

December 7, 2018

BY HAND DELIVERY AND EMAIL

Liberty Township Board of Trustees
10104 Brewster Lane
Powell, Ohio 43065

RE: Written Notice of Potential Default

Dear Trustees:

Pursuant to Article 8, Section 4 of the Liberty Township – City of Powell Cooperative Economic Development Agreement (“CEDA”), dated May 1, 2002, this letter shall serve as a notice of potential breach and default by Liberty Township of the terms of the CEDA. As set forth in more detail below, representatives of Liberty Township have knowingly and purposefully initiated negotiations with Delaware County to contract for EMS services and cease Township EMS services. As explained in more detail below, these actions, if implemented, would amount to a default under Article 6, Section 1 of the CEDA. Please accept this correspondence as a courtesy notice of a potential default of the CEDA that would be occasioned by any such cessation of EMS services by Liberty Township.

Article 6, Section 1 of the CEDA provides as follows with regard to the continuation and future enhancement of services to the CEDA territory:

Section 1. Provision of Services. During the term of this Agreement and any renewal thereof, the CITY and TOWNSHIP may furnish the CEDA Territory with such services, either individually or jointly, as the individual parties deem appropriate and as are allowed or otherwise required by law.

Relatedly, Article 5, Section 1 of the CEDA contains a prohibition on removal of annexed properties from the Township, such that the Township could maintain the integrity of its tax base to fund the provision of Township services:

Section 1. TOWNSHIP Boundaries. During the term of this Agreement and any renewal thereof, the CITY shall not exclude the TOWNSHIP from lands which comprise, have been previously annexed to, or which are

subsequently annexed to the CITY under this Agreement by changing TOWNSHIP boundaries under Chapter 503 of the Ohio Revised Code or any future or similar statute of like tenor or effect. It is the intention of the parties that the Liberty Township boundary lines shall not be altered in any way so as to exclude the TOWNSHIP from any existing or future CITY areas within the CEDA Territory. In other words, it is the express intention and agreement of the parties that there shall exist an overlay of the CITY and TOWNSHIP boundaries for all portions of the CITY which are currently part of the TOWNSHIP and for all future unincorporated areas of the TOWNSHIP which may be annexed into the CITY.

Further sections of Article 5 set forth a reparations payment obligation and formula in the event that the City were to remove any areas annexed after the date of the CEDA.

Moreover, Article 8, Section 14 of the CEDA made clear that the provisions of the CEDA should be liberally construed to provide the maximum advantage to the parties in terms of services and facilities of the governmental bodies:

Section 14. Liberal Construction. The parties agree that just as Ohio Revised Code Section 701.07 is to be liberally construed to allow parties to enter into Cooperative Economic Development Agreements, the parties further agree that this Agreement shall be liberally construed in order to facilitate the desire of each of the parties to carry out this Agreement by providing government improvements and *facilities and services*, by promoting and supporting economic development, by creating and preserving employment opportunities, and by allowing for the sharing by the TOWNSHIP and CITY in the benefits of economic development. Each provision of this Agreement shall be construed and interpreted so as to permit maximum advantage to the parties allowed by Ohio Revised Code Section 701.07. (Emphasis added.)

Naturally, the above provisions of the CEDA should be interpreted in light of the facts and circumstances surrounding the negotiations of the CEDA. Our records indicate that all parties to the negotiations understood and agreed that the Township would be the provider of EMS and fire services. As a matter of fact, notes of a meeting that occurred on Oct. 18, 2001, document that one of the three primary issues that were raised by the Township and discussed by the parties was that the agreement contain assurances that territory not be removed from the Township so that the Township would perpetually be the provider of Fire Department services, obviously including both fire and EMS. Moreover, on Oct. 23, 2001, City Manager Steve Lutz sent a letter to the editor which was published in the Olentangy News. It states to the citizens of Powell that "the City is preparing to enter into a pre-annexation agreement based on anticipated benefits," among them that "this property will remain part of Liberty Township and therefore continue to contribute to the Liberty Township Fire Department" and other Township funds.

Clearly, Liberty Township continuing to provide fire and EMS services was a material inducement to the City to enter into the CEDA. The Township provides no other significant services to taxpayers of the City. Fire and EMS services are the services required by law under section 1 above, and failure to provide EMS services would be a default under the CEDA.

In addition, a word of caution is appropriate with respect to the replacement fire levy recently approved by the voters in 2017. The City would respectfully urge the Township and County to research whether any of the funds produced by that levy in 2019 and future years could be used to fund anything other than Township Fire Department expenses. Obviously, when Powell residents were asked to approve the 5.6 mill replacement levy, it was clearly represented that the Township would be providing EMS services at this millage level. As a matter of fact, conversation occurred amongst the Trustees as to whether to transition to a County EMS arrangement at that time, and the public was told that passage of that levy would mean that the Township would maintain its own EMS service. Regardless, any funds from that levy or previous similar levies (or the transfer of equipment or other property paid for by the proceeds of those levies) may be of questionable legality. This issue needs to be fully explored prior to any further consideration of the County EMS proposal.

Based on the foregoing, the Township's pursuing the transfer of EMS services to the County amounts to a potential default and breach of the CEDA. Ceasing and desisting from further efforts to reduce or otherwise modify the current level of Fire & EMS services by the Liberty Township Fire Department in the City of Powell is hereby demanded to avoid default.

We look forward to your prompt response.

Sincerely,



Eugene L. Hollins
Powell Law Director

cc: Steve Lutz, City Manager
Matt Huffman, Township Administrator
Powell City Council
Board of Commissioners of Delaware County