

AGENDA

DATE: MONDAY, DECEMBER 18, 2006

PLACE: COUNCIL CHAMBERS

TIME: 7:30 P.M. - 8:15

THERE ARE NO PUBLIC HEARINGS TONIGHT

1. ROLL CALL
2. INVOCATION BY COUNCILWOMAN JAYNE FERRERO
3. PLEDGE OF ALLEGIANCE
4. READING OF THE JOURNAL
5. REMARKS OF DELEGATIONS AND CITIZENS TO MATTERS ON THE AGENDA
6. INTRODUCTION OF ORDINANCES AND RESOLUTIONS

ORDINANCE NO. 181 – 2006

BY: COMMUNITY DEVELOPMENT COMMITTEE

PASS 8-0

AN ORDINANCE petitioning the Board of County Commissioners of Stark County, Ohio, for a change in the township lines of Massillon and Tuscarawas Township, and declaring an emergency.

ORDINANCE NO. 182 – 2006

BY: COMMUNITY DEVELOPMENT COMMITTEE

PASS 8-0

AN ORDINANCE authorizing the Mayor to enter into an amended agreement between the City of Massillon and Integrity Crane Services, under the Ohio Urban Jobs and Enterprise Zone Program, and declaring an emergency.

ORDINANCE NO. 183 – 2006

BY: COMMUNITY DEVELOPMENT COMMITTEE

PASS 8-0

AN ORDINANCE amending the agreement between the City of Massillon and Kendel Welding and Fabrication, under the Ohio Urban Jobs and Enterprise Zone Program, and declaring an emergency.

ORDINANCE NO. 184 – 2006

BY: PARKS AND RECREATION COMMITTEE

1ST READING

AN ORDINANCE finding that a mutual mistake was made in the purchase of Out Lot 795, as previously authorized by Massillon City Ordinance No. 168 – 2001.

ORDINANCE NO. 185 – 2006

BY: RULES, COURTS & CIVIL SERVICE COMMITTEE

PASS 8-0

AN ORDINANCE authorizing the Mayor and the Director of Public Service and Safety of the City of Massillon, Ohio, to accept the CLASSIFIED AND UNCLASSIFIED EMPLOYEES AND SUPERVISORS (ACUE) contract effective April 1, 2006 through April 1, 2009, and declaring an emergency.

ORDINANCE NO. 186 – 2006

BY: FINANCE COMMITTEE

PASS B-O

AN ORDINANCE making certain appropriations from the unappropriated balance of the Fire Pension Fund, General Fund, Police Pension Fund, Parks and Rec. Recreation Fund and the Economic Development Fund, for the year ending December 31, 2006, and declaring an emergency.

ORDINANCE NO. 187 – 2006

BY: FINANCE COMMITTEE

PASS B-O

AN ORDINANCE reducing the appropriation in the Capital Improvement Fund, of the City of Massillon, for the year ending December 31, 2006, and declaring an emergency.

ORDINANCE NO. 188 – 2006

BY: FINANCE COMMITTEE

PASS B-O

AN ORDINANCE making certain transfers in the 2006 appropriations from within the General Fund for the year ending December 31, 2006, and declaring an emergency.

ORDINANCE NO. 189 – 2006

BY: FINANCE COMMITTEE

PASS B-O

AN ORDINANCE authorizing the Director of Public Service and Safety of the City of Massillon, Ohio, to enter into contract with Health Plan for health insurance coverage for city employees, and declaring an emergency.

7. UNFINISHED BUSINESS

8. PETITIONS AND GENERAL COMMUNICATIONS

LETTER FROM OHIO DIVISION OF LIQUOR CONTROL REGARDING A TRANSFER OF LIQUOR LICENSE FROM ANTHONY V SIMCIC INC DBA STADIUM 2700 ERIE STREET S MASSILLON OHIO 44646 TO LAMOORE ENTERPRISES INC DBA STADIUM 2700 ERIE STREET S MASSILLON OHIO 44646

9. BILLS, ACCOUNTS AND CLAIMS

10. REPORTS FROM CITY OFFICIALS

- A). POLICE CHIEF SUBMITS MONTHLY REPORT FOR NOVEMBER 2006
- B). TREASURER SUBMITS MONTHLY REPORT FOR NOVEMBER 2006
- C). FIRE CHIEF SUBMITS MONTHLY REPORT FOR NOVEMBER 2006.
- D). INCOME TAX DEPARTMENT SUBMITS MONTHLY REPORT FOR NOVEMBER 2006
- E). WASTE DEPARTMENT SUBMITS MONTHLY REPORT FOR NOVEMBER 2006
- F). MAYOR SUBMITS MONTHLY REPORT FOR NOVEMBER 2006

11. REPORTS OF COMMITTEES

12. RESOLUTIONS AND REQUESTS OF COUNCIL MEMBERS

13. CALL OF THE CALENDAR

14. THIRD READING ORDINANCES AND RESOLUTIONS

ORDINANCE NO. 168 – 2006 BY: POLICE AND FIRE COMMITTEE

PASS 8-0
AN ORDINANCE authorizing the Director of Public Service and Safety of the City of Massillon, Ohio, to adopt rules and regulations to govern all persons and entities which provide transportation or treatment of emergency medical patients, and declaring an emergency.

ORDINANCE NO. 169 – 2006 BY: POLICE AND FIRE COMMITTEE

TABLED TO MARCH 5, 2007
AN ORDINANCE amending CHAPTER 761 "TOWING COMPANIES" of the Codified Ordinances of the City of Massillon, by repealing existing SubSection 761.01(d) "IMPOUNDING LOTS AND MAIN TOWING CO. AND DISPATCH FACILITY" and enacting a new SubSection 761.01(d) "IMPOUNDING LOTS AND MAIN TOWING CO. AND DISPATCH FACILITY" and declaring an emergency.

15. SECOND READING ORDINANCES AND RESOLUTIONS

ORDINANCE NO. 173 – 2006 BY: ENVIRONMENTAL COMMITTEE

TABLED TO JULY 2, 2007
AN ORDINANCE amending CHAPTER 925 "SEWERS GENERALLY" and CHAPTER 937 "WASTEWATER TREATMENT REVENUE FUND" of the Codified Ordinance of the City of Massillon, by repealing existing Sections 925.20 GENERAL DISCHARGE PROHIBITIONS, 925.51 ADMINISTRATIVE PENALTIES, 937.05 PAYMENT DATES; PENALTY CHARGE, 937.09 ANNUAL RATES FOR SEWER SERVICE and 937.10 ADDITIONAL SURCHARGE FOR INDUSTRIAL WASTES" and enacting new Sections 925.20 GENERAL DISCHARGE PROHIBITIONS, 925.51 ADMINISTRATIVE PENALTIES, 937.05 PAYMENT DATES; PENALTY CHARGE, 937.09 ANNUAL RATES FOR SEWER SERVICE and 937.10 ADDITIONAL SURCHARGE FOR INDUSTRIAL WASTES" of CHAPTER 925 and CHAPTER 937, and declaring an emergency.

ORDINANCE NO. 174 – 2006 BY: PARKS AND RECREATION COMMITTEE

2ND READING
AN ORDINANCE authorizing the Mayor of the City of Massillon, Ohio, to enter into contract agreements with Variety Attractions, Inc., L & B Entertainment Inc., and other companies for various engagements for the 2007 summer concert series, and declaring an emergency.

16. NEW AND MISCELLANEOUS BUSINESS

17. REMARKS OF DELEGATIONS AND CITIZENS TO MATTERS NOT ON THE AGENDA

18. ADJOURNMENT

MARY BETH BAILEY - CLERK OF COUNCIL

DATE: DECEMBER 18, 2006

CLERK: MARY BETH BAILEY

CITY OF MASSILLON, OHIO

COUNCIL CHAMBERS

Passed
LEGISLATIVE DEPARTMENT

ORDINANCE NO. 181 - 2006

BY: COMMUNITY DEVELOPMENT COMMITTEE

TITLE: AN ORDINANCE petitioning the Board of County Commissioners of Stark County, Ohio, for a change in the township lines of Massillon and Tuscarawas Township, and declaring an emergency.

WHEREAS, a petition to annex certain land in Tuscarawas Township to the corporation limits of the City of Massillon, Stark County, Ohio, was approved by the Board of County Commissioners on September 7, 2006, and

WHEREAS, the corporation limits of the City of Massillon, Ohio, have been enlarged since the approval of the Board of County Commissioners through the annexation of 76.20 acres of land comprising a part of Tuscarawas Township, and

WHEREAS, these annexed lands are still shown as a part of Tuscarawas Township and the County Commissioners must amend the boundaries.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MASSILLON, STATE OF OHIO, THAT

Section 1:

The Council of the City of Massillon, Ohio hereby finds that the corporation limits of the City of Massillon includes 76.20 acres of land which is part of Tuscarawas Township, Stark County, Ohio, and that it will be in the public interest of the City to have the boundaries of said Tuscarawas Township changed by excluding this 76.20 acres of land from said Tuscarawas Township and adding this 76.20 acres of land to the City of Massillon within the corporation limits of the City.

Section 2:

The Board of County Commissioners of Stark County, Ohio, are hereby petitioned under authority of Section 503.07 Ohio Revised Code, to change the Township boundaries of Tuscarawas Township and the City of Massillon, all in Stark County, Ohio, by excluding from said Tuscarawas Township by adding to said City of Massillon the respective areas thereof which are presently located within the corporation limits of the City of Massillon, Ohio, which areas are described as follows:

SEE EXHIBIT "A" ATTACHED HERETO

Section 3:

That attached hereto and made a part of this ordinance is one (1) map covering the tract of land described in Section 2 of this ordinance.

Section 4:

That the Board of County Commissioners of Stark County, Ohio, are hereby petitioned under the authority of Section 503.07, Ohio Revised Code, to add the 76.20 acres of land described in Section 2 of this ordinance to the City of Massillon, Stark County, Ohio.

Section 5:

That upon passage of this ordinance the Clerk of Council is directed to forward a certified copy thereof and the attached map, together with an authenticated copy of the proceedings relating thereto, to the Board of County Commissioners of Stark County, Ohio.

Section 6:

This Ordinance is declared to be an emergency measure necessary for the immediate preservation of the health, safety and welfare of this community and for the further reason that the timely resolution of its subject matter is essential for making the boundary lines of Tuscarawas Township conform with the corporation lines of the City of Massillon, Ohio. Provided it receives the affirmative vote of two-thirds of the elected members to Council, it shall take effect and be in force immediately upon its passage and approval by the mayor. Otherwise, it shall take effect and be in force from and after the earliest period allowed by law.

PASSED IN COUNCIL THIS _____ DAY OF _____ 2006

APPROVED: _____
MARY BETH BAILEY, CLERK OF COUNCIL GLENN E. GAMBER, PRESIDENT

APPROVED: _____
FRANCIS H. CICCHINELLI, JR., MAYOR

PETITION
BY CITIZENS FOR THE COTTRILL ANNEXATION
TO THE CITY OF MASSILLON, OHIO

TO THE COMMISSIONERS OF STARK COUNTY, STATE OF OHIO:

We, the undersigned, being a majority of the adult owners of real estate in the territory hereinafter described, hereby petition for the annexation of the following described territory to the City of Massillon, Massillon Township, Stark County, Ohio.

Situated in the Township of Tuscarawas, County of Stark and State of Ohio: Situated in the Southeast Quarter of Section 3, Township 12-N, Range 10-W, Tuscarawas Township, Stark County, Ohio and bounded and described as follows:

Commencing at a point at the Southeast corner of the Southeast Quarter of Section 3, said point also being on the centerline of Kenyon Avenue (Township Road 340) a 60.00 foot public right of way,

Thence N 03°25'05"E along the section line and with the centerline of Kenyon Avenue a record distance of 200.00 feet to a point; said point being the TRUE PLACE OF BEGINNING for the tract herein described;

Thence N86°22'28"W a distance of 435.60 feet to a point;

Thence S03°25'05"W a distance of 200.00 feet to a point; said point being on the South line of section 3, Tuscarawas Township;

Thence continuing along said section line on a bearing of N86°22'28"W, a distance of 1051.98 feet to a point,

Thence N00°14'20"E a distance of 1341.98 feet to a point;

Thence N86°34'15"W a distance of 1154.20 feet to a point; said point being on the West line of the Southeast corner Section 3, Tuscarawas Township;

Thence along the west line of the Southeast Quarter Section 3; on a bearing of N03°23'03"E, a distance of 1295.00 feet to a point; said point also being the Northwest corner of the Southeast Quarter Section 3, Tuscarawas Township;

Thence along the North line of said quarter section, on a bearing of S86°58'10"E a distance of 1362.79 feet to a point; said point also being on the centerline of Skyland Ave.;

Thence S03°38'40"W a distance of 1304.50 feet to a point;

Thence S86°34'15"E a distance of 954.99 feet to a point;

Thence S 03°25'05"W a distance of 795.81 feet to a point;

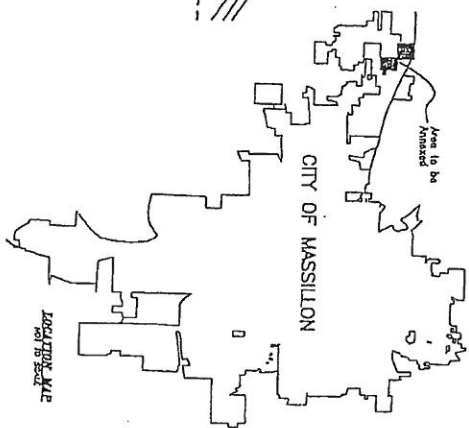
Thence S 86°34'55"E, a distance of 403.65 feet to a point; said point being on the East line of Section 3, Tuscarawas Township and the centerline of Kenyon Avenue;

Thence continuing along said section line and centerline, on a bearing of S03°25'05"W, and a distance of 349.27 feet to a point; said point being on the centerline of Kenyon Ave and on the East line of Section 3, and being the TRUE PLACE OF BEGINNING for the tract herein described and containing 76.20 acres, more or less, but subject to all legal highways, easements or restrictions, if any, of record and excepts +/-2.5 acres for the former WLE Railroad property.

Bearings are based on a Bearing of N 03°23'03"E for the west line of the Southeast Quarter Section 3, Tuscarawas Township, as recorded in Imaging Number 1997031309 of the Stark County Official Records.

Jason Haines, 6645 Baymere Avenue SW, Navarre, Ohio 44662, is hereby appointed agent for the undersigned petitioners as required RC 709.02 with full power and authority hereby granted to said agent to amend, alter, change, withdraw, refile, substitute, and to take any action necessary for obtaining the granting of this petition. Said amendment, compromise, increase or deletion, or other things for granting this petition shall be made in the petition, description, and/or plat by said agent without further expressed consent of the petitioners.

revised 08/29/06 per Stark County Engineer's comments



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DATE DECEMBER 18, 2006

CLERK: MARY BETH BAILEY

CITY OF MASSILLON, OHIO

COUNCIL CHAMBERS

passed
LEGISLATIVE DEPARTMENT

ORDINANCE NO. 182 - 2006

BY: COMMUNITY DEVELOPMENT COMMITTEE

TITLE: AN ORDINANCE authorizing the Mayor to enter into an amended agreement between the City of Massillon and Integrity Crane Services, under the Ohio Urban Jobs and Enterprise Zone Program, and declaring an emergency.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MASSILLON, STATE OF OHIO, THAT:

Section 1:

The Council of the City of Massillon, Ohio does hereby authorize amending the Enterprise Zone agreement between the City of Massillon and Integrity Crane Services by adding Wenger Acquisitions LLC, as a party to the agreement and authorizing the Mayor to enter into the same under the Ohio Urban Jobs and Enterprise Zone Program.

Section 2:

The agreement between the City of Massillon and Integrity Crane Services, under the Ohio Urban Jobs and Enterprise Zone Program is hereby amended to add Wenger Acquisitions LLC to the agreement and the Mayor is authorized to enter into the same.

Section 3:

A copy of said amendment is attached hereto and made part of this Ordinance.

Section 4:

This Ordinance is hereby declared to be an emergency measure, the reason for the emergency being that said enactment is necessary for the Enterprise Zone agreement to reflect the revised agreement with the addition of the new company Wenger Acquisitions LLC to the agreement. Provided it receives the affirmative vote of two-thirds of the elected members to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor. Otherwise, it shall take effect and be in force from and after the earliest period allowed by law.

PASSED IN COUNCIL THIS _____ DAY OF _____, 2006

APPROVED: _____
MARY BETH BAILEY, CLERK OF COUNCIL GLENN E. GAMBER, PRESIDENT

ATTEST: _____
FRANCIS H. CICCHINELLI, JR., MAYOR

AMENDMENT TO OHIO ENTERPRISE ZONE AGREEMENT

This Amendment made and entered into this _____ day of _____, 200__, by and among the City of Massillon, Ohio (the "City"), Integrity Crane Services, Ltd., an Ohio Limited Liability Company (the "Enterprise") and Wenger Acquisitions, LLC, an Ohio Limited Liability Company (the "Owner").

WITNESSETH, THAT:

Whereas, the City and the Enterprise have previously entered into an Ohio Enterprise Zone Agreement dated June 28, 2006 (the "Agreement") whereby the Enterprise agreed to construct a new nine thousand (9,000) square foot industrial facility at 2100 Venture Circle SE, on a 2.0 acre parcel, known as Out Lot 994, located in the City of Massillon, Stark County, Ohio (the "Project"); and in return, the City agreed to provide the Enterprise with development incentives to support the economic viability of the Project; and,

Whereas, the Agreement provides for a tax exemption for real and personal property improvements made in connection with the Project; and,

Whereas, the Enterprise has determined it to be in the Enterprise's best interest in completing the Project to create a new company for the sole purchasing/constructing of the facility to be located at 2100 Venture Circle SE; and,

Whereas, in order to accomplish the intended purpose of the Agreement, the parties have determined to amend the Agreement, in the particulars set forth herein.

Now, therefore, in consideration of the mutual covenants set forth in the Agreement and the benefit to be derived from each party from the completion of the Project as contemplated by the Agreement, the parties hereby agree as follows:

Section 1:

For purposes of the Agreement, the term "Enterprise" shall include Integrity Crane Services, Ltd., and Wenger Acquisitions, LLC, in its capacity as owner of the Project Site and of the improvements to be constructed thereon. Wenger Acquisitions, LLC, hereby joins in the agreements and undertakings of the Enterprise as they relate to the construction of the Project.

Section 2:

Wenger Acquisitions, LLC, is hereby recognized by the City as part of the Enterprise and is acknowledged as being the record owner of the real property improvements subject to tax exemption as set forth in Section 4 and Section 5 of the Agreement.

Section 3:

In all other respects, the Agreement is hereby confirmed and ratified as written.

In Witness Whereof, the parties have each caused this Agreement to be executed by their duly authorized representations as of the date and year first above written.

WITNESSED BY:

THE CITY OF MASSILLON, OHIO

Francis H. Cicchinelli, Jr., Mayor

WITNESSED BY:

INTEGRITY CRANE SERVICES, LTD.

Kyle A. Wenger Sr, Managing Member

WITNESSED BY:

WENGER ACQUISITIONS, LLC

Kyle A. Wenger Sr, Member

Approved as to form and legal sufficiency:

Pericles G. Stergios, Director of Law
City of Massillon, Ohio

DATE DECEMBER 18, 2006

CLERK: MARY BETH BAILEY

CITY OF MASSILLON, OHIO

COUNCIL CHAMBERS

passed
LEGISLATIVE DEPARTMENT

ORDINANCE NO. 183 - 2006

BY: COMMUNITY DEVELOPMENT COMMITTEE

TITLE: AN ORDINANCE amending the agreement between the City of Massillon and Kendel Welding and Fabrication, under the Ohio Urban Jobs and Enterprise Zone Program, and declaring an emergency.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MASSILLON, STATE OF OHIO, THAT:

Section 1:

The Council of the City of Massillon, Ohio does hereby authorize the Mayor to enter into an amended agreement between the City of Massillon and Kendel Welding and Fabrication, under the Ohio Urban Jobs and Enterprise Zone Program.

Section 2:

The agreement between the City of Massillon and Kendel Welding and Fabrication, under the Ohio Urban Jobs and Enterprise Zone Program is hereby amended to change the completion date for Phase I of the project from December 31, 2003 to December 31, 2007.

Section 3:

A copy of said amendment is attached hereto and made part of this Ordinance.

Section 4:

This Ordinance is hereby declared to be an emergency measure, the reason for the emergency being that said enactment is necessary for the Enterprise Zone agreement to reflect the revised completion date in that Kendel Welding and Fabrication began construction later than anticipated. Provided it receives the affirmative vote of two-thirds of the elected members to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor. Otherwise, it shall take effect and be in force from and after the earliest period allowed by law.

PASSED IN COUNCIL THIS _____ DAY OF _____, 2006

APPROVED: _____
MARY BETH BAILEY, CLERK OF COUNCIL GLENN E. GAMBER, PRESIDENT

ATTEST: _____
FRANCIS H. CICCHINELLI, JR., MAYOR

AMENDMENT TO OHIO ENTERPRISE ZONE AGREEMENT

This Amendment made and entered into this _____ day of _____, 200__, by and among the City of Massillon, Ohio (the "City"), Kendel Welding & Fabrication, Inc., an Ohio Corporation, and Kamended Technologies, LLC, an Ohio Limited Liability Company, (together hereinafter referred to as "the Enterprise").

WITNESSETH, THAT:

Whereas, the City and the Enterprise have previously entered into an Ohio Enterprise Zone Agreement dated April 8, 2003 (the "Agreement") whereby the Enterprise agreed to construct a new six thousand (6,000) square foot industrial facility, with one thousand (1,000) square feet of office space, at 1700 Navarre Road SE, on a 4.37 acre parcel, known as Out Lot 943, located in the City of Massillon, Stark County, Ohio (the "Project"); and in return, the City agreed to provide the Enterprise with development incentives to support the economic viability of the Project; and,

Whereas, the Agreement provides for a tax exemption for real and personal property improvements made in connection with the Project, with all acquisition, construction, and installation to be completed by December 31, 2003; and,

Whereas, due to circumstances beyond the control of the Enterprise, construction of the building and other improvements part of the Project have been delayed past the designated Project completion date; and,

Whereas, in order to accomplish the intended purpose of the Agreement, the parties have determined to amend the Agreement, in the particulars set forth herein.

Now, therefore, in consideration of the mutual covenants set forth in the Agreement and the benefit to be derived from each party from the completion of the Project as contemplated by the Agreement, the parties hereby agree as follows:

Section 1:

Section 4 of the Agreement is hereby amended to read as follows:

The City of Massillon hereby grants a tax exemption pursuant to Section 5709.62 for eligible new tangible personal property acquired in conjunction with the Project. This tax exemption shall be at the rate of 75% on all machinery and equipment, furniture and fixtures, as well as increases in inventory over the base level, acquired as part of the Project. Each identified project improvement will receive a ten year exemption period. The exemption commences the first year for which the tangible personal property would first be taxable were that property not exempted from taxation. No exemption shall commence after *December 31, 2007* nor extend beyond *December 31, 2016*.

Section 2:

Section 5, Paragraph 1 of the Agreement is hereby amended to read as follows:

The City of Massillon hereby grants the Enterprise a tax exemption for real property improvements made to the Project Site pursuant to Section 5709.62 of the Ohio Revised Code. This tax exemption shall be at the rate of 75%. Each identified project improvement will receive a ten year exemption period. The exemption commences the first year for which the real property exemption would first be taxable were that property not exempted from taxation. No exemption shall commence after *December 31, 2007* nor extend beyond *December 31, 2016*.

Section 3:

In all other respects, the Agreement is hereby confirmed and ratified as written.

In Witness Whereof, the parties have each caused this Agreement to be executed by their duly authorized representations as of the date and year first above written.

WITNESSED BY:

THE CITY OF MASSILLON, OHIO

Francis H. Cicchinelli, Jr., Mayor

WITNESSED BY:

KENDEL WELDING &
FABRICATION, INC.

Bettina M. Kendel, President

WITNESSED BY:

KAMENDED TECHNOLOGIES, LLC.

Bettina M. Kendel, President

Approved as to form and legal sufficiency:

Pericles G. Stergios, Director of Law
City of Massillon, Ohio

**KENDEL
WELDING &
FABRICATION Inc.**

Received via e-mail
12/7/06

December 6, 2006

Mr. Aane A. Aaby
Community Development Director
The City of Massillon, Ohio
Municipal Government Annex – Administration Building
151 Lincoln Way East
Massillon, Ohio 44646

Re: Kendel Welding & Fabrication, Inc. / Kamended Technologies, LLC
Building – 1700 Navarre Rd. S.E. Massillon, Ohio 44646

Dear Mr. Aaby:

In reference to the above, this letter is written to request a revision of the completion date of the Kendel Welding building located at 1700 Navarre Rd. S.E. Massillon, Ohio to December 31, 2007, due to the following complications in the completion of the building:

Kendel Welding & Fabrication, Inc. (K.W.F.) entered into a building contract with Riley Building Components, Inc. (Riley) on 10/24/2003 to serve as general contractor and supplier. Riley induced deposit monies in excess of 50% cost of the building with initial contract and addendum to contract May 24, 2004 with a commitment to commence project immediately. Riley did not start on-site work until mid November, 2004 with constant delays on all phases of the project. Kendel terminated Riley's contract in April, 2005 due to inexcusable time frame to complete building, poor workmanship and failure to perform project per architectural drawings.

May 2005, K.W.F. became general contractor and hired all new sub-contractors and completed project with increased costs due to lengthened time frame for completion of building and rectifying previously performed poor workmanship. The increased costs required K.W.F. to refinance project for additional funding, the process was approximately 3 months duration prior to approval. Kendel Welding & Fabrication is presently operating out of the building.

Kendel Welding & Fabrication is currently in litigation with Daniel Riley and Riley Building Components.

Thank you for your time and consideration regarding this request for revision of the completion date. Please feel free to contact me concerning this matter.

Respectfully,

Donald R Kendel - Vice President

5110 Revere Avenue NW * Massillon, Ohio 44647
330-834-2429 * Fax 330-834-2435

DATE: DECEMBER 18, 2006

CLERK: MARY BETH BAILEY

CITY OF MASSILLON, OHIO

COUNCIL CHAMBERS

1st Reading
LEGISLATIVE DEPARTMENT

ORDINANCE NO. 184 - 2006

passed 1/2/07

BY: PARKS AND RECREATION COMMITTEE

TITLE: AN ORDINANCE finding that a mutual mistake was made in the purchase of Out Lot 795, as previously authorized by Massillon City Ordinance No. 168 - 2001.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MASSILLON, STATE OF OHIO, THAT:

Section 1:

Massillon City Ordinance No. 168 - 2001 previously authorized the Director of Public Service and Safety to enter into a purchase agreement with Massillon Tiger Football Booster Club, Inc., and Ohio Corporation, wherein the City of Massillon, Ohio would purchase certain real estate from the booster club for the sum of Three Hundred Thousand Dollars (\$300,000.00), Attached "A".

Section 2:

On August 24, 2001, a purchase agreement was entered into between the City of Massillon, Ohio and the Massillon Tiger Football Booster Club, Inc detailing the specifics for the purchase of said real estate, a copy of which is attached hereto as Exhibit "B".

Section 3:

On September 21, 2001, a general warranty deed was executed and thereafter recorded conveying Out Lot 795, approximately 8.84 acres, from the Massillon Tiger Football Booster Club, Inc to the City of Massillon, Ohio, a copy of which is attached hereto as Exhibit "C".

Section 4:

Neither Ordinance No. 168 - 2001, the August 24, 2001 purchase agreement, nor the September 21, 2001 general warranty deed make any mention or reference to the seller, as part of the transaction, retaining any of the rights to minerals, oil, or gas underlying the real estate being sold to the City of Massillon, Ohio.

Section 5:

Five (5) years later the seller has approached the city alleging that a mistake was made in the preparation of all the above reference documents, and that the seller was to retain the mineral rights underlying said real estate as part of the transaction.

Section 6:

In spite of the fact that the City of Massillon, Ohio can find no written document, memorandum, minutes, or other evidence conclusively proving that such a mistake was made, the Council of the City of Massillon, Ohio hereby finds that the intent of the original transaction was for the mineral rights to be retained by the seller and that a mutual mistake was made between the buyer and the seller at the time that the transaction was consummated.

Section 7:

Wherefore, the Council of the City of Massillon, Ohio hereby formally finds that the intent of the parties was for the seller to retain the mineral rights underlying said property, and hereby authorizes the Safety Service Director of the City of Massillon, Ohio to execute a quit claim deed conveying the mineral rights underlying Out Lot 795 in the City of Massillon, Ohio, to the Massillon Tiger Football Booster Club, Inc, without any consideration, competitive bidding, nor advertising for the conveyance of said mineral rights.

Section 8:

This ordinance shall effect and be enforced from and after the earliest period allowed by law.

PASSED IN COUNCIL THIS _____ DAY OF _____ 2006

APPROVED: _____

MARY BETH BAILEY, CLERK OF COUNCIL

GLENN E. GAMBER, PRESIDENT

APPROVED: _____

FRANCIS H. CICCHINELLI, JR., MAYOR

DATE: JULY 16, 2001

CLERK: SHARON HOWELL

Exhibit "A"
CITY OF MASSILLON, OHIO

COUNCIL CHAMBERS

LEGISLATIVE DEPARTMENT

ORDINANCE NO. 168 - 2001

BY: PARKS AND RECREATION COMMITTEE

TITLE: AN ORDINANCE authorizing and directing the Director of Public Service and Safety to enter into an agreement for the purchase of Out Lot No. 795, which is currently owned by the Massillon Tiger Football Booster Club, and declaring an emergency.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MASSILLON, STATE OF OHIO, THAT:

Section 1:

The real property owned by the Massillon Tiger Football Booster Club, and known as Out Lot 795 in the City of Massillon is needed for the benefit of the parks and recreation system in the City of Massillon.

Section 2:

The Director of Public Service and Safety is authorized to enter into an agreement to purchase the above described real estate for Three Hundred Thousand Dollars (\$300,000.00) and upon the execution and approval the said Director of Public Service and Safety is further authorized to execute and the purchase of said real estate.

Section 3:

The purchase price of Three Hundred Thousand Dollars (\$300,000.00) shall be paid as follows:

\$ 100,000.00 in the year 2001
\$ 100,000.00 in the year 2002
\$ 100,000.00 in the year 2003

Section 4:

That the City Auditor is hereby authorized to pay the purchase price as stated above.

Section 5:

The purchase agreement shall include, but not limited to the following terms:

1. That the purchase is subject to the agreement between the Massillon Tiger Booster Club and Pepsi-Cola Bottling Company of Canton regarding the sale of beverage at the location (copy of agreement attached).
2. That all names associated with this complex shall remain.
3. That all signs currently located at the property or to be constructed for the complex shall remain.
4. That the Massillon Tiger Booster Club shall complete the Sports Complex as enumerated in Exhibit "A" attached hereby and the cost of completion shall be considered a donation to the citizens of the City of Massillon.

Section 6:

It is hereby found and determined that all formal actions of this Council concerning and relating to the adoption of this ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and any of its committees that resulted in such formal action, were in meetings open to the public 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, immediately necessary for the preservation of the health, safety and welfare of the community and for the benefit of the citizens of Massillon by enriching the parks and recreation system in the City of Massillon. Provided it receives the affirmative vote of the elected members to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor. Otherwise, it shall take effect and be in force from and after the earliest period allowed by law.

PASSED IN COUNCIL THIS _____ DAY OF _____ 2001

APPROVED: _____
SHARON HOWELL, CLERK OF COUNCIL DENNIS D. HARWIG, PRESIDENT

Exhibit "B"

2001068357

GENERAL WARRANTY DEED

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THE MASSILLON TIGER FOOTBALL BOOSTER CLUB, INC., an Ohio Corporation, of Stark County, Ohio, for valuable consideration paid, grants with general warranty covenants, to THE CITY OF MASSILLON, an Ohio Municipal Corporation, whose tax mailing address is One James Duncan Plaza, Massillon, Ohio 44646, the following real property:

Situated in the City of Massillon, County of Stark and State of Ohio and known as and being Out Lot 795 in the City of Massillon as set out in the Replat of Lands of Massillon Tiger Football Booster Club, recorded in Stark County, Ohio Recorder Plat Book 66, Page 33, containing 8.84 acres more or less.

Parcel #06-17989

Subject to water utility easement to Consumers Ohio Water Company recorded August 14, 2000 in the office of the Stark County, Ohio Recorder, at Imaging Number 2000048026 and subject to Non Surface Development Oil and Gas Lease to Great Lakes Energy Partners recorded July 10, 2001 in the Office of the Stark County, Ohio Recorder at Imaging Number 2001046902.

Real estate taxes, if any, shall be prorated through the date of delivery of deed.

The Agreement for Purchase and Other Agreements between the Massillon Tiger Football Booster club, Inc. and the city of Massillon dated August 24, 2001 shall survive the delivery of this deed and the provisions of that agreement shall remain in effect.

IN WITNESS WHEREOF, said corporation sets its hand and seal this 21st day of September, 2001.

WITNESSED BY:

THE MASSILLON TIGER FOOTBALL BOOSTER CLUB, INC.

John D. Ferrero, Jr.
JOHN D. FERRERO, JR.
Director of Law

By: Kenneth G. Kemp
KENNETH G. KEMP
its President

Elaine C. Lambert
ELAINE C. LAMBERT,
Administrative Assistant

By: Clayton A. Betz
CLAYTON A. BETZ,
its Secretary/Treasurer

RECORDED THIS DATE
HICK CAMPBELL
STARK COUNTY RECORDER

2001 SEP 24 PM 12:51

FEE 14.00

2001012001

06-17989 takes all RJM 9/24/2001

STATE OF OHIO, STARK COUNTY, SS:

Before me, a Notary Public in and for said County and State, personally appeared the above named THE MASSILLON TIGER FOOTBALL BOOSTER CLUB, INC., an Ohio Corporation, by KENNETH G. KEMP, its President, and by CLAYTON A. BETZ, its Secretary/Treasurer, who acknowledged that they did sign the foregoing instrument and that the same is their free act and deed as such officers and the free act and deed of said corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at Massillon, Ohio, this 21st day of September, 2001.

Elaine C. Lambert
NOTARY PUBLIC

INSTRUMENT PREPARED BY:

TIMOTHY G. ANDREWS
Assistant Prosecuting Attorney
City of Massillon
Massillon, Ohio

ELAINE C. LAMBERT
Notary Public State of Ohio
My Commission Expires 3-30-05

JANET WEIR CREIGHTON
Stark County Auditor
FEE En "A"

SEP 24 2001

TRANSFERRED - 50
~~TRANSFER NOT NECESSARY~~
DEPUTY [Signature]
IN COMPLIANCE WITH ORC §19.202

Exhibit "C"
**AGREEMENT FOR PURCHASE
AND OTHER AGREEMENTS**

This Agreement made and concluded at Massillon, Ohio, this
24 day of AUGUST, 2001 by and between the
MASSILLON TIGER FOOTBALL BOOSTER CLUB,
hereinafter known as "MTFBC" and the **CITY OF**
MASSILLON, hereinafter known as "City",

WITNESSETH, THAT:

WHEREAS, MTFBC agrees to sell and provide to the City the costs of
completion of the Sports Complex on and the City agrees to buy according to the terms
set out in this Agreement the following described premises:

Situated in the City of Massillon, Stark County, State of Ohio: Known
As and being Out Lot 795 in the City of Massillon.

NOW, THEREFORE, in consideration of the mutual covenants and agreements
hereinafter set forth, MTFBC and the CITY do for themselves, their successors' and
assigns bind themselves and agree as follows:

- (1) The purchase price for Out Lot 795 shall be \$300,000.00 payable,
\$100,000.00 in 2001, \$100,000.00 in 2002, and \$100,000.00 payable in 2003.
- (2) The CITY shall take possession upon delivery of deed.
- (3) This Agreement shall be performed and the transaction closed within one
hundred twenty (120) days of this Agreement unless the parties agree in
writing to an extension.
- (4) MTFBC shall convey to the CITY a good and title in fee simple to the
premises by a general warranty deed. Deed to be conveyed on payment of the
first \$100,000.00 installment payment.

- (5) Real estate taxes, if any, shall be pro-rated through the date of delivery of deed.
- (6) The parties agree that this purchase is subject to the Agreement between the MTFBC and Pepsi-Cola Bottling Company of Canton, a copy of said Agreement is attached.
- (7) The parties agree that all names associated with the Sports Complex shall remain.
- (8) The parties agree that all signs currently located on or to be constructed for the sports complex shall remain on the property.
- (9) The MTFBC shall complete the Sports Complex and provide all funding for completions of the Sports Complex, according to the attachment marked Exhibit A.
- (10) The parties agree that the improvements agreed to and provided by MTFBC shall become part of the property conveyed to the CITY and owned by the CITY and shall be a donation to the people of the City of Massillon.
- (11) The parties agree that all Agreements and representations contained in this Agreement shall survive the delivery of the deed executed and delivered in part performance of this Agreement and if said deed is inconsistent with this Agreement, the provision of this Agreement shall control.

IN WITNESS WHEREOF, THE PARTIES HEREIN HAVE EXECUTED

THIS agreement on the day and year first written above.

THE MASSILLON TIGER FOOTBALL
BOOSTER CLUB

Elaine C. Lambert

BY:

its

Kenneth G. Kenney
PRESIDENT

Victoria L. Atutz

Witness as to MTFBC

BY:

its

Ralph B. Pahl
SENIOR RD

THE CITY OF MASSILLON, OHIO,
A MUNICIPAL CORPORATION

Mary Ann Coyle

BY:

Alan W. Climer
ALAN W. CLIMER,

Director of Public Service and Safety

Ken L. McLe

CERTIFICATION

I hereby certify the adjacent to be correct, as surveyed by me in

PLANNING COMMISSION

Approved by the Massillon Planning Commission at a meeting on

1941
Chairman

CITY COUNCIL

Accepted by the City Council of Massillon, Ohio, by ord. no. 1929

City Engineer

MASSILLON CITY ENGINEER

Lot Number 15861 and Outlet 795

ACKNOWLEDGEMENT

Know all men by these present, that we the undersigned owners acknowledge the signing of the same to be our free act and deed, c

WITNESS

Witness
Richard E. Bordner
Richard E. Bordner
Richard E. Bordner
Richard E. Bordner
Richard E. Bordner

COUNTY OF STARK

STATE OF OHIO SS.

Before me, a Notary Public, in and for said county, did personally the signing of the same to be their free act and deed according to the my hand and seal this 2nd day of March, 1941. My commission expires April 5, 1941.

STARK COUNTY AUDITOR

Entered for transfer this 11th day of May

STARK COUNTY RECORDER

Received for record this 11th day of May
Recorded in Volume 106, Page 33

REPLAT & STREET & ALLEY VACATION OF VARIOUS LOT PLACE ALLOTMENT, IN THE CITY OF MASSILLON, OHIO

SCALE: 1" = 60'

FILE

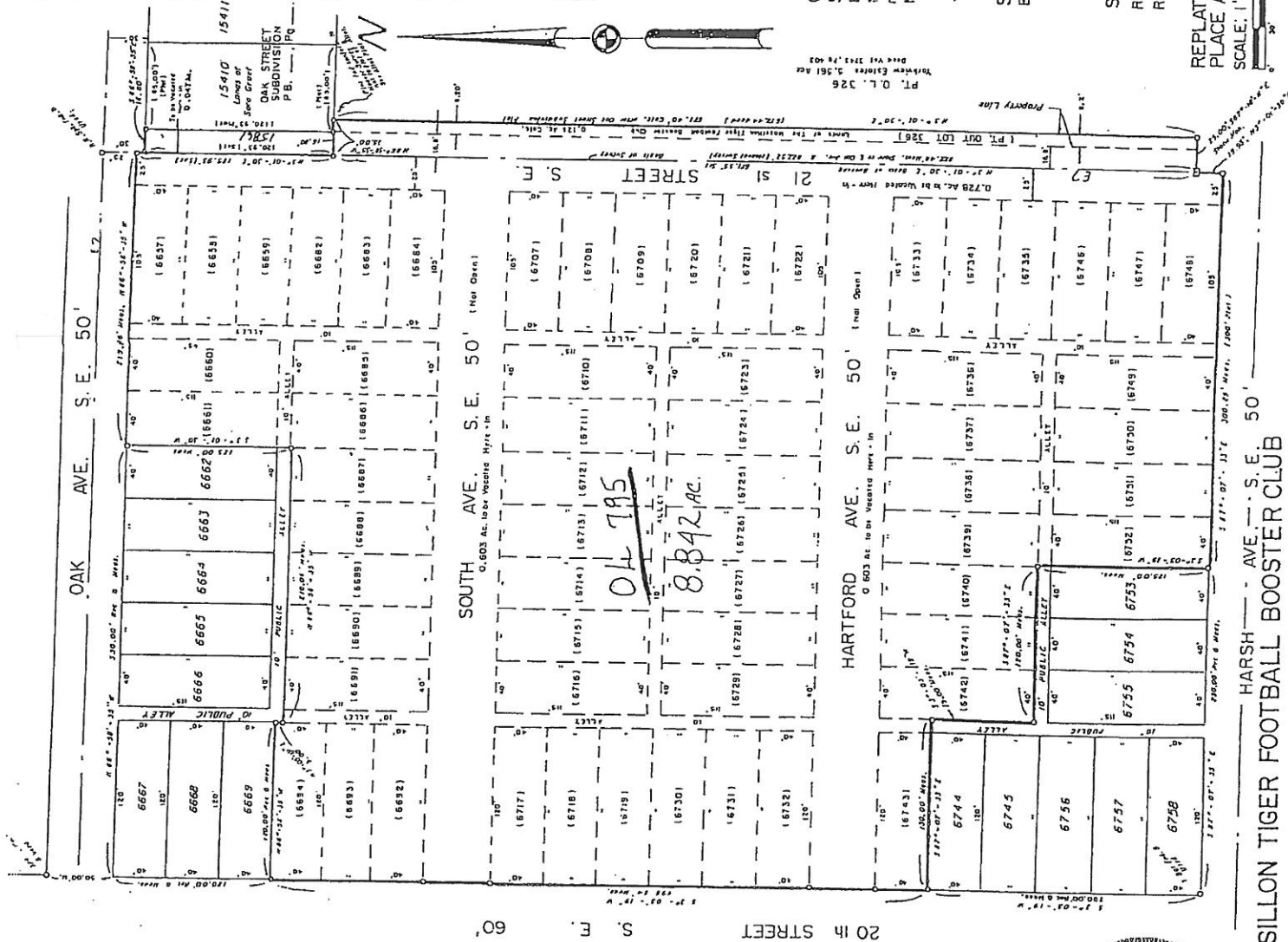


EXHIBIT "A"

SPORTS COMPLEX COMPLETION SCHEDULE

To Be Completed in 2001:

- A) Install #404 Hot Mix Asphalt
- B) Install One 8-Lane Track with Striping
- C) Install High Jump, Pole Vault, Long Jump, Shot Put and Discus Circle Areas
- D) Complete Irrigation System
- E) Complete Soccer/Football Field – Grading, Top Dress, Seedings

To Be Completed in 2002:

- A) Restroom/concession Building
- B) Bleachers for Track Area
- C) Field/Track Fencing
- D) Water and Sewer Lines

To Be Completed in 2001 or 2002:

- A) Track, Soccer/Football, and Softball Scoreboards and Installation
- B) P.A. System
- C) Softball Field Dugouts

AGREEMENT

THIS AGREEMENT, entered into by and between Massillon Tiger Football Booster Club (hereinafter referred to as the MTFBC) doing business within the Eagles #190 Sports Complex (hereinafter referred to as The Sports Complex) and PEPSI-COLA BOTTLING COMPANY OF CANTON, a division of CENTRAL INVESTMENT CORPORATION of Canton, Ohio (hereinafter referred to as "Pepsi").

WITNESSETH, that:

WHEREAS, the MTFBC will offer for various purposes connected with The Sport Complex , civic and other activities, certain premises operate as the The Sports Complex.

WHEREAS, from time to time, large numbers of people are in attendance to watch certain sport, civic or other activities; and

WHEREAS, the MTFBC desires to assure itself of a consistently high quality and reliable source of soft drinks, juices, ready-to-drink teas, isotonics, water and any other item(s) to be available through Pepsi for sale to such spectators and other people using facilities; and

WHEREAS, Pepsi wishes to cooperate with the MTFBC providing a locally operated source of soft drinks, juices, ready-to-drink teas, isotonics, water and any other item(s) to be available through Pepsi for use at various locations required to be serviced at The Sports Complex .

NOW, THEREFORE, for and in consideration of the mutual promises and conditions hereinafter contained, the parties hereby agree as follows:

1. GRANT

The MTFBC hereby grants to Pepsi the sole and exclusive right to supply soft drinks, juices, ready-to-drink teas, isotonic, water, and any other item(s) available together with cups and containers and CO₂ for serving such drinks, for and in connection with all activities at The Sports Complex. The MTFBC will agree to place _____ vendors throughout the facility under Pepsi's full service program and concessions agreed upon and operated at The Sports Complex. Pepsi has the right to add vendors to The Sports Complex upon agreement at The Sports Complex should it warrant these placements. All products supplied hereunder will be priced in accordance with prices normally charged Pepsi's same class of customers. All dispensing equipment and menu boards shall bear Pepsi's name and logo exclusively as the supplier of soft drinks, juices, ready-to-drink teas, isotonic, water and any other beverage item(s) added to Pepsi's lineup available throughout the life of the contract.

The MTFBC hereby grants to Pepsi the first right of refusal on any proposal or offer made by a competitor of Pepsi at the conclusion or end of this contract.

2. TERM

The term of this agreement shall be for 7 years, commencing on the 30th day of May 2001.

3. FINANCIAL SUPPORT

As partial consideration and inducement for the MTFBC to enter into this agreement, Pepsi hereby agrees to provide the following:

- 1 – Eight (8) lane Track Scoreboard
- 1 – Soccer Scoreboard
- 1 – Softball Scoreboard
- Support Funding to be paid to MTFBC - \$1.50 per case on all 20 oz. Water, Isotonics and New Age Product **
- \$.50 per case will be paid on all cans
- Bonus - \$.25 per case if volume increases 35% each term of the contract **
- \$1,500.00 – will be deducted from support should any non Pepsi product be sold under contract terms through The Sports Complex

**Support Funding to be paid in terms 2 – 10

4. INDEMNITIES

The MTFBC hereby indemnifies and agrees to save Pepsi harmless from any and all costs, expenses, damages, liabilities, installation costs, claims and causes of action arising out of or in any way connected with the installation of all scoreboards, ownership use and maintenance of the equipment to be covered hereunder. The MTFBC at Pepsi's request, will provide sufficient proof of insurance to cover such risks.

The MTFBC hereby indemnifies and agrees this agreement is binding upon and inures to the benefit of the MTFBC and Pepsi's successors and assigns. The MTFBC must assign its rights and obligations under this contract in the event of a subcontract or sublicense, as well as in the event of a transfer of all, or any part of, the MTFBC rights and obligations to the facility or concessions.

IN WITNESS WHEREOF, the parties have each caused this agreement to be executed by their duly authorized representative, at Canton, Ohio, on the date set forth on next page:

Signed in presence of:

Massillon Tiger Football Booster Club

Eagles #190 Sports Complex



Title: _____

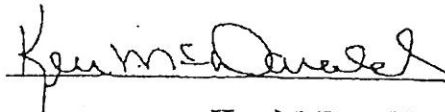
Dated: 5-30-01

PEPSI-COLA BOTTLING COMPANY

A Division of

CENTRAL INVESTMENT
CORPORATION

Dated: 5-29-01



Ken McDonald
General Manager

Dated: _____

DATE: DECEMBER 18, 2006

CLERK: MARY BETH BAILEY

CITY OF MASSILLON, OHIO

COUNCIL CHAMBERS

passed
LEGISLATIVE DEPARTMENT

ORDINANCE NO. 185 - 2006

BY: RULES, COURTS AND CIVIL SERVICE COMMITTEE

TITLE: AN ORDINANCE authorizing the Mayor and the Director of Public Service and Safety of the City of Massillon, Ohio, to accept the CLASSIFIED AND UNCLASSIFIED EMPLOYEES AND SUPERVISORS (ACUE) contract effective April 1, 2006 through April 1, 2009, and declaring an emergency.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MASSILLON, STATE OF OHIO, THAT:

Section 1:

The Council of the City of Massillon, Ohio, hereby finds that it is necessary to accept the CLASSIFIED AND UNCLASSIFIED EMPLOYEES AND SUPERVISORS (ACUE) contract effective April 1, 2006 through April 1, 2009.

Section 2:

The Mayor and the Director of Public Service and Safety of the City of Massillon, Ohio, are hereby authorized to accept the CLASSIFIED AND UNCLASSIFIED EMPLOYEES AND SUPERVISORS (ACUE) contract effective April 1, 2006 through April 1, 2009.

Section 3:

This Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the health, safety, and welfare of the community and for the additional reason to finalize the contract that the City has with the CLASSIFIED AND UNCLASSIFIED EMPLOYEES AND SUPERVISORS (ACUE). Provided it receives the affirmative vote of two-thirds of the elected members of Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor. Otherwise, it shall take effect and be in force from and after the earliest period allowed by law.

PASSED IN COUNCIL THIS _____ DAY OF _____ 2006

APPROVED: _____
MARY BETH BAILEY, CLERK OF COUNCIL GLENN. E. GAMBER, PRESIDENT

APPROVED: _____
FRANCIS H. CICCHINELLI, JR., MAYOR

**COLLECTIVE BARGAINING
AGREEMENT**

BETWEEN

THE CITY OF MASSILLON, OHIO

AND

**ALL CLASSIFIED AND UNCLASSIFIED EMPLOYEES
AND SUPERVISORS**

MARCH 21, 2006 THROUGH MARCH 29, 2009

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ARTICLE I

PREAMBLE

This Agreement made and entered into this _____ by and between the City of Massillon, Ohio, (hereinafter referred to as the "EMPLOYER") and the Classified and Unclassified Employees and Supervisors (hereinafter referred to as "ACUE").

WHEREAS, it is the intent and the purpose of the parties hereto that this Agreement respect and promote the responsibilities and obligations of the "EMPLOYER" as well as the interests of its employees; avoid interruptions to and interferences with the City's services to the public; and set forth herein rates of pay, hours of work, and conditions of employment for employees covered by this Agreement.

For the purpose of administering this agreement, the responsibility of the "EMPLOYER" shall be the Mayor, Service Director or his designee.

NOW, THEREFORE, In consideration of their mutual covenants herein contained, the parties agree to as follows:

ARTICLE II - RECOGNITION

The "EMPLOYER" recognizes the "COMMITTEE" as the sole and exclusive representative of the "ACUE" hereinafter defined for the purpose of collective bargaining with respect to rates of pay, hours of employment, and other conditions within the "ACUE".

Section 1

The term "employee" as used throughout this Agreement shall apply to those full time employees who are employed in the following City Departments as Classified or Unclassified Employees and/or Classified or Unclassified Supervisors.

CITY DEPARTMENTS IN BARGAINING GROUP

AUDITOR'S DEPARTMENT

BUILDING DEPARTMENT

CITY HALL & PUBLIC BUILDINGS (CUSTODIAL/JANITORIAL DEPT.)

CIVIL SERVICE COMMISSION

COLLECTIONS DEPARTMENT

COMMUNITY DEVELOPMENT/PLANNING

ENGINEERING DEPARTMENT

HEALTH DEPARTMENT

HUMAN SERVICES DEPARTMENT

MAYOR'S OFFICE

INCOME TAX DEPARTMENT

LAW DEPARTMENT

MUNICIPAL COURT

ARTICLE II - RECOGNITION (CONT.)

CITY DEPARTMENTS IN BARGAINING GROUP (CONT.)

PARK AND RECREATION DEPARTMENT

POLICE DEPARTMENT

SERVICE DEPARTMENT

SAFETY-TRAFFIC DEPARTMENT

SOLID WASTE DEPARTMENT

STREET DEPARTMENT

WASTE WATER TREATMENT DEPARTMENT

ARTICLE III - EMPLOYEE REPRESENTATION

Section 1

The "ACUE" shall be permitted a negotiating committee with three (3) representatives-at-large. Each committee representative shall also have an alternate representative during the committee representative's absence.

Section 2

The "COMMITTEE" shall submit written notification to the "EMPLOYER" containing the names of each committee representative and alternate representative, and shall notify the "EMPLOYER" promptly of any changes.

Section 3

Committee representatives shall be permitted reasonable time without loss of pay to investigate and process grievances during working hours, upon notification to the supervisor. Permission to investigate and process grievances shall not be unreasonably withheld.

Section 4 LABOR/MANAGEMENT MEETINGS

In the interest of sound labor/management relations, on a mutually agreeable day and time, the Service Director and/or his designee, and Mayor and/or his designee shall meet with not more than three (3) representatives of the committee to discuss pending problems and to promote a more harmonious labor/management relationship.

An agenda will be furnished at least five (5) working days in advance of the requested meetings with a list of matters to be taken up in the meeting, and the name of those union representatives who will be attending. The purpose of such meeting shall be to:

- A. Discuss the administration of this Agreement.
- B. Notify the "ACUE" of changes made by the Employer which affect "ACUE".
- C. Discuss grievances which have not been processed beyond the final step of the Grievance Procedure when such discussions are mutually agreed to by the parties.
- D. Disseminate general information of interest to the parties.
- E. Discuss ways to increase productivity and improve efficiency.
- F. To consider and discuss health and safety matters relating to employees.

It is further agreed that if special labor/management meetings have been requested, and mutually agreed upon, they shall be convened as soon as possible. If a needed member of either labor or management is on an authorized leave, a mutual day shall be arranged.

ARTICLE IV - GRIEVANCE PROCEDURE

Section 1

The term "grievance" as used herein, means any dispute which may arise between the "EMPLOYER" and an employee or between the "EMPLOYER" and "COMMITTEE" concerning the application or interpretation of any provision of this Agreement.

Section 2

It is the intention of the "EMPLOYER" and the "ACUE" that this formal grievance procedure shall only be used when grievances between an employee and his supervisor or between the "EMPLOYER" and the "ACUE" cannot be settled informally.

Step 1 The grievance in writing shall be taken up by the aggrieved employee, accompanied by Committee Representative if desired, within five (5) working days after occurrence of the facts giving rise to the grievance.

The immediate supervisor shall give his answer in writing within five (5) working days.

Step 2 The "COMMITTEE OR EMPLOYEE" shall present the grievance in writing to the Service Director within five (5) working days.

The Service Director shall give his answer in writing within five (5) working days.

If no satisfactory settlement is reached, then proceed to:

Step 3 The "COMMITTEE OR EMPLOYEE" shall present the grievance in writing, together with all related material to the Mayor within five (5) working days.

The Mayor shall, within five (5) working days after the grievance is presented at Step 3, meet with the committee representative, the grieving employee and other witnesses as needed concerning the grievance.

A decision in writing shall be made by the Mayor within ten (10) working days after the meeting is held concerning the grievance. If no satisfactory settlement is reached, then proceed to:

ARTICLE IV - GRIEVANCE PROCEDURE cont.

Step 4

Any grievance, involving the interpretation, application or enforcement of the provisions of this Agreement or any unresolved question, dispute or complaint regarding the conditions of employment which has not been satisfactorily settled in the foregoing steps of the grievance procedure, may be arbitrated.

Arbitration proceedings may be initiated by the committee representative and the grieving employee within fifteen (15) days of the written disposition of such grievance by the Mayor. The decision of such arbitrator shall be in writing and binding upon parties hereto. Exception - monetary awards over \$5,000 may be accepted by the "EMPLOYER" or referred to Council or to the Courts.

Binding arbitration may be initiated by the "COMMITTEE" serving upon the "EMPLOYER" a notice in writing of an intent to proceed to arbitration. Unless the parties can, within five (5) days following the receipt of such written notice, agree upon the selection of an arbitrator, either party may in writing request the American Arbitration Association to submit a list of nine (9) arbitrators to both parties. The parties shall within five (5) working days of the receipt of said list meet for the purpose of selecting the arbitrator by alternately striking names from said list until one name remains. Such person shall then become the arbitrator. The arbitrator so selected shall hold a hearing at a time and place convenient to the parties. In the event the arbitrator is unable to schedule a hearing within a thirty (30) day period after his selection or a mutually agreed upon date beyond the thirty (30) days period, the parties may select another arbitrator. All expenses which may be involved in the arbitration proceeding shall be borne by the EMPLOYER and the GRIEVANT equally. However, expenses relating to the calling of witnesses or the obtaining of depositions or any other similar expense associated with such proceedings shall be borne by the party at whose request such witnesses or depositions are required. The arbitrator shall not have the authority to add to, subtract from or modify such expressed terms and provisions of this agreement.

Section 3

Any grievance not timely appealed from the written disposition of the "EMPLOYER'S" Representative in any of the Steps of the Grievance Procedure shall be considered as having been accepted by the employee and "COMMITTEE" representative on the basis of the disposition last made, and shall not be subject to further appeal. The failure of the "EMPLOYER" to answer a grievance within the time limits, at any step of the Grievance Procedure, shall be considered a settlement of the grievance in favor of the grievant.

Grievances involving the suspension or discharge of an employee and/or grievances affecting a group of employees may be filed directly at Step 3 of the grievance procedure by the "COMMITTEE" representative.

ARTICLE V - COMMITTEE ACTIVITY - VISITATIONS

Section 1

Committee Representatives of the employees may enter departments of the "EMPLOYER" to determine if provisions of this Agreement are being observed and for attending meetings with representatives of the "EMPLOYER" pertaining to employee matters, or any matter pertaining to wages, hours, terms of all conditions of employment covered under the terms and conditions of this agreement, upon notification to, and permission of, the employee's immediate supervision. Such permission shall not be arbitrarily withheld.

ARTICLE VI - WORK WEEK

Section 1

- 1) The normal work week for all employees covered by this contract shall be forty (40) hours per week and from 8:30 A.M. to 4:30 P.M., Monday through Friday.
- 2) The normal work week shall not be changed unless the "EMPLOYER" and the "EMPLOYEE" mutually agree to such changes.
- 3) The normal work week for employees engaged in continuous operations, defined as operations for which there is regularly scheduled employment, seven (7) days a week, shall be five consecutive eight (8) hour days.

Section 2

Employees shall be paid only for actual scheduled hours worked other than holidays, sick leave, vacations, or compensatory time.

ARTICLE VII - OVERTIME

Section 1

Employees shall be paid one and one-half (1 ½) times their normal hourly rate of pay for any work in excess of forty (40) hours in any one (1) work week.

Section 2

If an employee elects to work past the end of a normal work day, he/she may be granted time off if approved by the "EMPLOYER". If an employee is required to work over, it shall be considered overtime.

Section 3

Employees shall be paid double times (2x) the employee's normal rate of pay for work performed on the seventh (7th) consecutive day of the employee's work week.

Section 4

For purposes of computing overtime, credit shall be given for paid vacations, paid holidays, jury duty days, comp. time, pre-approved sick days, and pre-approved personal time.

Section 5

All overtime worked by employees covered by this contract must be approved by their Department Head.

Section 6

Compensatory time off will be granted as an option of the employee. If the employee elects to take compensatory time off in lieu of overtime pay for any overtime worked, such compensatory time shall be granted by his administrative supervisor on time-and-one-half (1 1/2) basis at a time mutually convenient to the employee and the administrative supervisor. On the first (1st) payday in June and the first (1st) payday in December all compensatory time over sixty (60) hours will be paid at the regular hourly rate.

Section 7

An employee called back to work beyond his normal quitting time shall be paid at the overtime rate (1 1/2) for all hours worked but shall receive a minimum payment of two (2) hours of overtime at time and a half.

ARTICLE VIII - BULLETIN BOARD

Section 1

Any notices may be hand delivered or electronically mailed to all members of the "ACUE".

ARTICLE IX - SENIORITY

Section 1

Seniority shall be an employee's length of continuous service with the "EMPLOYER", department or job classification, depending on the question involved. An employee shall have no seniority for the probationary period, but upon completion of the probationary period seniority shall be retroactive to the date of hire.

There will be a probationary period of ninety (90) days for new employees hired under the terms of this contract.

Seniority shall be lost if suspension accepted or upheld for a period of thirty (30) days or longer.

ARTICLE X - LEAVES OF ABSENCE (SICK LEAVE)

Section 1

Each full-time employee of the "EMPLOYER" shall be entitled to 4.6 hours of sick leave for each 80 hours worked. Sick leave shall be calculated without limit.

Section 2

Sick leave shall be granted to an employee only upon approval of the appointing authority and for the following reasons:

- A. Illness or injury of the employee or a member of his immediate family. In case of a member of the immediate family not living in the same household, the appointing authority may credit sick leave when he believes it justified, but such cases should be carefully investigated.
- B. Medical, dental, or optical examination or treatment of employees or member of his immediate family which requires the employee, and which cannot be reasonably scheduled during non-working hours.
- C. If a member of the immediate family is afflicted with a contagious disease and requires the care and attendance of the employee; or when, through exposure to a contagious disease, the presence of the employee at his job would jeopardize the health of others.
- D. Death of a member of his immediate family (sick leave usage is limited to five (5) calendar days).
- E. Definition of "IMMEDIATE FAMILY" as defined in State Civil Laws.
"IMMEDIATE FAMILY" shall mean:

SPOUSE
MOTHER
FATHER
SISTER-IN-LAW
BROTHER-IN-LAW
CHILDREN
SON-IN-LAW

MOTHER-IN-LAW
FATHER-IN-LAW
GRANDPARENTS
SISTER
BROTHER
GRANDCHILDREN
DAUGHTER-IN-LAW

LEGAL GUARDIAN OR OTHER PERSON WHO STANDS IN
PLACE OF A PARENT (LOCO PARENTIS)

- F. Abuse of sick leave: Employees failing to comply with sick leave rules and regulations shall not be paid. Application for sick leave with intent to defraud shall be grounds for disciplinary action, up to and including dismissal.

ARTICLE X - LEAVES OF ABSENCE (SICK LEAVE) CONT.

Section 3

- A. Absences shall be reported to the employee's department before the regular starting times on each day of absence. In case of extended illness, the employee shall be expected to periodically inform his/her supervisor or department head of his/her progress and expected date of return to work.
- B. An employee who has separated his service with the "EMPLOYER" and is re-employed will have his previously accumulated sick leave placed to his credit upon the date of re-employment.
- C. An employee shall be paid eight (8) hours pay at the employee's normal hourly rate of pay for holidays occurring during an approved sick leave. Such holidays shall not be charged to the employee's accumulated sick leave.
- D. Employees may use up to five (5) personal days a year without penalty and chargeable to accumulated sick leave, with at least five (5) days advance notification. Personal leave is not to be used as vacation, but to conduct personal business that cannot be conducted otherwise outside of the employees' working schedule. Employees may use this time in the following blocks of time. Two (2) days in eight (8) hour blocks of time. Two days in four (4) hour blocks of time and one (1) 8 hour day in hourly increments.

Section 4 - UNPAID SICK LEAVE

An employee having completed the required initial (90) day probationary period shall be granted an unpaid sick leave of absence for a period not to exceed six (6) months because of personal illness or injury upon application supported by medical evidence.

Section 5 - ABSENTEE POLICY

- A. An incident of absence is any day, consecutive day or part of a day that an employee is not at work other than personal day, holiday, vacation, jury duty, court appearance (if subpoenaed), approved leave of absence, injury leave, pre-approved absence of one (1) day or less due to a doctor's appointment, hospitalization, or bereavement leave.
- B. Pre-arranged absence of one (1) day or less for doctor's or dentist's appointment will not be charged as an absence occurrence providing the employee supplies documentation to support the appointment or visit. Emergency absences may result in the employee being required to present accepted documentation.
- C. After the fifth (5th) incident, management will counsel the employee directly and document the session. An incident is defined as each separate occasion of absence as defined in Section 5, Paragraph A. After the sixth (6th) incident,

ARTICLE X - LEAVES OF ABSENCE (SICK LEAVE) CONT.

management will issue a verbal warning, seven (7) incidents of absenteeism within a 12 month period will result in a written warning. Eight (8) incidents of absenteeism within a 12 month period will result in a suspension. Any further incidents of absenteeism within a 12 month period will result in additional disciplinary action, including termination. The infraction period will be based upon a "rolling" calendar.

- D. Mitigating circumstances to incidents of absenteeism will only be considered by the Employer when the pattern has progressed beyond the written warning stage, and when the employee notifies the Employer before any disciplinary action is taken.
- E. "Pattern Abuse" shall constitute grounds for discipline apart from and/or in addition to paragraph C above. Pattern abuse consists of absence while on sick leave as evidenced by a frequency or pattern contiguous with or related to holidays, weekends, vacation days, and/or consistent or regular usage of sick leave.

Section 6

This article shall not interfere with existing sick leave credit given employees for unused sick leave prior to the effective date of this agreement.

Section 7

Any Bargaining Unit Member may donate up to two (2) of their accumulated sick days to a member of the same Bargaining Unit Member's accumulated sick leave where said person, because of illness, has used up all of their available time, i.e., Vacation, Comp. Time and Sick Time. No more than sixteen (16) hours may be donated in a calendar year, upon approval of the Bargaining Unit.

ARTICLE XI - UNPAID LEAVES OF ABSENCE

Section 1 - PERSONAL LEAVE

Any employee who has completed the required initial probationary period who believes he has a justifiable reason may apply for a leave of absence not to exceed ninety (90) days for personal reasons. Such leaves shall be granted for good cause if the employee's absence will not adversely affect efficient operation of the department in which he works, upon comment of the department head and the approval of the Service Director.

ARTICLE XI - UNPAID LEAVES OF ABSENCE (CONT.)

Section 2 - MILITARY LEAVE

- A. Bargaining Unit Members who are members of the Ohio National Guard, the Ohio Defense Corps, the Naval Militia, or members of other reserve components of the Armed Forces of the United States, and who have been employed for at least ninety (90) days, shall be granted an extended leave of absence without pay for military duty in accordance with law, and after discharge, shall be restored to employment with the Employer upon request.
- B. Any Bargaining Unit Member who is temporarily called for mandatory active duty (e.g., summer training) shall be granted a leave of absence for the duration of such active duty and shall be paid the difference between his regular pay and his service pay (upon receipt of a service pay voucher) for a period not to exceed one hundred seventy-six (176) hours in any calendar year. Said Member shall accumulate vacation and sick leave credit during the period of his leave.
- C. Bargaining Unit Members on military leave who thereafter return to employment with the employer shall receive retirement credit for all time spent in active military service.
- D. An employee who re-enlists while on active duty, or a commissioned officer who voluntarily enters an extended active duty beyond that required upon accepting a commission, is not eligible for reinstatement with the employer.
- E. Employees who are members of the Ohio National Guard will be granted emergency leave for mob, riot, flood, civil defense, or similar duties when so ordered by the Governor to assist civil authorities. Such leave will be without pay if it exceeds authorized paid military leave for the year. The leave will cover the official period of the emergency.
- F. A veteran separated or discharged under honorable conditions must make application for re-employment to his or her former classification within ninety (90) days after discharge or release from hospitalization due to in service injury or illness which has not exceeded a period of more than one (1) year. The following procedures shall apply:
 - 1. Reinstatement shall be accomplished within thirty (30) days after application is received by the Employer providing the veteran has remained physically qualified to perform the duties of the classification. When a disability in the military service precludes restoration to the original classification, the veteran shall be reinstated to a classification and position of like status and pay, compatible with his or her physical condition, provided such classification and position are available.
 - 2. A photostatic copy of the discharge or certification of service must accompany all requests for reinstatement or reappointment.

ARTICLE XI - UNPAID LEAVE OF ABSENCE (CONT.)

Section 2 - MILITARY LEAVE (cont.)

3. The veteran is entitled to salary benefits or other advancement accruing to the position during military absence as follows:
 - a. Sick leave - that amount which has been accumulated at the time of entering service.
 - b. Vacation leave - time spent on military leave will be counted in determining the employees length of service, but no vacation credit will be accumulated during the time spent on military leave.
 - c. Change in classification or pay range which would have accrued to the employee if he or she had been on the job; and
 - d. Any automatic salary adjustments associated with the position that the employee would have received had he or she been on the job.
- G. The foregoing provision of this Article reflects accurately the applicable provisions of existing federal law and regulations. In the event of a change in such law or regulation, provisions of this Article will be amended to accurately reflect such changes.

Section 3 - INDUSTRIAL ILLNESS - INJURY

In cases of compensable industrial illness or injury, a leave of absence shall be granted when appropriately supported by medical evidence. Such leave shall be automatically terminated when the employee is placed upon such degree of permanent disability as prevents his performance of the duties of his job or when he returns to work.

ARTICLE XII - SALARY FOR DISABLED EMPLOYEES

Section 1

When an employee is disabled due to injury in the discharge of his duty, he shall be paid his regular salary for a minimum of 90 Days.

Section 2

After 90 Days of an employee's period of disability the department supervisor and the Safety-Service Director may, at their option, extend for an additional 90 Days the period of disability or order said employee to submit to examination by a physician approved by the Employer and employee to determine the extent of the disability. If such examination is ordered, the Service Director shall notify the "ACUE" immediately in writing and in advance of the examination. The employee shall not be responsible for any charges or fees resulting from said examination.

ARTICLE XII - SALARY FOR DISABLED EMPLOYEES cont.

Section 3

This disability leave shall be used before an employee's accumulated sick leave can be used.

Section 4

Should the period of disability exceed the disability leave the "EMPLOYER" shall continue to provide said employee with full normal insurance coverage for at least six (6) additional months. The provisions of this Article shall in no event exceed the period of disability.

ARTICLE XIII - PROVISIONS REGARDING LEAVES OF ABSENCE

Section 1

All leaves of absence (and any extensions thereof), must be applied for and granted or rejected, within five (5) working days, writing on forms to be provided by the "EMPLOYER". An employee may, upon request, return to work prior to the expiration date of any leave of absence if such return is agreed to by the "EMPLOYER". When an employee returns to work after leave of absence, he will be assigned to the position which he formerly occupied or to a similar position if his former position is not vacant or no longer exists at his current rate of pay.

Section 2

If it is found that a leave of absence is not actually being used for the purpose for which it was granted, the "EMPLOYER" may cancel the leave, direct the employee to return to work, and impose disciplinary action.

Section 3

An employee who fails to report to work at the expiration or cancellation of a leave of absence, of fails to secure an extension of such leave, shall be deemed to be absent without leave and shall be subject to loss of seniority under Article IX, Seniority.

ARTICLE XIV - JURY DUTY

Any employee who is called for jury duty during any regular scheduled work day shall be excused from work for the day which he serves. He shall be required to return to work promptly after being excused from jury duty to complete the balance of his regularly scheduled hours. Payment for such jury duty shall be the difference between his regular straight time pay and the payment he received for jury duty. The employee shall present proof of service and the amount of pay to the department head.

ARTICLE XV - VACATIONS

Section 1

All employees except temporary and seasonal employees shall earn vacation with pay at the following rate:

- (A) Two (2) calendar weeks per year after the completion of one (1) full year of employment.
- (B) Three (3) calendar weeks per year after the completion of five (5) full years of employment.
- (C) Four (4) calendar weeks per year after the completion of ten (10) full years of employment.
- (D) Five (5) calendar weeks per year after the completion of fifteen (15) full years of employment.
- (E) Six (6) calendar weeks after twenty (20) full years of employment.

Section 2

Vacations become due on or after January 1st of each year. After an employee completes one (1) full year of service, the anniversary date of employment for vacation purposes shall be January 1st of each year. Service credit shall be given for consecutive service in any department of the Employer, including approved leave of absence.

Section 3

Vacations shall be scheduled by seniority in each department upon the request of the employee. Seniority will be in effect for the first thirty (30) days after the employee has requested his vacation. After thirty (30) days seniority cannot bump the employee from the days he has scheduled. The vacation period shall be from January 1 through December 31, and no portion of the vacation may be carried over into the next year. The employee's vacation request shall be granted unless such request allegedly affects operations of the department in which the employee works. In that event, Management shall grant at least one (1) employee his/her request and right to accrued vacation during any period or periods of any year. In event of denial of an employee's vacation request, a meeting shall be scheduled between the Committee Representative and the Safety-Service Director to resolve the dispute.

Section 4

Holidays occurring during an employee's vacation will not be counted as part of the vacation. The employee shall receive a future day off.

Section 5

Upon death of the employee, any unused vacation shall be paid to the employee's estate.

Section 6

Employees who so desire may take earned vacation leave according to the following plans:

Two (2) weeks of earned vacation leave must be taken, unless an employee is in his retiring year. Employees with earned vacation leave in excess of two (2) weeks may take the remainder in any combination of earned vacation leave and/or base pay in lieu of earned vacation leave. Vacation pay may be collected on payday before taking vacation with notice.

A retiring employee may use any combination of vacation and/or base pay in lieu of earned vacation leave.

ARTICLE XVI - HOLIDAYS

Section 1

All employees shall receive the following holidays with pay:

Employee's Anniversary Date	Labor Day
January 1st	Veteran's Day
President's Day (3rd Monday in February)	Thanksgiving Day
Good Friday	Day after Thanksgiving
Memorial Day	Christmas Day
July 4th	Employee's Birthday
	Martin Luther King Day

All employees covered by this contract may use their Birthday Holiday and Anniversary Date Holiday as floating holidays in the following manner. The employee may take this holiday on any date between the actual date and the end of that calendar year. The exception to this rule would be those employees who celebrate these dates in December. If the actual date of the holiday is in December, that employee may take this holiday any date thirty (30) days prior to the actual date.

Section 2

If any of the holidays fall on Sunday, the following Monday shall be observed as the holiday. If any of the holidays fall on a Saturday the preceding Friday shall be observed as the holiday.

Section 3

An employee who works on a holiday shall be paid one and one-half times (1 ½) his normal hourly rate for hours worked in addition to holiday pay.

Section 4

In order to be eligible for holiday pay provided herein, an employee must comply with the following provisions:

- (1) An employee who is scheduled to work on any holiday, but who fails to report and perform his scheduled or assigned work, shall become ineligible to be paid for the unworked holiday, unless he failed to perform such work because of sickness or of a death in his immediate family.

- (2) An employee, who fails to work on his last scheduled work day prior to and his first scheduled work day following the day on which the holiday is observed, shall become ineligible to be paid for the unworked holiday, unless he failed to work because of sickness, or vacation or because of a death in his immediate family.

ARTICLE XVII - HOSPITALIZATION - LIFE INSURANCE - EYE & DENTAL

Section 1 - MEDICAL/EYE/DENTAL INSURANCE

- A. All Bargaining Unit Members who are normally scheduled to work or who actually work a minimum of thirty-five (35) hours per week for the "EMPLOYER" shall be furnished with a fully paid family or single coverage hospitalization plan. The "EMPLOYER" will offer such Bargaining Unit Members at least one plan which has been bid for the identical coverage as contained in the fully funded plan as of January 1, 2006.
- B. The hospital plan may provide for a maximum one hundred dollar (\$100.00) per person and a two hundred dollar (\$200.00) per family in plan deductible and a two hundred dollar (\$200.00) per person and a four hundred (\$400.00) per family out of plan deductible.
- C. The out of pocket maximum will not exceed seven hundred fifty (\$750.00) for ACUE members. The employees' responsibility shall not exceed this amount in any calendar year for Hospitalization and major medical expenses that are covered.
- D. The EMPLOYER shall provide and maintain a fully funded eye program equal to or better than the program offered by the EMPLOYER effective June 1, 2006.
- E. The EMPLOYER shall provide to each ACUE member, participation in a dental plan at a cost of \$20.00 per pay for family and \$7.00 per pay for single participants.

Section 2 - PRESCRIPTIONS

Each Bargaining Unit Member shall be provided with a "PRESCRIPTION CARD". With the use of this card, the Bargaining Unit Member on the PPO PLAN shall pay up to a maximum of twenty dollars (\$20.00) per formulary prescription, ten dollars (\$10.00) per generic prescription, and thirty five dollars (\$35.00) per non-formulary prescription. The remainder of the prescription cost shall be paid by the EMPLOYER. The fees paid by the Bargaining Unit Member while using this card may not be included in the total annual deductible. The employer may offer an optional plan which the Employee can convert to.

Section 3 - Life Insurance

All Bargaining Unit Members shall be furnished with a fully paid life insurance policy of ten thousand dollars (\$10,000.00). The coverage shall provide double indemnity provisions for accidental death or dismemberment. The EMPLOYER shall provide, at no cost to the Bargaining Unit Members, this policy.

Section 4 - Insurance Coverage/Dependents/Policies

- A. All newly hired Bargaining Unit Members must serve an initial six (6) month period prior to enrolling in the above insurance programs as of the 1st of the following month.
- B. In the event of the death of a Bargaining Unit Member, hospitalization coverage shall be continued by the EMPLOYER for his dependents through the month following the month in which the Bargaining Unit Member died.
- C. The EMPLOYER shall provide "ACUE" with a copy of all insurance policies covering any Bargaining Unit Members. Upon written request by a Bargaining Unit Member the EMPLOYER shall provide the Member with a copy of any insurance policy requested.

ARTICLE XVIII - RETIREMENT

Section 1

When a full-time employee retires pursuant to the rules and regulations established by the applicable retirement board, or when a full-time employee separates from employment with the City of Massillon and has completed twenty (20) years of service subject to a State of Ohio retirement system, said employee shall be entitled to receive a lump sum payment for unused sick leave according to the following formula:

Up to one hundred-seventy (170) sick days, full compensation, plus compensation of 40% of sick days in excess of one hundred-seventy (170) days.

Section 2

In case an employee leaves the service of the "EMPLOYER" after five (5) years' service, he shall be paid 40% of his accumulated sick leave.

Section 3

In computing the above formula (Sections 1 and 2) the employee shall be deemed to have worked forty (40) hours per week and the amount to be received computed accordingly.

Section 4

Any employee that retires and receives lump sum payment shall not, upon re-employment by the EMPLOYER, be eligible for any further lump sum payment for unused sick leave.

Section 5

Upon death of an employee a lump sum payment of accumulated sick leave according to the retirement formula in Section 1 of this article shall be paid to the employee's estate.

Section 6

An employee of the ACUE shall have the option of receiving their retirement sick time lump sum payment in either one or two payments, as mutually agreed upon by the Employee and the City Administration at the time of severance of service.

ARTICLE XIX - NON-DISCRIMINATION-BARGAINING UNIT MEMBERSHIP AND ACTIVITIES

Section 1

The "EMPLOYER" recognizes the right of all "ACUE" employees, the right to be free to join the "ACUE" and to participate in lawful concert "ACUE" activities. Therefore, the "EMPLOYER" agrees that there shall be no discrimination, interference, restraint, coercion, or reprisal by the "EMPLOYER" against any employee or any applicant for employment because of any lawful activity in an official capacity on behalf of the "ACUE".

ARTICLE XX - EXTRA CONTRACT AGREEMENTS

Section 1

It is agreed that any or all verbal and written agreements which add to or amend or delete the provisions of this Agreement shall be negotiated by the Mayor or his designees and the Negotiating Committee of the "ACUE". Any verbal and written agreements that do not meet the above criteria are null and void. This provision shall not be interpreted to encompass nor alter the recognition clause or Management Rights clause of this Agreement.

ARTICLE XXI - NON-DISCRIMINATION-CIVIL RIGHTS

Section 1

Both the "EMPLOYER" and the "ACUE" recognize their respective responsibilities under Federal and State Civil Rights Laws, Fair Employment Practice Acts, and other similar constitutional and statutory requirements. Therefore, both parties hereby re-affirm their commitments, legal and moral, not to discriminate in any manner relating to employment on the basis of race, color, creed, national origin, age or sex.

ARTICLE XXII - CONTRACTING OUT

Section 1

The "EMPLOYER" reserves the right to contract or sub-contract out projects which require a high degree of specialization that the "ACUE" cannot perform, and are not qualified to do, so long as the employment of current employees is not jeopardized by the contracting out of such work.

The employee's current work week shall not be shortened or curtailed and the employee's rate of pay shall not be affected by such contracting. The "EMPLOYER" shall not use this section to erode "ACUE" work.

ARTICLE XXIII - WAGES

Section 1

Effective March 20, 2006 the "EMPLOYER" agrees to pay the "ACUE" in accordance with the rate schedules attached.

Appendix "A" Rates Shall be changed to reflect the following:

- Pay period beginning December 25, 2006 the bi-weekly pay will increase 2%.
- Pay period beginning March 19, 2007 the bi-weekly pay will increase 4%.
- Pay period beginning March 31, 2008 the bi-weekly pay will increase 4%.

Section 2

Original hire of an employee shall be at the entrance rate of the classification concerned and future advancement within a pay range shall be as follows:

- (A) On the first day of the payroll period following the anniversary date of his/her employment (continuous service) with the "EMPLOYER", each employee shall advance within the pay range for this appropriate grade class to the pay rate which his/her years of continuous service entitles him/her to advance. Said employee shall continue to so advance each year until he/she has reached the maximum rate for his/her grade class.
- (B) When an employee's initial compensation is at a step rate higher than the entrance rate for the grade class in which he is employed, said employee shall advance to the next higher rate for his grade class on the first day of the payroll period following the anniversary date of his employment with the "EMPLOYER". Said employee shall continue to advance each year until he has reached the maximum rate for his grade class.
- (C) Upon recommendation of the Service Director, the Mayor may approve initial compensation at a rate higher than the minimum rate in the pay range for the class when the needs of the service so require; provided that any such exception is based on the outstanding and unusual character of the employee's experience and ability over and above the qualification requirements specified for the class, or that a critical shortage of applicants exists. In the later case, any incumbents in the same class receiving a lower rate shall have their rates increased to the rate established for the entrance of new employees.

ARTICLE XXIII - WAGES (CONT)

Section 3 - Starting Rate on Return to Duty:

When an employee returns to duty in the same class of position after a separation from the "EMPLOYER'S" service of not more than one (1) year, which separation was not due to discreditable circumstances, such employee shall receive the rate received at the time of separation and shall subsequently serve there for at least such period as is normally required for advancement to the next higher rate.

Section 4 - Starting Rate on Return from Military Service

Any employee who leaves or has left the "EMPLOYER'S" service to enter the active service of the Armed Forces of the United States, and who subsequently is re-instated to a position previously held by him, shall be entitled to receive the rate of compensation at the step to which he would have been entitled had his service with the "EMPLOYER" not been interrupted by service in the Armed Forces.

ARTICLE XXIV -PREVAILING RIGHTS

Section 1

This agreement represents the entire Agreement between the CITY and the ACUE and unless specifically and expressly set forth in the express written provisions of this Agreement, all rules, regulations, benefits, and practices previously and presently in effect may be modified or discontinued at the sole discretion of the CITY.

Section 2

However, prior to implementing such modifications or discontinuances, the CITY agrees to meet and confer with the ACUE to discuss the same. In addition, the CITY agrees that nothing in this language permits it to make any changes inconsistent with the previously agreed-to provisions of this contract.

ARTICLE XXV - SCHOOLING

Section 1 - Job Required

Employees who are required to take courses to keep up their certification or credentials for their job shall be paid the expenses for attending those courses, including wages and other expenses incidental to them.

In addition they shall receive a stipend for those courses which shall be computed as follows:

Seven dollars and fifty cents (\$7.50) per classroom hour up to a maximum of seven hundred and fifty dollars (\$750.00) in 2006, 2007, 2008.

All hours obtained in a calendar year will be paid only in that calendar year.

All courses and/or seminars attended will require Department Head's approval prior to attendance.

1. The employee must apply in advance to the Service Director through the department head.
2. Nurses who have completed the course requirements for Pediatric Nurse Practitioner shall be compensated at the maximum annual rates listed above.

Section 2 - Job Related

- A. The "EMPLOYER" will pay for tuition and textbooks for employees taking job related courses. The courses must relate to their particular field of endeavor or be a part of a degree in their field of endeavor.
- B. Reimbursement shall be made to the employee by the "EMPLOYER" after completion of courses or the cost of the training program can be paid directly to the person or firm conducting the program. The employee must pass the course and receipts have to be furnished upon completion in order to be reimbursed. The employee shall have the right to keep the textbooks.

C. Application:

1. The employee must apply in advance to the Service Director through the Department Head.
2. After successful completion of the course, the employee must submit a transcript of the passing grades and paid receipts to the department head who, along with the Service Director, will give authority for payment. For this purpose the Employer would provide reimbursement for tuition and book expenses only if the employee receives a grade of "C" or better in a course. This must be requested.
3. The employee must apply each semester (or quarter).

ARTICLE XXV - SCHOOLING cont.

- D. An employee shall receive the appropriate compensation for the most advanced of the following categories:
- Step 1. \$900.00 Annually for an Associate Degree in a field directly related to the job.
- Step 2. \$1,800.00 Annually for a Bachelor's Degree in a field directly related to the job.
- E. In case an employee has credits or a degree related to his field of endeavor from an accredited institution of higher learning acquired previous to this contract the educational credit and degree compensation may be paid for the related courses and/or degrees. The relatedness of the courses shall be decided by the committee made up of the Mayor and representatives of the "ACUE" bargaining unit. Continuing Education Units will be considered for compensation under the job related stipend. The committee will determine the proper rate and relatedness.
- F. In case degrees or courses are required for a position or classification, the employee shall not be paid for both the higher position and the educational stipend.
- G. The additional payments as specified shall be in addition to the employee's regular rate of pay and shall be paid in two (2) equal payments on the first (1st) pay in June and the first (1st) pay in December, provided, however, payment shall only be made to those qualified who have attained their degree or certification within at least five (5) days prior to the date of payment. The Associate Degrees and the Bachelor Degree must be received from a fully-accredited college or university.
- H. In no case will reimbursement or compensation be granted for any studies beyond the Bachelor Degree, except in the case of the engineer or any other position which requires that degree. In that case, the "EMPLOYER" will pay only for the next higher degree.

Section 3

Employees who are sent out of town to attend seminars, meetings, etc., shall be paid their regular wage plus mileage to fluctuate with the Federal standard, for the use of their own car, lodging, toll charges, and meals. Expenses including meals will be reimbursed from receipts submitted. The maximum reimbursement for meals shall not exceed \$35.00 per day.

Section 4

Employees who use their own cars for City business may be reimbursed at the rate to fluctuate with the Federal standard. Long trips, if a City car is unavailable, are exempt. Auto Club mileage charts will be used to determine trip miles. Employees may, in lieu of the car allowance, use their expenses for Federal Income Tax deductions.

ARTICLE XXVI

WAGES AND SELECTED FRINGE BENEFITS

Effective the first pay period of 2007, that portion of the employee contribution to the Public Employees Retirement System of Ohio (hereinafter known as P.E.R.S.) shall equal up to and including ten percent (10%) of the employee's earned compensation as set by P.E.R.S. If the employee's percentage of contribution is increased beyond ten percent (10%) by P.E.R.S., the "EMPLOYER" shall pay the additional contribution amount. The "EMPLOYER" shall, in reporting and making remittance to P.E.R.S. of Ohio, report that each employee's contribution has been made as provided by statute.

Holiday pay, overtime pay, vacation pay, compensation pay, severance pay, and any other earned compensation shall be computed on an employee's base pay before deferrals.

The "EMPLOYER" shall keep the proper records of an employee's gross pay (before deferral) for pension purposes. Further, the "EMPLOYER" shall keep the proper records of an employee's adjusted gross pay for income tax purposes.

ARTICLE XXVII - DURATION AND TERM

Section 1 WAGE AND ECONOMIC RE-OPENER

The parties agree to meet the month of January 2009 for the purpose of negotiating wages and economics.

Unless extended by mutual agreement, the fact-finding process shall be implemented by either party thirty (30) days after the opening of the negotiations, with the expiration date of the reopener procedure being thirty (30) days after the implementation of the fact-finding process.

ARTICLE XXVIII - RESIDENCY

Pursuant to Ordinance 113-2006 passed by Council August 7, 2006, All "ACUE" employees:

- A. herein after appointed to positions in the City service shall be residents of Stark County or any adjacent county at the time of their appointment or within twelve months of their appointment and shall continue to maintain their primary place of residence within Stark County or any adjacent county at all times during their continued service with the City.
- B. now holding positions in the City service shall continue to maintain their primary place of residence in accordance with the requirement presently in existence, to wit: within Stark County or any adjacent county.
- C. who fail to comply with the provisions of this section, shall automatically be discharged from his or her service with the City.
- D. pursuant to the Collective Bargaining Agreements must be residents of Stark County or any adjacent county within one year from date of hire.

ARTICLE XXIX - DRUG FREE POLICY

All employees covered by this contract agree to the "EMPLOYER'S" policy on a drug free workplace and drug testing of employees, in accordance to and in conjunction with Massillon City Ordinance # 46-96.

DURATION AND TERM

This agreement shall be effective March 20, 2006 and shall continue in effect thru March 29, 2009, unless either party gives written notice to the other party at least ninety (90) days prior to March 29, 2009 to terminate, modify, or negotiate a successor collective bargaining agreement.

FOR THE "COMMITTEE"

FOR THE CITY OF MASSILLON

DATE: DECEMBER 18, 2006

CLERK: MARY BETH BAILEY

CITY OF MASSILLON, OHIO

COUNCIL CHAMBERS

passed
LEGISLATIVE DEPARTMENT

ORDINANCE NO. 186 - 2006

BY: FINANCE COMMITTEE

TITLE: AN ORDINANCE making certain appropriations from the unappropriated balance of the Fire Pension Fund, General Fund, Police Pension Fund, Parks and Rec. Recreation Fund and the Economic Development Fund, for the year ending December 31, 2006, and declaring an emergency.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MASSILLON, STATE OF OHIO, THAT:

Section 1:

There be and hereby is appropriated from the unappropriated balance of the Fire Pension Fund for the year ending December 31, 2006, the following:

\$77,775.00 to an account entitled "Fire Pension" 1210.325.2240

Section 2:

There be and hereby is appropriated from the unappropriated balance of the General Fund for the year ending December 31, 2006, the following:

\$19,417.99 to an account entitled "School District Revenue Sharing" 1100.210.2721

\$ 9,500.00 to an account entitled "Salary Police" 1100.305.2110

Section 3:

There be and hereby is appropriated from the unappropriated balance of the Police Pension Fund for the year ending December 31, 2006, the following:

\$19,360.00 to an account entitled "Police Pension" 1209.305.2240

Section 4:

There be and hereby is appropriated from the unappropriated balance of the Parks and Recreation Fund for the year ending December 31, 2006, the following:

\$13,284.00 to an account entitled "Utilities-Rec. Center" 1234.505.2341

\$ 3,500.00 to an account entitled "Utilities" 1234.505.2340

Section 5:

There be and hereby is appropriated from the unappropriated balance of the Economic Development Fund for the year ending December 31, 2006, the following:

\$ 5,350.00 to an account entitled "Services/Contracts" 1237.845.2392

Section 6:

This Ordinance is hereby declared to be an emergency measure, for the efficient operation of the various departments of the City of Massillon and for the preservation of the public health, safety and welfare of the community. Provided it receives the affirmative vote of two-thirds of the elected members to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor. Otherwise, it shall take effect and be in force from and after the earliest period allowed by law.

PASSED IN COUNCIL THIS _____ DAY OF _____ 2006

ATTEST: _____

MARY BETH BAILEY, CLERK OF COUNCIL

GLENN E. GAMBER, PRESIDENT

APPROVED: _____

FRANCIS H. CICCHINELLI, JR., MAYOR

DATE: DECEMBER 18, 2006

CLERK: MARY BETH BAILEY

CITY OF MASSILLON, OHIO

COUNCIL CHAMBERS

passed
LEGISLATIVE DEPARTMENT

ORDINANCE NO. 187 - 2006

BY: FINANCE COMMITTEE

TITLE: AN ORDINANCE reducing the appropriation in the Capital Improvement Fund, of the City of Massillon, for the year ending December 31, 2006, and declaring an emergency.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MASSILLON, STATE OF OHIO, THAT:

Section 1:

The appropriations are hereby reduced in the Capital Improvement Fund, for the year ending December 31, 2006, as follows:

\$18,667.56 from an account entitled "Street Resurfacing" 1401.435.2510

Section 2:

This Ordinance is hereby declared to be an emergency measure, for the efficient operation of the various departments of the City of Massillon and for the preservation of the public health, safety and welfare of the community and for the additional reason that the appropriation needs to be reduced because of an audit procedure. Provided it receives the affirmative vote of two-thirds of the elected members to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor. Otherwise, it shall take effect and be in force from and after the earliest period allowed by law.

PASSED IN COUNCIL THIS _____ DAY OF _____ 2006

APPROVED: _____
MARY BETH BAILEY, CLERK OF COUNCIL

GLENN E. GAMBER, PRESIDENT

APPROVED: _____

FRANCIS H. CICCHINELLI, JR, MAYOR

DATE: DECEMBER 18, 2006

CLERK: MARY BETH BAILEY

CITY OF MASSILLON, OHIO

COUNCIL CHAMBERS

passed
LEGISLATIVE DEPARTMENT

ORDINANCE NO. 188 - 2006

BY: FINANCE COMMITTEE

TITLE: AN ORDINANCE making certain transfers in the 2006 appropriations from within the General Fund for the year ending December 31, 2006, of the City of Massillon, Ohio, and declaring an emergency.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MASSILLON, STATE OF OHIO, THAT:

Section 1:

There be and hereby is transferred from the 2006 appropriation from within the General Fund, of the City of Massillon, Ohio, the following:

FROM:	Salary-Income Tax	1100.210.2111	\$ 7,000.00
	Gas & Oil	1100.305.2430	\$14,000.00
	Salary-Building	1100.415.2110	\$ 4,500.00
	Salary-Street	1100.435.2110	\$ 3,000.00
	Workers Compensation	1100.905.2270	\$ 6,242.00
	Supplies/Materials/Postage	1100.205.2410	\$10,000.00
	State Examination	1100.905.2395	\$1,637.75
	Refunds - Income Tax	1100.210.2720	\$10,000.00
	Salary - Temp Help Treasurer	1100.215.2111	\$444.00
	Accrued Liability - Fire	1100.325.2260	\$3,736.98
	Accrued Liability - Police	1100.305.2260	\$270.18
	Energy Saving Lease	1100.410.2333	\$1,563.76
	Utilities	1100.410.2340	\$9,667.30
	Services/Contra	1100.160.2392	\$97.92
	Supplies/Materials/Postage	1100.160.2410	\$12.39
	Insurance	1100.905.2312	\$25,712.00
	Workers Comp Defense Acct	1100.905.2399	\$200.00
	Annexation Fees	1100.905.2721	\$5,000.00
	Transfer - Debt Retirement	1100.905.2712	\$815.50
TO:	SD Revenue Sharing	1100.210.2721	\$103,899.78
FROM:	City Hall & Public Bldg - Utilities	1100.410.2340	\$10,000.00
TO:	Street Lighting	1100.905.2392	\$10,000.00

FROM:	Medicare	1100.110.2231	\$100.00
	Medicare	1100.115.2231	\$130.00
	Medicare	1100.205.2231	\$175.00
	Medicare	1100.210.2231	\$475.00
	Medicare	1100.210.2231	\$5.00
	Medicare	1100.305.2231	\$5,000.00
	Medicare	1100.325.2231	\$500.00
	Medicare	1100.415.2231	\$200.00
	Medicare	1100.435.2231	\$2,000.00
	OPERS	1100.175.2230	\$91.00
	OPERS	1100.210.2230	\$1,044.69
	OPERS	1100.215.2230	\$67.05
	OPERS	1100.405.2230	\$1,047.85
	OPERS	1100.415.2230	\$2,466.50
	Salary – Civil Service	1100.150.2110	\$70.00
	Salary – Planning Steno	1100.140.2111	\$150.00
	Salary – Law Director Staff	1100.115.2111	\$500.00
	Salary – Service Director	1100.160.2111	\$500.00
	Salary – Auditor Staff	1100.205.2111	\$2,800.00
	Salary – Income Tax Staff	1100.210.2111	\$1,000.00
	Salary – Street	1100.435.2110	\$10,000.00
	Salary – Street OVT	1100.435.2119	\$2,000.00
	Uniform Allowance – Police	1100.305.2280	\$2,600.00
	Uniform Allowance – Fire	1100.325.2280	\$1,020.01
TO:	PERS Council	1100.105.2230	\$130.01
	PERS Mayor	1100.110.2230	\$198.71
	PERS Law Director	1100.115.2230	\$1,134.05
	PERS Civil Service	1100.150.2230	\$3.29
	PERS Service Director	1100.160.2230	\$1,081.00
	PERS Auditor	1100.205.2230	\$441.13
	PERS Police	1100.305.2230	\$1,185.10
	PERS Janitor	1100.410.2230	\$11.03
	PERS Health	1100.705.2230	\$2,548.65
	Medicare Council	1100.105.2231	\$2.99
	Medicare Service Director	1100.160.2231	\$16.43
	Salary Police Staff	1100.305.2111	\$2,206.00
	Salary Fire Comp	1100.325.2118	\$17,614.41
	Salary Fire Salary	1100.325.2110	\$3,981.25
	Salary Engineer	1100.405.2110	\$506.23
	Salary Police	1100.305.2110	\$2,881.82

FROM:	Fire Hosp/Eye/Dental	1100.325.2210	\$26,911.99
	Mayor Hosp/Eye/Dental	1100.110.2210	\$90.00
	Council Hosp/Eye/Dental	1100.105.2210	\$34.00
	Service Director Hosp/Eye/Dental	1100.160.2210	\$50.00
	Treasurer Hosp/Eye/Dental	1100.215.2210	\$50.00
	Engineer Hosp/Eye/Dental	1100.405.2210	\$2,100.00
	Building Hosp/Eye/Dental	1100.415.2210	\$100.00
	Salary Health	1100.705.2110	\$4,000.00
TO:	Police Salaries	1100.305.2110	\$33,335.99

Section 2

That this Ordinance is hereby declared to be an emergency measure, the reason for the emergency being that said funds are necessary for the preservation of the public health, safety and welfare of the community and for the additional reason that the funds are required in the specific accounts to pay city obligations by the end of 2006. Provided it receives the affirmative vote of two-thirds of the elected members to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor. Otherwise, it shall take effect and be in force from and after the earliest period allowed by law.

PASSED IN COUNCIL THIS _____ DAY OF _____ 2006

APPROVED: _____
MARY BETH BAILEY, CLERK OF COUNCIL

GLENN E. GAMBER, PRESIDENT

APPROVED: _____

FRANCIS H. CICCHINELLI, JR., MAYOR

DATE: DECEMBER 18, 2006

CLERK: MARY BETH BAILEY

CITY OF MASSILLON, OHIO

COUNCIL CHAMBERS

Passed
LEGISLATIVE DEPARTMENT

ORDINANCE NO. 189 - 2006

BY: FINANCE COMMITTEE

TITLE: AN ORDINANCE authorizing the Director of Public Service and Safety of the City of Massillon, Ohio to enter into contract with Health Plan for health insurance coverage for city employees, and declaring an emergency.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MASSILLON, STATE OF OHIO, THAT:

Section 1:

The Council of the City of Massillon, Ohio, hereby determines it to be necessary and in the public health, safety and welfare to enter into contract with Health Plan for health insurance coverage for city employees. The terms and conditions of the contracts will be as contained on the two exhibits attached hereto as exhibits "A" and "B".

Section 2:

The Director of Public Service and Safety of the City of Massillon is hereby authorized to enter into contract with Health Plan for health insurance coverage for city employees for the 2007 calendar year pursuant to the terms on exhibits "A" and "B".

Section 3:

This Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the health, safety, and welfare of the community, and for the additional reason that it is necessary to enter into contract with Health Plan for health insurance coverage for city employees in order for city employees to be covered for the beginning calendar year 2007. Provided it receives the affirmative vote of two-thirds of the elected members to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor. Otherwise, it shall take effect and be in force from and after the earliest period allowed by law.

PASSED IN COUNCIL THIS _____ DAY OF _____ 2006

APPROVED: _____
MARY BETH BAILEY, CLERK OF COUNCIL GLENN E. GAMBER, PRESIDENT

APPROVED: _____
FRANCIS H. CICCHINELLI, JR., MAYOR