

**MINUTES OF THE MEETING OF APRIL 5, 2004**

CHAIRMAN CASAR: With a quorum present, the Chair calls this meeting of Canton City Council to order.

*The regular meeting of Canton City Council was held on Monday, April 5, 2004, at 7:30 P.M. in the Canton City Council Chamber. The meeting was called to order by Council Vice President Donald Casar in the absence of Council President Ray Denczak. The roll call was then taken (as follows) by Clerk of Council Debbie Vanckunas. The invocation was given by Ward 8 Councilmember Rosemary Diamond, followed by the Pledge of Allegiance led by Vice President of Council Donald Casar.*

CHAIRMAN CASAR: Roll call please.

***ROLL CALL TAKEN BY CLERK OF COUNCIL:***

11 COUNCILMEMBERS PRESENT: (DON CASAR, JOE CARBENIA, MARY M. BABCOCK, THOMAS M. BERNABEI, GREG HAWK, THOMAS E. WEST, KELLY ZACHARY, TERRY PRATER, DAVID R. DOUGHERTY, RICHARD HART & ROSEMARY DIAMOND)

1 COUNCILMEMBER ABSENT: (R.A. MALLONN II)

**AGENDA CORRECTIONS & CHANGES**

CHAIRMAN CASAR: There'll be some corrections, changes and corrections, to tonight's agenda. Entertain a motion to suspend Rule 22A so that we can add ordinances back to the agenda, 11 through 16, and also suspend Rule 24B to add Resolution #43. Member Carbenia.

MEMBER CARBENIA: I move that we suspend Rule 22A to add second readings from 11 through 16 and suspend Rule 24B to add Resolution 43.

CHAIRMAN CASAR: Member Carbenia, one rule at a time.

MEMBER CARBENIA: Okay. We'll just suspend Rule 22; seconded.

CHAIRMAN CASAR: Moved and seconded. All those in favor, signify by saying aye, those opposed-- no, roll call, please.

NO REMARKS

ROLL CALL: 11 YEAS, 0 NAYS

MEMBER CARBENIA: Mr. President, I move to suspend Rule 24 to add Resolution 43 to the agenda; seconded.

CHAIRMAN CASAR: Moved and seconded. Roll call, please.

NO REMARKS

ROLL CALL: 11 YEAS, 0 NAYS

**MINUTES OF THE MEETING OF APRIL 5, 2004****PUBLIC HEARINGS****PUBLIC HEARING #1, FORD/REPUBLIC GEORGETOWN ANNEXATION, 7:30 PM**

CHAIRMAN CASAR: We have a public hearing scheduled for 7:30...

CLERK VANCKUNAS: Mr. President, it's a request to annex 176.419 acres known as the Ford/Republic Georgetown Road Annexation area; assigning said territory to Ward 4; zoning said territory as I-1 light industrial.

CHAIRMAN CASAR: Is there anyone in the audience wishing to speak for or against?... Is there anyone in the audience wishing to speak for or against that ordinance?... Is there anyone in the audience wishing to speak for or against this rezoning ordinance?... If not, the public hearing is over and the ordinance will be dealt with later on on the agenda.

**PUBLIC HEARING #2, SARTA ZONE CHANGE, 7:31 PM**

CHAIRMAN CASAR: We have another public hearing scheduled for 7:31...

CLERK VANCKUNAS: A request to amend zoning ordinance 55 passed in 1977 to rezone Lot #82084 located at 112 Cherry Avenue SE as requested by SARTA to permit a 7 x 9' electronic sign.

CHAIRMAN CASAR: Is there anyone in the audience wishing to speak for or against?... The Planning Commission recommended denial on this one. Is there anyone in the audience wishing to speak for or against?... Is there anyone in the audience wishing to speak for or against this ordinance?... If not, the public hearing is closed and we'll deal with this ordinance later in the agenda also.

**PRESENTATION OF MAYOR'S PROCLAMATION FOR BUILDING SAFETY WEEK  
BY CHIEF BUILDING OFFICIAL ROGER WESTFALL**

MR. WESTFALL: Mr. President and Members, this week the Building Department is celebrating National Building Safety Week. It is actually an event that has been going on since 1980, sponsored by the International Code Council, and the Mayor has issued a proclamation and I would like to read a small section from that. I do not wish to go through the whole part, but I will highlight a couple of the issues here. This is Mayor's Proclamation, City of Canton, Ohio. "Whereas, building safety affects many aspects of American life. Because of building safety, code enforcement, we enjoy the comfort of structures that are safe and sound; and whereas, building safety provides safeguards to protect the public from natural disasters that can occur all across the country such as snow storms, hurricanes, tornados, wild land fires and earthquakes. Building safety codes also work to minimize other potential building catastrophes; and whereas, this year as we observe Building Safety Week, I ask all Americans to consider projects to improve building safety at home and in the community and to recognize the local building safety and fire prevention officials and the important role that they play in public safety. Now, therefore, be it resolved, that I, Janet Weir-Creighton, Mayor of the City of Canton, do hereby proclaim April 4 through 10, 2004 as Building Safety Week in the City of Canton." We have scheduled numerous activities this week, and I think I have made it appropriate to show you those schedules. We had an open house in our department today and I appreciate, Member West was there, and we do appreciate his attendance. We had over 75 people in attendance from all walks of our community. We had videotapes going and a number of things. Throughout

**MINUTES OF THE MEETING OF APRIL 5, 2004**

the week we have seminars to really address the public awareness of what we do in our jobs as building safety. One additional thing I would like to add as the past president of the Ohio Building Officials Association, I do spend considerable time in Columbus dealing with representatives, and I-- for the first time since 1986, the Governor of Ohio has also declared this as building safety, and I received a resolution from him, and I will not read this, but it is signed, "Now therefore, I, Bob Taft, Governor of the State of Ohio, do hereby proclaim April 4 through 10, 2004 as Building Safety Week." So my role as building official in the State of Ohio, I am the chairperson for public relations this year and I'm trying to get out the word to everyone across the nation and across our State of Ohio the importance of the role that we as building officials and code officials do to protect your places that you attend. For instance, the places you're in here right now where you assemble, where you worship, where you go for your entertainment or your restaurants. Whatever you do, you take for granted when you enter a building that that building has been designed and properly inspected for safe habitation. And that is the job of the building officials, and therefore, we are trying to make the public aware of what we really do in our jobs. Thank you very much.

CHAIRMAN CASAR: Thank you, Mr. Westfall, for giving us that presentation. We certainly appreciate it. Does anyone else have any comments on this while we're on the subject?....

MEMBER WEST: Mr. President, I have to say that I did attend the event today and I was very proud of our building department and all the staff there that were everything that I've actually been presented. They were very friendly and I've seen a number of people while I was up there, and I just want to commend Roger Westfall and the building department on the activities that they displayed this morning.

CHAIRMAN CASAR: Thank you.

**PUBLIC SPEAKS (ORDINANCES OR RESOLUTIONS FOR ADOPTION ONLY):**

(No one was signed up for public speaks under Ordinances or Resolutions for adoption only.)

**INFORMAL RESOLUTIONS**

CHAIRMAN CASAR: Entertain a motion to excuse members, Member Carbenia.

MEMBER CARBENIA: I move that we excuse Councilman Mallonn and President Ray Denczak; seconded.

CHAIRMAN CASAR: It's been moved and seconded that Councilman Mallonn and President Denczak be excused from tonight's meeting. Roll call, please.

NO REMARKS

ROLL CALL: 11 YEAS, 0 NAYS

CHAIRMAN CASAR: Councilman Mallonn and President Denczak are duly excused from this evening's meeting. Resolution #43.

***CHAIRMAN CASAR CALLED UPON CLERK OF COUNCIL VANCKUNAS TO READ RESOLUTION 43 BY TITLE, AS SHOWN BELOW. THE RESOLUTION IS ON FILE IN ITS ENTIRETY IN THE***

**MINUTES OF THE MEETING OF APRIL 5, 2004*****COUNCIL OFFICE WITH THE AGENDA ITEMS DATED APRIL 5, 2004.***

43. INTERGOVERNMENTAL & PUBLIC SERVICE COMMITTEE: OBJECTING TO TRANSFER OF D5 LIQUOR PERMIT AS REQUESTED BY CHESTER W. HUTH DBA STARK COUNTY SPORTS PUB @ 508 CLEVELAND AVE NW - ADOPTED BY COUNCIL

MEMBER CARBENIA: Mr. President, I move that we vote on Resolution #43; seconded.

CHAIRMAN CASAR: It's been moved and seconded. Any comments?... If not, all those in favor signify by saying aye. Those opposed, no.

NO REMARKS

RESOLUTION #43 ADOPTED BY UNANIMOUS VOICE VOTE

CHAIRMAN CASAR: The ayes have it. Resolution #43 is adopted.

**COMMUNICATIONS**

CHAIRMAN CASAR: Communications #196 through #207 are received as read.

***NOTE: ALL COMMUNICATIONS WHICH FOLLOW, LISTED BY AGENDA TITLE, ARE ON FILE IN THEIR ENTIRETY IN THE COUNCIL OFFICE WITH THE AGENDA ITEMS FILE DATED APRIL 5, 2004.***

196. AUDITOR KIM R. PEREZ, CITY OF CANTON: REQUEST FOR ADDITIONAL AMENDED CERTIFICATE DATED 3/31/04. - CLERK OF COUNCIL
197. AUDITOR KIM R. PEREZ, CITY OF CANTON: REQUEST FOR ADDITIONAL AMENDED CERTIFICATE DATED 3/31/03. - CLERK OF COUNCIL
198. AUDITOR KIM R. PEREZ, CITY OF CANTON: MONTHLY REPORT BY FUND FOR 3/1-31/04. - RECEIVED & FILED
199. AUDITOR KIM R. PEREZ, CITY OF CANTON: YEARLY REPORT BY FUND FOR 1/1/04 - 3/31/04. - RECEIVED & FILED
200. CHIEF OF STAFF JOSEPH J. CONCATTO, CITY OF CANTON: REQUEST TO AUTHORIZE & DIRECT THE MAYOR TO ENTER INTO A PROFESSIONAL SERVICES CONTRACT WITH DHR INTERNATIONAL TO RECRUIT A NEW COMMUNITY & ECONOMIC DEVELOPMENT DIRECTOR, TO RELOCATE THE INDIVIDUAL, & ACCEPT GRANTS FROM CANTON CHAMBER OF COMMERCE; REQUEST FOR \$30,000 SUPPLEMENTAL APPROPRIATION FROM THE 1001 GENERAL FUND - COMMUNITY & ECONOMIC DEVELOPMENT & FINANCE COMMITTEES
201. LIQUOR CONTROL DIVISION (STATE OF OHIO), 6606 TUSSING ROAD, PO BOX 4005,

**MINUTES OF THE MEETING OF APRIL 5, 2004**

REYNOLDSBURG, OHIO 43068-9005: REQUEST FOR TRANSFER OF D1, D2, D3, D3A LIQUOR PERMIT REQUESTED BY EAST SIDE POP & DRIVE-THRU INC, GROUND & 1<sup>ST</sup> FLOOR & DRIVE THRU @ 2401 EAST TUSC. - INTERGOVERNMENTAL & PUBLIC SERVICE COMMITTEE

202. SERVICE DIRECTOR TAD ELLSWORTH, CITY OF CANTON: REQUEST AUTHORITY TO ENTER INTO A \$23,800 PROFESSIONAL ENGINEERING CONTRACT WITH CT CONSULTANTS FOR REPLACEMENT OF HVAC SYSTEM AT WPCC; REQUEST AUTHORITY TO ADVERTISE, RECEIVE BIDS & ENTER INTO A \$65,000 CONTRACT FOR THE HVAC REPLACEMENT PROJECT; REQUEST \$88,800 SUPPLEMENTAL APPROPRIATION FROM THE 5410 SANITARY SEWER FUND. - PUBLIC PROPERTY CAPITAL IMPROVEMENT & FINANCE COMMITTEES
203. SERVICE DIRECTOR TAD ELLSWORTH, CITY OF CANTON: REQUEST TO AMEND O.50/2003 TO MAKE NECESSARY CHANGES OF OWNERSHIP OF PROPERTY IN THE 4<sup>TH</sup> STREET NE RECONSTRUCTION PROJECT. - COMMUNITY & ECONOMIC DEVELOPMENT & FINANCE COMMITTEES
204. SERVICE DIRECTOR TAD ELLSWORTH, CITY OF CANTON: REQUEST LEGISLATION TO APPROPRIATE PROPERTY AFTER UNSUCCESSFUL NEGOTIATION IN THE 4<sup>TH</sup> STREET NE RECONSTRUCTION PROJECT. - COMMUNITY & ECONOMIC DEVELOPMENT & FINANCE COMMITTEES
205. TREASURER ROBERT C. SCHIRACK, CITY OF CANTON: COMPARATIVE REPORT OF DEPOSITS & PAY INS TO AMBULANCE LOCK BOX ACCOUNT FOR MONTH OF MARCH 2004. - RECEIVED & FILED
206. TREASURER ROBERT C. SCHIRACK, CITY OF CANTON: COMPARATIVE REPORT OF PARKING METER REVENUE FOR MONTH OF MARCH 2004. - RECEIVED & FILED
207. WILLIAMS, BRUCE - PLANNING ANALYST, CITY OF CANTON: SUBMITTING HOUSING SURVEY FOR THE SUMMIT NEIGHBORHOOD COMMUNITY REINVESTMENT AREA (CRA). - COMMUNITY & ECONOMIC DEVELOPMENT COMMITTEE

**ORDINANCES & FORMAL RESOLUTIONS FOR FIRST READING**

CHAIRMAN CASAR: We're under Resolutions for the first reading. Resolution-- or Ordinance #1. Sorry.

***NOTE: VICE PRESIDENT CASAR CALLED UPON CLERK VANCKUNAS TO READ THE FOLLOWING ORDINANCES #1 THROUGH AND INCLUDING #10 FOR THE FIRST TIME BY TITLE & ANNOUNCED THE COMMITTEE REFERRAL, AS FOLLOWS.***

- #1 (1<sup>ST</sup> RDG) AN ORDINANCE AUTHORIZING THE MAYOR TO ENTER INTO AN ENTERPRISE ZONE AGREEMENT WITH McGRANN PAPER CORPORATION TO PROVIDE REAL

**MINUTES OF THE MEETING OF APRIL 5, 2004**

AND PERSONAL PROPERTY TAX EXEMPTIONS FOR CONSOLIDATION AND RELOCATION OF ITS FACILITIES; AUTHORIZING THE GRANTING OF 100% TEN YEAR REAL AND PERSONAL PROPERTY TAX EXEMPTIONS; AUTHORIZING THE AUDITOR TO MAKE PAYMENTS TO THE CANTON BOARD OF EDUCATION AS REQUIRED TO BE PAID PURSUANT TO SECTION 5709.82(C) AND (D) OF THE REVISED CODE; AND DECLARING THE SAME TO BE AN EMERGENCY

Referred to Community & Economic Development & Finance Committees

- #2 (1<sup>ST</sup> RDG) AN ORDINANCE AUTHORIZING THE MAYOR AND/OR DIRECTORS OF PUBLIC SERVICE AND SAFETY TO COMPLETE THE CONTRACTING PROCESS FOR VARIOUS CONTRACTS PREVIOUSLY AUTHORIZED BUT NOT COMPLETED BY JANUARY 1, 2004; AND DECLARING THE SAME TO BE AN EMERGENCY

Referred to Community & Economic Development, Finance & Public Property Capital Improvement Committees

- #3 (1<sup>ST</sup> RDG) A RESOLUTION APPROVING THE STATEMENT OF SERVICES TO BE PROVIDED TO THE PROPERTY OWNERS IN THE MCKINLEY DEVELOPMENT/PLAIN TOWNSHIP CEDA ANNEXATION AREA, THE APPROXIMATE DATE SERVICES WILL BE PROVIDED, PROCEDURE FOR INCOMPATIBLE ZONING USES UPON ITS BEING ANNEXED TO THE CITY OF CANTON, OHIO; AND DECLARING THE SAME TO BE AN EMERGENCY

Referred to Annexation Committee

- #4 (1<sup>ST</sup> RDG) AN ORDINANCE AUTHORIZING THE MAYOR AND/OR DIRECTOR OF PUBLIC SERVICE TO CONVEY CITY-OWNED REAL PROPERTY, NO LONGER NEEDED FOR MUNICIPAL PURPOSES, TO THE CANTON COMMUNITY IMPROVEMENT CORPORATION; AND DECLARING THE SAME TO BE AN EMERGENCY

Referred to Public Property Capital Improvement & Community & Economic Development Committees

- #5 (1<sup>ST</sup> RDG) AN ORDINANCE AMENDING EXHIBIT A TO ORDINANCE NO. 40/2000, AS AMENDED, THE CLASSIFICATION PLAN FOR BARGAINING UNIT PERSONNEL EMPLOYED BY THE CITY OF CANTON; AND DECLARING THE SAME TO BE AN EMERGENCY

Referred to Personnel Committees

- #6 (1<sup>ST</sup> RDG) AN ORDINANCE APPROVING AND ACCEPTING THE REPLATTING OF LOTS 42237 THROUGH 42246; AND DECLARING THE SAME TO BE AN EMERGENCY

Referred to Public Safety & Thoroughfares Committee

- #7 (1<sup>ST</sup> RDG) AN ORDINANCE AUTHORIZING THE DIRECTOR OF PUBLIC SERVICE TO ENTER INTO A THREE-YEAR CONTRACT WITH U.S. HEALTHWORKS OF OHIO, INC. FOR PROFESSIONAL MEDICAL SERVICES FOR CITY OF CANTON JOB APPLICANTS

**MINUTES OF THE MEETING OF APRIL 5, 2004**

AND EMPLOYEES; AND DECLARING THE SAME TO BE AN EMERGENCY

Referred to Finance Committee

#8 (1<sup>ST</sup> RDG) AN ORDINANCE AUTHORIZING THE DIRECTOR OF PUBLIC SERVICE TO ADVERTISE, RECEIVE BIDS AND ENTER INTO CONTRACT FOR THE LIFT STATIONS REPLACEMENT PROJECT; AMENDING APPROPRIATION ORDINANCE NO. 1/2004, AS AMENDED, BY MAKING THE SUPPLEMENTAL APPROPRIATION HEREIN DESCRIBED; AND DECLARING THE SAME TO BE AN EMERGENCY

Referred to Environmental & Public Utilities & Finance Committees

#9 (1<sup>ST</sup> RDG) AN ORDINANCE APPROVING A CANTON CITY WATER MAIN EXTENSION TO PERRY TOWNSHIP; AUTHORIZING THE DIRECTOR OF PUBLIC SERVICE TO ENTER INTO CONTRACT FOR THE EXTENSION OF SAID WATER MAIN; AND DECLARING THE SAME TO BE AN EMERGENCY

Referred to Environmental & Public Utilities Committee

#10 (1<sup>ST</sup> RDG) AN ORDINANCE AMENDING APPROPRIATION ORDINANCE NO. 1/2004, AS AMENDED, BY MAKING THE SUPPLEMENTAL APPROPRIATION HEREIN DESCRIBED; AND DECLARING THE SAME TO BE AN EMERGENCY

Referred to Parks & Recreation & Finance Committees

**ORDINANCES & FORMAL RESOLUTIONS FOR SECOND READING**

CHAIRMAN CASAR: We are now under Ordinances for the second reading. Let the Journal show that all ordinances are received and they're all read according to law.

***NOTE: VICE PRESIDENT CASAR CALLED UPON CLERK VANCKUNAS TO READ THE FOLLOWING ORDINANCES #11 THROUGH AND INCLUDING #16 FOR THE SECOND TIME BY TITLE, AS FOLLOWS.***

**RULE 22A WAS SUSPENDED TO ADD #11 THROUGH #16:**

#11 (2<sup>ND</sup> RDG) AN ORDINANCE AUTHORIZING THE DIRECTOR OF PUBLIC SAFETY TO ADVERTISE, RECEIVE BIDS AND ENTER INTO CONTRACT FOR THE PURCHASE OF A LIVE-FIRE SHOOTING SIMULATION SYSTEM FOR THE POLICE DEPARTMENT; AND DECLARING THE SAME TO BE AN EMERGENCY

#12 (2<sup>ND</sup> RDG) AN ORDINANCE AUTHORIZING THE DIRECTOR OF PUBLIC SAFETY TO ADVERTISE, RECEIVE BIDS AND ENTER INTO CONTRACT FOR THE PURCHASE OF VARIOUS EQUIPMENT FOR THE FIRE DEPARTMENT; AND DECLARING THE SAME TO BE AN EMERGENCY

#13 (2<sup>ND</sup> RDG) AN ORDINANCE AUTHORIZING THE MAYOR TO ENTER INTO AN AMENDMENT

MINUTES OF THE MEETING OF APRIL 5, 2004

TO THE SERVICE AGREEMENT WITH KEYBANK NATIONAL ASSOCIATION FOR THE PLACEMENT OF AN ATM TERMINAL AT THE MILLENNIUM PARKING DECK; AND DECLARING THE SAME TO BE AN EMERGENCY

#14 (2<sup>ND</sup> RDG) AN ORDINANCE VACATING A 10' UNNAMED ALLEY SOUTH OF 16<sup>TH</sup> STREET NE; APPROVING AND ACCEPTING THE REPLATTING OF ALL OF LOTS NOS. 8907 & 13968 AND THE VACATED 10' ALLEY; AND DECLARING THE SAME TO BE AN EMERGENCY. **PUBLIC HEARING 4/12/04 @ 7:30 PM**

#15 (2<sup>ND</sup> RDG) **ADOPTED AS ORDINANCE NO. 50/2004** AN ORDINANCE APPROVING & ACCEPTING THE REPLATTING OF LOTS NOS 1406 AND 1407; AND DECLARING THE SAME TO BE AN EMERGENCY

MEMBER CARBENIA: Mr. President, I move that we suspend the statutory rule for #15 and vote on it; seconded.

CHAIRMAN CASAR: It's been moved and seconded to suspend...

MEMBER CARBENIA: Statutory three readings...

CHAIRMAN CASAR: ...statutory rules for #15. Any questions or comments?... If not, roll call, please.

NO REMARKS

ROLL CALL: 11 YEAS, 0 NAYS

CHAIRMAN CASAR: You heard the three readings. Move to adopt Ordinance #15.

MEMBER CARBENIA: Make a motion we adopt Ordinance #15; seconded.

CHAIRMAN CASAR: It's been moved and seconded to adopt Ordinance #15. Are there any comments?... Questions?... If not by roll call, all those in favor sig-- roll call.

NO REMARKS

ROLL CALL: 11 YEAS, 0 NAYS

CHAIRMAN CASAR: Ordinance #15 is adopted.

**#15 ADOPTED AS ORDINANCE NO. 50/2004**

#16 (2<sup>ND</sup> RDG) A RESOLUTION DECLARING THE NECESSITY AND INTENT OF THE CITY OF CANTON TO APPROPRIATE PROPERTY WITHIN ITS CORPORATE LIMITS PURSUANT TO OHIO REVISED CODE CHAPTER 719 FOR THE PURPOSE OF ACQUIRING PROPERTY FOR THE 4<sup>TH</sup> STREET NE RECONSTRUCTION PROJECT; AND DECLARING THE SAME TO BE AN EMERGENCY

ORDINANCES AND FORMAL RESOLUTIONS FOR THIRD READING

CHAIRMAN CASAR: We're now under Ordinances for the third and final reading.

**MINUTES OF THE MEETING OF APRIL 5, 2004**

MEMBER CARBENIA: Mr. President, I move we adopt Ordinance #17.

CHAIRMAN CASAR: Member Carbenia, the Clerk has to read the ordinance first before you make the motion.

***NOTE: VICE PRESIDENT CASAR CALLED UPON CLERK VANCKUNAS TO READ THE FOLLOWING ORDINANCES #17 THROUGH AND INCLUDING #20 FOR THE THIRD & FINAL TIME BY TITLE, AS FOLLOWS.***

#17 (3<sup>RD</sup> RDG) **ADOPTED AS ORDINANCE NO. 51/2004** AN ORDINANCE AUTHORIZING CANTON TO ANNEX THE TERRITORY KNOWN AS THE FORD/REPUBLIC GEORGETOWN ROAD ANNEXATION AREA CONTAINING 176.419 ACRES; ASSIGNING SAID TERRITORY TO WARD 4 OF THE CITY; ZONING SAID TERRITORY AS I-1 (LIGHT INDUSTRIAL DISTRICT); AND DECLARING THE SAME TO BE AN EMERGENCY **PUBLIC HEARING HELD 4/5/04 @ 7:30 PM**

MEMBER CARBENIA: Mr. President, I make a motion that we adopt Ordinance #17; seconded.

CHAIRMAN CASAR: It's been moved and seconded to adopt Ordinance #17. Are there any questions, comments?... If not, roll call please.

NO REMARKS

ROLL CALL: 11 YEAS, 0 NAYS

CHAIRMAN CASAR: Ordinance #17 has passed.

**#17 ADOPTED AS ORDINANCE NO. 51/2004**

#18 (3<sup>RD</sup> RDG) **ADOPTED AS ORDINANCE NO. 52/2004** AN ORDINANCE AMENDING ORDINANCE NO.55/77, AS AMENDED, KNOWN AS THE CITY OF CANTON ZONING ORDINANCE; AND DECLARING THE SAME TO BE AN EMERGENCY **PUBLIC HEARING HELD 4/5/04 @ 7:31 PM**

MEMBER CARBENIA: Mr. President, I make a motion that we adopt Ordinance #18; seconded.

CHAIRMAN CASAR: It's been moved and seconded to adopt Ordinance #18. Are there any comments?... If not, roll call please.

NO REMARKS

ROLL CALL: 11 YEAS, 0 NAYS

CHAIRMAN CASAR: Ordinance #18 is adopted.

**#18 ADOPTED AS ORDINANCE NO. 52/2004**

#19 (3<sup>RD</sup> RDG) **ADOPTED AS ORDINANCE NO. 53/2004** AN ORDINANCE APPROVING AND ACCEPTING THE REPLATTING OF PARTS OF LOTS 2457, 2458, 2459 AND 2460; AND DECLARING THE SAME TO BE AN EMERGENCY

**MINUTES OF THE MEETING OF APRIL 5, 2004**

MEMBER CARBENIA: Mr. President, I move we approve Ordinance #18.

CHAIRMAN CASAR: 19.

MEMBER CARBENIA: 19; seconded.

CHAIRMAN CASAR: It's been moved and seconded Ordinance #19 be adopted. Are there any questions or comments?... If not, roll call please.

NO REMARKS

ROLL CALL: 11 YEAS, 0 NAYS  
**#19 ADOPTED AS ORDINANCE NO. 53/2004**

**ORDINANCES & FORMAL RESOLUTIONS - POSTPONED MATTER:**

CHAIRMAN CASAR: We're now under Ordinances and Formal Resolutions, Postponed Matters. We have one ordinance, postponed matter, which is Ordinance #20.

#20 **POSTPONED FROM 3/29/04 COUNCIL MTG; HAS REC'D 3 RDGS:**  
**ADOPTED AS ORDINANCE NO. 54/2004** AN ORDINANCE AUTHORIZING THE MAYOR AND/OR CHIEF OF STAFF TO ENTER INTO PROFESSIONAL SERVICE CONTRACT WITH SMG FOR OPERATION OF THE CANTON CIVIC CENTER; AND DECLARING THE SAME TO BE AN EMERGENCY

MEMBER CARBENIA: Mr. President, I move that we adopt Ordinance #20; seconded.

CHAIRMAN CASAR: It's been moved and seconded. Are there any remarks?...

MEMBER CARBENIA: Mr. President, I move that we amend the Ordinance #20. Pursuant to Rule 36, I hereby move that Agenda Item #20 be amended by substituting an Exhibit A attached to the Amendment for the Exhibit A attached to the Ordinance currently pending before Council; seconded.

**SEE AMENDED EXHIBIT A BEGINNING ON THE NEXT PAGE:**

MINUTES OF THE MEETING OF APRIL 5, 2004

**PROFESSIONAL SERVICES AGREEMENT**

**THIS PROFESSIONAL SERVICES AGREEMENT** (this "Agreement") dated as of the 1<sup>st</sup> day of April, 2004 by and between the City of Canton, Ohio (the "CITY"), and SMG, a Pennsylvania general partnership ("SMG").

**BACKGROUND**

SMG is an organization whose principals have substantial experience and expertise in the management, operation and marketing of facilities such as the Facility; and

The City is desirous of retaining and engaging SMG to provide the services set forth herein to assist in meeting the City's objectives for the Canton Memorial Civic Center ("Facility") and SMG is desirous of accepting said engagement, all on the terms and conditions herein contained.

**NOW, THEREFORE**, in consideration of the mutual premises, covenants and agreements herein contained, the parties hereto, intending to be legally bound, hereby agree as follows:

**1. Definitions**

For purposes of this Agreement, the following terms have the meanings referred to in this Section 1:

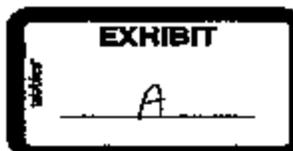
**"Affiliate"** a person that directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control with, a specified person. For purposes of this definition, "control" means ownership of equity securities or other ownership interests that represent more than 40% of the voting power in the controlled person.

**"Facility"** -- as defined in the first paragraph of the Background section of this Agreement

**"Fiscal Year"** -- a one year period beginning January 1 and ending December 31.

**"Renewal Term"** -- a five (5) year period beginning immediately following the Term.

**"Term"** -- as defined in Section 4.1.



MINUTES OF THE MEETING OF APRIL 5, 2004

**2. SMG Designated Employee.**

SMG shall assign to the Facility an employee to perform SMG's duties hereunder. During the Term and any Renewal Term, SMG's employee shall be provided an office and all other amenities currently provided to senior personnel of the Facility.

**3. Engagement of SMG; Scope of Services; City Covenants.**

**3.1 Engagement, Conversion and City Covenants.**

(a) Engagement. Subject to the terms of this Agreement, SMG shall provide, through its employee, certain services to assist the City in its efforts to market, promote and book the Facility during the Term and any Renewal Term. SMG's employee shall assist the City in generating new events at the Facility, increasing the existing level of service and increasing profit margins for existing events. SMG shall make available its regional (e.g. Cleveland, Columbus, and Pittsburgh) operators to provide oversight to its employee. Additionally, SMG shall provide oversight from its home corporate offices. Notwithstanding anything to the contrary herein, the City shall have the authority over the day-to-day operation of the Facility, with the option to engage SMG to provide certain services otherwise provided by SMG hereunder, with respect to the period in which the annual Canton Hall of Fame event takes place.

(b) Conversion. At any time during the Term and any Renewal Term, the City may elect, by written notice to SMG, to increase SMG's scope of services. In such event, the parties shall agree on a transition period leading to such increased services and negotiate in good faith an agreement for such services at the Facility.

(c) City Representations and Covenants.

(i) Financial Covenants. The City has complete responsibility over all financial activities and matters pertaining to the Facility, including without limitation depositing revenues generated from the operation of the Facility, writing checks for the payment of expenses associated with the operation and maintenance of the Facility and the provision of the services at the Facility. SMG shall not be required to pay for or advance any amounts for the operation of the Facility. Any failure by SMG to perform its obligations under this Agreement shall not be a breach under this Agreement if such breach results from the City's decision to not, or inability to, provide in a timely manner sufficient funds for the management, operation and promotion of the Facility.

(ii) Facility Representations and Covenants. The City represents and warrants that, prior to and as of the commencement of the Term hereunder, the Facility has not been operated, or the Facility and its premises have been, in compliance with all Laws (including the American with Disabilities Act and any applicable environmental laws). The City covenants to SMG that it will operate the Facility in a manner consistent with applicable laws (including the American with Disabilities Act and any applicable environmental laws).

MINUTES OF THE MEETING OF APRIL 5, 2004

## 3.2 Scope of Services -- Generally.

- (a) As soon as practicable after the execution of this Agreement, SMG shall evaluate, recommend and implement any operational modifications that it deems necessary in order to meet the goals of the City for the Facility, including, without limitation, adjustments in the rental rates, pursuit of new business, and changes in the provision of food and beverage service; provided, however that any rental rate changes must be approved in advance by City Council.
- (b) Without limiting the foregoing, the parties will work together to avoid event-scheduling conflicts. In the event that the parties are unable to resolve a conflict, the event shall not take place at the Facility; however, the parties agree to consider whether SMG shall be given credit for the event.
- (c) SMG shall negotiate, execute in its name as agent for the City, deliver and administer any and all licenses, occupancy agreements, rental agreements, booking commitments, and all other contracts and agreements (hereinafter "Facility Agreements") in connection with the promotion and booking of the Facility, provided that if any such license, agreement, commitment or contract other than those involving the license, lease or rental of the Facility in the ordinary course has a term that extends beyond the remaining Term or any Renewal Term, as applicable, such license, agreement, commitment or contract shall be approved and executed by the City (which approval shall not be unreasonably withheld). Additionally, in the event that the City provides such direction in writing, SMG shall execute City approved operational contracts as agent for the City. SMG agrees that it will include terms in the Facility Agreements as may be requested by the City from time to time.
- (d) The City and SMG will coordinate to maintain a master set of all booking records and schedules for the Facility. With the cooperation and assistance from the City, SMG shall develop a booking policy plan for the Facility, which will be submitted and approved by the City. SMG agrees that it will not engage events or activities at the Facility where it has received written notice that the City has determined such event to be inappropriate for the Facility.
- (e) Notwithstanding anything to the contrary herein, the City shall have the authority over the day-to-day operation of the Facility during the entire period encompassing the annual Canton Hall of Fame festivities. It is agreed that use of the facility for Hall of Fame events and festivities shall take priority over all other events. City may engage SMG to provide other services not provided by SMG hereunder with respect to the Hall of Fame festivities.
- (f) In addition, SMG acknowledges that the City uses the Facility, from time to time, as an Emergency Shelter. It is agreed that the Facility's use as an Emergency Shelter shall continue throughout the Term and any Renewal Term of this Agreement.
- (g) In performing its services under this Agreement, SMG agrees to comply with all local, state and federal laws affecting the use and occupation of the Facility.

MINUTES OF THE MEETING OF APRIL 5, 2004**3.3 Confidentiality/Nondisclosure.**

Subject to the City's duties under Ohio's Public Records Law, the parties hereto agree that they shall keep secret and confidential any and all proprietary information (which shall include all documents which SMG marks as confidential or proprietary), and neither party shall divulge any such information, in whole or in part, to any third party, except as required by law, without the prior written consent of the other party. The parties shall provide notice to the other party of any known or suspected violations of this Section 3.3.

**4. Term and Renewal.**

**4.1 Term.** The term of this Agreement ("Term") shall commence as of April 1, 2004 and end at midnight on December 31, 2009; provided, however, that the City shall have the right to terminate this Agreement after three years (i.e. effective as of December 31, 2007) by providing not less than one hundred eighty (180) days prior written notice to SMG of such termination. Unless SMG is so notified, this Agreement shall continue until December 31, 2009. Notwithstanding the foregoing, in the event that SMG earns an incentive fee in any two of the three first full fiscal years under the Term (i.e. 2005, 2006 or 2007), this Agreement shall automatically continue for the full period of the Term (i.e. through December 31, 2009).

**4.2 Renewal Term.** At the sole discretion of the City, this Agreement may be extended for the Renewal Term. This Agreement shall be so extended unless the City provides SMG written notice before July 1, 2009 that it will not extend this Agreement for the Renewal Term. In the event that this Agreement is renewed for the Renewal Term, the City shall have the right to terminate this Agreement after three years (i.e. effective as of December 31, 2012) by providing notice before July 1, 2012. Unless SMG is so notified, this Agreement shall continue until December 31, 2014. Notwithstanding the foregoing, in the event that SMG earns an incentive fee in any two of the three first fiscal years under the Renewal Term (i.e. 2010, 2011 or 2012), this Agreement shall automatically continue for the full period of the Renewal Term (i.e. December 31, 2014).

**5. SMG's Compensation.****5.1 Fixed Fee.**

As base compensation to SMG for providing the services herein specified during Term, the City shall pay SMG during the Management, if any, an annual fixed fee of Seventy-Five Thousand Dollars (\$75,000), subject to an annual CPI increase. The foregoing annual fixed compensation shall be payable in equal monthly installments due on or before the last day of each month during such fiscal Year.

**5.2 Incentive Fee.**

MINUTES OF THE MEETING OF APRIL 5, 2004

(a) Amount. In each Fiscal Year during the Term and any Renewal Term, SMG shall be entitled to earn annual incentive fees based upon achieving improvement of the Net Income (as defined below) for the Facility. For each Fiscal Year during the Term, SMG shall be entitled to receive the following Tier 1 and Tier 2 incentive fees, if earned:

(i) Tier 1: one-half (1/2) of the Net Annual Improvement (as defined below); provided, however, that such fee shall not exceed Seventy-Five Thousand Dollars (\$75,000).

(ii) Tier 2: forty percent (40%) of each dollar of Net Income where such Net Income is a profit for the Facility (i.e. positive Net Income); provided, however, that such fee shall not exceed One Hundred Thousand Dollars (\$100,000).

For purposes of this Section 5.2, the following bolded terms shall be defined as follows: (i) "**Net Income**" shall mean all revenues generated from Facility less expenses incurred at the Facility (including SMG's base fee referenced in Section 5.1), all on a basis that is agreed upon by the parties on or before agreement on the Benchmark (defined below) and consistent with generally accepted accounting principles and past practice, (ii) "**Net Annual Improvement**" shall mean the excess of Net Income for a Fiscal year over the Benchmark, and (iii) "**Benchmark**" shall be equal to a loss of \$703,500 subject to certain carve-outs (e.g. banked vacation, buy-outs and sick/benefit time premium) as set forth on Exhibit 5.2(A). The incentive fee for year 2004 (partial year) shall be based on the results of the final three quarters of 2004 and 75% of the Benchmark. Attached, as Exhibit 5.2 (B), is an example of how the incentive fees will be calculated.

(b) Payment. The incentive fee determined pursuant to Section 5.2(a) above for each fully or partially completed Fiscal Year shall be payable to SMG within thirty (30) days after the City's receipt of the annual financial statements described in Section 6.1 hereof for the then current Fiscal Year. Upon the City's receipt of the annual financial statements, the City shall promptly submit the statements, certified by one of its officers setting forth SMG's performance relative to each of the Benchmarks, to SMG for its review.

**5.3 Capital Needs Assessment Program.** At any time during the Term or the Renewal Term, the City may engage SMG to perform an assessment of, and provide a written report on, the capital needs of the Facility. The City and SMG shall agree in writing on the scope of the assessment and the time for delivery of such report. Upon delivery of such report, the City shall pay SMG Ten Thousand Dollars (\$10,000). In addition, the City shall pay SMG all out of pocket expenses actually incurred within thirty (30) days from the date of the City's receipt of (i) SMG's invoice therefor and (ii) documentation evidencing such expenses.

**6. Records, Audits and Reports.**

**6.1 Records and Audits.**

MINUTES OF THE MEETING OF APRIL 5, 2004

(a) The City shall keep full and accurate accounting records relating to the booking and promoting activities at the Facility in accordance with generally accepted United States accounting principles. The City shall maintain a system of bookkeeping adequate for its operations hereunder. The City shall give SMG authorized representatives access to such books and records maintained at the Facility during reasonable business hours and upon reasonable advance notice solely for purposes relevant to the agreements between the parties contained in this Agreement. The City shall keep and preserve for at least three (3) years following each Fiscal Year all records relating to operating revenues and expenses for such period. In addition, on or before February 15 following each Fiscal Year for which SMG provided services hereunder (beginning February 15, 2005), the City shall furnish to SMG a statement of profit or loss for the Facility for the preceding Fiscal Year, which statement shall be prepared on a cash basis consistent with the manner in which the Benchmark is derived and in accordance with the preparation of the financial statements for the Facility over the last two (2) years. Thereafter and as soon as available, the City shall provide to SMG financial statements for the Facility.

(b) SMG shall have the right at any time, and from time to time, to cause nationally recognized independent auditors to audit the operating revenues and operating expenses for the Facility for any such Fiscal Year and the calculation of SMG's incentive fee payable hereunder. If any such audit demonstrates that the calculation of SMG's incentive fee payable hereunder is understated by more than ten percent (10%), the City shall pay to SMG the cost of such audit and shall promptly pay to SMG any portion of the incentive fee unpaid for such Fiscal Year which is attributable to the overstatement or understatement, as the case may be. In the event that the parties cannot agree on the correct calculation of such incentive fee, then the parties shall attempt to resolve the disputes pursuant to the first sentence of Section 11.1. SMG's right to have such an audit made with respect to any Fiscal Year and the City's obligation to retain the above records shall expire three (3) years after the City's statement for such Fiscal Year has been delivered to SMG.

**6.2 Monthly Reports.**

The City shall provide to SMG a written monthly report in a form approved by the City and SMG setting out the revenues and expenses for the prior month's events and activities.

**7. Employees.****7.1 Employees.**

(a) SMG shall make recommendations to the City regarding the selection, training and employment of City employees at the Facility; provided, however, SMG shall not be entitled to make any hiring, firing, compensation or like decisions regarding such City employees.

(b) Subject to Section 7.1(a), SMG shall be solely responsible for their supervision and daily operational direction and control and compliance, to the extent within its

MINUTES OF THE MEETING OF APRIL 5, 2004

control, with any union contracts covering such City employees; provided, however, the City shall make all final decisions regarding any disputes arising between SMG and the City's employees at the Facility. The City agrees to hold SMG harmless from any withdrawal liability stemming from any union contract involving employees at the Facility. The City's Human Resources Director and Department shall provide human resources support to SMG, as requested by SMG, concerning the City's employees at the Facility.

(c) SMG shall provide a full time employee at the Facility and such employee shall not for any purpose be considered to be an employee of the City, and SMG shall be solely responsible for such employee's supervision and daily direction. The hiring of SMG's employee shall be subject to the written approval of the City. All compensation, employee benefits of SMG's employee and costs related to such employment shall be an operating expense of the Facility and invoiced monthly by SMG. The total compensation for SMG's employee, including all benefits, shall not exceed \$75,000 per year, which amount may be adjusted upward each Fiscal Year by not more than three (3) percent per year when taken over the Term and the Renewal Term.

**7.2 No Solicitation or Employment by the City.**

The City covenants and agrees that neither it nor any of its Affiliates shall, during the Term hereof or for a period of twelve (12) months following the expiration or early termination of this Agreement, hire, employ, solicit for hire, or engage in any manner or for any purpose SMG's employee without the prior written approval of SMG. In addition to any other remedies that SMG may have, specific performance in the form of injunctive relief shall be available for the enforcement of this provision.

**8. Insurance and Indemnification.**

**8.1 Liability Insurance.**

City shall continue to provide the insurance coverage it currently maintains for the Facility. SMG will provide workers compensation insurance for its employee, the cost of which shall be an operating expense of the Facility. In addition, SMG will secure and pay for comprehensive liability insurance covering its scope of services in the Facility and shall name the City as an additional insured on said policy. Such liability insurance shall insure and protect SMG and City from any and all claims of property damage, injury or death occurring with regard to SMG's scope of services at the Facility.

**8.2 Indemnification.** To the extent that Losses (as defined below) are not covered by applicable insurance, the parties agree as follows:

(a) SMG shall indemnify, defend and hold harmless the City, its officers, agents and employees from and against any and all losses, liabilities, claims, damages and expenses (including reasonable attorneys fees) (collectively, "Losses") arising from any material default or breach by SMG of its obligations specified herein; provided, however, that the

MINUTES OF THE MEETING OF APRIL 5, 2004

foregoing indemnification shall not extend to Losses to the extent such Losses arise from any material breach or default by the City of its obligations under Section 8.2 (b) below or Owner's or the City's ownership or operation of the Facility.

(b) To the extent permitted under Ohio law and subject to the statutory immunities and protections enjoyed by City, the City shall indemnify, defend and hold harmless SMG, its partners, officers, agents and employees from and against any and all Losses arising from (i) any material default or breach by the City of its obligations specified herein, (ii) the fact that at any time prior to, as of, or after the commencement of the Term hereunder the Facility has not been operated, or the Facility and its premises are not or have not been, in compliance with all Laws (including the American with Disabilities Act and any applicable environmental laws), (iii) any obligation or liability under or in respect of any contract, agreement or other instrument executed by SMG as agent for the City in the ordinary course of business or as authorized herein; provided, however, that the foregoing indemnification shall not extend to Losses to the extent such Losses arise from any material breach or default by SMG of its obligations under Section 8.2(a). By agreeing to the above indemnification, City does not waive any of the protections and immunities which the City, its officers, agents and employees are entitled to or may hereafter be entitled to under Ohio law and does not expand any limitations on the liability of the City, its officers, agents or employees which are or may hereafter be allowed by law. In the event that it is determined that the City is precluded from indemnifying SMG hereunder, the City shall make every effort to defend SMG, to the extent permitted by law, from third party lawsuits arising from the enumerated actions set forth above in subsections (i), (ii) and (iii) above and permit SMG to either participate, at its cost, in such defense or take over the defense at any time with written notice to the City of its desire to do so.

(c) The terms of all insurance policies referred to in Section 8.1 shall preclude subrogation claims against SMG, its partners, the City and their respective officers, directors, employees and agents.

## 9. Assignment; Affiliates.

### 9.1 Assignment.

Neither this Agreement nor any of the rights or obligations hereunder may be assigned by either party hereto without the prior written consent of the other party hereto; provided, however, that SMG may assign its rights to an Affiliate. For sake of clarity, the parties acknowledge that the foregoing does not preclude the assignment by SMG of its rights to receive its management and incentive fees hereunder to its lender(s) as collateral security for SMG's obligations under any credit facilities provided to it by such lender(s), provided that such collateral assignment shall not in any event cover SMG's rights to manage, promote or operate the Facility hereunder.

9.2 SMG Affiliates. Any contract entered into between SMG and an Affiliate of SMG relating to the Facility shall be approved by the City and on terms and for prices customarily charged in the industry for comparable goods and services.

MINUTES OF THE MEETING OF APRIL 5, 2004

9.3 Conflicts of Interest. The City acknowledges that SMG manages other public assembly facilities that may, from time to time, be in competition with the Facility. The management of competing facilities will not, in and of itself, be deemed a conflict of interest or breach of SMG's duties hereunder.

**10. Termination.****10.1 Termination.**

(a) Upon Default. Either party may terminate this Agreement upon a default by the other party hereunder. A party shall be in default hereunder if (i) such party fails to pay any sum payable hereunder within thirty (30) days after same is due and payable, or (ii) such party fails in any material respect to perform or comply with any of the other terms, covenants, agreements or conditions hereof and such failure continues for more than sixty (60) days after written notice thereof from the other party. In the event that a default (other than a default in the payment of money) is not reasonably susceptible to being cured within the sixty (60) day period, the defaulting party shall not be considered in default if it shall within such sixty (60) day period have commenced with due diligence and dispatch to cure such default and thereafter completes with dispatch and due diligence the curing of such default.

(b) Upon Sale or Permanent Discontinuance. Notwithstanding anything to the contrary herein, in the event that the City sells all its ownership interests in the Facility or permanently discontinues use of the Facility for public events, then either party may terminate this Agreement by providing the other written notice of such termination. The City shall provide SMG not less than ninety (90) days prior written notice of its intention to enter into such a sale or discontinue use of the Facility for public events.

**10.2 Effect of Termination.**

(a) Fixed Fee. In the event this Agreement is terminated, the City shall promptly pay SMG the prorated amount of the fixed fee earned to the date of expiration or termination (as described in Section 5.1) without offset. Upon a termination, all further obligations of the parties hereunder shall terminate except for the obligations in Section 8, this Section 10 and Section 3.3; provided, however, that if such termination is the result of a willful default, the non-defaulting party exercising its right to terminate this Agreement shall be entitled to recover damages for breach arising from such willful default.

(b) Incentive Fee. In the event this Agreement is terminated, the Net Income found referenced in Section 5.2 shall be annualized over the remaining Fiscal Year as set forth in such Section and the City shall pay the prorated amount of incentive fee, if any, owed to SMG within the thirty (30) day period set forth therein.

**11. Miscellaneous.**

MINUTES OF THE MEETING OF APRIL 5, 2004

11.1 Any dispute arising hereunder will first be referred to the parties' respective agents or representatives prior to either party initiating a legal suit, who will endeavor in good faith to resolve any such disputes within the limits of their authority and within forty-five (45) days after the commencement of such discussions. Nothing herein contained is intended or shall be construed in any way to create or establish the relationship of partners or a joint venture between the City and SMG. SMG's employee shall not be, or be deemed to be, an employee of the City for any purpose whatsoever. This Agreement contains the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements and understandings with respect thereto. No other agreements, representations, warranties or other matters, whether oral or written, will be deemed to bind the parties hereto with respect to the subject matter hereof. This Agreement shall not be altered, modified or amended in whole or in part, except in a writing executed by each of the parties hereto. The section headings contained herein are for reference purposes only and shall not in any way affect the meaning and interpretation of this Agreement. The terms defined herein and in any agreement executed in connection herewith include the plural as well as the singular and the singular as well as the plural, and the use of masculine pronouns shall include the feminine and neuter. Except as otherwise indicated, all agreements defined herein refer to the same as from time to time amended or supplemented or the terms thereof waived or modified in accordance herewith and therewith. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original copy of this Agreement, and all of which, when taken together, shall be deemed to constitute but one and the same agreement. The invalidity or unenforceability of any particular provision, or part of any provision, of this Agreement shall not affect the other provisions or parts hereof, and this Agreement shall be construed in all respects as if such invalid or unenforceable provisions or parts were omitted. A failure by either party to take any action with respect to any default or violation by the other of any of the terms, covenants, or conditions of this Agreement shall not in any respect limit, prejudice, diminish, or constitute a waiver of any rights of such party to act with respect to any prior, contemporaneous, or subsequent violation or default or with respect to any continuation or repetition of the original violation or default. This Agreement will be governed by and construed in accordance with the internal laws of the State of Ohio, without giving effect to otherwise applicable principles of conflicts of law.

11.2 Force Majeure.

(a) No party will be liable or responsible to the other party for any delay, damage, loss, failure, or inability to perform caused by "Force Majeure" if notice is provided to the other party within ten (10) days of date on which such party gains actual knowledge of the event of "Force Majeure" that such party is unable to perform. The term "Force Majeure" as used in this Agreement means the following: an act of God, strike, war, public rioting, lightning, fire, storm, flood, explosions, inability to obtain materials, supplies, epidemics, landslides, lightening storms, earthquakes, floods, storms, washouts, civil disturbances, and any other cause whether of the kinds specifically enumerated above or otherwise which is not reasonably within the control of the party whose performance is to be excused and which by the exercise of due diligence could not be reasonably prevented or overcome (it being acknowledged that under no

MINUTES OF THE MEETING OF APRIL 5, 2004

circumstances shall a failure to pay amounts due and payable hereunder be excusable due to a Force Majeure).

**11.3 Notices.**

Any notice, consent or other communication given pursuant to this Agreement will be in writing and will be effective either (a) when delivered personally to the party for whom intended, (b) on the second business day following mailing by an overnight courier service that is generally recognized as reliable, (c) on the fifth day following mailing by certified or registered mail, return receipt requested, postage prepaid, or (d) on the date transmitted by telecopy as shown on the telecopy confirmation therefor as long as such telecopy transmission is followed by mailing of such notice by certified or registered mail, return receipt requested, postage prepaid, in any case addressed to such party as set forth below or as a party may designate by written notice given to the other party in accordance herewith.

**To the City:**

Tad C. Billsworth, Director of Public Service  
218 Cleveland Ave. S.W.  
Canton, Ohio 44702

With copy to:

Joseph Martuccio, Law Director  
218 Cleveland Ave. S.W.  
Canton, Ohio 44702

**To SMG:**

SMG  
701 Market Street, 4<sup>th</sup> Floor  
Philadelphia, PA 19106  
Attention: President

With a copy to:

Stradley, Ronon, Stevens & Young  
2600 One Commerce Square  
Philadelphia, PA 19103  
Attention: William R. Sasso, Esq. Or  
Steven A. Scolari, Esq.  
Telecopy: (215) 564-8120

**11.4 Binding Upon Successors and Assigns; No Third-Party Beneficiaries.**

MINUTES OF THE MEETING OF APRIL 5, 2004

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To the City:

Tad C. Ellsworth, Director of Public Service  
218 Cleveland Ave. S.W.  
Canton, Ohio 44702

## With copy to:

Joseph Martuccio, Law Director  
218 Cleveland Ave. S.W.  
Canton, Ohio 44702

## To SMG:

SMG  
701 Market Street, 4<sup>th</sup> Floor  
Philadelphia, PA 19106  
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Telecopy: (215) 564-8120

11.4 Binding Upon Successors and Assigns; No Third-Party Beneficiaries.

**MINUTES OF THE MEETING OF APRIL 5, 2004**

(a) This Agreement and the rights and obligations set forth herein shall inure to the benefit of, and be binding upon, the parties hereto and each of their respective successors and permitted assigns.

(b) This Agreement shall not be construed as giving any person, other than the parties hereto and their successors and permitted assigns, any legal or equitable right, remedy or claim under or in respect of this Agreement or any of the provisions herein contained, this Agreement and all provisions and conditions hereof being intended to be, and being, for the sole and exclusive benefit of such parties and their successors and permitted assigns and for the benefit of no other person or entity.

IN WITNESS WHEREOF, the parties hereto as of the day and year first above written have duly executed this Agreement.

City of Canton, Ohio

By: \_\_\_\_\_  
Name:  
Title:  
SMC

By: \_\_\_\_\_  
Name: Wes Westley  
Title: President and CEO

**MINUTES OF THE MEETING OF APRIL 5, 2004**



**MINUTES OF THE MEETING OF APRIL 5, 2004**

**Canton Management Fee Sample Calculations-(in 000's) Exhibit 5.2 (B)**

Base Fee	\$75																		
Incentive Fee-Tier 1																			
Incentive Fee-Tier 2																			
Actual Net-Operating Income Before Fee	(743.5)	(823.5)	(478.5)	(278.5)	0.0	203.0	300.0	325.0	400.0										
Base Fee	(75.0)	(75.0)	(75.0)	(75.0)	(75.0)	(75.0)	(75.0)	(75.0)	(75.0)										
Net Operating Income or Incentive Purposes	(818.5)	(703.5)	(553.5)	(353.5)	(75.0)	125.0	225.0	250.0	325.0										
Benchmark	(703.5)	(703.5)	(703.5)	(703.5)	(703.5)	(703.5)	(703.5)	(703.5)	(703.5)										
Improvement over Benchmark	(115.0)	(0.0)	150.0	360.0	628.5	828.5	928.5	953.5	1,028.5										
Tier 1 Calculation			50%	75.0	75.0	75.0	75.0	75.0	75.0										
Tier 2 Calculation																			
Actual Net-Operating Income Before Fee						200.0	300.0	325.0	400.0										
Base Fee						(75.0)	(75.0)	(75.0)	(75.0)										
Positive Net-Operating Income						125.0	225.0	250.0	325.0										
Tier 2 Incentive Fee			40%			50.0	90.0	100.0	100.0										
Total SMG Fees	75.0	75.0	150.0	150.0	150.0	200.0	240.0	250.0	250.0										

**MINUTES OF THE MEETING OF APRIL 5, 2004**

CHAIRMAN CASAR: I understand all members of council have a copy of this Amendment. Are there any other comments?... We're voting on the Amendment. Any questions or comments?... If not, roll call please.

(AFTER A SLIGHT PAUSE) I'm sorry, a voice vote. All those in favor, signify by saying aye. Those opposed nay.

NO REMARKS

AMENDMENT ADOPTED BY UNANIMOUS VOICE VOTE

CHAIRMAN CASAR: The ayes have it. The Amendment is adopted. And now, the complete ordinance, Ordinance #20.

MEMBER CARBENIA: I move that we adopt Ordinance #20 as amended.

CHAIRMAN CASAR: We already did that. Is there any questions or comments on the ordinance as amended?...

CHIEF OF STAFF CONCATTO: Mr. President, for the record, again, I would like to thank Member Bernabei for his assistance with this ordinance, and also John Coury from the Law Department who entered the final negotiations and was a very important part of coming to this final agreement passed by Council. Both-- and all of our efforts I think was better for the City. Thank you.

CHAIRMAN CASAR: Are there any other comments?... I would just like to say as a member of Council that as I stated in our Democratic caucus, this just goes to show what, when Council does its homework and we get a little persistent on something, what we can do, and we have our registered attorney on our Council now, Member Bernabei, and John Coury got involved and his knowledge and procedure on contracts has really helped us, and this is a contract that will be good for the City of Canton and hopefully it will repay many rewards in the future, and I think that it's probably the best contract that Mr. Coury said in the Law Department that we could probably achieve, or accomplish I should say. So, I thank them for their hard persistent work on this matter. Any other comments?... If not, we'll be voting on the ordinance as adopted. As amended, I'm sorry, I meant to say.

NO REMARKS

ROLL CALL: 11 YEAS, 0 NAYS

CHAIRMAN CASAR: Ordinance #20 is adopted.

**#20 ADOPTED AS ORDINANCE NO. 54/2004**

**ANNOUNCEMENT OF COMMITTEE MEETINGS**

CHAIRMAN CASAR: Announcement of Committee Meetings.

MEMBER CARBENIA: Mr. President, the Community & Economic Development Committee will meet at 6:00 on next Monday.

CHAIRMAN CASAR: Anyone else?

**MINUTES OF THE MEETING OF APRIL 5, 2004**

MEMBER PRATER: (MEMBER PRATER’S COMMENTS INAUDIBLE–HE CALLS FOR AN ANNEXATION COMMITTEE MEETING ON MONDAY, APRIL 12<sup>TH</sup> AT 6:00 P.M.)

MEMBER ZACHARY: The Personnel Committee will meet next Monday at 6:00.

MEMBER DOUGHERTY: Public Property Capital Improvement will also meet Monday, 6:00 PM.

CHAIRMAN CASAR: Any other committees? I think we should probably call a meeting of Parks and Recreation.

MEMBER BABCOCK: Public Safety and Thoroughfares will also meet next Monday at 6:00.

CHAIRMAN CASAR: I think it’s Ordinance #10, it’s Finance, so Member Hawk, you might want to call that one.

MEMBER HAWK: (MEMBER HAWK’S COMMENTS INAUDIBLE–HE CALLS FOR A FINANCE COMMITTEE MEETING ON MONDAY, APRIL 12<sup>TH</sup> AT 6:00 P.M.)

CHAIRMAN CASAR: And I would entertain a motion also for, or a request that Environmental meet also, which is Member Mallonn’s committee and he’s not here, so we’ll have the second person on there call that meeting also, so we’ll call that for 6:00 also. Is that all for committee meetings?... Okay.

**PUBLIC SPEAKS (OPEN FORUM--CITY BUSINESS ONLY)**

CHAIRMAN CASAR: We are now under Public Speaks. No one has signed up to speak under Public Speaks.

**MISCELLANEOUS BUSINESS**

CHAIRMAN CASAR: So, we’re now under Miscellaneous Business. Is there any miscellaneous business?...

MEMBER CARBENIA; Mr. President, I move we adjourn; seconded.

CHAIRMAN CASAR: It’s been moved and seconded we adjourn. Roll call please.

NO REMARKS PERMITTED ON THE MOTION TO ADJOURN

ROLL CALL: 11 YEAS, 0 NAYS

ADJOURNMENT TIME: 8:05 P.M.

ATTEST:

APPROVED:

DEBRA VANCKUNAS  
CLERK OF COUNCIL

RAY DENCZAK  
PRESIDENT OF COUNCIL