **PHYSICALLY INSPECT THE DELIVERY.**
- If you encounter or suspect visible damage, make precise notations on the carriers delivery receipt. Take pictures/video and **REFUSE THE DELIVERY.**
- Contact your salesperson and the carrier **IMMEDIATELY** and request the required inspections necessary to file a claim for damage if you must accept the merchandise..

Do not accept the merchandise until the delivery receipt is noted "Damaged".

Damage must be reported within **24 Hours** of receipt of the merchandise.

Save all boxes and packing material.

- For **MISSING PRODUCT**, make a notation on the carriers' delivery receipt and **ACCEPT THE DELIVERY.**

- For **CONCEALED DAMAGE** the customer is responsible for filing a Concealed Damage Claim with the appropriate carrier.
- The customer is responsible for proving the Claim of Concealed Damage.
- If the delivery receipt was signed, without exception, by the customer as **FREE & CLEAR**, the Manufacturer & The Wasserstrom Company are **NOT** responsible for the Concealed Damage Claim.

The Wasserstrom Company cannot accept any responsibility for damage/missing product that occurs during shipment. The Wasserstrom Company will work to ensure that any damaged shipment/missing item issues are resolved to your satisfaction. If you fail to make the notations of damaged or missing products on the carriers delivery receipt, the manufacturer & The Wasserstrom Company **CANNOT** guarantee any compensation for damaged or missing items. By signing your name on the delivery receipt, without declaring these exceptions, you are stating that you have received your shipment, free and clear, in acceptable condition. There is no recourse with the freight company for resolutions and/or reimbursement. Please contact your Representative or Customer Service at (614) 737-8400.

New merchandise is subject to the Manufacturer's Warranty unless otherwise noted.

All electrical, plumbing, ventilation, rough-in, and final connections are the responsibility of the customer, unless otherwise noted.

Prices do not include: uncrating, assembly, set-in-place, installation and/or disposal, unless otherwise noted.

Added product, equipment and/or supplies will be done on a change order basis and must include a new customer signature in order for the change to be valid.

Thank you for the opportunity to be of service. The Wasserstrom Company sincerely wishes to be favored with the award of this contract. We look forward to the prospect of working with you and the rest of the project team to produce a smooth and timely transaction. Please let us know how our team can be of further service to you.

SPECIAL NOTE ON PRICING – Due to extreme pricing volatility due to tariffs on material commonly used by manufacturers of food service equipment; i.e., steel, aluminum and other materials commonly used in the making of food service equipment, all pricing will be reviewed at the time the order is actually received by The Wasserstrom Company. We reserve the right to adjust our quotation and pass along any unforeseen increases with prior notification to our customer.

The Wasserstrom Company

Acceptance: _____ Date: _____
Printed Name: _____

Quote

04/18/2023



To:
Rose Music Center at the Heights
Kevin Crawford
6800 Executive Blvd.
Huber Heights , Oh 45424

Project:
Rose Music Center at the Heights-
Victory Used Freezer

From:
The Wasserstrom Company
Coleman Lucas
4500 E Broad St
Columbus, OH 43213
614-228-6525
614-737-8256 (Contact)

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Item	Qty	Description	Sell	Sell Total
1	1 ea	FREEZER Victory Refrigeration Model No. FS-2D-S1-2XS-6C Victory 2 door Used Freezer, all stainless steel, very good working condition, outside in great shape, has all shelving, gaskets in tacked and good condition. Good Until 4-19-23 - final approval needed.	\$4,000.00	\$4,000.00
ITEM TOTAL:				\$4,000.00

Rose Music Center at the Heights-
Victory Used Freezer

Rose Music Center at the Heights

Initial: _____
Page 1 of 4

Item	Qty	Description	Sell	Sell Total
2		NOTE: If Wasserstrom would buy this unit , this is what we would offer.		
			Total	\$4,000.00

Equipment Terms: 50% to place order; 45% 7 days prior to delivery and 5% net 30 days

Requires approved credit application or prepayment with your check, Electronic Funds Transfer or other acceptable method of payment. An approved credit application must be on file prior to the activation of your open account.

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The Wasserstrom Company

Acceptance: _____ Date: _____
Printed Name: _____

All prices are in USD.

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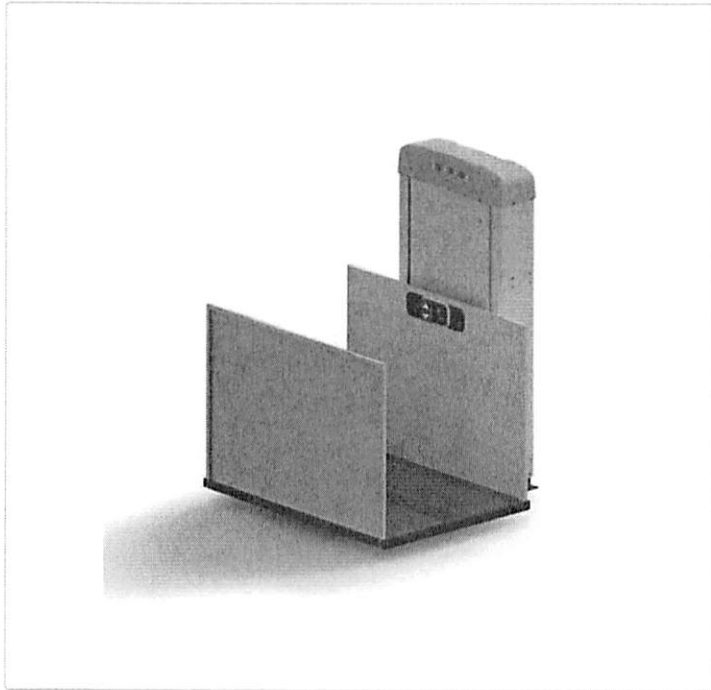
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[Home](#) [Lifts](#) [Vertical Platform Lifts](#) [Harmar Highlander II Vertical Platform Lift](#)



Harmar

Harmar Highlander II Vertical Platform

Financing Available: HighlanderII

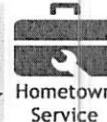
Key Features:

Harmar's Residential Vertical Platform Lift (RPL) is a safe, smooth and economical solution to the barriers porches, staircases, decks and other elevation changes can create in and around a home. Designed from ground up to be cost-efficient

\$6,565.00

Starting at \$410/mo with [affirm](#). Prequalify now

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Instant Specials**

*** Select Traveling Height:**

Please choose an option to add this product to your cart.

*** Harmar VPL Gate and Interlock Options:**

Please choose an option to add this product to your cart.

*** Harmar VPL Platform Options:**

Please choose an option to add this product to your cart.

*** Select Platform Gate:**

Please choose an option to add this product to your cart.

*** Add Call / Send Controls:**

Please choose an option to add this product to your cart.

*** Select Power Option:**

AC Power (Standard)

*** Shipping and Installation:**

Please choose an option to add this product to your cart.

Quantity:

1

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Hey there! How can we help?

Product Description

NOTE: Additional Hardware / Mounting Kits may be required for All Vertical Platform Lifts. Please call us before ordering exact pricing / vehicle compatibility.

The Highlander II represents a new generation and evolution in VPL's. New technologies introduced in the Highlander II make this VPL more reliable, easier to use, easier to service, easier to troubleshoot, and the premiere market choice for platform lift solutions. Innovation is at the heart of this next generation Vertical Platform Lift. The Highlander II is an outstanding choice for vertical lifting solutions the home or in light commercial settings where an elevator is impractical or unnecessary.

- Guardian System
- Smart Sense Technology
- Universal Drive System
- [Click Here for Brochure](#)

Specs:

- Maximum Capacity: 750 lb (340.2 kg)
- Power Source: Fully Sealed 2/3 hp 90V DC Motor
- Maximum Lifting Height: Up to 171" (434.3 cm)
- Overspeed Brake: YES
- Lift Speed: 10 FPM (Feet Per Minute)

Warranty Information

Other Details

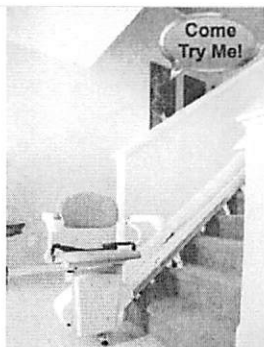
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Golden MaxiComfort Cloud Sleep'N
~~\$3,299.00~~ \$1,878.00 ★★★★★



Harmar SL300 Stair Lift INSTALLED*
~~\$4,485.00~~ \$3,515.00 ★★★★★



Pride Victory LX Sport w/ CTS
~~\$3,569.00~~ \$2,564.00 ★★★★★



NEW! Pride VivaLift!® Radiance
~~\$2,399.00~~ \$1,704.00 ★★★★★

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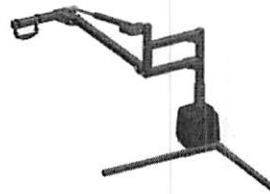
Harmar AL225 - 2 Axis Lift

~~\$3,635.00~~ **\$2,730.00** NOT RATED



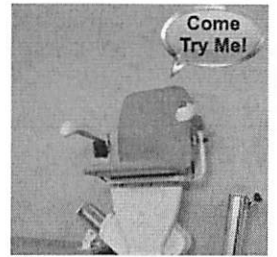
Harmar AL825 Truck Lift

~~\$5,235.00~~ **\$3,925.00** NOT RATED



Harmar AL835 Truck Lift

~~\$5,235.00~~ **\$3,925.00** NOT RATED



Harmar SL600 Stair Lift INSTALLED*

~~\$5,375.00~~ **\$4,260.00** NOT RATED

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STATE OF OHIO

RESOLUTION NO. 2023-R-

DECLARING CERTAIN CITY PROPERTY LOCATED AT THE ROSE MUSIC CENTER NO LONGER NEEDED FOR MUNICIPAL PURPOSES AS SURPLUS AND AUTHORIZING SALE OF SAID SURPLUS PROPERTY.

WHEREAS, the City of Huber Heights is in possession of certain property including unneeded concession and ADA mobility equipment; and

WHEREAS, the property is being removed to provide space for more functional equipment; and

WHEREAS, the City Manager requests to negotiate the sale of the surplus items to an interested consumer, Music & Event Management, Inc. (MEMI).

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

Section 1. The City Manager is hereby authorized to declare the Rose Music Center’s equipment as surplus and negotiate the terms for sale with MEMI.

<u>ITEM:</u>	<u>PRICE:</u>
2-Compartment Sink	\$ 440.00
Freezer	\$4,400.00
ADA Platform Lift	\$3,000.00

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 _____, 2023;
_____ Yeas; _____ Nays.

Effective Date:

AUTHENTICATION:

Clerk of Council

Mayor

Date

Date

AI-9245

**New Business D.
City Manager**

City Council Meeting

Meeting Date: 05/22/2023

Waiver Of Conflict Of Interest - Simms Development

Submitted By: Bryan Chodkowski

Department: Legal

Council Committee Review?: Council **Date(s) of Committee Review:** 05/02/2023 and
Work 05/16/2023
Session

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

**Motion/Ordinance/
Resolution No.:**

Agenda Item Description or Legislation Title

A Resolution Authorizing The City Manager To Execute A Waiver Of Potential Conflict/CRA Agreement Between The City Of Huber Heights And Charles V. Simms Development Corporation And Simms The Gables Of HH, Ltd. For The Residential Development Known As The Gables.
(first reading)

Purpose and Background

The City of Huber Heights desires to ensure that its citizens are provided with a variety of appropriate and desirable housing options and Charles Simms Development intends to construct and sell owner-occupied housing units on previously undeveloped land immediately north of the Fairways condominium project on Brandt Pike. This project site is located within Community Reinvestment Area #7 which provides an opportunity for the City and Simms Development to negotiate an economic development agreement. However, both the City and Simms Development employ the firm of Pickrel, Schaeffer & Ebeling for general legal counsel which presents a potential conflict. As both parties have agreed to general terms on incentives, the City and Simms Development must formally agree to waive any potential conflict between the parties;

Fiscal Impact

Source of Funds: N/A

Cost: N/A

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

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

Financial Implications:

Attachments

Resolution
Exhibit A

CITY OF HUBER HEIGHTS
STATE OF OHIO

RESOLUTION NO. 2023-R-

AUTHORIZING THE CITY MANAGER TO EXECUTE A WAIVER OF POTENTIAL CONFLICT/CRA AGREEMENT BETWEEN THE CITY OF HUBER HEIGHTS AND CHARLES V. SIMMS DEVELOPMENT CORPORATION AND SIMMS THE GABLES OF HH, LTD. FOR THE RESIDENTIAL DEVELOPMENT KNOWN AS THE GABLES.

WHEREAS, the City of Huber Heights (the “City”) desires to ensure that its citizens are provided with a variety of appropriate and desirable housing options; and

WHEREAS, Charles Simms Development (“Simms”) intends to construct and sell owner-occupied housing units (the “Project”) in an effort to further the desires of the City; and

WHEREAS, the Project is located within Community Reinvestment Area #7 which provides an opportunity for the City and Simms to enter into an economic development agreement; and

WHEREAS, both the City and Simms employ the firm of Pickrel, Schaeffer & Ebeling for general legal counsel which presents a potential conflict; and

WHEREAS in the interest of their mutual benefits, the City and Simms agree to waive any potential conflict as it specifically relates to drafting an economic development agreement between the parties.

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 sign a Waiver Of Potential Conflict/CRA Agreement between the City of Huber Heights and Charles V. Simms Development Corporation and Simms The Gables of HH, Ltd., for the residential development known as The Gables, attached hereto as Exhibit A as if incorporated herein.

Section 2. It is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this Ordinance were adopted in an open meeting of this Council and that all deliberations of this Council and of any of its Committees that resulted in such formal action were 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 _____, 2023;
_____ Yeas; _____ Nays.

Effective Date:

AUTHENTICATION:

Clerk of Council

Mayor

Date

Date

EXHIBIT A

PICKREL, SCHAEFFER AND EBELING

A LEGAL PROFESSIONAL ASSOCIATION

2700 STRATACACHE TOWER
40 NORTH MAIN STREET
DAYTON, OHIO 45423-2700
937/223-1130

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TROY OFFICE

305 PUBLIC SQUARE, SOUTHEAST
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L. MICHAEL BLY
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KRISTINA E. CURRY
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GERALD L. MCDONALD¹
MARCELLA T. MCHENRY
DAVID H. MONTGOMERY
JON M. ROSEMEYER
KAYLEE R. PRICE
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ALAN B. SCHAEFFER
BROOKE A. SCHLEBEN
JEFFREY S. SENNEY
MATTHEW D. STOKELY³
KATRINA L. WAHL

OF COUNSEL
JAMES I. WEPRIN

¹ Also licensed in FL and MI

² Also licensed in NY

³ Also admitted in NY and CT

dmontgomery@pselaw.com

May 5, 2023

City of Huber Heights
Attn: Bryan Chodkowski, City Manager
6131 Taylorsville Road
Huber Heights, OH 45424

Charles V. Simms Development Corporation
Simms The Gables of HH, Ltd.
Attn: Charles H. Simms, President
2785 Orchard Run Road
Dayton, OH 45449

Re: Waiver of Potential Conflict / CRA Agreement (“Agreement”) between the City of Huber Heights and Charles V. Simms Development Corporation and Simms The Gables of HH, Ltd., for the Residential Development Known as The Gables

Dear Bryan and Charlie:

The purpose of this correspondence is to inform all parties of a potential conflict of interest which may exist in regard to the above referenced matter. Our office currently represents and has in the past represented the City of Huber Heights (“City”) on various legal matters, thereby making the City a client of Pickrel, Schaeffer & Ebeling (“Firm”). That being said, our Firm also currently represents and has in the past represented Charles V. Simms Development Corporation and Simms the Gables of HH, Ltd. (collectively “Simms”) on various legal matters, including the residential development known as The Gables in the City, thereby making Simms a client of the Firm.

In regard to the above transaction, the parties have negotiated the terms of the Agreement and the Firm will draft the Agreement pursuant to those terms. This waiver does not apply to any dispute, known or unknown, between the City and Simms that is related to the Agreement, the development, or otherwise.

Our Firm is ethically bound to disclose this potential conflict to the parties regarding the referenced matter. Ethically we would be required to withdraw from both sides of this matter, however in the event the parties hereto wish for our Firm to represent

Trust In Us. For Life.®

City of Huber Heights / Charles V. Simms Development Corporation

Re: Waiver of Potential Conflict / CRA Agreement ("Agreement") between the City of Huber Heights and Charles V. Simms Development Corporation for the Residential Development Known as The Gables

May 5, 2023

Page 2

both parties despite this potential conflict, it will be necessary for both parties to waive any conflict by signing this letter where indicated.

In the event all parties involved acknowledge the receipt of this letter, and the disclosures contained herein, and are comfortable with the representation of their respective interests as outlined herein, I would ask that each party please sign this letter where indicated. The executed signature pages may be delivered in counterparts by facsimile or by email, and such facsimile or email version shall each be deemed to constitute a valid and binding original upon receipt. In doing so, each party will be waiving any claim for a conflict of interest in relation to those representations which are disclosed herein.

Please do not hesitate to contact our office should either party, after review of this correspondence, have any questions or comments regarding the matter addressed.

Sincerely yours,

PICKREL SCHAEFFER & EBELING CO., LPA

David H. Montgomery

DHM/lap

ACCEPTANCE

The undersigned party hereby acknowledges he has read, and understands, agrees, and accepts the terms, conditions, and content of this correspondence as of the date below written.

City of Huber Heights

By _____ Date: _____, 2023
Bryan Chodkowski
City Manager

ACCEPTANCE

The undersigned party hereby acknowledges he has read, and understands, agrees, and accepts the terms, conditions, and content of this correspondence as of the date below written.

Charles V. Simms Development Corporation

By _____ Date: _____, 2023
Charles H. Simms

City of Huber Heights / Charles V. Simms Development Corporation

Re: Waiver of Potential Conflict / CRA Agreement (“Agreement”) between the City of Huber Heights and Charles V. Simms Development Corporation for the Residential Development Known as The Gables

May 5, 2023

Page 3

President

AI-9246

**New Business E.
City Manager**

City Council Meeting

Meeting Date: 05/22/2023

CRA Agreement - Simms Development - The Gables

Submitted By: Bryan Chodkowski

Department: Economic Development

Council Committee Review?: Council Work Session **Date(s) of Committee Review:** 05/02/2023 and 05/16/2023

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

**Motion/Ordinance/
Resolution No.:**

Agenda Item Description or Legislation Title

A Resolution Authorizing The City Manager To Enter Into A Community Reinvestment Area Agreement With Charles Simms Development Under Certain Terms And Conditions.
(first reading)

Purpose and Background

The City of Huber Heights created Community Reinvestment Area #7 ("CRA #7") for the purpose of encouraging economic development activity. Parcel Numbers P70 03910 0057; P70 0320 0010, 0011, 0012; P70 0320 0018, 0019 and 0020 (the "Property") are located within CRA #7 and vacant. Charles Simms Development intends to construct 74 owner-occupied single family residences with an initial estimated investment of \$27,750,000.00. Absent any economic development agreement, the City is estimated to earn approximately \$1,138,854.27 in property tax from this project over the next 30 years. Charles Simms Development seeks to enter into an economic development agreement with the City that is estimated to generate approximately \$5,630,285.13 in net revenues to the City. This legislation authorizes the City Manager to execute said economic development agreement.

Fiscal Impact

Source of Funds: N/A

Cost: N/A

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

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

Financial Implications:

Attachments

Resolution

Attachment A

Exhibit A

Exhibit B

CITY OF HUBER HEIGHTS
STATE OF OHIO

RESOLUTION NO. 2023-R-

AUTHORIZING THE CITY MANAGER TO ENTER INTO A COMMUNITY REINVESTMENT AREA AGREEMENT WITH CHARLES SIMMS DEVELOPMENT UNDER CERTAIN TERMS AND CONDITIONS.

WHEREAS, the City of Huber Heights (the “City”) created Community Reinvestment Area #7 (“CRA #7”) by Resolution No. 94-R-1453 on June 20, 1994 for the purpose of encouraging economic development activity; and

WHEREAS, Parcel Numbers P70 03910 0057; P70 0320 0010, 0011, 0012; P70 0320 0018, 0019 and 0020 (the “Property”) are located within CRA #7; and

WHEREAS, Charles Simms Development intends to construct 74 owner-occupied single family residences (the “Project”) on the Property; and

WHEREAS, the Project will require an initial investment of \$27,750,000.00; and

WHEREAS, Charles Simms Development seeks to enter into an agreement with the City to ensure the economic development incentives available in CRA #7 as negotiated with the City are provided in support of the Project.

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 agreement with Charles Simms Development, attached hereto as Attachment A, to provide tax incentives for the purposes noted above and detailed therein; approved as to final form and content by the Law Director.

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 _____, 2023;
_____ Yeas; _____ Nays.

Effective Date:

AUTHENTICATION:

Clerk of Council

Mayor

Date

Date

ATTACHMENT A

PRE-JULY 1994 COMMUNITY REINVESTMENT AREA AND DEVELOPMENT AGREEMENT

This Community Reinvestment Area and Development Agreement (the “Agreement”) made and entered into as of the ____ day of ____ 2023, by and between the CITY OF HUBER HEIGHTS, OHIO, an Ohio political subdivision, with its main offices located at 6131 Taylorsville Road, Huber Heights, Ohio (the “City”); and SIMMS THE GABLES OF HH, LTD., an Ohio limited liability company, with its main offices located at 2785 Orchard Run Road, Dayton, Ohio 45449 (the “Property Owner”).

WHEREAS, the City has encouraged the development of real property located in the area designated as a Community Reinvestment Area; and

WHEREAS, on September 14, 1992, the City Council of Huber Heights, Ohio by Resolution No. 94-R-1453, designated the area known as “Community Reinvestment Area #7” or the “Area” pursuant Chapter 3735 of the Ohio Revised Code and the Charter of Huber Heights, as subsequently amended; and

WHEREAS, Community Reinvestment Area #7 has been modified or amended by the City Council of Huber Heights on September 27, 2010 via Resolution No. 2010-R-5333; June 8, 2015 via Resolution No. 2015-R-6195; September 14, 2021 via Resolution No. 2021-R-7036; and December 15, 2022 via Resolution No. 2022-R-7211; and *[Resolution # and dates will change if not CRA #7]* (the “CRA Resolution”)

WHEREAS, the Property Owner intends to develop certain unimproved real property and constructed certain improvements within the boundaries of the Community Reinvestment Area #7 in the City, provided that the appropriate development incentives are available to support the economic viability of the Project (defined below); and

WHEREAS, the City, having the appropriate authority pursuant to the Ohio Constitution, Charter of the City of Huber Heights and laws of the State of Ohio, desires to provide the Property Owner with incentives available for the development of the Project in said Community Reinvestment Area #7; and

NOW, Therefore, in consideration of the mutual covenants contained in this agreement, and of the benefit to be derived by the parties from the execution of it, the parties herein agree as follow:

1. The Property Owner shall, at an unimproved location on Brandt Pike, Huber Heights, Ohio, consisting of Parcel Numbers P70 03910 0057; P70 0320 0010, 0011, 0012; P70 0320 0018, 0019 and 0020 (the “Project Site”), as more specifically described in Exhibit A attached hereto and incorporated herein, and located within Community Reinvestment Area Number 7 construct seventy- four (74) single family residential dwellings, other improvements and amenities, comprising the planned community known as The Gables of Huber Heights (the “Project”). The Project involves a total investment by the Property Owner of approximately \$27,750,000.00, at the Project Site.

2. The Property Owner shall provide to the City’s housing officer, and the

designated tax incentive review council any information reasonably required by the City's housing officer or, the designated tax incentive review council to evaluate the Property Owner's compliance with this Agreement. Property Owner agrees to file with the City, no later than ninety (90) days following the issuance (which issuance will not be unreasonably conditioned, withheld or delayed) by the City of a certificate of occupancy for each residential or other structure within the Project, a real property CRA tax exemption application, which shall include at least the following information, to the extent applicable:

(i) Confirmation that construction of one or more structures of the Project has been completed and a certificate of occupancy has been issued therefor, and

(ii) Confirmation that the Project has been constructed, or is on track to include at least approximately the number of units described in this Agreement,

3. Upon conclusion of the Project, including any phased portions thereof, the City shall grant the Property Owner a Community Reinvest Area tax exemption for real property improvements made to the Project Site pursuant to applicable law, including Ohio Revised Code 3735.65 through 3735.70 (including the pre-Senate Bill 19 (1994) version thereof, as applicable); and shall be in the following amounts: One Hundred Percent (100%) for fifteen (15) consecutive years (the "CRA Exemption") for each structure constructed as part of the Project. The exemption commences the first year for which the real property would first be taxable were that property not exempted from taxation. The parties agree: (a) the CRA Exemption shall commence for each particular portion of the Project (including for example fewer than all the buildings that comprise the Project, if the Project is constructed in multiple phases) with the first tax year for that portion based on the submittal by the Property Owner of a CRA exemption application to the City provided that the CRA Exemption for any particular portion of the Project shall commence no later than the first tax year after that portion is completed; (b) the City shall provide written notification to the Montgomery County Auditors to the tax year in which the CRA Exemption shall commence as to each portion of the Project; (c) the parties shall cooperate and work in good faith to maximize the maximize for the Property Owner the benefits of the CRA Exemption. Property Owner must file the appropriate applications with the City, if any, and tax forms with the Montgomery County Auditor to effect and maintain the exemptions covered in this Agreement. The City shall timely submit any status report or other reporting to Montgomery County or the State of Ohio (including the Ohio Development Services Agency) as required by applicable law, rule or regulation.

4. Provided it receives the benefit of the CRA Exemption for the Project in accordance with the term of this Agreement, Property Owner agrees to annual minimum service payments ("MSP Payment(s)" or "MSPs") of Three Million Five Hundred Fifteen Thousand Dollars and xx/00 (\$3,515,000.00) in the aggregate, which upon full completion of construction of the Project shall result in an annual MSP Payment for each residential dwelling of Nine Thousand Five Hundred Dollars and xx/100 (\$9,500.00). The MSP payments will commence the calendar year immediately following the first calendar year in which any type of certificate of occupancy is issued for the first structure that is a portion of the Project, provided that the structure is exempted from real property taxation for that tax year pursuant to the CRA Resolution and in accordance with this Agreement (the "MSP First Year Payment"). Such MSPs shall continue in accordance with the provisions of this Agreement until the 14th year after the MSP First Payment Year (the "MSP Last Year

Payment”). The MSP Payments shall be as follows:

Years 11-15:	\$703,000.00 annually; and being
:	\$9,500.00 annually / dwelling unit based on Project buildout

For each applicable year, the MSP Payment will be due on or before the later of (i) thirty (30) days after the receipt of an invoice from the City therefor, or (ii) February 15th.

5. This Agreement is not transferable or assignable without the express written approval of the parties. This Agreement shall be binding upon each party’s respective successors and permitted assigns.

6. The Property Owner shall pay such real estate taxes as are not exempted under this Agreement, and are charged against such property, and shall file all tax reports and returns as required by law. If Property Owner fails to pay such taxes or file such returns and reports, all incentives granted under this Agreement are rescinded, beginning with the year for which such taxes are charged or such reports returns are required to be filed, and thereafter.

7. The City shall perform such acts as are reasonably necessary or appropriate to effect, claim, reserve, and maintain exemptions from taxation granted under this Agreement including, without limitation, joining in the execution of all documentation and providing any necessary certificates required in connection with such exemptions.

8. If for any reason the Community Reinvestment Area designation expires or the Director of the Ohio Department of Development revokes certification of the Area, entitlements granted under this Agreement shall continue for the number of years specified under this Agreement; provided however, if Property Owner materially fails to fulfill its obligation under this Agreement the City may terminate or modify the exemptions from taxation granted under this Agreement.

9. If the Property Owner materially fails to fulfill its obligations under this Agreement, or if the City determines that the certification as to delinquent taxes required by this Agreement is fraudulent, the City may unilaterally terminate or modify the exemptions from taxation granted under this Agreement; and may require that the Property Owner pay to the City the amount of taxes that were exempted under this Agreement, (i.e. the taxes that would have been payable had the property not been exempted from taxation under this Agreement). The City is authorized to secure the repayment of such taxes by a lien on the Project Site in an amount required to be repaid; and such lien shall attach and may be perfected, collected, and enforced, in the same manner as a mortgage lien on the real property; and shall otherwise have the same force and effect as a mortgage lien on the real property. The City is authorized to record the necessary documentation to perfect its lien rights set forth herein including but not limited to this Agreement and the Declaration of Minimum Service Payments (the “Declaration”), attached hereto as Exhibit B and incorporated herein. Any lien created by this Agreement, and/or pursuant to the Declaration of shall run with the land.

10. The Property Owner covenants that at the time of executing this Agreement it does not owe: (1) any delinquent taxes to the State of Ohio or political subdivision of the State; or (2) any other monies to the State, a state agency or a political subdivision of the State that are past due, whether the amounts owed are being contested in a court of law or not.

11. The Property Owner and the City acknowledge that this Agreement must be approved by formal action of the City Council of Huber Heights, Ohio, as a condition for the Agreement to take effect.

12. By executing this Agreement, the Property Owner is committing to following non-discriminatory hiring practices, acknowledging that no individual may be denied employment solely on the basis of race, religion, gender, disability, color, national origin, or ancestry.

13. The Property Owner agrees to construct the Project in accordance with the requirements of Huber Heights Codified Ordinances, and approvals for the Project.

14. The failure by any party to exercise any of its rights hereunder or to enforce any of the terms or conditions of this Agreement on any occasion shall not constitute or be deemed a waiver of that party's rights thereafter to exercise any rights hereunder or to enforce each and every term and condition of this Agreement. This Agreement may not be modified except by a writing specifically referring to this Agreement and executed by duly authorized representatives of both parties. The parties have had the opportunity to have this Agreement reviewed by legal counsel of their choosing. This Agreement was the product of negotiations between the parties and the parties agree that no provision or provisions herein shall be construed against any one party by virtue of the authorship of such provision.

15. The Parties agree to execute and deliver such additional documents and to perform such additional acts as may become reasonably necessary to effectuate the transfers contemplated by this Agreement.

16. A determination that any portion of this Agreement is unenforceable or invalid shall not affect the enforceability or validity of any of the remaining portions of this Agreement as a whole. In the event that any part of any of the covenants, Sections, or provisions herein may be determined by a court of law or equity to be invalid or unenforceable, the parties shall attempt to reach agreement with respect to valid and enforceable substitutes for deleted provision(s), which shall be as close in intent and effect as possible to the deleted portions.

17. The Property Owner hereby consents to the Huber Heights Tax Division providing to, the Huber Heights City Manager, or his designee, and City housing officer, any and all tax information if necessary to evaluate Property Owner's compliance with this Agreement and such disclosure shall not be a violation of any federal state or local confidentiality laws or requirements associated with tax and payroll returns. To the fullest extent permitted by law, the City Manager or his designee, or City housing officer will treat any such information as confidential.

18. The City hereby acknowledges that, from time to time during the development of the Project, the Property Owner and/or the developer (if different) will obtain financing in connection with the Project which will be secured in whole or in part by assignments, pledges or mortgages of the its interests in the Project Site (each a "Owner Mortgage"). In connection therewith, the City agrees to and shall cooperate with the Property Owner and developer to provide to the holder of any such Owner Mortgage (each a "Owner Mortgagee") such reasonable factual representations and mortgagee cure rights regarding this Agreement and/or the Property Owner's rights hereunder as such Owner Mortgagee may request from time to time. 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.

19. 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. All prior agreements between the parties relative to the subject matter of this Agreement are expressly terminated.

20. 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.

21. 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.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties have execute this Agreement, respectively, as
fo the date below written

CITY

PROPERTY OWNER

THE CITY OF HUBER HEIGHTS

SIMMS THE GABLES OF HH, LTD.

By: Charles V. Simms Development Corp.

Bryan RH Chodkowski,
Interim City Manager

Charles H. Simms, President

Date: _____

Date: _____

Approved as to Form and Correctness:

By: _____

Printed: _____

Title: _____

STATE OF OHIO)
) ss.
COUNTY OF MONTGOMERY)

This is an acknowledgement clause. No oath or affirmation was administered to the signer.

The foregoing instrument was acknowledged before me this _____ day of _____, 2023, by Bryan RH Chodkowski, Interim City Manager of Huber Heights, Ohio, on behalf of the City of Huber Heights, Ohio.

Printed Name: _____
Notary

STATE OF OHIO)
) ss.
COUNTY OF MONTGOMERY)

This is an acknowledgement clause. No oath or affirmation was administered to the signer.

The foregoing instrument was acknowledged before me this _____ day of _____, 2023, by Charles H. Simms, President of Charles V. Simms Development Corp., member of Simms The Gables of HH, Ltd., an Ohio limited liability company, on behalf of the company.

Printed Name: _____
Notary

EXHIBIT "A"

Situate in the State of Ohio, County of Montgomery, and in the City of Huber Heights, and located in Section 18, Town 2, Range 8 MRS, and being the followings lands:

Tract I:

Being all of Lot Numbered FIVE (5) of The Reserve on the Fairways as recorded in Plat Book 187, Pages 13-13A of the Plat Records of Montgomery County, Ohio records.

Parcel ID No.: P70-03910-0057

Tract II:

Being all of Lot Number FIFTEEN (15) of The Reserve at the Fairways, Section One-A, as recorded in Plat Book 202, Pages 1-1A of the Plat Records of Montgomery County, Ohio.

Parcel ID No.: P70-00320-0019

Tract III:

Being all of Lot Number SIXTEEN (16) of The Reserve at the Fairways, Section One-A, as recorded in Plat Book 202, Pages 1-1A of the Plat Records of Montgomery County, Ohio.

Parcel ID No.: P70-00320-0020

Tract IV:

Being all of Lot Numbered TWELVE (12) of The Reserve at the Fairways, Section One as recorded in Plat Book 195, Pages 21-21A of the Plat Records of Montgomery County, Ohio records.

Parcel ID No.: P70-0320-0012

Tract V:

Being all of Lot Number FOURTEEN (14) of The Reserve at the Fairways, Section One-A, as recorded in Plat Book 202, Pages 1-1A of the Plat Records of Montgomery County, Ohio.

Parcel ID No.: P70-00320-0018

Tract VI:

Being all of Lot Numbered TEN (10) of The Reserve at the Fairways, Section One as recorded in Plat Book 195, Pages 21-21A of the Plat Records of Montgomery County, Ohio records.

Parcel ID No.: P70-0320-0010

Tract VII:

Being all of Lot Numbered ELVEN (11) of The Reserve at the Fairways, Section One as recorded in Plat Book 195, Pages 21-21A of the Plat Records of Montgomery County, Ohio records.

Parcel ID No.: P70-0320-0011

EXCEPTING THEREFROM THE ABOVE REFERENCED TRACTS, the following:

Those portions of the Lots above which have been re-platted in The Reserve at the Fairways, Section One, in Plat Book 195, Pages 21-21A; The Reserve at the Fairways, Section One-A, in Plat Book 202, Pages 1-1A; The Reserve at the Fairways Condominium-Phase One, in Plat Book 199, Pages 6-6D; The Reserve at the Fairways Condominium-Phase Two, in Plat Book 200, Pages 13-13F; The Reserve at the Fairways Condominium-Phase Three, in Plat Book 200, Pages 14-14E; The Reserve at the Fairways Condominium-Phase 4, in Plat Book 204, Pages 1-1E; The Reserve at the Fairways Condominium-Phase Five, in Plat Book 205, Pages 36-36C; and The Reserve at the Fairways Condominium-Phase Six, in Plat Book 207, Pages 33-33C, all of the Montgomery County, Ohio records.

EXHIBIT B

DECLARATION OF MINIMUM SERVICE PAYMENTS

This Declaration of Minimum Service Payments ("Declaration") is made by SIMMS THE GABLES OF HH, LTD, an Ohio limited liability company having its address at 2785 Orchard Run Road, Dayton, Ohio 45449 (the "Declarant").

WHEREAS, the Declarant has acquired certain parcels of real property located in the City of Huber Heights, Ohio (the "City"), a description of which real property is attached hereto as Exhibit A (the "Parcel" or "Parcels"), having acquired such fee simple title by instrument No. 2022-00059936 recorded in the Official Records of the Office of the Recorder of Montgomery County, Ohio (the "County Recorder"); and

WHEREAS, the Declarant intends to develop the Parcels and in furtherance thereof the Declarant and the City entered into The Gables Development Agreement as of _____, 2023 (the "Agreement"), a copy of which may be obtained from the office of the City Manager of the City at 6131 Taylorsville Road, Huber Heights, Ohio 45424; and

WHEREAS, the Agreement creates an obligation that the owners of the Parcel make certain minimum service payments with respect to the Parcel (the "Minimum Service Payments");

WHEREAS, this Declaration is being made and filed of record pursuant to Section ____ of the Agreement.

NOW, THEREFORE, the Declarant, for itself and its successors and assigns to or of any of the Parcels (collectively, the "Owners" and individually, each an "Owner"), hereby declares that the forgoing recitals are incorporated into this Declaration by this reference and that the Parcels and any improvements thereon will be held, developed, encumbered, leased, occupied, improved, built upon, used and conveyed subject to the terms and provisions of this Declaration:

Section 1. Development of the Parcels. The Parcels shall be developed in the manner described in the Agreement.

Section 2. Provision of Real Property Tax Exemptions Pursuant to CRA #7 Resolution. The City shall not be required to provide any real property tax exemption with respect to the Parcels under CRA # 7 Resolution except as provided in the Agreement.

Section 3. Minimum Service Payments. The Declarant/Owner(s) agree to a minimum service payment obligation (the “Minimum Service Payment Obligation”) for each Parcel owned by Declarant or such respective Owner, pursuant to and in accordance with the requirements of the Agreement.

Section 4. Nondiscriminatory Hiring Policy. The Declarant/Owner(s) agree to comply with the City’s policies adopted pursuant to Ohio Revised Code Section 5709.832 to ensure that recipients of tax exemptions practice nondiscriminatory hiring in its operations. In furtherance of that policy, each agrees that it will not deny any individual employment solely on the basis of race, religion, sex, disability, color, national origin or ancestry.

Section 5. Covenants to Run With the Land. Each of the covenants contained in this Declaration are covenants running with the land and will, in any event and without regard to technical classification or designation, legal or otherwise, be binding to the fullest extent permitted by law and equity, for the benefit and in favor of, and enforceable by, the City against each Parcel, as applicable, any improvements thereon and the Owner of the Parcel.

IN WITNESS WHEREOF, the Declarant has caused this Declaration to be executed and effective as of _____, 2023.

SIMMS THE GABLES OF HH, LTD,
an Ohio limited liability company

By: Charles V. Simms Development Corp.,
an Ohio corporation

By: _____
Charles H. Simms, President

STATE OF OHIO) SS:
COUNTY OF MONTGOMERY)

This is an acknowledgement clause. No oath or affirmation was administered to the signer. On this _____ day of _____, 2023, before me a Notary Public personally appeared Charles H. Simms, President of Charles V. Simms Development Corp, an Ohio corporation, the Member of Simms The Gables of HH, Ltd, 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 said company.

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

Notary Public

AI-9239

City Council Meeting

**New Business F.
Human Resources**

Meeting Date: 05/22/2023

2024 BWC Group Retrospective Rating Program

Submitted By: Katie Knisley

Department: Human Resources

Council Committee Review?: Council Work Session
Date(s) of Committee Review: 05/16/2023

Audio-Visual Needs: None
Emergency Legislation?: No

**Motion/Ordinance/
Resolution No.:**

Agenda Item Description or Legislation Title

A Resolution Authorizing The City Manager To Participate In The Ohio Association Of Public Treasurers 2024 Workers' Compensation Group Retrospective Program Administered By Sedgwick. (first reading)

Purpose and Background

The City has been invited to join the BWC's Group Retrospective Rating Program through the Ohio Association of Public Treasurers Retro Group for the 2024 policy year. In this program, the premium is paid up front and claims during the policy year are surveyed for cost at 12, 24 and 36 months, then the difference between those costs and the premium will determine the amount of rebate the City will receive. This legislation authorizes the City Manager to enter into agreements with the Ohio Public Treasurer's Retrospective Group for policy year 2024 and with Sedgwick to continue as the City's TPA in order to assist in controlling the City's exposure to risk and potentially reducing BWC premiums.

Fiscal Impact

Source of Funds: Various Funds

Cost: \$209,032

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

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

Financial Implications:

The fee for Sedgwick is \$7,845 and the estimated premium cost for 2024 is \$209,032

Attachments

Resolution

CITY OF HUBER HEIGHTS
STATE OF OHIO

RESOLUTION NO. 2023-R-

AUTHORIZING THE CITY MANAGER TO PARTICIPATE IN THE OHIO ASSOCIATION OF PUBLIC TREASURERS 2024 WORKERS’ COMPENSATION GROUP RETROSPECTIVE PROGRAM ADMINISTERED BY SEDGWICK.

WHEREAS, the City of Huber Heights has determined it is in the best interest of the City to participate in a workers’ compensation group retrospective rating program in order to control the City’s risk exposure while potentially reducing workers’ compensation premiums; and

WHEREAS, the City of Huber Heights has been invited to participate in the Ohio Association of Public Treasurers 2024 Workers’ Compensation Group Retrospective Rating Program.

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

Section 1. The City Manager is hereby authorized to participate in the Ohio Association of Public Treasurers Workers’ Compensation Group Retrospective Rating Program and to enter into the necessary agreements with the Ohio Public Treasurers and to continue with its third-party administrator, Sedgwick, to participate in said group retrospective rating program with the Ohio BWC.

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 _____, 2023;
_____ Yeas; _____ Nays.

Effective Date:

AUTHENTICATION:

Clerk of Council

Mayor

Date

Date

AI-9241

City Council Meeting

**New Business G.
Human Resources**

Meeting Date: 05/22/2023

Ohio Police And Fire Pension Fund - Amendment - IAFF

Submitted By: Bryan Chodkowski

Department: Human Resources

Council Committee Review?: Council **Date(s) of Committee Review:** 05/16/2023
Work
Session

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

**Motion/Ordinance/
Resolution No.:**

Agenda Item Description or Legislation Title

A Resolution Amending The City Of Huber Heights "Pick Up" Of A Portion Of The Statutorily Required Contribution To The Ohio Police And Fire Pension Fund For Qualifying And Participating Members Of The Huber Heights Fire Division.
(first reading)

Purpose and Background

In its collective bargaining agreement negotiations with the City for the contract term of January 1, 2023 through December 31, 2025, IAFF Local 2926 agreed to forego the City's 1% pick-up of the required pension contribution in exchange for a 0.75% additional wage increase. Based on provisions of the Ohio Administrative Code, the Ohio Police and Fire Pension Fund requires the City adopt this legislation. Labor Counsel Jonathan Downes has reviewed and approved this legislation.

Fiscal Impact

Source of Funds: N/A

Cost: N/A

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

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

Financial Implications:

Attachments

Resolution

CITY OF HUBER HEIGHTS
STATE OF OHIO

RESOLUTION NO. 2023-R-

AMENDING THE CITY OF HUBER HEIGHTS “PICK UP” OF A PORTION OF THE STATUTORILY REQUIRED CONTRIBUTION TO THE OHIO POLICE AND FIRE PENSION FUND FOR QUALIFYING AND PARTICIPATING MEMBERS OF THE HUBER HEIGHTS FIRE DIVISION.

WHEREAS, via Resolution No. 2013-R-5818, adopted on May 13, 2013, the Huber Heights City Council provided that the City would “pick-up” one percent (1.0%) of all full-time employee’s required retirement contributions to their respective state pension system; and

WHEREAS, eligible employees of the Huber Heights Fire Division participate in the Ohio Police & Fire Pension fund; and

WHEREAS, under the right to collective bargaining, qualifying and participating members of the Huber Heights Fire Division, International Association of Fire Fighters, Local 2926, elected to pay the full twelve and a quarter percent (12.25%) mandatory contributions required to be paid under Section 742.31 of the Ohio Revised Code for qualifying and participating employees of the Huber Heights Fire Division who are members of the Ohio Police and Fire Pension Fund; and

WHEREAS, the Ohio Police & Fire Pension Fund has adopted new procedures for reporting picked-up contributions in order to properly prepare 1099-R forms for its members; and

WHEREAS, the City Council of Huber Heights wishes to amend its prior Resolution in order to accommodate the terms and conditions of its current collective bargaining agreement with qualifying and participating employees of the Huber Heights Fire Division, International Association of Fire Fighters, Local 2926, who are members of the Ohio Police and Fire Pension Fund;

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

Section 1. Effective January 1, 2023, the City Council of Huber Heights has determined to pick-up 0% of the twelve and a quarter percent (12.25%) mandatory contributions of the qualifying and participating employees of the Huber Heights Fire Division, International Association of Fire Fighters, Local 2926, who are members of the Ohio Police and Fire Pension Fund.

Section 2. Said picked up contributions paid through a payroll reduction even though designated as employee contributions for state law purposes are being paid by the City of Huber Heights in lieu of said contributions by the employee.

Section 3. Said picked up contributions will not be included in the gross income of the employees for tax reporting purposes, that is, for federal or state income tax withholding, until distributed from the Ohio Police and Fire Pension Fund.

Section 4. Said picked up contributions will be included in the gross income of the employees, for employment tax purposes, as the contributions are made to the Ohio Police and Fire Pension Fund.

Section 5. Said employees shall not be entitled to any option of choosing to receive the contributed amounts directly instead of having them paid by the City of Huber Heights to the Ohio Police and Fire Pension Fund.

Section 6. 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 7. 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 _____ , 2023;
_____ Yeas; _____ Nays.

Effective Date:

AUTHENTICATION:

Clerk of Council

Mayor

Date

Date

AI-9243

**New Business H.
Finance**

City Council Meeting

Meeting Date: 05/22/2023

Supplemental Appropriations

Submitted By: Jim Bell

Department: Finance **Division:** Accounting

Council Committee Review?: Council Work Session

Date(s) of Committee Review: 05/16/2023

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

**Motion/Ordinance/
Resolution No.:**

Agenda Item Description or Legislation Title

An Ordinance Amending Ordinance No. 2022-O-2562 By Making Supplemental Appropriations For Expenses Of The City Of Huber Heights, Ohio For The Period Beginning January 1, 2023 And Ending December 31, 2023.
(first reading)

Purpose and Background

The supplemental appropriations in this Ordinance are for the following purposes:

- \$80,000 for Merily Way traffic study.
- \$23,940 for temporary staffing services for the Accounting Division of the Finance Department, matched with a reduction in budgeted salary expenses for unfilled positions.
- \$41,180 for temporary staffing services for the Tax Division of the Finance Department, matched with a reduction in budgeted salary expenses for unfilled positions.
- \$5,000 for additional professional services to be provided by Lennon & Company, CPA.

Fiscal Impact

Source of Funds: General Fund

Cost: \$85,000

Recurring Cost? (Yes/No): No

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

Financial Implications:

Attachments

Ordinance

CITY OF HUBER HEIGHTS
STATE OF OHIO

ORDINANCE NO. 2023-O-

AMENDING ORDINANCE NO. 2022-O-2562 BY MAKING SUPPLEMENTAL APPROPRIATIONS FOR EXPENSES OF THE CITY OF HUBER HEIGHTS, OHIO FOR THE PERIOD BEGINNING JANUARY 1, 2023 AND ENDING DECEMBER 31, 2023.

WHEREAS, supplemental appropriations for expenses of the City of Huber Heights must be made for appropriations of funds for various 2023 operating and project funding.

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

Section 1. Ordinance No. 2022-O-2562 is hereby amended as shown in Exhibit A of this Ordinance.

Section 2. It is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this Ordinance were adopted in an open meeting of this Council and that all deliberations of this Council and of any of its Committees that resulted in such formal action were 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 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 _____, 2023;
_____ Yeas; _____ Nays.

Effective Date:

AUTHENTICATION:

Clerk of Council

Mayor

Date

Date

EXHIBIT A

AMENDING ORDINANCE NO. 2022-O-2562 BY MAKING APPROPRIATIONS FOR EXPENSES OF THE CITY OF HUBER HEIGHTS, OHIO FOR THE PERIOD BEGINNING JANUARY 1, 2023 AND ENDING DECEMBER 31, 2023.

- 1) Section 1 of Ordinance No. 2022-O-2562 is hereby amended to reflect changes in the appropriations of the 101 General Fund, as follows:
 - a. Subsection g) Central Services, Operations and Capital increase of \$80,000.00
 - b. Subsection k) Accounting, Personnel decrease of \$23,940.00
 - b. Subsection k) Accounting, Operations and Capital increase of \$28,940.00
 - b. Subsection l) Taxation, Personnel decrease of \$41,180.00
 - b. Subsection l) Taxation, Operations and Capital increase of \$41,180.00

General Fund	\$85,000.00
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AI-9244

**New Business I.
Finance**

City Council Meeting

Meeting Date: 05/22/2023

Increase Not To Exceed Amount - Lennon & Company, CPA

Submitted By: Jim Bell

Department: Finance

Division: Accounting

Council Committee Review?: Council
Work
Session

Date(s) of Committee Review: 05/16/2023

Audio-Visual Needs: None

Emergency Legislation?: No

**Motion/Ordinance/
Resolution No.:**

Agenda Item Description or Legislation Title

A Resolution To Increase The Not To Exceed Amount For Lennon & Company, CPA For Additional Professional Services For The Finance Department In Calendar Year 2023.
(first reading)

Purpose and Background

City Staff request the not to exceed spending limit of \$25,000 be increased to \$30,000 for additional professional services provided by Lennon & Company, CPA in preparation of the Annual Comprehensive Financial Report.

Fiscal Impact

Source of Funds: General Fund

Cost: \$5,000

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. 2023-R-

TO INCREASE THE NOT TO EXCEED AMOUNT FOR LENNON & COMPANY, CPA FOR ADDITIONAL PROFESSIONAL SERVICES FOR THE FINANCE DEPARTMENT IN CALENDAR YEAR 2023.

WHEREAS, Lennon & Company, CPA has previously performed other professional services for the City of Huber Heights, including the preparation of the Annual Comprehensive Financial Report and the City desires the ability to use Lennon & Company, CPA to perform additional professional services; and

WHEREAS, the City Charter requires that City Council approve all work performed by a single vendor in excess of \$25,000.00 in any given year; and

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

Section 1. The City Manager is hereby authorized to increase the not to exceed amount for Lennon & Company, CPA by \$5,000.00 for a new total of \$30,000.00 to cover all additional expenses throughout Calendar Year 2023 as needed.

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 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 _____, 2023;
____ Yeas; ____ Nays.

Effective Date:

AUTHENTICATION:

Clerk of Council

Mayor

Date

Date

AI-9248

**New Business J.
Finance**

City Council Meeting

Meeting Date: 05/22/2023

Capital Lease - New Medic - Fire Division

Submitted By: Jim Bell

Department: Finance **Division:** Accounting

Council Committee Review?: Council Work Session

Date(s) of Committee Review: 05/16/2023

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

**Motion/Ordinance/
Resolution No.:**

Agenda Item Description or Legislation Title

An Ordinance Authorizing The Execution Of A Master Lease-Purchase Agreement And Related Payment Schedule For The Purpose Of Acquiring An Emergency Medical Vehicle For Use By The City, And Declaring An Emergency.
(first reading)

Purpose and Background

The Fire Division has been notified that the new medic ordered in 2021 will be ready for delivery the first week of July, 2023. City Staff recommend that the City enter into a capital lease for the purchase of the new medic. Seven timely proposals were received by the Finance Department and are included as an attachment. City Staff recommends the lowest and best proposal for a five-year lease with an interest rate of 4.34% and variable declining semi-annual payments of no more than \$32,218.55, and a total financing of \$296,596.00 from Cogent Leasing & Financing, Inc. be approved. The Master Lease Purchase Agreement, including the Addendum, Fiscal Officer Certificate, Escrow Agreement and Payment Schedule are included. All of the documents have been thoroughly reviewed by an attorney at Squire Patton Boggs as bond counsel for the City. Due to delivery in early July, 2023 and financing that is only guaranteed until June 5, 2023, City Staff request that the second reading of this legislation be waived on May 22, 2023, with an emergency clause, so the legislation can be effective immediately.

Fiscal Impact

Source of Funds: Fire Capital Fund

Cost: \$32,219

Recurring Cost? (Yes/No): Yes

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

Financial Implications:

The semi-annual lease payments will begin in December 2023, and a full year of lease payments will be included in the proposed 2024 Budget.

Attachments

Lease Proposals

Master Lease Purchase Agreement

Addendum/Fiscal Officer Certificate

Escrow Agreement

Lease Payment Schedule
Ordinance

2022 Medic Lease Options - May 2023

<u>Bank/Finance Company</u>	<u>Annual Payments</u> <u>5 Years</u>
Cogent Bank	\$59,319.16
Fifth Third Bank	\$60,260.24
Huntington Bank Leasing	\$59,775.36
JP Morgan Chase Bank	\$0.00
US Bank Gov't Leasing & Finance	\$59,923.38
Republic First National Corp.	\$60,310.12
Tax Exempt Leasing Corp.	\$60,122.78
Horton (REV Financial Services)	\$62,039.74

Annual Financing for 2022 Medic will be out of the Fire Capital Fund

12/1/2023	1st semi-annual payment
6/1/2028	Final semi-annual payment

MASTER LEASE PURCHASE AGREEMENT

This Master Lease Purchase Agreement (this "Agreement"), dated as of June 5, 2023, is made and entered into by and between COGENT LEASING AND FINANCING, INC. (together with its successors and assigns, "Lessor"), and the CITY OF HUBER HEIGHTS, a political subdivision of the State of Ohio ("Lessee").

In consideration of the mutual covenants herein contained, the parties hereto agree as follows:

1. LEASE OF EQUIPMENT; FUNDING

1.1. Lease; Possession and Use. Lessor hereby agrees to sell, transfer and lease to Lessee, and Lessee hereby agrees to acquire, purchase and lease from Lessor the property described in each Lease Schedule (defined herein) executed and delivered by Lessor and Lessee, upon the terms and conditions set forth herein, together with all attachments, additions, accessions, parts, repairs, improvements, replacements and substitutions thereto (the "Equipment"). Each Lease (defined herein) executed and delivered by Lessor and Lessee pursuant to this Agreement shall constitute a separate and independent lease and installment purchase of the Equipment described therein. This Agreement is not a commitment by Lessor to enter into any Lease and nothing in this Agreement shall be construed to impose any obligation upon Lessor to enter into any proposed Lease. The decision whether Lessor enters into any Lease is within Lessor's sole discretion. As used herein, (i) "Lease Schedule" means a schedule substantially in the form attached as Exhibit A to this Agreement, together with all addenda, riders, attachments, certificates and exhibits thereto, as the same may from time to time be amended, modified or supplemented, and (ii) "Lease" means a Lease Schedule each together with this Agreement the terms and conditions of which are incorporated therein.

1.2. Funding. Unless otherwise provided in the applicable Lease Schedule, in order to provide financing to pay the costs to acquire and install the Equipment and to pay certain costs related to the execution and delivery of the Lease Documents (defined herein) as set forth in the applicable Lease Schedule (the "Purchase Price"), Lessor and Lessee shall execute and deliver an escrow agreement relating to such Schedule in form and substance and with an escrow agent satisfactory to Lessor (an "Escrow Agreement"). If all conditions set forth in Section 1.3 have been satisfied in full or waived, then Lessor will deposit or cause to be deposited into an escrow fund under the related Escrow Agreement, if applicable, or pay to Lessee an amount equal to the Purchase Price for the Equipment to be financed under the related Lease Schedule.

1.3. Funding Requirements. The funding of the Purchase Price and the performance by Lessor of any of its obligations pursuant to any Lease, are subject to the satisfaction or waiver of the following:

(a) Lessor has received all of the following documents, which shall be reasonably satisfactory, in form and substance, to Lessor: (1) evidence of insurance coverage or self-insurance as required by the Lease; (2) an opinion of Lessee's counsel and/or bond counsel to Lessee with respect to certain matters related to the Lease; (3) waivers of third party holders of interests in the real property where the Equipment will be located, as Lessor may deem necessary; (4) copies of resolutions by Lessee's governing body, duly authorizing the Lease and the Escrow Agreement and incumbency certificates for the person(s) executing the Lease and the Escrow Agreement; (5) such documents and certificates as Lessor may request relating to federal tax-exemption of interest payable under the Lease, including (without limitation) IRS Form 8038-G or 8038-GC and evidence of the adoption of a reimbursement resolution or other official action in the event that Lessee is to be reimbursed for expenditures that it has paid more than 60 days prior to the funding of the Purchase Price; (6) if all or a portion of the Purchase Price will be paid to Lessee (or vendor(s) or supplier(s) of the Equipment on behalf of Lessee), an acceptance certificate for the Equipment (substantially in the form attached as Exhibit B to this Agreement)(an "Acceptance Certificate"); and (7) such other documents and information previously identified by Lessor or otherwise reasonably requested by Lessor.

(b) Lessee has executed and delivered to Lessor the Lease Schedule, its related Payment

Schedule and the related Escrow Agreement (if applicable);

- (c) no Event of Default shall have occurred and be continuing under any Lease;
- (d) no material adverse change shall have occurred in the financial condition of Lessee;
- (e) the Equipment is reasonably satisfactory to Lessor and is free and clear of any Liens (defined herein) other than the respective rights of Lessor and Lessee as herein provided; and
- (f) all representations of Lessee in the Lease remain true, accurate and complete.

1.4. Delivery, Installation and Acceptance of Equipment. Lessee shall order each Equipment, shall cause the Equipment to be delivered and installed at the locations specified under the applicable Lease Schedule and shall pay all taxes, delivery costs and installation costs, if any, in connection therewith. If the Purchase Price is deposited under an Escrow Agreement for the acquisition of the Equipment, such funds shall be disbursed as provided therein. The insufficiency of proceeds of any Lease to pay all costs of the Equipment subject thereto shall not affect Lessee's obligations under this Section. When the Equipment described in such Lease Schedule is delivered, installed and accepted, Lessee shall promptly execute and deliver to Lessor an Acceptance Certificate for the Equipment.

2. TERM

2.1. Term. The term of each Lease (the "Lease Term") shall commence on the Lease Date set forth in the applicable Lease Schedule and shall continue until the end of the fiscal year of Lessee in effect at such Lease Date (the "Original Term"); provided that the Lease Term for each Lease may be continued, solely at the option of Lessee, at the end of the Original Term or any renewal term of each Lease, each having a duration of one year and a term coextensive with Lessee's fiscal year or such earlier date specified in the Lease (each a "Renewal Term"), as specified in the Lease Schedule applicable thereto up to the maximum Lease Term set forth in such Lease. At the end of the Original Term and at the end of each Renewal Term until the maximum Lease Term has been completed, Lessee shall be deemed to have exercised its option to continue each Lease for the next Renewal Term, unless sooner terminated pursuant to the Lease.

3. RENTAL PAYMENTS

3.1. Rental Payments. Lessee agrees to pay the rent payments ("Rental Payments") in the amounts and on the dates (each a "Payment Date") as specified in the Payment Schedule attached to each Lease Schedule. A portion of each Rental Payment is paid as interest as specified in the Payment Schedule for each Lease. All Rental Payments shall be paid to Lessor, at such places as Lessor may from time to time designate by written notice to Lessee. Lessee shall pay the Rental Payments with lawful money of the United States of America from moneys legally available therefor.

3.2. Current Expense. The obligations of Lessee under this Agreement and all Lease Schedules, including its obligation to pay the Rental Payments due in any fiscal year shall constitute a current expense of Lessee for such fiscal year and shall not constitute an indebtedness of Lessee within the meaning of the Constitution and laws of the State of Ohio (the "State"). THE RENTAL PAYMENTS AND ANY OTHER AMOUNTS PAYABLE HEREUNDER ARE TO BE MADE ONLY FROM LESSEE'S LEGALLY AVAILABLE REVENUES APPROPRIATED ON AN ANNUAL BASIS, AND NONE OF LESSEE, THE STATE, OR ANY POLITICAL SUBDIVISION OR AGENCY THEREOF SHALL BE OBLIGATED TO PAY ANY SUMS DUE UNDER A LEASE FROM THE COMPELLED LEVY OF AD VALOREM OR OTHER TAXES EXCEPT FROM THOSE LEGALLY AVAILABLE REVENUES APPROPRIATED BY LESSEE ON AN ANNUAL BASIS. Nothing herein shall constitute a pledge by Lessee of the full faith and credit or taxing power of the Lessee, the State or any political subdivision or agency thereof. The person or entity in charge of preparing Lessee's budget will include in the budget request for each fiscal year the Rental Payments to become due during such fiscal year, and will use all reasonable and lawful means available to secure the

appropriation of money for such fiscal year sufficient to pay all Rental Payments coming due therein; provided that Lessee's governing body retains the authority to approve or reject such budget request. Lessor acknowledges that appropriation for Rental Payments and any other amounts payable hereunder is a governmental function which Lessee cannot contractually commit itself in advance to perform. Without committing itself to do so, Lessee reasonably believes that moneys in an amount sufficient to make all Rental Payments can and will lawfully be appropriated and made available to permit Lessee's continued utilization of the Equipment in the performance of its essential functions during the applicable Lease Term.

3.3. Unconditional Rental Payments. Subject to Section 3.4 hereof, (a) Lessee's obligation to make Rental Payments and any other payments hereunder shall be absolute and unconditional; (b) Lessee shall make such payments when due and shall not withhold any of these payments pending final resolution of any disputes; (c) Lessee shall not assert any right of set-off or counterclaim against its obligation to make these payments; (d) Lessee's obligation to make Rental Payments or other payments shall not be abated through accident, unforeseen circumstances, failure of the Equipment to perform as desired, damage or destruction to the Equipment, loss of possession of the Equipment or obsolescence of the Equipment; and (e) Lessee shall be obligated to continue to make payments required of it by this Agreement if title to, or temporary use of, the Equipment or any part thereof shall be taken under exercise of the power of eminent domain.

3.4. Nonappropriation. If during the then current fiscal year of Lessee, sufficient funds are not appropriated to make Rental Payments required under a Lease for the following fiscal year (an "Event of Nonappropriation"), Lessee shall be deemed not to have renewed such Lease for the following fiscal year, and the Lease shall terminate at the end of the then current fiscal year, and Lessee shall not be obligated to make Rental Payments under the Lease beyond the then current fiscal year for which funds have been appropriated. Upon an Event of Nonappropriation, Lessee shall return the Equipment subject to the Lease to Lessor in accordance with the requirements of Section 11.3. Lessee shall notify Lessor in writing no later than 30 days following an Event of Nonappropriation, but failure to provide such notice shall not operate to extend the Lease Term. If Lessee fails to return the applicable Equipment or otherwise comply with Section 11.3, the termination shall nevertheless be effective, but Lessee shall be responsible for the payment of an amount equal to the Rental Payments that would thereafter have come due if the Lease had not been terminated and which are attributable to the number of days after which Lessee fails to comply with Lessor's instructions and for any other loss suffered by Lessor as a result of Lessee's failure to take such actions as required. In addition, Lessor may, by written instructions to any escrow agent who is holding proceeds of the Lease, instruct such escrow agent to release all such proceeds and any earnings thereon to Lessor.

3.5. Security Interest. As security for Lessee's obligations to pay all Rental Payments and all other amounts due and payable under each Lease and to perform and observe all covenants, agreements and conditions (direct or indirect, absolute or contingent, due or to become due or existing or hereafter arising) of Lessee under such Lease, Lessee hereby grants to Lessor a first priority, security interest in any and all of the Equipment (now existing or hereafter acquired) under each Lease, moneys and investments held from time to time in the escrow fund under each Escrow Agreement and any and all proceeds of any of the foregoing. Lessee agrees to execute and deliver to Lessor all necessary documents to evidence and perfect such security interest, including, without limitation, Uniform Commercial Code financing statements and any amendments thereto and certificates of title or certificates of origin (or applications thereof) noting Lessor's interest thereon.

3.6. Tax Covenants.

(a) Lessee covenants and agrees that it will (i) complete and timely file an information reporting return with the Internal Revenue Service ("IRS") in accordance with Section 149(e) of the Internal Revenue Code of 1986, as amended (the "Code"); (ii) not permit the Equipment to be directly or indirectly used for a private business use within the meaning of Section 141 of the Code including, without limitation, use by private persons or entities pursuant to contractual arrangements which do not satisfy IRS guidelines for permitted management contracts, as the same may be amended from time to time; (iii) invest and reinvest

moneys on deposit in the any escrow fund related to each Lease from time to time in a manner that will not cause such Lease to be classified as an “arbitrage bond” within the meaning of Section 148(a) of the Code; (iv) rebate an amount equal to excess earnings in any such escrow fund to the federal government if required by, and in accordance with, Section 148(f) of the Code and make the determinations and maintain the records required by the Code; and (v) comply with all provisions and regulations applicable to establishing and maintaining the excludability of the interest component of the Rental Payments under each Lease from federal gross income pursuant to Section 103 of the Code.

(b) If Lessor either (i) receives notice, in any form, from the IRS; or (ii) reasonably determines, based on an opinion of independent tax counsel selected by Lessor that Lessor may not exclude the interest component of any Rental Payment under a Lease from federal gross income, then Lessee shall pay to Lessor, within thirty (30) days after Lessor notifies Lessee of such determination, the amount which, with respect to Rental Payments previously paid and taking into account all penalties, fines, interest and additions to tax (including all federal, state and local taxes imposed on the interest component of all Rental Payments under the Lease due through the date of such event) that are imposed on Lessor as a result of the loss of the exclusion, will restore to Lessor the same after tax yield on the transaction evidenced by such Lease (assuming tax at the highest marginal corporate tax rate) that it would have realized had the exclusion not been lost. Additionally, Lessee agrees that upon the occurrence of such an event, it shall pay additional rent to Lessor on each succeeding Rental Payment due date in such amount as will maintain such after tax yield to Lessor. Lessor's determination of the amount necessary to maintain its after-tax yield as provided in this subsection (b) shall be conclusive (absent manifest error).

4. PURCHASE AND PREPAYMENT

4.1. End of Lease Term. Lessee shall have the option to purchase all of the Equipment under a Lease upon the expiration of the Lease Term and payment in full of all Rental Payments then due and all other amounts then owing under the Lease, and the payment of \$1.00 to Lessor.

4.2. Optional Prepayment. Lessee shall have the option to prepay its obligations under any Lease in whole but not in part on any Payment Date as set forth in the applicable Payment Schedule , but only if and to the extent the Lease Schedule provides for such prepayment. Lessee shall give written notice to Lessor of its intention to exercise its option not less than thirty (30) days prior to the Payment Date on which the option will be exercised and shall pay to Lessor not later than such Payment Date an amount equal to all Rental Payments and any other amounts then due or past due under such Lease, including the Rental Payment due on the Payment Date on which the option shall be effective, and the applicable Prepayment Price set forth in the applicable Payment Schedule (the “Prepayment Price”).

4.3. Excess Proceeds. Lessee's obligations under a Lease shall be prepaid in part from the excess proceeds of the Lease on the terms set forth in any Escrow Agreement pursuant to which proceeds of the Lease are being held.

4.4. Release of Lessor's Interest. Upon timely receipt, in collected funds, of all amounts required for the purchase of the Equipment subject to any Lease pursuant to Section 4.1 or the prepayment in whole of any Lease pursuant to Section 4.2, such Lease shall terminate, all of Lessor's right, title and interest in and to the Equipment shall terminate, and Lessor shall deliver to Lessee all such documents and instruments as Lessee may reasonably request to evidence the termination of the Lease and Lessor's interest in the Equipment, without warranty by or recourse to Lessor.

5. REPRESENTATIONS AND WARRANTIES.

5.1. Representations and Warranties. Lessee shall be deemed to make the following representations and warranties to Lessor with respect to each Lease, in each case as of the Lease Date for such Lease:

(a) Lessee is a state or political subdivision of the State within the meaning of Section 103(c) of the Code, duly organized and existing under the Constitution and laws of the State, and is authorized under the Constitution and laws of the State to enter into this Agreement, the other Lease Documents and the transactions contemplated hereby and thereby, and to perform all of its obligations under this Agreement and the other Lease Documents.

(b) The execution and delivery of this Agreement and the Lease Schedule have been duly authorized by all necessary action of Lessee's governing body and such action is in compliance with all public bidding and other State and federal laws applicable to this Agreement and the acquisition and financing of the Equipment by Lessee.

(c) This Agreement and the Lease Schedule have been duly executed and delivered by and constitute the valid and binding obligations of Lessee, enforceable against Lessee in accordance with their respective terms.

(d) The execution, delivery and performance of this Agreement and the Lease Schedule by Lessee does not (i) violate any State or federal law or local law or ordinance, or any order, writ, injunction, decree, or regulation of any court or other governmental agency or body applicable to Lessee, or (ii) conflict with or result in the breach or violation of any term or provision of, or constitute a default under, any note, bond, mortgage, indenture, agreement, deed of trust, lease or other obligation to which Lessee is bound.

(e) There is no action, suit, proceeding, claim, inquiry or investigation, at law or in equity, before or by any court, regulatory agency, public board or body pending or, to the best of Lessee's knowledge, threatened against or affecting Lessee, challenging Lessee's authority to enter into this Agreement or any other Lease Document or any other action wherein an unfavorable ruling or finding would adversely affect the enforceability of this Agreement or any other Lease Document.

(f) Lessee or Lessee's governing body has appropriated and/or taken other lawful actions necessary to provide moneys sufficient to pay all Rental Payments during the current fiscal year, and such moneys will be applied in payment of all Rental Payments due and payable during such current fiscal year.

(g) Lessee has an immediate need for, and expects to make immediate use of, the Equipment, which need is not temporary or expected to diminish during the applicable Lease Term.

6. INSURANCE

6.1. Liability and Property Insurance. Lessee shall, at its own expense, procure and maintain continuously in effect during each Lease Term: (a) public liability insurance for death or injuries to persons, or damage to property arising out of or in any way connected to the Equipment sufficient to protect Lessor and its assigns from liability in all events, with a coverage of not less than \$1,000,000 per occurrence unless specified differently in the related Lease Schedule, and (b) insurance against such hazards as Lessor may require, including, but not limited to, all-risk casualty and property insurance, in an amount equal to the greater of the full replacement cost of the Equipment or the applicable Prepayment Price.

6.2. Insurance Requirements. All insurance policies required by Section 6.1 shall be taken out and maintained with insurance companies acceptable to Lessor and shall contain a provision that thirty (30) days prior to any change in the coverage (including cancellation) the insurer must provide written notice to the insured parties. No insurance shall be subject to any co-insurance clause. Each liability insurance policy shall be endorsed to name Lessor and its assigns as an additional insured party and each casualty and property insurance policy shall be endorsed to name Lessor and its assigns as loss payee, in each case regardless of any breach of warranty or other act or omission of Lessee. Lessee may self-insure against the risks described in Section 6.1 with the prior written consent of Lessor.

7. ADDITIONAL OBLIGATIONS

7.1. Use and Maintenance of Equipment. Lessee shall, at its own expense, maintain the Equipment in good condition and proper working order, and shall make all necessary repairs and replacements to keep the Equipment in such condition. The Equipment will be used by Lessee only for the purpose of performing Lessee's essential governmental functions. Lessee shall not install, use, operate or maintain the Equipment improperly, carelessly, in violation of any manufacturer's guidelines or in violation of any applicable law or regulation or in a manner contrary to that contemplated by this Agreement. Lessee shall obtain and maintain all permits and licenses necessary for the installation and operation of the Equipment. Lessee shall have sole responsibility to maintain and repair the Equipment. Lessee shall keep (or in the case of Equipment constituting motor vehicles, house) the Equipment at the address specified in the related Lease Schedule; provided that Lessee may change the location at which any Equipment is kept (or housed) with thirty (30) days prior written notice to Lessor specifying the address of the new location. Lessee shall provide Lessor access at all reasonable times to examine and inspect the Equipment and provide Lessor with such access to the Equipment as may be reasonably necessary to perform maintenance on the Equipment in the event of failure by Lessee to perform its obligations hereunder. If Lessor reasonably determines that Lessee is not maintaining any of the Equipment in accordance with this Section, Lessor may (to the extent permitted by law and in addition to any other remedies it may have) require Lessee to enter into maintenance contracts for such Equipment in form approved by Lessor and with approved providers.

7.2. Taxes. Lessee shall pay all taxes, assessments and other charges which are assessed or levied against the Equipment or any part thereof, during the Lease Term, whether assessed against Lessee or Lessor. With respect to any taxes or charges that may lawfully be paid in installments over a period of years, Lessee shall be obligated to pay only such installments as accrue during the then current fiscal year of the Lease Term for such Equipment.

7.3. Modification of Equipment. Lessee will not, without the prior written consent of Lessor, affix or install any accessory equipment or device on any of the Equipment if such addition will change or impair the originally intended value, function or use of the Equipment.

7.4. Liens. Lessee shall not, directly or indirectly, create, incur, assume or suffer to exist any mortgage, pledge, lien, charge, encumbrance or other claim with respect to the Equipment (each, a "Lien"), other than the respective rights of Lessor and Lessee as herein provided. Lessee shall promptly, at its own expense, take such actions as may be necessary duly to discharge or remove any such claim if the same shall arise at any time.

7.5. Financial Information. Lessee shall deliver to Lessor (i) its annual audited financial statements within [270] days after the end of each fiscal year, (ii) its annual budget for each fiscal year promptly following approval thereof, and (iii) such other financial statements and information relating to the ability of Lessee to satisfy its obligations under this Agreement and the Lease as may be reasonably requested by Lessor from time to time.

8. TITLE; NO WARRANTIES BY LESSOR

8.1. Title. During the Lease Term, legal title to all Equipment shall be in Lessee, subject to Lessor's interests under the applicable Lease Schedule and this Agreement. Upon an Event of Default or Event of Nonappropriation, title shall immediately vest in Lessor, free and clear of any right, title or interest of Lessee.

8.2. Personal Property. The Equipment is and shall at all times be and remain personal property and not fixtures.

8.3. No Warranties. LESSEE ACQUIRES AND LEASES THE EQUIPMENT UNDER EACH LEASE "AS IS." LESSEE ACKNOWLEDGES THAT LESSOR DID NOT MANUFACTURE THE EQUIPMENT UNDER ANY LEASE. LESSOR DOES NOT REPRESENT THE MANUFACTURER,

SUPPLIER, OWNER OR DEALER, AND LESSEE SELECTED THE EQUIPMENT BASED UPON LESSEE'S OWN JUDGMENT. LESSOR MAKES NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR OTHERWISE OR AS TO THE EQUIPMENT'S VALUE, DESIGN, CONDITION, USE, CAPACITY OR DURABILITY. LESSEE AGREES THAT REGARDLESS OF CAUSE, LESSOR IS NOT RESPONSIBLE FOR, AND LESSEE WILL NOT MAKE ANY CLAIM AGAINST LESSOR FOR, ANY DAMAGES, WHETHER CONSEQUENTIAL, DIRECT, SPECIAL OR INDIRECT INCURRED BY LESSEE IN CONNECTION WITH THE EQUIPMENT UNDER ANY LEASE. NEITHER THE MANUFACTURER, SUPPLIER OR DEALER NOR ANY SALESPERSON, EMPLOYEE OR AGENT OF THE MANUFACTURER, SUPPLIER OR DEALER IS LESSOR'S AGENT OR HAS ANY AUTHORITY TO SPEAK FOR LESSOR OR TO BIND LESSOR IN ANY WAY. For and during the Lease Term under each Lease, Lessor assigns to Lessee any manufacturer's or Supplier's product warranties, express or implied, applicable to any Equipment and Lessor authorizes Lessee to obtain the customary services furnished in connection with such warranties at Lessee's sole expense. Lessee agrees that (a) all Equipment will have been purchased by Lessor for the benefit of the Lessee in accordance with Lessee's specifications from suppliers selected by Lessee, (b) Lessor is not a manufacturer or dealer of any Equipment and has no liability for the delivery or installation of any Equipment, (c) Lessor assumes no obligation with respect to any manufacturer's or Supplier's product warranties or guaranties, (d) no manufacturer or Supplier or any representative of said parties is an agent of Lessor, and (e) any warranty, representation, guaranty or agreement made by any manufacturer or supplier or any representative of said parties shall not be binding upon Lessor.

9. RISK OF LOSS; CASUALTY; INDEMNITY

9.1. Risk of Loss. As between Lessee and Lessor, Lessee bears the entire risk of loss, theft, damage or destruction of any Equipment in whole or in part for any reason whatsoever. No loss to any Equipment shall relieve Lessee from the obligation to make any Rental Payments or to perform any other obligation under any Lease. Proceeds of any insurance recovery will be applied to Lessee's obligations under this Section 9.

9.2. Notice of Loss. If a casualty occurs to any Equipment, Lessee shall immediately notify Lessor of the same and Lessee shall, unless otherwise directed by Lessor, immediately repair the same.

9.3. Application of Proceeds. If any item of Equipment has suffered a casualty loss is beyond repair, then Lessee shall either: (a) promptly replace such Equipment with similar equipment in good repair, condition and working order free and clear of any liens (except Lessor's rights hereunder), in which event such replacement equipment shall automatically be Equipment under the applicable Lease, or (b) on the next scheduled Payment Date, pay Lessor (i) all amounts owed by Lessee under the applicable Lease, including the Rental Payment due on such date, plus (ii) an amount equal to the applicable Prepayment Price set forth in the Payment Schedule to the applicable Lease. If Lessee is making such payment with respect to less than all of the Equipment under a Lease, then Lessor will provide Lessee with the pro rata amount of the Prepayment Price to be paid by Lessee with respect to the such Equipment.

9.4. Claims and Expenses. To the extent permitted by and enforceable under State law, Lessee shall bear the risk for, shall pay directly and shall defend against any and all claims, liabilities, proceedings, actions, expenses (including reasonable attorneys' fees), damages or losses arising under or related to any Equipment, including, but not limited to, the possession, ownership, lease, use or operation thereof. These obligations of Lessee shall survive any expiration or termination of any Lease.

10. ASSIGNMENT

10.1. Assignment by Lessor. Lessor may assign its rights, title and interest in and to any Lease, any Equipment or any Escrow Agreement (including the escrow fund thereunder), and/or may grant or assign a security interest in any Lease, its Equipment or any Escrow Agreement (including the escrow fund thereunder), in whole or in part, to any party at any time and from time to time without Lessee's consent. Any such assignee or lien holder (an "Assignee") shall have all of the rights of Lessor under the applicable Lease and Escrow Agreement. LESSEE AGREES NOT TO ASSERT AGAINST ANY ASSIGNEE ANY

CLAIMS, ABATEMENTS, SETOFFS, COUNTERCLAIMS, RECOUPMENT OR ANY OTHER SIMILAR DEFENSES WHICH LESSEE MAY HAVE AGAINST LESSOR. Unless otherwise agreed by Lessee in writing, any such assignment transaction shall not release Lessor from any of Lessor's obligations under the applicable Lease. An assignment or reassignment of any of Lessor's right, title or interest in a Lease, its Equipment or any Escrow Agreement (including the escrow fund thereunder) shall be enforceable against Lessee only after Lessee receives a written notice of assignment that discloses the name and address of each such Assignee. Lessee agrees to acknowledge in writing any such assignments if so requested. Lessee shall keep a complete and accurate record of all such assignments in the form necessary to comply with Section 149(a) of the Code. Lessee agrees to acknowledge in writing any such assignments if so requested.

10.2. Assignment and Subleasing by Lessee. Neither this Agreement nor any Lease or any Equipment may be assigned, subleased, sold, transferred, pledged or mortgaged by Lessee.

11. EVENTS OF DEFAULT; REMEDIES

11.1. Events of Default Defined. The occurrence of any of the following events with respect to a Lease shall constitute an Event of Default under the Lease:

(a) Lessee's failure to pay any Rental Payment or other amount required to be paid to Lessor under the Lease within ten (10) days following the due date thereof, other than by reason of an Event of Nonappropriation;

(b) Lessee fails to perform or observe any of its obligations under Section 6, 7.4 or 10.2 hereof;

(c) With the exception of the above clauses (a) or (b), Lessee's failure to perform or abide by any condition, agreement or covenant with respect to the Lease for a period of thirty (30) days after written notice by Lessor to Lessee specifying such failure and requesting that it be remedied, unless Lessor shall agree in writing to an extension of time prior to its expiration;

(d) Lessee is in default with respect to the payment or performance of any indebtedness, liability or obligation to Lessor or any of its affiliates under any note, loan agreement, security agreement, lease, title retention or conditional sales agreement or any other instrument or agreement (including the occurrence of any Event of Default under any other Lease then held by Lessor), whether accelerated or otherwise and any applicable grace period with respect thereto has expired; or

(e) Any statement, representation or warranty made by Lessee in the Lease or in any writing delivered by Lessee pursuant thereto or in connection therewith proves at any time to have been false, misleading or erroneous in any material respect as of the time when made; or

(f) Lessee applies for or consents to the appointment of a receiver, trustee, conservator or liquidator of Lessee or of all or a substantial part of its assets, or a petition for relief is filed by Lessee under any federal or state bankruptcy, insolvency, moratorium or similar law.

11.2. Remedies on Default. Upon the occurrence of any Event of Default with respect to a Lease, Lessor shall have the right, at its option and without any further demand or notice to one or more or all of the following remedies with respect to the Lease:

(a) Lessor, with or without terminating the Lease, may declare all Rental Payments payable under the Lease to the end of the then-current fiscal year of Lessee to be immediately due and payable by Lessee, whereupon such Rental Payments shall be immediately due and payable.

(b) Lessor may require Lessee to promptly return all Equipment to Lessor in the manner set forth in Section 11.3 (and Lessee agrees that it shall so return the Equipment), or Lessor may, at its option, enter upon the premises where any Equipment is located and repossess such Equipment without demand,

without any court order or other process of law and without liability for any damage occasioned by such repossession; and Lessor may thereafter dispose of the Equipment. If Lessor terminates the Lease and disposes of any or all of the Equipment, Lessor shall apply the proceeds of any such disposition to pay the following items in the following order: (i) all costs and expenses (including, but not limited to, attorneys' fees) incurred in securing possession of the Equipment; (ii) all costs and expenses incurred in completing the disposition of the Equipment; (iii) any sales or transfer taxes incurred in the disposition of the Equipment; (iv) any Rental Payments payable under the Lease to the end of the then-current fiscal year of Lessee; (v) the outstanding principal component of Rental Payments under the Lease; and (vi) any other amounts then due under the Lease. Any disposition proceeds remaining after the requirements of clauses (i), (ii), (iii), (iv), (v) and (vi) have been met shall be paid to Lessee.

(c) By written notice to any escrow agent that is holding proceeds of the Lease under an Escrow Agreement, Lessor may instruct such escrow agent to release all such proceeds and any earnings thereon to Lessor, such sums to be credited to payment of Lessee's obligations under the Lease; or

(d) Lessor may exercise any other remedy available, at law or in equity, with respect to such Event of Default. Lessee shall pay the reasonable attorneys' fees and expenses incurred by Lessor in exercising any remedy hereunder.

11.3. Return of Equipment; Release of Lessee's Interest. Upon termination of any Lease prior to the payment of all Rental Payments or the applicable Prepayment Price thereunder (whether as result of an Event of Nonappropriation or Event of Default), Lessee shall, within ten (10) days after such termination, at its own expense: (a) perform any testing and repairs required to place the related Equipment in the condition required by Section 7; (b) if deinstallation, disassembly or crating is required, cause such Equipment to be deinstalled, disassembled and crated by an authorized manufacturer's representative or such other service person as is satisfactory to Lessor; (c) return such Equipment to a location in the continental United States specified by Lessor, freight and insurance prepaid by Lessee; and (d) comply with any additional return conditions specified in the Lease Schedule. Lessee shall execute and deliver to Lessor such documents as Lessor may request to evidence the passage of legal title and ownership to Lessor and termination of Lessee's interest in the Equipment.

With respect to any provision of the Agreement requiring Lessee to return all or any portion of the Equipment to Lessor or to transfer title to all or any portion of the equipment to Lessor, Lessee agrees to voluntarily do so. In the event that Lessee fails or refuses to return or transfer the Equipment or title thereto voluntarily as set forth above, Lessor acknowledges that the Agreement does not and shall not create a right in Lessor to involuntarily dispossess Lessee of title to or possession of all or any item of the Equipment. In lieu of such right Lessor shall be entitled to and Lessee agrees to pay to Lessor immediately, but only from legally available funds, the Prepayment Price, plus any Rental Payments accrued and unpaid as of the date of such payment.

11.4. Late Charge. To the extent permitted by and enforceable under State law, Lessee shall pay Lessor a charge on any Rental Payment not paid on the date such payment is due at a rate equal to the interest rate set forth in the applicable Lease Schedule plus 5% per annum or the maximum amount permitted by law, whichever is less (the "Default Rate"), from such date.

11.5. No Remedy Exclusive. Each of the rights and remedies under this Agreement and each Lease is cumulative and may be enforced separately or concurrently. No course of dealing or conduct between Lessor and Lessee shall be effective to amend, modify or change any provisions of this Agreement or any Lease. No failure or delay by Lessor to insist upon the strict performance of any term, covenant or agreement of the Agreement or any Lease, or to exercise any right, power or remedy consequent upon a breach thereof, shall constitute a waiver of any such term, covenant or agreement or of any such breach, or preclude Lessor from exercising any such right, power or remedy at any later time or times.

11.6. Costs and Attorneys' Fees. To the extent permitted by and enforceable under State law, upon the occurrence of an Event of Default, Lessee agrees to pay to Lessor or reimburse Lessor for, in

addition to all other amounts payable hereunder, all of Lessor's costs of collection, including reasonable attorneys' fees, whether or not suit or action is filed thereon. Any such costs shall be immediately due and payable upon written notice and demand given to Lessee, shall be secured by this Agreement until paid, and shall bear interest at the Default Rate. In the event suit or action is instituted to enforce any of the terms of this Agreement, the prevailing party shall be entitled to recover from the other party such sum as the court may adjudge reasonable as attorneys' fees at trial and on appeal of such suit or action or in any bankruptcy proceeding, in addition to all other sums provided by law.

12. MISCELLANEOUS PROVISIONS

12.1. Notices. All written notices to be given under this Agreement shall be given (a) personally, (b) by mail in registered or certified form, with postage prepaid, or (c) by overnight courier, charges prepaid, in each case to the party entitled thereto at its address specified beneath each party's signature, or at such address as the party may provide to the other parties hereto in writing from time to time, and to any assignee at its address as it appears on the registration books maintained by Lessee. Any such notice shall be deemed to have been received 72 hours after deposit in the United States mail, 24 hours after deposit with a courier, or, if given by other means, when delivered.

12.2. Binding Effect. This Agreement and each Lease hereunder shall be binding upon and shall inure to the benefit of Lessor and Lessee and their respective successors and assigns. Specifically, as used herein the term "Lessor" means, with respect to a Lease, any person or entity to whom Lessor has assigned its right to receive Rental Payments under such Lease.

12.3. Severability. In the event any provision of this Agreement or any Lease shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

12.4. Entire Agreement; Amendments. Each Lease constitutes the entire agreement of the parties with respect to the subject matter thereof and supersedes all prior and contemporaneous writings, understandings, agreements, solicitation documents and representations, express or implied. Each Lease may be amended or modified only by written documents duly authorized, executed and delivered by Lessor and Lessee.

12.5. Captions. The captions or headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions, Articles, Sections or clauses hereof.

12.6. Further Assurances and Corrective Instruments. Lessor and Lessee agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required to perfect, confirm, establish, reestablish, continue or complete the interests of Lessor in this Agreement and each Lease, to consummate the transactions contemplated hereby and thereby, and to carry out the purposes and intentions of this Agreement and each Lease.

12.7. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State.

12.8. Usury. It is the intention of the parties hereto to comply with any applicable usury laws; accordingly, it is agreed that, notwithstanding any provisions to the contrary herein or in any Lease Schedule, in no event shall this Agreement or any Lease hereunder require the payment or permit the collection of interest or any amount in the nature of interest or fees in excess of the maximum amount permitted by applicable law. Any such excess interest or fees shall first be applied to reduce principal, and when no principal remains, refunded to Lessee. In determining whether the interest paid or payable exceeds the highest lawful rate, the total amount of interest shall be spread through the applicable Lease Term so that the interest is uniform through such term.

12.9. Waiver of Jury Trial. To the extent permitted by applicable law, Lessor and Lessee hereby waive any right to trial by jury in any action or proceeding with respect to, in connection with or arising out of this Agreement.

12.10. Relationship of Parties. Lessee acknowledges and agrees that (i) this Agreement and each Lease and the transactions related thereto is an arm's-length commercial transaction between Lessor and Lessee, (ii) in connection therewith and with the discussions, undertakings, and procedures leading up to the consummation of this transaction, Lessor is and has been acting solely as a principal and is not acting as the agent, advisor or fiduciary of Lessee, (iii) Lessor has not assumed an advisory or fiduciary responsibility in favor of Lessee with respect to the transactions contemplated hereby or the discussions, undertakings, and procedures leading thereto (regardless of whether Lessor or any affiliate thereof has provided other services or is currently providing other services to Lessee on other matters) and Lessor has no obligation to Lessee with respect to the transactions contemplated hereby except the obligations expressly set forth in this Agreement and any Lease, and (iv) Lessee has consulted its own legal, financial, and other advisors to the extent it has deemed appropriate.

12.11. Filing of Leases. Lessee shall not file or submit, or permit the filing or submission, of all or any portion this Agreement or any Lease, any document related to this Agreement or any Lease, any default, event of acceleration, termination event, waiver, modification of terms or other similar events relating to this Agreement or any Lease or any summary of the foregoing with the Municipal Securities Rulemaking Board ("MSRB") (or any successor to the MSRB or similar entity or service) unless such document or portion thereof has been provided to the Lessor in advance for review and redaction to the extent required by the Lessor and otherwise permitted under applicable MSRB rules or federal securities law, if any. Lessor is not responsible for the Lessee's or any other entity's compliance with any continuing disclosure obligations under any applicable securities law or related agreement or undertaking.

12.12. Counterparts. This Agreement and any Lease Schedules may be executed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument, and in making proof of this Agreement and any Lease Schedules it shall not be necessary to produce or account for more than one such counterpart.

12.13. Electronic Signatures. The parties agree that the electronic signature of a party to this Agreement and any Lease Schedule shall be as valid as an original signature of such party and shall be effective to bind such party to this Agreement and such Lease Schedule(s). The parties agree that any electronically signed document (including this Agreement and any Lease Schedule) shall be deemed (i) to be "written" or "in writing," (ii) to have been signed and (iii) to constitute a record established and maintained in the ordinary course of business and an original written record when printed from electronic files. Such paper copies or "printouts", if introduced as evidence in any judicial, arbitral, mediation or administrative proceeding, will be admissible as between the parties to the same extent and under the same conditions as other original business records created and maintained in documentary form. Neither party shall contest the admissibility of true and accurate copies of electronically signed documents on the basis of the best evidence rule or as not satisfying the business records exception to the hearsay rule. For purposes hereof, "electronic signature" means a manually signed original signature that is then transmitted by electronic means; "transmitted by electronic means" means sent in the form of a facsimile or sent via the internet as a "pdf" (portable document format) or other replicating image attached to an e mail message; and, "electronically signed document" means a document transmitted by electronic means and containing, or to which there is affixed, an electronic signature.

[The remainder of this page is intentionally blank. Signature page follows.]

IN WITNESS WHEREOF, Lessor has caused this Agreement to be executed in its corporate name by its duly authorized officer, and Lessee has caused this Agreement to be executed in its name by its duly authorized officer.

CITY OF HUBER HEIGHTS
Lessee

COGENT LEASING AND FINANCING, INC.
Lessor

By: _____
Name: Bryan RH Chodkowski
Title: Interim City Manager

Address: 6131 Taylorsville Rd
Huber Heights, OH 45424

Telephone: 937-237-5834
Email: bchodkowski@hhoh.org
jbell@hhoh.org

By: _____
Name: Michael J. Horkey
Title: President

Address: 420 S. Orange Ave, Ste. 150
Orlando, FL 32801
Attn: Public Finance

Telephone: 410.409.7579
E-mail: mhorkey@cogentbank.net

ADDENDUM TO MASTER LEASE PURCHASE AGREEMENT

Lessor: Cogent Leasing and Financing, Inc.
Lessee: City of Huber Heights, Ohio
Master Lease Purchase Agreement dated June 5, 2023

This Addendum dated as of June 5, 2023 is incorporated in and hereby made a part of the above referenced Master Lease Purchase Agreement, including all schedules, addenda, exhibits and other attachments (collectively, the "Agreement").

The Lessor and Lessee named above agree that notwithstanding any provision to the contrary in the Agreement:

1. The Agreement shall automatically expire at the end of the Original Term or Renewal Term then in effect unless prior to the end of that Original Term or Renewal Term the Lessee appropriates funds sufficient to pay Rental Payments due during the next Renewal Term and certifies that those funds are available or in the process of collection. The Original Term shall commence on the commencement date stated in the Payment Schedule and end on December 31, 2023. Each Renewal Term shall coincide with Lessee's fiscal year (January 1 to December 31), except that the final Renewal Term shall end on the final Rental Payment date stated on the Payment Schedule.

2. If and to the extent that any provision of the Agreement imposes any pecuniary obligation on Lessee, other than the obligation to pay Rental Payments due during the current fiscal year from money duly appropriated for that purpose and certified as available or in the process of collection by Lessee's fiscal officer, that pecuniary obligation is subject to the appropriation of sufficient funds for that purpose by Lessee's governing body and the certification by Lessee's fiscal officer that those funds are available or in the process of collection.

3. Lessee shall not be required to accept the Equipment except as provided pursuant to State law, as provided and in accordance with the Agreement, and pursuant to contract between Lessee and the vendor of the Equipment; provided that Lessor shall not be bound by any of the terms and conditions of such contract between Lessee and the vendor of the Equipment. Lessee shall not be required to enter into any maintenance or service agreement with respect to the Equipment except as required to maintain any vendor warranties with respect to the Equipment.

4. Notwithstanding the language in Section 3.2 of the Agreement regarding current expense, the Equipment is a permanent improvement with an estimated useful life of more than five years, and the Lessee may therefore use money in its Permanent Improvement Fund for Rental Payments.

5. Lessor shall have title to the Equipment during the term of the Agreement. However, for federal income tax purposes and State ad valorem tax purposes and for purposes of the Uniform Commercial Code, Lessor and Lessee shall treat the Agreement as a conditional sales agreement. Lessee shall be deemed to have exercised its option to purchase the Equipment, and title to the Equipment shall pass to the Lessee without any further act or notice on its part, upon the payment in full of all Rental Payments and other payments required under the Agreement for the Original Term and all Renewal Terms contemplated under the Agreement, by the Lessee, as they shall have come due in accordance with the Agreement, so long as there shall be no Event of Default in existence at such time. Notwithstanding the foregoing, Lessee and Lessor agree that, with respect to any Equipment constituting a motor vehicle for purposes of the Ohio certificate of motor vehicle title law (Ohio Revised Code Chapter 4505), the Lessee shall appear as holder of title to such Equipment.

6. Lessor shall not issue, sell or publicly underwrite fractionalized interests in the Agreement without the knowledge and express written approval or authorization of the Lessee, as required by Ohio Revised Code Section 9.94.

7. The Agreement and any ancillary agreement relating to the Agreement shall not be effective until a Fiscal Officer's Certificate has been signed and attached to the Agreement and ancillary agreement in substantially the form set forth in this Addendum.

8. Lessee agrees to complete, sign and file Form 8038-G with the IRS within the time prescribed by the IRS and provide Lessor with a copy of the form as filed and any filing correspondence to the IRS.

9. The Lessor may not have access to the Equipment location except upon reasonable prior notice to Lessee and during Lessee's normal business hours.

10. Any waiver of rights by Lessee pursuant to the Agreement, including but not limited to the waiver of a right to trial by jury, is given by Lessee only to the extent permitted by law.

11. Notwithstanding anything in the Agreement to the contrary, the opinion required to be delivered pursuant to Section 1.3(a) thereto shall be substantially in the form attached hereto as Exhibit A.

Lessor: Cogent Leasing and Financing, Inc.
By:
Name:
Title:

Lessee: City of Huber Heights, Ohio
By:
Name:
Title: Interim City Manager

Lessee: City of Huber Heights, Ohio
By:
Name:
Title: Director of Finance

FISCAL OFFICER'S CERTIFICATE

The undersigned, as fiscal officer of the Lessee, hereby certifies that the money required for the payment of the obligations of the Lessee under the attached contract during the current fiscal year has been lawfully appropriated for such purposes and is in the treasury or in the process of collection to the credit of the appropriate fund, free from any previous encumbrances. This Certificate is given in compliance with Sections 5705.41 and 5705.44 of the Revised Code.

LESSEE: City of Huber Heights, Ohio

Dated: May 18, 2023



Name:

Title: Director of Finance

Exhibit A
Form of Opinion

To: City of Huber Heights, Ohio

Cogent Leasing and Financing, Inc.

We have served as bond counsel to our client the City of Huber Heights, Ohio (the "City"), in connection with the City's execution and delivery of a Master Lease Purchase Agreement dated June 5, 2023 (together with related schedule, and all addenda, exhibits and attachments thereto, the "Agreement"), between Cogent Leasing and Financing, Inc., as lessor (the "Lessor"), and the City, as lessee.

In our capacity as bond counsel, we have examined the transcript of proceedings relating to the execution and delivery of the Agreement, including the Agreement and such other documents, matters and law as we deem necessary to render the opinions set forth in this letter. Capitalized terms not otherwise defined in this letter are used as defined in the Agreement.

Based on that examination and subject to the limitations stated below, we are of the opinion that under existing law:

1. The City is a political subdivision of the State of Ohio for purposes of Section 103 of the Internal Revenue Code of 1986, as amended.
2. The Agreement is valid, binding, and enforceable against the City in accordance with its terms. The City's obligation to make payments under the Agreement ("Rental Payments") is subject to and dependent on annual appropriations by the City Council, is not secured by an obligation or pledge of any money raised by taxation except as so appropriated, and does not constitute a debt or pledge of the faith and credit of the City within the meaning of any constitutional or statutory limitation. If the City Council fails to appropriate money for Rental Payments, the Agreement terminates at the end of the current term and the City is relieved of any subsequent payment obligation under the Agreement.
3. The City's execution and delivery of the Agreement and the performance of its obligations under the Agreement do not and will not conflict with or violate any existing provisions of the Constitution or laws of the State of Ohio or, to the actual knowledge of the lawyers in this firm who rendered legal services in connection with this matter, any order, writ, injunction or decree of any governmental authority, or, to the actual knowledge of the lawyers in this firm who rendered legal services in connection with this matter, constitute a default under or conflict with or violate any indenture, mortgage, deed of trust or other agreement or instrument to which the City is a party or by which it or any of its property is bound.
4. No consent, approval or other authorization by any regulatory authority having jurisdiction over the City is required for the City to enter into the Agreement or perform the actions required on its part to be taken under the Agreement.
5. The Agreement has been duly approved and executed by and on behalf of the City.

The opinions stated above are based on an analysis of existing laws, regulations, rulings and court decisions and cover certain matters not directly addressed by such authorities. In rendering all such opinions, we assume, without independent verification, and rely upon (i) the accuracy of the factual matters represented, warranted or certified in the proceedings and documents we have examined, including the Lessee's Certificate, dated this date and signed by the Interim City Manager and Director of Finance of the City, (ii) the due and legal authorization, execution and delivery of those documents by, and the valid, binding and enforceable nature of those documents upon the Lessor, and (iii) that the Lessor has given value.

We express no opinion as to the federal, State of Ohio or local tax treatment of any amounts paid pursuant to the Agreement.

We express no opinion with respect to any indemnification, contribution, penalty, choice of law, choice of forum, choice of venue, waiver or severability provisions contained in the Agreement.

We express no opinion herein with respect to the status or quality of title to, or any interest in, any of the property described in the Agreement, or the accuracy or sufficiency of the description contained therein of any of that property, or the priority of, or the remedies available to enforce, any claim on or interest in any of that property.

The rights of the Lessor and the enforceability of the Agreement are subject to bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance or transfer, and other laws relating to or affecting the rights and remedies of creditors generally; to the application of equitable principles, whether considered in a proceeding at law or in equity; to the exercise of judicial discretion; and to limitations on legal remedies against public entities.

Our examination of matters of law in connection with the opinions expressed herein has been limited to the federal laws of the United States of America and laws of the State of Ohio; accordingly, no opinions expressed herein shall be deemed to cover any other laws.

We have neither examined nor requested an examination of the indices or records of any court or governmental or other agency, authority, instrumentality or entity, nor have we made inquiry of any person or entity, except as expressly set forth in this opinion letter.

No opinions other than those expressly stated herein are implied or shall be inferred as a result of anything contained in or omitted from this letter. The opinions expressed in this letter are stated only as of the time of its delivery and we disclaim any obligation to revise or supplement this letter thereafter. Our engagement as bond counsel in connection with the execution and delivery of the Agreement has concluded upon delivery of this letter.

This opinion letter is being furnished only to the addressees and is solely for their benefits and the benefit of their assigns in connection with the transactions contemplated by the Agreement. This opinion letter may not be relied upon for any other purpose or relied upon by any other person, firm or corporation for any purpose, without our prior written consent.

Respectfully submitted,

ESCROW AGREEMENT

This Escrow Agreement (this "Agreement"), dated as of June 5, 2023, by and among **COGENT LEASING AND FINANCING, INC.** (and any successors and permitted assigns "Lessor"), the **CITY OF HUBER HEIGHTS**, a government body corporate and politic and a political subdivision existing under the laws of the State of Ohio ("Lessee"), and **COGENT BANK**, in its capacity as escrow agent hereunder ("Escrow Agent").

Reference is made to that certain LEASE SCHEDULE NO. 2 dated June 5, 2023, to that certain Master Lease Purchase Agreement dated as of June 5, 2023, each between Lessor and Lessee (hereinafter collectively referred to as the "Lease"), covering the acquisition and lease of certain Equipment described therein (the "Equipment"). It is a requirement of the Lease that the Purchase Price in the amount of ~~\$265,000.00~~ be deposited into a segregated escrow account under terms satisfactory to Lessor, for the purpose of fully funding the Lease, and providing a mechanism for the application of such amounts to the purchase of and payment for the Equipment.

NOW, THEREFORE, in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Creation of Escrow Account.

(a) There is hereby created an escrow fund to be known as the "City of Huber Heights, OH, Escrow Account 02" (the "Escrow Account") to be held by the Escrow Agent for the purposes stated herein, for the benefit of Lessor and Lessee, to be held, disbursed and returned in accordance with the terms hereof.

(b) The Escrow Agent shall place all escrow funds in a demand deposit account or as otherwise agreed upon between the parties.

(c) Unless the Escrow Account is earlier terminated in accordance with the provisions of paragraph (d) below, amounts in the Escrow Account shall be disbursed by the Escrow Agent in payment of amounts described in Section 2 hereof upon receipt of written instruction(s) from Lessor, as is more fully described in Section 2 hereof. If the amounts in the Escrow Account are insufficient to pay such amounts, Lessee shall deposit into the Escrow Account any funds needed to complete the acquisition of the Equipment. Any moneys remaining in the Escrow Account on or after the earlier of (i) December 5, 2024 ("Termination Date") and (ii) the date on which Lessee executes an Acceptance Certificate shall be applied as provided in Section 4 hereof.

(d) The Escrow Account shall be terminated at the earliest of (i) the final distribution of amounts in the Escrow Account or (ii) written notice given by Lessor of the occurrence of a default or termination of the Lease due to non-appropriation.

(e) The Escrow Agent may act in reliance upon any writing or instrument or signature which it, in good faith, believes to be genuine and may assume the validity and accuracy of any statement or assertion contained in such a writing or instrument. The Escrow Agent shall not be liable in any manner for the sufficiency or correctness as to form, manner of execution, or validity of any instrument nor as to the identity, authority, or right of any person executing the same; and its duties hereunder shall be limited to the receipt of such moneys, instruments or other documents received by it as the Escrow Agent, and for the disposition of the same in accordance herewith. In the event conflicting instructions as to the disposition of all or any portion of the Escrow Account are at any time given by Lessor and Lessee, the Escrow Agent shall abide by the instructions given by Lessor without consent of the Lessee.

(f) Unless the Escrow Agent is guilty of gross negligence or willful misconduct with regard to its duties hereunder, to the extent permitted by law, Lessee agrees to and does hereby release

and indemnify the Escrow Agent and hold it harmless from any and all claims, liabilities, losses, actions, suits or proceedings at law or in equity, or any other expense, fees or charges of any character or nature, which it may incur or with which it may be threatened by reason of its acting as Escrow Agent under this agreement; and in connection therewith, does to the extent permitted by law indemnify the Escrow Agent against any and all expenses; including reasonable attorneys' fees and the cost of defending any action, suit or proceeding or resisting any claim.

(g) If Lessee and Lessor shall be in disagreement about the interpretation of the Lease, or about the rights and obligations, or the propriety of any action contemplated by the Escrow Agent hereunder, the Escrow Agent may, but shall not be required to, file an appropriate civil action including an interpleader action to resolve the disagreement. The Escrow Agent shall be reimbursed by Lessee for all costs in connection with such civil action, and shall be fully protected in suspending all or part of its activities under the Lease until a final judgment in such action is received.

(h) The Escrow Agent may consult with counsel of its own choice and shall have full and complete authorization and protection with the opinion of such counsel. Lessee shall reimburse the Escrow Agent for all such reasonable costs and expenses. The Escrow Agent shall otherwise not be liable for any mistakes of fact or errors of judgment, or for any acts or omissions of any kind unless caused by its willful misconduct.

(i) To the extent permitted by law, Lessee shall reimburse the Escrow Agent for all reasonable costs and expenses, including those of the Escrow Agent's attorneys, agents and employees incurred for non-routine administration of the Escrow Account and the performance of the Escrow Agent's powers and duties hereunder in connection with any Event of Default under the Lease, or in connection with any dispute between Lessor and Lessee concerning the Escrow Account.

(j) The Escrow Agent or any successor may at any time resign by giving mailed notice to Lessee and Lessor of its intention to resign and of the proposed date of resignation (the "Effective Date"), which shall be a date not less than 60 days after such notice is delivered to an express carrier, charges prepaid, unless an earlier resignation date and the appointment of a successor shall have been approved by the Lessee and Lessor. After the Effective Date, the Escrow Agent shall be under no further obligation except to hold the Escrow Account in accordance with the terms of this Agreement, pending receipt of written instructions from Lessor regarding further disposition of the Escrow Account.

(k) Except as provided by applicable law, the Escrow Agent shall have no responsibilities, obligations or duties other than those expressly set forth in this Agreement and no implied duties responsibilities or obligations shall be read into this Agreement.

2. Acquisition of Equipment.

(a) Acquisition Contracts. Lessee will arrange for, supervise and provide for, or cause to be supervised and provided for, the acquisition of the Equipment, with moneys available in the Escrow Account. Lessee represents the estimated costs of the Equipment are within the funds estimated to be available therefor, and Lessor makes no warranty or representation with respect thereto. Lessor shall have no liability under any of the acquisition or construction contracts. Lessee shall obtain all necessary permits and approvals, if any, for the acquisition, equipping and installation of the Equipment, and the operation and maintenance thereof. Escrow Agent shall have no duty to monitor or enforce Lessee's compliance with the foregoing covenant.

(b) Authorized Escrow Account Disbursements. It is agreed as between Lessee and Lessor that Disbursements from the Escrow Account shall be made for the purpose of paying (including the reimbursement to Lessee for advances from its own funds to accomplish the purposes hereinafter described) the cost of acquiring the Equipment.

(c) Requisition Procedure. No disbursement from the Escrow Account shall be made unless and until Lessor has approved such requisition. Prior to disbursement from the Escrow Account there shall be filed with the Escrow Agent a requisition for such payment in the form of Disbursement Request attached hereto as Exhibit A, stating each amount to be paid and the name of the person, firm or corporation to whom payment thereof is due and the manner of disbursement (check or wire).

Each such requisition shall be signed by an authorized representative of Lessee (an "Authorized Representative") and by Lessor, and shall be subject to the following conditions, which Escrow Agent shall conclusively presume have been satisfied at such time as a requisition executed by Lessee and Lessor is delivered to it:

1. Delivery to Lessor of an executed Disbursement Request in the form attached hereto as Exhibit A; and
2. Delivery to Lessor true and correct copies of invoices (and proofs of payment of such invoices, if Lessee seeks reimbursement) and bills of sale (if title to such Equipment has passed to Lessee) therefor as required by the Lease and any additional documentation reasonably requested by Lessor.

Lessee and Lessor agree that their execution of the form attached hereto as Exhibit A and delivery of the executed form to Escrow Agent confirms that all of the requirements and conditions with respect to disbursements set forth in this Section 2 have been satisfied.

3. Deposit to Escrow Account. Upon satisfaction of the conditions specified in Section 1.3 of the Lease, Lessor will cause the Purchase Price to be deposited in the Escrow Account. Lessee agrees to pay any costs with respect to the Equipment in excess of amounts available therefor in the Escrow Account.

4. Excessive Escrow Account. Lessor shall provide Escrow Agent written instructions and a representation that one of the following conditions has been satisfied, (upon which representation Escrow Agent shall conclusively rely,) (a) the Termination Date; or (b) the date on which Lessee executes an Acceptance Certificate; or (c) upon a termination of the Escrow Account as otherwise provided herein. Upon receipt of such written instructions, any funds remaining in the Escrow Agreement shall be disbursed to the Lessor and Lessor shall apply such funds to amounts owed by Lessee under the Lease.

5. Security Interest. The Escrow Agent and Lessee acknowledge and agree that the Escrow Account and all proceeds thereof are being held by Escrow Agent for disbursement or return as set forth herein. Lessee hereby grants to Lessor a first priority perfected security interest in the Escrow Account, and all proceeds thereof.

6. Escrow Agent Fees. [Intentionally omitted.]

7. Information Required Under USA PATRIOT ACT. The parties acknowledge that in order to help the United States government fight the funding of terrorism and money laundering activities, pursuant to Federal regulations that became effective on October 1, 2003 (Section 326 of the USA PATRIOT Act) all financial institutions are required to obtain, verify, record and update information that identifies each person establishing a relationship or opening an account. The parties to this Agreement agree that they will provide to the Escrow Agent such information as it may request, from time to time, in order for the Escrow Agent to satisfy the requirements of the USA PATRIOT Act, including but not limited to the name, address, tax identification number and other information that will allow it to identify the individual or entity who is establishing the relationship or opening the account and may also ask for formation documents such as articles of incorporation or other identifying documents to be provided.

8. Miscellaneous. Capitalized terms not otherwise defined herein shall have the meanings assigned to them in the Lease. This agreement may not be amended except in writing signed by all parties hereto. This agreement may be executed in one or more counterparts, each of which shall be deemed to

be an original instrument and each shall have the force and effect of an original and all of which together constitute, and shall be deemed to constitute, one and the same instrument. Notices hereunder shall be made in writing and shall be deemed to have been duly given when personally delivered or when deposited in the mail, first class postage prepaid, or delivered to an express carrier, charges prepaid, or sent by facsimile with electronic confirmation, addressed to each party at its address below.

Notices and other communications hereunder may be delivered or furnished by electronic mail; provided that any formal notice be attached to an email message in PDF format; and provided further that any notice or other communication sent to an e-mail address shall be deemed received upon and only upon the sender's receipt of affirmative acknowledgement or receipt from the intended recipient. For purposes hereof no acknowledgement of receipt generated on an automated basis shall be deemed sufficient for any purpose hereunder or admissible as evidence of receipt.

If to Lessor: Cogent Leasing and Financing, Inc.
420 S Orange Ave., Suite 150
Orlando, FL 32801
Attn: Mike Horkey
Email: mhorkey@cogentbank.net
escrow@cogentbank.net

If to Lessee: City of Huber Heights, OH
Attn: Interim City Manager
Bryan RH Chodkowski
6131 Taylorsville Rd
Huber Heights, OH 45424
Email: bchodkowski@hhoh.org
jbell@hhoh.org

If to Escrow Agent: Cogent Bank
420 S Orange Ave., Suite 150
Orlando, FL 32801
Attn: Public Finance Department

9. This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio.

10. Any bank or corporation into which the Escrow Agent may be merged or with which it may be consolidated, or any bank or corporation to whom the Escrow Agent may transfer a substantial amount of its escrow business, shall be the successor to the Escrow Agent without the execution or filing of any paper or any further act on the part of any of the parties, anything herein to the contrary notwithstanding. Any bank or corporation into which the Lessor may be merged or with which it may be consolidated, or any bank or corporation to whom the Lessor may transfer a substantial amount of its business, shall be the successor to the Lessor without the execution or filing of any paper or any further act on the part of any of the parties, anything herein to the contrary notwithstanding.

11. This Agreement may be amended, modified, and/or supplemented only by an instrument in writing executed by all parties hereto.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties have executed this Escrow Agreement as of the date first above written.

CITY OF HUBER HEIGHTS
as Lessee

COGENT LEASING AND FINANCING, INC.
as Lessor

By: _____
Name: Bryan RH Chodkowski
Title: Interim City Manager

By: _____
Name: Michael J. Horkey
Title: President

COGENT BANK
as Escrow Agent

By: _____
Name: Michael J. Horkey
Title: SVP

EXHIBIT A
to the Escrow Agreement

FORM OF DISBURSEMENT REQUEST

Re: **Lease Schedule No. 2** dated June 5, 2023 to that certain Master Lease Purchase Agreement dated as of June 5, 2023, each between Lessor and Lessee (hereinafter collectively referred to as the "Lease") (Capitalized terms not otherwise defined herein shall have the meanings assigned to them in the Lease.)

In accordance with the terms of the Escrow Agreement, dated as of June 5, 2023 (the "Escrow Agreement") by and among COGENT LEASING AND FINANCING, INC., as lessor (and its successors and permitted assigns, "Lessor"), the CITY OF HUBER HEIGHTS, OH ("Lessee"), and COGENT BANK, as escrow agent (the "Escrow Agent"), the undersigned hereby requests the Escrow Agent pay the following persons the following amounts from the Escrow Account created under the Escrow Agreement for the following purposes:

Payee's Name and Address (if disbursement via wire, must include wire transfer instructions)	Invoice Number	Dollar Amount	Purpose

(i) (a) Each obligation specified in the foregoing table has been incurred by Lessee in the stated amount, (b) the same is a proper charge against the Escrow Account for costs relating to the Equipment identified in the Lease, and (c) has not been paid (or has been paid by Lessee and Lessee requests reimbursement thereof).

(ii) Each item of Equipment relating to an obligation specified in the foregoing table has been delivered, installed and accepted by Lessee. Attached hereto is a true and correct copy of the invoice with respect to such obligation.

(iii) The undersigned, as authorized representative of Lessee, has no notice of any vendor's, mechanic's or other liens or rights to liens, chattel mortgages, conditional sales contracts or security interest which should be satisfied or discharged before such payment is made.

(iv) This requisition contains no item representing payment on account, or any retained percentages which Lessee is, at the date hereof, entitled to retain (except to the extent such amounts represent a reimbursement to Lessee).

(v) The Equipment is insured in accordance with the Lease.

(vi) No Event of Default, and no event which with notice or lapse of time, or both, would become an Event of Default, under the Lease has occurred and is continuing at the date hereof.

(vii) The representations, warranties and covenants of Lessee set forth in the Lease are true and correct as of the date hereof.

(vii) No material adverse change in the financial status of Lessee has occurred since the date of the execution and delivery of the Lease.

Dated: _____

CITY OF HUBER HEIGHTS
as Lessee

By: _____
Name: _____
Title: _____

Disbursement of funds from the Escrow
Account in accordance with the foregoing
Disbursement Request hereby is authorized

COGENT LEASING AND FINANCING, INC.
as Lessor

By: _____

Name: _____

Title: _____

LEASE SCHEDULE NO. 2
to Master Lease Purchase Agreement

Dated as of June 5, 2023

This Lease Schedule (this "Lease Schedule") relates to the Master Lease Purchase Agreement dated as of June 5, 2023 (the "Agreement") between the undersigned Lessor and Lessee, together with the terms and conditions of the Agreement incorporated herein by reference, constitutes a Lease. Unless otherwise defined herein, capitalized terms will have the same meaning ascribed to them in the Agreement. All terms and conditions of the Agreement are incorporated herein by reference.

1. Equipment Description. As used in the Lease, "Equipment" means all of the property described in Exhibit 1 attached to this Lease Schedule and all attachments, additions, accessions, parts, repairs, improvements, replacements and substitutions thereto.
2. Purchase Price. The Purchase Price for the Equipment is \$265,000.00, which shall be deposited in the escrow fund established under that certain Escrow Agreement related to this Lease Schedule between Lessee, Lessor, and Cogent Bank, as Escrow Agent thereunder.
3. Rental Payments; Lease Term. The Rental Payments to be paid by Lessee to Lessor and the Lease Term of this Lease are set forth on the Payment Schedule attached to this Lease Schedule as Exhibit 2.
4. Essential Use; Current Intent of Lessee. Lessee represents that (a) the use of the Equipment is essential to Lessee's proper, efficient and economic functioning or to the services that Lessee provides to its citizens, (b) the Equipment will be used by Lessee only for the purpose of performing its governmental or proprietary functions consistent with the permissible scope of its authority and will not be used in a trade or business of any person or entity, and (c) the useful life of the Equipment is not less than the stated full Lease Term of this Lease. Lessee has determined that a present need exists for the Equipment which need is not temporary or expected to diminish in the near future. Lessee currently intends for the full Lease Term: to use the Equipment; and to continue this Lease.
5. Representations, Warranties and Covenants. Lessee hereby represents, warrants and covenants that its representations, warranties and covenants set forth in the Agreement are true and correct as though made on the date of execution of this Lease Schedule.
6. Bank Qualified. Lessee certifies that it has designated this Lease as a qualified tax-exempt obligation in accordance with Section 265(b)(3) of the Code, that it has not designated more than \$10,000,000 of its obligations as qualified tax-exempt obligations in accordance with such Section for the current calendar year and that it reasonably anticipates that the total amount of tax-exempt obligations to be issued by Lessee during the current calendar year will not exceed \$10,000,000.
7. Optional Prepayment; Prepayment Price. Lessee has the option to prepay its obligation hereunder in whole on any Payment Date as set forth in Section 4.2 of the Agreement. Lessee's voluntary prepayment of the Lease pursuant to Section 4.2 of the Agreement shall be subject to a prepayment premium equal to two percent (2%) of the outstanding remaining balance of the Lease so prepaid.

[Signature Page Follows]

IN WITNESS WHEREOF, Lessor has caused this Lease Schedule to be executed in its corporate name by its duly authorized officer, and Lessee has caused this Lease Schedule to be executed in its name by its duly authorized officer.

CITY OF HUBER HEIGHTS

Lessee

COGENT LEASING AND FINANCING, INC.

Lessor

By: _____

Name: Bryan RH Chodkowski

Title: Interim City Manager

By: _____

Name: Michael J. Horkey

Title: President

Address: 6131 Taylorsville Rd
Huber Heights, OH 45424

Address: 420 S. Orange Ave, Ste. 150
Orlando, FL 32801
Attn: Public Finance

Telephone: 937-237-5834

Email: bchodkowski@hhoh.org

jbell@hhoh.org

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E-mail: mhorkey@cogentbank.net

amichelini@cogentbank.net

Equipment Description

One (1) new/replacement 2022 MV607 4x2 International Ambulance, plus additional equipment to outfit the vehicle.

Total Equipment Cost: \$265,000.00

Location of Equipment: City of Huber Heights - Fire Division

Exhibit 2**Payment Schedule****Rate: 4.34%**

Lease Date: 06/05/2023

#	Payment Date	Payment Amount	Interest	Principal	Balance	Prepayment Price
	6/5/2023				\$265,000.00	102%
1	12/1/2023	32,218.55	5,718.55	26,500.00	238,500.00	102%
2	6/1/2024	31,675.45	5,175.45	26,500.00	212,000.00	102%
3	12/1/2024	31,100.40	4,600.40	26,500.00	185,500.00	102%
4	6/1/2025	30,525.35	4,025.35	26,500.00	159,000.00	102%
5	12/1/2025	29,950.30	3,450.30	26,500.00	132,500.00	102%
6	6/1/2026	29,375.25	2,875.25	26,500.00	106,000.00	102%
7	12/1/2026	28,800.20	2,300.20	26,500.00	79,500.00	102%
8	6/1/2027	28,225.15	1,725.15	26,500.00	53,000.00	102%
9	12/1/2027	27,650.10	1,150.10	26,500.00	26,500.00	102%
10	6/1/2028	27,075.05	575.05	26,500.00	0.00	0.00
	TOTALS:	\$296,595.80	\$31,595.80	\$265,000.00		

ACCEPTANCE CERTIFICATE

Re: Lease Schedule No. 2 dated June 5, 2023 (the "Lease Schedule") to that certain Master Lease Purchase Agreement dated as of June 5, 2023 (the "Agreement" and together with the Lease Schedule, the "Lease") between Cogent Leasing and Financing, Inc., as Lessor, and the CITY OF HUBER HEIGHTS, OH, as Lessee

Ladies and Gentlemen:

I, the undersigned, hereby certify that I am the duly qualified and acting officer of Lessee identified below and, with respect to the above-referenced Lease Schedule, that:

1. The Equipment subject to the Lease Schedule and the Lease has been delivered and installed, is in good working order and is fully operational and has been fully accepted by Lessee on or before the date hereof.
2. Attached hereto are true and correct copies of the manufacturers' and dealers' invoices for the Equipment.
3. Lessee has appropriated and/or taken other lawful actions necessary to provide moneys sufficient to pay all Rental Payments required to be paid under the Lease during the current fiscal year of Lessee. Such moneys will be applied in payment of all such Rental Payments due and payable during such current fiscal year.
4. No event or condition that constitutes, or with notice or lapse of time, or both, would constitute, an Event of Default (as defined in the Lease) exists at the date hereof.

Date: _____

CITY OF HUBER HEIGHTS
Lessee

By: _____
Name:
Title:

CITY OF HUBER HEIGHTS
STATE OF OHIO

ORDINANCE NO. 2023-O-

AUTHORIZING THE EXECUTION OF A MASTER LEASE-PURCHASE AGREEMENT AND RELATED PAYMENT SCHEDULE FOR THE PURPOSE OF ACQUIRING AN EMERGENCY MEDICAL VEHICLE FOR USE BY THE CITY, AND DECLARING AN EMERGENCY.

WHEREAS, this Council has determined that it is in the best interest of the City to acquire a new emergency medical vehicle (the "*Equipment*") pursuant to a master lease-purchase agreement and related payment schedule (together with any and all addenda, exhibits and attachments thereto, the "*Lease*"), between Cogent Bank, or such other related entity as identified by Cogent Bank and accepted by the Director of Finance subject to the provisions of this Ordinance, as lessor ("*Lessor*"), and the City, as lessee, a copy of which Lease has been presented to this Council; and

WHEREAS, the obligations of the City under the Lease will be subject to annual appropriations by this Council.

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

Section 1. The City Manager and Director of Finance are hereby authorized to sign and deliver, in the name of and on behalf of the City, a Lease in substantially the form on file with the Clerk of Council, provided that the aggregate principal components of the rental payments due under the Lease shall not exceed \$265,000.00, the interest component of those rental payments shall accrue at an annual rate not in excess of 4.34%, and the final renewal term of the Lease shall end not later than six (6) years from the commencement date of the Lease and the Lease shall be subject to prepayment as set forth in the Lease. The Lease is approved with such changes that are not inconsistent with this Ordinance and not substantially adverse to the City that are permitted by law and 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 Lease by the City Manager and the Director of Finance. The City Manager, the Director of Finance, the Mayor, the City Attorney, the Clerk of Council, and other City officials, as appropriate, are each further authorized to sign any certifications, commitments, financing statements, assignments, escrow agreements, and other documents and instruments and to take such other actions as are desirable, advisable, necessary or appropriate to consummate the transactions contemplated by this Ordinance and the Lease.

Section 2. The proceeds of the Lease shall be credited to the proper fund or funds as provided in the Lease, and those proceeds are appropriated and shall be used for the purpose for which the Lease is authorized and are hereby appropriated for that purpose.

Section 3. The City covenants that it will use, and will restrict the use and investment of, the proceeds of the Lease so that (a) the obligations of the City under the Lease will not (i) constitute private activity bonds or arbitrage bonds under Sections 141 or 148 of the Internal Revenue Code of 1986, as amended (the "*Code*"), or (ii) be treated other than as obligations the interest on which is excluded from gross income under Section 103 of the Code, and (b) the interest components of the Lease payments ("*Interest*") will not be treated as an item of tax preference under Section 57 of the Code. The City further covenants that (a) the City will take or cause to be taken such actions which may be required of it for the Interest to be and to remain excluded from gross income for federal income tax purposes, (b) the City will not take or authorize to be taken any actions that would adversely affect that exclusion, and (c) the City, or persons acting for it, will, among other acts of compliance, (i) apply or cause the application of the Lease proceeds to the governmental purpose of the Lease, (ii) restrict the yield on investment property acquired with the Lease proceeds, (iii) make timely and adequate payments to the federal government if required, (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 those proceeds, all in such manner and to the extent necessary to assure such exclusion of the Interest under the Code.

The Director of Finance, as the fiscal officer, or the City Manager 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 Lease as the City is permitted or required to make or give under the federal income tax laws, including, without limitation thereto, any of the elections provided for in Section 148(f)(4)(C) of the Code or available under Section 148 of the Code, for the purpose of assuring, enhancing or protecting favorable tax treatment or status of the Lease or Interest or assisting compliance with requirements for that purpose, reducing the burden or expense of such compliance, reducing the rebate amount or payments or penalties, 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, as determined by that officer, 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 Lease, and (c) to give one or more appropriate certificates of the City, for inclusion in the transcript of proceedings for the Lease, setting forth the reasonable expectations of the City regarding the amount and use of all the proceeds of the Lease, the facts, circumstances and estimates on which they are based, and other facts and circumstances relevant to the tax treatment of the Interest and the tax status of the Lease. Either of those officers is specifically authorized to designate or otherwise determine the obligations of the City under the Lease to be “qualified tax-exempt obligations” for purposes of Section 265 of the Code if such designation or determination is applicable and desirable, and to make any related necessary representations and covenants.

Section 4. Proceeds in the amount of any temporary advances as certified by the Director of Finance are to be credited to the fund from which temporary advances were made to reimburse it for temporary advances made to pay capital expenditures previously made for the foregoing purpose, and such amount is charged against those proceeds. Immediately following the signing and delivery of the Lease, the appropriate officers are directed further to reflect such reimbursement, together with reimbursement of any additional amounts eligible for reimbursement under U.S. Treasury Regulations Section 1.150-2, on the appropriate accounting records of the City.

Section 5. It is the intent and purpose of City Council to approve the Lease subject to and in accordance with all applicable federal and state laws, regulations, and rules required for such approval in order to assure the contemplated tax treatment as set forth in the Lease. To the extent any such required law, regulation or rule is not expressly set forth in this legislation, it is incorporated herein by this reference.

Section 6. It is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this Ordinance were adopted in an open meeting of this Council and that all deliberations of this Council and of any of its Committees that resulted in such formal action were in meetings open to the public and in compliance with all legal requirements including Section 121.22 of the Ohio Revised Code.

Section 7. This Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety and welfare and for the further reason that the City may enter into the Lease and related documents in order to acquire the equipment and to obtain the financing thereof at the best cost to the City, which equipment is urgently needed for the safe and efficient operation of the Fire Division of the City; therefore, this Ordinance shall take full force and effect immediately upon its adoption by Council.

Passed by Council on the ____ day of _____ 2023;
____ 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. 2023-O-_____ passed by the City Council of the City of Huber Heights, on _____, 2023.

Clerk of Council

AI-9249

**New Business K.
Finance**

City Council Meeting

Meeting Date: 05/22/2023

Capital Lease - Street Sweeper - Public Works Division

Submitted By: Jim Bell

Department: Finance **Division:** Accounting

Council Committee Review?: Council Work Session

Date(s) of Committee Review: 05/16/2023

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

**Motion/Ordinance/
Resolution No.:**

Agenda Item Description or Legislation Title

An Ordinance Authorizing The Execution Of A Master Lease-Purchase Agreement And Related Payment Schedule For The Purpose Of Acquiring A Street Sweeper For Use By The City, And Declaring An Emergency.
(first reading)

Purpose and Background

The Public Works Division has been notified that the new street sweeper ordered last year will be ready for delivery in the next 2-3 weeks. City Staff recommend that the City enter into a capital lease for the purchase of the street sweeper. Six timely proposals were received by the Finance Department and are included as an attachment. City Staff recommends the lowest and best proposal for a 7-year lease with an interest rate of 4.34% and semi-annual payments of \$28,191.69 from Cogent Leasing & Financing, Inc. be approved. The Master Lease Purchase Agreement, including the Addendum, Fiscal Officer Certificate, Escrow Agreement and Payment Schedule are included. All of the documents have been thoroughly reviewed by an attorney at Squire Patton Boggs as bond counsel for the City. Due to delivery in the next 2-3 weeks, and financing that is only guaranteed until June 5, 2023, City Staff request that the second reading of this legislation be waived on May 22, 2023, with an emergency clause, so the legislation can be effective immediately.

Fiscal Impact

Source of Funds: Storm Water Management Fund

Cost: \$28,191.69

Recurring Cost? (Yes/No): Yes

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

Financial Implications:

The semi-annual lease payments will begin in December 2023, and a full year of lease payments will be included in the proposed 2024 Budget.

Attachments

Lease Proposals
Master Lease Purchase Agreement
Addendum/Fiscal Officer Certificate
Escrow Agreement

Lease Payment Schedule
Ordinance

2023 Street Sweeper Lease Options - May 2023

<u>Bank/Finance Company</u>	<u>Annual Payments</u> <u>7 Years</u>
Cogent Bank	\$56,383.38
Fifth Third Bank	\$60,867.12
Huntington Bank Leasing	\$57,082.92
JP Morgan Chase Bank	\$0.00
US Bank Gov't Leasing & Finance	\$57,211.78
Republic First National Corp.	\$57,384.36
Tax Exempt Leasing Corp.	\$57,321.58

Annual Financing for 2023 Street Sweeper will be out of the Storm Water Fund

12/1/2023	1st semi-annual payment
6/1/2030	Final semi-annual payment

MASTER LEASE PURCHASE AGREEMENT

This Master Lease Purchase Agreement (this "Agreement"), dated as of June 5, 2023, is made and entered into by and between COGENT LEASING AND FINANCING, INC. (together with its successors and assigns, "Lessor"), and the CITY OF HUBER HEIGHTS, a political subdivision of the State of Ohio ("Lessee").

In consideration of the mutual covenants herein contained, the parties hereto agree as follows:

1. LEASE OF EQUIPMENT; FUNDING

1.1. Lease; Possession and Use. Lessor hereby agrees to sell, transfer and lease to Lessee, and Lessee hereby agrees to acquire, purchase and lease from Lessor the property described in each Lease Schedule (defined herein) executed and delivered by Lessor and Lessee, upon the terms and conditions set forth herein, together with all attachments, additions, accessions, parts, repairs, improvements, replacements and substitutions thereto (the "Equipment"). Each Lease (defined herein) executed and delivered by Lessor and Lessee pursuant to this Agreement shall constitute a separate and independent lease and installment purchase of the Equipment described therein. This Agreement is not a commitment by Lessor to enter into any Lease and nothing in this Agreement shall be construed to impose any obligation upon Lessor to enter into any proposed Lease. The decision whether Lessor enters into any Lease is within Lessor's sole discretion. As used herein, (i) "Lease Schedule" means a schedule substantially in the form attached as Exhibit A to this Agreement, together with all addenda, riders, attachments, certificates and exhibits thereto, as the same may from time to time be amended, modified or supplemented, and (ii) "Lease" means a Lease Schedule each together with this Agreement the terms and conditions of which are incorporated therein.

1.2. Funding. Unless otherwise provided in the applicable Lease Schedule, in order to provide financing to pay the costs to acquire and install the Equipment and to pay certain costs related to the execution and delivery of the Lease Documents (defined herein) as set forth in the applicable Lease Schedule (the "Purchase Price"), Lessor and Lessee shall execute and deliver an escrow agreement relating to such Schedule in form and substance and with an escrow agent satisfactory to Lessor (an "Escrow Agreement"). If all conditions set forth in Section 1.3 have been satisfied in full or waived, then Lessor will deposit or cause to be deposited into an escrow fund under the related Escrow Agreement, if applicable, or pay to Lessee an amount equal to the Purchase Price for the Equipment to be financed under the related Lease Schedule.

1.3. Funding Requirements. The funding of the Purchase Price and the performance by Lessor of any of its obligations pursuant to any Lease, are subject to the satisfaction or waiver of the following:

(a) Lessor has received all of the following documents, which shall be reasonably satisfactory, in form and substance, to Lessor: (1) evidence of insurance coverage or self-insurance as required by the Lease; (2) an opinion of Lessee's counsel and/or bond counsel to Lessee with respect to certain matters related to the Lease; (3) waivers of third party holders of interests in the real property where the Equipment will be located, as Lessor may deem necessary; (4) copies of resolutions by Lessee's governing body, duly authorizing the Lease and the Escrow Agreement and incumbency certificates for the person(s) executing the Lease and the Escrow Agreement; (5) such documents and certificates as Lessor may request relating to federal tax-exemption of interest payable under the Lease, including (without limitation) IRS Form 8038-G or 8038-GC and evidence of the adoption of a reimbursement resolution or other official action in the event that Lessee is to be reimbursed for expenditures that it has paid more than 60 days prior to the funding of the Purchase Price; (6) if all or a portion of the Purchase Price will be paid to Lessee (or vendor(s) or supplier(s) of the Equipment on behalf of Lessee), an acceptance certificate for the Equipment (substantially in the form attached as Exhibit B to this Agreement)(an "Acceptance Certificate"); and (7) such other documents and information previously identified by Lessor or otherwise reasonably requested by Lessor.

(b) Lessee has executed and delivered to Lessor the Lease Schedule, its related Payment

Schedule and the related Escrow Agreement (if applicable);

- (c) no Event of Default shall have occurred and be continuing under any Lease;
- (d) no material adverse change shall have occurred in the financial condition of Lessee;
- (e) the Equipment is reasonably satisfactory to Lessor and is free and clear of any Liens (defined herein) other than the respective rights of Lessor and Lessee as herein provided; and
- (f) all representations of Lessee in the Lease remain true, accurate and complete.

1.4. Delivery, Installation and Acceptance of Equipment. Lessee shall order each Equipment, shall cause the Equipment to be delivered and installed at the locations specified under the applicable Lease Schedule and shall pay all taxes, delivery costs and installation costs, if any, in connection therewith. If the Purchase Price is deposited under an Escrow Agreement for the acquisition of the Equipment, such funds shall be disbursed as provided therein. The insufficiency of proceeds of any Lease to pay all costs of the Equipment subject thereto shall not affect Lessee's obligations under this Section. When the Equipment described in such Lease Schedule is delivered, installed and accepted, Lessee shall promptly execute and deliver to Lessor an Acceptance Certificate for the Equipment.

2. TERM

2.1. Term. The term of each Lease (the "Lease Term") shall commence on the Lease Date set forth in the applicable Lease Schedule and shall continue until the end of the fiscal year of Lessee in effect at such Lease Date (the "Original Term"); provided that the Lease Term for each Lease may be continued, solely at the option of Lessee, at the end of the Original Term or any renewal term of each Lease, each having a duration of one year and a term coextensive with Lessee's fiscal year or such earlier date specified in the Lease (each a "Renewal Term"), as specified in the Lease Schedule applicable thereto up to the maximum Lease Term set forth in such Lease. At the end of the Original Term and at the end of each Renewal Term until the maximum Lease Term has been completed, Lessee shall be deemed to have exercised its option to continue each Lease for the next Renewal Term, unless sooner terminated pursuant to the Lease.

3. RENTAL PAYMENTS

3.1. Rental Payments. Lessee agrees to pay the rent payments ("Rental Payments") in the amounts and on the dates (each a "Payment Date") as specified in the Payment Schedule attached to each Lease Schedule. A portion of each Rental Payment is paid as interest as specified in the Payment Schedule for each Lease. All Rental Payments shall be paid to Lessor, at such places as Lessor may from time to time designate by written notice to Lessee. Lessee shall pay the Rental Payments with lawful money of the United States of America from moneys legally available therefor.

3.2. Current Expense. The obligations of Lessee under this Agreement and all Lease Schedules, including its obligation to pay the Rental Payments due in any fiscal year shall constitute a current expense of Lessee for such fiscal year and shall not constitute an indebtedness of Lessee within the meaning of the Constitution and laws of the State of Ohio (the "State"). THE RENTAL PAYMENTS AND ANY OTHER AMOUNTS PAYABLE HEREUNDER ARE TO BE MADE ONLY FROM LESSEE'S LEGALLY AVAILABLE REVENUES APPROPRIATED ON AN ANNUAL BASIS, AND NONE OF LESSEE, THE STATE, OR ANY POLITICAL SUBDIVISION OR AGENCY THEREOF SHALL BE OBLIGATED TO PAY ANY SUMS DUE UNDER A LEASE FROM THE COMPELLED LEVY OF AD VALOREM OR OTHER TAXES EXCEPT FROM THOSE LEGALLY AVAILABLE REVENUES APPROPRIATED BY LESSEE ON AN ANNUAL BASIS. Nothing herein shall constitute a pledge by Lessee of the full faith and credit or taxing power of the Lessee, the State or any political subdivision or agency thereof. The person or entity in charge of preparing Lessee's budget will include in the budget request for each fiscal year the Rental Payments to become due during such fiscal year, and will use all reasonable and lawful means available to secure the

appropriation of money for such fiscal year sufficient to pay all Rental Payments coming due therein; provided that Lessee's governing body retains the authority to approve or reject such budget request. Lessor acknowledges that appropriation for Rental Payments and any other amounts payable hereunder is a governmental function which Lessee cannot contractually commit itself in advance to perform. Without committing itself to do so, Lessee reasonably believes that moneys in an amount sufficient to make all Rental Payments can and will lawfully be appropriated and made available to permit Lessee's continued utilization of the Equipment in the performance of its essential functions during the applicable Lease Term.

3.3. Unconditional Rental Payments. Subject to Section 3.4 hereof, (a) Lessee's obligation to make Rental Payments and any other payments hereunder shall be absolute and unconditional; (b) Lessee shall make such payments when due and shall not withhold any of these payments pending final resolution of any disputes; (c) Lessee shall not assert any right of set-off or counterclaim against its obligation to make these payments; (d) Lessee's obligation to make Rental Payments or other payments shall not be abated through accident, unforeseen circumstances, failure of the Equipment to perform as desired, damage or destruction to the Equipment, loss of possession of the Equipment or obsolescence of the Equipment; and (e) Lessee shall be obligated to continue to make payments required of it by this Agreement if title to, or temporary use of, the Equipment or any part thereof shall be taken under exercise of the power of eminent domain.

3.4. Nonappropriation. If during the then current fiscal year of Lessee, sufficient funds are not appropriated to make Rental Payments required under a Lease for the following fiscal year (an "Event of Nonappropriation"), Lessee shall be deemed not to have renewed such Lease for the following fiscal year, and the Lease shall terminate at the end of the then current fiscal year, and Lessee shall not be obligated to make Rental Payments under the Lease beyond the then current fiscal year for which funds have been appropriated. Upon an Event of Nonappropriation, Lessee shall return the Equipment subject to the Lease to Lessor in accordance with the requirements of Section 11.3. Lessee shall notify Lessor in writing no later than 30 days following an Event of Nonappropriation, but failure to provide such notice shall not operate to extend the Lease Term. If Lessee fails to return the applicable Equipment or otherwise comply with Section 11.3, the termination shall nevertheless be effective, but Lessee shall be responsible for the payment of an amount equal to the Rental Payments that would thereafter have come due if the Lease had not been terminated and which are attributable to the number of days after which Lessee fails to comply with Lessor's instructions and for any other loss suffered by Lessor as a result of Lessee's failure to take such actions as required. In addition, Lessor may, by written instructions to any escrow agent who is holding proceeds of the Lease, instruct such escrow agent to release all such proceeds and any earnings thereon to Lessor.

3.5. Security Interest. As security for Lessee's obligations to pay all Rental Payments and all other amounts due and payable under each Lease and to perform and observe all covenants, agreements and conditions (direct or indirect, absolute or contingent, due or to become due or existing or hereafter arising) of Lessee under such Lease, Lessee hereby grants to Lessor a first priority, security interest in any and all of the Equipment (now existing or hereafter acquired) under each Lease, moneys and investments held from time to time in the escrow fund under each Escrow Agreement and any and all proceeds of any of the foregoing. Lessee agrees to execute and deliver to Lessor all necessary documents to evidence and perfect such security interest, including, without limitation, Uniform Commercial Code financing statements and any amendments thereto and certificates of title or certificates of origin (or applications thereof) noting Lessor's interest thereon.

3.6. Tax Covenants.

(a) Lessee covenants and agrees that it will (i) complete and timely file an information reporting return with the Internal Revenue Service ("IRS") in accordance with Section 149(e) of the Internal Revenue Code of 1986, as amended (the "Code"); (ii) not permit the Equipment to be directly or indirectly used for a private business use within the meaning of Section 141 of the Code including, without limitation, use by private persons or entities pursuant to contractual arrangements which do not satisfy IRS guidelines for permitted management contracts, as the same may be amended from time to time; (iii) invest and reinvest

moneys on deposit in the any escrow fund related to each Lease from time to time in a manner that will not cause such Lease to be classified as an “arbitrage bond” within the meaning of Section 148(a) of the Code; (iv) rebate an amount equal to excess earnings in any such escrow fund to the federal government if required by, and in accordance with, Section 148(f) of the Code and make the determinations and maintain the records required by the Code; and (v) comply with all provisions and regulations applicable to establishing and maintaining the excludability of the interest component of the Rental Payments under each Lease from federal gross income pursuant to Section 103 of the Code.

(b) If Lessor either (i) receives notice, in any form, from the IRS; or (ii) reasonably determines, based on an opinion of independent tax counsel selected by Lessor that Lessor may not exclude the interest component of any Rental Payment under a Lease from federal gross income, then Lessee shall pay to Lessor, within thirty (30) days after Lessor notifies Lessee of such determination, the amount which, with respect to Rental Payments previously paid and taking into account all penalties, fines, interest and additions to tax (including all federal, state and local taxes imposed on the interest component of all Rental Payments under the Lease due through the date of such event) that are imposed on Lessor as a result of the loss of the exclusion, will restore to Lessor the same after tax yield on the transaction evidenced by such Lease (assuming tax at the highest marginal corporate tax rate) that it would have realized had the exclusion not been lost. Additionally, Lessee agrees that upon the occurrence of such an event, it shall pay additional rent to Lessor on each succeeding Rental Payment due date in such amount as will maintain such after tax yield to Lessor. Lessor's determination of the amount necessary to maintain its after-tax yield as provided in this subsection (b) shall be conclusive (absent manifest error).

4. PURCHASE AND PREPAYMENT

4.1. End of Lease Term. Lessee shall have the option to purchase all of the Equipment under a Lease upon the expiration of the Lease Term and payment in full of all Rental Payments then due and all other amounts then owing under the Lease, and the payment of \$1.00 to Lessor.

4.2. Optional Prepayment. Lessee shall have the option to prepay its obligations under any Lease in whole but not in part on any Payment Date as set forth in the applicable Payment Schedule , but only if and to the extent the Lease Schedule provides for such prepayment. Lessee shall give written notice to Lessor of its intention to exercise its option not less than thirty (30) days prior to the Payment Date on which the option will be exercised and shall pay to Lessor not later than such Payment Date an amount equal to all Rental Payments and any other amounts then due or past due under such Lease, including the Rental Payment due on the Payment Date on which the option shall be effective, and the applicable Prepayment Price set forth in the applicable Payment Schedule (the “Prepayment Price”).

4.3. Excess Proceeds. Lessee's obligations under a Lease shall be prepaid in part from the excess proceeds of the Lease on the terms set forth in any Escrow Agreement pursuant to which proceeds of the Lease are being held.

4.4. Release of Lessor's Interest. Upon timely receipt, in collected funds, of all amounts required for the purchase of the Equipment subject to any Lease pursuant to Section 4.1 or the prepayment in whole of any Lease pursuant to Section 4.2, such Lease shall terminate, all of Lessor's right, title and interest in and to the Equipment shall terminate, and Lessor shall deliver to Lessee all such documents and instruments as Lessee may reasonably request to evidence the termination of the Lease and Lessor's interest in the Equipment, without warranty by or recourse to Lessor.

5. REPRESENTATIONS AND WARRANTIES.

5.1. Representations and Warranties. Lessee shall be deemed to make the following representations and warranties to Lessor with respect to each Lease, in each case as of the Lease Date for such Lease:

(a) Lessee is a state or political subdivision of the State within the meaning of Section 103(c) of the Code, duly organized and existing under the Constitution and laws of the State, and is authorized under the Constitution and laws of the State to enter into this Agreement, the other Lease Documents and the transactions contemplated hereby and thereby, and to perform all of its obligations under this Agreement and the other Lease Documents.

(b) The execution and delivery of this Agreement and the Lease Schedule have been duly authorized by all necessary action of Lessee's governing body and such action is in compliance with all public bidding and other State and federal laws applicable to this Agreement and the acquisition and financing of the Equipment by Lessee.

(c) This Agreement and the Lease Schedule have been duly executed and delivered by and constitute the valid and binding obligations of Lessee, enforceable against Lessee in accordance with their respective terms.

(d) The execution, delivery and performance of this Agreement and the Lease Schedule by Lessee does not (i) violate any State or federal law or local law or ordinance, or any order, writ, injunction, decree, or regulation of any court or other governmental agency or body applicable to Lessee, or (ii) conflict with or result in the breach or violation of any term or provision of, or constitute a default under, any note, bond, mortgage, indenture, agreement, deed of trust, lease or other obligation to which Lessee is bound.

(e) There is no action, suit, proceeding, claim, inquiry or investigation, at law or in equity, before or by any court, regulatory agency, public board or body pending or, to the best of Lessee's knowledge, threatened against or affecting Lessee, challenging Lessee's authority to enter into this Agreement or any other Lease Document or any other action wherein an unfavorable ruling or finding would adversely affect the enforceability of this Agreement or any other Lease Document.

(f) Lessee or Lessee's governing body has appropriated and/or taken other lawful actions necessary to provide moneys sufficient to pay all Rental Payments during the current fiscal year, and such moneys will be applied in payment of all Rental Payments due and payable during such current fiscal year.

(g) Lessee has an immediate need for, and expects to make immediate use of, the Equipment, which need is not temporary or expected to diminish during the applicable Lease Term.

6. INSURANCE

6.1. Liability and Property Insurance. Lessee shall, at its own expense, procure and maintain continuously in effect during each Lease Term: (a) public liability insurance for death or injuries to persons, or damage to property arising out of or in any way connected to the Equipment sufficient to protect Lessor and its assigns from liability in all events, with a coverage of not less than \$1,000,000 per occurrence unless specified differently in the related Lease Schedule, and (b) insurance against such hazards as Lessor may require, including, but not limited to, all-risk casualty and property insurance, in an amount equal to the greater of the full replacement cost of the Equipment or the applicable Prepayment Price.

6.2. Insurance Requirements. All insurance policies required by Section 6.1 shall be taken out and maintained with insurance companies acceptable to Lessor and shall contain a provision that thirty (30) days prior to any change in the coverage (including cancellation) the insurer must provide written notice to the insured parties. No insurance shall be subject to any co-insurance clause. Each liability insurance policy shall be endorsed to name Lessor and its assigns as an additional insured party and each casualty and property insurance policy shall be endorsed to name Lessor and its assigns as loss payee, in each case regardless of any breach of warranty or other act or omission of Lessee. Lessee may self-insure against the risks described in Section 6.1 with the prior written consent of Lessor.

7. ADDITIONAL OBLIGATIONS

7.1. Use and Maintenance of Equipment. Lessee shall, at its own expense, maintain the Equipment in good condition and proper working order, and shall make all necessary repairs and replacements to keep the Equipment in such condition. The Equipment will be used by Lessee only for the purpose of performing Lessee's essential governmental functions. Lessee shall not install, use, operate or maintain the Equipment improperly, carelessly, in violation of any manufacturer's guidelines or in violation of any applicable law or regulation or in a manner contrary to that contemplated by this Agreement. Lessee shall obtain and maintain all permits and licenses necessary for the installation and operation of the Equipment. Lessee shall have sole responsibility to maintain and repair the Equipment. Lessee shall keep (or in the case of Equipment constituting motor vehicles, house) the Equipment at the address specified in the related Lease Schedule; provided that Lessee may change the location at which any Equipment is kept (or housed) with thirty (30) days prior written notice to Lessor specifying the address of the new location. Lessee shall provide Lessor access at all reasonable times to examine and inspect the Equipment and provide Lessor with such access to the Equipment as may be reasonably necessary to perform maintenance on the Equipment in the event of failure by Lessee to perform its obligations hereunder. If Lessor reasonably determines that Lessee is not maintaining any of the Equipment in accordance with this Section, Lessor may (to the extent permitted by law and in addition to any other remedies it may have) require Lessee to enter into maintenance contracts for such Equipment in form approved by Lessor and with approved providers.

7.2. Taxes. Lessee shall pay all taxes, assessments and other charges which are assessed or levied against the Equipment or any part thereof, during the Lease Term, whether assessed against Lessee or Lessor. With respect to any taxes or charges that may lawfully be paid in installments over a period of years, Lessee shall be obligated to pay only such installments as accrue during the then current fiscal year of the Lease Term for such Equipment.

7.3. Modification of Equipment. Lessee will not, without the prior written consent of Lessor, affix or install any accessory equipment or device on any of the Equipment if such addition will change or impair the originally intended value, function or use of the Equipment.

7.4. Liens. Lessee shall not, directly or indirectly, create, incur, assume or suffer to exist any mortgage, pledge, lien, charge, encumbrance or other claim with respect to the Equipment (each, a "Lien"), other than the respective rights of Lessor and Lessee as herein provided. Lessee shall promptly, at its own expense, take such actions as may be necessary duly to discharge or remove any such claim if the same shall arise at any time.

7.5. Financial Information. Lessee shall deliver to Lessor (i) its annual audited financial statements within [270] days after the end of each fiscal year, (ii) its annual budget for each fiscal year promptly following approval thereof, and (iii) such other financial statements and information relating to the ability of Lessee to satisfy its obligations under this Agreement and the Lease as may be reasonably requested by Lessor from time to time.

8. TITLE; NO WARRANTIES BY LESSOR

8.1. Title. During the Lease Term, legal title to all Equipment shall be in Lessee, subject to Lessor's interests under the applicable Lease Schedule and this Agreement. Upon an Event of Default or Event of Nonappropriation, title shall immediately vest in Lessor, free and clear of any right, title or interest of Lessee.

8.2. Personal Property. The Equipment is and shall at all times be and remain personal property and not fixtures.

8.3. No Warranties. LESSEE ACQUIRES AND LEASES THE EQUIPMENT UNDER EACH LEASE "AS IS." LESSEE ACKNOWLEDGES THAT LESSOR DID NOT MANUFACTURE THE EQUIPMENT UNDER ANY LEASE. LESSOR DOES NOT REPRESENT THE MANUFACTURER,

SUPPLIER, OWNER OR DEALER, AND LESSEE SELECTED THE EQUIPMENT BASED UPON LESSEE'S OWN JUDGMENT. LESSOR MAKES NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR OTHERWISE OR AS TO THE EQUIPMENT'S VALUE, DESIGN, CONDITION, USE, CAPACITY OR DURABILITY. LESSEE AGREES THAT REGARDLESS OF CAUSE, LESSOR IS NOT RESPONSIBLE FOR, AND LESSEE WILL NOT MAKE ANY CLAIM AGAINST LESSOR FOR, ANY DAMAGES, WHETHER CONSEQUENTIAL, DIRECT, SPECIAL OR INDIRECT INCURRED BY LESSEE IN CONNECTION WITH THE EQUIPMENT UNDER ANY LEASE. NEITHER THE MANUFACTURER, SUPPLIER OR DEALER NOR ANY SALESPERSON, EMPLOYEE OR AGENT OF THE MANUFACTURER, SUPPLIER OR DEALER IS LESSOR'S AGENT OR HAS ANY AUTHORITY TO SPEAK FOR LESSOR OR TO BIND LESSOR IN ANY WAY. For and during the Lease Term under each Lease, Lessor assigns to Lessee any manufacturer's or Supplier's product warranties, express or implied, applicable to any Equipment and Lessor authorizes Lessee to obtain the customary services furnished in connection with such warranties at Lessee's sole expense. Lessee agrees that (a) all Equipment will have been purchased by Lessor for the benefit of the Lessee in accordance with Lessee's specifications from suppliers selected by Lessee, (b) Lessor is not a manufacturer or dealer of any Equipment and has no liability for the delivery or installation of any Equipment, (c) Lessor assumes no obligation with respect to any manufacturer's or Supplier's product warranties or guaranties, (d) no manufacturer or Supplier or any representative of said parties is an agent of Lessor, and (e) any warranty, representation, guaranty or agreement made by any manufacturer or supplier or any representative of said parties shall not be binding upon Lessor.

9. RISK OF LOSS; CASUALTY; INDEMNITY

9.1. Risk of Loss. As between Lessee and Lessor, Lessee bears the entire risk of loss, theft, damage or destruction of any Equipment in whole or in part for any reason whatsoever. No loss to any Equipment shall relieve Lessee from the obligation to make any Rental Payments or to perform any other obligation under any Lease. Proceeds of any insurance recovery will be applied to Lessee's obligations under this Section 9.

9.2. Notice of Loss. If a casualty occurs to any Equipment, Lessee shall immediately notify Lessor of the same and Lessee shall, unless otherwise directed by Lessor, immediately repair the same.

9.3. Application of Proceeds. If any item of Equipment has suffered a casualty loss is beyond repair, then Lessee shall either: (a) promptly replace such Equipment with similar equipment in good repair, condition and working order free and clear of any liens (except Lessor's rights hereunder), in which event such replacement equipment shall automatically be Equipment under the applicable Lease, or (b) on the next scheduled Payment Date, pay Lessor (i) all amounts owed by Lessee under the applicable Lease, including the Rental Payment due on such date, plus (ii) an amount equal to the applicable Prepayment Price set forth in the Payment Schedule to the applicable Lease. If Lessee is making such payment with respect to less than all of the Equipment under a Lease, then Lessor will provide Lessee with the pro rata amount of the Prepayment Price to be paid by Lessee with respect to the such Equipment.

9.4. Claims and Expenses. To the extent permitted by and enforceable under State law, Lessee shall bear the risk for, shall pay directly and shall defend against any and all claims, liabilities, proceedings, actions, expenses (including reasonable attorneys' fees), damages or losses arising under or related to any Equipment, including, but not limited to, the possession, ownership, lease, use or operation thereof. These obligations of Lessee shall survive any expiration or termination of any Lease.

10. ASSIGNMENT

10.1. Assignment by Lessor. Lessor may assign its rights, title and interest in and to any Lease, any Equipment or any Escrow Agreement (including the escrow fund thereunder), and/or may grant or assign a security interest in any Lease, its Equipment or any Escrow Agreement (including the escrow fund thereunder), in whole or in part, to any party at any time and from time to time without Lessee's consent. Any such assignee or lien holder (an "Assignee") shall have all of the rights of Lessor under the applicable Lease and Escrow Agreement. LESSEE AGREES NOT TO ASSERT AGAINST ANY ASSIGNEE ANY

CLAIMS, ABATEMENTS, SETOFFS, COUNTERCLAIMS, RECOUPMENT OR ANY OTHER SIMILAR DEFENSES WHICH LESSEE MAY HAVE AGAINST LESSOR. Unless otherwise agreed by Lessee in writing, any such assignment transaction shall not release Lessor from any of Lessor's obligations under the applicable Lease. An assignment or reassignment of any of Lessor's right, title or interest in a Lease, its Equipment or any Escrow Agreement (including the escrow fund thereunder) shall be enforceable against Lessee only after Lessee receives a written notice of assignment that discloses the name and address of each such Assignee. Lessee agrees to acknowledge in writing any such assignments if so requested. Lessee shall keep a complete and accurate record of all such assignments in the form necessary to comply with Section 149(a) of the Code. Lessee agrees to acknowledge in writing any such assignments if so requested.

10.2. Assignment and Subleasing by Lessee. Neither this Agreement nor any Lease or any Equipment may be assigned, subleased, sold, transferred, pledged or mortgaged by Lessee.

11. EVENTS OF DEFAULT; REMEDIES

11.1. Events of Default Defined. The occurrence of any of the following events with respect to a Lease shall constitute an Event of Default under the Lease:

(a) Lessee's failure to pay any Rental Payment or other amount required to be paid to Lessor under the Lease within ten (10) days following the due date thereof, other than by reason of an Event of Nonappropriation;

(b) Lessee fails to perform or observe any of its obligations under Section 6, 7.4 or 10.2 hereof;

(c) With the exception of the above clauses (a) or (b), Lessee's failure to perform or abide by any condition, agreement or covenant with respect to the Lease for a period of thirty (30) days after written notice by Lessor to Lessee specifying such failure and requesting that it be remedied, unless Lessor shall agree in writing to an extension of time prior to its expiration;

(d) Lessee is in default with respect to the payment or performance of any indebtedness, liability or obligation to Lessor or any of its affiliates under any note, loan agreement, security agreement, lease, title retention or conditional sales agreement or any other instrument or agreement (including the occurrence of any Event of Default under any other Lease then held by Lessor), whether accelerated or otherwise and any applicable grace period with respect thereto has expired; or

(e) Any statement, representation or warranty made by Lessee in the Lease or in any writing delivered by Lessee pursuant thereto or in connection therewith proves at any time to have been false, misleading or erroneous in any material respect as of the time when made; or

(f) Lessee applies for or consents to the appointment of a receiver, trustee, conservator or liquidator of Lessee or of all or a substantial part of its assets, or a petition for relief is filed by Lessee under any federal or state bankruptcy, insolvency, moratorium or similar law.

11.2. Remedies on Default. Upon the occurrence of any Event of Default with respect to a Lease, Lessor shall have the right, at its option and without any further demand or notice to one or more or all of the following remedies with respect to the Lease:

(a) Lessor, with or without terminating the Lease, may declare all Rental Payments payable under the Lease to the end of the then-current fiscal year of Lessee to be immediately due and payable by Lessee, whereupon such Rental Payments shall be immediately due and payable.

(b) Lessor may require Lessee to promptly return all Equipment to Lessor in the manner set forth in Section 11.3 (and Lessee agrees that it shall so return the Equipment), or Lessor may, at its option, enter upon the premises where any Equipment is located and repossess such Equipment without demand,

without any court order or other process of law and without liability for any damage occasioned by such repossession; and Lessor may thereafter dispose of the Equipment. If Lessor terminates the Lease and disposes of any or all of the Equipment, Lessor shall apply the proceeds of any such disposition to pay the following items in the following order: (i) all costs and expenses (including, but not limited to, attorneys' fees) incurred in securing possession of the Equipment; (ii) all costs and expenses incurred in completing the disposition of the Equipment; (iii) any sales or transfer taxes incurred in the disposition of the Equipment; (iv) any Rental Payments payable under the Lease to the end of the then-current fiscal year of Lessee; (v) the outstanding principal component of Rental Payments under the Lease; and (vi) any other amounts then due under the Lease. Any disposition proceeds remaining after the requirements of clauses (i), (ii), (iii), (iv), (v) and (vi) have been met shall be paid to Lessee.

(c) By written notice to any escrow agent that is holding proceeds of the Lease under an Escrow Agreement, Lessor may instruct such escrow agent to release all such proceeds and any earnings thereon to Lessor, such sums to be credited to payment of Lessee's obligations under the Lease; or

(d) Lessor may exercise any other remedy available, at law or in equity, with respect to such Event of Default. Lessee shall pay the reasonable attorneys' fees and expenses incurred by Lessor in exercising any remedy hereunder.

11.3. Return of Equipment; Release of Lessee's Interest. Upon termination of any Lease prior to the payment of all Rental Payments or the applicable Prepayment Price thereunder (whether as result of an Event of Nonappropriation or Event of Default), Lessee shall, within ten (10) days after such termination, at its own expense: (a) perform any testing and repairs required to place the related Equipment in the condition required by Section 7; (b) if deinstallation, disassembly or crating is required, cause such Equipment to be deinstalled, disassembled and crated by an authorized manufacturer's representative or such other service person as is satisfactory to Lessor; (c) return such Equipment to a location in the continental United States specified by Lessor, freight and insurance prepaid by Lessee; and (d) comply with any additional return conditions specified in the Lease Schedule. Lessee shall execute and deliver to Lessor such documents as Lessor may request to evidence the passage of legal title and ownership to Lessor and termination of Lessee's interest in the Equipment.

With respect to any provision of the Agreement requiring Lessee to return all or any portion of the Equipment to Lessor or to transfer title to all or any portion of the equipment to Lessor, Lessee agrees to voluntarily do so. In the event that Lessee fails or refuses to return or transfer the Equipment or title thereto voluntarily as set forth above, Lessor acknowledges that the Agreement does not and shall not create a right in Lessor to involuntarily dispossess Lessee of title to or possession of all or any item of the Equipment. In lieu of such right Lessor shall be entitled to and Lessee agrees to pay to Lessor immediately, but only from legally available funds, the Prepayment Price, plus any Rental Payments accrued and unpaid as of the date of such payment.

11.4. Late Charge. To the extent permitted by and enforceable under State law, Lessee shall pay Lessor a charge on any Rental Payment not paid on the date such payment is due at a rate equal to the interest rate set forth in the applicable Lease Schedule plus 5% per annum or the maximum amount permitted by law, whichever is less (the "Default Rate"), from such date.

11.5. No Remedy Exclusive. Each of the rights and remedies under this Agreement and each Lease is cumulative and may be enforced separately or concurrently. No course of dealing or conduct between Lessor and Lessee shall be effective to amend, modify or change any provisions of this Agreement or any Lease. No failure or delay by Lessor to insist upon the strict performance of any term, covenant or agreement of the Agreement or any Lease, or to exercise any right, power or remedy consequent upon a breach thereof, shall constitute a waiver of any such term, covenant or agreement or of any such breach, or preclude Lessor from exercising any such right, power or remedy at any later time or times.

11.6. Costs and Attorneys' Fees. To the extent permitted by and enforceable under State law, upon the occurrence of an Event of Default, Lessee agrees to pay to Lessor or reimburse Lessor for, in

addition to all other amounts payable hereunder, all of Lessor's costs of collection, including reasonable attorneys' fees, whether or not suit or action is filed thereon. Any such costs shall be immediately due and payable upon written notice and demand given to Lessee, shall be secured by this Agreement until paid, and shall bear interest at the Default Rate. In the event suit or action is instituted to enforce any of the terms of this Agreement, the prevailing party shall be entitled to recover from the other party such sum as the court may adjudge reasonable as attorneys' fees at trial and on appeal of such suit or action or in any bankruptcy proceeding, in addition to all other sums provided by law.

12. MISCELLANEOUS PROVISIONS

12.1. Notices. All written notices to be given under this Agreement shall be given (a) personally, (b) by mail in registered or certified form, with postage prepaid, or (c) by overnight courier, charges prepaid, in each case to the party entitled thereto at its address specified beneath each party's signature, or at such address as the party may provide to the other parties hereto in writing from time to time, and to any assignee at its address as it appears on the registration books maintained by Lessee. Any such notice shall be deemed to have been received 72 hours after deposit in the United States mail, 24 hours after deposit with a courier, or, if given by other means, when delivered.

12.2. Binding Effect. This Agreement and each Lease hereunder shall be binding upon and shall inure to the benefit of Lessor and Lessee and their respective successors and assigns. Specifically, as used herein the term "Lessor" means, with respect to a Lease, any person or entity to whom Lessor has assigned its right to receive Rental Payments under such Lease.

12.3. Severability. In the event any provision of this Agreement or any Lease shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

12.4. Entire Agreement; Amendments. Each Lease constitutes the entire agreement of the parties with respect to the subject matter thereof and supersedes all prior and contemporaneous writings, understandings, agreements, solicitation documents and representations, express or implied. Each Lease may be amended or modified only by written documents duly authorized, executed and delivered by Lessor and Lessee.

12.5. Captions. The captions or headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions, Articles, Sections or clauses hereof.

12.6. Further Assurances and Corrective Instruments. Lessor and Lessee agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required to perfect, confirm, establish, reestablish, continue or complete the interests of Lessor in this Agreement and each Lease, to consummate the transactions contemplated hereby and thereby, and to carry out the purposes and intentions of this Agreement and each Lease.

12.7. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State.

12.8. Usury. It is the intention of the parties hereto to comply with any applicable usury laws; accordingly, it is agreed that, notwithstanding any provisions to the contrary herein or in any Lease Schedule, in no event shall this Agreement or any Lease hereunder require the payment or permit the collection of interest or any amount in the nature of interest or fees in excess of the maximum amount permitted by applicable law. Any such excess interest or fees shall first be applied to reduce principal, and when no principal remains, refunded to Lessee. In determining whether the interest paid or payable exceeds the highest lawful rate, the total amount of interest shall be spread through the applicable Lease Term so that the interest is uniform through such term.

12.9. Waiver of Jury Trial. To the extent permitted by applicable law, Lessor and Lessee hereby waive any right to trial by jury in any action or proceeding with respect to, in connection with or arising out of this Agreement.

12.10. Relationship of Parties. Lessee acknowledges and agrees that (i) this Agreement and each Lease and the transactions related thereto is an arm's-length commercial transaction between Lessor and Lessee, (ii) in connection therewith and with the discussions, undertakings, and procedures leading up to the consummation of this transaction, Lessor is and has been acting solely as a principal and is not acting as the agent, advisor or fiduciary of Lessee, (iii) Lessor has not assumed an advisory or fiduciary responsibility in favor of Lessee with respect to the transactions contemplated hereby or the discussions, undertakings, and procedures leading thereto (regardless of whether Lessor or any affiliate thereof has provided other services or is currently providing other services to Lessee on other matters) and Lessor has no obligation to Lessee with respect to the transactions contemplated hereby except the obligations expressly set forth in this Agreement and any Lease, and (iv) Lessee has consulted its own legal, financial, and other advisors to the extent it has deemed appropriate.

12.11. Filing of Leases. Lessee shall not file or submit, or permit the filing or submission, of all or any portion this Agreement or any Lease, any document related to this Agreement or any Lease, any default, event of acceleration, termination event, waiver, modification of terms or other similar events relating to this Agreement or any Lease or any summary of the foregoing with the Municipal Securities Rulemaking Board ("MSRB") (or any successor to the MSRB or similar entity or service) unless such document or portion thereof has been provided to the Lessor in advance for review and redaction to the extent required by the Lessor and otherwise permitted under applicable MSRB rules or federal securities law, if any. Lessor is not responsible for the Lessee's or any other entity's compliance with any continuing disclosure obligations under any applicable securities law or related agreement or undertaking.

12.12. Counterparts. This Agreement and any Lease Schedules may be executed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument, and in making proof of this Agreement and any Lease Schedules it shall not be necessary to produce or account for more than one such counterpart.

12.13. Electronic Signatures. The parties agree that the electronic signature of a party to this Agreement and any Lease Schedule shall be as valid as an original signature of such party and shall be effective to bind such party to this Agreement and such Lease Schedule(s). The parties agree that any electronically signed document (including this Agreement and any Lease Schedule) shall be deemed (i) to be "written" or "in writing," (ii) to have been signed and (iii) to constitute a record established and maintained in the ordinary course of business and an original written record when printed from electronic files. Such paper copies or "printouts", if introduced as evidence in any judicial, arbitral, mediation or administrative proceeding, will be admissible as between the parties to the same extent and under the same conditions as other original business records created and maintained in documentary form. Neither party shall contest the admissibility of true and accurate copies of electronically signed documents on the basis of the best evidence rule or as not satisfying the business records exception to the hearsay rule. For purposes hereof, "electronic signature" means a manually signed original signature that is then transmitted by electronic means; "transmitted by electronic means" means sent in the form of a facsimile or sent via the internet as a "pdf" (portable document format) or other replicating image attached to an e mail message; and, "electronically signed document" means a document transmitted by electronic means and containing, or to which there is affixed, an electronic signature.

[The remainder of this page is intentionally blank. Signature page follows.]

IN WITNESS WHEREOF, Lessor has caused this Agreement to be executed in its corporate name by its duly authorized officer, and Lessee has caused this Agreement to be executed in its name by its duly authorized officer.

CITY OF HUBER HEIGHTS
Lessee

COGENT LEASING AND FINANCING, INC.
Lessor

By: _____
Name: Bryan RH Chodkowski
Title: Interim City Manager

Address: 6131 Taylorsville Rd
Huber Heights, OH 45424

Telephone: 937-237-5834
Email: bchodkowski@hhoh.org
jbell@hhoh.org

By: _____
Name: Michael J. Horkey
Title: President

Address: 420 S. Orange Ave, Ste. 150
Orlando, FL 32801
Attn: Public Finance

Telephone: 410.409.7579
E-mail: mhorkey@cogentbank.net

ADDENDUM TO MASTER LEASE PURCHASE AGREEMENT

Lessor: Cogent Leasing and Financing, Inc.
Lessee: City of Huber Heights, Ohio
Master Lease Purchase Agreement dated June 5, 2023

This Addendum dated as of June 5, 2023 is incorporated in and hereby made a part of the above referenced Master Lease Purchase Agreement, including all schedules, addenda, exhibits and other attachments (collectively, the "Agreement").

The Lessor and Lessee named above agree that notwithstanding any provision to the contrary in the Agreement:

1. The Agreement shall automatically expire at the end of the Original Term or Renewal Term then in effect unless prior to the end of that Original Term or Renewal Term the Lessee appropriates funds sufficient to pay Rental Payments due during the next Renewal Term and certifies that those funds are available or in the process of collection. The Original Term shall commence on the commencement date stated in the Payment Schedule and end on December 31, 2023. Each Renewal Term shall coincide with Lessee's fiscal year (January 1 to December 31), except that the final Renewal Term shall end on the final Rental Payment date stated on the Payment Schedule.

2. If and to the extent that any provision of the Agreement imposes any pecuniary obligation on Lessee, other than the obligation to pay Rental Payments due during the current fiscal year from money duly appropriated for that purpose and certified as available or in the process of collection by Lessee's fiscal officer, that pecuniary obligation is subject to the appropriation of sufficient funds for that purpose by Lessee's governing body and the certification by Lessee's fiscal officer that those funds are available or in the process of collection.

3. Lessee shall not be required to accept the Equipment except as provided pursuant to State law, as provided and in accordance with the Agreement, and pursuant to contract between Lessee and the vendor of the Equipment; provided that Lessor shall not be bound by any of the terms and conditions of such contract between Lessee and the vendor of the Equipment. Lessee shall not be required to enter into any maintenance or service agreement with respect to the Equipment except as required to maintain any vendor warranties with respect to the Equipment.

4. Notwithstanding the language in Section 3.2 of the Agreement regarding current expense, the Equipment is a permanent improvement with an estimated useful life of more than five years, and the Lessee may therefore use money in its Permanent Improvement Fund for Rental Payments.

5. Lessor shall have title to the Equipment during the term of the Agreement. However, for federal income tax purposes and State ad valorem tax purposes and for purposes of the Uniform Commercial Code, Lessor and Lessee shall treat the Agreement as a conditional sales agreement. Lessee shall be deemed to have exercised its option to purchase the Equipment, and title to the Equipment shall pass to the Lessee without any further act or notice on its part, upon the payment in full of all Rental Payments and other payments required under the Agreement for the Original Term and all Renewal Terms contemplated under the Agreement, by the Lessee, as they shall have come due in accordance with the Agreement, so long as there shall be no Event of Default in existence at such time. Notwithstanding the foregoing, Lessee and Lessor agree that, with respect to any Equipment constituting a motor vehicle for purposes of the Ohio certificate of motor vehicle title law (Ohio Revised Code Chapter 4505), the Lessee shall appear as holder of title to such Equipment.

6. Lessor shall not issue, sell or publicly underwrite fractionalized interests in the Agreement without the knowledge and express written approval or authorization of the Lessee, as required by Ohio Revised Code Section 9.94.

7. The Agreement and any ancillary agreement relating to the Agreement shall not be effective until a Fiscal Officer's Certificate has been signed and attached to the Agreement and ancillary agreement in substantially the form set forth in this Addendum.

8. Lessee agrees to complete, sign and file Form 8038-G with the IRS within the time prescribed by the IRS and provide Lessor with a copy of the form as filed and any filing correspondence to the IRS.

9. The Lessor may not have access to the Equipment location except upon reasonable prior notice to Lessee and during Lessee's normal business hours.

10. Any waiver of rights by Lessee pursuant to the Agreement, including but not limited to the waiver of a right to trial by jury, is given by Lessee only to the extent permitted by law.

11. Notwithstanding anything in the Agreement to the contrary, the opinion required to be delivered pursuant to Section 1.3(a) thereto shall be substantially in the form attached hereto as Exhibit A.

Lessor: Cogent Leasing and Financing, Inc.
By:
Name:
Title:

Lessee: City of Huber Heights, Ohio
By:
Name:
Title: Interim City Manager

Lessee: City of Huber Heights, Ohio
By:
Name:
Title: Director of Finance

FISCAL OFFICER'S CERTIFICATE

The undersigned, as fiscal officer of the Lessee, hereby certifies that the money required for the payment of the obligations of the Lessee under the attached contract during the current fiscal year has been lawfully appropriated for such purposes and is in the treasury or in the process of collection to the credit of the appropriate fund, free from any previous encumbrances. This Certificate is given in compliance with Sections 5705.41 and 5705.44 of the Revised Code.

LESSEE: City of Huber Heights, Ohio

Dated: May 18, 2023



Name:
Title: Director of Finance

Exhibit A
Form of Opinion

To: City of Huber Heights, Ohio

Cogent Leasing and Financing, Inc.

We have served as bond counsel to our client the City of Huber Heights, Ohio (the "City"), in connection with the City's execution and delivery of a Master Lease Purchase Agreement dated June 5, 2023 (together with related schedule, and all addenda, exhibits and attachments thereto, the "Agreement"), between Cogent Leasing and Financing, Inc., as lessor (the "Lessor"), and the City, as lessee.

In our capacity as bond counsel, we have examined the transcript of proceedings relating to the execution and delivery of the Agreement, including the Agreement and such other documents, matters and law as we deem necessary to render the opinions set forth in this letter. Capitalized terms not otherwise defined in this letter are used as defined in the Agreement.

Based on that examination and subject to the limitations stated below, we are of the opinion that under existing law:

1. The City is a political subdivision of the State of Ohio for purposes of Section 103 of the Internal Revenue Code of 1986, as amended.
2. The Agreement is valid, binding, and enforceable against the City in accordance with its terms. The City's obligation to make payments under the Agreement ("Rental Payments") is subject to and dependent on annual appropriations by the City Council, is not secured by an obligation or pledge of any money raised by taxation except as so appropriated, and does not constitute a debt or pledge of the faith and credit of the City within the meaning of any constitutional or statutory limitation. If the City Council fails to appropriate money for Rental Payments, the Agreement terminates at the end of the current term and the City is relieved of any subsequent payment obligation under the Agreement.
3. The City's execution and delivery of the Agreement and the performance of its obligations under the Agreement do not and will not conflict with or violate any existing provisions of the Constitution or laws of the State of Ohio or, to the actual knowledge of the lawyers in this firm who rendered legal services in connection with this matter, any order, writ, injunction or decree of any governmental authority, or, to the actual knowledge of the lawyers in this firm who rendered legal services in connection with this matter, constitute a default under or conflict with or violate any indenture, mortgage, deed of trust or other agreement or instrument to which the City is a party or by which it or any of its property is bound.
4. No consent, approval or other authorization by any regulatory authority having jurisdiction over the City is required for the City to enter into the Agreement or perform the actions required on its part to be taken under the Agreement.
5. The Agreement has been duly approved and executed by and on behalf of the City.

The opinions stated above are based on an analysis of existing laws, regulations, rulings and court decisions and cover certain matters not directly addressed by such authorities. In rendering all such opinions, we assume, without independent verification, and rely upon (i) the accuracy of the factual matters represented, warranted or certified in the proceedings and documents we have examined, including the Lessee's Certificate, dated this date and signed by the Interim City Manager and Director of Finance of the City, (ii) the due and legal authorization, execution and delivery of those documents by, and the valid, binding and enforceable nature of those documents upon the Lessor, and (iii) that the Lessor has given value.

We express no opinion as to the federal, State of Ohio or local tax treatment of any amounts paid pursuant to the Agreement.

We express no opinion with respect to any indemnification, contribution, penalty, choice of law, choice of forum, choice of venue, waiver or severability provisions contained in the Agreement.

We express no opinion herein with respect to the status or quality of title to, or any interest in, any of the property described in the Agreement, or the accuracy or sufficiency of the description contained therein of any of that property, or the priority of, or the remedies available to enforce, any claim on or interest in any of that property.

The rights of the Lessor and the enforceability of the Agreement are subject to bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance or transfer, and other laws relating to or affecting the rights and remedies of creditors generally; to the application of equitable principles, whether considered in a proceeding at law or in equity; to the exercise of judicial discretion; and to limitations on legal remedies against public entities.

Our examination of matters of law in connection with the opinions expressed herein has been limited to the federal laws of the United States of America and laws of the State of Ohio; accordingly, no opinions expressed herein shall be deemed to cover any other laws.

We have neither examined nor requested an examination of the indices or records of any court or governmental or other agency, authority, instrumentality or entity, nor have we made inquiry of any person or entity, except as expressly set forth in this opinion letter.

No opinions other than those expressly stated herein are implied or shall be inferred as a result of anything contained in or omitted from this letter. The opinions expressed in this letter are stated only as of the time of its delivery and we disclaim any obligation to revise or supplement this letter thereafter. Our engagement as bond counsel in connection with the execution and delivery of the Agreement has concluded upon delivery of this letter.

This opinion letter is being furnished only to the addressees and is solely for their benefits and the benefit of their assigns in connection with the transactions contemplated by the Agreement. This opinion letter may not be relied upon for any other purpose or relied upon by any other person, firm or corporation for any purpose, without our prior written consent.

Respectfully submitted,

ESCROW AGREEMENT

This Escrow Agreement (this "Agreement"), dated as of June 5, 2023, by and among **COGENT LEASING AND FINANCING, INC.** (and any successors and permitted assigns "Lessor"), the **CITY OF HUBER HEIGHTS**, a government body corporate and politic and a political subdivision existing under the laws of the State of Ohio ("Lessee"), and **COGENT BANK**, in its capacity as escrow agent hereunder ("Escrow Agent").

Reference is made to that certain LEASE SCHEDULE NO. 1 dated June 5, 2023, to that certain Master Lease Purchase Agreement dated as of June 5, 2023, each between Lessor and Lessee (hereinafter collectively referred to as the "Lease"), covering the acquisition and lease of certain Equipment described therein (the "Equipment"). It is a requirement of the Lease that the Purchase Price in the amount of \$337,287.25 be deposited into a segregated escrow account under terms satisfactory to Lessor, for the purpose of fully funding the Lease, and providing a mechanism for the application of such amounts to the purchase of and payment for the Equipment.

NOW, THEREFORE, in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Creation of Escrow Account.

(a) There is hereby created an escrow fund to be known as the "City of Huber Heights, OH, Escrow Account 01" (the "Escrow Account") to be held by the Escrow Agent for the purposes stated herein, for the benefit of Lessor and Lessee, to be held, disbursed and returned in accordance with the terms hereof.

(b) The Escrow Agent shall place all escrow funds in a demand deposit account or as otherwise agreed upon between the parties.

(c) Unless the Escrow Account is earlier terminated in accordance with the provisions of paragraph (d) below, amounts in the Escrow Account shall be disbursed by the Escrow Agent in payment of amounts described in Section 2 hereof upon receipt of written instruction(s) from Lessor, as is more fully described in Section 2 hereof. If the amounts in the Escrow Account are insufficient to pay such amounts, Lessee shall deposit into the Escrow Account any funds needed to complete the acquisition of the Equipment. Any moneys remaining in the Escrow Account on or after the earlier of (i) December 5, 2024 ("Termination Date") and (ii) the date on which Lessee executes an Acceptance Certificate shall be applied as provided in Section 4 hereof.

(d) The Escrow Account shall be terminated at the earliest of (i) the final distribution of amounts in the Escrow Account or (ii) written notice given by Lessor of the occurrence of a default or termination of the Lease due to non-appropriation.

(e) The Escrow Agent may act in reliance upon any writing or instrument or signature which it, in good faith, believes to be genuine and may assume the validity and accuracy of any statement or assertion contained in such a writing or instrument. The Escrow Agent shall not be liable in any manner for the sufficiency or correctness as to form, manner of execution, or validity of any instrument nor as to the identity, authority, or right of any person executing the same; and its duties hereunder shall be limited to the receipt of such moneys, instruments or other documents received by it as the Escrow Agent, and for the disposition of the same in accordance herewith. In the event conflicting instructions as to the disposition of all or any portion of the Escrow Account are at any time given by Lessor and Lessee, the Escrow Agent shall abide by the instructions given by Lessor without consent of the Lessee.

(f) Unless the Escrow Agent is guilty of gross negligence or willful misconduct with regard to its duties hereunder, to the extent permitted by law, Lessee agrees to and does hereby release

and indemnify the Escrow Agent and hold it harmless from any and all claims, liabilities, losses, actions, suits or proceedings at law or in equity, or any other expense, fees or charges of any character or nature, which it may incur or with which it may be threatened by reason of its acting as Escrow Agent under this agreement; and in connection therewith, does to the extent permitted by law indemnify the Escrow Agent against any and all expenses; including reasonable attorneys' fees and the cost of defending any action, suit or proceeding or resisting any claim.

(g) If Lessee and Lessor shall be in disagreement about the interpretation of the Lease, or about the rights and obligations, or the propriety of any action contemplated by the Escrow Agent hereunder, the Escrow Agent may, but shall not be required to, file an appropriate civil action including an interpleader action to resolve the disagreement. The Escrow Agent shall be reimbursed by Lessee for all costs in connection with such civil action, and shall be fully protected in suspending all or part of its activities under the Lease until a final judgment in such action is received.

(h) The Escrow Agent may consult with counsel of its own choice and shall have full and complete authorization and protection with the opinion of such counsel. Lessee shall reimburse the Escrow Agent for all such reasonable costs and expenses. The Escrow Agent shall otherwise not be liable for any mistakes of fact or errors of judgment, or for any acts or omissions of any kind unless caused by its willful misconduct.

(i) To the extent permitted by law, Lessee shall reimburse the Escrow Agent for all reasonable costs and expenses, including those of the Escrow Agent's attorneys, agents and employees incurred for non-routine administration of the Escrow Account and the performance of the Escrow Agent's powers and duties hereunder in connection with any Event of Default under the Lease, or in connection with any dispute between Lessor and Lessee concerning the Escrow Account.

(j) The Escrow Agent or any successor may at any time resign by giving mailed notice to Lessee and Lessor of its intention to resign and of the proposed date of resignation (the "Effective Date"), which shall be a date not less than 60 days after such notice is delivered to an express carrier, charges prepaid, unless an earlier resignation date and the appointment of a successor shall have been approved by the Lessee and Lessor. After the Effective Date, the Escrow Agent shall be under no further obligation except to hold the Escrow Account in accordance with the terms of this Agreement, pending receipt of written instructions from Lessor regarding further disposition of the Escrow Account.

(k) Except as provided by applicable law, the Escrow Agent shall have no responsibilities, obligations or duties other than those expressly set forth in this Agreement and no implied duties responsibilities or obligations shall be read into this Agreement.

2. Acquisition of Equipment.

(a) Acquisition Contracts. Lessee will arrange for, supervise and provide for, or cause to be supervised and provided for, the acquisition of the Equipment, with moneys available in the Escrow Account. Lessee represents the estimated costs of the Equipment are within the funds estimated to be available therefor, and Lessor makes no warranty or representation with respect thereto. Lessor shall have no liability under any of the acquisition or construction contracts. Lessee shall obtain all necessary permits and approvals, if any, for the acquisition, equipping and installation of the Equipment, and the operation and maintenance thereof. Escrow Agent shall have no duty to monitor or enforce Lessee's compliance with the foregoing covenant.

(b) Authorized Escrow Account Disbursements. It is agreed as between Lessee and Lessor that Disbursements from the Escrow Account shall be made for the purpose of paying (including the reimbursement to Lessee for advances from its own funds to accomplish the purposes hereinafter described) the cost of acquiring the Equipment.

(c) Requisition Procedure. No disbursement from the Escrow Account shall be made unless and until Lessor has approved such requisition. Prior to disbursement from the Escrow Account there shall be filed with the Escrow Agent a requisition for such payment in the form of Disbursement Request attached hereto as Exhibit A, stating each amount to be paid and the name of the person, firm or corporation to whom payment thereof is due and the manner of disbursement (check or wire).

Each such requisition shall be signed by an authorized representative of Lessee (an "Authorized Representative") and by Lessor, and shall be subject to the following conditions, which Escrow Agent shall conclusively presume have been satisfied at such time as a requisition executed by Lessee and Lessor is delivered to it:

1. Delivery to Lessor of an executed Disbursement Request in the form attached hereto as Exhibit A; and
2. Delivery to Lessor true and correct copies of invoices (and proofs of payment of such invoices, if Lessee seeks reimbursement) and bills of sale (if title to such Equipment has passed to Lessee) therefor as required by the Lease and any additional documentation reasonably requested by Lessor.

Lessee and Lessor agree that their execution of the form attached hereto as Exhibit A and delivery of the executed form to Escrow Agent confirms that all of the requirements and conditions with respect to disbursements set forth in this Section 2 have been satisfied.

3. Deposit to Escrow Account. Upon satisfaction of the conditions specified in Section 1.3 of the Lease, Lessor will cause the Purchase Price to be deposited in the Escrow Account. Lessee agrees to pay any costs with respect to the Equipment in excess of amounts available therefor in the Escrow Account.

4. Excessive Escrow Account. Lessor shall provide Escrow Agent written instructions and a representation that one of the following conditions has been satisfied, (upon which representation Escrow Agent shall conclusively rely,) (a) the Termination Date; or (b) the date on which Lessee executes an Acceptance Certificate; or (c) upon a termination of the Escrow Account as otherwise provided herein. Upon receipt of such written instructions, any funds remaining in the Escrow Agreement shall be disbursed to the Lessor and Lessor shall apply such funds to amounts owed by Lessee under the Lease.

5. Security Interest. The Escrow Agent and Lessee acknowledge and agree that the Escrow Account and all proceeds thereof are being held by Escrow Agent for disbursement or return as set forth herein. Lessee hereby grants to Lessor a first priority perfected security interest in the Escrow Account, and all proceeds thereof.

6. Escrow Agent Fees. [Intentionally omitted.]

7. Information Required Under USA PATRIOT ACT. The parties acknowledge that in order to help the United States government fight the funding of terrorism and money laundering activities, pursuant to Federal regulations that became effective on October 1, 2003 (Section 326 of the USA PATRIOT Act) all financial institutions are required to obtain, verify, record and update information that identifies each person establishing a relationship or opening an account. The parties to this Agreement agree that they will provide to the Escrow Agent such information as it may request, from time to time, in order for the Escrow Agent to satisfy the requirements of the USA PATRIOT Act, including but not limited to the name, address, tax identification number and other information that will allow it to identify the individual or entity who is establishing the relationship or opening the account and may also ask for formation documents such as articles of incorporation or other identifying documents to be provided.

8. Miscellaneous. Capitalized terms not otherwise defined herein shall have the meanings assigned to them in the Lease. This agreement may not be amended except in writing signed by all parties hereto. This agreement may be executed in one or more counterparts, each of which shall be deemed to

be an original instrument and each shall have the force and effect of an original and all of which together constitute, and shall be deemed to constitute, one and the same instrument. Notices hereunder shall be made in writing and shall be deemed to have been duly given when personally delivered or when deposited in the mail, first class postage prepaid, or delivered to an express carrier, charges prepaid, or sent by facsimile with electronic confirmation, addressed to each party at its address below.

Notices and other communications hereunder may be delivered or furnished by electronic mail; provided that any formal notice be attached to an email message in PDF format; and provided further that any notice or other communication sent to an e-mail address shall be deemed received upon and only upon the sender's receipt of affirmative acknowledgement or receipt from the intended recipient. For purposes hereof no acknowledgement of receipt generated on an automated basis shall be deemed sufficient for any purpose hereunder or admissible as evidence of receipt.

If to Lessor: Cogent Leasing and Financing, Inc.
420 S Orange Ave., Suite 150
Orlando, FL 32801
Attn: Mike Horkey
Email: mhorkey@cogentbank.net
escrow@cogentbank.net

If to Lessee: City of Huber Heights, OH
Attn: Interim City Manager
Bryan RH Chodkowski
6131 Taylorsville Rd
Huber Heights, OH 45424
Email: bchodkowski@hhoh.org
jbell@hhoh.org

If to Escrow Agent: Cogent Bank
420 S Orange Ave., Suite 150
Orlando, FL 32801
Attn: Public Finance Department

9. This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio.

10. Any bank or corporation into which the Escrow Agent may be merged or with which it may be consolidated, or any bank or corporation to whom the Escrow Agent may transfer a substantial amount of its escrow business, shall be the successor to the Escrow Agent without the execution or filing of any paper or any further act on the part of any of the parties, anything herein to the contrary notwithstanding. Any bank or corporation into which the Lessor may be merged or with which it may be consolidated, or any bank or corporation to whom the Lessor may transfer a substantial amount of its business, shall be the successor to the Lessor without the execution or filing of any paper or any further act on the part of any of the parties, anything herein to the contrary notwithstanding.

11. This Agreement may be amended, modified, and/or supplemented only by an instrument in writing executed by all parties hereto.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties have executed this Escrow Agreement as of the date first above written.

CITY OF HUBER HEIGHTS
as Lessee

COGENT LEASING AND FINANCING, INC.
as Lessor

By: _____
Name: Bryan RH Chodkowski
Title: Interim City Manager

By: _____
Name: Michael J. Horkey
Title: President

COGENT BANK
as Escrow Agent

By: _____
Name: Michael J. Horkey
Title: SVP

EXHIBIT A
to the Escrow Agreement

FORM OF DISBURSEMENT REQUEST

Re: Lease Schedule No. 1 dated June 5, 2023 to that certain Master Lease Purchase Agreement dated as of June 5, 2023, each between Lessor and Lessee (hereinafter collectively referred to as the "Lease") (Capitalized terms not otherwise defined herein shall have the meanings assigned to them in the Lease.)

In accordance with the terms of the Escrow Agreement, dated as of June 5, 2023 (the "Escrow Agreement") by and among COGENT LEASING AND FINANCING, INC., as lessor (and its successors and permitted assigns, "Lessor"), the CITY OF HUBER HEIGHTS, OH ("Lessee"), and COGENT BANK, as escrow agent (the "Escrow Agent"), the undersigned hereby requests the Escrow Agent pay the following persons the following amounts from the Escrow Account created under the Escrow Agreement for the following purposes:

Payee's Name and Address (if disbursement via wire, must include wire transfer instructions)	Invoice Number	Dollar Amount	Purpose

(i) (a) Each obligation specified in the foregoing table has been incurred by Lessee in the stated amount, (b) the same is a proper charge against the Escrow Account for costs relating to the Equipment identified in the Lease, and (c) has not been paid (or has been paid by Lessee and Lessee requests reimbursement thereof).

(ii) Each item of Equipment relating to an obligation specified in the foregoing table has been delivered, installed and accepted by Lessee. Attached hereto is a true and correct copy of the invoice with respect to such obligation.

(iii) The undersigned, as authorized representative of Lessee, has no notice of any vendor's, mechanic's or other liens or rights to liens, chattel mortgages, conditional sales contracts or security interest which should be satisfied or discharged before such payment is made.

(iv) This requisition contains no item representing payment on account, or any retained percentages which Lessee is, at the date hereof, entitled to retain (except to the extent such amounts represent a reimbursement to Lessee).

(v) The Equipment is insured in accordance with the Lease.

(vi) No Event of Default, and no event which with notice or lapse of time, or both, would become an Event of Default, under the Lease has occurred and is continuing at the date hereof.

(vii) The representations, warranties and covenants of Lessee set forth in the Lease are true and correct as of the date hereof.

(vii) No material adverse change in the financial status of Lessee has occurred since the date of the execution and delivery of the Lease.

Dated: _____

CITY OF HUBER HEIGHTS
as Lessee

By: _____
Name: _____
Title: _____

Disbursement of funds from the Escrow
Account in accordance with the foregoing
Disbursement Request hereby is authorized

COGENT LEASING AND FINANCING, INC.
as Lessor

By: _____

Name: _____

Title: _____

EXHIBIT A

LEASE SCHEDULE NO. 1 to Master Lease Purchase Agreement

Dated as of June 5, 2023

This Lease Schedule (this "Lease Schedule") relates to the Master Lease Purchase Agreement dated as of June 5, 2023 (the "Agreement") between the undersigned Lessor and Lessee, together with the terms and conditions of the Agreement incorporated herein by reference, constitutes a Lease. Unless otherwise defined herein, capitalized terms will have the same meaning ascribed to them in the Agreement. All terms and conditions of the Agreement are incorporated herein by reference.

1. Equipment Description. As used in the Lease, "Equipment" means all of the property described in Exhibit 1 attached to this Lease Schedule and all attachments, additions, accessions, parts, repairs, improvements, replacements and substitutions thereto.
2. Purchase Price. The Purchase Price for the Equipment is \$337,287.25, which shall be deposited in the escrow fund established under that certain Escrow Agreement related to this Lease Schedule between Lessee, Lessor, and Cogent Bank, as Escrow Agent thereunder.
3. Rental Payments; Lease Term. The Rental Payments to be paid by Lessee to Lessor and the Lease Term of this Lease are set forth on the Payment Schedule attached to this Lease Schedule as Exhibit 2.
4. Essential Use; Current Intent of Lessee. Lessee represents that (a) the use of the Equipment is essential to Lessee's proper, efficient and economic functioning or to the services that Lessee provides to its citizens, (b) the Equipment will be used by Lessee only for the purpose of performing its governmental or proprietary functions consistent with the permissible scope of its authority and will not be used in a trade or business of any person or entity, and (c) the useful life of the Equipment is not less than the stated full Lease Term of this Lease. Lessee has determined that a present need exists for the Equipment which need is not temporary or expected to diminish in the near future. Lessee currently intends for the full Lease Term: to use the Equipment; and to continue this Lease.
5. Representations, Warranties and Covenants. Lessee hereby represents, warrants and covenants that its representations, warranties and covenants set forth in the Agreement are true and correct as though made on the date of execution of this Lease Schedule.
6. Bank Qualified. Lessee certifies that it has designated this Lease as a qualified tax-exempt obligation in accordance with Section 265(b)(3) of the Code, that it has not designated more than \$10,000,000 of its obligations as qualified tax-exempt obligations in accordance with such Section for the current calendar year and that it reasonably anticipates that the total amount of tax-exempt obligations to be issued by Lessee during the current calendar year will not exceed \$10,000,000.
7. Optional Prepayment; Prepayment Price. Lessee has the option to prepay its obligation hereunder in whole on any Payment Date as set forth in Section 4.2 of the Agreement. Lessee's voluntary prepayment of the Lease pursuant to Section 4.2 of the Agreement shall be subject to a prepayment premium equal to two percent (2%) of the outstanding remaining balance of the Lease so prepaid.

[Signature Page Follows]

IN WITNESS WHEREOF, Lessor has caused this Lease Schedule to be executed in its corporate name by its duly authorized officer, and Lessee has caused this Lease Schedule to be executed in its name by its duly authorized officer.

CITY OF HUBER HEIGHTS

Lessee

COGENT LEASING AND FINANCING, INC.

Lessor

By: _____

Name: Bryan RH Chodkowski

Title: Interim City Manager

By: _____

Name: Michael J. Horkey

Title: President

Address: 6131 Taylorsville Rd
Huber Heights, OH 45424

Address: 420 S. Orange Ave, Ste. 150
Orlando, FL 32801
Attn: Public Finance

Telephone: 937-237-5834

Email: bchodkowski@hhoh.org

jbell@hhoh.org

Telephone: 410.409.7579

E-mail: mhorkey@cogentbank.net

amichelini@cogentbank.net

Equipment Description

One (1) new/replacement 2023 Tymco 600 Street Sweeper on an International MV607 Chassis, plus additional equipment to outfit the vehicle.

Total Equipment Cost: \$337,287.25

Location of Equipment: City of Huber Heights Public Works

Exhibit 2**Payment Schedule****Rate: 4.34%**

Lease Date: 06/05/2023

#	Payment Date	Payment Amount	Interest	Principal	Balance	Prepayment Price
	6/5/2023				\$337,287.25	102%
1	12/1/2023	\$ 28,191.69	7,278.47	20,913.22	316,374.03	102%
2	6/1/2024	28,191.69	6,865.32	21,326.37	295,047.66	102%
3	12/1/2024	28,191.69	6,402.53	21,789.16	273,258.50	102%
4	6/1/2025	28,191.69	5,929.71	22,261.98	250,996.52	102%
5	12/1/2025	28,191.69	5,446.62	22,745.07	228,251.45	102%
6	6/1/2026	28,191.69	4,953.06	23,238.63	205,012.82	102%
7	12/1/2026	28,191.69	4,448.78	23,742.91	181,269.91	102%
8	6/1/2027	28,191.69	3,933.56	24,258.13	157,011.78	102%
9	12/1/2027	28,191.69	3,407.16	24,784.53	132,227.25	102%
10	6/1/2028	28,191.69	2,869.33	25,322.36	106,904.89	102%
11	12/1/2028	28,191.69	2,319.84	25,871.85	81,033.04	102%
12	6/1/2029	28,191.69	1,758.42	26,433.27	54,599.77	102%
13	12/1/2029	28,191.69	1,184.82	27,006.87	27,592.90	102%
14	6/1/2030	28,191.69	598.79	27,592.90	0.00	0.00
	TOTALS	\$394,683.66	\$57,396.41	\$337,287.25		

ACCEPTANCE CERTIFICATE

Re: Lease Schedule No. 1 dated June 5, 2023 (the "Lease Schedule") to that certain Master Lease Purchase Agreement dated as of June 5, 2023 (the "Agreement" and together with the Lease Schedule, the "Lease") between Cogent Leasing and Financing, Inc., as Lessor, and the CITY OF HUBER HEIGHTS, OH, as Lessee

Ladies and Gentlemen:

I, the undersigned, hereby certify that I am the duly qualified and acting officer of Lessee identified below and, with respect to the above-referenced Lease Schedule, that:

1. The Equipment subject to the Lease Schedule and the Lease has been delivered and installed, is in good working order and is fully operational and has been fully accepted by Lessee on or before the date hereof.
2. Attached hereto are true and correct copies of the manufacturers' and dealers' invoices for the Equipment.
3. Lessee has appropriated and/or taken other lawful actions necessary to provide moneys sufficient to pay all Rental Payments required to be paid under the Lease during the current fiscal year of Lessee. Such moneys will be applied in payment of all such Rental Payments due and payable during such current fiscal year.
4. No event or condition that constitutes, or with notice or lapse of time, or both, would constitute, an Event of Default (as defined in the Lease) exists at the date hereof.

Date: _____

CITY OF HUBER HEIGHTS, OH
Lessee

By: _____
Name:
Title:

CITY OF HUBER HEIGHTS
STATE OF OHIO

ORDINANCE NO. 2023-O-

AUTHORIZING THE EXECUTION OF A MASTER LEASE-PURCHASE AGREEMENT AND RELATED PAYMENT SCHEDULE FOR THE PURPOSE OF ACQUIRING A STREET SWEEPER FOR USE BY THE CITY, AND DECLARING AN EMERGENCY.

WHEREAS, this Council has determined that it is in the best interest of the City to acquire a new street sweeper (the "*Equipment*") pursuant to a master lease-purchase agreement and related payment schedule (together with any and all addenda, exhibits and attachments thereto, the "*Lease*"), between Cogent Bank, or such other related entity as identified by Cogent Bank and accepted by the Director of Finance subject to the provisions of this Ordinance, as lessor ("*Lessor*"), and the City, as lessee, a copy of which Lease has been presented to this Council; and

WHEREAS, the obligations of the City under the Lease will be subject to annual appropriations by this Council.

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

Section 1. The City Manager and Director of Finance are hereby authorized to sign and deliver, in the name of and on behalf of the City, a Lease in substantially the form on file with the Clerk of Council, provided that the aggregate principal components of the rental payments due under the Lease shall not exceed \$340,000.00, the interest component of those rental payments shall accrue at an annual rate not in excess of 4.34% and the final renewal term of the Lease shall end not later than 8 years from the commencement date of the Lease and the Lease shall be subject to prepayment as set forth in the Lease. The Lease is approved with such changes that are not inconsistent with this Ordinance and not substantially adverse to the City that are permitted by law and 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 Lease by the City Manager and the Director of Finance. The City Manager, the Director of Finance, the Mayor, the City Attorney, the Clerk of Council, and other City officials, as appropriate, are each further authorized to sign any certifications, commitments, financing statements, assignments, escrow agreements, and other documents and instruments and to take such other actions as are desirable, advisable, necessary or appropriate to consummate the transactions contemplated by this Ordinance and the Lease.

Section 2. The proceeds of the Lease shall be credited to the proper fund or funds as provided in the Lease, and those proceeds are appropriated and shall be used for the purpose for which the Lease is authorized and are hereby appropriated for that purpose.

Section 3. The City covenants that it will use, and will restrict the use and investment of, the proceeds of the Lease so that (a) the obligations of the City under the Lease will not (i) constitute private activity bonds or arbitrage bonds under Sections 141 or 148 of the Internal Revenue Code of 1986, as amended (the "*Code*"), or (ii) be treated other than as obligations the interest on which is excluded from gross income under Section 103 of the Code, and (b) the interest components of the Lease payments ("*Interest*") will not be treated as an item of tax preference under Section 57 of the Code. The City further covenants that (a) the City will take or cause to be taken such actions which may be required of it for the Interest to be and to remain excluded from gross income for federal income tax purposes, (b) the City will not take or authorize to be taken any actions that would adversely affect that exclusion, and (c) the City, or persons acting for it, will, among other acts of compliance, (i) apply or cause the application of the Lease proceeds to the governmental purpose of the Lease, (ii) restrict the yield on investment property acquired with the Lease proceeds, (iii) make timely and adequate payments to the federal government if required, (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 those proceeds, all in such manner and to the extent necessary to assure such exclusion of the Interest under the Code.

The Director of Finance, as the fiscal officer, or the City Manager 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 Lease as the City is permitted or required to make or give under the federal

income tax laws, including, without limitation thereto, any of the elections provided for in Section 148(f)(4)(C) of the Code or available under Section 148 of the Code, for the purpose of assuring, enhancing or protecting favorable tax treatment or status of the Lease or Interest or assisting compliance with requirements for that purpose, reducing the burden or expense of such compliance, reducing the rebate amount or payments or penalties, 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, as determined by that officer, 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 Lease, and (c) to give one or more appropriate certificates of the City, for inclusion in the transcript of proceedings for the Lease, setting forth the reasonable expectations of the City regarding the amount and use of all the proceeds of the Lease, the facts, circumstances and estimates on which they are based, and other facts and circumstances relevant to the tax treatment of the Interest and the tax status of the Lease. Either of those officers is specifically authorized to designate or otherwise determine the obligations of the City under the Lease to be “qualified tax-exempt obligations” for purposes of Section 265 of the Code if such designation or determination is applicable and desirable, and to make any related necessary representations and covenants.

Section 4. Proceeds in the amount of any temporary advances as certified by the Director of Finance are to be credited to the fund from which temporary advances were made to reimburse it for temporary advances made to pay capital expenditures previously made for the foregoing purpose, and such amount is charged against those proceeds. Immediately following the signing and delivery of the Lease, the appropriate officers are directed further to reflect such reimbursement, together with reimbursement of any additional amounts eligible for reimbursement under U.S. Treasury Regulations Section 1.150-2, on the appropriate accounting records of the City.

Section 5. It is the intent and purpose of City Council to approve the Lease subject to and in accordance with all applicable federal and State laws, regulations, and rules required for such approval in order to assure the contemplated tax treatment as set forth in the Lease. To the extent any such required law, regulation or rule is not expressly set forth in this legislation, it is incorporated herein by this reference.

Section 6. It is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this Ordinance were adopted in an open meeting of this Council and that all deliberations of this Council and of any of its Committees that resulted in such formal action were in meetings open to the public and in compliance with all legal requirements including Section 121.22 of the Ohio Revised Code.

Section 7. This Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety and welfare, and for the further reason that the City may enter into the Lease and related documents in order to acquire the equipment and to obtain the financing thereof at the best cost to the City, which equipment is urgently needed for the safe and efficient operation of the Public Works Division of the City; therefore, this Ordinance shall take full force and effect immediately upon its passage by Council.

Passed by Council on the ____ day of _____ 2023;
____ 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. 2023-O-_____ passed by the City Council of the City of Huber Heights, on _____, 2023.

Clerk of Council