North Canton City Council Notice
Special Committee of the Whole Agenda
Monday, February 22, 2016 – 7:00 p.m.

North Canton City Council will meet as a Committee of the Whole **Monday, February 22, 2016 immediately following the 7:00 p.m. Council Meeting** in Council chamber at North Canton City Hall.

Items to be discussed.

1. Street and Alley Committee

Chairperson:	Dominic Fonte
Vice Chairperson:	Daniel Peters
	Mark Cerreta
	Doug Foltz
	Dan Griffith
	Marcia Kiesling
	Stephanie Werren

An ordinance approving, confirming, and accepting a perpetual water main easement for the real property known as Parcel No. 2809144, by and between the City of North Canton, an Ohio charter municipal corporation ("City"), Grantee, and the Akron-Canton Regional Airport Authority, Grantor, and declaring the same to be an emergency.

2. Finance and Property Committee

Chairperson:	Dan Griffith
Vice Chairperson:	Marcia Kiesling
	Mark Cerreta
	Doug Foltz
	Dominic Fonte
	Daniel Peters
	Stephanie Werren

(a) An ordinance authorizing the Director of Administration of the City of North Canton to advertise and receive bids according to specifications now on file in the Director's office, and authorizing the Mayor of the City of North Canton, upon Board of Control approval, to enter into an agreement for the purchase of two marked cruisers from a vendor or, in the alternative, pursuant to the Ohio Cooperative Purchase Act, and declaring the same to be an emergency.

(b) An ordinance authorizing the Mayor of the City of North Canton to enter into a management agreement to have the North Canton YMCA manage the City's Dogwood Swimming Pool and associated facilities' day-to-day operations, and declaring the same to be an emergency.

(c) An ordinance appointing Director of Finance, Karen Alger, as Delegate and Director of Administration, Michael Grimes, as Alternate Delegate to the Regional Income Tax Agency (RITA) Regional Council of Governments, and declaring the same to be an emergency.

(d) An ordinance appointing David Deibel and Scott Warburton to a two-year term on the North Canton Board of Tax Review, and declaring the same to be an emergency.

Mary Beth Bailey
Clerk of Council

North Canton City Council
Street and Alley Committee

Ordinance No. - 2016

An ordinance approving, confirming, and accepting a perpetual water main easement for the real property known as Parcel No. 2809144, by and between the City of North Canton, an Ohio charter municipal corporation ("City"), Grantee, and the Akron-Canton Regional Airport Authority, Grantor, and declaring the same to be an emergency.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF NORTH CANTON, COUNTY OF STARK, AND STATE OF OHIO:

Section 1. That a perpetual water main easement for the real property known as Parcel No. 2809144, by and between the City, Grantee, and the Akron-Canton Regional Airport Authority, Grantor, be, and the same is hereby approved, confirmed and accepted.

Section 2. That the easement is more fully described in documents attached hereto, which are incorporated herein as if fully rewritten herein.

Section 3. That if a provision of this ordinance is or becomes illegal, invalid or unenforceable, that shall not affect the validity or enforceability of any other provision of this ordinance.

Section 4. That this ordinance is hereby declared to be an emergency measure necessary for the preservation of the health, safety and peace of the City of North Canton and further necessary for the timely completion of the water main lines to be installed, wherefore, provided it receives the affirmative vote of six or more members of Council elected thereto, this ordinance shall take effect and be in full force immediately upon its adoption by Council and approval by the Mayor.

Passed in Council this _____ day of _____ 2016

_____
David Held, Mayor

Signed: _____, 2016

ATTEST:

_____
Mary Beth Bailey, Clerk of Council

COPY

PERPETUAL WATER MAIN EASEMENT

Parcel No.: 28-09144
Routing No.: GR0003501003000

For and in consideration of ONE DOLLAR ($1.00) and other good and valuable consideration, the sufficiency of which is hereby acknowledged, **Akron-Canton Regional Airport Authority**, GRANTOR, does hereby give and grant unto **THE CITY OF NORTH CANTON**, an Ohio municipal corporation, GRANTEE, a perpetual easement to lay, re-lay, construct, install, maintain, operate, alter, inspect, repair, remove, replace, and renew at will a potable water main, and to perform any other tasks GRANTEE deems necessary or advisable in order to operate or maintain water mains, meters, connections, pipes and appurtenances in accordance with the ordinances, rules, and regulates of Grantee, which are now in effect or may be adopted hereafter, including the right of ingress and egress at any time to and from such utility and all appurtenances thereto on, under and through the following property, a/k/a the "Easement Area":

SEE ATTACHED EXHIBITS "A and B"

It is agreed by and between Grantor and Grantee as follows:

1. That the Grantee shall have the right to remove fences, shrubbery, plants, trees, landscaping, lawns, driveways, walkways, and paving within the Easement Area during initial construction or future maintenance of the utility and all appurtenances thereto. The Grantee shall be responsible to restore the surface area of the easement, disturbed by Grantee, to as closely as possible to its condition at the time of construction or maintenance. The Grantee will pay reasonable damages for items which cannot be restored or repaired. If the amount of said damages cannot be mutually agreed upon, the same shall be ascertained and determined by three disinterested persons; one appointed by the Grantor, one by the Grantee, and the third by the two so appointed. The award of such three persons shall be final and conclusive.
2. That no building or structure of any kind shall or will be erected within the easement area by Grantor, nor shall anything be placed in the vicinity of the easement which might be injurious to the utility. However, nothing herein shall interfere with the right of Grantor to place driveways, parking areas, or walkways in said easement. Grantor shall not change the ground elevation, within the easement area, without approval of Grantee.
3. That the Grantor may extend across, or grant easements to others to extend across said easement area to minimum acceptable clearances as determined by the Grantee.
4. That Grantor shall indemnify, defend and hold harmless Grantee from any and all claims, liabilities, damages, actions, costs and expenses or complaints, including reasonable attorney fees, arising out of Grantor's use of the Easement Area.
5. That upon removal of said utility and all appurtenances thereto, the Easement Area shall be restored as closely as possible to its then condition at the time of removal.

6. That this grant shall be binding upon the Grantor and Grantee and shall inure to the benefit of their respective heirs, executors, administrators, successors, and assigns forever.

7. That Grantor covenants with Grantee that it is well seized of the Easement Area as a good and indefeasible estate in fee simple and has the right to grant and convey the Easement Area in the manner and form described above. Grantor further covenants that it will warrant and defend the premises with the appurtenances thereunto belonging to Grantee against all lawful claims and demands whatsoever for the purposes described herein.

8. That this easement is subject to all matters of record.

IN WITNESS WHEREOF, the undersigned grantor(s) have caused their name to be subscribed to this Perpetual Water Main Easement this 21 day of January, 2016.

GRANTOR(S):

Akron-Canton Regional Airport Authority

By: Richard McQueen, President and Chief Executive Officer

Richard McQueen

(Signed Name)

NOTARY:

STATE OF OHIO)
) SS:
COUNTY OF Summit)

Before me, a Notary Public in and for said County, personally appeared Richard McQueen, President and CEO of Akron-Canton Regional Airport Authority, who acknowledged that they did sign the foregoing instrument and that it is their free act and deed.

IN THE TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my official seal a this 21 Day of January, 2016.

Linda D. Decker

Notary Public

NOTARIAL SEAL STATE OF OHIO

LINDA D. DECKER
Notary Public, State of Ohio
My Commission Expires 04-16-18

COPY

Seal

This instrument prepared by: City of North Canton
145 North Main Street
North Canton, OH 4720

EXHIBIT 'A'

Situated in the City of Green, the County of Summit, State of Ohio, and known as being part of the Southwest Quarter of original Green Township Section 36 being more fully described as follows:

Commencing at an iron pin located at the intersection of Lauby Road and Mount Pleasant Road;

Thence, N 01°39'33" E, along the centerline of Lauby Road a distance of 571.71 feet to a point;

Thence, N 88° 20'27"W, a distance of 50.00 feet to the westerly right-of-way line of Lauby Road at the southeast corner of an existing water main described in Reception No. 55302876 of Summit County Records;

Thence, along the south line of said easement the following 6 courses:

1. Thence, N 88° 51'37" W, a distance of 100.79 feet;
2. Thence, N 43° 00'17" W, a distance of 228.33 feet;
3. Thence, N 67° 30'00" W, a distance of 36.85 feet;
4. Thence, N 78° 42'51" W, a distance of 31.26 feet;
5. Thence, N 89° 42'03" W, a distance of 324.56 feet;
6. Thence, N 47° 05'38" W, a distance of 1.90 feet to an existing water main easement described in Reception No. 55822979 of Summit County Records;

Thence along the south line of said easement the following 4 courses:

1. Thence, S 46° 20'27" W, a distance of 148.03 feet;
2. Thence, S 57° 22'23" W, a distance of 163.58 feet;
3. Thence, N 77° 05'02" W, a distance of 153.07 feet;
4. Thence, S 58° 13'53" W, a distance of 362.89 feet to the True Place Of Beginning for the easement intended to be described herein;

Thence, S 43 34'41" E, a distance of 32.70 feet;

Thence, S 0°11'18" W, a distance of 324.41 feet to a point on the northern right-of-way line of Mount Pleasant Road;

Thence, N 88 26'37" W along the northern right-of-way line of Mount Pleasant Road a distance of 20.00 feet;

Thence, N 0°11'18" E, a distance of 315.90 feet;

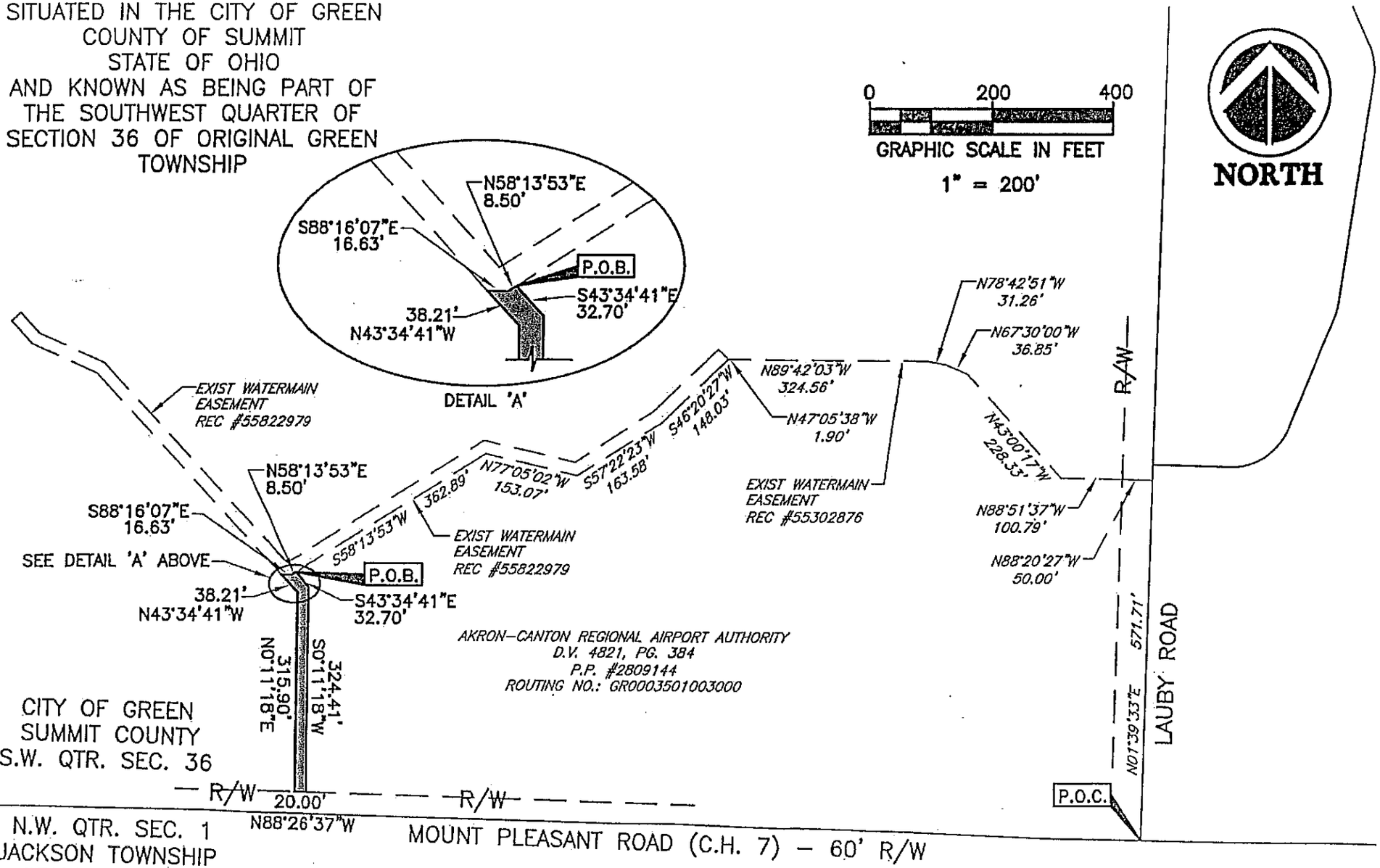
Thence, N 43 34'41" W, a distance of 38.21 feet to the south line of said water main easement;

Thence, S 88 16'07" E along the south line of said water main easement described in Reception No. 55822979, 16.63 feet to a point;

Thence, N 58 13'53" E, along the south line of said water main described in Reception No. 55822979 a distance of 8.50 feet to a point to the True Place of Beginning and containing 0.162 Acres of land, more or less, as determined in May, 2015 by CT Consultants, Inc., but subject to all legal highways and any restrictions, reservations or easements of record.

Bearings are to an assumed meridian and are used to indicate angles only.

SITUATED IN THE CITY OF GREEN
COUNTY OF SUMMIT
STATE OF OHIO
AND KNOWN AS BEING PART OF
THE SOUTHWEST QUARTER OF
SECTION 36 OF ORIGINAL GREEN
TOWNSHIP



AREA OF PERMANENT EASEMENT = 0.162 ACRES

DATE: 1/13/16
PROJECT NO. 150412
DRAWN BY: B.E.K.

PREPARED BY:
CT Consultants
engineers | architects | planners
3075 Embassy Pkwy, Suite 200, Akron, Ohio 44333
330.375.0090 www.ctconsultants.com

WATERMAIN EASEMENT
EXHIBIT 'B'
AKRON CANTON REGIONAL AIRPORT
AUTHORITY
TO CITY OF NORTH CANTON

City of NORTH CANTON, OHIO

145 NORTH MAIN STREET
NORTH CANTON OHIO 44720-2587

RECEIVED
FEB 0 1 2016
ADMINISTRATION
NORTH CANTON, OHIO

LEGISLATION REQUEST

February 1, 2016

To: ***Daniel J. Peters, President***
City Council

Subject: **PERPETUAL WATER MAIN EASEMENT**

Requested By: _____ Date: 1/29/16
City Engineer

Approved By: _____ Date: 2/2/16
Director of Administration

Requesting legislation accepting a Perpetual Water Main Easement – Parcel No. **28-09144** from Akron-Canton Regional Airport Authority to include the right ingress and egress at any time to and from such utility and all appurtenances and through the property also known as the "Easement Area". See Attached.

EMERGENCY REQUESTED: Yes **X** No ____

RECEIVED
FEB 0 2 2016
COUNCIL OFFICE
NORTH CANTON, OHIO

P:\PROJECTS\CAK Airport Surge Valve\Documents\Easement\legislation request SurgeValveWaterMain SummitCo CAK.docx

North Canton City Council
Finance and Property Committee

Ordinance No. - 2016

An ordinance authorizing the Director of Administration of the City of North Canton to advertise and receive bids according to specifications now on file in the Director's office, and authorizing the Mayor of the City of North Canton, upon Board of Control approval, to enter into an agreement for the purchase of two marked cruisers from a vendor or, in the alternative, pursuant to the Ohio Cooperative Purchase Act, and declaring the same to be an emergency.

WHEREAS, the City of North Canton must replace two marked cruisers; and

WHEREAS, the Ohio Cooperative Purchase Act enables municipalities, such as the City of North Canton, to benefit from economies of scale, expedite its procurement process, and achieve a substantial purchase savings for the purchase of two dump trucks.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF NORTH CANTON, COUNTY OF STARK, AND STATE OF OHIO:

Section 1. That the Mayor of the City of North Canton, upon Board of Control approval, and pursuant to the Ohio Cooperative Purchase Act, be, and is hereby authorized to enter into an agreement for the purchase of two marked cruisers at a cost not to exceed $64,000.00.

Section 2. That the Director of Finance of the City of North Canton, be, and is hereby authorized to draw funds necessary for the payment of the above-specified contract from the following appropriations:

330 CAPITAL IMPROVEMENT FUND
330.101.5500 Equipment $64,000.00

upon receipt of vouchers duly approved by the proper departmental authority.

Section 3. That if a provision of this ordinance is or becomes illegal, invalid, or unenforceable, that shall not affect the validity or enforceability of any other provision of this ordinance.

Section 4. That this ordinance is hereby declared to be an emergency measure necessary for the preservation of the health, safety, and peace of the City of North Canton and further necessary for the timely purchase of the two marked police and to ensure continued efficient operation of the Police Department; wherefore, provided it receives the affirmative vote of six or more members of Council elected thereto, this ordinance shall take effect and be in full force immediately upon its adoption by Council 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_____2016

_____
David Held, Mayor

Signed:_____, 2016

ATTEST:

_____
Mary Beth Bailey, Clerk of Council

RECEIVED
FEB 0 9 2016
ADMINISTRATION
NORTH CANTON, OHIO

City of NORTH CANTON, OHIO

145 NORTH MAIN STREET
NORTH CANTON OHIO 44720-2587

LEGISLATION REQUEST

February 9, 2016

To: **Daniel Jeff Peters, President of City Council**

Subject: **Purchase of two (2) Marked Police Cruisers**

Requested By: Stephan B. Wilder
Chief Stephan Wilder

Date: February 9, 2016

Approved By: _____
Director of Administration

Date: 2/10/2016

Request: An ordinance authorizing the Director of Administration to advertise and receive bids according to specifications now on file in the office of the Director of Administration and authorizing the Mayor through the Board of Control to enter into an Agreement for the purchase of two (2) Marked Cruisers for use by the Police Department from a vendor or, in the alternative purchase the vehicles pursuant to and within the purview of the Ohio Cooperative Purchase Act.

Funds have been allocated as follows:

Budget Line #	Amount
330.101.5500	$64,000.00

RECEIVED
FEB 1 0 2016
COUNCIL OFFICE
NORTH CANTON, OHIO

EMERGENCY REQUESTED: Yes X No __

Time is of the essence to place an order through the current Cooperative Purchase vendor price. Also, delivery of the vehicles is generally not a quick process and equipment has to also be ordered to receive it in time for installation into the vehicles. The current patrol vehicles being replaced have high mileage and will incur a maintenance cost to keep them patrol worthy.

North Canton City Council
Finance and Property Committee

Ordinance No. - 2016

An ordinance authorizing the Mayor of the City of North Canton to enter into a management agreement to have the North Canton YMCA manage the City's Dogwood Swimming Pool and associated facilities' day-to-day operations, and declaring the same to be an emergency.

WHEREAS, the City and the YMCA share the same goals and objectives of providing North Canton's residents and guests with safe, reliable, and efficient summer recreational activities; and

WHEREAS, the City recognizes the YMCA's vast experience and expertise in conducting aquatic programs for families, adults, and youths at its branches in Stark and adjoining counties; and

WHEREAS, City residents and guests will derive substantial benefits from the YMCA's activities and programs together with membership discounts; and

WHEREAS, it is the City and the YMCA's mutual desire that the YMCA manage the City's Dogwood Swimming Pool and associated facilities' day-to-day operations;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF NORTH CANTON, COUNTY OF STARK, AND STATE OF OHIO:

Section 1. That the Mayor of the City of North Canton is hereby authorized to enter into a management agreement the North Canton YMCA for it to manage the City's Dogwood Swimming Pool and associated facilities' day-to-day operations.

Section 2. That if a provision of this ordinance is or becomes illegal, invalid, or unenforceable, that shall not affect the validity or enforceability of any other provision of this ordinance.

Section 3. That this ordinance is hereby declared to be an emergency measure necessary for the preservation of the health, safety, and peace of the City of North Canton, and further necessary to enable the parties herein to plan and prepare for the 2016 summer season so that they may timely provide valuable, safe, and healthy summer recreational and exercise activities for the City's residents and guests; wherefore, provided it receives the affirmative vote of six or more members of Council elected thereto, this ordinance shall take effect and be in full force immediately upon its adoption by Council 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_____2016

_____
David Held, Mayor

Signed:_____, 2016

ATTEST:

_____
Mary Beth Bailey, Clerk of Council

MANAGEMENT AGREEMENT BY AND BETWEEN
THE CITY OF NORTH CANTON, OHIO
AND
THE YMCA OF CENTRAL STARK COUNTY

THIS MANAGEMENT AGREEMENT ("Agreement") is made between the CITY OF NORTH CANTON, a home rule municipal corporation of the State of Ohio ("City"), and the YMCA OF CENTRAL STARK COUNTY, Inc., an Ohio nonprofit corporation ("YMCA"), acting through its officers as duly authorized by its Board of Directors.

RECITALS

WHEREAS, the City and the YMCA share the same goals and objectives of providing North Canton's residents and guests with safe, reliable, and efficient summer recreational activities; and

WHEREAS, the City recognizes the YMCA's vast experience and expertise in conducting aquatic programs for people and families of all ages at its branches in Stark and adjoining counties; and

WHEREAS, City residents and guests will derive substantial benefits from the YMCA's activities and programs together with membership discounts; and

WHEREAS, it is the City and the YMCA's mutual desire that the YMCA manage the City's Dogwood Swimming Pool and associated facilities' day-to-day operations;

NOW, THEREFORE, in consideration of the mutual promises, representations, and covenants set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto, intending to be legally bound, hereby agree as follows:

ARTICLE 1. DEFINITIONS

1.01 **"Base Monthly Telephone Service Charges"** means local telephone service fees and DOES NOT include fees or charges for long distance, directory assistance, collect calls, Internet, additional facsimile charges, or other such calls or extra charges invoiced by the telephone service provider to the Premises.

1.02 **"City"** means the City of North Canton, Ohio.

1.03 **"Parties"** means, collectively, the City of North Canton and the YMCA of Central Stark County, Inc.

1.04 **"Premises"** means North Canton's Dogwood Swimming Pool and associated facilities and grounds.

1.05 **"YMCA"** means the YMCA of Central Stark County, Inc.

ARTICLE 2. TERM OF AGREEMENT

2.01 Term. The term of this Agreement (Term) shall be for two summer seasons, 2016 and 2017, and shall begin on the date of its execution until and including the time necessary to reasonably prepare for and wind up season 2017 operations, in addition to preparing the accounting described herein, which shall not exceed October 15, 2017.

ARTICLE 3. SAFE AND PERMITTED USE OF PREMISES

3.01 Condition of Premises. The YMCA accepts the Premises in its present condition, finds it suitable for the its intended purposes, and further acknowledges that it is thoroughly familiar with such condition by reason of a personal inspection, and does not rely on any City representations as to the condition of the Premises, or its suitability for the purposes intended.

3.02 Alteration of the Premises. The YMCA shall not make any alterations to the Premises without the City's prior written consent signed by the City's Mayor or designee. Any permanent improvement undertaken during this Agreement shall remain the property of the City at the conclusion of this Agreement.

3.03 Permitted Use of Premises. The YMCA warrants that it is qualified to provide the management services described herein and has, or prior to performing any of the services described in this Agreement, shall obtain, and maintain all necessary certificates and licenses to the extent such are necessary, and required by law.

The YMCA shall use the Premises only for the purpose of operating a municipal swimming pool and activities associated therewith, consistent with other YMCA facilities, and shall not use any part of the Premises for any use or purpose that violates any applicable law, regulation, or ordinance.

3.04 Safety Inspections. The City shall conduct periodic and regular inspections as may be required of the Premises to insure compliance with fire, safety, and sanitation regulations, and other provisions contained in this Agreement or in the City's Codified Ordinances. The City shall notify the YMCA of its findings, specifying any items requiring attention. The YMCA agrees to grant the City the right to access the Premises for inspections during normal business hours, and after hours, with prior notice as may be necessary. Failure to conduct any inspections as may be required shall not operate as a waiver of the City's right to conduct these inspections and shall not be considered a default of the terms of this Agreement.

3.05 Fire Code Inspections. The YMCA shall permit the City's fire inspectors or authorized agents to inspect the Premises, and the YMCA and the City shall comply with all requirements necessary to bring the Premises into compliance with the State Fire Code and City Codified Ordinances regarding fire safety, as such provisions exist or may later be amended subject to the maintenance and repair obligations in this Agreement. The YMCA shall maintain in proper

condition accessible fire extinguishers of a number and type approved by the City Fire Chief or authorized agents for the particular hazard involved.

3.06 Maintenance and Repair.

a. **City Obligations.** Except for repairs required by the YMCA under (b) below, the City will at all times during this Agreement, keep and maintain, or cause to be kept and maintained, the Premises, including the swimming pool, and all other buildings and improvements erected on the Premises, in a good state of repair (except for reasonable wear and tear) at the City's sole expense, including the parking area, bathhouses, concession room, roofs, foundation, electrical, plumbing, pumps, filters, gauges, deck, grounds, and any apparatuses associated with the operation of a municipal swimming pool, and pool features, such as diving boards, ingress/egress steps, as well as lawn mowing, and trash removal. Such maintenance and repairs will be made expeditiously and in the same manner as a person generally proficient in that industry or trade performing under similar circumstances.

After the City receives notice of needed repairs pursuant to (b) below, the City shall promptly inspect the Premises to determine the extent of repair required. The City shall complete the repairs in an expeditious fashion. Needed repairs and/or replacement as used in this subsection exclude obligations of the YMCA in (b) below.

b. **YMCA Obligations.** The YMCA shall provide the City with prompt notice of fire, accident, casualty, damage, or dangerous/defective conditions. For repair and/or replacement expenses estimated to be less than or equal to $500, the YMCA shall be responsible to timely make a repair and/or replacement. For repair and/or replacement expenses estimated to be greater than $500, the YMCA shall promptly notify the City Administrator of the needed repair/replacement.

ARTICLE 4. YMCA MANAGEMENT DUTIES AND RESPONSIBILITIES

4.01 To the Public. The YMCA shall operate and manage the Premises in order to offer exercise, and recreational activities to the public, and shall be solely responsible for the safety and health of the public as related to water treatment, lifeguards, and the condition of the Premises during operations, and shall do so in a diligent manner and in accordance with the applicable standards for health and safety considerations in the industry.

4.02 Equal Opportunity Employer. The YMCA represents that it is an Equal Opportunity Employer and agrees not to discriminate against employees or applicants for employment by reason of race, color, religion, sex, military status, national origin, disability, age, or ancestry, nor knowingly permit subcontractors to do so.

4.03 Entry. Access and entry into the premises shall be open to the public and shall be available to any person that meets the YMCA's guidelines. The YMCA reserves the right to deny

admittance to any person who fails to meet the YMCA's entry guidelines and for disciplinary reasons as necessary.

4.04 Discount Prices. Current Central Stark County YMCA members shall receive a 25% discount for a ~~2015~~ season pass.

4.05 Dates and Hours of Operation. The city shall make its best efforts to have the premises "ready to swim" on May 25, 2016 and May 22, 2017 respectively. Weather permitting, the YMCA shall begin pool operations on the Saturday prior to Memorial Day each summer and continue operations through Labor Day with limited operations from the start of school until Labor Day each summer of the agreement.

4.06 Plans and Rules. On or before the beginning of the term hereof, the YMCA shall furnish to the City a written Emergency Action Plan; a written Lifeguard Plan, which will set out the number of lifeguards it will have on duty per number of patrons; a written copy of the Pool Rules and Conduct; and proof of proper certification for all staff required to have such training and certification prior to beginning of said duties.

4.07 YMCA Management and Supervisory Responsibilities.

The YMCA shall be responsible to:

a. Hire and supervise a qualified staff in accordance with applicable state and federal employment laws, who will perform all duties associated with the operation of the Premises, including, but not limited to: advertising and selling pool passes; daily admission sales; lifeguard duties; concession stand duties including obtaining initial inventory of products for concession sales and replenishing concession items as needed; janitorial and custodial service; facilities preparation; minor system and mechanical repairs/replacements; pool water chemical balance monitoring and correction; bookkeeping; and all associated duties and supervision of the operations of the Premises.

b. Provide supervision by a person qualified in the fields of lifeguard training, CPR, first aid, equipment operation, and pool sanitation. Individuals are considered qualified in lifeguard training, CPR, and first aid if they hold a current, appropriate Red Cross or YMCA certification.

c. Ensure employees are properly certified and trained prior to beginning their duties.

d. Pay all staffing costs, i.e. salaries, withholding and employment taxes, Workers' Compensation premiums, and insurance costs, in accordance with the existing YMCA of Central Stark County salary and administration plan.

e. Test and record the pool water's pH and disinfectant residuals no less than three times daily: when the pool is open; before any programs begin in the morning, mid-afternoon; and before an evening session.

f. Maintain the Premises in a clean and hygienic manner in keeping with standards established by the City and licensing agencies of the state or federal government and accepted pool standards, together with providing all cleaning paper supplies, disinfectant solutions, soap solution for bathroom dispensers, and tissue for bathroom stalls.

g. Regularly inspect and notify the City of any deficiencies or other safety issues observed requiring attention. Some items may include, but not limited to lifeguard stands, diving boards, ingress/egress steps, all plumbing fixtures, pool deck, doors, fence, and any other pool features and associated items and areas.

h. Keep and maintain the books and records related to the Premises in accordance with sound business practices and generally accepted accounting principles and in formats as may be required by the Ohio Auditor of State, and to provide the City with a pro-forma budget for future seasons.

4.08 Waste and Nuisance. The YMCA shall neither commit nor allow to be committed any waste on the Premises, nor shall the YMCA maintain, commit or permit the maintenance or commission of any nuisance on the Premises or use the Premises for any unlawful purpose.

ARTICLE 5. UTILITIES

5.01 Payment by City. The City, at its sole cost and expense, will incur the cost to provide all gas, water, sewer, electric utilities, and base monthly service charges for telephones for YMCA use at the Premises.

5.02 Payment by YMCA. The YMCA, at its sole cost and expense, will incur the cost to provide the chemicals and testing equipment necessary to ensure the swimming pool's water chemistry and chemical balance is safe and clean by the YMCA's regularly monitoring and recording of the pool's pH and disinfectant residuals.

ARTICLE 6. AUDITING

6.01 Audits. The YMCA agrees that representatives of the City's Director of Finance, or other authorized City representatives, shall have access to, and the right to audit, examine, or reproduce, any and all records of the YMCA related to the performance under this Agreement. The YMCA shall retain all such records for a period of five years after the date the record was created, or until all audit and litigation matters that the City has brought to the attention of the YMCA are resolved, whichever is longer. The City and the YMCA shall refund to the other party any overpayments disclosed by any such audit.

6.02 Access to Records. The City shall have access, at all reasonable times, to all YMCA records related to any Premises operations, including, but not limited to pool testing results, lifeguard certifications, in-service training records, or any other documents related to the Dogwood Swimming Pool operations.

6.03 End-of-Season Report. No more than sixty days after the end of the 2015 operating season hereunder, the YMCA shall supply to the City an end-of-season report detailing all fees collected for pool passes, daily admission fees, rental fees; a report of daily attendance figures, including a detail of the number of pre-paid family and individual pass patrons, cash patrons, event sales, concession sales, and a detailed statement of revenues and expenses for the Premises during the term hereof.

ARTICLE 7. INSURANCE REQUIREMENTS

7.01 Insurance. The YMCA shall carry the following insurance during the term of this Agreement and any renewal term:

a. **Commercial General Liability Coverage.** The YMCA shall carry Commercial General Liability ("CGL") Insurance written on ISO form CG 00 01 10 01 (or its equivalent) with limits of $1,000,000 per occurrence and $2,000,000 in the aggregate. The City (including its directors, officers, affiliates, and employees) must be named as an additional insured on the CGL for liability arising out of the acts or omissions of the YMCA. The coverage afforded to the City shall be primary to any other insurance carried by the City, and the City's coverage shall contribute on an excess basis to any loss paid under the YMCA's CGL policy on behalf of the City. Commercial General Liability coverage (including City's status as additional insured) shall be maintained for at least two years after termination of this contract.

b. **Commercial Automobile Liability Coverage.** The YMCA shall carry Commercial Automobile Liability Insurance covering all owned, leased and non-owned vehicles used in connection with the work to be performed under this contract, with limits of not less than $1,000,000 combined single limit per accident for bodily injury and property damage. The City shall be afforded coverage under this policy for any liability arising out of the acts or omissions of the YMCA.

c. **Umbrella Liability Coverage.** The YMCA shall carry a policy to provide coverage excess of General Liability and Automobile Liability in the amount of $4,000,000. The YMCA may satisfy this requirement by providing additional limits under the primary policies.

d. **Environmental Coverage.** For claims made as a result of chemicals used or stored by the YMCA at the Premises.

The YMCA shall also provide an Additional Insured/Primary and Non-Contributory Endorsement indemnifying the City. All policies of liability insurance required to be maintained

by the YMCA shall name the City as an additional insured with primary/noncontributory coverage; shall be issued by insurers with an A.M. Best rating of not less than "A-, IX"; and shall provide that coverage shall not be canceled or non-renewed without reasonable advance notice to the City. The YMCA shall annually provide the City a certificate of insurance as evidence of the above coverage.

In addition to the above, the YMCA shall carry Workers' Compensation Insurance (including occupational disease) in compliance with Workers' Compensation statutes of Ohio for all of its employees providing services at the Premises. The YMCA shall also carry Employer's Liability Insurance with minimum limits of $500,000 each accident; $500,000 for disease (per employee); and $500,000 for disease (policy limit).

ARTICLE 8. RECORDS

8.01 Provision of Records. On a monthly basis, or at such intervals as may be requested, the YMCA shall provide the City current copies of season passes, itemized by zip code, family unit or as reasonably specified by the City, as well as financial, operational, and maintenance information related to the Premises, and all other information reasonably deemed necessary by the City and the YMCA. The YMCA shall account for the Premises' revenue and operating expenses and shall keep or cause to be kept proper books of record and account in such manner as is necessary to show the complete financial results of operation of the Premises.

8.02 Open Records. The YMCA acknowledges that the City is required to comply with Ohio's Public Record Act, R.C. 149.43 et seq. Under the Public Records Act, this Agreement, and records related to this Agreement, which are in City's possession, or to which the City has access, are presumed to be public and the City may release such records to the public unless an exception described in the Act applies to a record. To the extent such documents are subject to said law and are in the YMCA's possession, it shall make such documents available during the course of this Agreement and copies of the same shall be turned over to the City at the conclusion of this Agreement.

8.03 Notice of complaints or violation reports. The YMCA shall promptly notify the City of any complaints or reports of violations of law that have occurred at the Premises and that are significant in nature and that have a material effect on the operations of the Premises.

ARTICLE 9. MANAGEMENT FEE

9.01 Management Fee. As consideration for the YMCA undertaking management and operation of the Premises during the 2016 and 2017 operating seasons, the City shall pay the YMCA a management fee totaling seven percent of the 2016 and 2017 seasons' gross revenue of pool operations and concessions, up to a total of $16,000.00. Payments shall be due to the YMCA no later than 30 days after the YMCA's submission of its 2016 and 2017 season-ending financial reports.

9.02 Net Revenue. Upon the Parties reaching an agreement of the final revenue and expenses for the 2016 and 2017 operating seasons, not including the City's capital improvement expenditures, the Parties shall equally divide the remaining 2016 and 2017 seasons' net revenue, if any. One-half of the remaining 2016 and 2017 seasons' net revenue, if any, shall be retained by the YMCA as additional compensation for performing the obligations contained in this Agreement. The remaining one-half of the 2016 and 2017 seasons' net revenue, if any, shall be due to the City no later than 30 days after the YMCA's 2016 and 2017 season-ending financial reports. No additional compensation shall be due to the YMCA if a negative net revenue results for the 2016 and 2017 seasons.

ARTICLE 10. RESTORATION

10.01 Damage or Destruction. The City shall not be responsible, under any circumstances, for any damage to property belonging to the YMCA, its members, employees, agents, contractors, subcontractors, invitees, licensees, or trespassers, which may be damaged, stolen, or destroyed, and the YMCA hereby releases the City from any responsibility therefore. If the Premises or any other improvement constructed on the Premises is damaged or destroyed by fire or any other casualty, the City shall within 90 days from the date of the damage or destruction, begin to repair, reconstruct, or replace the damaged or destroyed Premises and pursue the repair, reconstruction, or replacement with reasonable diligence so as to restore the Premises to substantially the condition it was in before the casualty. But if beginning or completing this work is prevented or delayed by war, civil commotion, acts of God, strikes, governmental restrictions or regulations, or interferences, fire or other casualty, or any other reason beyond the City's control, whether similar to any of those enumerated or not, the time for beginning or completing the restoration (or both) will automatically be extended for the period of each such delay. In lieu of reconstructing the Premises, the Parties may mutually agree to declare this Agreement terminated.

10.02 Right to Remove Personal Property; Trade Fixtures. On or before the date of expiration of this Agreement, the YMCA shall vacate the Premises, remove all YMCA Property, and repair any damage to any buildings, structures, or improvements on the Premises resulting from the removal, restoring the Premises to a condition reasonably satisfactory to the City. If the City or the YMCA terminates this Agreement, the YMCA shall vacate the Premises, remove the YMCA Property, and restore the Premises within such time as the City shall reasonably designate, but in no event less than ninety days. In either event, if the YMCA shall fail or neglect to remove the YMCA's Property within a reasonable time after the Agreement termination date, not to exceed ninety days, and so restore the Premises, then the YMCA Property shall become the City's property.

ARTICLE 11. WAIVER OF SUBROGATION/IMMUNITY

11.01 Waiver of Subrogation. Each of the Parties hereto waives any and all rights of recovery against the officers, employees, agents, and representatives of the other party for loss of or damages to such waiving party or its property or the property of others under its control arising

from any cause insured against under insurance policy(ies) hereunder or under any other policy of insurance carried by such waiving party in lieu thereof.

11.02 Waiver of Immunity. Nothing in this Agreement shall be deemed to constitute a waiver of any immunity or affirmative defense, which may be asserted by the City or the YMCA as to any claim of any third party.

11.03 Cause of Action. Nothing in this Agreement shall be construed in any manner, to create a cause of action for the benefit of any person not a party to this Agreement, or to create any rights for the benefit of any person not a party to this Agreement not otherwise existing at law.

ARTICLE 12. DEFAULT AND REMEDIES

12.01 Event of Default. The following shall be deemed events of default by the City or the YMCA under this Agreement:

a. The YMCA fails to use the Premises for conducting and operating the Premises as a municipal swimming pool facility.

b. The City or the YMCA fails to comply with any material term, provision, or representation of this Agreement.

c. The City or YMCA fails to provide services in accordance with the requirements of this Agreement.

12.02 Curing a Default.

a. If an event of default occurs, the non-defaulting party shall give written notice to the defaulting party that describes the default in reasonable detail. The defaulting party must commence curing such default within 14 calendar days after the time it receives the notice from the non-defaulting party, and then complete the cure within 90 days thereafter.

b. If the defaulting party does not substantially complete the cure within the stated time in (a) of this section, the non-defaulting party may terminate this Agreement by giving written notice of the termination; provided, however, if the default is not reasonably susceptible to cure within the stated time, the non-defaulting party will not exercise its right to terminate this Agreement so long as the defaulting party has commenced to cure the default within the required time and diligently completes the cure within a reasonable time without unreasonable cessation of the work to complete the cure.

12.03 Other Remedies. Any termination of this Agreement as provided in this article will not relieve the Parties from paying any sum or sums due and payable under this Agreement at the time of termination, or any claim for damages then or previously accruing under this Agreement. Any such termination will not prevent a party from enforcing the payment of any such sum or sums or claim for damages by any remedy provided for by law, or from recovering damages for

any default under the Agreement. All rights, options, and remedies under this Agreement will be construed to be cumulative, and not one of them is exclusive of the other. Both Parties may pursue any or all such remedies or any other remedy or relief provided by law, whether or not stated in this Agreement.

ARTICLE 13. NOTICES

13.01 Notices. Any notice, demand, request, or other communication hereunder given or made by either party to the other shall be in writing and shall be deemed delivered, whether actually received or not, when deposited in the U.S. mail, postage prepaid, certified or registered mail, return receipt requested, and addressed to the Parties hereto at the respective addresses set out below, or at such other address as may they hereafter specify by written notice so given.

a. **City:**
City of North Canton
Attn: City Administrator
145 North Main Street
North Canton, OH 44720

b. **YMCA:**
North Canton YMCA Community Building
Attn: Executive Director
200 South Main Street
North Canton, OH 44720

ARTICLE 14. GENERAL PROVISIONS

14.01 Right of Entry and Inspection. The YMCA shall permit the City or its agents, representatives, or employees to enter the Premises during reasonable times and with reasonable notice, given the circumstances, for safety and fire inspections, to determine whether the Premises is being maintained or has been altered, for repairs, or for any other reasonable purpose.

14.02 No Third Party Rights. The provisions and conditions of this Agreement are solely for the benefit of the City and the YMCA and are not intended to create any rights, contractual or otherwise, to any other person or entity.

14.03 No Partnership or Joint Venture. The City and the YMCA agree that the relationship created by this Agreement is that of independent contractor and not an employer/employee relationship, a joint venture, or a partnership between the parties herein. The YMCA shall operate as an independent contractor and not as the City's officer, agent, servant, or employee. The YMCA shall have the sole and exclusive right to control the manner, time, place, and means by which it performs its services under this Agreement. The YMCA shall be solely and entirely responsible for its acts and for the acts of its employees, agents, and subcontractors in connection with the performance of Agreement. The YMCA shall be solely responsible for the compensation and benefits of the YMCA's employees and for payment of all federal, state, and local taxes payable with respect to any amounts paid to the YMCA under this Agreement. No payroll or employment taxes of any kind shall be withheld or paid with respect to payments to the YMCA, including, but not limited to, FICA, FUTA, federal and state personal income tax, state

disability insurance tax, and state unemployment tax. Therefore, neither the YMCA nor its employees shall acquire rights to wages, Workers' Compensation benefits, unemployment compensation benefits or other rights or benefits that may be offered or provided to City employees. The YMCA's employees shall not act as or represent themselves as the City's agents, representatives, or employees.

14.04 Force Majeure. Each party to this agreement agrees to excuse the failure of another party to perform its obligations under this Agreement to the extent that failure is caused by an event of force majeure. Force majeure means an uncontrollable force or natural disaster, not reasonably within the power of the party claiming force majeure, and not any cause or event that the party could not use due diligence to avoid or prevent. Force majeure does not include economic or market conditions, which affect a party's cost, but not its ability to perform. The party invoking force majeure shall give timely and adequate notice to the other party of the event in the manner required by this Agreement.

14.05 Assignment and Successors. Neither the City nor the YMCA may assign, transfer, or otherwise convey any of their rights or obligations under this Agreement to any party without the prior written consent of the other party. An attempt to assign this Agreement without the consent of the other party shall be considered an event of default.

14.06 Applicable Laws. The laws of the State of Ohio shall govern this Agreement and the relationship created hereby. Venue for any action brought to interpret or enforce, or arising out of or incident to, the terms of this Agreement shall be in Stark County, Ohio.

14.07 Interpretation. In the event of any dispute over the meaning or application of any provision of this Agreement, this Agreement shall be interpreted fairly and reasonably, and neither more strongly for or against any party, regardless of the actual drafter of this Agreement.

14.08 Invalid Provision. It is agreed that, in the event any covenant, condition, or provision of this Agreement is held to be invalid by any court of competent jurisdiction, the invalidity of such covenant, condition or provision shall in no way affect any other covenant, condition, or provision; provided, however, that the invalidity of any such covenant, condition, or provision does not materially prejudice either the YMCA or the City in connection with the rights and obligations contained in the valid covenants, conditions or provisions of this agreement.

14.09 Severability of Provisions. If any of the provisions contained in this Agreement shall be held, for any reason, to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability, shall be construed as if such invalid, illegal, or unenforceable provision had never been in this Agreement.

14.10 Captions. Captions and headings used in this Agreement are for reference purposes only and shall not be deemed a part of this Agreement.

14.11 Sole Agreement. This Agreement constitutes the sole and only agreement of the Parties respecting the operations of the Premises.

14.12 Authority to Enter into Agreement. Each individual signing this Agreement on behalf of the City or the YMCA warrants that such individual is authorized to do so and that this Agreement will constitute the legally binding obligation of the entity that such individual represents.

14.13 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, and all of which shall, taken together, be considered one and the same agreement.

Agreed to by the Parties this ____ day of _____, 2017.

FOR THE YMCA OF CENTRAL STARK COUNTY

_____
Ben Wheeler, Executive Director,
North Canton YMCA

FOR THE CITY OF NORTH CANTON

_____
Honorable David J. Held, Mayor

_____
Timothy L. Fox, Director of Law
As to form and content.

Finance Director's Certificate.

I certify that the amount of up to $16,000.00, required to meet the contract agreement, obligation, payment, or expenditure for the above, has been lawfully appropriated, authorized, or directed for such purpose and is in the treasury or in the process of collection to the credit of the General Fund - Swimming Pool free from any obligation or certification outstanding.

_____
Karen Alger, Director of Finance

_____
Date

North Canton City Council
Finance and Property Committee

Ordinance No. – 2016

An ordinance appointing Director of Finance, Karen Alger, as Delegate and Director of Administration, Michael Grimes, as Alternate Delegate to the Regional Income Tax Agency (RITA) Regional Council of Governments, and declaring the same to be an emergency.

WHEREAS, the Agreement for Participation entered into by all Member Municipalities of RITA provides that each municipal corporation that is a party to the Agreement has one representative to a Council of Governments, who shall be appointed by the Chief Executive with the approval of City Council, and that each municipal corporation shall similarly designate an alternate who may act in place of the representative in the representative's absence.

WHEREAS, North Canton's Mayor has appointed the City's Director of Finance, Karen Alger, and Director of Administration, Michael Grimes, as the City's Delegate and Alternate, respectively, to RITA's Regional Council of Governments.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF NORTH CANTON, COUNTY OF STARK, AND STATE OF OHIO:

Section 1: That Director of Finance, Karen Alger, be and is hereby appointed to be the Delegate to the RITA Regional Council of Governments, with Director of Administration, Michael Grimes acting as the Alternate Delegate should the Delegate be unable to attend the Regional Council of Governments meetings.

Section 2. That if a provision of this ordinance is or becomes illegal, invalid or unenforceable, that shall not affect the validity or enforceability of any other provision of this ordinance.

Section 3. That this ordinance is hereby declared to be an emergency measure necessary for the preservation of the health, safety and peace of the City of North Canton and further necessary for the timely appointments of the Delegate and the Alternate Delegate to the Regional Income Tax Agency Regional Council of Governments on behalf of the City of North Canton; wherefore, provided it receives the affirmative vote of six or more members of Council elected thereto, this ordinance shall take effect and be in full force immediately upon its adoption by Council and approval by the Mayor.

Passed in Council this _____day of _____2016.

_____
David Held, Mayor

Signed:_____, 2016

ATTEST:

_____
Mary Beth Bailey, Clerk of Council

North Canton City Council
Finance and Property Committee

Ordinance No. – 2016

An ordinance appointing David Deibel and Scott Warburton to a two-year term on the North Canton Board of Tax Review, and declaring the same to be an emergency.

WHEREAS, the City of North Canton's Tax Code requires the City's legislative authority, City Council, to appoint two members to the City's Board of Tax Review. Section 192.21(A)(1).

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF NORTH CANTON, COUNTY OF STARK, AND STATE OF OHIO:

Section 1: That North Canton City Council appoints David Deibel Scott Warburton be, and are hereby appointed to a two-year term on North Canton's Board of Tax Review, beginning January 1, 2016.

Section 2. That if a provision of this ordinance is or becomes illegal, invalid or unenforceable, that shall not affect the validity or enforceability of any other provision of this ordinance.

Section 3. That this ordinance is hereby declared to be an emergency measure necessary for the preservation of the health, safety and peace of the City of North Canton and further necessary for the timely appointments of the North Canton Board of Tax Review members; wherefore, provided it receives the affirmative vote of six or more members of Council elected thereto, this ordinance shall take effect and be in full force immediately upon its adoption by Council and approval by the Mayor.

Passed in Council this _____day of _____2016.

_____
David Held, Mayor

Signed:_____, 2016

ATTEST:

_____
Mary Beth Bailey, Clerk of Council