

AGENDA

**City of University Heights, Iowa
Special Meeting and Work Session of City Council**

Tuesday, June 25, 2013

Location: Iowa Room, University Club

Front entrance - 1360 Melrose Ave.

7:00 – 9:30 P.M.

Meeting called by Mayor Louise From

Time		Topic	Owner
7:00	Call to Order Special Meeting	Roll Call	Louise From
	City Business	Consideration of Resolution No. 13-13 authorizing the Mayor to sign and the Clerk to attest a 28E agreement with Johnson County SEATS for services for FY2014.	Steve Ballard
		Consider payment of bill to: Model Tree Service	
	Close Special Meeting		
7:05	Call to Order Work Session		
		City Council Discussion of the City's future	Mike Haverkamp Rosanne Hopson Jim Lane
		City Council Discussion of One University Place and TIF.	Jan Leff Brennan McGrath
9:00	Public Input	Public Comments	
	Announcements		Anyone
9:30	Adjournment		Louise From

June'13 – City Attorney's Report – Special Meeting (June 25, 2013)

1. **Agreement with Johnson County for SEATS Services.** You will be considering Resolution No. 13-13, which authorizes the Mayor to sign the renewal of the 28E Agreement with Johnson County for SEATS services.
 - The Agreement provides for annual fees of \$8,443.80, the same cost as last year.
 - The County has proposed a few changes, some non-substantive. I have created a “compared” document to show the proposed changes (deletions by strike-through, additions by underline). That document is attached.
 - All of the proposed changes are acceptable, in my opinion.
 - Here is my summary of the proposed changes:
 - Language has been added to specify that some SEATS service is not provided by way of the County’s contract with Pathways Adult Day Health Center.
 - Language has been added to indicate that ADA-certified persons will be given priority for paratransit services.
 - Language has been added to indicate the City will indemnify the County for claims based on the City’s breach of the Agreement. The City does not undertake to do much under the Agreement, aside from paying a monthly amount, so there is little for which the City could be called upon to indemnify the County.
 - Copies of the Resolution and the “clean” version of the Agreement are also attached

2. I am sending by separate email some information based on my discussion with Tom Gelman and Jeff Maxwell.

28E Agreement for Paratransit Service Between the City of University Heights and Johnson County for the Period of July 1, 2013 through June 30, 2014

This Agreement is made and entered into by and between the City of University Heights, Iowa (hereinafter referred to as "the City") and Johnson County, Iowa (hereinafter referred to as "the County").

Scope of Services, Purposes and Objectives

The County shall provide to the City through Johnson County SEATS paratransit service consistent with the Americans with Disabilities Act and the policies of the [Metropolitan Planning Organization of Johnson County complementary paratransit plan](#)~~Johnson County Council of Governments Paratransit Plan.~~

General Powers, Responsibilities and Rights

1. Paratransit service shall include any paratransit trips originating or ending within the corporate limits of the City of University Heights, unless said trip originated from North Liberty or is considered a Johnson County trip. A Johnson County trip shall include any trip taken by a resident of Johnson County who does not live in Iowa City, Coralville, North Liberty or University Heights; any trip that starts or ends within Johnson County but outside of Iowa City, Coralville, North Liberty or University Heights; and any trip taken that is paid for pursuant to the County's contract with Pathways.
2. Paratransit service shall be available throughout the same hours and days as fixed route service for the City. The City shall inform the County of any modification in hours of its fixed route service at least 30 days prior to any change in the hours of its fixed route service. The paratransit service shall operate on a holiday schedule consistent with the holidays of the City's fixed route service.
3. Paratransit service shall be operated as a door-to-door service. Service will be in compliance with the "SEATS Riders Guide" as amended.
4. The paratransit service shall be operated with a fare which shall be twice the fixed route fare for Iowa City Transit. Paratransit fares collected shall be retained by the County.
5. The City will make determinations of rider eligibility based upon an [ADA](#) certification process. Johnson County SEATS shall notify the City of a request for ADA certification on a weekly basis. It shall be the City's responsibility to notify Johnson County SEATS as to whether the applicant is ADA eligible. ~~Otherwise, the applicant shall remain eligible for paratransit service.~~ Priority for paratransit service will be given to persons certified under the ADA.
6. Johnson County SEATS shall maintain reporting statistics required by the Federal Transit Administration National Transit Database (formerly Federal Section 15 system). In addition Johnson County SEATS shall provide a management

information system consisting of information for each trip provided. ~~The City may request miscellaneous reports to assist it in its evaluation of SEATS services. These reports shall not create an undue administrative burden on SEATS management. If the City requests additional reports, the County will provide them at its cost to prepare them.~~

7. Johnson County SEATS shall comply with the Federal Transit Administration Drug and Alcohol testing requirements and shall be responsible for any and all costs associated with said drug and alcohol testing requirements. Johnson County seats shall comply with any other requirements of the Federal Transit Administration. Johnson County SEATS employees shall have all commercial drivers licenses required by law. Due to the possibility of federal capital assistance, exhibit A is attached and incorporated by this reference.

~~8. Each party agrees to release, indemnify and hold the other party, its officers and employees harmless from and against any and all liabilities, damages, business interruptions, delays, losses, claims, judgments, of any kind whatsoever, including all costs, attorneys' fees, and expenses incidental thereto, which may be suffered by, or charged to, the other party by reason of any loss or damage to any property or injury to or death of any person arising out of or by reason of any breach, violation or non-performance by the party or its servants, employees or agents of any covenant or condition of this Agreement or by any act or failure to act of those persons. The County shall not be liable for its failure to perform this Agreement or for any loss, injury, damage or delay of any nature whatsoever resulting therefrom caused by any act of God, fire, flood, accident, strike, labor dispute, riot, insurrection, war or any other cause beyond the County's control. The County shall indemnify, defend, keep and save harmless the City, its agents, officials and employees, against all claims, suits, liabilities, judgments, costs or expenses, which may in any way be made or claimed against the City in consequence of this agreement. The County shall at its own expense provide insurance protection with respect to this indemnification agreement.~~

Duration, Compensation and Termination

1. The term of this Agreement shall commence on July 1, 2013 and continue for one year though and including June 30, 2014.
2. The City agrees to pay the County ~~\$8,443.89~~\$8,443.80 for the provision of paratransit service in FY2014. This amount shall be the total City funding to the County from the City for SEATS service in FY2014. Monthly payments of \$703.66 shall be due on or before the 15th of each month, with first said payment due in July of 2013.
3. The City of University Heights agrees to pay a five cent (\$.05) fuel surcharge to Johnson County SEATS when the average fuel cost per operating mile exceeds fifty cents (\$.50) per mile for a one month period. The fuel surcharge shall be applied to the number of revenue miles of paratransit service Johnson County SEATS provides for the City of University Heights. After the initial fifty cents (\$.50) per mile bench mark is met, an additional five cent (\$.05) charge shall be

applied for each ten cent (\$.10) increase in fuel cost per operating mile. Johnson County SEATS will bill the City of University Heights for the previous month's additional fee after receiving the fuel bill and figuring the average cost per revenue mile. This payment is in addition to all other payments required by the contract.

4. Termination of this Agreement may be affected by either party upon written notice to the other party at least 45 days prior to the date of termination. In the event this agreement is terminated, the County shall be entitled to all fares and prorated monthly payments representing services provided through the 45-day notice period.

Extent of Agreement, Amendments and Responsibility for Filing

1. No separate legal entity is established by this Agreement.
2. This Agreement is between public agencies contracting to perform governmental service pursuant to Iowa Code section 28E.12.
3. This agreement represents the entire agreement between the City and the County for paratransit service. It may be amended only by written agreement signed by both parties.
4. Johnson County shall file this 28E agreement and any amendments with the Secretary of State in electronic format.

CITY OF UNIVERSITY HEIGHTS, IOWA

JOHNSON COUNTY, IOWA

By: _____
Louise From, Mayor

By: _____
Janelle Rettig, Chairperson
Board of Supervisors

ATTEST: _____
Chris Anderson, City Clerk

ATTEST: _____
Travis Weipert,
County Auditor

CITY ACKNOWLEDGMENT

STATE OF IOWA)
)ss:
JOHNSON COUNTY)

On this ____ day of _____, 20____, before me, _____, a Notary Public in and for the State of Iowa, personally appeared before me Louise From and Chris Anderson, to me personally known, and, who being by me duly sworn, did say that they are the Mayor and City Clerk , respectively of the City of University Heights, Iowa; that the seal affixed to the foregoing instrument is the corporate seal of the corporation, and that the instrument was signed and sealed on behalf of the corporation, by authority of its City Council, as contained in Resolution No. _____ passed by the City Council on the _____ day of _____, 20____, and that Louise From and Chris Anderson acknowledged the execution of the instrument to be their voluntary act and deed of the corporation, by it voluntarily executed.

Notary Public in and for the State of Iowa
My commission expires:

COUNTY ACKNOWLEDGEMENT

STATE OF IOWA)
)ss:
JOHNSON COUNTY)

On this ____ day of _____, 20____, before me, _____, a Notary Public in and for the State of Iowa, personally appeared Janelle Rettig and Travis Weipert, to me personally known, and, who, being by me duly sworn, did say that they are the Chairperson of the Board of Supervisors and County Auditor, respectively, of the County of Johnson, Iowa; that the seal affixed to the foregoing instrument is the corporate seal of the corporation, and that the instrument was signed and sealed on behalf of the corporation, by authority of its Board of Supervisors, as contained in the Motion adopted by the Board of Supervisors on the ____ day for _____, 20____, and Janelle Rettig and Travis Weipert acknowledge the execution of the instrument to be their voluntary act and deed and the voluntary act and deed of the corporation, by it voluntarily executed.

Notary Public in and for the State of Iowa
My commission expires:

EXHIBIT A

Because federal funds may be used to support the SEATS paratransit contract, University Heights and Johnson County SEATS hereby agree to the following required federal clauses:

ADA Access The Contractor agrees to provide transportation services consistent with the Americans with Disabilities Act (ADA) and comply with the provisions of the Act applicable to the facilities used for and the personnel policies applicable to staff involved in the administration of any contract issued pursuant to a solicitation by this recipient or subrecipient of Federal transit assistance. In particular, the Contractor's project manager shall be responsible for assuring that "reasonable accommodations" are made to ensure compliance with the provisions of the ADA in regard to service provision, hiring and managing personnel as well as workplace accessibility. The employment provisions of ADA require that reasonable accommodations be made in existing worksites to allow a qualified employment candidate with a disability to access the workplace and perform their job duties.

Under the ADA, it is also incumbent upon the Contractor to assure that any "accessible vans or buses" and the ancillary equipment that such vans or buses are required to be equipped with by 49 CFR Part 37 Subpart B Subsection 37.23, i.e., to satisfy the ADA's mobility aid user accessibility provisions, are inspected and properly maintained. As such, the Contractor is required to provide appropriate vehicle maintenance and staff training under this contract with a subrecipient of Federal transit assistance. This training must assure that vehicle operators have acquired skills in communicating with assisting persons with disabilities, are proficient in passenger assistance techniques, operation of vehicle level change devices, securement systems, public address systems and other access-related equipment.

Vehicle operators shall be required to report any access equipment problems as soon as possible. And, the Contractor shall make repairs to access equipment as soon as possible, preferably on the day following a report of deficiency or malfunction report. Any vehicle with inadequate or malfunctioning access equipment shall not be kept in service if a deficiency presents a heightened risk of passenger or vehicle operator injury. And, such a vehicle shall not be returned to revenue service until access equipment deficiencies are remedied. The Contractor shall cooperate with transit system, as well as State or Federal agency staff, or assessment contractors of agencies with oversight responsibility for assessment of whether the Contractor is complying with the provisions of the ADA. Such assessments shall require Contractor's staff to meet with oversight personnel and provide access to documentation relating to policies and instructions for access equipment pre-trip cycling, staff training, as well as access equipment operation, reliability and maintenance. Contractor shall permit drivers and administrative staff to be interviewed by persons performing ADA compliance assessments.

Drug Use and Testing - Alcohol Misuse and Testing Requirements

The Contractor agrees to comply with all applicable Federal regulations governing workplace drug use and alcohol misuse in the transit industry. Specifically, the

Contractor shall establish a Drug Use and Alcohol Misuse Policy acceptable to the transit agency purchasing services pursuant to this solicitation or contract award and conforming with the Federal Transit Administration (FTA) regulations. These regulations are detailed in 49 C.F.R. Part 665 "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit" as amended. Contractor shall comply with these regulations mandating testing of safety-sensitive employees for the use of drug and the misuse of alcohol in violation of law or Federal regulation, and prohibits performance of safety-sensitive functions when there is a positive test result. The Contractor shall as well comply with U.S. DOT regulations detailed in 49 CFR Part 40, Revised and corresponding Technical Amendments, that set standards for the collection and testing of urine and breath specimens from safety-sensitive employees. Contractor's employees shall be provided with the training required by these regulations as well as access for review, upon request, to the Federal regulations and Contractor's Policy on Prohibited Drug Use and Alcohol Misuse.

Fly America Requirement

The Vendor/Contractor shall comply with 49 U.S.C. 40118 (the "Fly America" Act) and regulations promulgated by the General Services Administration, at 41 CFR Part 301-10, which provide that recipients and subrecipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S. Government financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. This provision shall be included by the Contractor in all subcontracts that may involve international air transportation.

Charter Bus Requirements

The Contractor agrees to comply with 49 U.S. C. Section 5323(d) and 49 CFR Part 604, which provides that recipients and subrecipients of FTA assistance are prohibited from providing charter service using federally funded equipment or facilities if there is at least one private charter operator willing and able to provide the service, except under one of the exceptions detailed at 49 CFR 604.9. Any charter service provided under one of the exceptions must be "incidental." I.e., it must not interfere with or detract from the provisions of mass transportation.

School Bus Requirements

Pursuant to 49 U.S.C. Section 5323 (f) and 49 CFR Part 605, which provide that recipients and subrecipients of FTA assistance are prohibited from providing school bus operations exclusively for the transportation of students and school personnel in competition with private school bus operators unless qualified under specified exemptions. When operating exclusive school bus service under an allowable exemption, recipients and subrecipients may not use federally funded equipment, vehicles, or facilities.

Energy Conservation Requirement

The Vendor/Contractor bidder shall comply with mandatory standards and policies relating to energy efficiency that are contained in the State Energy Conservation Plan issued pursuant to the Energy Policy and Conservation Act.

Clean Water Requirement

Each Vendor/Contractor, by signing the Certificate of Compliance with Terms of Service under this Request for Architectural and Engineering Qualifications (RFQ) is obliged under penalty of law to perform such services using materials, and under conditions that comply with the federal, state and local clean water regulations governing said production. As such, the Contractor agrees to comply with and perform construction oversight that are the Contractor's responsibility to assess whether work performed by construction contractors is compliant with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C.1251 et seq. The contractor also agrees to report each violation to the Purchaser and understands and agrees that the Purchaser must, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

The Vendor/contractor is required to include these requirements in each subcontract exceeding \$100,000 financed, in whole or in part, with Federal assistance provided by a contract awarded under this solicitation and assisted by FTA.

Lobbying Disclosure Requirements and Prohibition

Pursuant to the Byrd Anti Lobbying Amendment, 31 U.S.C.1352, as amended by the Lobbying Disclosure Act of 1995, P.L.104-65 [to be codified at 2 U.S.C 1601,et seq.], vendors/contractors/EM's who submit a bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying ." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying disclosure Act of 1995 who has made lobbying contacts on its behalf with nonfederal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

Access to Records and Reports Requirements

In accordance with 49 CFR 18.36(I), the Vendor/contractor and any vendor acting on its behalf in this solicitation agree to provide the Iowa Public Transit System awarding a contract, the Iowa Department of Transportation, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to any contract awarded pursuant to this solicitation for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 CFR Part 633.17, to provide the FTA Administrator or his authorized representatives, including any PMO contractor, access to Contractor's records pertaining to contracts awarded that involve a major capital project, as defined at 49 U.S.C. 5302 (a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. section 5307, 5309, or 5311.

The Contractor agrees to permit any of the parties described in the preceding paragraph to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

The Contractor agrees to maintain all books, records, accounts and reports required under any contract awarded pursuant to this solicitation for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the Purchaser, the Iowa DOT, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(I)(11).

Federal Changes

The Contractor or vendor awarded a service contract pursuant to this solicitation agrees to comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement (Form FTA MA (6) dated October, 1999) between the Purchaser and the Iowa DOT as required by the Grant Agreement form the FTA to the Iowa DOT as they may be amended or promulgated from time to time during the term of the contract awarded pursuant to this solicitation. Contractor's failure to so comply shall constitute a material breach of this contract.

Clean Air

The Contractor, by signing the Certificate of Compliance with Solicitation Requirements, is obliged under penalty of law to manufacture the bus being offered in compliance with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C.7401 et seq. The FSM agrees to report each violation the Purchaser and understands and agrees that the Purchaser must, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

The Contractor is required to include these requirements in each subcontract exceeding \$100,000 financed, in whole or in part, with Federal assistance provided by a contract awarded under this solicitation and assisted by FTA.

Recycled Products

The Contractor shall develop construction specifications and building plans that, to the extent practicable utilized recycled products and, at a minimum require construction contractors to perform work in a manner that complies with the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962) including , but not limited to, the regulatory provisions of 40 CFR Part 247 and Executive Order 12873, insofar as these requirements are applicable to any item so designated by the Environmental Protection Agency (EPA), or material used to produce said item(s), that was designated in Subpart B of 40 CFR Part 247. Insofar as the Purchaser acquired \$10,000 or more of one of the items EPA designates in the fiscal year during which a contractor awarded a contract for project construction is authorized to

commence work or when the cost of such items purchased by the Contractor during the previous fiscal year was \$10,000 or more.

No Federal Government Obligation to Third Parties

The Contractor acknowledges and agrees that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Purchaser, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

Any Contractor/firm submitting qualifications pursuant to this solicitation agrees to include the paragraph/provision immediately above in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the provision shall not be modified, except to identify the subcontractor who will be subject to this provision.

Program Fraud and False or Fraudulent Statements and Related Acts

- (1) Each Contractor/ firm submitting qualifications in response to this RFQ are obliged to comply with the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, at 31 U.S.C. Section 3801 et seq., and U.S. DOT regulations “program Fraud Civil Remedies,” 49 CFR, Part 31. Upon execution of the underlying contract (accepting a contract awarded pursuant to this solicitation), the contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract is being manufactured or work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.
- (2) The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. Section 5307, the Government reserves the right to impose the penalties of 18 U.S.C. Section 1001 and 49 U.S.C. Section 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.
- (3) The Contractor agrees to include the clauses delineated as (1) and (2) above in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified except to identify the subcontractor who will be subject to the provisions.

Termination

- (1) Termination for Convenience (General Provision)

Any transit system/ Purchaser that awards a professional service contract incorporating this provision may terminate such contract, in whole or in part, at any time by written notice to the Contractor when it is in the Transit System's/Government's best interest. The Contractor shall be paid its cost, including contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to the Transit System (or other Purchaser) to be paid to the Contractor. If the Contractor has any property in its possession belonging to a Purchaser, the Contractor will account for such property and return or dispose of such property as directed by and at the cost of the Purchaser. .be paid its costs

(2) Termination for Default[Breach or Cause](General Provision)

If the Contractor does not deliver work as per the terms of this solicitation or any contract awarded thereof in accordance with the contract delivery schedule, or, if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, the Purchaser may terminate his contract for default. Termination shall be effected by serving a notice of termination on the contractor setting forth the manner in which the Contractor is in default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.

If it is later determined by the Purchaser that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, the Purchaser, after setting up a new delivery or performance schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

(3) Opportunity to Cure General Provision

The Purchaser in its sole discretion may in the case of termination for breach or default, allow the Contractor a specified period of time in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions.

If the Contractor fails to remedy to Purchaser's satisfaction the breach or default or any of the terms covenants, or conditions of the Contract within ten (10) business days after receipt by Contractor or written notice from the Purchaser setting forth the nature of said breach or default, Purchaser shall have the right to terminate the Contract without any further obligation to the Contractor. Any such termination for default shall not in any way operate to preclude the Purchaser from also pursuing all available remedies against Contractor and its sureties for said breach or default.

Government-wide Debarment and Suspension

Each prospective Contractor must submit an appropriately prepared, and signed certification regarding any debarment action or other factors relevant to the firm's, or any its principal's, eligibility to participate in federally funded projects. .By signing and submitting this bid or proposal, the prospective lower tier participant (contractor/ vendor)

is providing the certification as per the instructions delineated at 29 CFR part 29, Appendix B.

Civil Rights Requirements

- (1) Nondiscrimination – In accordance with Title VII of the Civil Rights Act as amended, 42 U.S.C. Section 2000d, Section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C, Section 6102, Section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. Section 12132, and Federal transit law at 49 U.S.C. Section 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue

- (2) Equal Employment Opportunity: Contractors/, or subcontractors thereof , performing lower tier contract services must be an equal opportunity employer as defined in the Rights Act of 1964 and in Iowa Executive Order Number Fifteen. The successful firm, in accepting the offer of a professional service contract under terms of this solicitation, certifies that its officials shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, disability, or national origin. The successful firm shall also take affirmative action to insure that applicants are employed, and that employees are treated during their employment, without regard to their race, religion, color, sex, disability, or national origin. The following requirements apply to the underlying contract:
 - (a) Race, Color, Creed, National Origin, Sex - In accordance with title VII of the Civil Rights Act, as amended, 42 U.S.C. Section 2000e, and Federal transit laws at 49 U.S.C. Section 53432, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor,” 41 CFR Parts 60 et seq., (that implement Executive Order No. 11246, Equal Employment Opportunity as amended by Executive Order No;11375, “amending Executive Order 11246 relating to Equal Employment Opportunity, “ 42 U.S.C. Section 2000e note) , and with any applicable Federal statutes, executive orders, regulations and Federal policies that may affect manufacturing activities undertaken in the course of producing the buses being purchased. The Contractor agrees to take such affirmative actions as may be necessary to ensure compliance. These actions shall include, but shall not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition the Contractor agrees to comply with any implementing requirements FTA may issue.
 - (b) Age – In accordance with Section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. Section 623 and Federal transit law at 49 U,S,C. Section 5332, the Contractor agrees to refrain form discrimination against present and prospective employees for reason of age. In addition, the contractor agrees to comply with any implementing requirements FTA may issue.
 - (c) Disabilities – In accordance with Section 102 of the Americans with Disabilities

Act, as amended, 42 U.S.C. section 12112, the Contractor agrees that it will comply with the requirements of the U.S. Equal Employment Opportunity Commission, “ Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act, “ 29 CFR part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

- (3) The Contractor agrees that it shall include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified, only if necessary, to identify the affected parties and clarify the responsibilities entailed.

Transit Employee Protective Agreements

The Contractor agrees to comply with:

- (1) applicable transit employee protective requirements as follows:
 - (a) General Transit Employee Protective Requirements - to the extent that FTA determines that transit operations are involved, the Contractor agrees to carry out the transit operations work on the underlying contract in compliance with terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees employed under this contract and to meet the employee protective requirements of 49 U.S.C. A 5333(b) , and U.S. DOL guidelines at 29 CFR Part 215, and any amendments thereto. These terms and conditions are identified in the letter of certification from the U.S. DOL to FTA applicable to the FTA Recipient’s project from which Federal assistance is provided to support work on the underlying contract. The Contractor agrees to carry out that work in compliance with the conditions stated in that U.S. DOL letter. The requirements for this subsection (a), however, do not apply to any contract financed with Federal assistance provided by FTA either for projects for elderly individuals with disabilities authorized by 49 USC Section 5310(a)(2), or for projects for nonurbanized areas authorized by 49 U.S.C. Section 5311. Alternate provisions for those projects are set forth in subsections (b) and (c) of this provision.
 - (b) Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. Section 5310(a)(2) for Elderly Individuals and Individuals with Disabilities. – If the contract this provision is incorporated by involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. Section 5310(a)(2), and if the U.S. Secretary of Transportation has determined or determines in the future that the employee protective requirements of 49 U.S.C. section 5310(b) are necessary or appropriate for the state and the public body subrecipient for which work is performed on the underlying contract, the Contractor agrees to carry out the Project in compliance with the terms and conditions determined by the U.S. Secretary of Labor to meet the requirements of 49 U.S. C. Section 5333(b), U.S. DOL guidelines at 29 C.F.R. Part 215 and any amendments thereto. These terms and conditions are identified in the U.S. DOL’s letter of certification to FTA, the date of which is set forth in the Grant Agreement or Cooperative Agreement with the state. The contractor agrees to perform transit operations in connection with the underlying contract in compliance with the conditions stated in that U.S. DOL letter.

- (c) Transit Employee Protective Requirements for Projects Authorized by 49 U.S. C. Section 5311 in Nonurbanized Areas – If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S. C. Section 5311, the Contractor agrees to comply with the terms and conditions of the Special Warranty for the Nonurbanized Area Program agreed to by the Secretaries of Transportation and Labor, dated May 31, 1979, and the procedures implemented by U.S. DOL or any revision thereto.
- (2) The Contractor also agrees to include any applicable requirements in each subcontract involving transit operation financed in whole or in part with Federal assistance provided by FTA.

Breaches and Dispute Resolution

If the vendor awarded a contract (i.e. Contractor) pursuant to this solicitation abandons, or before completion, discontinues that project; or if by reason of any of the events or reason, the commencement, prosecution, or timely completion of this project by the vendor is rendered improbable, infeasible, impossible, or illegal, the IPTS may, by written notice to the vendor, suspend any or all of its obligations under the contract until such a time as the event or conditions resulting in such suspension has ceased or been corrected, or the agency may terminate any of its obligations under the contract.

Upon receipt of a final termination or suspension notice, the vendor shall proceed promptly to carry out their actions required which may include any or all of the following: (1) necessary action to terminate or suspend, as the case may be, project activities and contracts and. (2) furnish a statement of the status of the project activities and contracts and. as a proposed schedule, plan and budget or terminating or suspending and closing-out project activities and other undertakings, the cost of which are otherwise included as project costs. The closing out shall be carried out in conformity with the latest schedule, plan, and budget within a reasonable time. Reimbursement to the vendor in the event of termination shall be for actual costs, less any assessment of damages.

Disputes arising in the performance of any Contract awarded pursuant to this solicitation that are not resolved by agreement of the parties and concurred with by the Iowa DOT shall be decided in writing by the authorized representative of the Procurement Administrator for the IPTS that awarded the contract for professional services. This decision shall be final and conclusive unless within ten calendar days from the date of receipt of its copy of the decision, the contractor mails or otherwise delivers a written appeal to the Procurement Administrator. In regard to any such appeal, the Contractor shall be afforded with an opportunity to be heard and to offer evidence in support of its position. If the Contractor deems that the Procurement Administrator rendered a decision that it cannot accept, any further review of the matter must be settled in a court of competent jurisdiction within Iowa.

Disadvantaged Business Enterprise Requirements (DBE) Plan Approval/Submission:

Each contractor/vendor shall comply with all rules and regulations promulgated by the Federal Transit Administration of the U.S. DOT regarding participation of Disadvantaged Business Enterprises in contracting opportunities by any contract awarded under this solicitation. As such, any bidder must complete and submit with any bid a Disadvantaged

Business Enterprise Certification for Non-Rolling Stock Materials or Services as promulgated under 49 CFR Part 26.and other applicable laws and regulations.

State and Local Law Disclaimer

The use of many of the clauses delineated herein to comply with Federal requirements may be significantly affected by State law. In the event that the Code of Iowa may contain requirements that are not precluded by federal statute, state law or local shall be applicable. If the Contractor has reason to believe that any discrepancy exists between local, state, or federal requirements, it is incumbent on the Contractor to request in writing that a determination be made and issued by the Procurement Administrator to resolve any such discrepancy.

Incorporation of Federal Transit Administration (FTA) Terms

The preceding provisions include, in part, certain Standard Terms and conditions required by DOT, whether or not expressly set forth in the provisions of this solicitation. All contractual provisions required by DOT, as set forth in FTA circular 4220.1D., dated April 15, 1996, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this solicitation or contract awarded thereof. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any requests made by the IPTS/Transit Agency, other participating Iowa public transit systems, or the Iowa DOT which would cause any of these parties to be in violation of FTA terms and conditions.

***Non-Collusion Bidding Certification: Not Applicable per FTA c.4220.1E, because this 28E agreement is to purchase service from another governmental entity.

Prohibited Interest: No member of, or delegate to, the Iowa State Legislature or the Congress of the United States shall be admitted to any share or part of this contract or to any benefit arising therefrom. No member, officer, or employee of the Transit Agency during his/her tenure or for one year thereafter shall have any interest, direct or indirect, in a contract or proceeds resulting from this solicitation.

Certificate of Compliance: Each Contractor must submit a properly prepared and signed Certificate of Compliance with Federal and this Solicitation's Requirements. Signing the form obligates the vendor to all requirements of this solicitation and constitutes the vendors assurance that it has the capacity and intent to deliver the services agreed upon or delineated as the scope of Contractor responsibilities in a manner that conforms with or exceeds federal and state standards and the transit agency's minimum requirements which are herein delineated or incorporated by reference into a Transit or Professional Services Agreement.

Declaration of Project Federal Assistance, Payment for Services

Federal assistance is anticipated to defray approximately 20% (but not greater than 80%) of the budgeted project costs of the work or item(s) being purchased. Federal assistance for the items being purchased cannot be reimbursed to the purchaser (Transit Agency) by the Iowa Department of Transportation or the Federal Transit Administration until such

work /item is delivered, inspected, and accepted. Unless otherwise detailed in writing, payment for the item(s) purchased shall not be made to the Contractor until approximately 30-45 days after the date an items is accepted by the Purchaser's Project Manager/transit agency and concurrence is given, if such is required by the Iowa DOT as the grantee

Protest of Solicitation Administration

Any party may initiate a protest of these provisions or decisions made pursuant to them in accordance with the protest procedure issued as part of this solicitation. See Protest Provision

Retention of Payment:

A reasonable portion of the amounts payable may be retained to assure correction of service deficiencies and compliance with the provisions of the Transit or Professional Services Contract jointly executed by the Transit Agency and the Contractor. The Contractor shall be informed in writing of all such items failing to meet provisions agreed upon and the amount retained for each item.

**28E Agreement for Paratransit Service Between the
City of University Heights and Johnson County for the Period of
July 1, 2013 through June 30, 2014**

This Agreement is made and entered into by and between the City of University Heights, Iowa (hereinafter referred to as "the City") and Johnson County, Iowa (hereinafter referred to as "the County").

Scope of Services, Purposes and Objectives

The County shall provide to the City through Johnson County SEATS paratransit service consistent with the Americans with Disabilities Act and the policies of the Metropolitan Planning Organization of Johnson County complementary paratransit plan.

General Powers, Responsibilities and Rights

1. Paratransit service shall include any paratransit trips originating or ending within the corporate limits of the City of University Heights, unless said trip originated from North Liberty or is considered a Johnson County trip. A Johnson County trip shall include any trip taken by a resident of Johnson County who does not live in Iowa City, Coralville, North Liberty or University Heights; any trip that starts or ends within Johnson County but outside of Iowa City, Coralville, North Liberty or University Heights; and any trip taken that is paid for pursuant to the County's contract with Pathways.
2. Paratransit service shall be available throughout the same hours and days as fixed route service for the City. The City shall inform the County of any modification in hours of its fixed route service at least 30 days prior to any change in the hours of its fixed route service. The paratransit service shall operate on a holiday schedule consistent with the holidays of the City's fixed route service.
3. Paratransit service shall be operated as a door-to-door service. Service will be in compliance with the "SEATS Riders Guide" as amended.
4. The paratransit service shall be operated with a fare which shall be twice the fixed route fare for Iowa City Transit. Paratransit fares collected shall be retained by the County.
5. The City will make determinations of rider eligibility based upon an ADA certification process. Johnson County SEATS shall notify the City of a request for ADA certification on a weekly basis. It shall be the City's responsibility to notify Johnson County SEATS as to whether the applicant is ADA eligible. Priority for paratransit service will be given to persons certified under the ADA.
6. Johnson County SEATS shall maintain reporting statistics required by the Federal Transit Administration National Transit Database (formerly Federal Section 15 system). In addition Johnson County SEATS shall provide a management information system consisting of information for each trip provided. If the City

requests additional reports, the County will provide them at its cost to prepare them.

7. Johnson County SEATS shall comply with the Federal Transit Administration Drug and Alcohol testing requirements and shall be responsible for any and all costs associated with said drug and alcohol testing requirements. Johnson County seats shall comply with any other requirements of the Federal Transit Administration. Johnson County SEATS employees shall have all commercial drivers licenses required by law. Due to the possibility of federal capital assistance, exhibit A is attached and incorporated by this reference.

Each party agrees to release, indemnify and hold the other party, its officers and employees harmless from and against any and all liabilities, damages, business interruptions, delays, losses, claims, judgments, of any kind whatsoever, including all costs, attorneys' fees, and expenses incidental thereto, which may be suffered by, or charged to, the other party by reason of any loss or damage to any property or injury to or death of any person arising out of or by reason of any breach, violation or non-performance by the party or its servants, employees or agents of any covenant or condition of this Agreement or by any act or failure to act of those persons. The County shall not be liable for its failure to perform this Agreement or for any loss, injury, damage or delay of any nature whatsoever resulting therefrom caused by any act of God, fire, flood, accident, strike, labor dispute, riot, insurrection, war or any other cause beyond the County's control.

Duration, Compensation and Termination

1. The term of this Agreement shall commence on July 1, 2013 and continue for one year though and including June 30, 2014.
2. The City agrees to pay the County \$8,443.80 for the provision of paratransit service in FY2014. This amount shall be the total City funding to the County from the City for SEATS service in FY2014. Monthly payments of \$703.66 shall be due on or before the 15th of each month, with first said payment due in July of 2013.
3. The City of University Heights agrees to pay a five cent (\$.05) fuel surcharge to Johnson County SEATS when the average fuel cost per operating mile exceeds fifty cents (\$.50) per mile for a one month period. The fuel surcharge shall be applied to the number of revenue miles of paratransit service Johnson County SEATS provides for the City of University Heights. After the initial fifty cents (\$.50) per mile bench mark is met, an additional five cent (\$.05) charge shall be applied for each ten cent (\$.10) increase in fuel cost per operating mile. Johnson County SEATS will bill the City of University Heights for the previous month's additional fee after receiving the fuel bill and figuring the average cost per revenue mile. This payment is in addition to all other payments required by the contract.
4. Termination of this Agreement may be affected by either party upon written notice to the other party at least 45 days prior to the date of termination. In the event this agreement is terminated, the County shall be entitled to all fares and

prorated monthly payments representing services provided through the 45-day notice period.

Extent of Agreement, Amendments and Responsibility for Filing

1. No separate legal entity is established by this Agreement.
2. This Agreement is between public agencies contracting to perform governmental service pursuant to Iowa Code section 28E.12.
3. This agreement represents the entire agreement between the City and the County for paratransit service. It may be amended only by written agreement signed by both parties.
4. Johnson County shall file this 28E agreement and any amendments with the Secretary of State in electronic format.

CITY OF UNIVERSITY HEIGHTS, IOWA

JOHNSON COUNTY, IOWA

By: _____
Louise From, Mayor

By: _____
Janelle Rettig, Chairperson
Board of Supervisors

ATTEST: _____
Christine Anderson, City Clerk

ATTEST: _____
Travis Weipert,
County Auditor

CITY ACKNOWLEDGMENT

STATE OF IOWA)
)ss:
JOHNSON COUNTY)

On this 25th day of June, 2013, before me, Steven E. Ballard, a Notary Public in and for the State of Iowa, personally appeared before me Louise From and Christine Anderson, to me personally known, and, who being by me duly sworn, did say that they are the Mayor and City Clerk , respectively of the City of University Heights, Iowa; that the seal affixed to the foregoing instrument is the corporate seal of the corporation, and that the instrument was signed and sealed on behalf of the corporation, by authority of its City Council, as contained in Resolution No.13-13 passed by the City Council on the 25th day of June, 2013, and that Louise From and Christine Anderson acknowledged the execution of the instrument to be their voluntary act and deed of the corporation, by it voluntarily executed.

Notary Public in and for the State of Iowa
My commission expires: July 16, 2015

COUNTY ACKNOWLEDGEMENT

STATE OF IOWA)
)ss:
JOHNSON COUNTY)

On this ____ day of _____, 20____, before me, _____, a Notary Public in and for the State of Iowa, personally appeared Janelle Rettig and Travis Weipert, to me personally known, and, who, being by me duly sworn, did say that they are the Chairperson of the Board of Supervisors and County Auditor, respectively, of the County of Johnson, Iowa; that the seal affixed to the foregoing instrument is the corporate seal of the corporation, and that the instrument was signed and sealed on behalf of the corporation, by authority of its Board of Supervisors, as contained in the Motion adopted by the Board of Supervisors on the ____ day for _____, 20____, and Janelle Rettig and Travis Weipert acknowledge the execution of the instrument to be their voluntary act and deed and the voluntary act and deed of the corporation, by it voluntarily executed.

Notary Public in and for the State of Iowa
My commission expires:

EXHIBIT A

Because federal funds may be used to support the SEATS paratransit contract, University Heights and Johnson County SEATS hereby agree to the following required federal clauses:

ADA Access The Contractor agrees to provide transportation services consistent with the Americans with Disabilities Act (ADA) and comply with the provisions of the Act applicable to the facilities used for and the personnel policies applicable to staff involved in the administration of any contract issued pursuant to a solicitation by this recipient or subrecipient of Federal transit assistance. In particular, the Contractor's project manager shall be responsible for assuring that "reasonable accommodations" are made to ensure compliance with the provisions of the ADA in regard to service provision, hiring and managing personnel as well as workplace accessibility. The employment provisions of ADA require that reasonable accommodations be made in existing worksites to allow a qualified employment candidate with a disability to access the workplace and perform their job duties.

Under the ADA, it is also incumbent upon the Contractor to assure that any "accessible vans or buses" and the ancillary equipment that such vans or buses are required to be equipped with by 49 CFR Part 37 Subpart B Subsection 37.23, i.e., to satisfy the ADA's mobility aid user accessibility provisions, are inspected and properly maintained. As such, the Contractor is required to provide appropriate vehicle maintenance and staff training under this contract with a subrecipient of Federal transit assistance. This training must assure that vehicle operators have acquired skills in communicating with assisting persons with disabilities, are proficient in passenger assistance techniques, operation of vehicle level change devices, securement systems, public address systems and other access-related equipment.

Vehicle operators shall be required to report any access equipment problems as soon as possible. And, the Contractor shall make repairs to access equipment as soon as possible, preferably on the day following a report of deficiency or malfunction report. Any vehicle with inadequate or malfunctioning access equipment shall not be kept in service if a deficiency presents a heightened risk of passenger or vehicle operator injury. And, such a vehicle shall not be returned to revenue service until access equipment deficiencies are remedied. The Contractor shall cooperate with transit system, as well as State or Federal agency staff, or assessment contractors of agencies with oversight responsibility for assessment of whether the Contractor is complying with the provisions of the ADA. Such assessments shall require Contractor's staff to meet with oversight personnel and provide access to documentation relating to policies and instructions for access equipment pre-trip cycling, staff training, as well as access equipment operation, reliability and maintenance. Contractor shall permit drivers and administrative staff to be interviewed by persons performing ADA compliance assessments.

Drug Use and Testing - Alcohol Misuse and Testing Requirements

The Contractor agrees to comply with all applicable Federal regulations governing workplace drug use and alcohol misuse in the transit industry. Specifically, the

Contractor shall establish a Drug Use and Alcohol Misuse Policy acceptable to the transit agency purchasing services pursuant to this solicitation or contract award and conforming with the Federal Transit Administration (FTA) regulations. These regulations are detailed in 49 C.F.R. Part 665 "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit" as amended. Contractor shall comply with these regulations mandating testing of safety-sensitive employees for the use of drug and the misuse of alcohol in violation of law or Federal regulation, and prohibits performance of safety-sensitive functions when there is a positive test result. The Contractor shall as well comply with U.S. DOT regulations detailed in 49 CFR Part 40, Revised and corresponding Technical Amendments, that set standards for the collection and testing of urine and breath specimens from safety-sensitive employees. Contractor's employees shall be provided with the training required by these regulations as well as access for review, upon request, to the Federal regulations and Contractor's Policy on Prohibited Drug Use and Alcohol Misuse.

Fly America Requirement

The Vendor/Contractor shall comply with 49 U.S.C. 40118 (the "Fly America" Act) and regulations promulgated by the General Services Administration, at 41 CFR Part 301-10, which provide that recipients and subrecipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S. Government financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. This provision shall be included by the Contractor in all subcontracts that may involve international air transportation.

Charter Bus Requirements

The Contractor agrees to comply with 49 U.S. C. Section 5323(d) and 49 CFR Part 604, which provides that recipients and subrecipients of FTA assistance are prohibited from providing charter service using federally funded equipment or facilities if there is at least one private charter operator willing and able to provide the service, except under one of the exceptions detailed at 49 CFR 604.9. Any charter service provided under one of the exceptions must be "incidental." I.e., it must not interfere with or detract from the provisions of mass transportation.

School Bus Requirements

Pursuant to 49 U.S.C. Section 5323 (f) and 49 CFR Part 605, which provide that recipients and subrecipients of FTA assistance are prohibited from providing school bus operations exclusively for the transportation of students and school personnel in competition with private school bus operators unless qualified under specified exemptions. When operating exclusive school bus service under an allowable exemption, recipients and subrecipients may not use federally funded equipment, vehicles, or facilities.

Energy Conservation Requirement

The Vendor/Contractor bidder shall comply with mandatory standards and policies relating to energy efficiency that are contained in the State Energy Conservation Plan issued pursuant to the Energy Policy and Conservation Act.

Clean Water Requirement

Each Vendor/Contractor, by signing the Certificate of Compliance with Terms of Service under this Request for Architectural and Engineering Qualifications (RFQ) is obliged under penalty of law to perform such services using materials, and under conditions that comply with the federal, state and local clean water regulations governing said production. As such, the Contractor agrees to comply with and perform construction oversight that are the Contractor's responsibility to assess whether work performed by construction contractors is compliant with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C.1251 et seq. The contractor also agrees to report each violation to the Purchaser and understands and agrees that the Purchaser must, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

The Vendor/contractor is required to include these requirements in each subcontract exceeding \$100,000 financed, in whole or in part, with Federal assistance provided by a contract awarded under this solicitation and assisted by FTA.

Lobbying Disclosure Requirements and Prohibition

Pursuant to the Byrd Anti Lobbying Amendment, 31 U.S.C.1352, as amended by the Lobbying Disclosure Act of 1995, P.L.104-65 [to be codified at 2 U.S.C 1601,et seq.], vendors/contractors/EM's who submit a bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying ." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying disclosure Act of 1995 who has made lobbying contacts on its behalf with nonfederal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

Access to Records and Reports Requirements

In accordance with 49 CFR 18.36(I), the Vendor/contractor and any vendor acting on its behalf in this solicitation agree to provide the Iowa Public Transit System awarding a contract, the Iowa Department of Transportation, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to any contract awarded pursuant to this solicitation for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 CFR Part 633.17, to provide the FTA Administrator or his authorized representatives, including any PMO contractor, access to Contractor's records pertaining to contracts awarded that involve a major capital project, as defined at 49 U.S.C. 5302 (a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. section 5307, 5309, or 5311.

The Contractor agrees to permit any of the parties described in the preceding paragraph to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

The Contractor agrees to maintain all books, records, accounts and reports required under any contract awarded pursuant to this solicitation for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the Purchaser, the Iowa DOT, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(I)(11).

Federal Changes

The Contractor or vendor awarded a service contract pursuant to this solicitation agrees to comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement (Form FTA MA (6) dated October, 1999) between the Purchaser and the Iowa DOT as required by the Grant Agreement form the FTA to the Iowa DOT as they may be amended or promulgated from time to time during the term of the contract awarded pursuant to this solicitation. Contractor's failure to so comply shall constitute a material breach of this contract.

Clean Air

The Contractor, by signing the Certificate of Compliance with Solicitation Requirements, is obliged under penalty of law to manufacture the bus being offered in compliance with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C.7401 et seq. The FSM agrees to report each violation the Purchaser and understands and agrees that the Purchaser must, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

The Contractor is required to include these requirements in each subcontract exceeding \$100,000 financed, in whole or in part, with Federal assistance provided by a contract awarded under this solicitation and assisted by FTA.

Recycled Products

The Contractor shall develop construction specifications and building plans that, to the extent practicable utilized recycled products and, at a minimum require construction contractors to perform work in a manner that complies with the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962) including , but not limited to, the regulatory provisions of 40 CFR Part 247 and Executive Order 12873, insofar as these requirements are applicable to any item so designated by the Environmental Protection Agency (EPA), or material used to produce said item(s), that was designated in Subpart B of 40 CFR Part 247. Insofar as the Purchaser acquired \$10,000 or more of one of the items EPA designates in the fiscal year during which a contractor awarded a contract for project construction is authorized to

commence work or when the cost of such items purchased by the Contractor during the previous fiscal year was \$10,000 or more.

No Federal Government Obligation to Third Parties

The Contractor acknowledges and agrees that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Purchaser, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

Any Contractor/firm submitting qualifications pursuant to this solicitation agrees to include the paragraph/provision immediately above in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the provision shall not be modified, except to identify the subcontractor who will be subject to this provision.

Program Fraud and False or Fraudulent Statements and Related Acts

- (1) Each Contractor/ firm submitting qualifications in response to this RFQ are obliged to comply with the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, at 31 U.S.C. Section 3801 et seq., and U.S. DOT regulations “program Fraud Civil Remedies,” 49 CFR, Part 31. Upon execution of the underlying contract (accepting a contract awarded pursuant to this solicitation), the contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract is being manufactured or work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.
- (2) The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. Section 5307, the Government reserves the right to impose the penalties of 18 U.S.C. Section 1001 and 49 U.S.C. Section 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.
- (3) The Contractor agrees to include the clauses delineated as (1) and (2) above in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified except to identify the subcontractor who will be subject to the provisions.

Termination

- (1) Termination for Convenience (General Provision)

Any transit system/ Purchaser that awards a professional service contract incorporating this provision may terminate such contract, in whole or in part, at any time by written notice to the Contractor when it is in the Transit System's/Government's best interest. The Contractor shall be paid its cost, including contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to the Transit System (or other Purchaser) to be paid to the Contractor. If the Contractor has any property in its possession belonging to a Purchaser, the Contractor will account for such property and return or dispose of such property as directed by and at the cost of the Purchaser. .be paid its costs

(2) Termination for Default[Breach or Cause](General Provision)

If the Contractor does not deliver work as per the terms of this solicitation or any contract awarded thereof in accordance with the contract delivery schedule, or, if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, the Purchaser may terminate his contract for default. Termination shall be effected by serving a notice of termination on the contractor setting forth the manner in which the Contractor is in default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.

If it is later determined by the Purchaser that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, the Purchaser, after setting up a new delivery or performance schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

(3) Opportunity to Cure General Provision

The Purchaser in its sole discretion may in the case of termination for breach or default, allow the Contractor a specified period of time in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions.

If the Contractor fails to remedy to Purchaser's satisfaction the breach or default or any of the terms covenants, or conditions of the Contract within ten (10) business days after receipt by Contractor or written notice from the Purchaser setting forth the nature of said breach or default, Purchaser shall have the right to terminate the Contract without any further obligation to the Contractor. Any such termination for default shall not in any way operate to preclude the Purchaser from also pursuing all available remedies against Contractor and its sureties for said breach or default.

Government-wide Debarment and Suspension

Each prospective Contractor must submit an appropriately prepared, and signed certification regarding any debarment action or other factors relevant to the firm's, or any its principal's, eligibility to participate in federally funded projects. .By signing and submitting this bid or proposal, the prospective lower tier participant (contractor/ vendor)

is providing the certification as per the instructions delineated at 29 CFR part 29, Appendix B.

Civil Rights Requirements

- (1) Nondiscrimination – In accordance with Title VII of the Civil Rights Act as amended, 42 U.S.C. Section 2000d, Section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C, Section 6102, Section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. Section 12132, and Federal transit law at 49 U.S.C. Section 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue

- (2) Equal Employment Opportunity: Contractors/, or subcontractors thereof , performing lower tier contract services must be an equal opportunity employer as defined in the Rights Act of 1964 and in Iowa Executive Order Number Fifteen. The successful firm, in accepting the offer of a professional service contract under terms of this solicitation, certifies that its officials shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, disability, or national origin. The successful firm shall also take affirmative action to insure that applicants are employed, and that employees are treated during their employment, without regard to their race, religion, color, sex, disability, or national origin. The following requirements apply to the underlying contract:
 - (a) Race, Color, Creed, National Origin, Sex - In accordance with title VII of the Civil Rights Act, as amended, 42 U.S.C. Section 2000e, and Federal transit laws at 49 U.S.C. Section 53432, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor,” 41 CFR Parts 60 et seq., (that implement Executive Order No. 11246, Equal Employment Opportunity as amended by Executive Order No;11375, “amending Executive Order 11246 relating to Equal Employment Opportunity, “ 42 U.S.C. Section 2000e note) , and with any applicable Federal statutes, executive orders, regulations and Federal policies that may affect manufacturing activities undertaken in the course of producing the buses being purchased. The Contractor agrees to take such affirmative actions as may be necessary to ensure compliance. These actions shall include, but shall not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition the Contractor agrees to comply with any implementing requirements FTA may issue.
 - (b) Age – In accordance with Section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. Section 623 and Federal transit law at 49 U,S,C. Section 5332, the Contractor agrees to refrain form discrimination against present and prospective employees for reason of age. In addition, the contractor agrees to comply with any implementing requirements FTA may issue.
 - (c) Disabilities – In accordance with Section 102 of the Americans with Disabilities

Act, as amended, 42 U.S.C. section 12112, the Contractor agrees that it will comply with the requirements of the U.S. Equal Employment Opportunity Commission, “ Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act, “ 29 CFR part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

- (3) The Contractor agrees that it shall include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified, only if necessary, to identify the affected parties and clarify the responsibilities entailed.

Transit Employee Protective Agreements

The Contractor agrees to comply with:

- (1) applicable transit employee protective requirements as follows:
- (a) General Transit Employee Protective Requirements - to the extent that FTA determines that transit operations are involved, the Contractor agrees to carry out the transit operations work on the underlying contract in compliance with terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees employed under this contract and to meet the employee protective requirements of 49 U.S.C. A 5333(b) , and U.S. DOL guidelines at 29 CFR Part 215, and any amendments thereto. These terms and conditions are identified in the letter of certification from the U.S. DOL to FTA applicable to the FTA Recipient’s project from which Federal assistance is provided to support work on the underlying contract. The Contractor agrees to carry out that work in compliance with the conditions stated in that U.S. DOL letter. The requirements for this subsection (a), however, do not apply to any contract financed with Federal assistance provided by FTA either for projects for elderly individuals with disabilities authorized by 49 USC Section 5310(a)(2), or for projects for nonurbanized areas authorized by 49 U.S.C. Section 5311. Alternate provisions for those projects are set forth in subsections (b) and (c) of this provision.
 - (b) Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. Section 5310(a)(2) for Elderly Individuals and Individuals with Disabilities. – If the contract this provision is incorporated by involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. Section 5310(a)(2), and if the U.S. Secretary of Transportation has determined or determines in the future that the employee protective requirements of 49 U.S.C. section 5310(b) are necessary or appropriate for the state and the public body subrecipient for which work is performed on the underlying contract, the Contractor agrees to carry out the Project in compliance with the terms and conditions determined by the U.S. Secretary of Labor to meet the requirements of 49 U.S. C. Section 5333(b), U.S. DOL guidelines at 29 C.F.R. Part 215 and any amendments thereto. These terms and conditions are identified in the U.S. DOL’s letter of certification to FTA, the date of which is set forth in the Grant Agreement or Cooperative Agreement with the state. The contractor agrees to perform transit operations in connection with the underlying contract in compliance with the conditions stated in that U.S. DOL letter.

- (c) Transit Employee Protective Requirements for Projects Authorized by 49 U.S. C. Section 5311 in Nonurbanized Areas – If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S. C. Section 5311, the Contractor agrees to comply with the terms and conditions of the Special Warranty for the Nonurbanized Area Program agreed to by the Secretaries of Transportation and Labor, dated May 31, 1979, and the procedures implemented by U.S. DOL or any revision thereto.
- (2) The Contractor also agrees to include any applicable requirements in each subcontract involving transit operation financed in whole or in part with Federal assistance provided by FTA.

Breaches and Dispute Resolution

If the vendor awarded a contract (i.e. Contractor) pursuant to this solicitation abandons, or before completion, discontinues that project; or if by reason of any of the events or reason, the commencement, prosecution, or timely completion of this project by the vendor is rendered improbable, infeasible, impossible, or illegal, the IPTS may, by written notice to the vendor, suspend any or all of its obligations under the contract until such a time as the event or conditions resulting in such suspension has ceased or been corrected, or the agency may terminate any of its obligations under the contract.

Upon receipt of a final termination or suspension notice, the vendor shall proceed promptly to carry out their actions required which may include any or all of the following: (1) necessary action to terminate or suspend, as the case may be, project activities and contracts and. (2) furnish a statement of the status of the project activities and contracts and. as a proposed schedule, plan and budget or terminating or suspending and closing-out project activities and other undertakings, the cost of which are otherwise included as project costs. The closing out shall be carried out in conformity with the latest schedule, plan, and budget within a reasonable time. Reimbursement to the vendor in the event of termination shall be for actual costs, less any assessment of damages.

Disputes arising in the performance of any Contract awarded pursuant to this solicitation that are not resolved by agreement of the parties and concurred with by the Iowa DOT shall be decided in writing by the authorized representative of the Procurement Administrator for the IPTS that awarded the contract for professional services. This decision shall be final and conclusive unless within ten calendar days from the date of receipt of its copy of the decision, the contractor mails or otherwise delivers a written appeal to the Procurement Administrator. In regard to any such appeal, the Contractor shall be afforded with an opportunity to be heard and to offer evidence in support of its position. If the Contractor deems that the Procurement Administrator rendered a decision that it cannot accept, any further review of the matter must be settled in a court of competent jurisdiction within Iowa.

Disadvantaged Business Enterprise Requirements (DBE) Plan Approval/Submission:

Each contractor/vendor shall comply with all rules and regulations promulgated by the Federal Transit Administration of the U.S. DOT regarding participation of Disadvantaged Business Enterprises in contracting opportunities by any contract awarded under this solicitation. As such, any bidder must complete and submit with any bid a Disadvantaged

Business Enterprise Certification for Non-Rolling Stock Materials or Services as promulgated under 49 CFR Part 26.and other applicable laws and regulations.

State and Local Law Disclaimer

The use of many of the clauses delineated herein to comply with Federal requirements may be significantly affected by State law. In the event that the Code of Iowa may contain requirements that are not precluded by federal statute, state law or local shall be applicable. If the Contractor has reason to believe that any discrepancy exists between local, state, or federal requirements, it is incumbent on the Contractor to request in writing that a determination be made and issued by the Procurement Administrator to resolve any such discrepancy.

Incorporation of Federal Transit Administration (FTA) Terms

The preceding provisions include, in part, certain Standard Terms and conditions required by DOT, whether or not expressly set forth in the provisions of this solicitation. All contractual provisions required by DOT, as set forth in FTA circular 4220.1D., dated April 15, 1996, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this solicitation or contract awarded thereof. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any requests made by the IPTS/Transit Agency, other participating Iowa public transit systems, or the Iowa DOT which would cause any of these parties to be in violation of FTA terms and conditions.

***Non-Collusion Bidding Certification: Not Applicable per FTA c.4220.1E, because this 28E agreement is to purchase service from another governmental entity.

Prohibited Interest: No member of, or delegate to, the Iowa State Legislature or the Congress of the United States shall be admitted to any share or part of this contract or to any benefit arising therefrom. No member, officer, or employee of the Transit Agency during his/her tenure or for one year thereafter shall have any interest, direct or indirect, in a contract or proceeds resulting from this solicitation.

Certificate of Compliance: Each Contractor must submit a properly prepared and signed Certificate of Compliance with Federal and this Solicitation's Requirements. Signing the form obligates the vendor to all requirements of this solicitation and constitutes the vendors assurance that it has the capacity and intent to deliver the services agreed upon or delineated as the scope of Contractor responsibilities in a manner that conforms with or exceeds federal and state standards and the transit agency's minimum requirements which are herein delineated or incorporated by reference into a Transit or Professional Services Agreement.

Declaration of Project Federal Assistance, Payment for Services

Federal assistance is anticipated to defray approximately 20% (but not greater than 80%) of the budgeted project costs of the work or item(s) being purchased. Federal assistance for the items being purchased cannot be reimbursed to the purchaser (Transit Agency) by the Iowa Department of Transportation or the Federal Transit Administration until such

work /item is delivered, inspected, and accepted. Unless otherwise detailed in writing, payment for the item(s) purchased shall not be made to the Contractor until approximately 30-45 days after the date an items is accepted by the Purchaser's Project Manager/transit agency and concurrence is given, if such is required by the Iowa DOT as the grantee

Protest of Solicitation Administration

Any party may initiate a protest of these provisions or decisions made pursuant to them in accordance with the protest procedure issued as part of this solicitation. See Protest Provision

Retention of Payment:

A reasonable portion of the amounts payable may be retained to assure correction of service deficiencies and compliance with the provisions of the Transit or Professional Services Contract jointly executed by the Transit Agency and the Contractor. The Contractor shall be informed in writing of all such items failing to meet provisions agreed upon and the amount retained for each item.

RESOLUTION AUTHORIZING THE MAYOR TO SIGN AND THE CITY CLERK TO ATTEST THE FY2014 AGREEMENT BETWEEN JOHNSON COUNTY, IOWA AND THE CITY OF UNIVERSITY HEIGHTS, IOWA FOR THE PROVISION OF PARATRANSIT SERVICE WITHIN THE COPROPRATE LIMITS OF UNIVERSITY HEIGHTS

WHEREAS, Chapter 28E, Code of Iowa (2013), provides, in substance, that any power which may be exercised by a public agency of this state may be exercised jointly with another public agency having such power; and

WHEREAS, it is in the mutual interest of Johnson County, Iowa and the City of University Heights, Iowa to encourage the use of public transit by residents of University Heights; and

WHEREAS, the parties have negotiated a contract for paratransit service in FY2014 at a rate of \$8,443.80, a copy of which is attached and incorporated herein.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF UNIVERSITY HEIGHTS, IOWA:

1. The attached FY2014 28E Agreement for paratransit services between Johnson County, Iowa and the City of University Heights, Iowa is hereby approved, and the Mayor of the City of University Heights, Iowa is hereby authorized to execute four (4) originals and the City Clerk to attest same on behalf of the City of University Heights, Iowa.
2. The County Auditor is directed to file a copy of said agreement with the Secretary of the State of Iowa and the Johnson County Recorder, as required by Iowa Code Chapter 28E.

Upon motion by _____, and seconded by _____, the vote was as follows:

	AYES:	NAYS	ABSENT
Haverkamp	_____	_____	_____
Hopson	_____	_____	_____
Lane	_____	_____	_____
Leff	_____	_____	_____
McGrath	_____	_____	_____

Upon Roll Call thus recorded, the Resolution is declared adopted this 25th day of June, 2013.

Louise From, Mayor
City of University Heights

ATTEST:

Christine M. Anderson, City Clerk

Passed and approved this 25th day of June, 2012.

Louise From, MAYOR

ATTEST: _____
Christine Anderson, CITY CLERK

From: "Steve Ballard" <Ballard@lefflaw.com>
Subject: St. Andrew Development proposal
Date: Mon, June 24, 2013 7:19 pm
To: "Brennan McGrath - Council" <brennan-mcgrath@university-heights.org>,"Chris Anderson - City Clerk" <uhclerk@yahoo.com>,"Jan Leff" <'jaleff@mchsi.com'>,"Jim Lane" <'jimlane@yahoo.com'>,"Josiah Bilskemper - Engineer" <jbilskemper@shive-hattery.com>,"Lori Kimura - Treasurer" <lkimura@keystoneproperty.net>,"louise-from@university-heights.org" <louise-from@university-heights.org>,"Mike Haverkamp - Council" <mike-haverkamp@university-heights.org>,"Ron Fort - Chief of Police" <ron.fort@uhpolice.org>,"Rosanne Hopson - Council" <rosanne-hopson@university-heights.org>
Cc: "pbb338koser@aol.com" <pbb338koser@aol.com>,"Tom Gelman" <gelman@ptmlaw.com>,"Pat Ford" <Ford@lefflaw.com>

Mayor and Council Members,

As directed at the April Council meeting, I met with Jeff Maxwell and his lawyer, Tom Gelman, to discuss the One University Place development proposal. We discussed the documents making up the development proposal and the steps remaining in the Council's consideration of the proposal.

The development proposal comprises these materials:

1. "PUD Submission September 8, 2011", a 28-page document prepared by Neumann Monson Architects, including layout plan, site plan, and related materials. Copies of that document were distributed previously. I do not have an electronic version to attach because the file is too large. The document is available on the City's website – <http://www.university-heights.org/BuildZoneSanit/OUP/index.html> -under the heading "September 9, 2011 - Updated PUD Plans"
2. A "Supplement to the Multi-Family Commercial PUD Application of Jeff Maxwell" prepared by Mr. Gelman and delivered to the City in 2011. This document is attached; it may also be found in the above link under the heading "April 25, 2011 One University Place Planned Unit Development Submission - Supplement to above document".

I believe that the steps remaining in the Council's process for considering the proposal are as follows:

1. Consideration of the PUD Plan; and
2. Consideration of a Developer's Agreement as part of the PUD Plan.

The Council may determine the manner in which it desires to consider Mr. Maxwell's proposal including whether, when, where, and for how long to hold public hearings, special meetings, work sessions, or other modes of consideration.

To begin, my suggestion is that the Council decide if it wants to direct the City's professional staff to evaluate the proposal further and make written reports and recommendations or whether staff's prior review and recommendations are sufficient.

Of course, the Council may wish to direct staff to focus on particular parts of the plan and address particular issues if the Council desires. With staff reports and recommendations in hand, I think the Council will be in a better position to move forward with its consideration of the proposal.

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Iowa City, Iowa 52244-2447
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Supplement to the Multi-Family Commercial PUD Application of Jeff Maxwell

University Heights Zoning Ordinance 79, as modified by amendments thereto specifically including Ordinance 180, sets out the submittal and procedural requirements for a Multi-Family Commercial PUD. This memorandum is for the purpose of initially addressing the submittal and approval requirements as pertains to certain legal documentation.

The following references are to provisions of Ordinance 180.

A. Section 13.B includes certain development regulations and restrictions, most of which will be inherent in the design of the buildings and improvements shown on the PUD Plan.

Additionally, Section 13.B(4) provides:

No more than one person not a member of the family as defined in Section 3 of this Ordinance may occupy each dwelling unit as part of the Individual Housekeeping Unit.

By the inclusion of this provision in the Zoning Ordinance, it has become an enforceable requirement in connection with the use and enjoyment of all properties subject to a Multi-Family Commercial PUD Zone. However, in addition to such inclusion, it is anticipated that the same language will be repeated in the Development Agreement required for the Multi-Family Commercial PUD. Furthermore, this same language will be incorporated into the Condominium Declaration for the Multi-Family Commercial project. It is reasonable that the Development Agreement require such inclusion.

B. Section 13.C(4) indicates that no building permit will be issued for the Multiple-Family Commercial PUD development until the City Council has approved the Plan Application and a Development Agreement has been entered into pursuant to Section 13.E of the Ordinance. Section 13.E of the Ordinance enumerates the various items that might be contained in the Development Agreement, including the following:

- 1. Design standards applicable to the project.*
- 2. Development covenants, easements and restrictions, including a prohibition on further subdivision of the property developed pursuant to the multi-family commercial PUD. Restrictions may also include the types of businesses and hours of operation of businesses located in the commercial space portion of the multi-family commercial PUD and whether and on what conditions some or all dwelling units may be leased.*
- 3. Site improvements, including sidewalks, that will be constructed following approval of the Site Development Plan.*
- 4. Timing of commencement and completion of construction of buildings and improvements pursuant to the multi-family commercial PUD Plan.*

5. *Payment by the Developer of the costs and fees, including engineering, legal, administrative, publication and recording fees incurred by the City of University Heights in considering the PUD Plan.*

While the Developer fully contemplates entering into a Development Agreement with the City of University Heights pertaining to this PUD application, the exact terms and conditions of that agreement are not yet evident because most will be developed during the course of the City's review of the submitted application. As such, rather than proposing an agreement at the threshold of the application process, it is more rational to develop the agreement as the process progresses and to have the agreement finalized near the end of that process.

In anticipation of this Development Agreement process, the following is in preliminary response to the various elements to be addressed in the Development Agreement.

1. *Design Standards.* The design standards for the project will, for the most part, be reflected on submitted PUD Plan documents. To the extent that the documents do not adequately address certain design standards, those can be incorporated into the Development Agreement.

One area of anticipated interest will be project lighting to keep it appropriate for safety and functional purposes, as well as in keeping with the surrounding properties.

Other design standards will likely be highlighted through the plan review process.

2. *Development covenants, easements, restrictions, etc.* The entire property will be submitted to a Horizontal Property Regime pursuant to Chapter 499B of the Iowa Code. As such, the covenants, easements and restrictions applicable to the property shall be incorporated, for the most part, in the Condominium Declaration. This is typical for condominium projects.

Necessary easements for public utilities, as will be identified through the PUD Plan review process will likely be granted separately and should be addressed in the Development Agreement for future implementation.

Submitting the property to a Horizontal Property Regime will, for all practical purposes, preclude the property from being further subdivided. However, it is anticipated that the Condominium Declaration will also include a prohibition against further subdivision.

The Condominium Declaration is difficult to prepare, and not likely appropriate to record, until final construction plans for at least a portion of the project have been completed. We are anticipating a fairly boilerplate Declaration appropriate for a multi-use condominium project, and then special provisions to reflect any unique features of this project and any specific requirements of the City of University Heights identified in this PUD review process. The boilerplate provisions will include, but not be limited to, the following matters:

- i) description of the condominium regime;
- ii) description of general and limited elements, and of the units;
- iii) granting of easements for access, utilities and repairs and maintenance for the mutual benefit of all condominium unit owners;

- iv) information regarding insurance and the respective responsibilities of the association of owners and of individual unit owners for maintaining insurance;
- v) the respective responsibilities of the unit owners and the association for maintenance, repairs and replacements;
- vi) provisions relating to partial damage or total destruction of the project;
- vii) provisions relating to the association of co-owners and its authority and obligations in connection with assessments and the operation of the condominium project;
- viii) specification of each unit owner's voting interest, percentage interest in the common elements and responsibility for participating in common maintenance, repair and replacement activities; and
- ix) other matters appropriate to the project.

The association of co-owners will be incorporated as a nonprofit corporation under Iowa law and as such will have basic Articles of Incorporation and Bylaws specifying governance, procedures and participation of owners in the association.

It is further anticipated that the Condominium Declaration will anticipate the possible phasing of the condominium project to allow, for example, for the commercial/residential building to be built and operated first, and then for the second building to be built and become operational.

Rather than having the Condominium Declaration and the homeowner association documents prepared prematurely at this time, a more rational approach is to enumerate in the Development Agreement those matters arising from the PUD review process that are agreed upon between the City of University Heights and the Developer, and to specify therein those that are required for inclusion in the future Condominium Declaration. The City's control over the issuance of building and occupancy permits can certainly provide enforcement for the subsequent inclusion of any such agreed to requirements.

Ordinance 180 provides that matters relating to the types of business and hours of operation of occupants in the commercial portion of the project will be addressed in covenants, easements, and restrictions (or, in this instance, more appropriately the Condominium Declaration). It is anticipated that all of the uses specified in the Ordinance 180, Section 6.F(2)(b) will be permitted, along with any such further uses as may be identified during the course of the PUD Application review process. In terms of hours of operation, it is anticipated that there should be a balancing of the interests of commercial activities choosing to locate in the facility with the interests of the residential units and the adjacent neighborhood, much in the same way as those interests have been reasonably balanced in connection with other commercial areas within the City of University Heights and elsewhere. The PUD Application review process should include such discussions with the outcome being incorporated into the Development Agreement as future requirements for inclusion in the Condominium Declaration.

The other item under Section 13.E(2) of Ordinance 180 to be included in the development covenants (or again, in this case, the Condominium Declaration) is to be "whether and under what conditions some or all dwelling units may be leased". At the present time it is intended by the Developer, in the commercial/residential building, that the residential units will be a mixture of owner-occupied and rental units, thereby being able to respond to market demand for each within the City of University Heights. It is correspondingly anticipated that the circumstances (size, finish and price) associated with the residential building will likely favor owner-occupied

units as opposed to rental units, but the Developer at this time would not choose to preclude any possibility of leasing. As such, it is anticipated that the Condominium Declaration will include provisions that will i) protect all unit owners and occupants in both buildings from undesirable circumstances constituting nuisances, and ii) protect the integrity of the residential units for pleasant residential use regardless of whether the occupants are owners or tenants. Certainly the Developer is willing to receive the Council's input on such matters and to consider mechanisms for assuring peaceful enjoyment and use of residential units by all occupants provided such mechanisms are not inappropriately discriminatory.

The Development Agreement should also contain a provision that any matter required by such document to be included in the Condominium Declaration shall not be amended by the condominium Owners' without the prior approval of the City. In addition to or as an alternative to incorporating any one or more of such requirements into the Condominium Declaration, where appropriate the Developer is willing to implement them through covenants or easements. The PUD Review process and the specific nature of any such requirements will likely illuminate the most appropriate form of documentation if not in the Condominium Declaration. These determinations can then be included in the Development Agreement.

3. Site Improvements.

For the most part, the site improvements are shown on the PUD plan. To the extent additional requirements for site improvements may be appropriate, they can be identified through the review process for inclusion in the Development Agreement.

4. Timing of Commencement and Completion of Construction.

As is well understood, the current owner of the land has certain control over contingencies which will ultimately determine when the project might be commenced and completed. It is difficult for the Developer to pinpoint dates at this time. However, it would appear more critical that the Development Agreement include understandings as to the length of the construction process from commencement to completion. In this regard it is the Developer's intention, once construction commences, to complete the process as efficiently and in as timely a manner as the parameters of the project permit. This would apply to each phase of the project.

5. Payment by the Developer of Costs and Fees.

The Developer has already agreed to, and has already reimbursed the City for, certain costs and fees associated with this PUD Application. The developer has recently submitted to the City a modified agreement for further reimbursement. To the extent necessary, additional provisions, consistent with those already agreed to, can be included in the Development Agreement.

The foregoing constitutes a basic outline of the documentation that is anticipated for this project for compliance with Zoning Ordinance requirements. The Developer looks forward to the City's review process and to mutually formulating appropriate provisions to be included within the anticipated Development Agreement.