Go to Previous View

Go to Table of Contents - Brief

SUPREME COURT OF ARIZONA

DARCIE SCHIRES; ANDREW AKERS; and GARY WHITMAN, Appellants/Petitioners, v. CATHY CARLAT, et al., Appellees/Respondents.	Arizona Supreme Court No. CV-20-0027-PR Court of Appeals Division One No. 1 CA-CV 18-0379 Maricopa County Superior Court No. CV 2016-013699

RESPONDENTS' COMBINED SUPPLEMENTAL BRIEF AND APPENDIX

Mary R. O'Grady (011434)
Emma Cone-Roddy (034285)
OSBORN MALEDON, P.A.
2929 North Central Avenue, Ste. 2100
Phoenix, Arizona 85012
(602) 640-9000
mogrady@omlaw.com
econe-roddy@omlaw.com

Vanessa Hickman, City Attorney, No. 022406
Amanda Sheridan, Senior Assistant City Attorney, No. 027360
OFFICE OF THE CITY ATTORNEY
CITY OF PEORIA
8401 West Monroe Street
Peoria, Arizona 85345
(623) 773-7330
caofiling@peoriaaz.gov

Attorneys for Appellees/Respondents

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

INTRODUCTION

Public purpose: In determining whether an expenditure serves a public purpose, "courts owe significant deference to the judgments of elected officials." *Turken v. Gordon*, 223 Ariz. 342, 346 ¶ 14 (2010). Courts find a public purpose lacking "only in those rare cases in which the governmental body's discretion has been 'unquestionably abused.'" *Id.* at 349 ¶ 28 (quoting *City of Glendale v. White*, 67 Ariz. 231, 237 (1948)).

Here, Peoria's elected officials did not "unquestionably abuse" their discretion. Rather, they reasonably determined that the HU and Arrowhead contracts would serve public purposes by, among other things, adding specialized higher education in Peoria, creating jobs in a desired industry, revitalizing property in an important district, and generating substantial economic output and tax revenues—all in furtherance of pre-existing policy goals.

Consideration: Courts "do not ordinarily examine" proportionality of consideration between contracting parties. *Turken*, 223 Ariz. at 349 ¶ 32. The reason courts make an exception in Gift Clause cases is to ensure the public entity is not "paying far too much for something." *Id.* at 350 ¶ 32. Even then, judicial review is limited to whether there is a gap in consideration "so inequitable and unreasonable that it amounts to an abuse of discretion, thus providing a subsidy to the private entity." *Id.* at 349 ¶ 30 (quoting *Wistuber v. Paradise Valley Unified Sch. Dist.*, 141

Ariz. 346, 349 (1984)).

Here, Peoria never paid "far too much" for anything. Rather, Peoria agreed to reimburse a portion of HU's and Arrowhead's costs in return for promises it deemed highly beneficial to the public, including the promise to open and operate a specialized undergraduate campus in Peoria and the promise to convert an otherwise underutilized building in an important district to an educational use.

Petitioners' arguments conflate two separate inquiries: *what counts* as consideration, and *how to value* that consideration. On the first inquiry, Petitioners define consideration too narrowly and ignore many of HU's and Arrowhead's actual promises to Peoria. On the second inquiry, Petitioners provide no evidence at all, even though the burden rests on their shoulders.

ARGUMENT

I. Petitioners have not shown that Peoria unquestionably abused its discretion in concluding that its contracts served a public purpose.

A. Arizona's broad policy and Peoria's specific policies.

Arizona's elected officials have authorized municipalities to spend money on "economic development activities." A.R.S. § 9-500.11(A). This includes projects that municipalities determine will "assist in the creation or retention of jobs" or "improve or enhance the economic welfare of the inhabitants." *Id.* § 9-500.11(D)(1).

Peoria's elected officials, in turn, have adopted more specific policies. This includes an Economic Development Incentive and Investment Policy ("EDIIP"), which sets out a "framework for evaluating" eligibility for financial incentives. (APP039.)[1] These incentives are designed to "fill gaps" in private financing that otherwise make projects "improbable." (APP040.) Targeted industries include "higher education" and those that use "innovative new technologies." (APP042.) To qualify for an incentive, a project must meet certain requirements, such as investing at least $250,000 in capital, creating at least 10 jobs, and repositioning "unused or underutilized properties." (*Id.*) Anyone may apply, and applicants must provide "supporting documentation" and undergo a "review process." (APP044.) Once a project is approved, the amount and timing of payments depends on negotiated contract terms, and generally payments will not be made until a project has "completed certain of its contractual obligations." (APP042.)

Peoria's elected officials have also adopted a Building Reuse Program for a key commercial district, the "P83 District." (APP047.) The program is designed to "encourage a more diverse use of existing vacant buildings" in the district. (APP047, 049.) Because converting a vacant building to a more productive use requires a "potentially extensive amount of tenant improvement costs," the Program permits eligible property owners to seek reimbursement of those costs "up to 50%." (APP047, 049.) Only certain kinds of costs are covered, and property owners must

[1] "APP" citations in this brief refer to the attached Appendix.

first submit documentation of costs to Peoria. (APP050.) Reimbursements are usually paid over time, and property owners who fail to timely perform give up their right to reimbursements and often must repay Peoria. (APP049.)

B. Overview of Peoria's contracts with HU and Arrowhead.

HU is a fully accredited, nationally recognized university in Indiana. (APP068 § 1.) HU submitted a proposal to open a digital media undergraduate campus in Peoria, with assistance under the EDIIP. (*See* APP067 § D.) After negotiation, Peoria agreed to reimburse a portion of HU's costs, in exchange for HU opening and operating the campus and other promises. (*See* Part II.B.1 below.)

HU then leased property in the P83 District from Arrowhead. (APP102 § 1(E).) Arrowhead submitted to Peoria a proposal to renovate the property for campus use, with assistance under the Building Reuse Program. (APP094–098.) After negotiation, Peoria agreed to reimburse up to 50% of Arrowhead's renovation costs, in exchange for Arrowhead completing specific kinds of renovations by a specific date and other promises. (*See* Part II.B.2 below.)

"The parties do not dispute that HU would not have opened a campus in Peoria if not for the HU agreement." (Ct. App. Op. at 4–5 ¶ 8; *see also* APP083–084 at 164:23–165:2 (testimony of HU representative).) Likewise, Arrowhead told Peoria that the Building Reuse Program "allows projects like this to actually be realized." (APP094.)

C. Peoria did not unquestionably abuse its discretion in determining that both contracts served a public purpose.

Peoria's elected officials determined that the HU and Arrowhead contracts served public purposes, including (1) bringing STEM-related higher education to Peoria, (2) creating significant jobs, (3) generating substantial economic output, (4) generating substantial tax revenues, (5) converting underutilized property to educational space in a key district, and (6) otherwise benefiting residents. (*See, e.g.*, APP067 §§ D, E, F, G; APP102 § 1(F), (G), (H).)

In making this determination, Peoria's elected officials did not "unquestionably abuse[]" their discretion. *Turken*, 223 Ariz. at 349 ¶ 28 (quoting *White*, 67 Ariz. at 237). Rather, they reasonably concluded that the contracts with HU and Arrowhead would benefit the public, in accordance with previously adopted policy goals.

Petitioners say these benefits are "secondary, intangible, and indirect" and "no Arizona court has ever" approved them. (Pet. at 15.) They are wrong on both counts. The public purposes identified by Peoria's elected officials are important, clear, and direct. And this Court has approved these sorts of public purposes. In *Turken*, for example, a municipality signed a contract that it expected would increase its "tax base" and produce "denser development, decreased pollution, and employment opportunities." 223 Ariz. at 348 ¶ 24. This Court deemed those purposes permissible, explaining that this Court has repeatedly taken "a broad view of permissible public purposes under the Gift Clause." *Id.* at 349 ¶¶ 25–28.

Petitioners also suggest that the contracts here serve no public purpose because they benefit "private" parties that Peoria does not "control." (*E.g.*, Pet. at 1–2.) Again, they are wrong on both counts. As long as an expenditure serves "a public purpose," it does not matter whether a private entity also benefits. *Turken*, 223 Ariz. at 348 ¶ 21. And, while government control over private entities is not a necessary feature of all expenditures, here Peoria exercised control by carefully specifying what HU and Arrowhead must do to receive reimbursements. (*See* Parts II.B.1 & 2 below.)

At bottom, Petitioners disagree with decisions of their elected representatives. Their proper recourse is political, not judicial. "[T]he primary determination of whether a specific purpose constitutes a 'public purpose' is assigned to the political branches of government, which are directly accountable to the public." *Turken*, 223 Ariz. at 349 ¶ 28.

II. Petitioners have not shown gross disproportionality of consideration.

A. The burden of proof lies with Petitioners.

It is Petitioners who "have the burden of proving gross disproportionality of consideration." *Cheatham v. DiCiccio*, 240 Ariz. 314, 322–23 ¶ 35 (2016). "It was not the burden of the [government entity] to prove that its contract was reasonable. The burden of proof was on those who challenged the contract. We will not assume disproportionality of consideration." *Wistuber*, 141 Ariz. at 350 (citation omitted).

The burden of proof properly belongs with Petitioners because (1) they are claiming that contracts adopted by their elected officials are unconstitutional, *cf.* *Baker v Univ. Physicians Healthcare*, 231 Ariz. 379, 387 ¶ 33 (2013); (2) courts usually do not evaluate consideration at all, *see* *Turken*, 223 Ariz. at 349 ¶ 32; and (3) otherwise public entities would face a burden each time their contracts are challenged under the Gift Clause, *cf.* *Wistuber*, 141 Ariz. at 350.

B. HU's and Arrowhead's promises to Peoria were consideration because they were bargained for.

Consideration in Gift Clause cases is defined the same as in other contract cases. It is "what one party to a contract obligates itself to do (or to forbear from doing) in return for the promise of the other contracting party." *Turken*, 223 Ariz. at 349 ¶ 31. Analysis of consideration therefore starts with the text of the contracts.

1. HU's promises to Peoria.

Peoria agreed to reimburse a portion of HU's costs for three years, but only if HU satisfied certain performance thresholds. (APP068–069 § 2.)

For Year 1, Peoria agreed to reimburse up to $900,000, but only if HU, among other things, (1) signed a lease of at least seven years at a facility in Peoria, (2) obtained state approval to offer at least five specific types of digital media degrees, (3) obtained approval for federal financial aid, and (4) accepted students for at least three specific types of digital media degrees in Fall 2016. (APP069–070 § 2(a).)

For Year 2, Peoria agreed to reimburse up to $550,000, but only if HU enrolled at least 100 undergraduates in person in Peoria. (APP070–071 § 2(b).)

For Year 3, Peoria agreed to reimburse up to $425,000, but only if HU enrolled at least 150 undergraduates in person in Peoria. (APP071–072 § 2(c).)

For Years 4, 5, 6, and 7, HU promised to maintain enrollment of at least 150 undergraduates in person in Peoria, or else it would repay a pro rata share of Peoria's reimbursements. (APP074 § 3(f).)

For each year, HU promised to give Peoria a detailed accounting of costs. (APP070–072 § 2(a)(x), (b)(ii), (c)(ii).) HU promised to use reimbursements only for certain costs, such as facility improvements. (APP072–073 § 2(d).)

HU also promised to invest $2.5 million in the Peoria campus during the first three years to develop the digital media programs, and promised to give Peoria a detailed annual accounting of this investment. (APP074–075 § 4(b).)

HU also promised to participate in economic development activities with Peoria to attract specific industries. (APP073 § 3(a).) These activities expressly included participating in meetings with business prospects, creating training programs for workforce development, and marketing. (*Id.*)

HU also promised not to pursue a similar project elsewhere in Arizona for seven years, or else it would repay Peoria entirely. (APP073 § 3(b).)

Go to Previous View
Go to Table of Contents - Brief

2. Arrowhead's promises to Peoria.

Peoria agreed to reimburse up to 50% of Arrowhead's costs, not to exceed $737,596, over the course of ten years, but only if Arrowhead satisfied certain criteria. (APP104 § 3; APP106 § 4.)

Arrowhead promised to renovate according to a schedule that assigned specific costs in an amount of $1,475,192. (APP103 § 2(A); APP114.) Arrowhead also promised to finish in time for HU's campus to open to the public by October 15, 2016, and agreed that it would receive no reimbursement if, at the time of such reimbursement, the campus was not open to the public. (APP103–104 § 2(A), (B)(4), (B)(6), (C)(1).) Arrowhead also promised to comply with its lease with HU and pass all applicable inspections. (APP103 § 2(B)(5); APP104 § 2(C)(2)–(5).)

As for timing: Peoria agreed to pay the first 30% of reimbursements after renovations were complete and HU's campus was open to the public. (*See* APP104 § 3(A).) Then, for the next three years, Arrowhead promised to give Peoria a security interest in the property, to guard against a risk of early default. (*See* APP104–105 § 3(B).) Then, for the next seven years, Peoria agreed to pay another 10% of the reimbursements each year, as long as HU's campus remained open to the public and other criteria remained satisfied. (*See* APP105–106 § 3(C), (D).)

Arrowhead also promised to submit proof of payment for all items for which it requested reimbursement, and Peoria could decline reimbursement for any item it deemed excessive. (APP103 § 2(B)(1), (2), (3).)

3. Petitioners define consideration too narrowly.

All of the above promises by HU and Arrowhead were consideration to Peoria, because they were what HU and Arrowhead "obligate[d] [themselves] to do (or to forbear from doing) in return for the promise of the other contracting party." *Turken*, 223 Ariz. at 349 ¶ 31.

Petitioners try to exclude these promises from analysis by urging a different, narrower definition of consideration. But their definition would upend the "settled meaning in contract law." *Turken*, 223 Ariz. at 349 ¶ 31.

- ***Consideration can involve "operating a business."*** Petitioners suggest that HU's and Arrowhead's promises to Peoria are not consideration because they merely promised to "operate their businesses." (*E.g.*, Pet. at 5.)

As a factual matter, Petitioners dramatically understate the record. Peoria did not simply agree to pay HU and Arrowhead to "operate their businesses." Rather, Peoria agreed to reimburse a portion of HU and Arrowhead's costs, if and only if (1) HU opened a specific type of campus in Peoria; (2) HU's and Arrowhead's costs were spent in specific documented ways; and (3) HU and Arrowhead accomplished clear progress in major endeavors that Peoria determined qualified for assistance under pre-existing generally applicable policies. (*See* Parts II.B.1 & 2 above.)

And, as a legal matter, Petitioners are wrong to suggest that a promise to open and operate one's business in a particular city—especially in a specific way that furthers a major endeavor determined by public officials to be in the public interest under pre-existing policies—cannot be consideration. As long as the promise is bargained for, it is consideration. *Turken*, 223 Ariz. at 349 ¶ 31.

➢ ***Consideration does not require giving "direct" benefits, and regardless, Peoria received direct benefits.*** Petitioners also argue that HU's and Arrowhead's promises are not consideration because neither HU nor Arrowhead gives any "direct" benefit to Peoria. (*E.g.*, Pet. at 7.)

It is important to distinguish between two types of directness. One involves whether a *promise is made directly* to a public entity. That was the issue in *Turken*. *See* 223 Ariz. at 350 ¶ 33 (focusing on "what the private party has promised to provide"). But that is not what Petitioners mean here. In this case, both HU and Arrowhead made their promises directly to Peoria. (*See* Parts II.B.1 & 2 above.)

The other involves whether the *thing being promised is given directly* to the public entity. This is what Petitioners mean. They say that HU and Arrowhead did not promise to give any "direct" or "tangible" benefit to Peoria and thus their promises are not consideration. (*E.g.*, Pet. at 7.)

This argument fails as a matter of law. A bargained-for promise is consideration regardless of whether the promisee directly receives a benefit, tangible or otherwise. *See* Restatement (Second) of Contracts § 71 cmt. d (1981) (explaining types of consideration); *id.* § 71 cmt. e ("It matters not from whom the consideration moves or to whom it goes.").

Moreover, Peoria *did* receive direct benefits. Public entities often enter into contracts not to obtain title or receive services, but to secure promises that otherwise have value to their communities at large. Consider, for example, a municipality that partially reimburses a hospital to begin offering COVID-19 tests to patients. The hospital's promise to offer tests would be consideration to the municipality, regardless of whether the municipality ever owns the tests. Again, as long as a promise is bargained for, it is consideration. *Turken*, 223 Ariz. at 349 ¶ 31.

- ***Consideration need not be "quantifiable."*** Petitioners also argue that HU's and Arrowhead's promises are not consideration because they have no "quantifiable" value. (*E.g.*, Pet. at 7–8.)

As a factual matter, Petitioners are largely mistaken. There are ways to quantify the value of (many of) HU's and Arrowhead's promises, as explained in Part II.C below. Petitioners simply failed to do so.

Regardless, as a legal matter, unquantifiable promises can be consideration. "Monetary gain is not always required as consideration." *Schade v. Diethrich*, 158 Ariz. 1, 8 (1988). Indeed, "in many situations there is no reliable external standard of value, or the general standard is inappropriate to the precise circumstances of the parties." Restatement (Second) of Contracts § 79 cmt. c (1981). Again, as long as a promise is bargained for, it is consideration. *Turken*, 223 Ariz. at 349 ¶ 31.

➢ ***Consideration need not be "directly tied" to a specific return promise in a contract.*** Petitioners also argue that two of HU's promises—its promise to invest $2.5 million in the campus and to participate in economic development activities—are not consideration because they are not "directly tied" to Peoria's "financial incentive package." (Pet. at 3.)

As a factual matter, Petitioners are incorrect. Under the agreement, if HU fails to comply with "any" of its promises, then it is in default. (APP107 § 8.) And if HU defaults, then depending on the timing, Peoria need not reimburse HU's costs and can seek repayment from HU. (APP108 § 9(B).)

Moreover, as a legal matter, Petitioners "assume[] that every provision in a contract must have a separately bargained for and stated consideration. It need not." *Chicago Litho Plate Graining Co. v. Allstate Can Co.*, 838 F.2d 927, 931 (7th Cir. 1988). Rather, courts take a "panoptic view" of the transaction. *Cheatham*, 240 Ariz. at 321 ¶ 30 (quoting *Turken*, 223 Ariz. at 352 ¶ 47). Contracting parties are free to exchange one large set of promises for another large set. Again, as long as promises are bargained for, they are consideration. *Turken*, 223 Ariz. at 349 ¶ 31.

C. Petitioners have not shown a gap in consideration so unreasonable as to be an abuse of discretion.

To prove gross disproportionality, Petitioners must show a gap in consideration "so inequitable and unreasonable that it amounts to an abuse of

Go to Previous View Go to Table of Contents - Brief

discretion, thus providing a subsidy to the private entity." *Turken*, 223 Ariz. at 349 ¶ 30 (quoting *Wistuber*, 141 Ariz. at 349).

The values of Peoria's promises are obvious. To HU, Peoria promised to reimburse certain costs for three years, up to $1,875,000. (Part II.B.1 above.) To Arrowhead, Peoria promised to reimburse certain costs over the course of ten years, up to $737,596. (Part II.B.2 above.)

The values of HU's and Arrowhead's promises are less obvious. But, crucially, Petitioners *do not even try* to assign a value. Rather than offer a valuation method, they try to exclude the promises from analysis altogether by redefining consideration. (*See* Part II.B.3 above.) This Court should resolve the consideration dispute here by simply holding that Petitioners' narrow definition of consideration is incorrect and that Petitioners have otherwise failed to offer evidence of the values of HU's and Arrowhead's promises. *See Wistuber*, 141 Ariz. at 350 (affirming judgment against challengers who passed up their "opportunity to present evidence on disproportionality of consideration").

If, however, this Court is inclined to venture into the valuation thicket, it is plain that the agreements are supported by adequate consideration.

1. To the extent HU's and Arrowhead's promises are not quantifiable, Petitioners have not carried their burden.

Petitioners say the values of HU's and Arrowhead's promises are not "quantifiable." (*E.g.*, Pet. at 7–8.) Some of the promises may indeed be hard to quantify in isolation. For example, it is hard to assign a specific value to HU's promise to get state approval for five specific digital media degrees, or Arrowhead's promise to finish renovations by a specific time. But these promises were necessary for HU and Arrowhead to deliver the campus of the size, type, and impact that Peoria required. And there are ways to quantify *that* promise, as explained below.

In any event, Petitioners draw the wrong conclusion about non-quantifiable consideration. If HU's and Arrowhead's promises are not quantifiable, that would mean Petitioners *have not shown* gross disproportionality of consideration. After all, the burden lies with Petitioners. (*See* Part II.A above.) And the reasons why judges ordinarily do not review proportionality of consideration, *see Turken*, 223 Ariz. at 349 ¶ 32, apply with particular force when values of promises "are uncertain or difficult to measure," Restatement (Second) of Contracts § 79 cmt. c (1981).

Arizona courts reject gross disproportionality allegations when proof is lacking. *See Cheatham*, 240 Ariz. at 322–23 ("The Taxpayers have the burden of proving gross disproportionality of consideration, and they have not met that burden here."); *Wistuber*, 141 Ariz. at 350 ("We will not assume disproportionality of consideration."); *Maricopa County v. State*, 187 Ariz. 275, 281 (App. 1996) (finding lower court's "misallocation of the burden of proof" on consideration "resulted in clear error"). Thus, to the extent HU's and Arrowhead's promises are not quantifiable, Petitioners' challenge fails.

2. Petitioners failed to present evidence of a fair market value of HU's or Arrowhead's promises.

In *Turken* this Court identified "objective fair market value" as a way to measure what a private party promises. 223 Ariz. at 350 ¶ 33. The Court offered an illustration: A municipality may not pay a contractor $5,000,000 to repair a sewer line, if "[s]everal competent contractors are willing to do the repair for $5,000." *Id.* at 350 ¶ 34.

This case is different, however, because there is no evidence of a comparable market. The record does not show that "several competent" universities were willing to open a digital media undergraduate campus (or any other campus) in Peoria. Nor does the record show that "several competent" property owners were willing to renovate property for campus use in the P83 District (or any other district) in Peoria. Petitioners presented no evidence on these points.

Even if there were an applicable market, Petitioners did not show that other market participants were willing to do what HU and Arrowhead promised, at a lower cost to Peoria. Indeed, the only evidence touching on these points is the opposite. "The parties do not dispute that HU would not have opened a campus in Peoria if not for the HU agreement." (Ct. App. Op. at 4–5 ¶ 8; *see also* APP083–084 at 164:23–165:2 (testimony of HU representation).) And Arrowhead told Peoria that the Building Reuse Program "allows projects like this to actually be realized."

(APP094.)[2]

Without any evidence of a market, much less evidence that other market participants were willing to do what HU and Arrowhead promised at a lower cost, Petitioners have not shown that Peoria paid "far too much." *Turken*, 223 Ariz. at 350 ¶ 32. This alone requires affirming the judgment.

3. The economic impact of HU's and Arrowhead's promises is a reasonable measure of part of the public value.

This Court may affirm on the independent grounds explained above. In addition, Peoria's economic analyses were a reasonable measure of part of the public value of HU's and Arrowhead's promises.

Peoria did two analyses. First, before entering into the agreements, Peoria hired an economist (Mr. Pollack) to estimate "the economic and fiscal impacts" of an HU campus in Peoria. (APP126.) Mr. Pollack concluded:

- The economic impact of construction, over five years, would be $1,301,000 in wages and $3,445,300 in total economic output (*see* APP138);

---

[2] Petitioners suggest that Arrowhead "has no trouble" raising funds for commercial real estate projects, which "can and do succeed without subsidies." (Pet. at 4.) But this is not evidence that Arrowhead, or any other company, would have done *this* project without assistance.

Moreover, Petitioners' assertion rests on their own description of deposition testimony. In reality, that deponent testified that the assistance from Peoria was "an important factor" in Arrowhead's decision to pursue the project and that it "help[ed] the project actually happen." (APP 196–197 at 71:19–72:4, 74:12-16.)

- The economic impact of operations, over five years, would be $4,872,160 in wages and $10,791,700 in total economic output (*see* APP139); and
- The fiscal impact of construction and operations on Peoria as an entity, over five years, would be $206,630 in tax revenues (*see* APP144–145).[3]

During litigation, Peoria hired another economist (Mr. Cook) to estimate "the economic impact that occurs within the city limits as a result of opening and operating the university." (APP151 ¶ 9.) Mr. Cook concluded:

- The economic impact of construction, over five years, would be $728,432 in labor income and $2,447,271 in total economic output (*see* APP170); and
- The economic impact of operations, over five years, would be $3,780,417 in labor income and $8,901,954 in total economic output (*see* APP170).

Neither economist measured *non-monetary* aspects of HU's and Arrowhead's promises. For example, Mr. Pollack noted, but did not measure, some of the "immeasurable impacts" of HU's campus, such as influencing the vitality of the surrounding community and increasing the attractiveness of the area to businesses. (APP147.)

These analyses were a reasonable way to measure part of the *public value* of

[3] Mr. Pollack also estimated the fiscal impact on the State and County over five years: $719,000 and $199,930 in tax revenues, respectively. (APP140–143.) He did not estimate impacts beyond five years, though he expected HU to "continue to impact the economy into the future." (APP139.)

Go to Previous View Go to Table of Contents - Brief

HU's and Arrowhead's promises. *See Cheatham*, 240 Ariz. at 322 ¶ 34 (focusing on "the benefit the public receives"); *Wistuber*, 141 Ariz. at 349 (focusing on "the value to be received by the public"). The methods used by Mr. Pollack and Mr. Cook are generally accepted by economists. (APP151–152 ¶¶ 9, 12; *see also* APP128–132, APP167–171 (explaining methods).) And the analyses were important to the contracting parties, as demonstrated by the express references to Mr. Pollack's analysis in both contracts. (*See* APP067 § E; APP102 § G.)

Petitioners argue that the economic analyses should be ignored because neither HU nor Arrowhead promised to "create economic impact." (Pet. at 6.) But both HU and Arrowhead promised to undertake *major economic endeavors* in Peoria. (*See* Parts II.B.1 & 2 above.) The economic analyses were ways of valuing those endeavors. Ignoring the impact altogether would be "overly technical" instead of a "panoptic view." *Cheatham*, 240 Ariz. at 318 ¶ 10 (quoting *Wistuber*, 141 Ariz. at 349).[4]

---

[4] Petitioners also argue that fiscal impact is a better measure of value than economic impact. (Pet. at 6.) That view assumes that consideration is limited to giving "direct" benefits to the promisee, which is incorrect. (*See* Part II.B.3 above.)

Moreover, even based solely on fiscal impact, Peoria acted reasonably. Peoria expected to receive $206,630 in tax revenues in the first five years alone. That figure does not include revenues that Peoria expected after five years, nor does it include revenues to the County and State in which Peoria is located. (*See* APP140–145.)

Go to Previous View

Go to Table of Contents - Brief

4. The amounts that HU and Arrowhead promised to invest in Peoria are another reasonable measure of value.

Apart from economic impact, HU and Arrowhead promised to invest specific amounts of money in specific ways in Peoria: HU promised to invest \$2.5 million in the campus during three years to develop the digital-media programs, and Arrowhead promised to invest \$1,475,192 in renovations according to a schedule that assigned costs. (*See* Parts II.B.1 & 2 above.)

While these amounts reflect only some of HU's and Arrowhead's promises, they are another reasonable way to measure part of the value. After all, consideration can consist of a "loss or detriment" to a contracting party. *Cavanagh v. Kelly*, 80 Ariz. 361, 363 (1956). And Peoria specifically bargained for HU and Arrowhead to spend these amounts in ways that it deemed would benefit the public. *See Turken*, 223 Ariz. at 349 ¶ 31.

In sum, no matter which valuation method is used, Petitioners have not shown a gap in consideration "so inequitable and unreasonable that it amounts to an abuse of discretion." *Turken*, 223 Ariz. at 349 ¶ 30 (quoting *Wistuber*, 141 Ariz. at 349).

CONCLUSION

The Court should affirm the judgment below.

RESPECTFULLY SUBMITTED this 7th day of October, 2020.

OSBORN MALEDON, P.A.

By /s/ Mary R. O'Grady

Mary R. O'Grady
Emma J. Cone-Roddy
2929 North Central Avenue, Ste. 2100
Phoenix, Arizona 85012

Vanessa Hickman
Amanda Sheridan
OFFICE OF THE CITY ATTORNEY
CITY OF PEORIA
8401 West Monroe Street
Peoria, Arizona 85345

THIS PAGE INTENTIONALLY LEFT BLANK

Go to Previous View

Click on the headings below to go to corresponding page

APPENDIX
TABLE OF CONTENTS*

* Counsel has added emphasis to selected pages in this Appendix using yellow highlighting to assist the Court with its review of the record. This Appendix complies with the bookmarking requirements of ARCAP 13.1(d)(3).

Go to Previous View
Go to Table of Contents - Appendix

Electronic Index of Record
MAR Case # CV2016-013699

No.	Document Name	Filed Date
1.	COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF	Oct. 12, 2016
2.	CERTIFICATE OF COMPULSORY ARBITRATION	Oct. 12, 2016
3.	CIVIL COVERSHEET	Oct. 12, 2016
4.	CERTIFICATE OF SERVICE BY PRIVATE PROCESS SERVER	Oct. 21, 2016
5.	CERTIFICATE OF SERVICE BY PRIVATE PROCESS SERVER	Oct. 21, 2016
6.	CERTIFICATE OF SERVICE BY PRIVATE PROCESS SERVER	Oct. 21, 2016
7.	CERTIFICATE OF SERVICE BY PRIVATE PROCESS SERVER	Oct. 21, 2016
8.	CERTIFICATE OF SERVICE BY PRIVATE PROCESS SERVER	Oct. 21, 2016
9.	CERTIFICATE OF SERVICE BY PRIVATE PROCESS SERVER	Oct. 21, 2016
10.	CERTIFICATE OF SERVICE BY PRIVATE PROCESS SERVER	Oct. 21, 2016
11.	CERTIFICATE OF SERVICE BY PRIVATE PROCESS SERVER	Oct. 21, 2016
12.	SUMMONS	Oct. 21, 2016
13.	SUMMONS	Oct. 21, 2016
14.	SUMMONS	Oct. 21, 2016
15.	SUMMONS	Oct. 21, 2016
16.	SUMMONS	Oct. 21, 2016
17.	SUMMONS	Oct. 21, 2016
18.	SUMMONS	Oct. 21, 2016
19.	SUMMONS	Oct. 21, 2016
20.	DEFENDANT'S ANSWER TO PLAINTIFFS' COMPLAINT FOR DECLARATORY INJUNCTIVE RELIEF	Nov. 21, 2016
21.	JOINT REPORT	Feb. 10, 2017
22.	SCHEDULING ORDER	Feb. 16, 2017
23.	**ME: ORDER ENTERED BY COURT [02/15/2017]**	**Feb. 17, 2017**

SCHIRES, AKES, & WHITMAN VS CITY OF PEORIA

Electronic Index of Record
MAR Case # CV2016-013699

No.	Document Name	Filed Date
24.	**ME: SETTLEMENT CONFERENCE SET [03/17/2017]**	**Mar. 17, 2017**
25.	**ME: SETTLEMENT CONFERENCE SET [03/23/2017]**	**Mar. 23, 2017**
26.	NOTICE OF APPEARANCE OF JAMES M. MANLEY	Apr. 10, 2017
27.	**ME: SETTLEMENT CONFERENCE SET [04/13/2017]**	**Apr. 14, 2017**
28.	JOINT STIPULATION AND ORDER FOR PROTECTION OF PRIVILEGED AND CONFIDENTIAL MATERIAL	Apr. 28, 2017
29.	PROTECTIVE ORDER	May. 5, 2017
30.	**ME: ORDER SIGNED [05/05/2017]**	**May. 8, 2017**
31.	[PART 1 OF 2] DEFENDANTS' MOTION FOR PROTECTIVE ORDER	Jul. 7, 2017
32.	[PART 2 OF 2] DEFENDANTS' MOTION FOR PROTECTIVE ORDER	Jul. 7, 2017
33.	[PART 1 OF 2] PLAINTIFFS' RESPONSE TO MOTION FOR PROTECTIVE ORDER	Jul. 26, 2017
34.	[PART 2 OF 2] PLAINTIFFS' RESPONSE TO MOTION FOR PROTECTIVE ORDER	Jul. 26, 2017
35.	DEFENDANTS' REPLY IN SUPPORT OF THEIR MOTION FOR PROTECTIVE ORDER	Aug. 7, 2017
36.	**ME: ORAL ARGUMENT SET [08/09/2017]**	**Aug. 14, 2017**
37.	JOINT STIPULATION TO VACATE TRAIL-SETTING CONFERENCE AND SUMMARY JUDGMENT DEADLINE	Aug. 14, 2017
38.	[PROPOSED] ORDER	Aug. 16, 2017
39.	**ME: HEARING [09/13/2017]**	**Sep. 19, 2017**
40.	JOINT STIPULATION REGARDING DISPOSITIVE MOTION BRIEFING AND TRAIL-SETTING CONFERENCE	Oct. 13, 2017
41.	SUPPLEMENTAL SCHEDULING ORDER	Oct. 23, 2017
42.	**ME: ORDER SIGNED [10/25/2017]**	**Oct. 27, 2017**
43.	DEFENDANTS' MOTION FOR SUMMARY JUDGMENT	Dec. 18, 2017

Electronic Index of Record
MAR Case # CV2016-013699

No.	Document Name	Filed Date
44.	[PART 1 OF 5] DEFENDANTS' SEPARATE STATEMENT OF FACTS IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT	Dec. 18, 2017
45.	[PART 2 OF 5] DEFENDANTS' SEPARATE STATEMENT OF FACTS IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT	Dec. 18, 2017
46.	[PART 3 OF 5] DEFENDANTS' SEPARATE STATEMENT OF FACTS IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT	Dec. 18, 2017
47.	[PART 4 OF 5] DEFENDANTS' SEPARATE STATEMENT OF FACTS IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT	Dec. 18, 2017
48.	[PART 5 OF 5] DEFENDANTS' SEPARATE STATEMENT OF FACTS IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT	Dec. 18, 2017
49.	[PART 1 OF 4] PLAINTIFFS' STATEMENT OF FACTS	Dec. 18, 2017
50.	[PART 2 OF 4] PLAINTIFFS' STATEMENT OF FACTS	Dec. 18, 2017
51.	[PART 3 OF 4] PLAINTIFFS' STATEMENT OF FACTS	Dec. 18, 2017
52.	[PART 4 OF 4] PLAINTIFFS' STATEMENT OF FACTS	Dec. 18, 2017
53.	PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT	Dec. 18, 2017
54.	[PART 1 OF 3] PLAINTIFFS' RESPONSE TO DEFENDANTS' SEPARATE STATEMENT OF FACTS AND PLAINTIFFS' SUPPLEMENTAL STATEMENT OF FACTS	Jan. 22, 2018
55.	[PART 2 OF 3] PLAINTIFFS' RESPONSE TO DEFENDANTS' SEPARATE STATEMENT OF FACTS AND PLAINTIFFS' SUPPLEMENTAL STATEMENT OF FACTS	Jan. 22, 2018
56.	[PART 3 OF 3] PLAINTIFFS' RESPONSE TO DEFENDANTS' SEPARATE STATEMENT OF FACTS AND PLAINTIFFS' SUPPLEMENTAL STATEMENT OF FACTS	Jan. 22, 2018
57.	DEFENDANTS' CONTROVERTING STATEMENT OF FACTS AND ADDITIONAL FACTS	Jan. 22, 2018
58.	PLAINTIFFS' RESPONSE TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT	Jan. 22, 2018
59.	DEFENDANTS' RESPONSE TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT	Jan. 22, 2018
60.	NOTICE OF WITHDRAWAL OF COUNSEL	Feb. 1, 2018

Electronic Index of Record
MAR Case # CV2016-013699

No.	Document Name	Filed Date
61.	DEFENDANTS' REPLY IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT	Feb. 20, 2018
62.	PLAINTIFFS' REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT	Feb. 20, 2018
63.	PLAINTIFFS' REPLY TO DEFENDANTS' CONTROVERTING STATEMENT OF FACTS AND ADDITIONAL FACTS	Feb. 20, 2018
64.	[PART 1 OF 4] PLAINTIFFS' CORRECTED STATEMENT OF FACTS	Feb. 20, 2018
65.	[PART 2 OF 4] PLAINTIFFS' CORRECTED STATEMENT OF FACTS	Feb. 20, 2018
66.	[PART 3 OF 4] PLAINTIFFS' CORRECTED STATEMENT OF FACTS	Feb. 20, 2018
67.	[PART 4 OF 4] PLAINTIFFS' CORRECTED STATEMENT OF FACTS	Feb. 20, 2018
68.	NOTICE OF ERRATA RE PLAINTIFFS' STATEMENT OF FACTS	Feb. 20, 2018
69.	[PART 1 OF 2] STIPULATION TO VACATE PRE-TRIAL CONFERENCE AND RESCHEDULE ORAL ARGUMENT ON MOTIONS FOR SUMMARY JUDGMENT	Feb. 21, 2018
70.	[PART 2 OF 2] STIPULATION TO VACATE PRE-TRIAL CONFERENCE AND RESCHEDULE ORAL ARGUMENT ON MOTIONS FOR SUMMARY JUDGMENT	Feb. 21, 2018
71.	[PART 1 OF 2] MOTION TO STRIKE	Feb. 22, 2018
72.	[PART 2 OF 2] MOTION TO STRIKE	Feb. 22, 2018
73.	STIPULATION TO VACATE PRE-TRIAL CONFERENCE AND RESCHEDULE ORAL ARGUMENT ON MOTIONS FOR SUMMARY JUDGMENT	Feb. 23, 2018
74.	PLAINTIFFS' RESPONSE TO DEFENDANTS' MOTION TO STRIKE	Feb. 26, 2018
75.	**ME: ORAL ARGUMENT RESET [02/23/2018]**	**Feb. 28, 2018**
76.	**ME: ORAL ARGUMENT RESET [03/14/2018]**	**Mar. 15, 2018**
77.	REQUEST FOR COURT REPORTER	Mar. 15, 2018
78.	**ME: ORDER ENTERED BY COURT [03/19/2018]**	**Mar. 23, 2018**
79.	**ME: HEARING [04/26/2018]**	**May. 1, 2018**

Electronic Index of Record
MAR Case # CV2016-013699

No.	Document Name	Filed Date
80.	STIPULATED MOTION FOR ENTRY OF JUDGMENT	May. 4, 2018
81.	FINAL JUDGMENT	May. 9, 2018
82.	**ME: JUDGMENT SIGNED [05/09/2018]**	**May. 10, 2018**
83.	NOTICE OF APPEAL	Jun. 4, 2018
84.	NOTICE OF TRANSCRIPT ORDER FOR APPEAL	Jun. 19, 2018
85.	AMENDED NOTICE OF TRANSCRIPT ORDER FOR APPEAL	Jun. 19, 2018

APPEAL COUNT: 1

RE: CASE: UNKNOWN

DUE DATE: 07/02/2018

CAPTION: SCHIRES, AKES, & WHITMAN VS CITY OF PEORIA

EXHIBIT(S): NONE

LOCATION ONLY: NONE

SEALED DOCUMENT: NONE

DEPOSITION(S): NONE

TRANSCRIPT(S): NONE

COMPILED BY: chestangc on July 2, 2018; [2.5-17026.63]
\\NTFSNAS\C2C\C2C-4\CV2016-013699\Group_01

CERTIFICATION: I, CHRIS DeROSE, Clerk of the Superior Court of Maricopa County, State of Arizona, do hereby certify that the above listed Index of Record, corresponding electronic documents, and items denoted to be transmitted manually constitute the record on appeal in the above-entitled action.

Electronic Index of Record
MAR Case # CV2016-013699

The bracketed [date] following the minute entry title is the date of the minute entry.

CONTACT INFO: Clerk of the Superior Court, Maricopa County, Appeals Unit, 175 W Madison, Phoenix, AZ 85003; 602-372-5375

Chris DeRose, Clerk of Court
*** Electronically Filed ***
05/01/2018 8:00 AM

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2016-013699 | 04/26/2018

HON. SHERRY K. STEPHENS

CLERK OF THE COURT
N. Johnson
Deputy

DARCIE SCHIRES, et al. | CHRISTINA M SANDEFUR

v.

CATHY CARLAT, et al. | SHANE HAM

MINUTE ENTRY

East Court Building – Courtroom 712

8:42 a.m. This is the time set for Oral Argument regarding the following motions:

- Plaintiffs' Motion for Summary Judgment, filed December 18, 2017;
- Defendants' Motion for Summary Judgment, filed December 18, 2017;
- Defendants' Motion to Strike, filed February 22, 2018; and the responsive pleadings.

Plaintiffs Darcie Schires, Andrew Akers, and Gary Whitman are represented by counsel, Veronica Thorson and Christina M. Sandefur. Defendants Cathy Carlat, Vicki Hunt, Carlo Leone, Michael Finn, Jon Edwards, Bridget Binsbacher, Bill Patena, and City of Peoria are represented by counsel, Shane M. Ham and Mary O'Grady.

Court Reporter, Hope Yeager, is present and a record of the proceedings is made digitally.

Oral argument is presented on the motions.

Go to Previous View

Go to Table of Contents - Appendix

IT IS ORDERED taking Plaintiffs' Motion for Summary Judgment, Defendants' Motion for Summary Judgment, and Defendants' Motion to Strike under advisement.

9:41 a.m. Matter concludes.

LATER:

The Court has considered Plaintiffs' Motion for Summary Judgment filed December 18, 2017, Plaintiffs' Statement of Facts filed February 18, 2017, Defendants' Response to Plaintiffs' Motion for Summary Judgment filed January 22, 2018, Defendants' Controverting Statement of Facts and Additional Facts filed January 22, 2018, Plaintiffs' Reply in Support of Motion for Summary Judgment filed February 20, 2018, Plaintiffs' Reply to Defendants' Controverting Statement of Facts and Additional Facts filed February 20, 2018, Plaintiffs' Corrected Statement of Facts filed February 20, 2018, the Notice of Errata Re Plaintiffs' Statement of Facts filed February 20, 2018, the Motion to Strike filed February 22, 2018, and the oral argument conducted on April 26, 2018.

The Court has also considered Defendants' Motion for Summary Judgment filed December 18, 2017, Defendants' Separate Statement of Facts in Support of Motion for Summary Judgment filed December 28, 2017, Plaintiffs' Response to Defendants' Motion for Summary Judgment filed January 22, 2018, Plaintiffs' Response to Defendants' Separate Statement of Facts and Plaintiffs' Supplemental Statement of Facts filed January 22, 2018, Defendants' Reply in Support of Its Motion for Summary Judgment filed February 20, 2018, and the oral argument conducted on April 26, 2018.

In the Complaint for Declaratory and Injunctive Relief filed October 12, 2016, Plaintiffs contend that the Huntington Economic Development Agreement and the Arrowhead Grant Agreement violate the Arizona Constitution's Gift Clause (Article IX, section 7 of the Arizona Constitution). Plaintiffs contend the City of Peoria has made an illegal donation or grant to Huntington University and Arrowhead Equities LLC. Specifically, Plaintiffs claim these expenditures of taxpayer funds violate the Gift Clause because these expenditures do not serve a public purpose and the consideration taxpayers will receive in exchange for their money is grossly disproportionate. As relief, Plaintiffs seek a determination that both the Huntington Agreement and Arrowhead Agreement constitute the unlawful gift of public funds and seek a permanent injunction that would prohibit Defendants from making payments or performing under either agreement. Plaintiffs also seek attorneys' fees and costs.

In Plaintiffs' motion for summary judgment, Plaintiffs seek summary judgment on their claims because there is no genuine issue of material fact and they are entitled to judgment as a matter of law. Plaintiffs contend the payments to Huntington University and Arrowhead LLC do not serve a public purpose and the consideration received by the City of Peoria is grossly disproportionate to the payments it is making with taxpayer money.

In Defendants' motion for summary judgment, Defendants contend Plaintiffs' claims fail as a matter of law.

All parties agree no material fact is in dispute and the case is proper for summary judgment. All parties agree the Huntington University and Arrowhead Equities LLC agreements are related and should be considered together as one agreement would not exist without the other agreement.

There is a two prong test used to determine whether government expenditures violate the Gift Clause of the Arizona Constitution, Article 9, Section 7 (the state or its subdivisions may not ever give or loan its credit in the aid of, or make any donation or grant, by subsidy or otherwise, to any individual, association or corporation). An expenditure of public funds will be upheld if: (1) it has a public purpose; and (2) the consideration received by the government is not grossly disproportionate to the amounts paid to the private entity. In evaluating Gift Clause challenges, the facts of each transaction will be reviewed and courts must not be overly technical and give appropriate deference to the findings of the governmental body. In determining whether a transaction serves a public purpose, court must consider the reality of the transaction and not merely surface indicia of public purpose. The primary determination of whether a specific purpose constitutes a public purpose is assigned to the political branches of government, which are directly accountable to the public. A public purpose is lacking only in rare cases in which the governmental body's discretion has been unquestionably abused. *Cheatham v. DiCiccio*, 240 Ariz. 314, (2016). The Gift Clause is violated when the consideration compared to the expenditure is so inequitable and unreasonable that it amounts to an abuse of discretion. The taxpayers have the burden of proving gross disproportionality. *Cheatham v. DiCiccio*, 240 Ariz. 314, 322 (2016) and *Wistuber v. Paradise Valley Unified Sch. Dist*., 141 Ariz. 346 (1984).

In October 2010, the City of Peoria approved a plan to achieve economic development goals established by the Peoria City Council. The City Council identified several public purposes for the plan including, stimulating the local economy by providing employment opportunities, promoting redevelopment or unused or underutilized properties, diversifying the local economy, expanding the tax base, and offering education and workforce training opportunities for Peoria residents. One part of the plan involves the P83 District Building Reuse Program. The purpose of the program is to encourage a diverse use of existing vacant buildings to include professional office, entertainment and retail tenants. A barrier to this plan is the extensive amount of tenant improvements costs necessary to convert unused buildings into suitable spaces. Some of these purposes are set forth in Section One of the agreement with Huntington University.

In 2015, after three years of discussions, the Peoria City Council approved an agreement with Huntington University. There were two subsequent amendments to that agreement. These agreements provide that Huntington University will be eligible for cost reimbursement from the City of Peoria over a three year period in exchange for opening and operating a campus in Peoria. The agreements provide Huntington University must meet specific requirements each year in order to receive reimbursement from the City of Peoria. In addition, Huntington University agreed to participate in economic development activities with the City of Peoria to attract targeted industries. The agreement requires Huntington University to contribute $2.5 million to the development of the Peoria campus in the first three years. The maximum amount of cost reimbursement the City of Peoria would pay under the agreement is $1,875,000. The director of Huntington University's Arizona operation has testified Huntington University would not have opened a branch campus in Peoria without the cost reimbursement provisions in the Huntington University Agreement.

In December 2015, Huntington University entered into a lease with Arrowhead Equities LLC (Arrowhead) for a facility in the P83 area. In January 2016, Arrowhead submitted a grant application through the P83 program. The grant request was approved by the City of Peoria. The Arrowhead Grant Agreement provides that Peoria will reimburse Arrowhead over a period of several years for tenant improvement expenses incurred in converting its property for use by Huntington University. The maximum grant reimbursement amount to be paid by the City of Peoria is $737,596. The agreement with Arrowhead identifies public purposes to include increasing daytime foot traffic, enhancing the quality of life for Peoria residents, and promoting commercial reinvestment activities. In addition, the agreement states the P83 program is intended to reposition unused or underutilized properties and to encourage a more diverse use of existing vacant buildings.

During the negotiations with Huntington University, the City of Peoria contracted for a study of the economic impact of the proposed Huntington University campus. That study concluded the Huntington University Agreement would have an economic impact of $15,663,860 on Peoria and surrounding areas during the first five years of operation of the campus. Defendants hired another expert after this lawsuit was filed. That expert, Bryce Cook, opined that the value of Huntington University's promise to open and operate a branch campus in Peoria, including the promises to repurpose the building for a campus, is $11.3 million. This opinion focused on the economic impact of the Arrowhead and Huntington University agreements on the zip codes located within the City of Peoria.

Plaintiffs argue that the $11.3 million value is an anticipated indirect benefit of the contract and is not consideration under *Turken v. Gordon,* 223 Ariz. 342, 224 P.3d 158 (2010) since no one has promised to give the city $11.3 million. Plaintiff argues the court must focus on the objective fair market value of what Huntington University has promised to provide in return for payment by the City of Peoria, citing to *Turken*, 223 Ariz. at 350. Plaintiffs contend the objective value of the promise to operate a campus in Peoria and Arrowhead's promise to help it do so is zero according to their expert. The City of Peoria receives nothing of any quantifiable or market value in exchange for its payments. Huntington University and Arrowhead did not promise to provide anything to the City of Peoria other than operate their own businesses for a profit. The Huntington University campus will not be used by the general public but only those who enroll in the university and pay tuition. There is no guarantee of admission. The mission of Huntington University is to educate men and women in the field of digital media arts with a curriculum that promotes the Christian worldview. Since Huntington is not a public university, government officials exercise no control over its operations. Thus, Plaintiffs argue there is no public purpose or a benefit to the general public. The agreements thus violate the Gift Clause because each provide a gift or subsidy to private industry.

Defendants argue that both the Huntington University and Arrowhead agreements have a public purpose: economic development. Both agreements support economic development and job growth and will have a positive economic impact on Peoria. In addition, the agreements will promote the P83 program which will involves infill development opportunities and encourages the use of existing vacant buildings. Further, Defendants claim the agreements will enhance the overall quality of life for Peoria residents. With regard to the second prong of the Gift Clause analysis, Defendants rely on the opinions of their expert that the economic impact of these agreements far exceeds the maximum investment due from the City of Peoria. If all criteria are met by Huntington University, thereby triggering cost reimbursement by the city of Peoria, the maximum payment by Peoria will be $1,870,000. The estimated economic impact for Peoria is $11.3 million. As to Plaintiffs' argument there is no direct benefit to the City of Peoria under the Huntington University Agreement, Defendants contend that Huntington University would not open a campus in Peoria without the incentives in that agreement. The agreement to build and operate a university campus within the City of Peoria is itself valuable consideration. The City Council of Peoria negotiated and entered into the agreements with Huntington University and Arrowhead because economic development will occur and the court must give deference to that legislative determination, citing to *Cheatham v. DiCiccio,* 240 Ariz. 314, 320 (2016).

Summary judgment is appropriate only if no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law. Rule 56, Ariz.R.Civ.P., *Nat'l Bank of Ariz. v. Thruston*, 218 Ariz. 112 (App. 2008), *Colonial Tri-City Ltd. P'ship v. Ben Franklin Stores, Inc.,* 179 Ariz. 428, 432 (App. 1993) and *Johnson v. Earnhardt's Gilbert Dodge, Inc.*, 212 Ariz. 381, 385, 132 P.3d 825, 829 (2006). Thus, a motion for summary judgment should only be granted if the acts produced in support of the claim or defense have so little probative value, given the quantum of evidence required, that reasonable people could not agree with the conclusion advanced by the proponent of the claim or defense. *Orme Sch. v. Reeves*, 166 Ariz. 301, 309, 802 P.2d 1000, 1008 (1990). The facts must be viewed in a light most favorable to the

Go to Previous View

Go to Table of Contents - Appendix

party against whom it was direct and summary judgment is inappropriate if there is any doubt as to whether an issue of material fact exists. *Lennar Corp. v. Transamerica Ins. Co.,* 227 Ariz. 238, 242 (App. 2011) and *Joseph v. Markovitz*, 27 Ariz.App. 122, 125, 551 P.2d 571, 574 (1976). A statement of facts is the only means by which a party opposing summary judgment may create a record showing the existence of those facts which establish a genuine issue of material fact or otherwise preclude summary judgment in favor of the moving party. See Rule 56, Ariz.R.Civ.P. Where the evidence or inferences would permit a jury to resolve a material issue in favor of either party, summary judgment is improper. *Comerica Bank v. Mahmoodi,* 224 Ariz. 289, 292 (App. 2010).

Given the quantum of evidence required to establish the claims in the complaint and, viewing the evidence in a light most favorable to Plaintiffs, the Court finds there are no genuine issues of material fact and summary judgment for Defendants is appropriate. The Peoria City Council determined there were public purposes in entering into the agreements with Huntington University and Arrowhead. Those purposes included economic development, promoting commercial reinvestment activities, stimulating the local economy by providing employment opportunities, promoting redevelopment of unused or underutilized properties, diversifying the local economy, expanding the tax base, and offering education and workforce training opportunities for Peoria residents. The Court should defer to the policy makers' determinations of public purpose which is an evolving and changing question to be considered in a wide variety of contexts. *City of Tombstone v. Macia*, 30 Ariz. 218 (1926) and *Cheatham*, 240 Ariz. at 320. There is no requirement that every taxpayer must benefit from an economic development agreement in order for there to be a public purpose. Benefitting a single company does not violate the Gift Clause. See *Town of Gila Bend v. Walled Lake Door Co.,* 107 Ariz. 545 (1971). Further, A.R.S. § 9-500.11 provides that the governing body of a city or town may appropriate and spend public monies for and in connection with economic development activities. The Court finds no abuse of discretion by the Peoria City Council in entering into these agreements. With regard to the consideration the City of Peoria will receive in exchange for payments to be made under the agreements with Huntington and Arrowhead, Plaintiffs have not met their burden of establishing gross disproportionality. The Court finds no violation of the Gift Clause under these facts and Defendants are entitled to judgment as a matter of law.

For the reasons stated,

IT IS ORDERED granting Defendants' Motion to Strike filed February 22, 2018.

IT IS FURTHER ORDERED granting Defendants' Motion for Summary Judgment and denying Plaintiffs' Motion for Summary Judgment.

Chris DeRose, Clerk of Court
*** Electronically Filed ***
05/10/2018 8:00 AM

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2016-013699 05/09/2018

HON. SHERRY K. STEPHENS

CLERK OF THE COURT
T. DeRaddo
Deputy

DARCIE SCHIRES, et al. CHRISTINA M SANDEFUR

v.

CATHY CARLAT, et al. SHANE HAM

JUDGMENT SIGNED

The court has received and considered the parties' Stipulated Motion for Entry of Judgment, filed on May 4, 2018.

IT IS ORDERED approving and settling the formal written Judgment in favor of Defendants and against Plaintiffs signed by the Court May 8, 2018 and filed (entered) by the clerk on May 9, 2018.

Please note: The Court has signed a hard-copy version of the judgment provided with an electronically filed pleading. After the order has been scanned and docketed by the Clerk of Court, copies of this order may be available through ECR Online at clerkofcourt.maricopa.gov or through AZTurboCourt.gov and from the Public Access Terminals at the Clerk of Court's offices located throughout Maricopa County.

EXHIBIT 1

ECONOMIC DEVELOPMENT INCENTIVE AND INVESTMENT POLICY

Introduction

On October 19, 2010, the Peoria City Council approved an Economic Development Implementation Strategy ("EDIS") which provides an implementation-based plan for achieving the economic development goals of the City as established by the Council. The EDIS includes a community and business climate assessment of Peoria, an economic base analysis, an identification of business activities and industries desirable to the City, and a general discussion of strategies to enhance the City's economic development future. One such strategy identified in the EDIS is creation and implementation of an economic development incentive and investment program that sets forth in detail the types of public incentives and investments that the City is authorized and willing to make on a discretionary basis in furtherance of retaining existing businesses and attracting certain targeted businesses and industries identified in the EDIS as desirable to Peoria.

This Economic Development Incentive and Investment Policy ("EDIIP") is adopted by the Peoria City Council for the purpose of implementing the EDIS. The EDIIP and accompanying Economic Development Incentive and Investment Policy Guidelines ("EDIIP Guidelines") provide a framework for evaluating City financial incentives and investment towards the retention and expansion of existing local businesses and attraction and expansion of targeted industries within the City of Peoria in a manner that is consistent with applicable laws. The City is authorized pursuant to Arizona Revised Statutes, Sections 9-500.05 and 9-500.11, to negotiate and enter into development agreements that include expenditures for economic development. The City will negotiate and enter into Economic Development Incentive and Investment Agreements with those projects that qualify and are approved under the EDIIP. Each Agreement will be presented to the City Council for consideration and possible approval.

The City will review each request for public incentives and investment on a project-by-project basis applying this EDIIP and the EDIIP Guidelines. By adopting this EDIIP, the City is not obligated to offer any incentives or make any investments. This EDIIP shall not be applied retroactively and shall become effective on the date adopted by the City Council.

Public Purposes Promoted by this EDIIP

The City Council expressly finds that implementing the EDIS through this EDIIP will further a number of public purposes, including, but not limited to, stimulating the local economy by providing additional value-added employment opportunities, expanding the tax base required to provide essential public services, diversifying the local economy, expanding the economic base of the City, promoting redevelopment of unused or underutilized properties to positively influence infill development opportunities, and providing educational and workforce training opportunities for

Peoria residents. Indirect public purposes that may be served by adoption and implementation of this EDIIP include, but are not limited to, reducing vehicle miles travelled by Peoria residents who no longer have to commute to other communities for suitable employment, reduction of air pollution due to less vehicle miles being travelled, and an overall improvement in quality of life for Peoria residents.

This EDIIP does not commit the City to providing economic development incentive and investment assistance in every instance, nor does it restrict the City from providing additional incentives or investments in a specific instance. The EDIIP and EDIIP Guidelines contain specific criteria, guidelines, and procedures necessary to effectively and fairly administer the City's economic development incentive and investment decisions.

Purpose

Public incentives and investment extended pursuant to this EDIIP is intended to fill gaps in private business investment and development project financing that make the project improbable without public support to fill those financing gaps. This EDIIP and the EDIIP Guidelines establish criteria and procedures for the regulation and coordination of economic development financial incentives and investment by the City, as well as to create a return on investment ("ROI") analysis template that will be applied to each eligible project. These policies and procedures shall be used as a guide for the orderly review and disposition of applications requesting economic development Incentives and investment assistance in coordination with the EDIS, as well as the economic development element of the Peoria General Plan and the City's Principles of Sound Financial Management concerning economic development.[1]

A variety of economic development incentives and investment tools are available, or will be pursued by the City, for use by businesses and developers for those economic development projects that meet the eligibility criteria set forth in this EDIIP and the EDIIP Guidelines and are approved by the City Council. Not all tools are available for every project, and projects may be offered more than one tool. The type and number of incentives and investment tools is the sole discretion of the Peoria City Council. Incentives and investment tools include, but are not limited to, the following:

Foreign Trade Zone (federal program) -- Merchandise can be brought duty-free into a designated Foreign Trade Zone (FTZ) for purposes of storing, repacking, display, assembly or manufacturing. Imports may be landed and stored without full customs formalities. Arizona is the only state in the United States that provides an 80 percent reduction in real and personal property taxes for companies qualifying for Foreign Trade Zone or sub-zone designation.

[1] The EDIS, economic development element of the Peoria General Plan, and the City's Principles of Sound Financial Management are incorporated into this EDIIP by reference. Italicized terms are defined in the EDIS document.

City Direct Investment -- Provides direct city advance payment or reimbursement to private industry for a variety of capital or operating expenditures such as business relocation costs, worker relocation costs, tenant improvements, impact fee and permit fee waivers, etc. to attract both capital investment and high quality jobs in targeted industries.

Peoria Industrial Development Authority Bonds – Development Authority issued bonds are conduit financing for an eligible project to assist a private developer or business in facility creation or expansion. Liability of the bonds is solely that of the developer or business. Conduit feature is used to obtain access to capital and competitive interest rates. City charges 1% fee for services provided and pays its costs from that fee. Other fees may apply. Issues for nonprofit entities may be charged a discounted fee and receive a discounted interest rate under the federal tax law, pursuant to IDA policy guidelines.

Lease Revenue Bonds -- Bonds issued by the City, the proceeds from which are used to construct facilities for private business enterprise. Lease payments made by the business enterprise to city government are used to service the bonds.

Government Purchase Lease Excise Tax (GPLET) -- The GPLET is a local excise tax that is levied on a square footage, as opposed to value, basis against improved real property leased by private parties from a municipality or county. The result is a reduction in property tax base for the subject property.

Maricopa County Economic Development Fund -- Maricopa County passed a resolution to fund economic development activities that assist in the creation or retention of jobs or otherwise improve or enhance the economic welfare of the residents of Maricopa County. The program has two goals: to increase the per capita income and to increase the share of employment in base industries in Maricopa County. Funding for such projects will be appropriated from the County General Fund's interest earnings.

Guiding Principles
In carrying out its economic development objectives, the City of Peoria will adhere to the following guiding investment principles for strategically investing its resources in *targeted industries* and *investment zone* redevelopment opportunities appropriate for consideration under this EDIIP:

- Eligible projects that retain, expand, or attract existing or targeted industries providing: (1) high-wage, knowledge-based jobs; and/or (2) significant capital investment and new wealth to the community.
- Eligible projects that create or attract a top-tier workforce desirable to targeted industries, including the creation of industry specific workforce training programs through coordination among community institutions including

economic development organizations, non-profit entities and groups, colleges and universities, the business community, and workforce development entities.

- Eligible projects that provide infrastructure improvements and other public benefit necessary to retain and/or expand existing businesses, attract targeted industries, and/or revitalize key development nodes in the City's *investment zones*.
- Eligible projects that nurture and grow targeted startup businesses.
- Eligible projects that promote the development of bioscience and technology-based products and services.
- Eligible projects that redevelop vacant or under-utilized commercial and industrial properties in targeted investment zones.
- Eligible projects for business assistance (new or expansion) focused primarily on targeted industries.

The minimum project qualifications for consideration under the EDIIP are listed in the table below:

Category of consideration	**Minimum Requirements**
Capital investment	$250,000
Jobs created	10
Avg. salaries of jobs created	$50,000 FTE with benefits
Avg. education level	4-year degree
Targeted Industries	Manufacturing, corporate or divisional HQ, advanced business services, back office operations (e.g. data centers, etc.), research and development, or processes which involve the utilization of high technology or innovative new technologies, bioscience, alternative energy, telecommunications, health care, and higher education
Redevelopment Projects	Defined as projects that will economically reposition unused or underutilized properties

The City reserves the right to consider projects beyond the parameters outlined in this section. Projects outside of the scope detailed herein will only be considered if it is found that the nature of such project would have a significantly transformative and dramatically positive net economic impact on the City.

The amount and timing of the City's public investment in an eligible project will be dictated by the terms of the Economic Development Incentive and Investment Agreement approved by the City Council pursuant to the EDIIP. In general, the City's investment will not occur until the eligible project has completed certain of its contractual obligations under the Agreement. For example, proof that a certain number of high-wage, knowledge-based jobs have been created may trigger a predetermined incentive or investment by the City. However, for certain projects deemed extraordinary, the City may make a portion of its public incentives or investments at an

Go to Previous View

Go to Table of Contents - Appendix

earlier point in time, but subject to repayment or security in the event that subsequent contractual obligations are not timely satisfied. For example, a public incentive may be offered or investment made in the form of tenant improvements to private property so as to facilitate the business' relocation or location in Peoria. In this case, the commitment to locate in the City would be memorialized in an executed lease agreement. Other documentation may be accepted at the discretion of the City Council.

Incentives or investment funds may be used for one or more of the following eligible activities to retain an existing eligible business, assist a targeted industry in locating in Peoria, or to facilitate a redevelopment project:

- Real property lease or acquisition
- Personal property lease or purchase (e.g. equipment)
- Site preparation costs
- On-site infrastructure
- Off-site infrastructure
- Improvements to a building such as tenant improvements
- Other capital investments
- Job training costs not otherwise reimbursed by grants or tax credits
- Other purposes which bring value to the community as determined by the Economic Development Services (EDS) Department on a project-by-project basis
- Payment of site development and building plan review and permit costs

This is not an exclusive list, but rather a sample of the types of public incentives and investments that may be approved by the City Council in its discretion in regard to a particular eligible project.

Return on Investment Considerations

Each eligible project under the EDIIP guidelines must provide a return on investment (ROI) for the assistance provided. The specific ROI will be determined through the negotiation process and stipulated in the Economic Development Incentive and Investment Agreement. Qualifying items for equivalent ROI would include the following:

- Jobs that meet wage and education goals according to the EDIIP guidelines
- Jobs provided to Peoria residents, specifically new employees that move to the City of Peoria
- Redevelopment of under-utilized properties or infill development
- Space absorption resulting in reduced commercial or industrial vacancy rates
- Ability to bring additional targeted investment to the City
- Ability to partner with the City, universities, and others on workforce development goals
- Tax revenue generated through increased property taxes, lease rate taxes, and sales taxes

Process for Requesting Public Incentives and/or Investment
Each entity requesting City economic development assistance under the EDIIP will be required to prepare and submit to the Economic Development Services Department ("EDS") an application and supporting documentation as required by the EDIIP Guidelines. EDS will review each application for sufficiency on a case-by-case basis using the EDIIP Guidelines. This review process will also include reviews by other City Departments to ensure consistency with all applicable City laws and policies, such as the General Plan, Zoning Ordinance, and Principles of Sound Financial Management. As appropriate, the review process may also include submission of the application and supporting documentation to a panel of relevant industry experts for technical appraisal.

The Guidelines shall be subject to periodic review and may be modified or amended, due to changed economic conditions or competitive considerations. In the event of any modification or amendment, Economic Development Incentive and Investment Agreements previously approved by the City Council pursuant to the EDIIP will not be affected.

In determining whether to make a public incentive or investment in response to a request and, if so, the amount of assistance to be extended, the City will consider, among other relevant factors, the following:

- The total private capital investment in the project including site acquisition, site improvement, building development, tenant improvements, and equipment purchases.
- The number, type and quality of full time jobs created or retained.
- Wage levels and benefits for jobs created by the project.
- The potential for future expansions and increased employment.
- Project specific benefits that impact positively on economic development objectives related to business attraction, business retention, redevelopment, small business, and workforce development, which will further stimulate development in targeted areas of the City, thereby benefiting overall community development.
- The potential for the project to attract other companies which would be suppliers to or affiliated with that company.
- Other factors promoting the public welfare and deemed relevant by the City Council in its discretion.

The City Council desires to make public incentives and investments pursuant to this EDIIP to attract new jobs and capital investments to Peoria by adding new companies and businesses to the community and expanding existing businesses. The City, however, will also consider on a case-by-case basis the utilization of this Policy when necessary to preserve existing jobs and capital investments which are at risk of being lost. This will apply to situations in which a targeted industry is considering the consolidation of operations within a facility in Peoria or a facility outside of Peoria, in which a targeted industry must modernize its equipment or facility to remain competitive in its market, or in other situations in which it is considering reducing or eliminating its operations in Peoria. In such situations, assistance may be made, at the discretion of the City Council, if the overall amount of taxable capital investment for the subject company will increase.

EXHIBIT 3

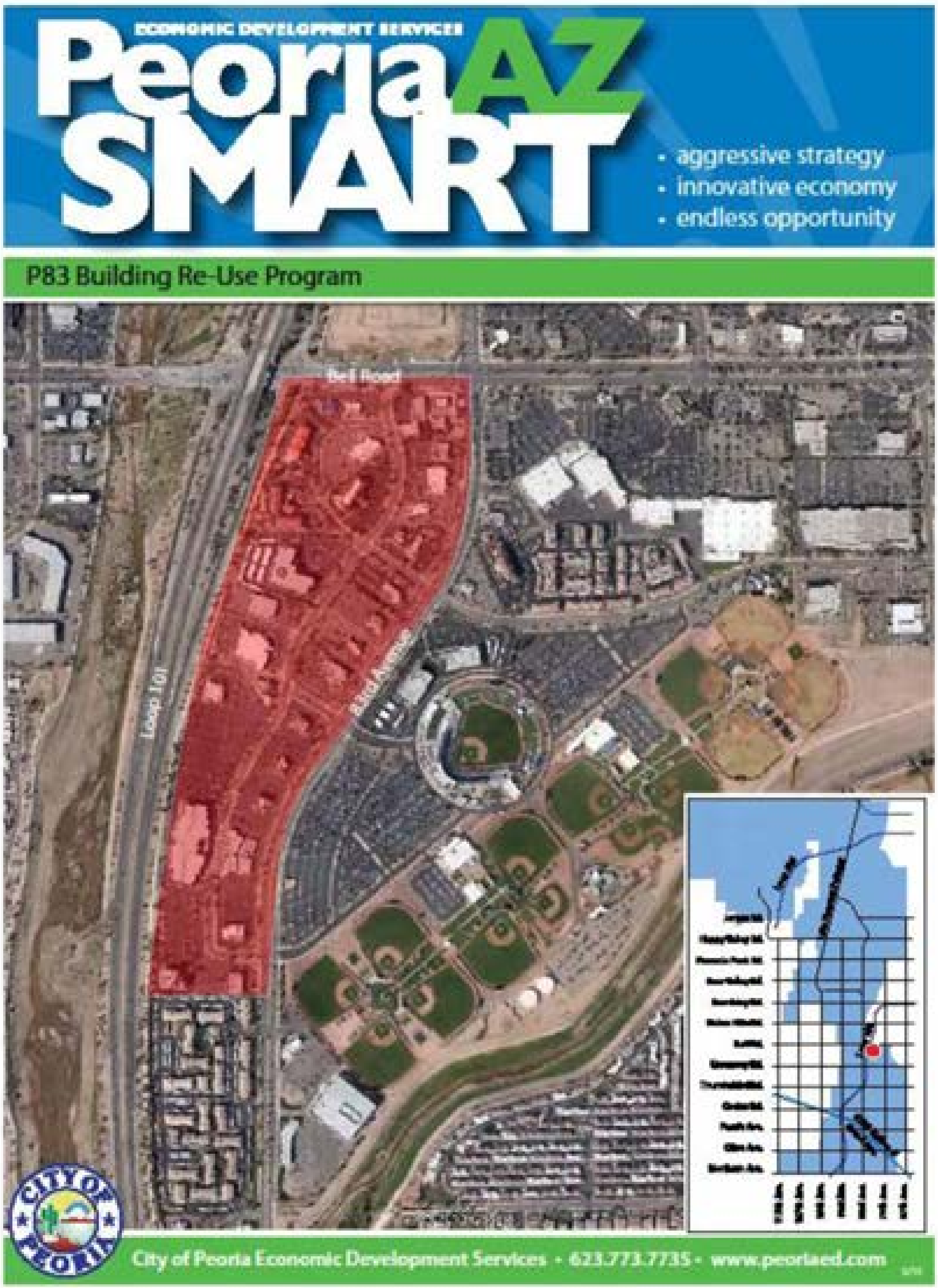
City of Peoria P83 District Building Reuse Program Amendment No. 1

The City's Economic Development Implementation Strategy (EDIS) was adopted to serve as a road map to achieving the City's stated economic development goals of business retention, business attraction, workforce development, redevelopment, and real estate development opportunities. One strategy identified in the EDIS was the creation and implementation of an economic development incentive and investment program to set forth the type of assistance the City may offer to qualified projects that enhance the City's economic development strategy. As such, the Economic Development Incentive and Investment Policy (EDIIP) was adopted to create defined criteria for businesses to evaluate and understand the type of investment that would qualify for City assistance as part of relocating or expanding within the City. Each project requesting city assistance must meet the EDIIP minimum qualification criteria, which can be found in the EDIIP Guidelines (attached), as well as complete an EDIIP application form.

In furtherance of the City's economic development objectives, the City of Peoria has identified the P83 District as an EDIS Investment Zone, and developed a P83 District Building Reuse Program ("Program") encompassing the target area depicted on the map below (Target Area). The purpose of the Program is to encourage a more diverse use of existing vacant buildings in the District to include professional office, entertainment and retail tenants as an alternative to continuing to add restaurant users that have a historical failure rate in the District.

The District offers a unique opportunity in the City for business attraction, specifically advanced business services, healthcare, and software development users, as those types of users often require up to 20,000 square feet of space within an area offering restaurant, convenience retail and entertainment options within walking distance or a short drive time from a business location. The P83 District offers such amenities, as well as buildings in the 10,000 – 30,000 square feet range that could feasibly accommodate such tenants that would provide additional daytime population to benefit the District overall. Therefore, an opportunity exists for a collaboration among key property owners, commercial brokers and the City to offer a strategy to accelerate the re-use of key buildings in the Target Area for such industry users.

An issue to overcome is the potentially extensive amount of tenant improvement costs associated with converting existing restaurant oriented building interiors into commercial office, retail, or entertainment appropriate spaces. The Program is designed to address this issue, and that of minimizing the timeframe of tenant improvement building plan review/permitting and to allow neeeded improvements to occur expeditiously.


ECONOMIC DEVELOPMENT SERVICES
PeoriaAZ SMART
• aggressive strategy
• innovative economy
• endless opportunity
P83 Building Re-Use Program
Bell Road
Loop 101
City of Peoria Economic Development Services • 623.773.7735 • www.peoriaed.com

The City's goal is to use the Program as a tool to revitalize the P83 District and reinvigorate private investment in targeted properties. These revitalization efforts will help to eliminate empty restaurant buildings and convert them into professional office, retail and entertainment uses, promote commercial reinvestment activities, increase the daytime foot traffic in this important area of the City, and enhance the overall quality of life for Peoria residents. The City, at its sole discretion, shall determine eligibility under the Program and the owner's likelihood to meet City objectives and goals as stated in the Economic Development Implementation Strategy (EDIS) I/II.

Security Structure

Option 1 – City's Preferred Approach

If approved, City assistance will be in the form of a reimbursable grant. The Program may provide up to 50% matching funds, on a reimbursement basis of 10% of the total grant amount being reimbursed over a period of ten years, to eligible private property owners for improvements associated with properties located in the Target Area. Should the owner not comply with the terms of the resulting agreement, following city notification of non-compliance and owner's failure to cure the item(s) of non-compliance, the outstanding grant balance will be forfeited. In addition, failure to remain in full operation for the term of the grant (10 years) will result in owner's repaying the City all funds received under the Program.

Option 2 – Alternative Security Structure

If approved, the Program will provide up to 50% matching funds, in a lump sum reimbursement basis, to eligible private property owners for eligible improvements associated with properties located in the Target Area. City assistance will be in the form of a reimbursable grant. Should the property owner not comply with the terms of the resulting agreement including a promissory note and deed of trust, following city notification of non-compliance and owner's failure to cure the item(s) of non-compliance, the then outstanding grant balance plus accrued interest shall be immediately due and payable to the city. Upon compliance with the Program agreement, the grant balance and accrued interest shall be forgiven by ten (10) percent per year over a 10-year grant period. An applicant can prepay the note balance under this option at any time upon prior written notice to the City. The total amount of prepayment is the outstanding amount of the grant and all accrued and unpaid interest through the date of repayment.

Eligible Applicants

A person, corporation, association, or other private legal entity holding fee simple title to commercial real property located within the Program's Target Areas are eligible to apply for assistance under the Program. This program is not eligible to tenants or those with a ground lease for the premises, unless written consent of the property owner(s) has been obtained.

Go to Previous View

Go to Table of Contents - Appendix

Eligible Activities/Improvements

Eligible improvements under the Program are limited to interior tenant improvements for buildings with a minimum of 5,000 square feet in size appropriate for use by an office, retail, or entertainment user, a targeted industry (as part of the EDIS), or other compelling user as approved by the City. Priority will be given to commercial users fitting one of the following industry types: advanced business services, healthcare, or software development. FF&E is not eligible for reimbursement. Only interior improvements including A&E and actual construction costs are eligible, subject to City review and approval. The applicant must include a detailed listing of all proposed interior tenant improvement A&E costs and actual cost of construction (exclusive of FF&E) with their program application.

Eligibility for Program Participation

The City will approve the form of security structure to be used . The resulting agreement, subject to City Council approval, will include a stipulation for the amounts owed for non-compliance under the agreement. A person, corporation, association or other private legal entity holding fee simple title to any commercial real property that is located in the Target Area may apply for Program benefits. Tenants must obtain the written consent of their landlord in order to participate in the Program. The Building Reuse Program Application may be made directly by the property owner or an agent authorized in writing to act on behalf of the property owner. If the real property is under joint ownership, the application must be made on behalf or with the authorization of all owners of the real estate. As a general requirement, existing liens together with the City grant may not exceed 125% of the property value, as determined by an appraisal.

City participation for an eligible activity, up to 50% of approved costs, is based on a reimbursement to the property owner upon acceptable performance, including all needed City permits and passing all building, fire and other City inspections for eligible work.

Commencement and Deadlines for Work

No construction or rehabilitation activity under the Program eligible to receive 50% cost reimbursement to the property owner from the City that is included in the approved project scope of work will commence, **nor will costs be incurred**, prior to the date the City informs the applicant in writing that all program documents are signed and finalized and the Building Reuse Program Agreement has been approved by the City Council (see contractual requirements below). Also, no work can begin without obtaining all required city permits and approvals.

Matching Fund Documentation

Any request for reimbursement must include documentation of the eligible expenses being paid first by the applicant and documentation of the equal non-city funds being expended since this is a matching contribution program.

Other Program Requirements

Once an application for the Building Reuse Program is approved in writing by the City, the property owner is required to execute and/or provide the following documents:

A. **Building Reuse Agreement**. This City Council approved document (drafted by the City's attorneys on a project-by-project basis) sets forth the terms and conditions for participation in the Program. Some of the key terms include scope of work, funding amount and owner maintenance requirements.

B. **Title Report and Appraisal**. Security Structure Option 2 requires the property owner to obtain and submit with his or her application a title report for his or her property identifying any interest that may affect the City's enforcement of the Agreement. Applicants also may be required to supply additional information relating to liens and encumbrances on the property in order to be approved. The property owner must also provide a separate title report after recording of the Building Reuse Agreement to evidence the City's position on the chain of title. A current title report and appraisal is required as part of the application for assistance. Under Security Structure Option 1, a title report and appraisal is not required.

C. **Consent Agreement.** Option 2 requires the property owner to obtain duly acknowledged consent agreements from all lien holders or other persons or entities with an interest in the subject real property, including commercial buildings and related structures thereon, consenting to the grant of the City's security interest in the property. To expedite this process, the applicant must submit the contact party name and loan number for each lien holder and is encouraged to seek consent in principle as early in the application process as possible.

D. **Insurance Certificate**. The property owner must provide a certificate of property and liability insurance that certifies the subject real property, including without limitation the building or structures thereon, is insured for amounts acceptable to the City from an insurer acceptable to the City. A copy of the insurance certificate will be an attachment in the final contract documents. The City shall be an additional named party on the insurance certificate.

Application for Participation in the City of Peoria's P83 Building Reuse Program

This form must be completed and submitted to the Economic Development Services Department (EDS), to the attention of Dina Green, by owners of eligible properties located in an established Program target area (see attached Target Areas Map) who desire to participate in the City of Peoria's P83 Building Reuse Program. A person, corporation, association or other public or private legal entity holding fee simple title to any commercial real property that is located in the eligible Program target area may apply for Program benefits. Tenants must obtain the consent of their landlords in writing in order to participate in the Program (please attach the written consent of the property owner if a tenant submission). Also, please attach a current title report evidencing the condition of title to the property as of the date of Program application. The application may be made directly by the property owner or by an agent authorized in writing to act on behalf of the property owner. If the real property is under joint ownership, the application must be submitted on behalf of or with the authorization of all of the owners of the real property.

Date________________

Property Address____

Property Tax Assessor Parcel Number _________________________

1. Property Owner Name ____

   Legal name of entity to which Agreement entered into with City

   ____

2. Property Owner Mailing Address

   ____
   Street Address

   ____
   City/Town State Zip

3. Owner Phone Number _________________________

4. Owner Email ____________________________ Fax # ______________________

5. What business(es) occupies the property(ies) included in this request?

____

6. What type of business is it? ____

7. What year was the property improved and building(s) built? (Estimate if not sure)

____

8. If yes to 8, have restrictions been placed on changing the façade based on this designation? Yes____ No____

9. Please attach a copy of your current property insurance policy evidencing sufficient insurance coverage for the property to which an improvement is being requested. The property owner must provide a certificate of property and liability insurance that certifies the subject real property, including without limitation the building or structures thereon, is insured for amounts acceptable to the City from an insurer acceptable to the City. A copy of the insurance certificate will be an attachment in the final contract documents. The City shall be an additional named part on the insurance.

10. Please attach a detailed narrative of the proposed project for which City assistance is requested (City matching funds provided are only in the form of reimbursement up to 50% of eligible costs for eligible improvements, as determined by the City). The narrative should fully describe:

- A project overview and scope of work
- Nature of proposed improvements
- A summary table showing all improvements proposed and costs separating the property owner's funded improvements and City eligible improvements with a total cost for the project
- A project financing sources and uses table showing all available property owner's funds for their 50% share of the costs and the use of those funds, as well as the requested City 50% share of the costs and the use of those funds
- Include renderings of the proposed interior tenant improvements that will assist the City in understanding the full scope and benefit of the project

11. Total number of new FTE jobs brought to Peoria AZ ______ Year 1 _____ Year 3

12. Average salaries of new jobs ____________Year 1____________ Year 3

13. Total number of existing jobs (if expansion) ______ Year 1______ Year 3

14. Average salaries of existing jobs _______________

15. Total payroll of all jobs __________ Year 1 ___________ Year 3

16. Average education levels of new jobs (circle one):
    2-Year Post Secondary   4-Year Bachelors   Graduate Degrees

17. Percentage of benefits paid by employer for <u>all</u> jobs

18. Total real and personal property for tax purposes ___________________________

19. Anticipated direct sales tax generated at 1% of taxable sales __________________

20. Other revenues (est. annual): Occupancy taxes ____Utility revenues ___________

21. City infrastructure construction required __________________________________

22. Projected total annual operating budget for facility __________________________

23. Total capital expenditures from the property owner for the project _____________

By signing this application the undersigned acknowledges and agrees that the City of Peoria, in its sole and absolute discretion, will determine Program eligibility and the nature of participation the City will provide towards a revitalization project in its entirety, and work with the Property Owner to finalize all design concepts insofar as those concepts are structurally sound, appropriately relate to the overarching design program of the City, and are reasonable. The City of Peoria will also communicate any issues that might develop during construction with the Property Owner and make every effort to reach a solution to complete the project in a timely and efficient way. The City also will not be bound to a timeline for the project other than the one that is developed by the Contractor and agreed to by the City in writing.

By signing this application the Property Owner(s) acknowledges receiving a copy of the Program Guidelines. The applicant must execute the P83 Building Reuse Agreement as a condition to participating in the Program. Property owner(s) acknowledge and agree to obtain all required city approvals, including design and use approvals, as needed, from the city, as well as all permits for construction, demolition, or other covered activities requiring a permit of the city.

Reimbursement under this Program is subject to the property owner(s) submitting a request for reimbursement package to the city, containing the items below, following the execution of a Development Agreement:

- Copies of city permits obtained for the scope of work contained in the agreement
- Proof of passing city building, fire and other inspections for the work items reimbursement is being requested
- Exhibits showing the work items completed pursuant to the approved scope of work contained in the Agreement

- Evidence that the property owner has paid the cost of the work for which reimbursement is being requested

The information contained in this statement is true and accurate. (Incorrect or misleading information may disqualify the project.)

____ Date________________________

Property Owner (required)

Received by City of Peoria _________________________ Date _________________________

Contact: Dina Green, Economic Development Project Manager
dina.green@peoriaaz.gov or 623.773.7781

To Be Completed by City Staff:

Date Application Deemed Complete: _______________________________

Date Application Deemed Eligible Under the Program: ________________

Signature of Eligibility Officer: ___________________________________

Signature of EDS Director: _______________________________________

City of Peoria P83 District Building Reuse Program FAQs

What is the Peoria P83 District Building Reuse Program?

The Program is a tool to revitalize the P83 District and reinvigorate private investment in targeted properties. These revitalization efforts will help to eliminate empty restaurant buildings and convert them into professional office, retail and entertainment uses, promote commercial reinvestment activities, increase the daytime foot traffic in this important area of the City, and enhance the overall quality of life for Peoria residents.

The City will approve the form of security structure to be used. The resulting agreement, subject to City Council approval, will include a stipulation for the amounts owed for non-compliance under the agreement.

Option 1 - City's Preferred Structure:
The Program will provide up to 50% matching funds, on a reimbursement basis, to eligible private property owners for eligible improvements associated with properties located in the Target Area. City assistance will be in the form of a reimbursable grant. Should the property owner not comply with the terms of the program agreement, following the City's notification of non-compliance and owner's failure to cure the item(s) of non-compliance, the outstanding grant balance will be forfeited. Upon compliance with the Program agreement, the grant amount shall be reimbursed at ten (10) percent per year over a 10-year grant period.

Option 2 – Alternative Security Structure:
The Program will provide up to 50% matching funds in a lump sum reimbursement basis, to eligible private property owners for eligible improvements associated with properties located in the Target Area. City assistance will be in the form of a reimbursable grant. Should the owner not comply with the terms of the program agreement, including a promissory note and deed of trust, following the City's notification of non-compliance and owner's failure to cure the item(s) of non-compliance, the then outstanding grant balance shall be immediately due and payable to the city. Upon compliance with the Program agreement, the grant balance shall be reduced by ten (10) percent per year over a 10-year grant period. This structure will require as part of the application the submittal of a current title report and a current property appraisal. All outstanding financial liens on the property plus the City's contribution cannot exceed 125% of the property's appraised value.

Who can apply for funding?

A person, corporation, association, or other private legal entity holding fee simple title to commercial real property located within the Program's Target Areas is eligible to apply for assistance under the Program. This program is not eligible to tenants or those with a ground lease for the premises, unless (i) written consent of the property owner(s) has been obtained for a deed of trust to be recorded against the parcel **(Option 2)**, and (ii) the City otherwise determines that the grant is appropriate. (See **map of district**).

What types of improvements are eligible for funding?

Eligible improvements under the Program are limited to interior tenant improvements for buildings with a minimum of 5,000 square feet in size appropriate for use by an office, retail, entertainment or other compelling user. Furnishings, fixtures and equipment (FF&E) and exotic or extravagant improvements are not eligible. Priority will be given to commercial users fitting one of the following industry types: advanced business services, healthcare, or software development (Targeted Industries). A detailed listing of all proposed interior tenant improvement A&E costs and actual cost of construction (exclusive of FF&E) must be submitted as part of the application.

How is the money awarded?

This is a matching grant program, which means that the applicant pays for the improvement and the City of Peoria reimburses elilgible costs covered under the City approved grant. The amount of the match must be at least 1:1 -- the applicant pays $1 and the City reimburses $1. Work completed prior to receiving City Council approval is not eligible for funding. Grant funds are disbursed on a reimbursement basis and cannot be issued until the proposed project has been completed including all city building and fire inspections and issuance of a certificate of occupancy by the City. Before a check is cut, applicants will need to submit proof of payment for completed work and the release of all mechanics' and materialmen's liens, and Peoria Economic Development staff must review the completed project to determine that the actual work performed was the work approved.

How does the application process work?

First, applicants must contact Dina Green, Economic Development Project Manager, at 623.773.7781 or dina.green@peoriaaz.gov. At this preliminary stage, staff will explain the program requirements as well as discuss the proposed scope of the renovation project and security structure with the applicant. At this stage, the preliminary eligibility of the project for the program will also be determined (subject to City Council approval).

The preliminary stage will be followed by the submission of a formal application for assistance. Along with the application, the applicant will provide an architectural or building design plan of the improvements in sufficient detail to determine program compliance.

The Peoria Economic Development Department will prepare a program agreement outlining the obligations of the applicant, as well as a promissory note in the amount of the proposed reimbursable grant and a deed of trust to secure repayment of the note **(under Option 2)**. The documents will be presented to the City Council to review and approve at its discretion. If approved, reimbursable work can be commenced by the applicant, once all city approvals are received, including building permits.

Project cost overruns due to miscalculations, undiscovered construction requirements, or other justifiable reasons may be added to the overall cost of the Building Reuse Project and be eligible for one half matching funds with the prior written approval from the City.

Following completion of construction of the improvements, the applicant will submit the following documentation to City staff for review:

1) Copies of invoices and contracts;
2) Copies of lien releases from all contractors, subcontractors and suppliers of materials and equipment;
3) The applicant's cancelled checks or credit card receipts, showing that all costs have been paid in full;
4) Copy of the final building and fire inspection approvals.

How are projects selected for funding?

Applications will be reviewed and selected based on their compatibility with the vision and goals of the P83 Building Reuse Program guidelines, the applicant's experience in the industry for which the improvements are intended (that is, likelihood of performance for the 10-year term of the grant), and the City's security position. As a general requirement, existing liens, together with the City grant, cannot exceed 125% of the property value **(under Option 2)**.

What happens after a project is selected for funding?

Work selected for a matching grant must be completed prior to reimbursement of funds. The applicant is responsible for obtaining all building and fire permits and any other required city approvals for the work to be done. The applicant is responsible for conformance with all applicable safety standards and conditions. The applicant also agrees to maintain the property and improvements.

What is the promissory note interest rate?

The promissory note will bear and accrue interest at the City's bond rate (that is, the amount that the City must pay to borrow money). If the applicant has complied with all the terms and conditions of the program agreement, the annual accrued interest will be reduced at the time of the annual reduction of the note amount. If the applicant has not complied with the program agreement, all accrued and unpaid interest shall be due in full, along with the full unreduced note amount.

Will the city subordinate? (Under Option 2)

No. The city will not subordinate its deed of trust to new construction or other financing.

Will the city deviate from the 10-year term of assistance?

No. In order to provide uniformity of treatment across the program, the City will neither accelerate nor extend the program's 10-year term.

Is the note eligible for prepayment?

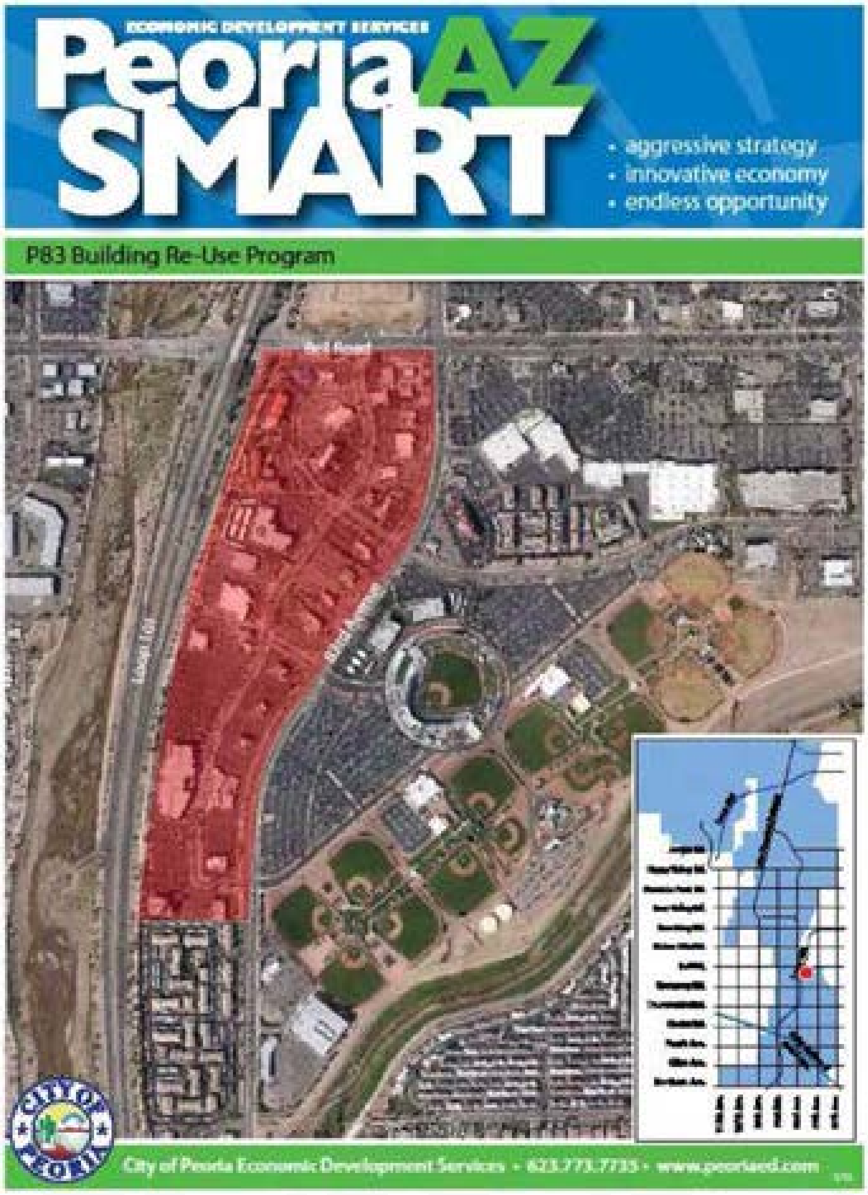
An applicant can prepay the note balance under Option 2 at any time upon prior written notice to the City. The total amount of prepayment is the outstanding amount of the grant and all accrued and unpaid interest through the date of prepayment. The interest rate will be at the City's bond rate (that is, the amount that the City must pay to borrow money). If the applicant has complied with all the terms and conditions of the program agreement, the annual accrued interest will be reduced at the time of the annual reduction of the note amount. If the applicant has not complied with the program agreement, all accrued and unpaid interest shall be due in full, along with the full unreduced note amount.

Is the grant "recourse" or "non-recourse"? (Under Option 2)

Although the City's grant is secured by a deed of trust, the note is a personal obligation of the applicant; therefore, the grant is "recourse."

Can the program agreement and grant be assigned?

As long as the applicant is not in default, the program agreement and grant can be assigned with the City's prior written approval to an individual or entity that acquires the applicant's entire interest in the property and agrees in writing to be bound by all of the terms and conditions of the program agreement.


ECONOMIC DEVELOPMENT SERVICES
PeoriaAZ
SMART
• aggressive strategy
• innovative economy
• endless opportunity
P83 Building Re-Use Program
Bell Road
Loop 101
City of Peoria Economic Development Services • 623.773.7735 • www.peoriaed.com

March 2016

EXHIBIT 4

CITY OF PEORIA, ARIZONA
COUNCIL COMMUNICATION

Agenda Item: 29R

Date Prepared: June 24, 2015 **Council Meeting Date: July 7, 2015**

TO: **Carl Swenson, City Manager**

FROM: **Scott Whyte, Economic Development Services Director**

THROUGH: **Susan J. Daluddung, Deputy City Manager**

SUBJECT: **City Council authorization to enter into an Economic Development Activities Agreement (EDA) with Huntington University**

Purpose:
This is a request for the City Council to authorize the City Manager to execute an Economic Development Activities Agreement (EDA) with Huntington University (HU) for the development of an accredited additional university campus location in Peoria.

Background/Summary:
The Economic Development Implementation Strategy (EDIS) identifies the attraction of targeted industries as a key objective in diversifying the city's economic base and work force. As part of implementing the EDIS, the Economic Development Services Department (EDS) actively pursues targeted industries as part of an overall sales and marketing effort to attract higher education users, as well as other targeted industries, to Peoria. In 2010, EDS engaged the services of a private firm to locate institutions of higher education to Peoria, and Huntington University was one of those interested in expanding their campus operations.

The city of Peoria has been in dialogue with Huntington University since 2012. An Exclusive Negotiating Agreement (ENA) was signed with Huntington University on October 9, 2012, which expired in April 2013. At that time Huntington was looking to create a branch campus as a member of our university consortium. They had planned to bring nursing, exercise science and digital media arts (DMA) to Peoria; however, their plans were put on hold as they re-evaluated which programs would be most successful in the city. As of March 2015, we received an updated proposal from Huntington to enter into an agreement to bring a DMA program to Peoria, which is STEM related and in alignment with our EDIS.

Huntington University offers more than 28 undergraduate degree programs, 13 graduate/professional studies degree programs, as well as online and seated courses throughout Indiana. Huntington is a fully accredited, nationally recognized private, four-year liberal arts university. HU is accredited by the Higher Learning Commission of the North Central Association. Huntington is consistently ranked by *U.S. News & World Report* in the top tier of Midwestern comprehensive colleges and in the top 10% in the Midwest for over 10 years.

FORBES listed Huntington University among the Top 10% of colleges and universities in the United States. *Princeton Review* ranked Huntington among the "Best Midwestern Colleges."

This Project will be of great value to the city of Peoria and the region, not only in the area of higher education, but also supporting economic development and job growth through technology commercialization efforts, assisting business, and entrepreneurs. Huntington's partnership with the city will be visible in many ways, including partnerships with BioInspire companies to advance technology commercialization through video design, editing, animation and graphic design.

The first step in the partnership is the creation of an additional campus location in Peoria (the "Peoria campus"). Initially, 15,000 SF of space for administrative and instructional uses will be housed at the Arrowhead Innovation Campus (AIC) located at 8700 W. Kelton Lane. As the DMA program expands and the need for more physical space emerges, a build-to-suit opportunity is available on adjacent property that is also owned by the AIC landlord. If necessary, the parties may agree to amend this agreement in writing at the time of expansion.

Community support for this Project to bring DMA-related programs to Peoria has been strong. Supporters include Peoria Unified School District, Arizona Commerce Authority, BioAccel, Trine University, Maricopa Community Colleges, as well as to Quincea's, and the Social Enterprise Inititative, among others.

Agreement Summary
The Economic Development Activities Agreement includes the following deal points (see Exhibit 1):

a) Year 1 (2015-2016) Performance Threshold 1:
    1) HU appoints campus leadership in Peoria, Arizona.
    2) The Higher Learning Commission and the Arizona State Board for Private-Post Secondary Education approve HU to offer degree programs in Peoria, Arizona including Broadcast Fusion Media, Film Production, Graphic Design, Digital Animations, and Web Development (STEM Programs).
    3) The U.S. Department of Education and U.S. Veterans Administration approve HU students in Arizona to received federal grants and loans.
    4) HU submits to the city a university-approved marketing plan with final tuition and enrollment projections for the first five years of the Project.
    5) HU submits to the city a final listing of undergraduate programs to be offered at the Peoria campus location, including STEM programs.
    6) HU signs a long-term facility lease with 8700 Kelton Campus, LLC for 15,000 SF of space at the Arrowhead Innovation Campus (minimum 7-year term).
    7) HU submits to the city a university-approved and funded faculty and staff plan with post-high school seated enrollment estimates along with post-high school

online enrollment and high school dual enrollment estimates for the first five years of the Project.

8) HU submits to the city executed articulation agreements between HU and Maricopa County Community College District for all applicable majors offered at the Peoria campus location.
9) HU achieves the 8 points above and is prepared to accept students for the year 2 schedule of classes in identified programs (Digital Media Arts/Broadcast Fusion Media/Film Production/Graphic Design/Web Development).
10) HU To have completed deal points 1-9 above and provide to the city a detailed accounting of Huntington University's expenses on Program related tenant improvements, fixtures, furniture, equipment and technology for classrooms, lab and studio development, marketing and student recruitment costs, software licensing costs, and any other tangible thing for which HU seeks reimbursement from Peoria.
11) City reimbursement to HU for year 1 expenses is not to exceed $900,000.

b) Year 2 (2016-2017) Performance Threshold 2:
   1) HU offers coursework in the first year Programs as proposed and meets an enrollment target of 100 total post-high school students who are seated for Year 2 Programs. Each student will complete all or part of the semester's coursework for which the student is registered in order to fulfill this performance measurement. Dual enrollment, online or any other type of distance learning will not be counted in the 100 student performance requirement set forth in the year 2 thresholds.
   2) HU to provide a detailed accounting of HU's expenses on Program related tenant improvements, fixtures, furniture, equipment and technology for classrooms, lab and studio development, marketing and student recruitment costs, software licensing costs, and any other tangible thing for which HU seeks reimbursement from Peoria.
   3) City reimbursement to HU for year 2 expenses is not to exceed $550,000.

c) Year 3 (2017-2018) Performance Threshold 3:
   1) HU meets enrollment target of 150 total post-high school students who are seated and enrolled for Year 3 Programs. Each student will complete all or part of the semester's coursework for which the student is registered in order to fulfill this performance measurement. Dual enrollment, online or any other type of distance learning will not be counted in the 150 student performance requirement set forth in the year 3 thresholds.
   2) HU to provide a detailed accounting of HU's expenses on Program related tenant improvements, fixtures, furniture, equipment and technology for classrooms, lab and studio development, marketing and student recruitment costs, software licensing costs, and any other tangible thing for which HU seeks reimbursement from Peoria.
   3) City reimbursement to HU for year 3 expenses is not to exceed $425,000.

Go to Previous View
Go to Table of Contents - Appendix

d) Total city investment made to the HU Peoria Campus location will not exceed $1,875,000 over three years.

Additional Deal Points

- If the actual post-high school students who are seated and enrolled falls below 150 post-high school students/year for each of years 4-7 of the agreement, HU shall repay the city the pro rata amount of city funding paid to HU under the terms of the Economic Development Activities Agreement.
- Term of the agreement is 7 years.

Elliott Pollack Economic Impact Analysis

Elliott D. Pollack and Company, an economic and real estate consulting firm, prepared an economic and fiscal impact analysis for the Project showing, that in the startup year (year 1), the University will generate 12 jobs with $694,900 in wages and $1.7 million in economic output. By year four, these figures grow to an impact of 121 jobs, over $2.0 million in wages and $4.5 million in economic activity throughout the region.

Previous Actions:

- City Council approved an Exclusive Negotiating Agreement with Huntington University on October 9, 2012.
- City Council considered the Huntington University branch campus proposal in Study Session on February 17, 2015.
- City Council discussed potential deal points on Huntington University in executive session on May 5, 2015.

Options:

A: **Approve an EDA with Huntington University**. This action will enable the university to open an accredited additional university campus location in Peoria with programs starting in 2016.

B: **Reject an EDA with Huntington University**. This action will terminate the Project.

Staff's Recommendation:

Authorize the City Manager to (a) approve an Economic Development Activities Agreement with Huntington University for the development of an accredited additional university campus location in Peoria; (b) approve the use of General Fund Reserves and; (c) approve a budget adjustment in the amount of $900,000 from the Half-cent Sales Tax Fund contingency to the Half-cent Sales Tax Fund Economic Development Programs account.

Fiscal Analysis:

To support the Huntington University Activities Agreement, staff requests a $900,000 budget adjustment in FY16 from the Half-cent Sales Tax Fund contingency (1210-0350-570000) to the

Go to Previous View
Go to Table of Contents - Appendix

Half-cent Sales Tax Fund Economic Development Programs account (1210-0350-522070-CIPOF-ED00018). Staff will request the remaining funding in the FY17 Capital Improvement Plan.

Exhibits:

Exhibit 1: Economic Development Activities Agreement

Contact Name and Number: Scott Whyte, X7738

EXHIBIT 5

Go to Previous View

Go to Table of Contents - Appendix

ECONOMIC DEVELOPMENT ACTIVITIES AGREEMENT
BETWEEN
THE CITY OF PEORIA, ARIZONA
AND
HUNTINGTON UNIVERSITY

This Economic Development Activities Agreement ("Agreement") is entered into on July 7, 2015 ("Effective Date") between the City of Peoria, Arizona, an Arizona municipal corporation ("City") and Huntington University, an Indiana non-profit corporation ("HU"); each entity is separately referred to as a "Party" and collectively they are referred to as "the Parties."

RECITALS

A. On October 19, 2010, the City adopted an Economic Development Implementation Strategy ("EDIS") which provides an implementation-based plan for achieving the economic development goals of the City;

B. One of the strategies to implement the EDIS is through the City-adopted Economic Development Incentive and Investment Policy ("EDIIP") and accompanying Economic Development Incentive and Investment Policy Guidelines ("EDIIP Guidelines"), which provide a framework for evaluating City financial incentives and investment towards the retention and expansion of existing local businesses and attraction and expansion of targeted industries within the City in a manner that is consistent with applicable laws;

C. The City is authorized pursuant to Arizona Revised Statutes, §§ 9-500.5 and 9-500.11 to negotiate and enter into development agreements that include expenditures for economic development;

D. HU has submitted a proposal to the City with a request for public incentives and investment to develop an accredited additional university campus location (the "Peoria campus") offering undergraduate degrees in digital media arts programs (the "Project"), a recognized STEM discipline, which is a key component in the City's EDIIP;

E. The City has contracted with Elliott D. Pollack and Company to conduct an economic impact analysis for the Project, and this study shows the Project results in a positive economic impact for the City;

F. The City has reviewed HU's request and determined that the Project qualifies and should be approved under the EDIIP;

G. The City has concluded that the Project will benefit the public interest and promote the public welfare of the citizens in the City and that the City and its residents will receive an equitable or proportional economic return in exchange for the incentives that will be provided by the City under this Agreement; and

H. The Parties acknowledge that the activities described in this Agreement and related to the Project are economic development activities within the meaning of the State of Arizona's laws concerning such matters, and that all expenditures by the City pursuant to this Agreement constitute the appropriation and expenditure of public monies for and in connection with economic development activities. To this end, the City and HU are entering into this Agreement pursuant to A.R.S. § 9-500.11 to facilitate development consistent with the City's General Plan, its zoning ordinances, the EDIS, EDIIP and EDIIP Guidelines.

AGREEMENT

NOW THEREFORE, in consideration of the mutual promises contained herein, the Parties agree as follows:

1. <u>Description of the Project</u>.

HU is a fully accredited, nationally recognized liberal arts university. *U.S. News and World Report* consistently ranks HU in the top tier of Midwestern comprehensive colleges and in the top 10% in the Midwest for over 10 years. FORBES lists HU among the Top 10% of colleges and universities in the United States while the Princeton Review ranks Huntington among the Best Midwestern Colleges. HU is accredited by the Higher Learning Commission of the North Central Association of Colleges and Schools, and its digital media arts undergraduate degree programs are fully accredited and nationally recognized.

HU and the City believe this Project will be of great value to the City of Peoria and the region, not only in the area of higher education and community education, but also supporting economic development and job growth through technology commercialization efforts, assisting business, as well as entrepreneurs. To do this, HU will be developing an additional campus location (the "Peoria campus") to launch digital media arts degree programs in the City of Peoria, Arizona, including at least the following degree programs: Broadcast Fusion Media, Film Production, Graphic Design, Digital Animation and Web Development. Support for HU's Peoria campus ranges from school districts including the Peoria Unified School District, to non-profit entrepreneurial entities such as BioAccel, as well as to Quincea's, and the Social Enterprise Initiative.

HU will be housed in buildings located within the Arrowhead Innovation Campus (AIC) located at 8700 W. Kelton (the "Peoria campus location"). This location will provide HU students with easy access to the facility and SR 101 and will allow room for growth. As a part of the AIC campus, students and businesses will share space and provide expertise while students are still enrolled at HU in order to ensure an expedited economic impact.

2. <u>City Financial Incentives and Investment</u>.

The City will provide a post-performance financial incentive package to HU over a period of three (3) years which financial incentive package is directly tied to performance thresholds that must be achieved by HU in order for HU to receive

Go to Previous View

Go to Table of Contents - Appendix

financial assistance from the City. The performance thresholds and incentive amounts are as follows:

(a) Performance Threshold 1 (also known as Year 1 which will include academic year 2015-2016)[1] includes the following specific performance requirements:

i. HU will appoint campus leadership in Peoria, Arizona.

ii. The Higher Learning Commission and the Arizona State Board for Private Post Secondary Education approve HU's application to offer degree programs in Arizona, and more specifically degree programs at the Peoria campus. The undergraduate degree programs to be approved for the Peoria campus by these entities will include at least the following: Broadcast Fusion Media, Film Production, Graphic Design, Digital Animation and Web Development (referred to collectively herein as the "Program").

iii. HU will obtain approval from the U.S. Department of Education and the U.S. Veterans Administration in order to permit HU students in Arizona to be eligible for receipt of federal grants and loans.

iv. HU will submit to Peoria a University-approved marketing plan that will include final tuition and enrollment projections for the first five years of the Peoria campus Project. These projections will not limit the actual student enrollments required by this Agreement.

v. HU will submit to Peoria a final list of undergraduate programs that will be offered to students at the Peoria campus, which list will include AT LEAST the STEM Program degrees referenced in subsection 2(a)(ii).

vi. HU will sign a long-term facility lease with a minimum seven (7) year leasehold term with 8700 Kelton Campus, LLC for the Arrowhead Innovation Campus buildings identified in HU's proposal dated March 2015. The initial leased space will be for an estimated 15,000 square feet. A copy of the executed lease, together with any amendments, shall be provided to the City.

vii. HU will submit to the City a University-approved and funded faculty and staff plan along with post-high school seated enrollment estimates for the first five (5) years of the Project. In addition, HU will submit a University-approved and funded faculty and staff plan along with post-high school online enrollment and high school dual enrollment estimates for the first five (5) years of the Project.

---

[1] Academic Year as defined herein for each Performance Threshold refers to the usual academic school year calendar adopted by HU University for use on its main campus located in Huntington Indiana; and is a period running roughly from August through May of any given year.

viii. HU will submit to Peoria executed articulation agreements between HU and the Maricopa County Community College district for all majors offered at the Peoria campus.

ix. HU will complete subsections 2(a)(i-viii) above and will accept students for academic year 2016 – 2017, to commence actual coursework on or in the Fall semester for at least the following scheduled Digital Media Arts majors: (1) Broadcast Fusion Media; (2) Film Production; and (3) Graphic Design.

x. HU will complete all matters specified in subsections 2(a)(i-ix), and will provide Peoria with a detailed accounting of its expenses for Program related: (1) Tenant improvements; (2) Fixtures, furniture, equipment and technology for classrooms, lab and studio development; (3) Marketing and student recruitment costs; (4) Software licensing costs; and (5) For any other tangible thing for which HU seeks reimbursement from Peoria (the "Other Costs"), so long as HU seeks preapproval and receives authorization from the City for the Other Costs. Further, subject to the City's preapproval and authorization, HU may, at the City's discretion, be eligible for reimbursement for reasonable business related travel costs and consultant expenses as set forth in 2(d), *infra*. Each expense, including preapproved business related travel costs, consultant expenses, and Other Costs, will be itemized and supported by an invoice that includes the date, the payee and the amount of the expenditure.

In addition, HU will provide the City with a summary report of its expenditures and should the City request additional detail on any expenditures set forth in the summary report, HU will promptly (within 30 days) submit all necessary back-up documentation evidencing payment by HU of those certain expenses and expenditures.

Once all subparts of 2(a)(i-x) are met, then the later of 30 days after receiving said accounting, or 30 days after further documentation reasonably requested by the City is received from HU, the City will, pursuant to Section 3(e) pay HU an amount not to exceed $900,000.

(b) Performance Threshold Two (also known as Year 2 which includes academic year 2016 - 2017) includes the following specific performance requirements:

i. HU will offer coursework at the Peoria campus to at least one hundred (100) students enrolled in its first year of actual operations offering digital media arts programs commencing the second semester of its 2016-2017 academic year. The students included in this performance measure will be post-high school graduates who are seated at the HU Peoria campus and enrolled in coursework in pursuit of a digital media arts undergraduate major to

Go to Previous View

Go to Table of Contents - Appendix

be applied towards a Bachelor of Arts or Bachelor of Science degree. Further, each such student will complete all or part of the semester's coursework for which the student is registered in order to fulfill this performance measurement. Additional students i.e., dual enrollment, online or any other type of distance learning, will not be counted in the one hundred (100) student performance requirement set forth in this subsection.

ii. HU will, prior to July 1, 2017, complete all matters specified in this subsections 2(b)(i-ii), and will provide Peoria a detailed accounting of its expenses for Program related: (1)Tenant improvements; (2) Fixtures, furniture, equipment and technology for classrooms, lab and studio development; (3) Marketing and student recruitment costs; (4) Software licensing costs; and (5) For any other tangible thing for which HU seeks reimbursement from Peoria (the "Other Costs"), so long as HU seeks preapproval and receives authorization from the City for the Other Costs. Further, subject to the City's preapproval and authorization, HU may, at the City's discretion, be eligible for reimbursement for reasonable business related travel costs and consultant expenses as set forth in 2(d), *infra*. Each expense, including preapproved business related travel costs, consultant expenses and Other Costs, will be itemized and supported by an invoice that includes the date, the payee and the amount of the expenditure.

In addition, HU will provide the City with a summary report of its expenditures and should the City request additional detail on any expenditures set forth in the summary report, HU will promptly (within 30 days) submit all necessary back-up documentation evidencing payment by HU of those certain expenses and expenditures.

Once all requirements in subsections 2(b)(i-ii) are met, then the later of 30 days after receiving said accounting, or 30 days after further documentation reasonably requested by the City is received from HU, the City will, pursuant to Section 3(e) pay HU an amount not to exceed $550,000. If 100 students of the type required herein are not seated and do not complete Year 2, then HU may request a pro rata share of $550,000, based upon the number of eligible students completing the academic year. For example, if fifty (50) post high school seated students complete the academic year during Year 2, then the City would pay HU fifty percent (50%) of $550,000 or $275,000 for Year 2.

(c) Performance Threshold 3 (also known as Year 3 which will include academic year 2017-2018) includes the following specific performance requirements:

i. In its second year of actual operations (academic year 2017 – 2018) HU, Peoria campus, will offer coursework to at least one

Go to Previous View

Go to Table of Contents - Appendix

hundred fifty (150) students in digital media arts programs. The students included in this performance measure will be post-high school graduates who are seated at the HU Peoria campus and enrolled in coursework in pursuit of a digital media art major to be applied towards a Bachelor of Arts or Bachelor of Science degree. Further, each such student will complete all or part of the semester's coursework for which the student is registered in order to fulfill this performance measurement. Additional students i.e., dual enrollment, online or any other type of distance learning, will not be counted in the one hundred fifty (150) student performance requirement set forth in this sub-paragraph.

ii. HU will, prior to July 1, 2018, complete all matters specified in subsections 2(c)(i-ii), and will provide Peoria a detailed accounting of its expenses for Program related: (1)Tenant improvements;(2) Fixtures, furniture, equipment and technology for classrooms, lab and studio development;(3) Marketing and student recruitment costs; (4) Software licensing costs; and (5) For any other tangible thing for which HU seeks reimbursement from Peoria (the "Other Costs"), so long as HU seeks preapproval and receives authorization from the City for the Other Costs. Further, subject to the City's preapproval and authorization, HU may, at the City's discretion, be eligible for reimbursement for reasonable business related travel costs and consultant expenses as set forth in 2(d), *infra*. Each expense, including preapproved business related travel costs, consultant expenses and Other Costs will be itemized and supported by an invoice that includes the date, the payee and the amount of the expenditure

In addition, HU will provide the City with a summary report of its expenditures and should the City request additional detail on any expenditures set forth in the summary report, HU will promptly (within 30 days) submit all necessary back-up documentation evidencing payment by HU of those certain expenses and expenditures.

If the performance requirements set forth in subsections 2(c)(i-ii) are met, then the later of 30 days after receiving said accounting, or 30 days after further documentation reasonably requested by the City is received from HU, then pursuant to Section 3(e) the City will pay HU an amount not to exceed the sum of $425,000. If 150 students of the type required herein are not seated and do not complete Year 3, then HU may request a pro rata share of $425,000, based upon the number of students completing the academic year. (See example of calculation at paragraph 2(b), *supra.*

(d) The total City incentives made to HU Peoria campus pursuant to this Agreement will not exceed the sum of $1,875,000. Moreover, all incentives paid by the

Go to Previous View

Go to Table of Contents - Appendix

City pursuant to this Agreement will be for tenant improvements related to the Project's Program specific lab and studio development furniture, fixture or equipment costs, marketing and student recruitment expense, software licensing costs and those preapproved and preauthorized business related travel costs, consultant expenses and Other Costs. Further, subject to the following requirements, business related travel costs, consultant expenses and Other Costs related specifically to the business of developing and growing the Peoria campus may be reimbursable only with the City's prior written approval. It is specifically understood by HU that any travel cost, consultant expense, or Other Cost is subject to pre-approval and authorization by the City before incurring the expense and that the City's determination regarding any such potentially reimbursable request is final, same being within the City's sole and exclusive discretion. Moreover, HU agrees that any and all reimbursement requests of any kind or nature will relate to costs accrued by HU solely for expenses directly related to the Peoria campus for use as a four-year liberal arts college, including such uses as teaching, college courses, and when classes are not in session for any related college administrative uses, college recruiting, student lounge, special events, or similar collegiate uses This provision is intended to meet the requirements of Article IX, Section 10 of the Arizona Constitution. If the improved space is used by any outside entity unrelated to campus life or student activities, then the user shall pay a commercially reasonable rent for use of the improved space.

3. <u>HU and City Obligations and Verification</u>.

(a) HU will participate in economic development activities with the City for the attraction of City Targeted Industries for high-wage and technically-skilled jobs, including the development of customized work force development plans and programs for targeted industries sought by the City as part of its business attraction efforts. Such activities will include participation in meetings with business prospects, the creation of custom training programs to meet workforce development needs, and marketing activities.

(b) If prior to the end of 84 months (7 years) from the Effective Date of this Agreement, HU engages in any similar project with another Arizona municipality, such action will be presumed to be competition with the City's Project. In the event of such competition, HU will repay the City all of the financial assistance/incentives it has received from the City to the date of such competition with interest at the statutory judgment rate.

(c) Upon HU's request, the City will review tenant improvement plans for the Peoria campus (the "Premises") on a priority basis at no cost to HU, and subject to all applicable laws, including laws involving posting and the conduct of public meetings. Upon the City's determination that HU has submitted final and complete plans for tenant improvements for the Premises that comply with all applicable laws, ordinances and requirements, and that are otherwise to the satisfaction of the City, the City will issue tenant improvement permits for the improvements to be built in or on the Premises. Consistent with the issuance of such permits, the City will provide a single point of contact with the City to coordinate timely permitting and will hold pre-submittal meetings to reduce the number of reviews required, to ensure timely completion of this and any future phases of the tenant improvements for the Premises.

(d) HU will submit to the City documentation relating to each performance threshold contained in Section 2, which documentation will be in a form and manner established by the City. The City may request additional documentation from HU, as necessary, to verify that a performance threshold has been achieved.

(e) Within 30 days following the City verifying that all components of a performance threshold have been met, the City will submit payment to HU in the amount corresponding to those specific performance thresholds required for any of the three scheduled periodic payments. Nothing herein grants HU a right nor does it create a duty in Peoria to accelerate the payment related to any performance threshold(s).

(f) If during the Term of this Agreement HU does not achieve an academic year in which 150 post high school seated students are enrolled and taking classes in an accredited digital media arts program then HU agrees to repay the City for all financial assistance/incentives HU received from the City pursuant to this Agreement . Moreover, should HU fail to meet an average required Performance Measure Threshold of 150 seated post-high school graduates during any year following Year 3, i.e., in Years 4 – 7, then HU will repay the City a pro rata amount of the City funding paid to HU under the terms of this Agreement, but in no event will the total principal amount of repayment set forth in this Paragraph exceed the total amount/incentives paid by the City to HU. For example, if in Year 4 the enrollment is 147 students, then assuming the full amount of possible incentives (i.e., $1,875,000) was, in fact, paid by the City to HU, then HU would owe the City $6,616 ($1,875,000 divided by 850 (the total of required enrolled students for the Term of the Agreement, Years 2-7)), = $2,206/student) for Year 4.

4. <u>Additional HU Obligations and Duties</u>.

(a) The City and HU will work together to achieve the Enrollment Requirements in order to maximize the economic impact to the City from the financial support required by this Agreement. This Agreement to work together does not, however, impact the Enrollment Requirements set forth herein and HU remains solely responsible for meeting said requirements. Furthermore, should the City pursue and recruit other universities to Peoria, through the end of year three (3), the City agrees to first review those candidates with HU and to engage and/or financially support only those universities willing to collaborate and not compete with HU. Moreover, HU acknowledges the presence of Trine's campus in Peoria and agrees that said presence will not impact its Enrollment Requirements.

(b) HU will devote and invest 2.5 million dollars ($2,500,000) for the development of the HU Peoria campus during years 1-3. This investment by HU will be program specific to the digital media arts undergraduate degree programs offered at the HU Peoria campus. Moreover, HU will annually, in each of the first 3 years, provide the City with a detailed summary report of these expenditures, and if requested by the City, HU will provide specific back-up documentation related to its investment which will include but is not limited to payroll information, invoices, payment records and any other evidence of payment as reasonably required by the City, documenting at least a total $2,500,000 investment in the HU Peoria campus for Years 1-3.

(c) HU will obtain the equivalent of approximately $700,000 from 8700 Kelton Campus, LLC, as rent assistance for the 15,000 square foot AIC campus space housing HU. This rent assistance will be calculated at reasonable commercial rates for similarly situated property in the area of the HU Peoria campus location. HU will provide the City with an executedcopy of the Lease Agreement.

5. **Term.** This Agreement shall commence upon the date when both Parties have executed this Agreement (the "Effective Date"). Unless terminated earlier as provided herein, the term of this Agreement shall be 7 years starting from the Effective Date.

6. **Breach, Cure, Remedies, and Termination.**

(a) In the event that a Party fails to perform any obligation imposed by this Agreement, the non-breaching Party shall provide written notice of such breach to the other Party. The Party receiving the written notice will have ten (10) business days after receipt of such written notice within which to remedy such breach unless additional time is reasonably required to remedy the breach, in which event the Party shall cure the breach within thirty (30) business days.

(b) If the Party in breach fails to remedy the breach in a timely and reasonable manner as provided in Subsection (a), the Parties agree that any Party who provided written notice of such breach may cancel and terminate this Agreement by providing written notice of termination to the other Party. In the event of termination, the Parties shall be fully and completely released from all of their respective rights, duties, obligations, and liabilities under this Agreement, except as otherwise set forth herein.

(c) In addition to the termination rights under 6 (a) and (b) above, (i) each Party shall also have the right, in its sole and unfettered discretion, to terminate this Agreement in the event that any or all of the Parties reach an impasse in negotiations under this Agreement for any reason whatsoever; (ii) the City shall have the right to terminate this Agreement for conflict of interest pursuant to A.R.S. § 38-511; (iii) the Parties each shall have the right to terminate this Agreement if at any time any such Party reasonably determines that the Project is not feasible financially or for other business reasons with the express understanding that HU's financial investment in the Peoria campus will be greater than or equal to the incentives received from the City should it terminate this Agreement within the first 3 years of the Agreement and absent such investment, HU will have no right to terminate pursuant to the voluntary provisions of this Section 6; and (iv) this Agreement may be terminated at any time upon the mutual written agreement of the Parties. In the event of any termination under the preceding sentence, the Party exercising the termination right shall provide written notice of termination and the applicable basis above to the other Party, whereupon the Parties shall, except as otherwise provided herein, be fully and completely released

Go to Previous View

Go to Table of Contents - Appendix

from all of their respective rights, duties, obligations, and liabilities under this Agreement. Nothing herein shall prevent an action for Breach which Breach occurred *prior to a notice terminating the Agreement. Nor will any Termination provision(s),* herein, affect HU's enrollment requirements or its duty to reimburse the City for City assistance or incentives as set forth in Paragraph 3(f) of this Agreement.

7. **Assignment.** No Party may assign this Agreement without first obtaining the advance written approval of the other Party, which approval may be granted or withheld in the sole and unfettered discretion of such other Party. The City agrees that, notwithstanding the foregoing, HU may assign without the prior written approval of the City, but with thirty (30) days prior written notice to the City, its respective rights, duties, obligations, and liabilities under this Agreement to a limited liability company, corporation, trust, or partnership of which HU owns the majority beneficial interest and has operational control, but any such assignment will not affect HU's requirements, duties and potential liabilities pursuant to this Agreement; HU remaining solely responsible for compliance with the terms of this Agreement.

8. **Representations and Warranties / Limitations.**

(a) HU represents and warrants that it is an Indiana not-for-profit corporation duly formed and validly existing, in good standing, and authorized to operate under the laws of the State of Arizona.

(b) HU represents and warrants that the person(s) executing this Agreement on behalf of HU has/have full right, power, and authority to execute this Agreement and bind HU hereunder.

(c) HU shall comply with all applicable federal, state and local regulations, codes and laws regarding its operations. Nothing in this Agreement constitutes an exemption or grant of a variance from applicable codes and laws.

(d) City represents and warrants that the person(s) executing this Agreement on behalf of City has full right, power, and authority to execute this Agreement and bind the City hereunder.

9. **General Provisions.**

(a) Applicable Law and Venue. The laws of the State of Arizona will govern the interpretation and enforcement of this Agreement, without regard to conflicts of laws principles. Any mediation, arbitration, or legal proceedings initiated to enforce the terms and conditions of this Agreement will be conducted in Peoria, Arizona, or in the Maricopa County Superior Court or the United States District Court for the District of Arizona, as appropriate.

(b) Rights and Remedies are Cumulative. Except as otherwise expressly stated in this Agreement, the rights and remedies of the Parties are cumulative, and the exercise by either Party of one or more of its rights or remedies will not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other Party.

(c) Specific Performance as Exclusive Remedy. Subject to HU's right to terminate this Agreement in accordance with Section 6, HU's exclusive remedy for an uncured City breach of this Agreement is to institute an action for specific performance of the terms of this Agreement, and in no event shall HU have the right, and HU expressly waives the right to seek monetary damages of any kind (including but not limited to actual damages, economic damages, consequential damages, or lost profits) from the City in the event of a default by the City under this Agreement or any action related to this Agreement.

(d) Indemnity. HU shall indemnify, protect, defend, and hold harmless the City, and its officials, officers, employees, representatives, and agents (collectively, "Indemnified Parties") from and against any and all losses, liabilities, damages, claims, actions, causes of action or costs (including reasonable attorneys' fees and costs) (collectively, the "Liabilities") directly or indirectly arising from the negligent acts, errors, omissions or willful misconduct of HU, its officers, employees, representatives, members, contractors, invitees and agents hereunder or from the Project, excluding any such Liabilities arising from the negligent acts, errors, omissions or willful misconduct of the City. This indemnity obligation will survive any assignment or termination of this Agreement.

(e) Notices, Demands, and Communications Between the Parties. All notices, demands, and communications between the Parties under this Agreement shall be given either by (i) personal service, (ii) delivery by a reputable document delivery service such as Federal Express that provides a receipt showing date and time of delivery, (iii) facsimile or email with a hard copy sent by United States mail; or (iv) by mailing in the United States mail, certified mail, postage prepaid, return receipt requested, addressed to:

To City:	City Manager City of Peoria P.O. Box 4038 Peoria, Arizona 85380-4038
With a copy to:	Economic Development Services Director City of Peoria P.O. Box 4038 Peoria, Arizona 85380-4038
With a copy to:	City Attorney City of Peoria P.O. Box 4038 Peoria, Arizona 85380-4038

Go to Previous View

Go to Table of Contents - Appendix

To Huntington:	Huntington University Attn: President Emberton 2303 College Avenue Huntington, Indiana 46750
With copy to:	Huntington University Attn: Jeff Berggren 8765 W. Kelton Ln B3, Ste. 140 Peoria, Arizona 85382
With copy to:	DeLaney Hartburg Roth & Garrott LLP General Counsel 533 Warren Street Huntington, IN 46750

Notices personally delivered, sent by fax or email with a confirmation by United States mail or delivered by document delivery service shall be deemed effective on delivery (personally or by a reputable commercial overnight courier service) or on the second business day following deposit of the confirmation (for a fax or email) in the United States mail. Such written notices, demands, and communications shall be sent in the same manner to such other addresses as any Party may from time to time designate by giving notice in accordance with this subsection.

(f) Nonliability of City Officials and Employees. No elected official, officer, employee, agent, or contractor of the City will be personally liable to HU in the event of any default or breach by the City or for any amount which may become due to HU on any City obligations arising by the terms of this Agreement.

(g) Interpretation. The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against any Party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply. The part and paragraph headings used in this Agreement are for purposes of convenience only, and shall not be construed to limit or extend the meaning of this Agreement.

(h) Acknowledgment. HU acknowledges that this Agreement is subject to the provisions of the Arizona Constitution, Article IX, Section 10 pertaining to aid of religious institutions. HU has made an independent evaluation of compliance with these provisions and City makes no warranties of such compliance.

(i) Entire Agreement, Waivers, and Amendments. This Agreement integrates all of the terms and conditions mentioned herein, or incidental hereto, and supersedes all negotiations or previous agreements between the Parties with respect to all or any part of the subject matter hereof. All waivers of the provisions of this Agreement must be in writing and signed by the appropriate authorities of the Party to be charged, and all amendments and modifications hereto must be in writing and signed by the appropriate authorities of both the City and HU.

(j) Counterparts; Signatures. This Agreement may be executed in counterparts, each of which, after all the Parties hereto have signed this Agreement, shall be deemed to be an original, and such counterparts shall constitute one and the same instrument. Facsimile or electronically scanned signatures shall have the same force and effect as original signatures.

(k) Successors. This Agreement shall be binding upon and shall inure to the benefit of the permitted successors of each of the Parties hereto.

(l) *Severability. In the event any section or portion of this Agreement shall be* held, found, or determined to be unenforceable or invalid for any reason whatsoever, the remaining provisions shall remain in effect, and the Parties hereto shall take further actions as may be reasonably necessary and available to them to effectuate the intent of the Parties as to all provisions set forth in this Agreement.

(m) Time is of the Essence. Time is of the essence for each of the Parties' obligations under this Agreement.

(n) Recitals. The recitals set forth above are incorporated herein by this reference.

(o) Attorneys' Fees. The prevailing Party or Parties in any action to enforce this Agreement shall be entitled to recover reasonable attorneys' fees and costs from the other Party or Parties (including fees and costs in any subsequent action or proceeding to enforce any judgment entered pursuant to an action on this Agreement).

(p) No Third Party Beneficiaries. This Agreement is made and entered into solely for the benefit of the City and HU. No other person shall have any right of action or claim under or by reason of this Agreement.

(q) No Partnership or Joint Venture. Nothing in this Agreement is intended to or does establish the Parties as partners, joint venturers, or principal and agent with each other.

[Signature page follows]

Go to Previous View

Go to Table of Contents - Appendix

IN WITNESS WHEREOF, the City and HU have executed this Agreement through their representatives duly authorized to execute this document and bind their respective entities to the terms and obligations contained in this Agreement on the Effective Date.

HUNTINGTON UNIVERSITY:

[redacted]

Its: president

THE CITY OF PEORIA:

Susan J. Daluddung for

Carl Swenson, City Manager

ATTEST:

Rhonda Geriminsky

Rhonda Geriminsky, City Clerk

APPROVED AS TO FORM:

Stephen J. Burg for

Stephen M. Kemp, City Attorney

EXHIBIT 9

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

DARCIE SCHIRES; ANDREW AKERS; and GARY WHITMAN, Plaintiffs,	
vs.	No. CV2016-013699
CATHY CARLAT, in her official capacity as Mayor of the City of Peoria; et al., Defendants.	

DEPOSITION OF JEFFREY CHARLES BERGGREN

Phoenix, Arizona

August 23, 2017

Prepared By:
Colette E. Ross, CR
Certified Reporter #50658

Go to Previous View

Go to Table of Contents - Appendix

leasing or purchasing property within the City of Peoria a standard function of Huntington University?

A. No.

Q. Prior to the execution of this agreement, was

01:52:33 there any legal obligation for Huntington University to build a campus in the City of Peoria?

A. No.

Q. Prior to the execution of this agreement, was there any contractual obligation for Huntington University

01:52:46 to build a campus within the City of Peoria?

A. No.

Q. Prior to the execution of this agreement, were there any regulatory, and when I say regulatory I mean either government administrative agencies or accrediting

01:53:02 academic accrediting, were there any regulatory requirements that Huntington University operate a campus within the City of Peoria?

A. No.

Q. Is it fair to say then that this agreement is

01:53:13 the one and only obligation for operating a campus within the City of Peoria?

A. Yes.

Q. And did I understand you correctly from your earlier testimony that it is your belief that Huntington

01:53:35 University would not be operating a campus within the City of Peoria if not for this agreement?

A. That was my personal opinion, yes.

MR. HAM: That's all the questions I have.

MS. DEMARCHI: I have no questions. We will read and sign.

We should talk about the mechanics of the preparation of the confidential portion of the transcript. I guess what we can do is have a version that has all the materials and then a version that has it excerpted. Maybe there is a way to mark the pages that are confidential so that, you know, two years down the road when you are reading your file it isn't hard to tell which pages you can't share. Does that work?

MS. THORSON: That works.

MR. MANLEY: I think having one -- you are saying one version of the transcript that's complete and one that is --

MS. DEMARCHI: One that has --

MR. MANLEY: That does not include the confidential material.

MS. DEMARCHI: Right. And so I was talking with Colette at the break. And she was saying what they can do sometimes is leave the pages in there but you white out all of those sections so that you still -- you don't have to change the pagination and it doesn't get super confusing.

MR. MANLEY: I think that makes sense.

MS. DEMARCHI: Okay. I think we are done then.

MR. HAM: The City will take a copy.

(The deposition concluded at 1:54 p.m.)

Jeffrey Charles Berggren

JEFFREY CHARLES BERGGREN

EXHIBIT 10

LEASE

THIS LEASE is made and entered into this 24th day of December, 2015 ("Effective Date") by and between ARROWHEAD EQUITIES LLC, an Arizona limited liability company, hereinafter designated as "Landlord," and HUNTINGTON UNIVERSITY, INC., an Indiana not-for-profit corporation, hereinafter designated as "Tenant" (this agreement is hereinafter designated as "Lease").

1. PREMISES

1.1 Demise. Landlord hereby leases to Tenant and Tenant hereby leases from Landlord the following described property located in Maricopa County, Arizona:

That certain commercial building containing approximately Twenty-Nine Thousand Two Hundred Twenty-Two (29,222) square feet, as outlined in red on the Site Plan attached hereto as Exhibit "A" and by this reference incorporated herein (the "Premises"). The Premises are located at 8385 W. Mariners Way in the City of Peoria, Maricopa County, Arizona. The square footage of the Premises shall not be remeasured upon Substantial Completion of the Improvements. The square footage set forth above shall be deemed correct for all purposes of this Lease.

The Premises are part of a larger parcel of real estate shown on Exhibit "A-1" referred to herein as the "Project". Tenant acknowledges that Landlord does not own any portions of the Project other than the Premises.

The Project is subject to that certain Declaration of Covenants Conditions and Restrictions by Arrowhead Entertainment Center, dated June 26, 2000, and recorded on June 26, 2000, as document No. 2000484710 (hereinafter collectively referred to as the "Declaration"). Tenant acknowledges receipt of a copy of the Declaration and acknowledges and agrees that its rights hereunder are subject to the terms of the Declaration. Landlord shall not amend, waive the benefit of, or terminate, or permit any amendment, waiver or termination of, any portion of the Declaration in any manner which materially adversely affects Tenant's ability to conduct business at the Premises as permitted herein, except with the prior written consent of Tenant, which may be given or withheld at Tenant's sole discretion. Landlord shall perform all applicable obligations under the Declaration, as required, at no expense to Tenant, except if and as herein elsewhere expressly provided, and shall at its own sole expense use all reasonable and diligent efforts to enforce the Declaration in accordance with its respective terms against all other parties subject thereto if such enforcement is necessary to protect the interest and rights of Tenant hereunder.

1.2 Common Areas. Landlord grants to Tenant the non-exclusive right to use the Common Area of the Project. The use and occupation by Tenant of the Premises shall include the use in common with others entitled thereto of such common additional areas, including without limitation, the parking areas, service roads, loading facilities,

Go to Previous View

Go to Table of Contents - Appendix

sidewalks, and other facilities, as may be designated from time to time by the Landlord (collectively, the "Common Areas"). Tenant's use of the Common Areas shall be subject to the terms and conditions of this Lease and to reasonable rules and regulations for the use thereof as prescribed from time to time by Landlord which regulations do not materially limit Tenant's business operations or Tenant's rights under this Lease and which rules and regulations shall be uniformly enforced. No changes to the Common Areas shall be made by Landlord which materially adversely affect the use, access or visibility of the Premises.

2. TERM

2.1 Lease Term. The term of this Lease shall be for a period of approximately ninety six (96) full calendar months following the Commencement Date, plus the remainder of the partial calendar month, if any, in which the term commences (hereinafter referred to as the "Lease Term"), with a fixed expiration date of July 31, 2024.

Commencement Date. The Lease shall be effective upon execution hereof. The Lease Term, and Tenant's obligations to pay rent and occupy the Premises, shall commence upon Landlord's notification to the Tenant that the Premises and Phase One of the Improvements (defined below) therein are Substantially Complete and available for occupancy, but no later than July 15, 2016, subject to Tenant Delays, as such term is defined below ("Outside Delivery Date"), so long as the Premises and Phase One of the Improvements are substantially complete (hereinafter referred to as the "Commencement Date"). Landlord shall provide at least thirty (30) days prior notice to Tenant advising Tenant of the date on which Landlord intends to deliver the Premises to Tenant with Phase One of the Improvements substantially completed ("Delivery Date"). Tenant shall be obligated to pay to Landlord, on a monthly basis, its Proportionate Share (as hereinafter defined) of all Operating Costs, Insurance and Real Estate Taxes and Assessments (all as hereinafter defined) commencing upon the Commencement Date and continuing thereafter throughout the Lease Term. Should the Lease Term not commence on the first day of a calendar month, Tenant shall pay rent for such partial month on a per diem basis calculated on the basis of a thirty-day month and the provisions hereof shall be effective during such partial month. "Phase One of the Improvements" shall mean the improvements depicted on Exhibit E-1 attached hereto an made a part hereof. The remainder of the Improvements to be completed by Landlord pursuant to Section 52 of this Lease are referred to herein as "Phase Two of the Improvements". Phase Two of the Improvements shall be Substantially Completed no later than December 1, 2016 ("Phase Two Completion Date").

For purposes herein, "Tenant Delays" shall mean any actual delay which results from: (i) Tenant's failure to approve the floor plans by the later of January 15, 2016 or five (5) business days after the floor plans are delivered by Landlord to Tenant; (ii) Tenant's failure to approve the construction drawings by the later of February 15, 2016 or five (5) business days after the construction drawings are delivered by Landlord to Tenant; or (iii) changes to the approved Plans and Specs requested by Tenant for which Landlord has

Go to Previous View

Go to Table of Contents - Appendix

notified Tenant that a delay will result therefrom in accordance with Section 52 of this Lease.

A written memorandum of the Commencement Date may be executed by both parties at the request of either party and shall thereafter be attached to this Lease. For purposes hereof, "Substantial Completion" or "Substantially Complete" or words of similar import, shall mean that Phase One of the Improvements or Phase Two of the Improvements, as applicable, are completed in accordance with all applicable law, in compliance with the approved Plans and Specifications and are in good and satisfactory condition, subject only to Punchlist items that do not prevent Tenant from using the Premises and Phase One of the Improvements and/or Phase Two of the Improvements, as applicable, for its intended use, including the occupancy by students and administration for the purpose of conducting classes.

2.3 Possession. Tenant hereby covenants and agrees that it will open the Premises for business fully fixtured, stocked and staffed within 30 days after the Commencement Date. Landlord acknowledges that use by Tenant of the administrative offices for any school related purposes shall be deemed "open for business, fully fixtured, stocked and staffed".

Landlord shall use its commercially reasonable efforts to cause the Delivery Date to occur no later than the Outside Delivery Date and Substantial Completion of Phase Two of the Improvements by the Phase Two Completion Date. If the Delivery Date or Substantial Completion of Phase Two of the Improvements has not occurred within fifteen (15) days after the Outside Delivery Date or Phase Two Completion Date, as applicable, Landlord acknowledges that Tenant will incur additional costs not anticipated by the parties and therefore Tenant shall receive a rent credit towards its next due rental obligations equal to two (2) days Rent for each and every day after the Outside Delivery Date until the Delivery Date or Substantial Completion of Phase Two of the Improvements by the Phase Two Completion Date, as applicable. The parties agree that this rent credit represents a fair and reasonable estimate of the costs that Tenant will incur by reason of such late delivery. The provision for such rent credit shall be in addition to all of Tenant's other rights and remedies hereunder or at law and shall not be construed as a penalty.

Subject to all applicable ordinances and building codes governing Tenant's right to occupy that certain portion of the Premises consisting of approximately 1,500 square feet of space at the easternmost entrance to the Premises ("Early Occupancy Space"), Tenant shall be allowed early possession of the Early Occupancy Space for administrative purposes, touring, registration, fundraising, student visits and other non-classroom activities commencing upon the date that is sixty (60) days after the effective date of this Lease (the "Early Occupancy Date"), in which event Tenant's occupancy of the Early Occupancy Space shall be subject to all terms and conditions of the Lease, including without limitation payment of utilities and satisfaction of the insurance requirements, except that Tenant's obligation to pay Rent shall not commence until the Commencement Date. Neither the failure of the Early Occupancy Space to be ready for

EXHIBIT 11

In The Matter Of:

Schires vs.

Carlat

Jeffrey W. Kost

August 21, 2017

Griffin & Associates Court Reporters, LLC

2398 E. Camelback Road

Suite 260

Phoenix, AZ 85016

Original File JK082117.txt

Min-U-Script® with Word Index

describe a lease that you entered with Huntington University?

A. Yes.

Q. And that property is 8385 West Mariners Way in Peoria; correct?

A. Yes.

Q. And is that the same property that's the subject of Arrowhead's agreement with the City of Peoria?

A. Yes.

Q. Okay. Now, when did Arrowhead acquire this property?

A. Again, within the last couple years, two to three years.

Q. Why did Arrowhead acquire the property?

A. It looked like a good opportunity.

Q. Why did it look like a good opportunity?

A. It looked like it was a strong tenant and a good value on the building.

Q. And when did Arrowhead learn the property was available?

A. I do not know.

Q. What did Arrowhead intend to do with the property when it first acquired it?

A. From the very beginning, it's been to have Huntington University as a tenant.

Q. And what was the condition of the property when you

EXHIBIT 12

Huntington University P83 Narrative

Par Time Equities LLC, Manager for Arrowhead Equities LLC is pleased to inform the City of Peoria that our company is purchasing the real estate located at 8353 and 8385 Mariners Way (both addresses are old Dolce Spa building) in the P83 area. As the City may be aware, Huntington University (HU) will be our tenant at this location and we will be conducting a medium sized remodel/tenant improvement for all three (3) interior floors, roof and HVAC units for the existing building.

The HU remodel/tenant improvement scope of work for the interior of the existing building will be changes such as significant demo, removing the hair cutting stations and replacing them with various Digital Media Arts (DMA) filming studios, common areas and labs. Tenant improvement work will include items such as adding various interior demising walls, creating new open spaces, significant changes/additions to HVAC, electrical, plumbing, fire protection, millwork, lighting, sound proofing, flooring, ceilings, low voltage systems, etc. We will remodel the other existing rooms for DMA sound areas for students to use individually for their school projects. We will be painting the entire "interior" of the 30,000 sf building. The only new additions for the sitework or the exterior of the building will be flatwork/curbing repairs, up-dating landscape and repairs to the existing water feature. The building's exterior stucco and paint colors seem to be in great shape and they will remain as existing.

Overall, we will implement adjustments/demo/additions throughout various areas for the interior of the existing building. The layout and feel of the existing floor plan for this building is something that works really well for HU and the creative DMA atmosphere the university is striving to establish for their new campus in Peoria. Par Time Equities LLC, manager for the Arrowhead Equities LLC ownership is applying for the P83 reuse program for reimbursement of tenant improvement costs. The total tenant improvement costs that our real estate ownership plans on spending related to this project will be in the range of 1.6 million dollars. Our project costs will be initially paid for through equity dollars and a conventional financing through our lender on the project. Par Four will be seeking reimbursement from the City of Peoria through the P83 Reuse program as dictated by the program directives.

Again, we look forward to making this project a success for Huntington University and the City of Peoria. We also want to commend the City of Peoria for creating a program that allows projects like this to actually be realized and even successful for all involved. Thank you

Sincerely,

Par Time Equities LLC 1-12-16

Application for Participation in the City of Peoria's P83 Building Reuse Program

This form must be completed and submitted to the Economic Development Services Department (EDS), to the attention of Dina Green, by owners of eligible properties located in an established Program target area (see attached Target Areas Map) who desire to participate in the City of Peoria's P83 Building Reuse Program. A person, corporation, association or other public or private legal entity holding fee simple title to any commercial real property that is located in the eligible Program target area may apply for Program benefits. Tenants must obtain the consent of their landlords in writing in order to participate in the Program (please attach the written consent of the property owner if a tenant submission). Also, please attach a current title report evidencing the condition of title to the property as of the date of Program application. The application may be made directly by the property owner or by an agent authorized in writing to act on behalf of the property owner. If the real property is under joint ownership, the application must be submitted on behalf of or with the authorization of all of the owners of the real property.

Date 4/12/16

Property Address 8353 & 8385 W. MARINERS WAY

Property Tax Assessor Parcel Number 200-53-630

1. Property Owner Name ARROWHEAD EQUITIES LLC

   Legal name of entity to which Agreement entered into with City

   PAR TIME EQUITIES LLC

2. Property Owner Mailing Address

   1333 N. GREENFIELD RD #104
   Street Address

   MESA AZ 85205
   City/Town State Zip

3. Owner Phone Number 480-775-4650

4. Owner Email Jeff@GLENWOOD.com Fax # 480-775-4646

5. What business(es) occupies the property(ies) included in this request?

HUNTINGTON UNIVERSITY

6. What type of business is it? DMA (DIGITAL MEDIA ARTS)

7. What year was the property improved and building(s) built? (Estimate if not sure)

2007

8. If yes to 8, have restrictions been placed on changing the façade based on this designation? Yes____ No X

9. Please attach a copy of your current property insurance policy evidencing sufficient insurance coverage for the property to which an improvement is being requested. The property owner must provide a certificate of property and liability insurance that certifies the subject real property, including without limitation the building or structures thereon, is insured for amounts acceptable to the City from an insurer acceptable to the City. A copy of the insurance certificate will be an attachment in the final contract documents. The City shall be an additional named part on the insurance.

10. Please attach a detailed narrative of the proposed project for which City assistance is requested (City matching funds provided are only in the form of reimbursement up to 50% of eligible costs for eligible improvements, as determined by the City). The narrative should fully describe:

- A project overview and scope of work
- Nature of proposed improvements
- A summary table showing all improvements proposed and costs separating the property owner's funded improvements and City eligible improvements with a total cost for the project
- A project financing sources and uses table showing all available property owner's funds for their 50% share of the costs and the use of those funds, as well as the requested City 50% share of the costs and the use of those funds
- Include renderings of the proposed interior tenant improvements that will assist the City in understanding the full scope and benefit of the project

11. Total number of new FTE jobs brought to Peoria AZ 8-10 Year 1 23-25 Year 3

12. Average salaries of new jobs 50-60K Year 1 45-55K Year 3

13. Total number of existing jobs (if expansion) N/A Year 1 N/A Year 3

14. Average salaries of existing jobs N/A

15. Total payroll of all jobs 600K Year 1 1.375 MIL Year 3

Go to Previous View

Go to Table of Contents - Appendix

16. Average education levels of new jobs (circle one):
2-Year Post Secondary   4-Year Bachelors   Graduate Degrees

17. Percentage of benefits paid by employer for all jobs 100%

18. Total real and personal property for tax purposes 3,700,000 BUILDING PURCHASE COST

19. Anticipated direct sales tax generated at 1% of taxable sales 100%

20. Other revenues (est. annual): Occupancy taxes 100% Utility revenues 100%

21. City infrastructure construction required NO

22. Projected total annual operating budget for facility $3,000,000

23. Total capital expenditures from the property owner for the project 6.7 MILLION (OWNER & TENANT FF&E)

By signing this application the undersigned acknowledges and agrees that the City of Peoria, in its sole and absolute discretion, will determine Program eligibility and the nature of participation the City will provide towards a revitalization project in its entirety, and work with the Property Owner to finalize all design concepts insofar as those concepts are structurally sound, appropriately relate to the overarching design program of the City, and are reasonable. The City of Peoria will also communicate any issues that might develop during construction with the Property Owner and make every effort to reach a solution to complete the project in a timely and efficient way. The City also will not be bound to a timeline for the project other than the one that is developed by the Contractor and agreed to by the City in writing.

By signing this application the Property Owner(s) acknowledges receiving a copy of the Program Guidelines and the Commercial Revitalization Agreement. The applicant must execute the P83 Building Reuse Agreement as a condition to participating in the Program. Property owner(s) acknowledge and agree to obtain all required city approvals, including design and use approvals, as needed, from the city, as well as all permits for construction, demolition, or other covered activities requiring a permit of the city.

Reimbursement under this Program is subject to the property owner(s) submitting a request for reimbursement package to the city, containing the items below, following the execution of a Commercial Revitalization Agreement:

- Copies of city permits obtained for the scope of work contained in the agreement
- Proof of passing city building, fire and other inspections for the work items reimbursement is being requested
- Exhibits showing the work items completed pursuant to the approved scope of work contained in the Agreement

Go to Previous View

Go to Table of Contents - Appendix

- Evidence that the property owner has paid the cost of the work for which reimbursement is being requested

The information contained in this statement is true and accurate. (Incorrect or misleading information may disqualify the project.)

______________________ Date 1/12/16 ______________
Property Owner (required)

Received by City of Peoria ______________________ Date ______________________

Contact: Dina Green, Economic Development Project Manager
dina.green@peoriaaz.gov or 623.773.7781

To Be Completed by City Staff:

Date Application Deemed Complete: ______________________________

Date Application Deemed Eligible Under the Program: _______________

Signature of Eligibility Officer: __________________________________

Signature of EDS Director: ______________________________________

Huntington University Peoria, AZ Campus

TI CONSTRUCTION BUDGET

		Square Footage	Price/Bldg. Sq. Ft.	Total
LAND	Land psf			
PRODUCTION COSTS:				
Hard Construction Costs:				
Offsite Work				$0
Site Work				$50,000
HU Building		30,000		$0
Tenant Improvements			$35.00	$1,050,000
Total Hard Costs:		**30,000**	**$35.00**	**$1,100,000**
Soft Construction Costs:				
Architect & Engineer			$5.00	$150,000
Legal, Title & Closing			$0.00	$0
Permits & Fees	(City, SRP, SWG, C.L.)		$2.33	$70,000
Survey & Appraisal			$0.00	
Construction Inspection			$0.17	$5,000
Taxes & Insurance			$0.00	
Project Management			$5.00	$150,000
Marketing/Leasing			$0.00	$0
Sales Commission			$0.00	$0
Contingency			$3.50	$105,000
Total Soft Costs:			**$16.00**	**$480,000**
TOTAL PRODUCTION COSTS		**30,000**	**$51.00**	**$1,580,000**
FINANCING:				
Construction Interest			$0.00	$0
Financing Fees			$0.00	$0
TOTAL FINANCING COSTS			**$0.00**	**$0**
TOTAL PROJECT COSTS		30,000	$51.00	$1,580,000

1/25/16

EXHIBIT 13

ECONOMIC DEVELOPMENT ACTIVITIES AGREEMENT

This ECONOMIC DEVELOPMENT ACTIVITIES AGREEMENT ("Agreement") is entered into to be effective as of the 15th day of March, 2016 (the "Effective Date"), by and between the CITY OF PEORIA, a municipal corporation of the State of Arizona (the "City") and ARROWHEAD EQUITIES LLC, an Arizona limited liability company ("Arrowhead"). The City and Arrowhead are each a "Party" to this Agreement and may be referred to herein collectively as "Parties."

1. **Recitals**. As background to this Agreement, the Parties recite, acknowledge and confirm the following, each of which shall be a material term and provision of this Agreement:

A. On December 20, 2010, the City adopted an Economic Development Implementation Strategy ("EDIS") which provides an implementation-based plan for achieving the economic development goals of the City.

B. One of the strategies to implement the EDIS is through the City-adopted Economic Development Incentive and Investment Policy ("EDIIP") and accompanying Economic Development Incentive and Investment Policy Guidelines ("EDIIP Guidelines"), which provide a framework for evaluating City financial incentives and investment towards the retention and expansion of existing local businesses and attraction of certain new businesses within the City in a manner that is consistent with applicable laws.

C. In furtherance of these objectives, the City has identified its P83 District (the "District") as an EDIS Investment Zone, and has developed a P83 District Building Reuse Program (the "Program") and accompanying City of Peoria P83 District Building Reuse Program Guidelines (the "Program Guidelines") to reposition unused or underutilized properties in order to influence infill development opportunities within the District, and to encourage a more diverse use of existing vacant buildings in the District that includes professional office, entertainment and retail tenants as an alternative to restaurant uses that have a historical failure rate in the District.

D. One of the challenges facing targeted properties within the District is the extensive amount of tenant improvement costs associated with converting existing building interiors into commercial office, retail or entertainment spaces, which conversion thereafter is intended to promote commercial reinvestment activities through the District, to increase daytime foot traffic in the District, and ultimately to enhance the overall quality of life for the City's residents by providing both tangible and intangible economic benefits.

E. Arrowhead, as "Landlord," has entered into a lease dated December 24, 2015 (the "Lease") with Huntington University ("Tenant") to improve, and thereafter operate in, an existing approximate 30,000 square foot building (the former Dolce Salon & Spa) located at 8385 West Mariners Way, in the District (the "Premises"). Arrowhead has disclosed that Tenant intends to occupy the Premises primarily as an institution of higher learning, including the offering of digital media arts programs to college students, as an educational use of the nature that is consistent with the objectives of the Program (the "Required Use"). Arrowhead further has represented that the preliminary capital investment from Arrowhead and Tenant will be in excess of $6,700,000.00 including building acquisition, architectural services, tenant improvements, furnishings, fixtures and equipment, interior and exterior signage, and other costs related to acquiring, equipping and fixturizing the Premises.

F. The City has found and determined that the construction of the proposed tenant improvements at the Premises by Arrowhead, and Tenant's operation of its business from the Premises, is exactly the sort of "re-use" of a presently unused or underutilized property and conversion to an educational space that is the ultimate objective of the Program.

G. According to an Elliott Pollack study, during its first year of operations, Huntington University will generate 12 jobs with $694,400 in wages and $1.7 million in economic output. Over a five year period, the annual fiscal impacts of construction and ongoing operations of Huntington University campus will generate an estimated $719,000 for the State, $199,930 for the County and $206,630 for the City. In total, the university would generate more than $1.1 million in tax revenues for the State and local governments.

H. The City and Arrowhead are entering into this Agreement pursuant to A.R.S. Section 9-500.11. The Parties hereto desire to enter into this Agreement to facilitate development consistent with (i) the City's General Plan, (ii) its zoning ordinances, (iii) the EDIS, (iv) the EDIIP, (v) the EDIIP Guidelines, (vi) the Program, and (vii) the Program Guidelines. The Parties acknowledge that the activities described in this Agreement and related to Tenant's educational reuse of the Premises are economic development activities within the meaning of the State of Arizona's laws concerning such matters, including but not necessarily limited to A.R.S. Section 9-500.11, and that all "expenditures" (as defined in A.R.S. Section 9-500.11) by the City pursuant to this Agreement constitute the appropriation and expenditure of public monies for and in connection with economic development activities as defined in A.R.S. Section 9-500.11.

I. The City, in the exercise of its legislative functions, and finding in such legislative capacity that the benefits conferred upon Arrowhead by this Agreement are not grossly disproportionate to the benefits being received by the City, by its Resolution No. 2016-23, adopted on March 15, 2016, has authorized the execution and performance of this Agreement and has otherwise taken all action required by law to enter into this Agreement and make it binding upon the City.

Go to Previous View

Go to Table of Contents - Appendix

2. **Agreements**. In consideration of the mutual promises and representations set forth herein and in the recitals hereto, the City and Arrowhead agree as follows:

A. Tenant Improvements. Arrowhead will cause to be constructed the tenant improvements at and within the Premises generally in accordance with the schedule attached to this Agreement as Exhibit A ("Tenant Improvements"). Arrowhead will cause the completion of construction of the Tenant Improvements (established by the issuance of a certificate of occupancy for the Premises issued by the City) no later than seven (7) months from the Effective Date, so that Tenant may be open for business to the general public on a full-time basis no later than October 15, 2016.

B. Program Criteria. Arrowhead, as conditions precedent to its eligibility for reimbursement by the City, will have complied with each of the following (collectively, the "Program Criteria"):

1. The City's Economic Services Development Department ("Department") will have determined the suitability of each of the Tenant Improvements or architectural expense for which reimbursement is requested.

2. No reimbursement will be made for any item or charge that is deemed by the Department, in its sole discretion, to be extravagant, exorbitant, excessive or overpriced; that has been supplied, provided or performed prior to the Effective Date; that is for FF&E (furnishings, fixtures and equipment, as that term is understood in the education industry); or that has been supplied, provided or performed by Arrowhead or its affiliates unless consistent with the budget approved by the City.

3. Arrowhead will have supplied to the Department satisfactory evidence of prior payment of all such items for which reimbursement is requested, together with receipts and lien waivers for such work or material as may be requested by the Department.

4. Arrowhead will have caused the completion of construction of all of the scheduled Tenant Improvements, materially in accordance with all approved plans and specifications.

5. The Premises will have passed all fire and building inspections.

6. Arrowhead will have caused the Premises to be ready to be open for business by Tenant for the Required Use on a full-time basis by October 15, 2016 ("Opening").

C. Performance Criteria. In order to receive reimbursement of the Reimbursable Amount (as defined in Section 3 below), Arrowhead will be in compliance with each of the following (the "Performance Criteria") at the time of any reimbursement by the City:

Go to Previous View
Go to Table of Contents - Appendix

1. Tenant will have been open for business to the public for the Required Use on a full-time basis continuously and without interruption since the Opening (subject to reasonable periods of closure arising from or required in connection with casualty or remodeling, provided that repairs and other construction work are prosecuted diligently and without interruption).

2. Arrowhead is in material compliance with all applicable municipal, state and federal laws (including but not limited to being current with respect to all permit and sales tax obligations).

3. The Premises is in material compliance with all applicable building, fire and safety requirements and has passed applicable bulding, fire, and safety inspections.

4. Arrowhead will be in compliance with all of its obligations under the Lease.

5. Arrowhead will not be in default or breach of any of its obligations under this Agreement, and all of Arrowhead's representations and warranties to the City shall be and remain true and correct.

3. **Reimbursable Amount and Form of Reimbursement**. The City has calculated that the reimbursement available to Arrowhead upon satisfaction of the Program Criteria is (and shall not exceed) Seven Hundred and Thirty-Seven Thousand, Five Hundred Ninety-Six and no/100 Dollars ($737,596.00), an amount equal to one-half of Arrowhead's approved tenant improvement and architectural expenses (the "Reimbursable Amount"). The Reimbursable Amount will be reimbursed to Arrowhead as follows:

A. The City will make an initial reimbursement to Arrowhead in the amount of Two Hundred and Twenty-One Thousand, Two Hundred Eighty and no/100 Dollars ($221,280.00) (the "Initial Reimbursement") upon satisfaction by Arrowhead of all of the Program Criteria.

B. At the time of payment of the Initial Reimbursement to Arrowhead by the City (the "Initial Reimbursement Date"), Arrowhead shall deliver to the City a Deed of Trust in the form attached to this Agreement as Exhibit B (the "Deed of Trust"). The City shall cause the Deed of Trust to be recorded promptly upon the payment to Arrowhead of the Initial Reimbursement.

1. The Deed of Trust may be subordinated only to a first lien for commercial financing from an institutional lender, provided that the such lien for financing, together with the Initial Reimbursement, cannot exceed 125% of the value of the Property.

2. At any time prior to the fourth anniversary of the Initial Reimbursement Date, and further provided that Arrowhead is not in default of any of its

Go to Previous View
Go to Table of Contents - Appendix

obligations under this Agreement, Arrowhead may substitute collateral of equal or greater value (that is, the amount of net equity in favor of Arrowhead) as reasonably determined and approved by the City Manager. Substitute collateral may consist only of real property, an unconditional letter of credit issued by a national banking association, registered securities or cash as reasonably approved by the City, together with all applicable security agreements, pledge agreements, deeds of trust, mortgages, financing statements and similar documents that may be required by the City in order to secure and perfect the City's lien in such substitute collateral, and in forms approved by the City Attorney in his reasonable commercial discretion. Upon the approval by and delivery to the City of such substitute collateral, the City will release the lien of the Deed of Trust.

3. If there is an Event of Default by Arrowhead prior to the first anniversary of the Initial Reimbursement Date, Arrowhead shall repay the entire Initial Reimbursement (or $221,280.00), to the City promptly upon demand. In the event of Arrowhead's failure to repay $221,280.00 as required by this section, the City shall have all of its remedies at law and in equity to recover such amount.

4. If there is an Event of Default by Arrowhead after the first anniversary of the Initial Reimbursement Date but prior to the second anniversary of the Initial Reimbursement Date, Arrowhead shall repay the sum of One Hundred and Forty-Seven Thousand, Five Hundred Twenty Dollars ($147,520.00), to the City promptly upon demand. In the event of Arrowhead's failure to repay $147,520.00 as required by this section, the City shall have all of its remedies at law and in equity to recover such amount.

5. If there is an Event of Default by Arrowhead after the second anniversary of the Initial Reimbursement Date but prior to the third anniversary of the Initial Reimbursement Date, Arrowhead shall repay the sum of Seventy-Nine Thousand Dollars ($73,760.00) to the City promptly upon demand. In the event of Arrowhead's failure to repay $73,760.00 as required by this section, the City shall have all of its remedies available at law to recover such amount.

6. If there is not Event of Default by Arrowhead on the third anniversary of the Initial Reimbursement Date, the City shall promptly release the Deed of Trust or such other lien or liens as may exist with respect to any substitute collateral.

C. As long as Arrowhead is in material compliance with (or has caused the compliance with) all the Performance Criteria from and after the Initial Reimbursement Date, the City will make an additional reimbursement in the amount of $73,760.00 to Arrowhead on the fourth anniversary of the Initial Reimbursement Date, and in the same amount on each subsequent anniversary of the Initial Reimbursement Date, until the Reimbursement Amount has been reimbursed in full to Arrowhead. At any time that there is an Event of Default by Arrowhead, the City shall have no further obligation to make any further reimbursements to Arrowhead pursuant to this Agreement; provided, however, that all reimbursements made to Arrowhead prior to such Event of Default shall belong to Arrowhead and are not subject to recall or recapture by the City.

Go to Previous View

Go to Table of Contents - Appendix

D. Upon each anniversary of the Initial Reimbursement Date, Arrowhead shall deliver to the City a certification that Arrowhead has materially complied with (or caused the material compliance with) all of the terms and provisions of Section 2(C) of this Agreement as of the date of the certification, and the delivery of such certification shall be a condition to the obligation of the City to make the reimbursements described in Section 3(C) of this Agreement.

4. **Term**. Unless terminated earlier by the City due to the occurrence of an Event of Default by Arrowhead (or its permitted successors and assigns), the term of this Agreement ("Term") shall begin on the Effective Date and continue through and including the tenth (10^{th}) anniversary of the Initial Reimbursement Date (the "Termination Date").

5. **Notices**. Unless otherwise specifically provided herein, or unless written notice of a change of address has been previously given pursuant hereto, all notices, demands or other communication given hereunder (each, a "Notice") shall be in writing and shall be deemed to have been duly delivered upon (i) personal delivery, (ii) upon delivery by a recognized overnight courier (e.g., Federal Express, United Parcel Service) for next business day delivery, or (iii) as of the second business day after mailing by United States mail, postage prepaid, by certified mail, return receipt requested, addressed as follows:

To Arrowhead:	Arrowhead Equities LLC 1333 North Greenfield Road Suite 104 Mesa, Arizona 85205
To the City:	City Economic Development Dept. 8401 West Monroe Street Peoria, Arizona 85345
Copy to:	City Attorney 8401 West Monroe Street Peoria, Arizona 85345

Communications may be made by facsimile or by electronic or digital means (for example, email), but such communications shall not constitute "Notice" as required by this Agreement unless also sent by one of the methods specified above, and shall be deemed only to be courtesies to the recipient.

6. **Unintended Delay; Extensions**. If and to the extent that Arrowhead's performance of this Agreement is impaired or delayed by war, fire, casualty, acts of God or other similar causes beyond or outside the control of Arrowhead (each, an "Unintended Delay"), then the Termination Date shall be equitably extended (that is, by one day for each day of Unintended Delay) as necessary. In no event will Unintended Delay include any delay resulting from general economic or market conditions, or from the unavailability for any reason of particular contractors, subcontractors, vendors,

Go to Previous View

Go to Table of Contents - Appendix

investors or lenders, it being agreed that Arrowhead will bear all risks of delay which are not Unintended Delay. In the event of the occurrence of any such Unintended Delay, Arrowhead shall, within thirty (30) days after Arrowhead knows of any such Unintended Delay, first notify the City of the specific delay in writing and claim the right to an extension for the period of the Unintended Delay. Notwithstanding the foregoing, the Department, in its sole discretion, may extend the time for Arrowhead's performance for reasonable intervals as requested by Arrowhead.

7. **Representations and Warranties**. As of the Effective Date:

A. Arrowhead represents and warrants to the City that it is a limited liability company duly formed and validly existing under the laws of the State of Arizonaa and is in good standing in the State of Arizona. If Arrowhead assigns or transfers the Property under the terms of this Agreement, City recognizes and agrees that Arrowhead may not continue its existence for the entire Term; provided, however, that Arrowhead agrees to maintain its existence as a limited liability company until the Deed of Trust has been released in accordance with the terms of this Agreement.

B. Arrowhead represents and warrants to the City that the person executing this Agreement on behalf of Arrowhead has full right, power, and authority to execute this Agreement and bind Arrowhead hereunder.

C. Arrowhead represents and warrants to the City that the Lease is in full force and effect, with no defaults by either the Landlord or the Tenant.

D. Arrowhead represents and warrants to the City that it is in material compliance with all applicable federal, state and local regulations, codes and laws regarding its ownership of the Premises and its construction and development activities on and at the Premises. Arrowhead agrees and acknowledges that nothing in this Agreement constitutes an exemption (or grant of a variance) to Arrowhead from applicable codes and laws.

E. The City represents and warrants to Arrowhead that the person(s) executing this Agreement on behalf of the City has full right, power, and authority to execute this Agreement and bind the City hereunder.

8. **Default**. In the event any Party fails to comply with any terms, conditions and obligations under this Agreement which are applicable to such Party, such Party shall be deemed to be in default under this Agreement. It is expressly agreed by Arrowhead that a failure by Arrowhead to comply with the Program Criteria and the Performance Criteria will be and constitute a default under this Agreement. The failure of any Party to cure a default within thirty (30) days after receipt of written notice from the other Party shall be an "Event of Default."

9. **Remedies**.

A. If the City is in default and fails to cure its Event of Default within the time period described in Section 8 above, then, in that event and as Arrowhead's sole

Go to Previous View

Go to Table of Contents - Appendix

and exclusive remedy, Arrowhead shall have the right to seek specific performance of the City's obligations contained herein or to pursue those remedies detailed in this Agreement.

B. If Arrowhead is in default and fails to cure its Event of Default within the time period described in Section 8 above, then, in that event and as the City's sole and exclusive remedies, the City shall have the following rights and remedies: (i) if the Event of Default occurs on or prior to the third anniversary of the Initial Reimbursement Date, the City's rights and remedies are set forth in Sections 3(b)(3), (4), and (5); and (ii) if the Event of Default occurs after the third anniversary of the Initial Reimbursement Date, the City's rights and remedies are set forth in Section 3(C). The City's remedies under this Agreement are not exclusive, and the City may exercise one or more remedies concurrently, although the City shall be entitled to a single recovery. Further, the Parties agree and acknowledge that the City has no obligation to seek foreclosure of the Deed of Trust or any other lien granted with respect to substituted collateral.

10. **Assignment**.

A. Arrowhead shall not assign any right or obligation in this Agreement other than to a subsidiary or affiliate of Arrowhead, or to an entity that acquires the entirety of Arrowhead's interest in the Premises, without the City's express written consent, which consent may be granted, conditioned or delayed in the City's sole and absolute discretion. In order to be effective, any such assignment must contain an express written agreement and assumption by the assignee agreeing to be unconditionally liable for Arrowhead's obligations contained herein. Any such assignment shall relieve Arrowhead of its obligations in this Agreement.

B. Notwithstanding the foregoing, Arrowhead may assign to its Manager (Par Time Equities LLC, an Arizona limited liability company, or "Manager") its rights to receive payments of the Reimbursable Amount. Arrowhead and Manager agree and acknowledge that such assignment shall not relieve Arrowhead of any of its obligations in this Agreement and that the Manager's right to receive any assigned payments are conditioned upon the satisfaction of and compliance with the Program Criteria and Performance Criteria required by this Agreement by Arrowhead, its successors and assigns.

11. **Additional Matters**.

A. City's Right to Terminate. This Agreement is subject to termination by the City pursuant to the provisions of A.R.S. 38-511.

B. Effective Date. This Agreement is entered into and effective as of the Effective Date.

C. Recitals. The recitals set forth in Paragraph A through I, inclusive, of this Agreement are incorporated in this Agreement by reference as if fully set forth herein.

D. City Processes. Nothing in this Agreement shall preclude the City from the reasonable exercise of its normal zoning, platting and review processes, or its enforcement of public health and safety.

E. No Exemption. Nothing in this Agreement exempts Arrowhead from payment of any sales tax, rental tax, use tax or any other municipal fees or charges.

F. Severability. The City and Arrowhead each believes that the execution, delivery and performance of this Agreement are in compliance with all applicable laws. However, in the unlikely event that any provision of this Agreement is declared void or unenforceable (or is construed as requiring the City to do any act in violation of any applicable constitutional provision, law, regulation, City code or City charter), such provision shall be deemed severed from this Agreement and this Agreement shall otherwise remain in full force and effect; provided that this Agreement shall retroactively be deemed reformed to the extent reasonably possible in such a manner so that the reformed Agreement (and any related agreements effective as of the same date) provide essentially the same rights and benefits (economic and otherwise) to the Parties as if such severance and reformation were not required. The Parties further agree, in such circumstances, to do all acts and to execute all amendments, instruments and consents necessary to accomplish and to give effect to the purposes of this Agreement, as reformed.

G. No Waiver. The failure of any Party to exercise any right, power or remedy given to it under this Agreement, or to insist upon strict compliance with it, shall not constitute a waiver of the terms and conditions of this Agreement with respect to any other or subsequent breach, nor a waiver by either Party of its rights at any time to require exact and strict compliance with all of the terms of this Agreement. The rights or remedies under this Agreement are exclusive of any other rights or remedies which may be granted by law.

H. Entire Agreement; Amendments; Counterparts. This Agreement constitutes the entire Agreement between the City and Arrowhead with respect to its subject matter, and all agreements, oral or written, entered into prior to this Agreement are revoked and superseded by this Agreement. This Agreement may not be changed, modified or rescinded, except in writing, signed by all Parties and any attempt at oral modification of this Agreement shall be void and of no effect. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same instrument.

I. Attorney's Fees. In the event of any dispute between the Parties in connection with this Agreement, the Party prevailing in such action or proceeding shall be entitled to recover from the other Party all of its costs and fees, including reasonable attorneys' fees; provided, however, that no such amount shall be awarded, owed or payable until (i) the court in question has made a finding that one or the other party is the "prevailing party" in such proceeding, and (ii) a final, non-appealable order of judgment is entered by a court of competent jurisdiction, or where applicable, the mandate of an appellate court of competent jurisdiction shall issue.

J. Governing Law; Choice of Forum. This Agreement shall be deemed to be made under, shall be construed in accordance with, and shall be governed solely and exclusively by the internal, substantive laws of the State of Arizona (without reference to conflict of law principles). Any action brought to interpret, enforce or construe any provision of this Agreement shall be commenced and maintained in the Superior Court of the State of Arizona in and for the County of Maricopa (or in the United States District Court for the District of Arizona, if, but only if, the Superior Court lacks or declines jurisdiction over such action, or the City elects such forum in its sole election). The Parties irrevocably consent to the sole and exclusive jurisdiction and venue in such courts for such purposes and agree not to seek transfer or removal of any action commenced in accordance with the terms of this Section 11(J). The provisions of this Section 11(J) have been specifically bargained for by the City and constitute additional consideration to the City for its entering into, and agreeing to be bound by, this Agreement.

K. No Personal Liability. No member, agent, representative, official, officer, or employee of any Party shall be personally liable to any Party, or any successor-in-interest, in the event of any default or breach by a Party or for any amount which may become due to another Party or any successor in interest or on any obligation under the terms of this Agreement.

L. No Partnership. It is not intended by this Agreement to, and nothing contained in this Agreement shall, create any partnership, joint venture or other arrangement between Arrowhead and the City. No term or provision of this Agreement is intended to, or shall, be for the benefit of any person, firm, organization or corporation not a Party hereto, and no such other person, firm, organization or corporation shall have any right or cause of action hereunder.

M. No Recording. Neither Party shall record this Agreement nor any memorandum hereof in the Maricopa County records.

= Signatures are on the following two (2) pages. =

Go to Previous View

Go to Table of Contents - Appendix

IN WITNESS WHEREOF, the Parties have executed this Agreement through their representatives duly authorized to execute this document and bind their respective entities to the terms and obligations herein contained as of the Effective Date.

CITY OF PEORIA, an Arizona municipal corporation

By: [redacted]
Carl Swenson, City Manager

ATTEST:

By: [redacted]
City Clerk

APPROVED AS TO FORM:

By: [redacted]
City Attorney

STATE OF ARIZONA)
) ss.
County of Maricopa)

On this, the 23rd day of March, 2016, before me, the undersigned Notary Public, personally appeared Carl Swenson, who acknowledged himself to be the City Manager of the City of Peoria, a municipal corporation of the State of Arizona, and that he, as such officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

[redacted]
Notary Public

My Commission Expires:

9/5/17

MARCELLA CARRILLO
Notary Public - State of Arizona
MARICOPA COUNTY
My Commission Expires Sept. 5, 2017

Go to Previous View

Go to Table of Contents - Appendix

ARROWHEAD EQUITIES LLC, an Arizona limited liability company

By: Par Times Equities, LLC, an Arizona limited liability company, its Manager

By: [redacted]
Name: Jeffrey Kost
Title: Manager

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this 30 day of MARCH, 2016, by [redacted], the Manager of Par Times Equities, LLC, an Arizona limited liability company, on behalf of the company, as Manager of Arrowhead Equities, LLC.

BRADLEY N. FORSGREN
Notary Public - Arizona
Maricopa County
My Comm. Expires Mar 14, 2020

[redacted]
Notary Public

My commission expires:

MAR 14, 2020

EXHIBIT A

Schedule of Tenant Improvements
and Listing of Approved Reimbursement Amount

EXHIBIT A

TI Construction Budget (Huntington University)

		Square Footage	Price/Bldg SF	Total
LAND	Land/SF			
PRODUCTION COSTS:				
Hard Construction Costs:				
Offsite Work				$0
Site Work				$50,000
HU Building		30,000		$0
Tenant Improvements			$31.50	$945,192
Total Hard Costs:		30,000		$995,192
Soft Construction Costs:				
Architect & Engineer		$5		$150,000
Legal, Title & Closing		$0		$0
Permits & Fees (City, SRP, SWG, CL)		$2.33		$70,000
Survey & Appraisal		$0		
Construction Inspection		$0.17		$5,000
Taxes & Insurance		$0		
Project Management		$5		$150,000
Marketing/Leasing		$0		$0
Sales Commission		$0		$0
Contingency		$3.50		$105,000
Total Soft Costs:		**$16**		**$480,000**
TOTAL PRODUCTION COSTS:	**30,000**	**$49**		**$1,475,192**
FINANCING				
Construction Interest		$0		$0
Financing Fees		$0		$0
TOTAL FINANCING COSTS		**$0**		**$0**
TOTAL PROJECT COSTS	**30,000**	**$49**		**$1,475,192**

2/22/2016

EXHIBIT B

Form of Deed of Trust

When recorded mail to:

City Clerk
City of Peoria
8401 West Monroe Street
Peoria, Arizona 85345

DEED OF TRUST

DATE: ______________________, 20___

TRUSTOR: ARROWHEAD EQUITIES LLC, an Arizona limited liability company
1333 North Greenfield Road, Suite 104
Mesa, Arizona 85205

BENEFICIARY: CITY OF PEORIA, ARIZONA, a municipal corporation
8401 West Monroe Street
Peoria, Arizona 85345

TRUSTEE: ______________________________
____
____

PROPERTY: Property located in Maricopa County, State of Arizona, which is more particularly described on Exhibit "A" hereof, together with all buildings, improvements and fixtures thereon.

THIS DEED OF TRUST, is made on the above date among the Trustor, Trustee and Beneficiary.

WITNESSETH: That Trustor irrevocably grants and conveys to Trustee in Trust, and for the benefit of Beneficiary, with Power of Sale, the above described real property and all buildings, improvements and fixtures located thereon or hereafter erected thereon (all of which shall be hereinafter collectively called the "Property"); subject, however, to existing taxes, assessments, liens, encumbrances, covenants, conditions, restrictions, rights of way and easements of record.

FOR THE PURPOSE OF SECURING:

Performance by Trustor of each agreement of Trustor contained in this Deed of Trust and performance and observance by Trustor of each covenant, provision and agreement contained in that certain Economic Development Activities Agreement between Trustor and Beneficiary dated March ___, 2016 (the "Agreement"). The maximum principal amount of money secured by this Deed of Trust under the Agreement is Two Hundred and Twenty-One Thousand, Two Hundred Eighty and no/100 Dollars ($221,280.00), exclusive of trustee's fees and other costs and expenses of foreclosure. In addition, the Agreement provides Trustor with the right to substitute other collateral for the Property under certain conditions described in more detail therein.

TO PROTECT THE SECURITY OF THIS DEED OF TRUST, TRUSTOR AGREES:

1. Not to create or permit to be created any mortgage, lien, pledge or encumbrance on the Property; not to initiate or permit any zoning reclassification or to use the Property in a manner that would result in such use becoming a non-conforming use under applicable zoning law.

2. To appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; and to pay all costs and expenses of Beneficiary and Trustee, including cost of evidence of title and attorneys' fees in a reasonable sum, in any such action or proceeding in which Beneficiary or Trustee may appear or be named, and in any suit brought by Beneficiary or Trustee to foreclose this Deed of Trust.

3. To pay before delinquent all costs, fees and expenses of this Trust including, without limiting the generality of the foregoing, the fees of Trustee for issuance of any Deed of Release and Reconveyance, and all lawful charges, costs and expenses in the event of reinstatement of this Deed of Trust following a default hereof or a default of the obligations secured hereby. Should Trustor fail to make any payment or to do any act as herein provided, then Beneficiary or Trustee, but without obligation to do so and without notice to or demand upon Trustor and without releasing Trustor from any obligation hereof, may make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof.

4. To pay immediately and without demand all sums expended by Beneficiary or Trustee pursuant to the provisions hereof, together with interest from date of expenditure at fifteen percent (15%) per annum. Any amounts so paid by Beneficiary or Trustee shall become a debt secured by this Deed of Trust and a lien on the Property or immediately due and payable at option of Beneficiary or Trustee.

IT IS MUTUALLY AGREED:

5. That time is of the essence of this Deed of Trust, and that by accepting performance of Trustor's obligations hereunder after the due date for such performance, Beneficiary does not waive its right either to require timely performance of subsequent obligations or to declare default for failure by Trustor to timely perform.

Go to Previous View

Go to Table of Contents - Appendix

6. That upon written request of Beneficiary stating that all obligations secured hereby have been fulfilled, and upon surrender of this Deed of Trust to Trustee for cancellation, and upon payment of its fees, Trustee shall release and reconvey, without covenant or warranty, express or implied, the Property then held hereunder. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The grantee in such reconveyance may be described as "the person, or persons legally entitled thereto."

7. That Trustor shall not, other than as set forth in the Agreement or without the prior written consent of Beneficiary, (which consent shall not be unreasonably withheld) sell, convey, lease, mortgage, pledge, encumber, grant easements or rights of way over or upon or otherwise transfer the Property or a part thereof or interest therein, or attempt to do any of the same, or hypothecate any of the income of the Property and in the event Trustor shall commit any act specified in this Section, then Beneficiary may, in addition to the other rights and remedies otherwise available to Beneficiary hereunder, without further demand, protest or notice of any kind to Trustor, declare Trustor to be in default hereunder.

8. That upon default by Trustor in performance of any agreement hereunder, Beneficiary may elect to cause the Property or in the Agreement, to be sold under this Deed of Trust. Trustee shall record and give notice of trustee's sale in the manner required by law, and after the lapse of such time as may then be required by law, Trustee shall sell, in the manner required by law, the Property at public auction at the time and place fixed by it in said notice of trustee's sale to the highest bidder for cash in lawful money of the United States, payable as may then be required by law. Trustee may postpone or continue the sale by giving notice of postponement or continuance by public declaration at the time and place last appointed for the sale. Trustee shall deliver to such purchaser its deed conveying the Property so sold, but without any covenant or warranty, expressed or implied. Any persons, including Trustor, Trustee, or Beneficiary, may purchase at such sale. After deducting all costs, fees, and expenses of Trustee and of this Trust, including cost of evidence of title in connection with sale and reasonable attorney's fees, Trustee shall apply the proceeds of sale to payment of: (i) all sums then secured hereby and all other sums due under the terms hereof, with accrued interest; and (ii) the remainder, if any, to the person or persons legally entitled thereto, as provided in A.R.S. § 33 812. Beneficiary may foreclose this Deed of Trust as a realty mortgage. No election of any of the remedies available to Beneficiary hereunder shall foreclose the election of any other remedy hereunder or under any of the agreements between Beneficiary and Trustor.

9. That Beneficiary may appoint a successor Trustee in the manner prescribed by law. A successor Trustee herein shall, without conveyance from the predecessor Trustee, succeed to all the predecessor's title, estate, rights, powers, and duties. Trustee may resign by mailing or delivering notice thereof to Beneficiary and Trustor.

10. That this Deed of Trust applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors, and

Go to Previous View
Go to Table of Contents - Appendix

assigns. In this Deed of Trust, whenever the context so requires, the masculine gender includes the feminine and neuter, and the singular number includes the plural.

11. That Trustee accepts this Trust when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law. Trustee is not obligated to notify any party hereto of pending sale under any other Deed of Trust or of any action or proceeding in which Trustor, Beneficiary, or Trustee shall be a party unless brought by Trustee.

12. The undersigned Trustor requests that a copy of any notice of trustee's sale hereunder be mailed to its address hereinbefore set forth.

13. That Trustee may resign by mailing or delivering notice thereof to Beneficiary and Trustor. Beneficiary may appoint a successor Trustee in the manner prescribed by law. A successor Trustee herein shall, without conveyance from the predecessor Trustee, succeed to all the predecessor's title, estate, rights, powers and duties.

14. That in this Deed of Trust, wherever the context so requires the masculine gender includes the feminine and neuter, and the singular number includes the plural.

15. That the trust relationship created by this Deed of Trust is limited solely to the creation and enforcement of a security interest in real property. All of Trustee's duties, whether fiduciary or otherwise, are strictly limited to those duties imposed by this instrument and A.R.S. §33-801 et seq., inclusive, and no additional duties, burdens or responsibilities are or shall be placed on Trustee.

16. Upon the filing of a petition in bankruptcy by Trustor (or against Trustor, in which Trustor acquiesces or which is not dismissed within thirty (30) days of the filing thereof, or upon the adjudication of Trustor to be insolvent or the sequestration of any of its property in legal proceedings, or if Trustor shall file a petition for an arrangement or reorganization pursuant to the Federal Bankruptcy Act or any similar statute now or hereafter in effect, or if Trustor shall make an assignment for the benefit of creditors or shall admit in writing the inability to pay its debts as such become due, or if a receiver, trustee, conservator or liquidator or all or any part of its property shall be appointed, Beneficiary may proceed to enforce the rights available to it under the Deed of Trust as provided for in the event of default.

17. In the event it becomes necessary for the Beneficiary to employ legal counsel or take legal action to collect the indebtedness secured by this Deed of Trust, to enforce any provision of this Deed of Trust or to protect any of Beneficiary's rights under this Deed of Trust, Trustor agrees to pay to Beneficiary, in addition to taxable costs of any legal proceeding or action and other sums due and payable pursuant hereto, reasonable attorneys' fees actually incurred, and all costs of preparation and conduct of such proceedings, including costs of title searches and title policy commitments, all of which shall be a lien upon the property and secured hereby.

Go to Previous View Go to Table of Contents - Appendix

18. Should any term, provision, covenant or condition of this Deed of Trust be held to be void or invalid, the same shall not affect any other term, provision, covenant or condition of this Deed of Trust. Furthermore, should this instrument be or become ineffective as a Deed of Trust, then these presents shall be construed and enforced as a realty mortgage with the Trustor being the mortgagor, the Beneficiary being the mortgagee.

19. The Deed of Trust shall be governed by and interpreted under the laws of the State of Arizona.

20. Trustor shall not be entitled to rezone any part or all of the Property, nor modify or consent to any modification to any stipulations or conditions to zoning without the prior written consent to Beneficiary, which consent may be withheld in Beneficiary's sole and absolute discretion. No plan, documents or other matters submitted to governmental authorities in connection with or as a condition to zoning for the Property shall be submitted without the prior written approval of Beneficiary. Without Beneficiary's prior written consent, Trustor shall not enter in to any agreements or contracts with any governmental or quasi-governmental agency which may affect or impair the Property's development, regardless of whether such agreements or contracts do not affect title or are subordinate to this Deed of Trust.

21. The captions of the Sections hereof are for convenience only and shall not govern or influence the interpretation hereof. This Deed of Trust is the result of negotiations between Trustor and Beneficiary and, accordingly, shall not be construed for or against either such party regardless of which party drafted this Deed of Trust or any portion thereof.

22. No notice, consent, approval, or other communication provided for herein or given in connection herewith shall be validly given, made, delivered or served unless it is in writing and delivered personally, sent by overnight courier, sent by telephone facsimile or sent by registered or certified United States mail, postage prepaid, with return receipt requested, to the addresses set forth for each party on page one.

IN WITNESS WHEREOF, Trustor has executed this Deed of Trust as of the date first above written

ARROWHEAD EQUITIES LLC, an Arizona limited liability company

By: Par Times Equities, LLC, an Arizona limited liability company, its Manager

By: [redacted]
Name: Jeffrey Kost
Title: Manager

PHOENIX 53630-13 283920v4

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this 30 day of MARCH, 2016, by JEFFREY KOST, the Manager of Par Times Equities, LLC, an Arizona limited liability company, on behalf of the company, as Manager of Arrowhead Equities, LLC.

BRADLEY N. FORSGREN
Notary Public - Arizona
Maricopa County
My Comm. Expires Mar 14, 2020

[redacted]
Notary Public

My commission expires:

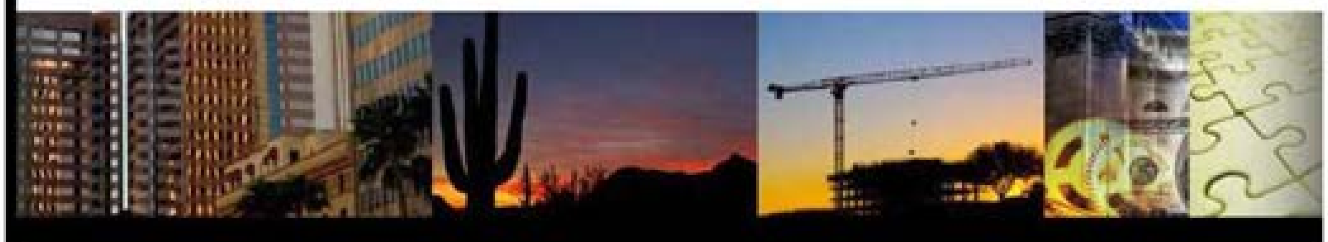
MAR 14, 2020

EXHIBIT 14

Go to Previous View

Go to Table of Contents - Appendix

Impact of the Proposed Huntington University In Peoria, Arizona



Prepared for:
City of Peoria

April 2015

Prepared by:

Elliott D. Pollack & Company
7505 East 6th Avenue, Suite 100
Scottsdale, Arizona 85251

Table of Contents

Go to Previous View

Go to Table of Contents - Appendix

1.0 Introduction

Elliott D. Pollack and Company was retained to perform a comprehensive analysis of the economic and fiscal impacts of the operations of a branch campus of Huntington University to be located in Peoria, Arizona. The University has already received approval from the Arizona Corporation Commission to do business in Arizona and is currently seeking permission from various organizations to offer Digital Media Arts degree programs. The proposed partnership with the City of Peoria would bring high quality learning programs to the City to support economic growth in technology fields such as animation, digital media broadcasting, film, graphic design and video communications. In addition, the University operations will promote the development of new business start-ups via Huntington University Ventures, Inc. and other collaborating entities within the Arrowhead Innovation Campus in Peoria. Financial assistance is being requested from the City to support the startup expenses for the University. The focus of this study is to not only provide a quantifiable evaluation of the operations of the proposed University, but to also review the broader regional impact analysis that demonstrates the importance of higher education in the region.

Economic impact analysis examines the regional implications of an activity in terms of three basic measures: output, earnings and job creation. Fiscal impact analysis, on the other hand, evaluates the public revenues and costs created by a particular activity. In fiscal impact analysis, the primary revenue sources of a city, county or state government are analyzed to determine how the activity may financially affect them.

This study prepared by Elliott D. Pollack & Company is subject to the following considerations and limiting conditions.

- It is our understanding that this study is for the client's due diligence and other planning purposes. Neither our report, nor its contents, nor any of our work were intended to be included and, therefore, may not be referred to or quoted in whole or in part, in any registration statement, prospectus, public filing, private offering memorandum, or loan agreement without our prior written approval.

- The reported recommendation(s) represent the considered judgment of Elliott D. Pollack and Company based on the facts, analyses and methodologies described in the report.

- Except as specifically stated to the contrary, this study will not give consideration to the following matters to the extent they exist: (i) matters of a legal nature, including issues of legal title and compliance with federal, state and local laws and ordinances; and (ii) environmental and engineering issues, and the costs associated with their correction. The user of this study will be responsible for making his/her own determination about the impact, if any, of these matters.

- This study is intended to be read and used as a whole and not in parts.

- This study has not evaluated the feasibility or marketability of any site for planned uses.

- All estimates regarding specific student counts, leasing costs and operating data were provided by the City of Peoria and Huntington University. Data has been reviewed and verified to determine its reasonableness and applicability to the University.

- This economic and fiscal impact study evaluates the potential "gross impacts" of construction and operations activities. The term "gross impacts" as used in this study refers to the total revenue, jobs and economic output that would be generated by the construction and operations. The study does not consider the potential impact on other community colleges or higher education institutions in the trade area that may occur as a result of the proposed campus.

- This analysis does not consider the costs to local governments associated with providing services to the campus. Such analysis is beyond the scope of this study. In addition, the analysis is based on the current tax structure and rates imposed by the State, counties, and local governments. Changes in those rates would alter the findings of this study.

- All dollar amounts are stated in current dollars and, unless indicated, do not take into account the effects of inflation.

- Our analysis is based on currently available information and estimates and assumptions about long-term future development trends. Such estimates and assumptions are subject to uncertainty and variation. Accordingly, we do not represent them as results that will be achieved. Some assumptions inevitably will not materialize and unanticipated events and circumstances may occur; therefore, the actual results achieved may vary materially from the forecasted results. The assumptions disclosed in this study are those that are believed to be significant to the projections of future results.

Go to Previous View
Go to Table of Contents - Appendix

2.0 Methodology and Assumptions

2.1 Approach to Study

Institutions of higher education produce both economic and fiscal benefits for communities and governing entities where they are located. This study quantifies these benefits in terms of jobs, wages and output (economic impact) along with the resulting government revenues (fiscal impact). The benefits are calculated for the following categories:

a) Construction impacts – spending by the institution on tenant improvements to accommodate specific education and program needs.

b) Operations impacts – the ongoing annual impacts of a university including direct expenditures by the university on salaries and operating supplies, along with spending by faculty and staff.

c) Additional ongoing annual impact from student spending within the community.

Huntington University's enrollment projections do include students that will take only online classes. While the benefits of the *online* campus are numerous and far reaching, they are difficult to quantify in terms of the local economic and fiscal impacts. Thus, the fiscal impact results in terms of student spending are limited to the campus-based students. The results of the analysis are intended to represent the impact of Huntington University as it expands over the next few years.

2.2 Analysis Assumptions

The assumptions used to estimate the economic and fiscal impacts of operations are outlined below. The primary inputs are based on both assumptions supplied by Huntington University regarding project scale as well as on basic economic fundamentals regarding economic impact analysis such as using the Consumer Expenditure Survey to determine spending patterns of faculty and staff based on their respective wages and Census survey results used for calculating the percentage of employees that live within the county or city in which they work. All values are expressed in constant 2015 dollars. Unless otherwise indicated, an inflation factor has not been included in this analysis.

The table below provides the expected student and resulting faculty and staff growth for the online and campus-based instruction. After a year of recruitment (labeled as "Year 0"), 115 students are expected to enroll by year one. Of these students, 100 will attend classes on campus. Total student count is expected to grow to nearly 500 students by year four but the online portion of student body will remain low and represent only 12% of the Huntington University student body. This will require the number of on-campus faculty, adjunct faculty and support staff to grow from 3 in year 0 to 106 by year four.

Go to Previous View
Go to Table of Contents - Appendix

The University has secured 25,000 square feet at the Arrowhead Innovation Campus at 8765 West Kelton Lane in Peoria. Under an agreement with the owner, rent will be waived the first three and a half years and projected to be $24 per square foot starting in year four. While the campus is ideal for the Digital Media Arts program, the University plans for tenant improvements of $750,000 in year 0, $500,000 in year one and $250,000 in years two through four. In addition, the entire campus will be equipped with a robust wireless system that can support the large files typical for Digital Media Arts. The technology infrastructure will cost $362,000 in the first year (year 0). Maintenance will be an estimated $36,000 each subsequent year.

Huntington University
Assumptions for Analysis

	Year 0	Year 1	Year 2	Year 3	Year 4
Number of Students					
Seated students	0	100	210	320	440
Online students	0	15	30	45	60
Total	0	115	240	365	500
Faculty & Staff					
Faculty	0	0	2	4	5
Adjunct faculty	0	30	60	80	90
Support staff	1	2	5	7	9
Office executive	2	2	2	2	2
	3	34	69	93	106
Total wages	$130,000	$295,000	$599,420	$882,980	$1,164,760
Operations					
Leased space (sf)	25,000	25,000	25,000	25,000	25,000
Rent per sf	$0.00	$0.00	$0.00	$12.00	$24.00
Materials and supplies	$95,000	$105,000	$115,000	$135,000	$105,000
Academic Lab Equipment	$225,000	$200,000	$200,000	$100,000	$200,000
Tenant Improvements ($)	$750,000	$500,000	$250,000	$250,000	$250,000
Technology infrastructure	$362,000	$36,000	$36,000	$126,000	$36,000
Value of FF&E (subject to Use Tax)	$50,000	$225,000	$175,000	$0	$200,000

Source: Huntington University; Elliott D. Pollack & Company

2.3 Economic Impact Methodology

Economic impact analysis examines the economic implications of an activity in terms of output, earnings, and employment. For this study, the analysis focused on the ongoing operations including direct expenditures by the university on salaries and operating supplies along with spending by faculty, staff and students.

The different types of economic impacts are known as direct, indirect, and induced, according to the manner in which the impacts are generated. For instance, direct employment consists of permanent jobs held by the University employees. Indirect employment is those jobs created by businesses that provide goods and services essential to the operation or construction of the University. These businesses range from manufacturers (who make goods) to wholesalers (who deliver goods) to janitorial firms (who clean the buildings). Finally, the spending of the wages and salaries of the direct and indirect employees on items such as food, housing, transportation and medical services creates induced employment in all sectors of the economy, throughout the metropolitan area. These secondary effects are captured in the analysis conducted in this study.

Multipliers have been developed to estimate the indirect and induced impacts of various direct economic activities. The Minnesota IMPLAN Group developed the multipliers used in this study. The economic impact is categorized into three types of impacts:

(1) **Employment Impact** – the total wage and salary and self employed jobs in a region. Jobs include both part time and full time workers.

(2) **Earnings Impact** – the personal income, earnings or wages, of the direct, indirect and induced employees. Earnings include total wage and salary payments as well as benefits of health and life insurance, retirement payments and any other non-cash compensation.

(3) **Economic Output** – also referred to economic activity, relates to the gross receipts for goods or services generated by the company's operations.

Economic impacts are by their nature regional in character. Such impacts are best illustrated when not assigned to a specific city or locality, although clearly the primary impact of job creation would be on the city where the campus is located. However, many other communities in the surrounding region would also benefit from the construction and operations of the university.

2.4 Fiscal Impact Methodology

Fiscal impact analysis studies the public revenues associated with a particular economic activity. The primary revenue sources of local, county, and state governments (i.e., taxes) are analyzed to determine how an activity may affect the various jurisdictions. This section will evaluate the impact of the campus on State and local government revenues.

The fiscal impact figures cited in this report have been generated from information provided by a variety of sources including the U.S. Bureau of the Census; the U.S. Department of Labor; the Internal Revenue Service; the State of Arizona; the Arizona Tax Research Association; and the U.S. Consumer Expenditure Survey. Elliott D. Pollack and Company has relied upon the estimates of operating revenues outlined in this study. Unless otherwise stated, all dollar values are expressed in current dollars.

Fiscal impacts are categorized by type in this study, similar to economic impact analysis. The major sources of revenue generation for governmental entities are calculated based on ongoing University operations. Faculty, staff and students will

Go to Previous View

Go to Table of Contents - Appendix

spend part of their salaries on local goods and services and pay taxes on the homes they occupy. This spending will contribute to revenues collected by the State that are ultimately shared with local governments. The following is a description of the applicable revenue sources that will be considered for this analysis.

- Construction Sales Tax
  The State, counties, and local cities levy a sales tax on materials used in the construction of buildings or development of land improvements. That tax is calculated by State law under the assumption that 65% of the construction cost of the facility and its land improvements are related to construction materials with the remaining 35% devoted to labor. The sales tax rate is then applied to the 65% materials figure. The sales tax on construction materials is a one-time collection by the governmental entity. The State currently levies a 5.6% sales tax on construction activity (a portion of which is shared with local governments), Maricopa County levies a 0.7% sales tax, and the City of Peoria's construction sales tax rate is 1.8%.

- Use Tax
  The State, counties and local cities charge a use tax that is assessed on items purchased outside the jurisdiction and brought in for storage, use or consumption. The use tax rate is 5.6% for the State, 0.7% for Maricopa County and 1.8% for Peoria. This tax rate is applied to the FF&E (furniture, fixture and equipment) within the university campus.

- Sales Tax
  The State, counties, and local cities in Arizona charge sales tax on retail goods. The sales tax rate for the State is 5.6%. Portions of this tax are redistributed through revenue sharing to counties and cities throughout Arizona based on population. The Counties' sales tax rate is 0.7% while the City of Peoria levies 1.8% (2.8% for restaurant and bar sales). These tax rates are applied to taxable supplies, taxable spending of students as well as to the spending of direct, indirect and induced employees. Most of the employees supported by the project reside within a city or, at the very least, purchase goods from retailers located within a municipality. Based on data from the U.S. Consumer Expenditure Survey, the projected extent of retail spending and resulting sales tax receipts was calculated.

- Property Taxes
  While Huntington University is a not-for-profit private college and would be exempt from real property taxes, the University is not exempt if the property is leased and will ultimately contribute to the payment of property taxes. In addition, employees supported by operations of Huntington University will pay property taxes on the homes they occupy. In order to estimate property taxes, the assessed full cash value of the University's leased space along with the projected value of a typical housing unit has been calculated.

- State Unemployment Tax
  Unemployment insurance tax for employees is 2.7% on the first $7,000 of earned income. This factor is applied to the projected wages and earnings of direct and indirect employees.

- State Shared Revenues
  Each city in Arizona receives a portion of State revenues from four different sources - State sales tax (see description above), State income tax, vehicle license tax and highway user tax. The formulas for allocating these revenues are primarily based on population. Counties also share in the revenue sources of the State, with the exception of income tax.

  State Income Tax
  The State of Arizona collects taxes on personal income. The tax rate used in the analysis averages about 1.6% for earnings. These percentages are based on the most recently available income tax data from the State and the projected wage levels of jobs created by the construction and operations impact. This tax is applied to the wages and earnings of direct and indirect employment. Portions of this tax are redistributed through revenue sharing to cities throughout Arizona based on population.

  HURF Taxes
  The State of Arizona collects specific taxes for the Highway User Revenue Fund (HURF). Both the registration fees and the motor vehicle fuel tax (gas tax) are considered in this analysis. The motor vehicle fuel tax is $0.18 per gallon and is calculated based on a vehicle traveling 12,000 miles per year at 20 miles per gallon. Registration fees average $66 per employee in the State of Arizona. These factors are applied to the projected direct and indirect employee count. Portions of these taxes are distributed to cities and counties throughout Arizona based on a formula that includes population and the origin of gasoline sales.

  Vehicle License Tax
  The vehicle license tax is a personal property tax placed on vehicles at the time of annual registration. This factor is applied to the projected direct, indirect and induced employee count. The average tax used in this analysis is $325 and portions of the total collections are distributed to the Highway User Revenue Fund. The remaining funds are shared between cities and counties in accordance with population-based formulas.

The above tax categories represent the largest sources of revenues that would be generated to city, county, and State governments. This analysis considers gross tax collections and does not differentiate among dedicated purposes or uses of such gross tax collections.

Go to Previous View
Go to Table of Contents - Appendix

3.0 Economic Development Considerations

Aside from the more tangible economic and fiscal impact calculations, the addition of Huntington University to the City of Peoria would impact the community in a number of intangible ways. For example, a university provides quality instruction enhancing human capital and, therefore, contributing quality workers to the community. Individuals with higher educational attainment earn significantly higher incomes throughout their lifetimes, further positively impacting Arizona.

The local community surrounding Huntington University would also benefit in a number of intangible ways such as, private universities provide a wealth of activities that influence the vitality of the community and a campus would likely add to the attractiveness of the area to businesses. In addition, spending by faculty, staff and students in local shops and restaurants boosts the community's well-being. Additional, immeasurable benefits that can be assigned to the University's operations include its ability to partner with the local not for profit sector to address awareness and communication needs in public health, youth programs, senior outreach, poverty relief, and many others. While the value of these related impacts are not directly calculated in this study, the impacts should not be ignored.

3.1 The Need for Higher Education in a Growing Economy

The State of Arizona, and more specifically Greater Phoenix, weathered a most severe recession. Unlike many other communities across the country that also saw significant declines in their employment base, Greater Phoenix remains well positioned to be a national growth leader well into the future.

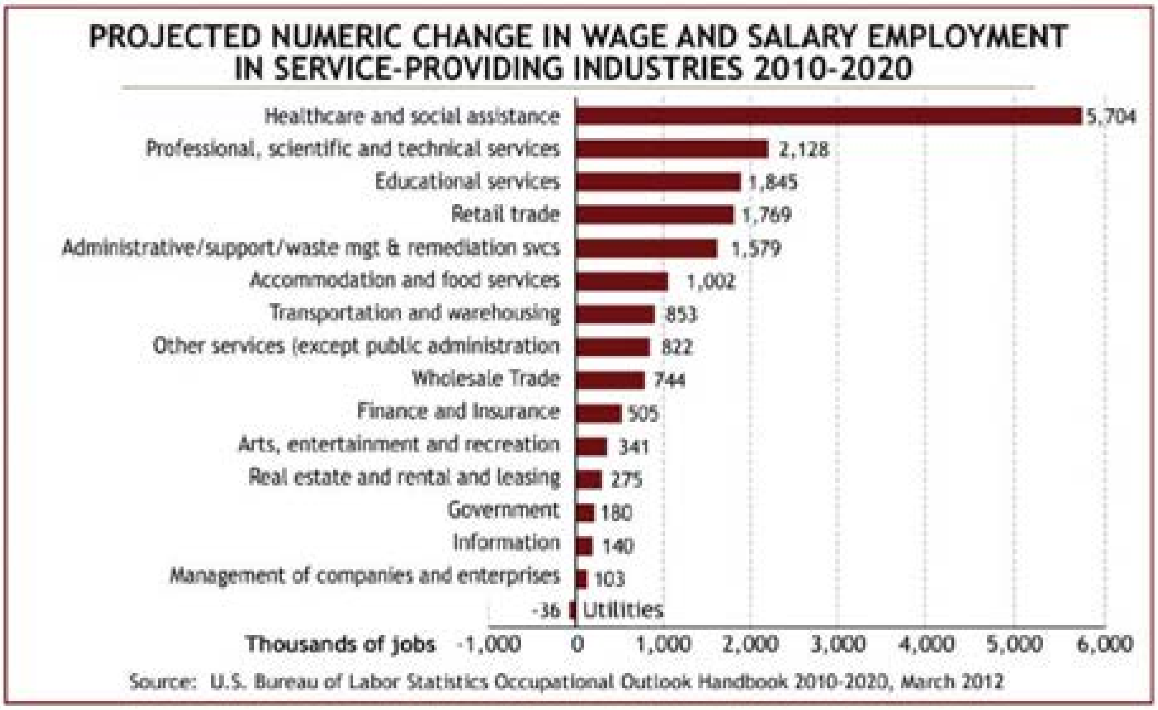
There are a number of reasons that a particular region grows. Some factors are inherent like geographical location, while others are more policy based, like having a competitive tax structure, economic development tools, and an available and cost effective workforce.

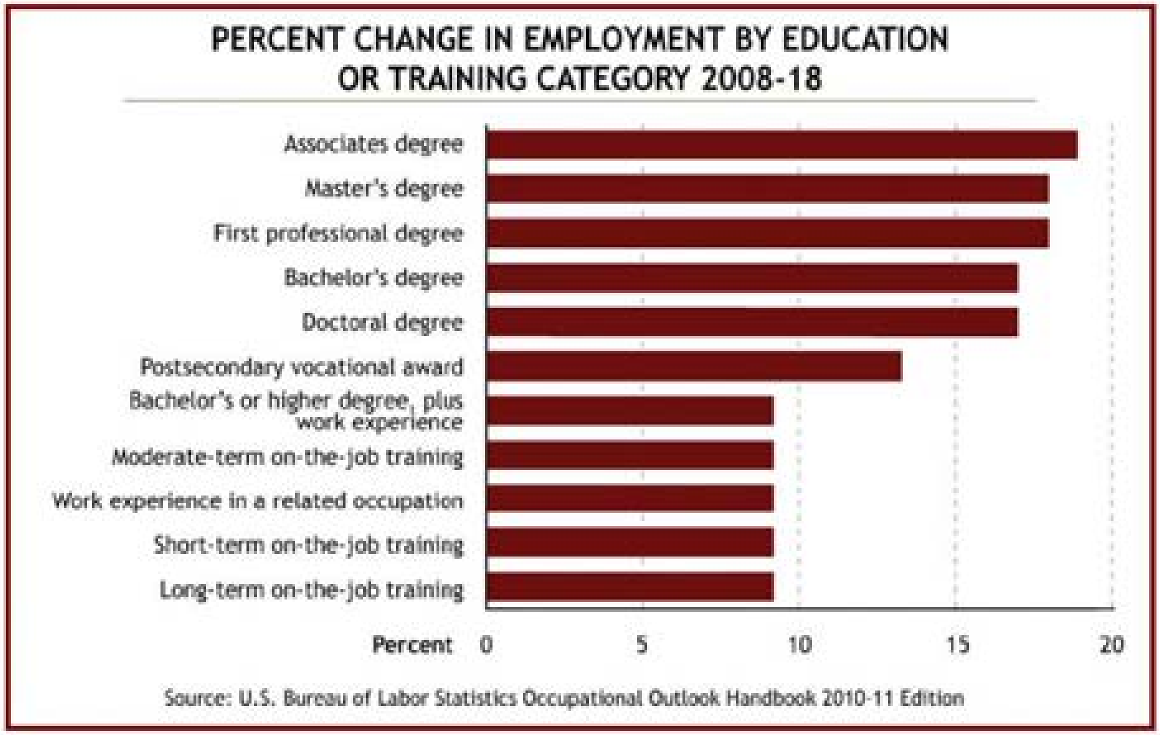
This workforce component of Greater Phoenix's advantages has historically been strong. When engineering firms needed engineers, the local universities produced them. In more recent times the local business community has needed workers with very specific skill sets. In some cases on-site training will occur. However, moving forward, the local region needs to better evaluate its positioning in terms of: 1) providing the workforce that business demand now and will demand in the future, and 2) providing adequate technical training programs that can quickly evolve with the needs of the community.

The use of private colleges and universities will be the key to meeting these short and long terms workforce needs and in helping the State and local region maintain and enhance its competitive position.

The private colleges and universities will need to work closely with local government entities to assure a mutually beneficial partnership. On the government side, information pertaining to the rapid identification of needed space is key, as well as affordability of that space. Linkages with other government entities and the Maricopa County Community College District will also be of value to any relocating or expanding education institution.

In addition to the aforementioned collaboration on facilities and other government partnerships, the demographic profile of the local region will assist with maximizing enrollment if a clear understanding of opportunities is developed. For example, the 55 and older age cohort is expected to increase in size, from 2010 to 2020, by 29.1% across the nation (U.S. Bureau of Labor Statistics, Occupational Outlook Handbook, 2010-2020, March 2012). The same source projects a demand for over 5.7 million new workers in the healthcare and social assistance fields by 2020. The following chart displays the fields of study in the noted analysis. A breakdown of employment growth by required degrees is also included.





Greater Phoenix has a disproportionate competitive advantage in terms of the attraction of the aging population and expansion of the health care industries. For example, many of these individuals will be looking at only "partial retirement" and will seek additional education to further their "post career" opportunities.

The region is also well positioned to expand further into the fields related to aging, such as health care. Nursing school graduates will continue to be in high demand as will technical operators of related equipment, research and development professionals, etc.

Another example relates to tourism and hospitality. Approximately 10% of the State's economy is tied to tourism in some way. This will also continue to be an area of strength for the State and Greater Phoenix area. Many more examples are relevant to the region.

Thus, the combination of the local region being economically sound, the development of partnerships, and the strategic identification of specific fields of education will enhance the potential for success any relocating or expanding educational institutions.

Go to Previous View

Go to Table of Contents - Appendix

3.2 Review of the Huntington University Proposal

Huntington University plans to offer higher education degree programs in Digital Media Arts, preparing graduates key technology fields like animation, digital media broadcasting, film, graphic design and video communications. The types of careers that can be expected from these degrees include Communications, Broadcasting (Fusion Media), Animation, Film Production, and Graphic Design. The median starting salary of these jobs is $39,100 with an average of $39,950. By mid-career, the graduates of Huntington University with careers in their field would be expected to have an average salary of $64,350 (in 2015 dollars).

Huntington Universiy
Careers and Salaries by Degrees Offered

Degree Offered	Types of Careers	Salary: Starting	Salary: Mid-Career
Broadcasting - Fusion Media	Broadcast Journalism; Broadcasting in Radio or TV; Visual and Audio Podcasting; Advertising; Newscaster	$37,900	$58,300
Communications	Public Relations; Advertising; Sales & Marketing; Media Relations; Human Resource Management; Customer Service	$40,000	$69,600
Digital Animation	3D Modelers; Art Directors; Flash Directors; Forensic Animators; Game Artist and Designers; Graphic Programmer; Independent Filmmakers; Lighting Technicians; Mathematical Modeler; Motion Capture Artist; Production Designer; Special Effects Designer; Technical Designer; Visual Effects Artist; Web Developer	$45,000	$70,000
Film Production	Boom Operator; Camera Assitant; Casting Associate; Computer Effects; Costume Designer; Director/Producer; Editor; Motion Graphics; Reporter; Sound Designer/Editor; Video Editor	$38,200	$70,900
Graphic Design	Specialized Design Services; Newspaper, Periodical or Book Publishers; Advertising; Printing Services; Computer Systems Design	$37,000	$56,000
Web Design	Website Development & Design; Mobile Application Development	$41,600	$61,300
	Median	$39,100	$65,450
	Average	$39,950	$64,350

Sources: www.payscale.com; EDPco; Huntington University

According to the University's proposal (and reviewed by Elliott D. Pollack & company), there are 15,000 high school students in Arizona who graduate each year with involvement in a digital media program at their school. Their options for pursuing education in the Digital Media Arts programs are limited to ASU Cronkite School, Scottsdale Community College or high cost enrollment at the for-profit Art Institute of America. Thus, the niche market should serve Peoria well, indeed, attract students from throughout the State.

Huntington University's enrollment projections for the Peoria location start at 115 students after one year of recruitment, increasing to 500 students by year four.

Year	Enrollment Projection
0	0
1	115
2	240
3	365
4	500

This averages around 100 new recruitments per year over the five years. Three local universities listed in the figure below have grown much faster, and for a longer period of

Go to Previous View
Go to Table of Contents - Appendix

time. The ASU locations on average have brought in around 600 new enrollments per year for at least 10 years. Grand Canyon University has exceeded all expectations and is expected to average just fewer than 2,000 new students per year. Typical demand coupled the niche market planned, Huntington University should not experience any difficulties with achieving their enrollment goals.

Growth Potential for Arizona Universities					
University	Year 1	Year 5	Year 10	Year 15	Growth Per Year
Huntington University, Peoria	115*	500	N/A	N/A	100
Arizona State West	7,348	10,000	12,500	15,000	510
Arizona State Polytechnic	4,865	8,220	13,000	15,000	676
Grand Canyon University	2,723	10,637	22,500	N/A	1,977

*Huntington University projects 115 students after one year of recruitment.

Huntington University will work to provide competitive tuition rates in the Peoria market allowing students to choose between HU or state universities within Arizona without overall cost being a meaningful variable. The following table provides current tuition rates for various universities throughout Arizona.

Cost of Tuition Per Year (24-36 units)	
University	**Tuition**
Trine, Peoria	$9,844
Arizona State Tempe	$9,484
Arizona State Polytechnic	$9,484
University of Arizona	$11,000
Grand Canyon University	$16,500
Northern Arizona University	$9,120
Average*	**$11,124**

*Average excludes Trine University

4.0 Economic Impact of Huntington University

Both the construction (tenant improvements) and the on-going operations of the University will create economic benefits to the community.

4.1 Economic Impact of Construction

Construction phase impacts are generally short-term effects related to onsite and offsite construction employment as well as other supporting industries. The direct economic impact from construction of the campus is based on the value of tenant improvements each year. In the first year (year 0), the $750,000 of construction would generate 7.6 direct, indirect and induced jobs with total wages of $487,900 and total economic output of nearly $1.3 million. The construction impacts are a one-time impact on the local economy, but in the case of Huntington University, additional tenant improvements continue through the scope of this analysis. Indeed, the impact in the second year of operations (labeled year 1) totals 5.1 jobs, $325,300 in wages and $861,300 in economic output. Years 2 through 4 generate 2.5 jobs each year, $162,600 in wages and $430,700 in economic output. Again, all results are expressed as 2015 dollars; no inflation has been added to these figures.

Huntington University
Economic Impact of Construction
(2015 Dollars)

Impact Type	Year 0	Year 1	Year 2	Year 3	Year 4
Jobs					
Direct	3.9	2.6	1.3	1.3	1.3
Indirect	1.4	1.0	0.5	0.5	0.5
Induced	2.3	1.5	0.8	0.8	0.8
Total	**7.6**	**5.1**	**2.5**	**2.5**	**2.5**
Wages					
Direct	$276,700	$184,500	$92,200	$92,200	$92,200
Indirect	$96,600	$64,400	$32,200	$32,200	$32,200
Induced	$114,600	$76,400	$38,200	$38,200	$38,200
Total	**$487,900**	**$325,300**	**$162,600**	**$162,600**	**$162,600**
Output					
Direct	$750,000	$500,000	$250,000	$250,000	$250,000
Indirect	$230,900	$154,000	$77,000	$77,000	$77,000
Induced	$311,000	$207,300	$103,700	$103,700	$103,700
Total	**$1,291,900**	**$861,300**	**$430,700**	**$430,700**	**$430,700**

NOTES
1 The total may not equal the sum of the impacts due to rounding.
2 All dollar figures are in 2015 dollars. Inflation has not been included in these figures.

Source: Elliott D. Pollack & Company; IMPLAN

Go to Previous View

Go to Table of Contents - Appendix

4.2 Economic Impact of Operations

The operations of Huntington University in Peoria will have long-term (ongoing) benefits for the community. The following table provides the economic impact of the faculty and staff jobs, resulting wages and economic output, including the supporting jobs (both indirect and induced). The impacts are presented as annual impacts estimated for the first five years of operations. The assumptions used in the following analysis can be found with the methodology in Section 2.0.

Huntington University
Economic Impact of Faculty & Staff Operations
(2015 Dollars)

Impact Type	Year 0	Year 1	Year 2	Year 3	Year 4
Jobs					
Direct	3.0	34.0	69.0	93.0	106.0
Indirect	0.5	1.1	2.2	3.2	4.3
Induced	0.9	2.0	4.1	6.0	7.9
Total	**4.4**	**37.1**	**75.3**	**102.2**	**118.2**
Wages					
Direct	$130,000	$295,000	$599,420	$882,980	$1,164,760
Indirect	$28,000	$63,000	$127,000	$187,000	$247,000
Induced	$49,000	$110,000	$224,000	$330,000	$435,000
Total	**$207,000**	**$468,000**	**$950,420**	**$1,399,980**	**$1,846,760**
Output					
Direct	$237,700	$539,300	$1,095,900	$1,614,300	$2,129,500
Indirect	$87,000	$198,000	$402,000	$593,000	$782,000
Induced	$132,000	$299,000	$607,000	$895,000	$1,180,000
Total	**$456,700**	**$1,036,300**	**$2,104,900**	**$3,102,300**	**$4,091,500**

NOTES
1 The total may not equal the sum of the impacts due to rounding.
2 All dollar figures are in 2015 dollars. Inflation has not been included in these figures.

Source: Elliott D. Pollack & Company; IMPLAN

The first year of the analysis is labeled "Year 0" as Huntington University will take this opportunity to recruit students and get ready to open its doors. In that year, operations will support a total of 3 direct jobs with wages of $130,000 and an economic impact of $237,700. Indirect and induced impacts include an additional 1.4 jobs with total wages of $77,000 and economic output of $219,000. Overall, in year 0, the operations will generate a total of 4 jobs, $207,000 in wages and $456,700 in economic activity.

The estimated 106 faculty, adjunct faculty, and support staff projected by year four would generate about $1.2 million in wages and over $2.1 million annually in economic output (2015 dollars). In turn, these employees will create the demand for an additional 12 indirect and induced jobs, $682,000 in wages and economic output of nearly $2.0 million. By year four, a total of 118 jobs, $1.8 million in wages and $4.1 million in annual economic output would be generated. It is important to note that these economic impacts of operations are ongoing and will continue to impact the economy into the future.

5.0 Fiscal Impact of Huntington University

This section of the report outlines the fiscal impact of the construction and operations at the proposed Huntington University campus. While the construction impacts are considered one-time short term impacts, operations impacts are long-term on-going impacts and, while, they are represented as annual impacts only over a five year period, the impacts will continue to be realized as long as the University continues to operate in Peoria.

The tables included in this section summarize revenues that would ultimately flow to the State of Arizona, Maricopa County and the City of Peoria. Some revenues are more direct and definable than others. Revenues have been defined in this analysis as either primary or secondary, depending on their source and how the dollars flow through the economy into government tax accounts. For instance, some revenues, such as construction sales, materials sales and use taxes, are definable, straightforward calculations based on the value of construction or direct purchases. These revenues are described in this study as primary revenues.

Secondary revenues, on the other hand, flow from the wages of those direct, indirect and induced employees who are supported by the project. Revenue projections are based on typical wages of the employees working in the project, their spending patterns, projections of where they might live, and other assumptions outlined earlier in this report.

The fiscal impact of Huntington University includes the tax revenues generated from the property taxes, materials and supplies purchased locally, spending of students on taxable items as well as the faculty and staff impacts created from the spending of the employees.

5.1 Fiscal Impact on the State of Arizona

For the State of Arizona, primary collections from the proposed campus tenant improvements total $89,200 over the five years. This includes construction sales tax and use tax generated from furniture, fixtures and equipment. The secondary impacts generated by employees totals an additional $38,400 over the five years.

The ongoing operations of the University generate primary taxes totaling $326,200. This includes revenues generated from the purchase of supplies, as well as from the spending of students in the state economy. Total tax collections from secondary sources of the university-based staff amounts to $265,200 over the five year time period. These fiscal revenues will be generated from income taxes, sales taxes, unemployment taxes and vehicle related taxes and fees.

In total, the State of Arizona will collect $719,000 in revenues from the construction and operations of the proposed campus of Huntington University in the City of Peoria.

Go to Previous View

Go to Table of Contents - Appendix

Huntington University
State Fiscal Impact Summary

	Year 0	Year 1	Year 2	Year 3	Year 4	Total 5 Years
Construction Impact						
Total Primary Construction Impact	$23,700	$25,400	$15,900	$7,100	$17,100	$89,200
Construction sales tax	$21,200	$14,100	$7,100	$7,100	$7,100	$56,600
FF&E use tax	$2,500	$11,300	$8,800	$0	$10,000	$32,600
Secondary impact from DIRECT const. employees	$8,100	$5,400	$2,600	$2,600	$2,600	$21,300
Employee spending sales tax	$2,500	$1,700	$800	$800	$800	$6,600
Personal Income Tax	$4,200	$2,800	$1,400	$1,400	$1,400	$11,200
Unemployment tax	$700	$500	$200	$200	$200	$1,800
VLT	$300	$200	$100	$100	$100	$800
HURF	$400	$200	$100	$100	$100	$900
Secondary impact from INDIRECT const. employees	$2,900	$2,000	$900	$900	$900	$7,600
Employee spending sales tax	$900.00	$600.00	$300.00	$300.00	$300.00	$2,400
Personal Income Tax	$1,500.00	$1,000.00	$500.00	$500.00	$500.00	$4,000
Unemployment tax	$300.00	$200.00	$100.00	$100.00	$100.00	$800
VLT	$100.00	$100.00	$0.00	$0.00	$0.00	$200
HURF	$100	$100	$0	$0	$0	$200
Secondary impact from INDUCED const. employees	$3,500.00	$2,400.00	$1,200.00	$1,200.00	$1,200.00	$9,500
Employee spending sales tax	$1,100	$800.00	$400.00	$400.00	$400.00	$3,100
Personal Income Tax	$1,600	$1,100.00	$500.00	$500.00	$500.00	$4,200
Unemployment tax	$400.00	$300.00	$100.00	$100.00	$100.00	$1,000
VLT	$200	$100	$100	$100	$100	$600
HURF	$200	$100	$100	$100	$100	$600
Secondary impact from const. employees	$14,500	$9,800	$4,700	$4,700	$4,700	$38,400
Employee spending sales tax	$4,500	$3,100	$1,500	$1,500	$1,500	$12,100
Personal Income Tax	$7,300	$4,900	$2,400	$2,400	$2,400	$19,400
Unemployment tax	$1,400	$1,000	$400	$400	$400	$3,600
VLT	$600	$400	$200	$200	$200	$1,600
HURF	$700	$400	$200	$200	$200	$1,700
Total Impact from construction	**$38,200**	**$35,200**	**$20,600**	**$11,800**	**$21,800**	**$127,600**
Operations Impact						
Total Primary Operations Impact	$16,000	$39,300	$64,800	$86,800	$119,300	$326,200
Materials & supplies sales tax	$16,000	$15,300	$15,800	$11,800	$15,300	$74,200
Student spending sales tax	$0	$24,000	$49,000	$75,000	$104,000	$252,000
Secondary impact from DIRECT employees	$4,100	$23,000	$46,600	$63,700	$73,300	$210,700
Employee spending sales tax	$1,300	$7,300	$14,800	$20,500	$24,400	$68,300
Personal Income Tax	$1,500	$1,100	$2,300	$3,400	$3,600	$11,900
Unemployment tax	$600	$6,400	$13,000	$17,600	$20,000	$57,600
VLT	$400	$5,000	$10,100	$13,600	$15,500	$44,600
HURF	$300	$3,200	$6,400	$8,600	$9,800	$28,300
Secondary impact from INDIRECT employees	$900	$1,900	$3,700	$5,600	$7,300	$19,400
Employee spending sales tax	$300	$600	$1,200	$1,800	$2,300	$6,200
Personal Income Tax	$400	$800	$1,600	$2,400	$3,200	$8,400
Unemployment tax	$100	$200	$400	$600	$800	$2,100
VLT	$100	$200	$300	$500	$600	$1,700
HURF	$0	$100	$200	$300	$400	$1,000
Secondary impact from INDUCED employees	$1,500	$3,400	$6,900	$10,100	$13,200	$35,100
Employee spending sales tax	$500	$1,100	$2,200	$3,200	$4,200	$11,200
Personal Income Tax	$600	$1,400	$2,900	$4,300	$5,600	$14,800
Unemployment tax	$200	$400	$800	$1,100	$1,500	$4,000
VLT	$100	$300	$600	$900	$1,200	$3,100
HURF	$100	$200	$400	$600	$700	$2,000
Total Secondary impact from operations employees	$6,500	$28,300	$57,200	$79,400	$93,800	$265,200
Employee spending sales tax	$2,100	$9,000	$18,200	$25,500	$30,900	$85,700
Personal Income Tax	$2,500	$3,300	$6,800	$10,100	$12,400	$35,100
Unemployment tax	$900	$7,000	$14,200	$19,300	$22,300	$63,700
VLT	$600	$5,500	$11,000	$15,000	$17,300	$49,400
HURF	$400	$3,500	$7,000	$9,500	$10,900	$31,300
Total Impact from operations	**$22,500**	**$67,600**	**$122,000**	**$166,200**	**$213,100**	**$591,400**
TOTAL FISCAL IMPACT	**$60,700**	**$102,800**	**$142,600**	**$178,000**	**$234,900**	**$719,000**

NOTES:

All figures are intended only as a general guideline as to how the State could be impacted by the project(s).

The above figures are based on the current economic structure and tax rates of the State

5.2 Fiscal Impact on Maricopa County

The County will also benefit fiscally from the proposed University. In addition to sales tax, local governments in Arizona also collect property taxes. While Arizona Revised Statute 42-11104 exempts property used in education and, thus, the University will be exempt from personal property taxes, real property taxes will still be levied on the real estate space that is leased.

Tenant improvements will generate $15,030 for Maricopa County over five years including $9,000 in construction sales tax and $6,030 in secondary revenues generated by employees.

During the first five years of operations, the County would collect $112,600 from primary taxes such as sales tax and property taxes, including taxes collected from student spending. Additional secondary impacts from the spending of employees total $72,300.

Overall, the operations of Huntington University in Peoria, Arizona would generate nearly $199,930 for Maricopa County during the five years of this analysis.

Go to Previous View

Go to Table of Contents - Appendix

Huntington University
County Fiscal Impact Summary

	Year 0	Year 1	Year 2	Year 3	Year 4	Total 5 Years
Construction Impact						
Total Primary Operations Impact	$3,400	$2,300	$1,100	$1,100	$1,100	$9,000
Construction sales tax	$3,400	$2,300	$1,100	$1,100	$1,100	$9,000
Secondary impact from DIRECT const. employees	$1,140	$730	$410	$410	$410	$3,100
Employee spending sales tax	$500	$300	$200	$200	$200	$1,400
Residents property tax	$600	$400	$200	$200	$200	$1,600
State shared revenue	$40	$30	$10	$10	$10	$100
Secondary impact from INDIRECT const. employees	$420	$210	$210	$210	$210	$1,260
Employee spending sales tax	$200	$100	$100	$100	$100	$600
Residents property tax	$200	$100	$100	$100	$100	$600
State shared revenue	$20	$10	$10	$10	$10	$60
Secondary impact from INDUCED const. employees	$620	$420	$210	$210	$210	$1,670
Employee spending sales tax	$200	$200	$100	$100	$100	$700
Residents property tax	$400	$200	$100	$100	$100	$900
State shared revenue	$20	$20	$10	$10	$10	$70
Secondary impact from const. employees	$2,180	$1,360	$830	$830	$830	$6,030
Employee spending sales tax	$900	$600	$400	$400	$400	$2,700
Residents property tax	$1,200	$700	$400	$400	$400	$3,100
State shared revenue	$80	$60	$30	$30	$30	$230
Total Impact from construction	**$5,580**	**$3,660**	**$1,930**	**$1,930**	**$1,930**	**$15,030**
Operations Impact						
Total Primary Operations Impact	$11,400	$16,700	$22,400	$27,500	$34,600	$112,600
Materials & supplies sales tax	$2,200	$2,100	$2,200	$1,600	$2,100	$10,200
Real property tax	$9,200	$10,600	$11,200	$11,900	$12,500	$55,400
Student spending sales tax	$0	$4,000	$9,000	$14,000	$20,000	$47,000
Secondary impact from DIRECT employees	$800	$7,100	$14,300	$19,500	$22,300	$64,000
Employee spending sales tax	$300	$1,500	$3,100	$4,300	$5,100	$14,300
Residents property tax	$500	$5,200	$10,500	$14,200	$16,100	$46,500
State shared revenue	$0	$400	$700	$1,000	$1,100	$3,200
Secondary impact from INDIRECT employees	$200	$300	$500	$800	$1,100	$2,900
Employee spending sales tax	$100	$100	$200	$300	$500	$1,200
Residents property tax	$100	$200	$300	$500	$600	$1,700
State shared revenue	$0	$0	$0	$0	$0	$0
Secondary impact from INDUCED employees	$200	$500	$1,000	$1,600	$2,100	$5,400
Employee spending sales tax	$100	$200	$400	$600	$800	$2,100
Residents property tax	$100	$300	$600	$900	$1,200	$3,100
State shared revenue	$0	$0	$0	$100	$100	$200
Total Secondary impact from operations employees	$1,200	$7,900	$15,800	$21,900	$25,500	$72,300
Employee spending sales tax	$500	$1,800	$3,700	$5,200	$6,400	$17,600
Residents property tax	$700	$5,700	$11,400	$15,600	$17,900	$51,300
State shared revenue	$0	$400	$700	$1,100	$1,200	$3,400
Total Impact from operations	**$12,600**	**$24,600**	**$38,200**	**$49,400**	**$60,100**	**$184,900**
TOTAL COUNTY FISCAL IMPACT	**$18,180**	**$28,260**	**$40,130**	**$51,330**	**$62,030**	**$199,930**

NOTES:

All figures are intended only as a general guideline as to how the County could be impacted by the project(s).

The above figures are based on the current economic structure and tax rates of the County.

Go to Previous View
Go to Table of Contents - Appendix

5.3 Fiscal Impact on the City of Peoria

The City of Peoria will collect $35,200 in construction sales tax and use tax collected from the purchase of furniture, fixture and equipment. Secondary revenues from construction employees will create an additional $2,030 for the City. This figure takes into account the estimated 15.4% of the construction employees that will live within the City of Peoria and, thus, spend their disposable income within City limits.

Primary revenues total $148,600 over five years of operations of Huntington University. This includes sales taxes from purchases, property taxes on the occupied building and sales taxes generated by students spending. An additional $20,800 would be generated by the employees that are projected to live in the city of Peoria.

In total, the first five years of operations would generate an additional $206,630 in tax revenues for the city of Peoria.

Go to Previous View

Go to Table of Contents - Appendix

Huntington University

City Fiscal Impact Summary

	Year 0	Year 1	Year 2	Year 3	Year 4	Total 5 Years
Construction Impact						
Total Primary Operations Impact	$9,700	$10,000	$6,100	$2,900	$6,500	$35,200
Construction sales tax	$8,800	$5,900	$2,900	$2,900	$2,900	$23,400
FF&E	$900	$4,100	$3,200	$0	$3,600	$11,800
Secondary impact from DIRECT const. employees	$430	$290	$140	$140	$140	$1,140
Employee spending sales tax	$220	$150	$70	$70	$70	$580
Residents property tax	$120	$80	$40	$40	$40	$320
State shared revenue	$90	$60	$30	$30	$30	$240
Secondary impact from INDIRECT const. employee	$140	$90	$50	$50	$50	$380
Employee spending sales tax	$80	$50	$30	$30	$30	$220
Residents property tax	$40	$30	$10	$10	$10	$100
State shared revenue	$20	$10	$10	$10	$10	$60
Secondary impact from INDUCED const. employee	$190	$140	$60	$60	$60	$510
Employee spending sales tax	$100	$70	$30	$30	$30	$260
Residents property tax	$70	$50	$20	$20	$20	$180
State shared revenue	$20	$20	$10	$10	$10	$70
Total Secondary impact from construction employe	$760	$520	$250	$250	$250	$2,030
Employee spending sales tax	$400	$270	$130	$130	$130	$1,060
Residents property tax	$230	$160	$70	$70	$70	$600
State shared revenue	$130	$90	$50	$50	$50	$370
Total Impact from construction	**$10,460**	**$10,520**	**$6,350**	**$3,150**	**$6,750**	**$37,230**
Operations Impact						
Total Primary Operations Impact	$15,100	$20,900	$26,700	$36,300	$49,600	$148,600
Direct Spending Materials & Supplies	$5,800	$5,500	$5,700	$4,200	$5,500	$26,700
University Property Tax	$9,300	$10,400	$11,000	$11,700	$12,300	$54,700
Lease tax	$0	$0	$0	$5,400	$10,800	$16,200
Student spending sales tax	$0	$5,000	$10,000	$15,000	$21,000	$51,000
Secondary impact from DIRECT employees	$240	$1,970	$3,990	$5,420	$6,280	$17,900
Employee spending sales tax	$120	$710	$1,430	$1,970	$2,340	$6,570
Residents property tax	$90	$1,040	$2,110	$2,840	$3,240	$9,320
State shared revenue	$30	$220	$460	$610	$700	$2,010
Secondary impact from INDIRECT employees	$40	$90	$210	$300	$390	$1,030
Employee spending sales tax	$20	$50	$110	$160	$210	$550
Residents property tax	$10	$30	$70	$100	$130	$340
State shared revenue	$10	$10	$30	$40	$50	$140
Secondary impact from INDUCED employees	$80	$180	$360	$540	$710	$1,870
Employee spending sales tax	$40	$100	$190	$290	$360	$1,000
Residents property tax	$30	$60	$120	$180	$240	$630
State shared revenue	$10	$20	$50	$70	$90	$240
Total Secondary impact from operations employee	$360	$2,240	$4,560	$6,260	$7,380	$20,800
Employee spending sales tax	$180	$860	$1,730	$2,420	$2,930	$8,120
Residents property tax	$130	$1,130	$2,300	$3,120	$3,610	$10,290
State shared revenue	$50	$250	$530	$720	$840	$2,390
Total Impact from operations	**$15,460**	**$23,140**	**$31,260**	**$42,560**	**$56,980**	**$169,400**
TOTAL CITY FISCAL IMPACT	**$25,920**	**$33,660**	**$37,610**	**$45,710**	**$63,730**	**$206,630**

NOTES:

All figures are intended only as a general guideline as to how the City could be impacted by the project(s).

The above figures are based on the current economic structure and tax rates of the City.

Go to Previous View

Go to Table of Contents - Appendix

6.0 Summary of Total Impacts

The economic and fiscal impact of the construction and ongoing operations of the proposed Huntington University branch campus will be significant for the community as well as for the State of Arizona.

6.1 Economic & Fiscal Impact Summary

The following table summarizes the economic and fiscal impacts of the construction and ongoing operations over the five years. In the startup year (year 0), the University will generate 12 jobs with $694,900 in wages and $1.7 million in economic output. By year four, these figures grow to an impact of 121 jobs, over $2.0 million in wages and $4.5 million in economic activity throughout the region.

Over the five year period, the annual fiscal impacts of construction and ongoing operations of the Huntington University campus would generate an estimated $719,000 for the State, $199,930 for the County and $206,630 for the City over the five years. In total, the university would generate more than $1.1 million in tax revenues for the State and local governments.

Huntington University
Economic & Fiscal Impact Summary
(2015 Dollars)

Economic Impact						
Construction & Ongoing Operations	**Year 0**	**Year 1**	**Year 2**	**Year 3**	**Year 4**	
Jobs	12	42	78	105	121	
Wages ($ mil)	$694,900	$793,300	$1,113,020	$1,562,580	$2,009,360	
Economic Output ($ mil)	$1,748,600	$1,897,600	$2,535,600	$3,533,000	$4,522,200	
Fiscal Impact						
Construction & Ongoing Operations	**Year 0**	**Year 1**	**Year 2**	**Year 3**	**Year 4**	**Total**
State of Arizona	$60,700	$102,800	$142,600	$178,000	$234,900	**$719,000**
Maricopa County	$18,180	$28,260	$40,130	$51,330	$62,030	**$199,930**
City of Peoria	$25,920	$33,660	$37,610	$45,710	$63,730	**$206,630**
Total	$104,800	$164,720	$220,340	$275,040	$360,660	**$1,125,560**

NOTES
1 Figures include both impacts from construction and operations.
2 The total may not equal the sum of the impacts due to rounding.
3 All of the above figures are based on current tax rates for the State, County and City. The figures are intended only as a general guideline as to how they could be impacted.

Source: Elliott D. Pollack & Company; Huntington University; ADOR; Arizona Tax Research Association.

Go to Previous View

Go to Table of Contents - Appendix

6.2 Summary of Economic Development Considerations

Additional immeasurable impacts are not directly calculated in the above tables. However, their impacts should not be ignored. Such considerations include:

- A university would provide quality instruction enhancing human capital and, therefore, contributing quality workers to the community.
- Individuals with higher educational attainment earn significantly higher incomes throughout their lifetimes, further positively impacting Arizona.
- The local community surrounding Huntington would also benefit as private universities provide a wealth of activities that influence the vitality of the community and the campus likely adds to the attractiveness of the area to businesses.
- Spending by faculty, staff and students in local shops and restaurants would boost the community's well-being.
- The University has the ability to partner with the private sector through technology transfer activities and other methods of cooperating with the community at large.

EXHIBIT 16

Go to Previous View

Go to Table of Contents - Appendix

Mary O'Grady, 011434
Shane M. Ham, 027753
OSBORN MALEDON, P.A.
2929 North Central Avenue, 21st Floor
Phoenix, Arizona 85012-2793
(602) 640-9000
mogrady@omlaw.com
sham@omlaw.com

Stephen J. Burg, City Attorney (012073)
OFFICE OF THE CITY ATTORNEY
CITY OF PEORIA
Melinda A. Bird, Assistant City Attorney (013163)
Physical Address:
8401 West Monroe Street
Peoria, Arizona 85345
Mailing Address:
Post Office Box 4038
Peoria, Arizona 85380-4038
(623) 773-7330
caofiling@peoriaaz.gov

Attorneys for Defendants

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

DARCIE SCHIRES; ANDREW AKERS; and GARY WHITMAN, Plaintiffs, v. CATHY CARLAT, in her official capacity as Mayor of the City of Peoria; VICKI HUNT, in her official capacity as City of Peoria Councilmember for the Acacia District; CARLO LEONE, in his official capacity as City of Peoria Councilmember for the Pine District; MICHAEL FINN, in his official capacity as City of Peoria Councilmember for the Palo Verde District; JON EDWARDS, in his official capacity as City of Peoria Councilmember for the Willow District; BRIDGET BINSBACHER, in her official capacity as City of Peoria Councilmember for the Mesquite District; BILL PATENA, in his official capacity as City of Peoria Councilmember for the Ironwood District; and CITY OF PEORIA, a municipal corporation of the State of Arizona, Defendants.	Case No. CV2016-013699 **DECLARATION OF BRYCE COOK** (Assigned to the Honorable Sherry K. Stephens)

Go to Previous View

Go to Table of Contents - Appendix

STATE OF ARIZONA)
) ss:
County of Maricopa)

Bryce Cook, being duly sworn, says as follows:

1. I am an expert in the above-entitled and numbered action and make this Affidavit based on my personal knowledge in compliance with Rule 56(d)(1)(A) of the Arizona Rules of Civil Procedure.

2. I am a Director with Navigant, a specialized independent consulting firm that employs over 5,000 professionals and has over 60 offices worldwide. The firm's consultants include accounting, finance, engineering and information technology professionals experienced in the analysis of business operations, business valuation, financial and accounting matters, and economic damages. I have a Bachelor of Science Degree in Business Management with a concentration in finance and a Master's Degree in Business Administration. I am also a Certified Management Accountant and a member of the National Association of Certified Valuation Analysts.

3. I am experienced in financial, economic, damage and accounting matters related to the scope of work on this matter. I have consulted on numerous engagements involving the analysis of economic impact relating to proposed business ventures and other impacts. A copy of my resume is attached to this Declaration as **Exhibit A**.

4. I have been retained by the City of Peoria in this action as a rebuttal expert to opine on the testimony of Dr. Shawn Kantor. In developing my opinions, I have reviewed the pleadings filed in this matter, documents produced by both parties, and documents obtained in the course of performing my research and analysis.

Go to Previous View

Go to Table of Contents - Appendix

ECONOMIC IMPACT IS THE ONLY WAY TO VALUE THE AGREEMENTS AT ISSUE

5. I have reviewed the agreements at issue in this case between the City of Peoria (the "City") on the one hand and Huntington University ("HU") and Arrowhead Equities LLC ("Arrowhead") on the other.

6. The agreement between the City of Peoria and HU is an agreement for the City to provide certain cost reimbursements to HU. In exchange, HU promises to open and operate a branch campus of its university within the city limits of Peoria. The agreement also requires HU to offer a degree program in digital media arts.

7. The agreement between the City of Peoria and Arrowhead is an agreement to the terms and conditions of a grant program, under which Arrowhead would undertake tenant improvements to prepare a building for use as an HU campus and the City would provide partial reimbursement of those costs. Each of the two agreements have risk mitigating provisions that ensure full payment is made only if HU continues to operate in Peoria. In reaching my opinions I reviewed the two agreements together and considered how the provisions interact to reduce risk to the City.

8. Taken together, the cost reimbursements made by the City to HU and Arrowhead were in exchange for the promise to open and operate a branch campus of HU within the Peoria city limits.

9. It is my opinion that the best way to measure the economic benefit or value received by the City from the agreements at issue in this case is to measure the economic impact that occurs within the city limits as a result of opening and operating the university. In my experience, an economic input-output study is the most widely accepted and appropriate method for determining that economic impact. I do not know of any more appropriate method for placing an economic value on the promise received by the City in the agreements at issue in this case.

Go to Previous View

Go to Table of Contents - Appendix

10. Dr. Kantor's criticisms of the economic impact analysis performed in the first report commissioned by the City (the "Pollack report") are not correct. I address Dr. Kantor's specific criticisms of this mode of analysis at pages 2-6 of my June 30, 2017 report. A copy of that report is attached hereto as **Exhibit B** and incorporated into this Declaration.

ECONOMIC IMPACT OF HU CAMPUS ON CITY OF PEORIA EXCEEDS $11 MILLION

11. Dr. Kantor's report also criticized the Pollack report on the grounds that it measured the impact of the HU agreement on Maricopa County rather than on the City of Peoria specifically. I agree that the geographic scope of the Pollack report is unclear, and therefore I undertook an analysis that is focused on the economic impact the agreements will have on the zip codes within the City of Peoria.

12. To conduct my analysis I used IMPLAN, a popular and widely used economic analysis modeling system that measures the economic impacts of a given set of inputs. The IMPLAN model contains databases of economic data gathered primarily from government information banks, and allows for an analysis of the specific area in question.

13. The IMPLAN model uses geographically restricted data to measure the economic impact of the HU campus in Peoria specifically. If the same agreement were analyzed in a different municipality, the result would also be different.

14. The methodology for my IMPLAN study is set forth in pages 7-11 of my report at Exhibit B.

15. In my opinion, the economic impact of the agreements at issue in this case exceed $11.3 million.

16. In my opinion, the economic value of the promise to operate a branch campus of HU in the City of Peoria, including the promises to repurpose the building for the campus, is $11.3 million.

17. The statements made in this affidavit are true and correct to the best of my knowledge.

Dated this 15 day of December, 2017.

Bryce Cook

SUBSCRIBED AND SWORN before me, a notary public, by Bryce Cook this 15th day of December, 2017.

OFFICIAL SEAL
REBECCA WARINNER
Commission #522717
Notary Public - State of Arizona
MARICOPA COUNTY
My comm. expires Feb. 28, 2021

Notary Public

My commission expires:

2/28/2021

7371782

EXHIBIT A

Go to Previous View

Go to Table of Contents - Appendix

NAVIGANT

ATTACHMENT B

Bryce R. Cook

Bryce R. Cook
Director

Navigant Consulting
The Collier Center, Suite 1700
201 E. Washington St.
Phoenix, AZ 85004-2245
Tel: 602.528.8061 (direct)
Fax: 602.254.6163
bcook@navigantconsulting.com

Professional History

- Navigant Consulting, Inc. – Present
- Tucker Alan Inc. – 1994 to 2004
- Peterson Consulting Limited Partnership – 1987-1994
- Economic Analysis Corporation – 1986-1987

Education

- Master of Business Administration, with a concentration in finance and economics, Arizona State University
- Bachelor of Science degree in Business Management, Brigham Young University
- Certified Management Accountant

Professional Associations

- Institute of Management Accountants
- National Association of Certified Valuation Analysts
- Licensing Executives Society
- State Bar of Arizona, Intellectual Property Section

Current Position

Bryce is a Director with Navigant Consulting, Inc. As part of Navigant's Litigation and Investigations practice, Bryce consults on business matters involving complex financial, accounting and economic issues, particularly as they relate to economic damages or financial investigations. Bryce is a Certified Management Accountant and a member of the National Association of Certified Valuation Analysts.

Professional Experience

Bryce has extensive experience in matters involving computation of economic damages, including breach of contract, infringement of intellectual property rights, professional malpractice, fraud and other causes of action. He has performed damage analyses that involve lost profits, increased costs, diminution of business value and deepening insolvency, among others. He has consulted in a variety of industries including:

- Financial institutions
- Healthcare
- Retail
- Utilities
- Real estate and construction
- Insurance
- Computers
- Automobile
- Restaurant and fast food
- Agricultural
- Oil and gas

Bryce has given expert testimony on damages in federal and state courts and in arbitration. He has lectured to the Arizona State Bar on damages issues and has made presentations on damages to law firms and at professional society conferences.

NAVIGANT

ATTACHMENT B

Selected Experience

Financial Analysis and Commercial Damages

Performed analyses of economic damages and other special-purpose financial investigations of companies in a variety of industries. Damages were based on such causes of action as breach of contract, dealer termination, professional malpractice, lender liability and deepening insolvency, to name a few. Case examples include:

» Evaluated numerous auditor malpractice claims brought by trustees, investors, government agencies and other third parties. Performed forensic analysis to determine the causes of a company's failure or reasons for the decline in value of its securities. Analyzed the company's investments and transactions over time to determine what would have been avoided given the plaintiff's liability scenario.

» Evaluated a real estate developer's lost profit claim stemming from the filing of a lis pendens on one of his properties. Analyzed property values and economic indicators affecting Arizona real estate over the relevant time period. Modeled cash flow projections and performed sensitivity analysis under varying marketing and economic scenarios to determine the most likely disposition of his property holdings.

» Determined consequential damages to high-tech manufacturing company stemming from insurance company's failure to pay on a claim. Damages included lost profits and lost cost savings due to inability to take advantage of business opportunities.

» Reconstructed the capital accounts of a dissolved physicians practice to determine the ending capital owed to/by the various partners based on a review and analysis of five years worth of transactions records, accounting data and tax records. This analysis included determining the relative value of services provided, real estate contributed, and other resources contributed or used that flowed through the partnership over this time period.

Valuation

Performed business valuations for purposes of damage claims, solvency analyses and transaction disputes. Valuations have included public and privately held companies, franchises, trademarks and loan portfolios. Case examples include:

» Valued a sub-prime mortgage wholesaler whose general partner terminated the partnership. Entailed analyzing the company's past performance, management skill, and industry norms. Performed projections of loan production volume, origination points and fees, sales premiums, and general and administrative expenses.

Go to Previous View

Go to Table of Contents - Appendix

- Valued the trademark of a restaurant chain that was licensed to operators in Arizona and California. Analyzed factors that affected the ability of the mark to generate income, including recognition and reputation, historical financial performance, legal status, licensee characteristics and economic/industry conditions.

- Performed a valuation estimate of the lease price of a lithotripsy facility operated by a physician's group. The lease structure included compensation for both equipment and services provided by the physicians. Work involved researching comparable companies, fee and cost structures, revenue per patient and contractual agreements with hospitals.

- Performed stock valuation of a closely held manufacturing firm being sued by a minority shareholder wanting to liquidate his interest. Determined discounts for lack of marketability and lack of control.

Intellectual Property

Performed damage analyses stemming from infringement of intellectual property rights. This work has included determining lost profits, reasonable royalty, accounting of profits and deductible costs, and the cost of corrective advertising. Case examples include:

- Analyzed a company's damage claim stemming from the alleged misappropriation of its trade secrets and proprietary technology relating to a medical waste destruction process. In assessing the value of the trade secrets, performed research on the industry and commercial viability of the technology. Evaluated the company's past transactions involving the technology and determined a reasonable royalty assuming a hypothetical licensing negotiation between the parties.

- Calculated a reasonable royalty and the economic harm sustained by a patentee whose patent was infringed by a tool manufacturer and distributor. Analyzed various factors relevant to determining a reasonable royalty in this matter, including the bargaining positions and economic expectations of both parties prior to the infringement.

- Performed an analysis of a trademark infringer's accounting records to determine its costs associated with manufacturing and selling counterfeit branded motorcycles. Evaluated infringer's own analysis of costs and identified inconsistencies and errors.

- Analyzed the lost profits of an international tour operator due to a competitor's trademark infringement and false advertising. Performed a detailed analysis of economic, industry and company-specific factors to determine to what extent, if any, these factors contributed to the decline in the infringed company's profits. Conducted extensive interviews of travel agents to determine the likelihood of consumer confusion in the industry and the effect of the advertising claims on consumers.

Go to Previous View

Go to Table of Contents - Appendix

Healthcare

Performed various analyses of healthcare provider financial operations, rate structures, profitability and costs of providing services. Have performed work on behalf of state agencies, hospitals and physicians. Case examples include:

- Performed a variety of consulting projects for the State of California, Department of Corrections, relating to inmate healthcare. One project entailed analyzing a provider hospital's cost structure, profitability and financial condition in a rate dispute. In another project, computed statistics from health-care budgeting and expenditure data and compared results with other state departments of corrections.

- Analyzed the financial operations and patient volume of a laser eye clinic to determine the costs and profits associated with treating the former patients of a large, national laser eye surgery company that went bankrupt. Analyzed the accounting records of a related, surviving clinic to determine the ownership of accounts and moneys owed between the two entities.

- Analyzed adequacy of Medicaid reimbursements to health-care providers in a lawsuit against the state of Oregon. Conducted review of providers' costs and constructed a computer model to analyze variables affecting reimbursement formula.

- Prepared a Boren Amendment "findings" report and analysis to determine adequacy of Medicaid reimbursement of hospital costs in the state of Illinois. Required significant statistical and quantitative analysis of hospital costs.

- Reviewed lost profit claim of the operator of a planned medical clinic in a lender liability lawsuit. Created a financial model to generate alternative business scenarios based on claimant's historical financial record operating similar ventures.

EXHIBIT B

NAVIGANT

Darcie Schires et al.
v.
City of Peoria et al.

Superior Court of Arizona, County of Maricopa
Case No. CV2016-0173699

June 30, 2017

Expert Report of
Bryce R. Cook

Navigant Consulting, Inc.
201 East Washington Street, Suite 1700
Phoenix, Arizona 85004-2245
602.257.0075
www.navigant.com

NAVIGANT

EXPERT REPORT Confidential

Contents

NAVIGANT

EXPERT REPORT Confidential

I. Introduction

Navigant Consulting was retained by counsel for the City of Peoria ("the City") to analyze and respond to the May 2017 report of Plaintiffs' expert, Shawn Kantor, PhD, that criticizes the Elliot D. Pollack report prepared for the City in April 2015.

In developing my opinions, I have reviewed the pleadings filed in this matter, documents produced by both parties, and documents obtained in the course of performing my research and analysis. A list of the documents I considered is included in Attachment A.

The opinions and analyses presented in this report are based on currently available information. If new information becomes available that is relevant to my analysis or opinions, I may supplement this report. If this matter proceeds to trial, selected pages of the documents and information considered may be used as exhibits. In addition, I may prepare graphical or illustrative exhibits based on the contents of this report, the documents and information considered, and on my analysis of the documents and information.

I am a Director with Navigant, a specialized independent consulting firm that employs over 5,000 professionals and has over 60 offices worldwide. The firm's consultants include accounting, finance, engineering and information technology professionals experienced in the analysis of business operations, business valuation, financial and accounting matters, and economic damages. I have a Bachelor of Science Degree in Business Management with a concentration in finance and a Master's Degree in Business Administration. I am also a Certified Management Accountant and a member of the National Association of Certified Valuation Analysts.

I am experienced in financial, economic, damage and accounting matters related to the scope of work on this matter. I have consulted on numerous engagements involving the analysis of economic impact relating to proposed business ventures and other impacts. My résumé is included as Attachment B.

II. Background

Huntington University ("HU") is a comprehensive Christian college of the liberal arts based in Indiana that offers graduate and undergraduate programs in more than 70 academic concentrations.[1] On July 7, 2015 the Peoria City Council voted to enter an economic development agreement with HU relating to HU's development and operating of a college campus in Peoria ("HU Campus"). Under the terms of the agreement, the City agreed to reimburse HU's expenditures relating to the development of the HU Campus for up to $1,875,000 after HU

[1] https://www.huntington.edu/about

Go to Previous View
Go to Table of Contents - Appendix

achieved certain "Performance Thresholds."[2] HU ultimately received the full amount of the funding to develop and operate the HU Campus.

Arrowhead Equities LLC ("Arrowhead") owns the real estate on which the HU Campus is located. Arrowhead applied for and was awarded a grant from the City, as contained in an economic development agreement dated March 15, 2016. Under the terms of the agreement, Peoria was to provide funding of $737,596 over a 10-year period to pay for 50% of the tenant improvements on the HU Campus, as long as Arrowhead met certain program and performance criteria.[3]

Prior to signing the HU and Arrowhead Agreements, the City commissioned an economic study of the HU Campus project from Elliot D. Pollack and Company. In April 2015, Pollack issued a report that calculated the regional economic and fiscal benefits what would accrue from building and opening the HU Campus ("Pollack Report").[4] The Pollack Report concluded that the HU Campus would generate 121 jobs, over $2 million in wages, and $4.5 million in economic activity by year 4. The Pollack Report also concluded that the HU Campus would generate more than $1.1 million in tax revenue for state and local governments.[5]

On October 12, 2016 Plaintiffs filed a complaint against the City and other Peoria government officials ("Defendants") claiming that the Defendants' expenditures for the HU Campus violated the Gift Clause of the Arizona Constitution because, among other things, the expenditures did not serve a public purpose and "the consideration the City receives in exchange for its payments is grossly disproportionate."[6]

III. Analysis of the Kantor Report

The Kantor Report is entitled, "Analyzing the Economics of the Huntington University and Arrowhead Equities Subsidies in Peoria, Arizona." However, the report provides no analysis of the economic benefit (or cost) associated with the HU Campus but simply proffers criticisms of the Pollack Report.

Dr. Kantor's critiques fall into two categories:

1. Claims the economic benefit determined from Pollack's IMPLAN analysis is "dramatically upwardly biased" because it does not account for potential economic costs to the City of the HU Campus.

2. Claims the Pollack Report calculated the economic benefit for too broad a market trade area and does not account for spending leakages outside the relevant area.

---

[2] HU Agreement, paragraph 2.
[3] Arrowhead Agreement, pp. 3-4.
[4] Pollack Report, p. 3.
[5] Pollack Report, p. 21.
[6] Complaint, p. 7.

Go to Previous View

Go to Table of Contents - Appendix

I address these critiques below.

A. Consideration of the Economic Costs

Dr. Kantor's first argument is over semantics – he takes issue with the Pollack report's use of the term "economic impact," arguing that the proper economics parlance for the study conducted by Pollack is "economic contribution." The difference as explained by Dr. Kantor is that economic impact is an estimate of the economic activity that would likely be lost from the local economy if the HU Campus were not undertaken, while economic contribution is simply the gross economic change to the local economy attributable to the HU Campus.[7]

The accounting or finance terminology for the economic impact as described by Dr. Kantor is "incremental" impact. In other words, he assumes that in addition to the economic contribution (or output) attributable to the HU Campus, there would be associated economic costs that the Pollack report did not consider or deduct from output, which if deducted would yield the incremental impact. Dr. Kantor claims the appropriate methodology to measure the incremental impact is to compare the forecasted hypothetical economy with the HU Campus to the forecasted economy without the campus.

Despite all the discussion over proper terminology and methodology, Dr. Kantor failed to perform such an analysis; and while he indicated various types of costs that potentially could be associated with the HU Campus, he failed to estimate the amount of these costs. Moreover, he is wrong in his appraisal of these costs, as addressed below.

1. Opportunity Cost of the City's Investment

Dr. Kantor states, "Perhaps the most notable shortcoming of the Pollack Report is that it failed to account for the 'opportunity cost' of the City's use of taxpayer funds to subsidize the [HU Campus] projects."[8] Dr. Kantor's opinion ignores the context and purpose of the study, which is the subject of this lawsuit, namely, whether the $2.6 million in expenditures for the HU Campus are disproportionate to the economic benefit the City would receive. The Arizona Constitution's Gift Clause says nothing about comparing a city's payment to the next best alternative, it simply requires that "the consideration received by the City not be grossly disproportionate to the amount paid to the private entity."[9]

On its face, Dr. Kantor's argument fails because if the $2.6 million had been used for a public project such as "to build or fix city roads, sewers, or water mains, to build a fire or police station, or the money could have simply been left in citizens' hands…,"[10] there would be no private-entity funds added to these alternatives. Assuming the $2.6 million City expenditure is non-incremental

[7] Kantor report, p. 8.
[8] Kantor report, p. 12.
[9] *Turken v. Gordon*, 223 Ariz. 342, 350 (Ariz. 2010), ¶41.
[10] Kantor report, p. 13.

– that is, it provides the same economic benefit whether used to build a fire station or the HU Campus – the HU Campus investment is clearly superior in terms of the additional funds expended by HU, as summarized in the following table.

Comparison of City Investment Alternatives			
	City expenditures	Private-entity expenditures	Total expenditures
HU Campus	$2.6 million	$6.1 million	$8.7 million
Public project	$2.6 million	$0	$2.6 million

Even if Dr. Kantor's approach is used, and the $2.6 million payment made by the City is excluded from the economic output analysis,[11] the economic output of the HU Campus would still exceed any public investment alternative that does not bring in any additional private-sector investment.

2. Public Costs of Economic Growth

Dr. Kantor observes that more people living in or traveling to the City as a result of opening the HU Campus will increase the burden placed on infrastructure and public services provided by the City, the costs of which the Pollack study does not address. Dr. Kantor argues that by not considering these potential increased costs, "the resulting conclusions about the net effect of the new project will be biased upwards."[12] This argument is wholly inconsistent with his opinion about opportunity cost above. In that opinion, he argues that an economic impact study should consider the economic benefit from the next best alternative (e.g., a public park or fire station), and he assumes that the City's expenditure for the HU Campus is essentially non-incremental because a competing investment alternative would provide a similar economic benefit. However, in this opinion on public costs, he fails to acknowledge that the competing investment alternative would also have similar public costs. Therefore, to be consistent with his first argument, any public costs should also be considered non-incremental.

Notwithstanding this clear inconsistency, the potential infrastructure costs Dr. Kantor speaks of – but does not quantify – do not upwardly bias the study results. In fact, they understate the results compared to a public investment alternative. HU's landlord will pay City property taxes and sales taxes associated with the leased property that will help offset any increased burden on infrastructure. An alternative City project such as a fire station or public park would provide no such income to offset increased infrastructure costs. In addition, when the property was first constructed, the City charged the owner/developer permit fees to help cover infrastructure costs.[13] Therefore, if infrastructure costs were considered as argued by Dr. Kantor – and they are

[11] Kantor report, p. 13.
[12] Kantor report, p. 14.
[13] See for instance, City of Peoria Annual Development Fee Report, FY 2013.

compared to the next best public investment alternative – there would be additional, or incremental, economic benefit associated with HU Campus not quantified in the Pollack study.

3. Opportunity Cost of Huntington Students (Zero-Sum Assumption)

Dr. Kantor states:

> "…many students who would attend Huntington University would likely have attended another college in the Phoenix area and, as such, will not contribute to a net economic gain from the university's creation. In other words, if Huntington is able to matriculate a local student, then another local university loses that student, and the overall economy is unchanged."[14]

This "zero-sum" assumption only applies on a region or statewide basis and is wholly inconsistent with Dr. Kantor's subsequent criticism that the Pollack study region was too broad and "should focus on the geographic boundaries of the City of Peoria…"[15] If the point of the study is to measure the economic output specific to the City of Peoria, then it does not matter if Phoenix or another city outside of Peoria loses its students to the HU Campus.

4. Risk to the City's Investment

Dr. Kantor devotes the largest part of his report (pages 17-31), including most of the quantitative analyses he performed, to potential risks to the financial viability and success of the HU Campus. He observes that "market risk should have been taken into account more seriously in the Pollack Report and more seriously considered by the Peoria City Council at the time of its Huntington subsidy decision."[16] He appears to be offering expert opinion on municipal governance and legislative policy-making. He also fails to give any weight to the fact that HU was willing to risk its financial capital and reputation by opening its first and only satellite campus in Peoria and would not do so without substantial internal vetting and analysis.

More importantly, Dr. Kantor failed to recognize that the City effectively dealt with the HU Campus financial viability and market risks by incorporating certain protections into its development agreement with HU, which renders his criticisms moot. First, per paragraph 2 of the agreement, the City's incentive payments are tied to a number of HU performance thresholds, including student enrollment requirements, which, if not met, obligated HU to repay all incentives received from the City.

The most comprehensive protection is found in paragraph 3(f):

---

[14] Kantor report, p. 15.
[15] Kantor report, pp. 32, 33 and 36.
[16] Kantor report, p. 18.

> If during the Term of this Agreement HU does not achieve an academic year in which 150 post high school seated students are enrolled and taking classes in an accredited digital media arts program then **HU agrees to repay the City for all financial assistance/ incentives HU received from the City pursuant to this Agreement**. [emphasis added]

Furthermore, by the end of the third year of the agreement, not only was HU required to have a minimum of 150 seated students, but those students had to be high school graduates. Otherwise, HU would have to repay the City a pro-rata amount, based on the shortfall, of the total incentive funding it received.

Finally, per paragraph 6 of the agreement:

> The Parties each shall have the right to terminate this Agreement if at any time any such Party reasonably determines that the Project is not feasible financially or for other business reasons with the express understanding that HU's financial investment in the Peoria Campus will be greater than or equal to the incentives received from the City should it terminate this Agreement within the first 3 years of the Agreement... Nor will any Termination provision(s), herein, affect HU's enrollment requirements or its duty to reimburse the City for City assistance or incentives as set forth in Paragraph 3(f) of this Agreement.

The risk associated with Arrowhead is also mitigated because the City's payments are spread out over 10 years; and one of the criteria for Arrowhead receiving payment is that HU continuously occupy the premises without interruption.[17] Taken together, the risk-mitigating conditions built into the HU and Arrowhead development agreements significantly reduce the City's risk of losing its investment in the HU Campus project.

B. Market Trade Area for Determining the Economic Benefit

Dr. Kantor opines that the Pollack study "misspecified" the market trade area and that the study area was too broad and "should focus on the geographic boundaries of the City of Peoria..."[18] He also observes that the HU expenditure data "show the significant leakage of Peoria tax dollars to vendors outside the City."[19] To address these criticisms, Navigant used the IMPLAN model to perform an input-output analysis using the same cost data provided to Pollack but limited the study area to the zip codes within the City boundaries. This analysis, and a more specific response to Dr. Kantor's criticisms of the Pollack IMPLAN study, are addressed below.

[17] Arrowhead agreement, p. 4.
[18] Kantor report, pp. 32, 33 and 36.
[19] Kantor Report, p. 34.

Go to Previous View Go to Table of Contents - Appendix

1. Navigant's Input-Output Analysis using IMPLAN

Input-output (I-O) models contain information on inter-industry relationships within an economy, household spending patterns, and commodity trade-flows. IMPLAN is a widely-used I-O analysis modeling system used to estimate the effects of changes in final demand for a good or service on regional economies through backward linkages with suppliers of inputs and through households' spending of wages associated with the change. The mathematical formulas built into the model allow for examination of the effects of a change in one or several economic activities (e.g., construction and/or university operations) on an entire economy within a specified geographic area.[20] For instance, new construction spending leads contractors to purchase additional inputs – say, lumber, sheetrock and legal services – from other industries, and each of those industries pays wages to its employees who spend a portion of those wages in the regional economy. By tracing these linkages between industries and households, IMPLAN can estimate the secondary effects of the increased spending.

IMPLAN maintains databases of economic data primarily from government information banks such as the Bureau of Labor Statistics and the Bureau of Economic Analysis to calculate representative multipliers for specific zip codes and industries. Using these multipliers and the IMPLAN software, users can produce I-O analysis that measures the economic benefit of a proposed project.

I-O analysis determines three types of economic impacts, or "effects," resulting from a change in economic activity:

- *Direct effect:* The initial spending or investment on the activity, which reflects the initial impact to the economy. The model applies multipliers to this initial impact to yield the secondary effects of indirect and induced economic activity.

- *Indirect effect:* Additional spending by businesses within the study area that supply goods and services to the industry initially affected. For instance, when funds are initially expended on a new construction project, the contractor may purchase lumber from a lumberyard, tools and supplies from a retailer like Home Depot and gasoline for vehicles it will use on the project. To meet the increased demand for those goods and services, each of those businesses, in turn, will purchase goods and services from industries to which it has ties. This economic ripple effect is quantified by multipliers derived from historical supply-chain relationships within the study area.

- *Induced effect:* Additional spending of Labor Income by the employees working in the indirectly-impacted industries, under the assumption that the more income households earn, the more money those households spend. Note that IMPLAN does not assume that 100% of this Labor Income is spent or that it is spent locally. IMPLAN removes payroll

[20] http://support.implan.com/index.php?option=com_glossary&view=glossary&glossid=13&Itemid=1866

taxes, personal income taxes, savings, in-commuter income, and non-local purchases before spending the rest locally.

It is important to note that IMPLAN does not assume that all industry and household purchases are made from businesses within the study region. The smaller the study area, the more likely it is that some or most of the goods and services will be purchased from outside the area, which is known as "leakage." For instance, a contractor may buy lumber at a lumberyard within the study area, but the lumberyard may obtain its lumber from wholesalers located outside the study area. The model adjusts for this leakage based on data from industries located within the study area.

The results of an I-O analysis are quantified in four different measures of economic activity based on their respective multipliers.

- *Output*: A measure of the value of goods and services produced in the study area in all sectors of the economy that is necessary to satisfy a dollar's worth of final demand for that sector's output. In other words, for every dollar change in final-demand spending (direct effect), the change in the total value of output in all sectors. A broad measure of economic activity within an industry or region.

- *Value-added*: For every dollar change in final-demand spending (direct effect), the change in value added to the products and services (the value over and above the cost of inputs used to produce the goods and services in previous stages of production). Equivalent to the change in Gross Domestic Product in the study area, it is the difference between total output and the expenditures necessary to create total output.

- *Labor income:* For every dollar change in final-demand spending (direct effect), the change in income received by households.

- *Employment*: For every million-dollar change in final-demand spending (direct effect), the change in employment (number of jobs created).

In performing its I-O analysis, Navigant ran three separate IMPLAN impact studies to assess the economic benefits resulting from: (1) construction of the HU Campus tenant improvements, (2) non-wage operations of the HU Campus, and (3) wages paid to HU Campus employees (items 2 and 3 are combined in the following summary tables). Navigant used the same spending and construction budget estimates provided to Pollack in performing these studies. Navigant consulted with IMPLAN economists regarding the methodology it used and had an IMPLAN economist review the completed study.

Based on the results of Navigant's IMPLAN study, the following table summarizes the anticipated economic benefits to the City through the first five years of the Agreement (see Attachment D-1 for detailed schedules).

Go to Previous View

Go to Table of Contents - Appendix

IMPLAN Results – Total of Years 1 through 5			
Activity	*Labor income*	*Value added*	*Output*
Construction	$ 728,432	$ 1,060,351	$ 2,447,271
University operations	$ 3,780,417	$ 5,239,058	$ 8,901,954
Total	$ 4,508,849	$ 6,299,409	$ 11,349,225

As shown above, the $11.3 million in Output – the value of all goods and services produced as a result of the HU Campus project – significantly exceeds the City's $2.6 million in expenditures. Likewise, the $6.3 million in Value Added, which captures the value of final goods and services produced in the study area, significantly exceeds the City's expenditures. Finally, increased labor income to households resulting from the project exceeds the City's expenditures.

2. Confining Study Area to City of Peoria Boundaries

Dr. Kantor criticized Pollack's IMPLAN study, assuming that it did not focus on the geographic boundaries of the City of Peoria. However, the Pollack report is not clear on what study area it used, and Dr. Kantor did not perform an IMPLAN study to demonstrate the study area on which the Pollack study was based. As indicated above, the Navigant IMPLAN study specified only those zip codes within the City boundaries.

3. Treatment of Expenditure "Leakage" Outside City Boundaries

IMPLAN provides default multipliers specific to the type of event and geographic region where the event will take place. Dr. Kantor cites Duval, Kerna & Frisvold (2016) as advocates for disregarding IMPLAN's default multipliers in favor of specific expenditures where the source, amount, date, and category of expenditure is known.[21] Dr. Kantor does not explicitly advocate for this approach, although he examined project expenditures to identify vendors and their locations. This approach may be fine for assessing impacts after the fact (*ex post*), but in this matter the objective is to determine what the City knew and anticipated at the time of its decision to provide funds for the project, which was before the expenditures were actually made (an *ex ante* approach).

The Duval study that Dr. Kantor cites addresses best practices for IMPLAN users when faced with a situation such as this where the expenses are not known or have not yet occurred:

[21] Kantor Report, p. 34.

> If no information is available on individual transactions and vendors, the IMPLAN model has built-in estimates of local purchase percentages. Leakages can be modeled either by only including local spending (if the data is available) and later setting the local purchase percentage to 100% in IMPLAN, or by including all expenditures by category and later setting the local purchase percentage in IMPLAN to the appropriate value based upon percentage of in-state or in-region spending.[22]

Navigant used an *ex ante* approach in performing its IMPLAN study and relied on the IMPLAN local purchase percentages built into the model, with one exception noted below. As shown in the following table, IMPLAN's local purchase percentages ("LPP") greatly reduce the spending impact within the study area. The composite LPP for all sectors was only 8.8%.

IMPLAN Study – Local Purchase Percentages Used (Top Ten Sectors)	
3440 Real estate buying and selling, leasing, managing, and related services	0.00%[23]
3051 Water, sewage and other systems	100.00%
3050 Natural gas distribution	31.76%
3049 Electricity transmission and distribution	32.80%
3432 Internet publishing and broadcasting and web search portals	6.95%
3395 Wholesale trade distribution services	21.62%
3089 Meat (except poultry) produced in slaughtering plant	0.49%
3408 Air transportation services	0.00%
3457 Advertising, public relations, and related services	44.37%
3427 Wired telecommunications	40.06%

The Duval study cited by Dr. Kantor also found that the IMPLAN built-in estimates were generally consistent with actual spending patterns. The study analyzed three higher-education events in Arizona, performing two IMPLAN studies for each higher education event. One IMPLAN study used IMPLAN's built-in estimates, the second IMPLAN study used actual expense data. The results showed that studies using IMPLAN's default estimates yielded outputs that were roughly equivalent to studies using actual expense data, as summarized in the following table.

[22] Duval, Kerna, & Frisvold, 2016, Using Enterprise Software Data to Analyze the Economic Contributions and Impacts of University Programs with the IMPLAN Model. p. 5.
[23] Navigant adjusted this percentage from 70% to 0% since the landlord/developer (Glenwood) was located in Mesa.

Duval study: IMPLAN Output using Built-in Estimates vs. Actual Expenses		
	IMPLAN Default	Actual Expense
Case study 1	$1.1 million	$1.0 million
Case study 2	$10.9 million	$11 million
Case study 3	$12 million	$11.4 million

IV. Conclusion

Dr. Kantor's criticisms of the Pollack IMPLAN study methodology are moot based on Navigant's updated study that restricted the study area to within the City boundaries and adequately accounted for leakage outside those boundaries. Dr. Kantor did not produce an alternative IMPLAN study based on the criticisms and suggestions in his report.

Given a proper IMPLAN study methodology and adequate economic benefits, Dr. Kantor is left with arguing that the estimated economic benefits did not properly account for various costs that might be associated with the HU Campus. However, he failed to prove up or estimate the amount of any such costs. Moreover, for the reasons discussed above, he is wrong in his assessment of those costs. Based on these findings and observations, the City's expenditures on the HU Campus were not disproportionate to the economic benefits it was expected to generate.

Bryce R. Cook

ATTACHMENT A

Documents Considered

- 2016-10-12 City of Peoria-Schires - Complaint for Declaratory and Injunctive Relief.PDF
- 2017-02-03 City of Peoria-Schires - Joint Report with Proposed Order.pdf
- AHE000001 - 237.pdf
- Analyzing the Benefits and Costs of EDP.pdf
- COP000296.pdf
- COP000342.pdf
- COP000390.xls
- COP000404.xlsx
- COP000406.xls
- COP000408.xlsx
- COP000431.xls
- COP000432.xls
- COP000896.xls
- COP001006.xlsx
- COP001124.xls
- COP001149.xls
- COP001150.xls
- COP001231.pdf
- COP001233.pdf
- COP002061.pdf
- COP002068.xls
- COP002069.pdf
- COP002074.pdf
- COP001869-1872.pdf
- Duval, Kerna, & Frisvold, 2016, Using Enterprise Software Data to Analyze the Economic Contributions and Impacts of University Programs with the IMPLAN Model.
- HU Form 990 2011.pdf
- HU Form 990 2012.pdf
- HU Form 990 2013.pdf
- HU Form 990 2014.pdf
- HUN0001 - 72 (Confidential Subject to Protective Order)170510.pdf
- Kantor bio 04 2017.pdf
- Kantor CV April 2017.pdf
- Kantor Expert Report.pdf
- Peoria 2012-2013 Annual Dev Fee Report.pdf
- Pollack Report.PDF
- SCH000210 - 673.PDF
- https://www.huntington.edu/about
- Turken v. Gordon, 223 Ariz. 342, 350 (Ariz. 2010), ¶41
- signed protective order.pdf

- Updating & Enhancing IMPLAN's Economic Regional Purchase Coefficients.pdf
- Description - NAICS Code 2362 - Nonresidential Building Construction.pdf
- IMPLAN - Local Purchase Percentage Field.pdf
- IMPLAN - SAM Multiplier.pdf
- IMPLAN Deflators.pdf
- IMPLAN-Key Assumptions.pdf
- IMPLAN - Estimating Employee comp adj for commuting.pdf
- IMPLAN - Pro Reference Manual.pdf
- IMPLAN - Pro Quick Start Guide.pdf
- IMPLAN - Case Study- ABP.pdf
- IMPLAN - The Basics of Analysis by Parts.pdf
- IMPLAN - How is Employment Defined.pdf
- IMPLAN -Special Sector Definitions.pdf

NAVIGANT

ATTACHMENT B

Bryce R. Cook

Bryce R. Cook
Director

Navigant Consulting
The Collier Center, Suite 1700
201 E. Washington St.
Phoenix, AZ 85004-2245
Tel: 602.528.8061 (direct)
Fax: 602.254.6163
bcook@navigantconsulting.com

Professional History

- Navigant Consulting, Inc. – Present
- Tucker Alan Inc. – 1994 to 2004
- Peterson Consulting Limited Partnership – 1987-1994
- Economic Analysis Corporation – 1986-1987

Education

- Master of Business Administration, with a concentration in finance and economics, Arizona State University
- Bachelor of Science degree in Business Management, Brigham Young University
- Certified Management Accountant

Professional Associations

- Institute of Management Accountants
- National Association of Certified Valuation Analysts
- Licensing Executives Society
- State Bar of Arizona, Intellectual Property Section

Current Position

Bryce is a Director with Navigant Consulting, Inc. As part of Navigant's Litigation and Investigations practice, Bryce consults on business matters involving complex financial, accounting and economic issues, particularly as they relate to economic damages or financial investigations. Bryce is a Certified Management Accountant and a member of the National Association of Certified Valuation Analysts.

Professional Experience

Bryce has extensive experience in matters involving computation of economic damages, including breach of contract, infringement of intellectual property rights, professional malpractice, fraud and other causes of action. He has performed damage analyses that involve lost profits, increased costs, diminution of business value and deepening insolvency, among others. He has consulted in a variety of industries including:

- Financial institutions
- Healthcare
- Retail
- Utilities
- Real estate and construction
- Insurance
- Computers
- Automobile
- Restaurant and fast food
- Agricultural
- Oil and gas

Bryce has given expert testimony on damages in federal and state courts and in arbitration. He has lectured to the Arizona State Bar on damages issues and has made presentations on damages to law firms and at professional society conferences.

NAVIGANT

ATTACHMENT B

Selected Experience

Financial Analysis and Commercial Damages

Performed analyses of economic damages and other special-purpose financial investigations of companies in a variety of industries. Damages were based on such causes of action as breach of contract, dealer termination, professional malpractice, lender liability and deepening insolvency, to name a few. Case examples include:

» Evaluated numerous auditor malpractice claims brought by trustees, investors, government agencies and other third parties. Performed forensic analysis to determine the causes of a company's failure or reasons for the decline in value of its securities. Analyzed the company's investments and transactions over time to determine what would have been avoided given the plaintiff's liability scenario.

» Evaluated a real estate developer's lost profit claim stemming from the filing of a lis pendens on one of his properties. Analyzed property values and economic indicators affecting Arizona real estate over the relevant time period. Modeled cash flow projections and performed sensitivity analysis under varying marketing and economic scenarios to determine the most likely disposition of his property holdings.

» Determined consequential damages to high-tech manufacturing company stemming from insurance company's failure to pay on a claim. Damages included lost profits and lost cost savings due to inability to take advantage of business opportunities.

» Reconstructed the capital accounts of a dissolved physicians practice to determine the ending capital owed to/by the various partners based on a review and analysis of five years worth of transactions records, accounting data and tax records. This analysis included determining the relative value of services provided, real estate contributed, and other resources contributed or used that flowed through the partnership over this time period.

Valuation

Performed business valuations for purposes of damage claims, solvency analyses and transaction disputes. Valuations have included public and privately held companies, franchises, trademarks and loan portfolios. Case examples include:

» Valued a sub-prime mortgage wholesaler whose general partner terminated the partnership. Entailed analyzing the company's past performance, management skill, and industry norms. Performed projections of loan production volume, origination points and fees, sales premiums, and general and administrative expenses.

- Valued the trademark of a restaurant chain that was licensed to operators in Arizona and California. Analyzed factors that affected the ability of the mark to generate income, including recognition and reputation, historical financial performance, legal status, licensee characteristics and economic/industry conditions.

- Performed a valuation estimate of the lease price of a lithotripsy facility operated by a physician's group. The lease structure included compensation for both equipment and services provided by the physicians. Work involved researching comparable companies, fee and cost structures, revenue per patient and contractual agreements with hospitals.

- Performed stock valuation of a closely held manufacturing firm being sued by a minority shareholder wanting to liquidate his interest. Determined discounts for lack of marketability and lack of control.

Intellectual Property

Performed damage analyses stemming from infringement of intellectual property rights. This work has included determining lost profits, reasonable royalty, accounting of profits and deductible costs, and the cost of corrective advertising. Case examples include:

- Analyzed a company's damage claim stemming from the alleged misappropriation of its trade secrets and proprietary technology relating to a medical waste destruction process. In assessing the value of the trade secrets, performed research on the industry and commercial viability of the technology. Evaluated the company's past transactions involving the technology and determined a reasonable royalty assuming a hypothetical licensing negotiation between the parties.

- Calculated a reasonable royalty and the economic harm sustained by a patentee whose patent was infringed by a tool manufacturer and distributor. Analyzed various factors relevant to determining a reasonable royalty in this matter, including the bargaining positions and economic expectations of both parties prior to the infringement.

- Performed an analysis of a trademark infringer's accounting records to determine its costs associated with manufacturing and selling counterfeit branded motorcycles. Evaluated infringer's own analysis of costs and identified inconsistencies and errors.

- Analyzed the lost profits of an international tour operator due to a competitor's trademark infringement and false advertising. Performed a detailed analysis of economic, industry and company-specific factors to determine to what extent, if any, these factors contributed to the decline in the infringed company's profits. Conducted extensive interviews of travel agents to determine the likelihood of consumer confusion in the industry and the effect of the advertising claims on consumers.

Go to Previous View

Go to Table of Contents - Appendix

Healthcare

Performed various analyses of healthcare provider financial operations, rate structures, profitability and costs of providing services. Have performed work on behalf of state agencies, hospitals and physicians. Case examples include:

- Performed a variety of consulting projects for the State of California, Department of Corrections, relating to inmate healthcare. One project entailed analyzing a provider hospital's cost structure, profitability and financial condition in a rate dispute. In another project, computed statistics from health-care budgeting and expenditure data and compared results with other state departments of corrections.

- Analyzed the financial operations and patient volume of a laser eye clinic to determine the costs and profits associated with treating the former patients of a large, national laser eye surgery company that went bankrupt. Analyzed the accounting records of a related, surviving clinic to determine the ownership of accounts and moneys owed between the two entities.

- Analyzed adequacy of Medicaid reimbursements to health-care providers in a lawsuit against the state of Oregon. Conducted review of providers' costs and constructed a computer model to analyze variables affecting reimbursement formula.

- Prepared a Boren Amendment "findings" report and analysis to determine adequacy of Medicaid reimbursement of hospital costs in the state of Illinois. Required significant statistical and quantitative analysis of hospital costs.

- Reviewed lost profit claim of the operator of a planned medical clinic in a lender liability lawsuit. Created a financial model to generate alternative business scenarios based on claimant's historical financial record operating similar ventures.

Go to Previous View

Go to Table of Contents - Appendix

Schires v. City of Peoria

Summary of Result Tables from IMPLAN

Attachment D-1

Impact Type	Employment		Labor Income		Value Added		Output
Construction	2.4	$	728,432	$	1,060,351	$	2,447,271
University Operations	16.6	$	3,780,417	$	5,239,058	$	8,901,954
Total	**19.0**	**$**	**4,508,849**	**$**	**6,299,409**	**$**	**11,349,225**

Go to Previous View

Go to Table of Contents - Appendix

Construction 2015, Year 1

Impact Type	Employment	Labor Income	Value Added	Output
Direct Effect	3	$ 212,750	$ 287,777	$ 750,000
Indirect Effect	0.7	$ 33,529	$ 54,815	$ 89,595
Induced Effect	0.9	$ 35,966	$ 68,262	$ 108,648
Total Effect	4.6	$ 282,245	$ 410,854	$ 948,243

Construction 2016, Year 2

Impact Type	Employment	Labor Income	Value Added	Output
Direct Effect	2	$ 138,441	$ 187,262	$ 488,041
Indirect Effect	0.5	$ 21,818	$ 35,669	$ 58,301
Induced Effect	0.6	$ 23,404	$ 44,420	$ 70,700
Total Effect	3	$ 183,663	$ 267,351	$ 617,041

Construction 2017, Year 3

Impact Type	Employment	Labor Income	Value Added	Output
Direct Effect	1	$ 67,565	$ 91,392	$ 238,184
Indirect Effect	0.2	$ 10,648	$ 17,408	$ 28,453
Induced Effect	0.3	$ 11,422	$ 21,679	$ 34,504
Total Effect	1.5	$ 89,635	$ 130,478	$ 301,141

Construction 2018, Year 4

Impact Type	Employment	Labor Income	Value Added	Output
Direct Effect	0.9	$ 65,949	$ 89,206	$ 232,487
Indirect Effect	0.2	$ 10,393	$ 16,992	$ 27,773
Induced Effect	0.3	$ 11,149	$ 21,160	$ 33,679
Total Effect	1.4	$ 87,491	$ 127,357	$ 293,938

Construction 2019, Year 5

Impact Type	Employment	Labor Income	Value Added	Output
Direct Effect	0.9	$ 64,371	$ 87,072	$ 226,926
Indirect Effect	0.2	$ 10,145	$ 16,585	$ 27,108
Induced Effect	0.3	$ 10,882	$ 20,654	$ 32,873
Total Effect	1.4	$ 85,398	$ 124,311	$ 286,908

Total Construction

Impact Type	Employment	Labor Income	Value Added	Output
Direct Effect	7.8	$ 549,076	$ 742,709	$ 1,935,638
Indirect Effect	1.8	$ 86,533	$ 141,469	$ 231,230
Induced Effect	2.4	$ 92,823	$ 176,175	$ 280,404
Total Effect	11.9	$ 728,432	$ 1,060,351	$ 2,447,271

Schires v. City of Peoria

Result Tables from IMPLAN - Operations

Attachment D-1.2

HU Operations 2015, Year 1

Impact Type	Employment	Labor Income	Value Added	Output
Direct Effect	2.8	$ 130,000	$ 169,232	$ 284,000
Indirect Effect	0.2	$ 11,113	$ 16,453	$ 30,601
Induced Effect	0.5	$ 20,370	$ 38,661	$ 61,529
Total Effect	3.5	$ 161,483	$ 224,346	$ 376,130

HU Operations 2016, Year 2

Impact Type	Employment	Labor Income	Value Added	Output
Direct Effect	6.5	$ 295,000	$ 384,026	$ 648,000
Indirect Effect	0.5	$ 24,847	$ 36,807	$ 68,480
Induced Effect	1.1	$ 45,371	$ 86,112	$ 137,048
Total Effect	8.1	$ 365,218	$ 506,945	$ 853,528

HU Operations 2017, Year 3

Impact Type	Employment	Labor Income	Value Added	Output
Direct Effect	13.1	$ 599,420	$ 780,315	$ 1,325,000
Indirect Effect	1.0	$ 49,745	$ 73,735	$ 137,228
Induced Effect	2.1	$ 90,491	$ 171,749	$ 273,339
Total Effect	16.2	$ 739,656	$ 1,025,799	$ 1,735,567

HU Operations 2018, Year 4

Impact Type	Employment	Labor Income	Value Added	Output
Direct Effect	19.3	$ 882,980	$ 1,149,449	$ 1,964,000
Indirect Effect	1.4	$ 72,205	$ 107,090	$ 199,370
Induced Effect	3.1	$ 130,841	$ 248,332	$ 395,222
Total Effect	23.8	$ 1,086,026	$ 1,504,871	$ 2,558,592

HU Operations 2019, Year 5

Impact Type	Employment	Labor Income	Value Added	Output
Direct Effect	25.5	$ 1,164,760	$ 1,516,265	$ 2,607,000
Indirect Effect	1.8	$ 93,858	$ 139,287	$ 259,397
Induced Effect	4.0	$ 169,416	$ 321,545	$ 511,740
Total Effect	31.3	$ 1,428,034	$ 1,977,097	$ 3,378,137

Total Operations

Impact Type	Employment	Labor Income	Value Added	Output
Direct Effect	67.2	$ 3,072,160	$ 3,999,287	$ 6,828,000
Indirect Effect	4.9	$ 251,768	$ 373,372	$ 695,076
Induced Effect	10.8	$ 456,489	$ 866,399	$ 1,378,878
Total Effect	82.9	$ 3,780,417	$ 5,239,058	$ 8,901,954

Go to Previous View

Go to Table of Contents - Appendix

Sector	Coefficient	Event Year	Local Purchase Percentage	NCI Adjusted Percentages	Amount per $1000	Total % Local
3440 Real estate buying and selling, leasing, managing, and related services	0.11507	2015	70.00%	0.00%	0.00	8.8%
3051 Water, sewage and other systems	0.02569	2015	100.00%	100.00%	25.69	
3050 Natural gas distribution	0.01389	2015	31.76%	31.76%	4.41	
3049 Electricity transmission and distribution	0.01072	2015	32.80%	32.80%	3.52	
3432 Internet publishing and broadcasting and web search portals	0.01060	2015	6.95%	6.95%	0.74	
3395 Wholesale trade distribution services	0.01020	2015	21.62%	21.62%	2.21	
3089 Meat (except poultry) produced in slaughtering plant	0.00929	2015	0.49%	0.49%	0.05	
3408 Air transportation services	0.00860	2015	0.00%	0.00%	0.00	
3457 Advertising, public relations, and related services	0.00754	2015	44.37%	44.37%	3.35	
3427 Wired telecommunications	0.00703	2015	40.06%	40.06%	2.82	
3094 Bread and bakery products, except frozen	0.00677	2015	0.00%		0.00	
3108 Beer, ale, malt liquor and nonalcoholic beer	0.00533	2015	0.00%		0.00	
3474 Other educational services	0.00530	2015	76.21%		4.04	
3501 Full-service restaurant services	0.00475	2015	90.00%		4.27	
3499 Hotels and motel services, including casino hotels	0.00444	2015	31.08%		1.38	
3530 Noncomparable imports	0.00441	2015	0.00%		0.00	
3446 Leasing of nonfinancial intangible assets	0.00402	2015	69.03%		2.78	
3453 Other computer related services, including facilities management services	0.00364	2015	36.25%		1.32	
3412 Transit and ground passenger transportation services	0.00343	2015	34.86%		1.19	
3195 Other plastics products	0.00341	2015	0.58%		0.02	
3471 Waste management and remediation services	0.00333	2015	29.76%		0.99	
3084 Fluid milk	0.00323	2015	2.42%		0.08	
3507 Commercial and industrial machinery and equipment repair and maintenance	0.00313	2015	69.03%		2.16	
3277 Air conditioning, refrigeration, and warm air heating equipment	0.00300	2015	3.85%		0.12	
3428 Wireless telecommunications (except satellite)	0.00295	2015	15.62%		0.46	
3443 General and consumer goods rental servicesexcept video tapes and discs	0.00286	2015	69.03%		1.97	
3158 Refined petroleum products	0.00268	2015	0.73%		0.02	
3511 Dry-cleaning and laundry services	0.00260	2015	48.21%		1.25	
3433 Monetary authorities and depository credit intermediation	0.00254	2015	28.65%		0.73	
3470 Other support services	0.00252	2015	4.07%		0.10	
3508 Personal and household goods repair and maintenance	0.00247	2015	58.68%		1.45	
3518 US Postal delivery services	0.00237	2015	75.00%		1.78	
3468 Services to buildings	0.00235	2015	69.03%		1.62	
3460 Marketing research and all other miscellaneous professional, scientific, and technical services	0.00230	2015	53.84%		1.24	
3093 Seafood products	0.00221	2015	0.00%		0.00	
3502 Limited-service restaurant services	0.00216	2015	90.00%		1.94	
3506 Electronic and precision equipment repair and maintenance	0.00214	2015	40.53%		0.87	
3154 Printed materials	0.00208	2015	8.41%		0.17	
3449 Architectural, engineering, and related services	0.00208	2015	33.40%		0.69	
3424 Sound recordings	0.00203	2015	21.83%		0.44	
3351 Motor vehicle electrical and electronic equipment	0.00203	2015	0.53%		0.01	
3430 Data processing, hosting, and related services	0.00181	2015	5.16%		0.09	
3436 Other financial investment services	0.00175	2015	47.11%		0.82	
3101 Coffee and tea	0.00173	2015	0.00%		0.00	
3411 Truck transportation services	0.00167	2015	42.69%		0.71	
3082 Canned specialties	0.00131	2015	0.01%		0.00	
3062 Maintained and repaired nonresidential structures	0.00131	2015	100.00%		1.31	
3466 Travel arrangement and reservation services	0.00128	2015	18.29%		0.23	
3356 Other motor vehicle parts	0.00121	2015	36.52%		0.44	
3465 Business support services	0.00121	2015	55.21%		0.67	
3088 Ice cream and frozen dessert	0.00107	2015	0.01%		0.00	
3422 Software publishers	0.00106	2015	1.41%		0.01	
3353 Motor vehicle transmission and power train parts	0.00106	2015	3.09%		0.03	
3087 Dry, condensed, and evaporated dairy products	0.00105	2015	0.00%		0.00	
3469 Landscape and horticultural services	0.00105	2015	69.03%		0.72	
3081 Canned fruits and vegetables	0.00097	2015	0.07%		0.00	
3104 Spices and extracts	0.00094	2015	0.46%		0.00	

Go to Previous View

Go to Table of Contents - Appendix

Sector	Coefficient	Event Year	Local Purchase Percentage	NCI Adjusted Percentages	Amount per $1000	Total % Local
3503 All other food and drinking place services	0.00093	2015	74.16%		0.69	
3447 Legal services	0.00088	2015	15.00%		0.13	
3086 Cheese	0.00084	2015	0.00%		0.00	
3080 Frozen specialties	0.00083	2015	0.05%		0.00	
3448 Accounting, tax preparation, bookkeeping, and payroll services	0.00079	2015	89.93%		0.71	
3496 Other amusement and recreation	0.00078	2015	74.41%		0.58	
3078 Confectioneries from purchased chocolate	0.00076	2015	0.00%		0.00	
3172 Pesticides and other agricultural chemicals	0.00076	2015	0.00%		0.00	
3415 Couriers and messengers services	0.00076	2015	18.06%		0.14	
3179 Soaps and other detergents	0.00076	2015	0.56%		0.00	
3504 Automotive repair and maintenance, except car washes	0.00075	2015	90.01%		0.68	
3103 Mayonnaise, dressings, and sauces	0.00071	2015	0.41%		0.00	
3454 Management consulting services	0.00068	2015	63.43%		0.43	
3434 Nondepository credit intermediation and related activities	0.00067	2015	64.04%		0.43	
3276 Heating equipment (except warm air furnaces)	0.00065	2015	0.00%		0.00	
3095 Frozen cakes and other pastries	0.00062	2015	0.00%		0.00	
3437 Insurance	0.00061	2015	18.82%		0.11	
3450 Specialized design services	0.00058	2015	37.65%		0.22	
3497 Fitness and recreational sports center services	0.00058	2015	68.57%		0.39	
3177 Paints and coatings	0.00057	2015	0.00%		0.00	
3013 Poultry and egg products	0.00055	2015	5.59%		0.03	
3076 Nonchocolate confectioneries	0.00054	2015	0.00%		0.00	
3096 Cookies and crackers	0.00054	2015	0.00%		0.00	
3097 Dry pasta, mixes, and dough	0.00054	2015	0.00%		0.00	
3147 Paper from pulp	0.00052	2015	0.00%		0.00	
3467 Investigation and security services	0.00051	2015	26.88%		0.14	
3236 Handtools	0.00050	2015	0.07%		0.00	
3442 Automotive equipment rental and leasing services	0.00050	2015	34.10%		0.17	
3186 Photographic films and chemicals	0.00049	2015	0.00%		0.00	
3180 Polish and other sanitation goods	0.00047	2015	0.86%		0.00	
3079 Frozen fruits, juices and vegetables	0.00047	2015	0.02%		0.00	
3418 Periodicals	0.00047	2015	4.94%		0.02	
3106 Bottled and canned soft drinks and water	0.00046	2015	0.02%		0.00	
3488 Performing arts	0.00044	2015	74.41%		0.33	
3515 Business and professional services	0.00040	2015	3.48%		0.01	
3100 Other snack foods	0.00039	2015	0.00%		0.00	
3429 Satellite, telecommunications resellers, and all other telecommunications	0.00036	2015	21.84%		0.08	
3489 Commercial sports except racing	0.00036	2015	16.00%		0.06	
3303 Computer terminals and other computer peripheral equipment	0.00036	2015	0.00%		0.00	
3151 Stationery products	0.00035	2015	0.00%		0.00	
3003 Vegetables and melons	0.00035	2015	16.38%		0.06	
3235 Cutlery, utensils, pots, and pans	0.00034	2015	4.34%		0.01	
3464 Employment services	0.00032	2015	69.03%		0.22	
3313 Other electronic components	0.00031	2015	3.73%		0.01	
3340 Wiring devices	0.00029	2015	0.02%		0.00	
3491 Promotional services for performing arts and sports and public figures	0.00029	2015	27.10%		0.08	
3072 Fats and oils refining and blending	0.00027	2015	0.33%		0.00	
3435 Securities and commodity contracts intermediation and brokerage	0.00026	2015	64.04%		0.16	
3150 Paper bags and coated and treated paper	0.00025	2015	0.00%		0.00	
3394 All other miscellaneous manufactured products	0.00022	2015	0.17%		0.00	
3452 Computer systems design services	0.00021	2015	32.24%		0.07	
3085 Creamery butter	0.00021	2015	0.40%		0.00	
3325 Electric lamp bulbs and parts	0.00020	2015	0.00%		0.00	
3077 Chocolate and confectioneries from cacao beans	0.00019	2015	0.00%		0.00	
3075 Sugar cane	0.00019	2015	0.00%		0.00	
3526 Other products and services of Local Govt enterprises	0.00018	2015	100.00%		0.18	
3326 Lighting fixtures	0.00018	2015	0.00%		0.00	
3445 Commercial and industrial machinery and equipment rental and leasing services	0.00018	2015	69.03%		0.12	
3073 Breakfast cereal	0.00017	2015	0.00%		0.00	

Schires v. City of Peoria
Sectors by Coefficient for Sector 473

Attachment D-2

Sector	Coefficient	Event Year	Local Purchase Percentage	NCI Adjusted Percentages	Amount per $1000	Total % Local
3074 Beet sugar	0.00017	2015	0.00%		0.00	
3083 Dehydrated food products	0.00017	2015	0.00%		0.00	
3409 Rail transportation services	0.00017	2015	43.59%		0.07	
3067 Flour	0.00016	2015	0.05%		0.00	
3145 All other miscellaneous wood products	0.00016	2015	0.86%		0.00	
3098 Tortillas	0.00016	2015	0.00%		0.00	
3290 Elevators and moving stairways	0.00015	2015	0.00%		0.00	
3438 Insurance agencies, brokerages, and related services	0.00015	2015	55.56%		0.08	
3202 Other pressed and blown glass and glassware	0.00014	2015	2.43%		0.00	
3305 Broadcast and wireless communications equipment	0.00013	2015	0.00%		0.00	
3494 Amusement parks and arcades	0.00012	2015	40.34%		0.05	
3175 In-vitro diagnostic substances	0.00012	2015	0.83%		0.00	
3102 Flavoring syrup and concentrate	0.00012	2015	0.00%		0.00	
3099 Roasted nuts and peanut butter	0.00011	2015	0.00%		0.00	
3017 Fish	0.00011	2015	1.68%		0.00	
3165 Other basic organic chemicals	0.00011	2015	2.54%		0.00	
3002 Grains	0.00010	2015	0.36%		0.00	
3410 Water transportation services	0.00009	2015	0.31%		0.00	
3387 Office supplies (except paper)	0.00009	2015	0.03%		0.00	
3419 Books	0.00008	2015	0.09%		0.00	
3193 Urethane and other foam products (except polystyrene)	0.00008	2015	0.39%		0.00	
3155 Printing support services	0.00007	2015	5.45%		0.00	
3462 Office administrative services	0.00007	2015	69.03%		0.05	
3492 Independent artists, writers, and performers	0.00007	2015	21.13%		0.01	
3423 Motion pictures and videos	0.00006	2015	74.41%		0.05	
3241 Sheet metal work (except stampings)	0.00006	2015	0.61%		0.00	
3149 Paperboard containers	0.00005	2015	0.00%		0.00	
3456 Scientific research and development services	0.00005	2015	15.18%		0.01	
3004 Fruit	0.00005	2015	0.03%		0.00	
3105 All other food products	0.00005	2015	1.66%		0.00	
3020 Natural gas and crude petroleum	0.00005	2015	0.00%		0.00	
3240 Metal windows and doors	0.00005	2015	0.00%		0.00	
3431 News syndicates, libraries, archives and all other information services	0.00005	2015	9.52%		0.00	
3389 Gaskets, packings, and sealing devices	0.00005	2015	0.00%		0.00	
3455 Environmental and other technical consulting services	0.00004	2015	34.77%		0.01	
3129 Other cut and sew apparel	0.00004	2015	0.02%		0.00	
3163 Synthetic dyes and pigments	0.00004	2015	0.00%		0.00	
3242 Ornamental and architectural metal products	0.00003	2015	2.70%		0.00	
3153 All other converted paper products	0.00003	2015	0.00%		0.00	
3392 Brooms, brushes, and mops	0.00003	2015	0.00%		0.00	
3420 Directories, mailing lists, and other published materials	0.00003	2015	2.83%		0.00	
3109 Wine and brandies	0.00003	2015	0.00%		0.00	
3092 Processed poultry meat products	0.00003	2015	2.10%		0.00	
3413 Pipeline transportation services	0.00003	2015	37.32%		0.01	
3158 Asphalt shingles and coating materials	0.00003	2015	0.11%		0.00	
3198 Other rubber products	0.00003	2015	0.07%		0.00	
3238 Fabricated structural metal products	0.00003	2015	0.74%		0.00	
3187 Other miscellaneous chemical products	0.00003	2015	0.11%		0.00	
3139 Wood windows and doors	0.00002	2015	4.28%		0.00	
3312 Printed circuit assemblies (electronic assemblies)	0.00002	2015	1.04%		0.00	
3136 Veneer and plywood	0.00002	2015	0.08%		0.00	
3206 Ready-mix concrete	0.00002	2015	0.01%		0.00	
3414 Scenic and sightseeing transportation services and support activities for transportation	0.00002	2015	45.65%		0.01	
3069 Malt	0.00002	2015	0.00%		0.00	
3159 Petroleum lubricating oil and grease	0.00002	2015	0.31%		0.00	
3350 Motor vehicle gasoline engines and engine parts	0.00002	2015	23.60%		0.00	
3190 Plastics pipes and pipe fittings	0.00002	2015	0.00%		0.00	
3249 Machined products	0.00002	2015	5.05%		0.00	
3318 Totalizing fluid meters and counting devices	0.00002	2015	1.97%		0.00	
3334 Switchgear and switchboard apparatus	0.00002	2015	0.00%		0.00	
3207 Concrete blocks and bricks	0.00002	2015	0.00%		0.00	
3463 Facilities support services	0.00002	2015	9.65%		0.00	

Go to Previous View

Go to Table of Contents - Appendix

Sector	Coefficient	Event Year	Local Purchase Percentage	NCI Adjusted Percentages	Amount per $1000	Total % Local
3005 Tree nuts	0.00002	2015	0.46%		0.00	
3254 Valve and fittings, other than plumbing	0.00002	2015	0.49%		0.00	
3255 Plumbing fixture fittings and trims	0.00002	2015	11.72%		0.00	
3317 Industrial process variable instruments	0.00002	2015	0.00%		0.00	
3512 Other personal services	0.00002	2015	[illegible]		0.00	
3014 Animal products, except cattle and poultry and eggs	0.00002	2015	[illegible]		0.00	
3120 Curtains and linens	0.00002	2015	0.91%		0.00	
3138 Reconstituted wood products	0.00002	2015	0.00%		0.00	
3261 Other fabricated metals	0.00002	2015	0.00%		0.00	
3137 Engineered wood members and trusses	0.00002	2015	10.79%		0.00	
3161 Petrochemicals	0.00002	2015	12.06%		0.00	
3183 Printing inks	0.00002	2015	0.00%		0.00	
3379 Surgical and medical instruments	0.00002	2015	0.00%		0.00	
3384 Jewelry and silverware	0.00002	2015	0.00%		0.00	
3162 Industrial gases	0.00001	2015	0.00%		0.00	
3213 Cut stone and stone products	0.00001	2015	0.07%		0.00	
3015 Forest, timber, and forest nursery products	0.00001	2015	0.02%		0.00	
3071 Soybean and other oilseed processing	0.00001	2015	0.23%		0.00	
3110 Distilled liquors except brandies	0.00001	2015	0.00%		0.00	
3148 Paperboard from pulp	0.00001	2015	0.00%		0.00	
3339 Other communication and energy wires	0.00001	2015	0.00%		0.00	
3141 Other millwork, including flooring	0.00001	2015	0.06%		0.00	
3191 Laminated plastics plates, sheets (except packaging), and shapes	0.00001	2015	0.00%		0.00	
3237 Prefabricated metal buildings and components	0.00001	2015	0.00%		0.00	
3332 Power, distribution, and specialty transformers	0.00001	2015	0.00%		0.00	
3174 Pharmaceuticals	0.00001	2015	0.04%		0.00	
3196 Tires	0.00001	2015	0.00%		0.00	
3200 Bricks, tiles, and other structural clay products	0.00001	2015	0.00%		0.00	
3275 Air purification and ventilation equipment	0.00001	2015	0.00%		0.00	
3417 Newspapers	0.00001	2015	0.00%		0.00	
3178 Adhesives	0.00001	2015	0.00%		0.00	
3192 Polystyrene foam products	0.00001	2015	0.67%		0.00	
3243 Power boilers and heat exchangers	0.00001	2015	0.00%		0.00	
3251 Heat treated products	0.00001	2015	0.27%		0.00	
3322 Watches, clockes, and other measuring and controlling devices	0.00001	2015	0.00%		0.00	
3458 Photographic services	0.00001	2015	69.03%		0.01	
3523 Other products and services of State Govt enterprises	0.00001	2015	3.60%		0.00	
3022 Coal	0.00001	2015	0.00%		0.00	
3142 Wood containers and pallets	0.00001	2015	0.00%		0.00	
3164 Other basic inorganic chemicals	0.00001	2015	0.45%		0.00	
3188 Plastics packaging materials and unlaminated films and sheets	0.00001	2015	0.99%		0.00	
3306 Other communications equipment	0.00001	2015	0.00%		0.00	
3333 Motors and generators	0.00001	2015	0.00%		0.00	
3352 Motor vehicle steering, suspension components (except spring), and brake systems	0.00001	2015	0.33%		0.00	
3416 Warehousing and storage services	0.00001	2015	1.66%		0.00	
3157 Asphalt paving mixtures and blocks	0.00001	2015	14.84%		0.00	
3160 All other petroleum and coal products	0.00001	2015	0.00%		0.00	
3244 Metal tanks (heavy gauge)	0.00001	2015	0.01%		0.00	
3247 Hardware	0.00001	2015	0.00%		0.00	
3336 Storage batteries	0.00001	2015	0.00%		0.00	
3505 Car washes	0.00001	2015	90.01%		0.01	
3123 Other textile products	0.00001	2015	4.31%		0.00	
3134 Dimension lumber	0.00001	2015	0.03%		0.00	
3212 Abrasive products	0.00001	2015	0.00%		0.00	
3311 Electronic connectors	0.00001	2015	0.00%		0.00	
3407 Retail services - Nonstore retailers	0.00001	2015	83.76%		0.01	
3107 Manufactured ice	0.00001	2015	0.00%		0.00	
3170 Phosphatic fertilizer	0.00001	2015	0.00%		0.00	
3205 Cement	0.00001	2015	0.01%		0.00	
3209 Other concrete products	0.00001	2015	0.00%		0.00	

Go to Previous View

Go to Table of Contents - Appendix

Sector	Coefficient	Event Year	Local Purchase Percentage	NCI Adjusted Percentages	Amount per $1000	Total % Local
3250 Turned products and screws, nuts, and bolts	0.00001	2015	0.56%		0.00	
3169 Nitrogenous fertilizer	0.00001	2015	0.00%		0.00	
3199 Pottery, ceramics, and plumbing fixtures	0.00001	2015	0.03%		0.00	
3204 Glass products made of purchased glass	0.00001	2015	5.90%		0.00	
3211 Gypsum products	0.00001	2015	0.00%		0.00	
3220 Steel wire	0.00001	2015	0.00%		0.00	
3403 Retail services- Clothing and clothing accessories stores	0.00001	2015	79.94%		0.00	
3124 Hosiery and socks	0.00000	2015	0.00%		0.00	
3310 Capacitors, resistors, coils, transformers, and other inductors	0.00000	2015	39.25%		0.00	
3201 Flat glass	0.00000	2015	39.75%		0.00	
3401 Retail services - Health and personal care stores	0.00000	2015	83.76%		0.00	
3127 Mens and boys cut and sew apparel	0.00000	2015	0.00%		0.00	
3135 Preserved wood products	0.00000	2015	0.00%		0.00	
3140 Cut stock, resawn and planed lumber	0.00000	2015	0.00%		0.00	
3189 Unlaminated plastics profile shapes	0.00000	2015	6.84%		0.00	
3203 Glass containers	0.00000	2015	0.00%		0.00	
3324 Software and other prerecorded and record reproducing	0.00000	2015	0.00%		0.00	
3338 Fiber optic cables	0.00000	2015	0.00%		0.00	
3399 Retail services - Building material and garden equipment and supplies stores	0.00000	2015	83.76%		0.00	
3402 Retail services - Gasoline stores	0.00000	2015	95.01%		0.00	
3404 Retail services - Sporting goods, hobby, musical instrument and book stores	0.00000	2015	83.76%		0.00	
3406 Retail services - Miscellaneious store retailers	0.00000	2015	83.76%		0.00	
3130 Apparel accessories and other apparel	0.00000	2015	0.00%		0.00	
3323 Blank magnetic and optical recording media	0.00000	2015	18.92%		0.00	
3397 Retail services - Furniture and home furnishings stores	0.00000	2015	83.76%		0.00	
3398 Retail services - Electronics and appliance stores	0.00000	2015	62.49%		0.00	
					87.65	

Go to Previous View

Go to Table of Contents - Appendix

Sector	Industry Sales	Employment	Employee Compensation	Proprietor Income	Event Year	Output Deflator	GDP Deflator	Local Purchase Percentage
Activty Type: Industry Change								
55 Construction of New Educational and Vocational Structures	$ 750,000.00	3	$ 154,180.72	$ 58,568.93	2015	1.050	1.039	100%
55 Construction of New Educational and Vocational Structures	$ 500,000.00	2	$ 102,246.84	$ 38,840.71	2016	1.075	1.058	100%
55 Construction of New Educational and Vocational Structures	$ 250,000.00	1	$ 50,854.69	$ 19,318.27	2017	1.102	1.079	100%
55 Construction of New Educational and Vocational Structures	$ 250,000.00	1	$ 50,587.38	$ 19,216.73	2018	1.129	1.099	100%
55 Construction of New Educational and Vocational Structures	$ 250,000.00	1	$ 50,321.47	$ 19,115.71	2019	1.156	1.120	100%

Activty Type: Labor Income Change

Sector	Labor Income Value	Event Year	GDP Deflator	Local Purchase Percentage
5001 Emplyee Compensation	$130,000.00	2015	1.039	100%
5001 Emplyee Compensation	$295,000.00	2016	1.058	100%
5001 Emplyee Compensation	$599,420.00	2017	1.079	100%
5001 Emplyee Compensation	$882,980.00	2018	1.099	100%
5001 Emplyee Compensation	$1,164,760.00	2019	1.120	100%

Activty Type: Industry Change (1)

Sector	Industry Sales	Employment	Employee Compensation	Proprietor Income	Event Year	Output Deflator	GDP Deflator	Local Purchase Percentage
473 Junior colleges, colleges, universities, and professional schools	$283,894.11	3	$130,000.00	$7,199.63	2015	1.051	1.039	100%
473 Junior colleges, colleges, universities, and professional schools	$648,191.76	6	$295,000.00	$16,337.62	2016	1.078	1.058	100%
473 Junior colleges, colleges, universities, and professional schools	$1,325,199.25	12	$599,420.00	$33,196.94	2017	1.106	1.079	100%
473 Junior colleges, colleges, universities, and professional schools	$1,964,125.62	18	$882,980.00	$48,901.00	2018	1.134	1.099	100%
473 Junior colleges, colleges, universities, and professional schools	$2,606,893.58	23	$1,164,760.00	$64,506.47	2019	1.162	1.120	100%

Notes:

[1] The Industry Change Activity for Sector 473 was used to determine the Industry Sales output.

NAV001489

Go to Previous View

Go to Table of Contents - Appendix

	Employment	Employee Compensation	Proprietor Income [2]	Other Property Type Income	Tax on Production and Imports	Output
Junior colleges, colleges, universities, and professional schools (473) [1]	17.1	$781,352	$43,273	$166,747	$69,052	$1,685,477
Category as a ratio of Employment Comp. [3]	0.002%	100.0%	0.0%	21.3%	8.8%	215.7%

Industry Economic Output Ratios [4]	Employment	Employee Compensation	Proprietor Income [2]	Other Property Type Income	Tax on Production and Imports	Output
2015	2.8	$ 130,000	$ -	$ 27,743	$ 11,489	$ 280,427
2016	6.5	295,000	-	62,955	26,071	636,353
2017	13.1	599,420	-	127,921	52,974	1,293,026
2018	19.3	882,980	-	188,435	78,033	1,904,702
2019	25.5	1,164,760	-	248,569	102,936	2,512,537

Implied Economic Output	Employment	Total Employee Compensation [5]	Total Value Added [6]	Output [7]
2015	2.85	$ 130,000	$ 169,232	$284,000
2016	6.46	295,000	384,026	648,000
2017	13.12	599,420	780,315	1,325,000
2018	19.32	882,980	1,149,449	1,964,000
2019	25.49	1,164,760	1,516,265	2,607,000

Notes:

[1] Industry average values for junior colleges, universities and professional schools as per IMPLAN.

[2] Proprietor income represents funds paid to the owner of the project/entity. As the proprietor (HU) is not located in Peoria city limits, this value is set to $0.

[3] Formula = Category values / Employment compensation.

[4] Formula = Employment compensation in each year * category ratio.

[5] Formula = Employment compensation + proprietor Income.

[6] Formula = Employment comp. + Proprietor income + Other property income Type + Tax on production and imports.

[7] Activity output, Industry Sales, rounded.

Schires v. City of Peoria
Assumption Costs from HU

Attachment D-5

Huntington University Operations Costs

	Year 1	Year 2	Year 3	Year 4	Year 5	Total
Rent	-	-	-	300,000	600,000	900,000
Materials and supplies	95,000	105,000	115,000	135,000	105,000	555,000
Academic Lab Equipment	225,000	200,000	200,000	100,000	200,000	925,000
Technology infrastructure	362,000	36,000	36,000	126,000	36,000	596,000
Value of FF&E	50,000	225,000	175,000	-	200,000	650,000
	$ 732,000	**$ 566,000**	**$ 526,000**	**$ 661,000**	**$ 1,141,000**	**$ 3,626,000**
Total Wages	$ 130,000	$ 295,000	$ 599,420	$ 882,980	$ 1,164,760	$ 3,072,160
Tenant Improvements	$ 750,000	$ 500,000	$ 250,000	$ 250,000	$ 250,000	$ 2,000,000
Total	**$ 1,612,000**	**$ 1,361,000**	**$ 1,375,420**	**$ 1,793,980**	**$ 2,555,760**	**$ 8,698,160**

Notes:
Source: COP001150

Go to Previous View

Go to Table of Contents - Appendix

PLAINTIFFS' STATEMENT OF FACTS IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

Exhibit 20

Go to Previous View

Go to Table of Contents - Appendix

In The Matter Of:

Schires vs.

Carlat

Jeffrey W. Kost

August 21, 2017

Griffin & Associates Court Reporters, LLC

2398 E. Camelback Road

Suite 260

Phoenix, AZ 85016

Original File JK082117.txt

Min-U-Script® with Word Index

Page 25

Not to confuse you.
Q. Okay.
A. There's Ironwood Equities. The list goes on. So just the entities -- the management entities change based on who is principals in our company at that time.
Q. At that time.
Okay. And right now, there are three principals?
A. We have a new entity, which is Ironwood Equities, that has a fourth member, and that is Bob Klepinger's son, Tyler Klepinger.
Q. Okay. So you have a new --
A. He's not a principal in Glenwood. He's just part of that Ironwood Equities.
Q. Okay. So you have principals at Glenwood, and then you have principals that are part of the managing companies --
A. Correct.
Q. -- like Part-Time?
A. That is correct.
Q. But they're not necessarily the same --
A. Correct.
Q. -- principals, although they can be?
A. Yes.
Q. Okay.

Page 26

I'm sorry?
MR. MANLEY: Are you okay? I mean, do you have it?
MS. THORSON: Yeah. No, I was just seeing if you had --
MR. MANLEY: Oh.
MS. THORSON: -- anything.
BY MS. THORSON:
Q. Okay. So I think I can move on to when was the Arrowhead Equities LLC formed?
A. I would have to look at when we formed it. I do not know.
Q. Has it been five years?
A. I would estimate three, two and a half, three.
Q. Okay. It was created just for the Dolce building?
A. Yes.
Q. So it would have been formed around that time?
A. Correct.
Q. That's how you're estimating?
Okay. Do you remember when Part-Time was formed?
A. No.
Q. Has that been in existence for a while?
A. Also a few years.
Q. Okay. Was it created around the same time as the Arrowhead Equities LLC?
A. Definitely before. But I don't know the date.
Q. Okay. And Part-Time does have other LLCs?
A. I'm fairly certain that entity manages other entities, yes.
Q. Okay. And how about Glenwood Development, when was that formed?
A. I'm estimating because it was before I was around. So 20, 25 years ago.
Q. Okay. So Arrowhead Equities is a single-purpose entity. All that it does is fund the Dolce project? Or what does Arrowhead do?
A. That's the ownership entity for the Dolce building, which is now the HU building.
Q. Okay. So in the capacity as owner, what does Arrowhead do?
A. Again, we're the ownership entity. Arrowhead is. They own the building. They own the project.
Q. And they make decisions on the project?
A. In concert with the Part-Time entity because they are the manager of the entity.
Q. Okay. So Part-Time, do they do anything else other than make decisions with Arrowhead?
A. Again, it may be affiliated with another entity on another project. But again, its main purpose is to manage

Page 27

Page 28

the entities it's associated with. In this case, it would be Arrowhead.
Q. Okay. So in relation to Arrowhead and the Dolce project, what does -- what does Part-Time do?
A. Part-Time, again, is the management entity of that. So if there are things that have to happen in regards to decisions that are made, which we haven't had very many at all, if any, since we have formed that partnership.
Q. Okay. And how about Glenwood Development?
A. Again, as a development company, we office at Glenwood, and so it's almost one and the same. I am part of Part-Time. I work at Glenwood. And so I will deal with things. For example, they've had problems with the air conditioning, and we've helped with some repairs.
Q. "They" meaning?
A. HU.
Q. Okay.
A. Yeah.
Q. Okay. On the Glenwood Development website, it says that Glenwood has several famous clients, like McDonald's, Walmart, and Chevron; is that right?
A. We've developed with all of them, yes.
Q. And Glenwood has over 75 years of combined real estate experience, according to the website; is that right?
A. Correct.

Q. So would you hold onto a project longer if you could sell it for more money later?
A. Every project's different. It would be hard to say to answer that as a standard rule of thumb.
Q. Okay. Are those the kinds of decisions that would be involved?
A. With?
Q. With whether to hold onto a project or sell it.
A. Sure. That's part of many decisions.
Q. Okay. What would be some other decisions?
A. Again, based on which project? You know, it could be if the leasing wasn't there. It can be is there opportunity to sell a pad. Is there opportunity to lease a pad? Is there opportunity to recapitalize it. There's so many factors in this, we can go on and on, which will have us spinning in circles.
Q. Okay. So does anyone ever commission a development from Arrowhead approach -- or I'm sorry, Part-Time Equities or Glenwood Development, does anyone approach you with a proposal for a building or for a development?
A. Yes. People come to us.
Q. Okay. And how do these people find your company, Glenwood Development? Do they --
A. Typically, it would be word of mouth.
Q. Do they go to Glenwood Development if they have a

proposal?
A. That's where we office, yeah. So --
Q. Okay.
A. -- office is Glenwood Development. And typically, it's word of mouth. People we've done business with, they've had good experiences, they talk with their friends, and they give us a call.
Q. Okay. And did that happen with the Huntington project?
A. If I recall on this project, the -- there was a contractor by the name of Imagine Builders, and the person's name was Dino. I think it's Dino Miserendino. I'm not making that up. And I won't spell it either.
We've done business with them periodically. They know who we are. When I say "they," Imagine. And Dino called me and said, "Hey, there's a building that's for sale out in the Arrowhead area, and you should look into it." I'm talking to the -- this is him speaking. "I'm talking to the -- to the broker at the time and to HU. There could be an opportunity for you to come and be involved in this project."
And so we -- I don't know the chain of events. I do know we talked to a broker by the name of Troy Giammarco. And he was the main point of contact from there, then on out.

We also had another broker who -- Troy was involved. There's another broker who was involved in the seller's side of the building. I don't recall his name. And so what we did was start to look into the feasibility of the project and acquiring the building and looking into Huntington University as well.
Q. Okay.
A. So --
Q. I will go back to this a little later.
A. Sure.
Q. This subject area. But for now, let's -- I want to ask you, what is the purpose of these developments?
A. It's commercial real estate. So it's business.
Q. Business.
A. Looking for investment opportunities.
Q. Investment opportunities for the purpose of?
A. Business. Yeah.
Q. To make --
A. So obviously, yeah, to make money.
Q. To make money?
A. That's correct.
Q. To make a profit?
A. To produce good projects. And we like to drive by our projects and say, "Hey, we had something to do with that." I don't like looking in the other direction. When I

drive by with my kids, I like to point out, "Hey, we had a part in that."
Q. Okay. And are there other developments pending for Part-Time or for Glenwood Development?
A. Other things that we're working on?
Q. Uh-huh.
A. Absolutely.
Q. And have there been any developments that were planned but not completed?
A. Meaning we've looked into and didn't execute on?
Q. Yes.
A. Sure.
Q. What about projects that you started but were not completed?
A. It depends on your definition of "started."
Q. What would be the start of a project as far as you're in it, you're going to pursue this?
A. Typically, going past a feasibility period or nonrefundable.
Q. Okay. Have there been any of those?
A. Sure. Over the course of the last couple decades, absolutely.
Q. Okay. So how many would you say there have been of those that were started, but not completed?
A. Maybe five. And I don't recall which ones they

are.
Q. Okay. Do you remember why they weren't completed?
A. The spectrum would be more of a user not -- "user" meaning the tenant -- not being able to move forward or something encumbering the land that we didn't see.
Q. So title problems, things like that?
A. Yeah.
Q. Have there been issues with being able to raise the funds for the projects?
A. Typically, no.
Q. Okay. Would those projects be considered failures?
A. No.
Q. Are there failed projects?
A. Sure.
Q. How many?
A. I know of two.
Q. Can you remember what they are?
A. Just ones that we never were able to develop during the downturn of the economy.
Q. And you weren't able to develop these two because of why?
A. Overall economy. Users not developing, not moving forward. Just what everybody else experienced.
Q. Okay.
A. Investors not wanting to do anything. Everybody

being scared, running for the hills.
Q. So what would make a project a failure?
A. Losing our investors' money.
Q. Okay. Are you familiar with Trine University in Peoria?
A. I do. I know who they are.
Q. And do you know what happened --
A. No.
Q. -- with them?
They opened for business, but then I believe they made a decision to not continue?
A. I don't have the details on that.
Q. Okay. What about Saint Xavier University in Gilbert, Arizona, are you familiar with that project?
A. No.
Q. Okay. Saint Xavier University was another private university. They opened up in Gilbert with help from the City of Gilbert, and they closed after their first year.
As far as your experience in commercial development, would you consider that a failure?
MR. HAM: Object to form.
THE WITNESS: Again, I don't know the workings of their agreements.
BY MS. THORSON:
Q. If a developer had invested in that project

expecting to be in business for many years and found out that the project didn't continue and actually shut down after a year, would that be a failure?
MR. HAM: Object to form.
THE WITNESS: Again, I don't know the details there. I have things that happen. As a developer, an owner, you have to be nimble. You have to be willing to -- things change all the time, businesses go out of business or they -- they change. And you always have to be ready to make changes to who your users are and what you're doing with that investment.
BY MS. THORSON:
Q. Okay. You said losing money is a failed project?
A. It depends how much. That's correct. You can always lose a little bit of money before you make a whole bunch more. It just depends on what you do.
Q. Okay.
A. Every project is different. I wouldn't say that's a standard.
Q. Is it more likely that you would lose money on a project if it shut down after a year versus if it were allowed to continue over the course of its intended time frame?
A. It just seems like a whole bunch of -- it's so hard to answer questions with so much speculation there. That's

all that I do is deal in speculation. And so you don't know until you're there.
Q. If you had a development and you were leasing it and the lease failed after a year and it was a ten-year lease, would that lose money?
A. Typically, no, because I make sure they're personally guaranteed and they can continue to follow through on their obligation. We try to protect our assets, protect our investors.
Q. Okay. So what would you consider a successful project then?
MR. HAM: Object to form.
THE WITNESS: Again, there's just too many factors to answer that.
BY MS. THORSON:
Q. What factors contribute to the success of a project?
A. Well, we've established that, obviously, a return on your investment is important, timing of that investment, who you're actually doing the project with, what cap rate it can sell for, term of the lease. There's -- this goes on and on. I would have to have a checklist in front of me to kind of go through that.
Q. Okay. You would say that those hundred projects that you worked on were successful, though?

I don't have a percentage to give you.
Q. So if you're considering a development project and you have to secure loans for it, do you have a number in mind where -- you know, a threshold maybe that -- where it would be too much to secure the loan and not worth it to do the project?
A. Again, nothing specific to that aspect. We look at the project as a whole.
Q. Okay. So if a project -- if let's say a loan for a particular project were going to have a 30 percent interest rate, would that be too much?
A. It sure sounds like it.
Q. Okay.
A. People often do hard money loans all the time. We try not to.
Q. Okay. So do you have like a number, then, that's acceptable for an interest rate for loans on projects, something that you try to shoot for?
A. We shoot for something that pencils out overall. So I couldn't give you a number.
Q. Okay. We know it's not 30 percent interest?
A. Correct.
Q. Twenty percent?
A. It would be below that.
Q. How about 15 percent?

A. It depends on the project.
Q. Okay. So it sounds like 15 percent you might consider?
A. It just depends on what you're even using it for. It could be for, you know, land before we get to the point where we develop it. We just don't know until you're involved in it.
Q. Okay. So would you say that there's risk involved in securing funding through loans?
A. Absolutely.
Q. What about through investors?
A. It's always a risk, yeah. You don't want to poison the well.
Q. Okay. So what makes it a risk?
A. If you don't perform and things don't go right, number one, you lose that investor's money. Number two, they won't invest with you again. And there's a period of financing, they could come after my home.
Q. So do you see this process of acquiring funding as difficult?
A. I wouldn't say it's difficult. But it's -- it's qualified.
Q. What does that mean?
A. It's looked at very thoroughly through our investors and through our lenders. They have committees.

Q. Is it complicated?
A. I wouldn't say it's complicated. It's just an arduous -- you know, it's a process.
Q. Does it require a lot of resources to go through that process?
A. It depends on the project.
Q. Okay. You did use the word "arduous."
A. Yeah.
Q. Okay.
A. I did, but I corrected myself. It's more of a -- just a lengthy process.
Q. Lengthy.
Okay. So what happens if there's not enough funding for a project?
A. Typically, we don't have that problem.
Q. Okay. So then would you say that Arrowhead Equities has -- are they creditworthy?
A. It's a single-purpose entity. So the people involved in that are, you know, that LLC. And the manager of that being Part-Time, yeah, we have good credit.
Q. Okay. And Glenwood Development as well?
A. I wouldn't see why Glenwood would have a credit rating, but we do feel like we are reliable and trustworthy.
Q. Okay. You have to be in this business?
A. Correct.

Q. I'm not sure whether I would ask this about Glenwood or Part-Time or Arrowhead. Do they have a net worth?
A. Each -- the company -- restate your question to make sure I understand.
Q. Okay. So not really understanding how -- like you do, how these companies work, I just asked, does Arrowhead, Part-Time, or Glenwood, do any of those have a net worth?
A. Arrowhead, obviously, owns the building. So there's worth there. There's value there with a tenant with a lease.
The Part-Time has, again, their managers, and they're involved in many other assets. So they're really more of a management entity.
And Glenwood, you know, we have relationships, but there isn't a -- and it has a property management aspect. So there could be a value if we decided to sell Glenwood.
Q. Okay. Do you know what the numbers are for any --
A. No.
Q. -- of the three?
A. No.
Q. Part-Time, you're a principal. So do you have an idea of the --
A. I'm a manager in Part-Time.
Q. Okay.

Q. The mayor?
A. No.
Q. Anyone in the Economic Development Department?
A. No.
Q. Anyone at the City?
A. No.
Q. Was anyone at Part-Time acquainted with anyone from the City --
A. No.
Q. -- prior to the circumstances surrounding the agreement?
Was anyone at Glenwood Development acquainted with anyone at the City prior to the circumstances surrounding the agreement?
A. No.
Q. Was anyone at Arrowhead acquainted with anyone at Huntington University prior to the circumstances surrounding the agreement?
MR. HAM: Form and foundation.
THE WITNESS: Will you ask that one more time?
BY MS. THORSON:
Q. Prior to the circumstances surrounding the agreement, was anyone at Arrowhead acquainted with anyone at Huntington University?
A. I just want to clarify some of my answers here.

Obviously, prior to us signing this agreement, we're talking to these people; right?
Q. Right.
A. Okay.
Q. But those would be the circumstances surrounding the agreement.
A. Right. Okay. So no, there's been no prior relationships with Huntington University.
Q. Okay. So whose idea was it to apply for the P83 program?
MR. HAM: Objection. Foundation.
THE WITNESS: It was mine.
BY MS. THORSON:
Q. Your idea?
A. Yes.
Q. How did you know about the P83 program?
A. Whenever I go and develop a project or acquire a project or do something like this, I go into a due diligence phase. And I start to look into city processes, city fees, city programs because every municipality is different.
Q. Okay. So you discovered that this program existed exactly how?
A. It could have been through I showed up on the counter, talked with staff, I've looked online, the website. Many forms of research. It would be one of those.

Q. But no one told you about it?
MR. HAM: Object to form.
THE WITNESS: Well, they would -- if I was asking questions about it, yeah, they were responding to my questions. I learned more about it through just question and answer.
BY MS. THORSON:
Q. You originally found out about this program on your own?
A. That's what I recall, yeah.
Q. Would Arrowhead have acquired their property if the P83 funds were not available to Arrowhead through its agreement with the City?
MR. HAM: Form and foundation.
THE WITNESS: That's hard to say. It's a matter of, again, every project standing on its own. We would have to evaluate it then, if it didn't exist. But it did exist, and so we moved forward.
BY MS. THORSON:
Q. Was the availability of the funding from the P83 program a factor in your decision to pursue this development project then?
MR. HAM: Form and foundation.
THE WITNESS: It was part of our decision process, yes.

BY MS. THORSON:
Q. Was it an important factor?
MR. HAM: Form and foundation.
THE WITNESS: Yes.
BY MS. THORSON:
Q. Can your company -- or I should say, can Arrowhead succeed without receiving money from agreements like these?
A. Yes.
Q. Can Part-Time Equities succeed without receiving agreements like these?
A. Yes.
Q. And Glenwood Development, can it be successful without affiliated companies receiving money from agreements like these?
A. Yes.
Q. Why is that? Why can it be successful despite not receiving money from agreements like these?
MR. HAM: Form, foundation.
THE WITNESS: Again, it just depends on the project and how much a tenant can pay. How much you buy the project for, how much you buy the land for, what kind of returns you have to give your investors. It just varies.
BY MS. THORSON:
Q. And in your experience, projects have succeeded without funding through agreements like these?

Go to Previous View
Go to Table of Contents - Appendix

MR. HAM: Form and foundation.
THE WITNESS: They have.
BY MS. THORSON:
Q. Has Arrowhead ever entered into a similar agreement with a government?
A. No.
Q. Has Part-Time Equities ever entered into a similar agreement with a government?
A. No.
Q. Has Glenwood Development ever entered into a similar agreement with a government?
A. That I'm not sure.
Q. Why has Arrowhead never entered into a similar agreement with a government?
MR. HAM: Form, foundation.
THE WITNESS: It's a single-purpose entity.
BY MS. THORSON:
Q. Okay. Why has Part-Time never entered into a similar agreement with a government?
MR. HAM: Form, foundation.
THE WITNESS: Part-Time only has done a few developments. So --
BY MS. THORSON:
Q. Would Part-Time enter into more of these types of agreements with other governments?

A. Yes.
Q. Why?
A. It's a good partnership with the City. It does assist us in making -- we think it would assist us in making a project successful.
Q. What does that mean in this context, that the project would be successful?
A. Well, there was a lot -- for this, for Huntington University, there were lots of costs involved in retooling the project. It's a very single-purpose type use. So we needed to spend lots of dollars to revamp it.
Q. So would you say, then, that these agreements help your company save money?
MR. HAM: Form, foundation.
THE WITNESS: I would say yes, but they also help the project actually happen.
BY MS. THORSON:
Q. Why did you enter into the agreement?
MR. HAM: Form, foundation.
THE WITNESS: It was a city program that was offered, and it was our understanding they were trying to help revitalize the area. And we went through their process and, hence, the ADA.
BY MS. THORSON:
Q. But why did your company enter into the agreement?

MR. HAM: Form and foundation.
BY MS. THORSON:
Q. So you talked about what the City wanted to do. But why?
A. It helps make the project a success.
MS. THORSON: Okay. We're going to go over the agreement in more detail, but before we do that, I would like to take a break if that's okay.
THE WITNESS: Sure.
(Recess taken, 12:12 - 12:21.)
BY MS. THORSON:
Q. So before we look at the agreement in more detail, I did want to go back to talking about the property at -- on Mariners Way, the Huntington campus, the 8385 West Mariners Way.
You did view that property before you acquired it?
A. Uh-huh.
Q. Who observed it?
A. Who walked it?
Q. Yes.
A. I did.
Q. Just you? Anybody else with you?
A. Mostly me.
Q. Mostly you.

About how much time did you spend looking at the property?
A. Days and weeks.
Q. So did you observe it several times over the course of those days and weeks?
A. Uh-huh. Yes.
Q. Why did you want to observe it so many times?
A. Make sure there weren't any structural problems. Just look at the integrity of the building, looking at project costs of what it would take to re-tenant it.
Q. And when you were observing the building, did you observe the neighborhood?
A. To a certain degree.
Q. What did you think of the neighborhood?
MR. HAM: Object to form.
THE WITNESS: It seemed to be a busy neighborhood, but there were a couple vacant buildings around.
BY MS. THORSON:
Q. And then earlier you said that there were vagrants?
A. There was a couple vagrants that I had to kick off the property when I was there.
Q. Were they in the building?
A. No.
Q. Where were they?

Page 73

MR. HAM: Form and foundation.
THE WITNESS: They have.
BY MS. THORSON:
Q. Has Arrowhead ever entered into a similar agreement with a government?
A. No.
Q. Has Part-Time Equities ever entered into a similar agreement with a government?
A. No.
Q. Has Glenwood Development ever entered into a similar agreement with a government?
A. That I'm not sure.
Q. Why has Arrowhead never entered into a similar agreement with a government?
MR. HAM: Form, foundation.
THE WITNESS: It's a single-purpose entity.
BY MS. THORSON:
Q. Okay. Why has Part-Time never entered into a similar agreement with a government?
MR. HAM: Form, foundation.
THE WITNESS: Part-Time only has done a few developments. So --
BY MS. THORSON:
Q. Would Part-Time enter into more of these types of agreements with other governments?

Page 74

A. Yes.
Q. Why?
A. It's a good partnership with the City. It does assist us in making -- we think it would assist us in making a project successful.
Q. What does that mean in this context, that the project would be successful?
A. Well, there was a lot -- for this, for Huntington University, there were lots of costs involved in retooling the project. It's a very single-purpose type use. So we needed to spend lots of dollars to revamp it.
Q. So would you say, then, that these agreements help your company save money?
MR. HAM: Form, foundation.
THE WITNESS: I would say yes, but they also help the project actually happen.
BY MS. THORSON:
Q. Why did you enter into the agreement?
MR. HAM: Form, foundation.
THE WITNESS: It was a city program that was offered, and it was our understanding they were trying to help revitalize the area. And we went through their process and, hence, the ADA.
BY MS. THORSON:
Q. But why did your company enter into the agreement?

Page 75

MR. HAM: Form and foundation.
BY MS. THORSON:
Q. So you talked about what the City wanted to do. But why?
A. It helps make the project a success.
MS. THORSON: Okay. We're going to go over the agreement in more detail, but before we do that, I would like to take a break if that's okay.
THE WITNESS: Sure.
(Recess taken, 12:12 - 12:21.)
BY MS. THORSON:
Q. So before we look at the agreement in more detail, I did want to go back to talking about the property at -- on Mariners Way, the Huntington campus, the 8385 West Mariners Way.
You did view that property before you acquired it?
A. Uh-huh.
Q. Who observed it?
A. Who walked it?
Q. Yes.
A. I did.
Q. Just you? Anybody else with you?
A. Mostly me.
Q. Mostly you.

Page 76

About how much time did you spend looking at the property?
A. Days and weeks.
Q. So did you observe it several times over the course of those days and weeks?
A. Uh-huh. Yes.
Q. Why did you want to observe it so many times?
A. Make sure there weren't any structural problems. Just look at the integrity of the building, looking at project costs of what it would take to re-tenant it.
Q. And when you were observing the building, did you observe the neighborhood?
A. To a certain degree.
Q. What did you think of the neighborhood?
MR. HAM: Object to form.
THE WITNESS: It seemed to be a busy neighborhood, but there were a couple vacant buildings around.
BY MS. THORSON:
Q. And then earlier you said that there were vagrants?
A. There was a couple vagrants that I had to kick off the property when I was there.
Q. Were they in the building?
A. No.
Q. Where were they?

A. Back of the building going through the trash, that kind of thing.
Q. Okay. Was it in back of the property?
A. Yes.
Q. Did they move on to other buildings?
A. I have no idea.
MR. HAM: Object to foundation.
BY MS. THORSON:
Q. Okay. Anything else you can tell me about the neighborhood or --
A. A few vacant buildings. That's it.
Q. Do you remember which buildings they were?
A. A building directly to the east. It used to be a restaurant. And another building to the northeast across Mariners.
Q. Okay. Okay. So let's go ahead, and if you could take a moment to look over the agreement, Exhibit 2.
A. Anything in particular?
Q. No. Just giving you a chance to review it since we're going to be looking at it.
A. Okay. You can start asking questions if you'd like.
Q. Okay. So are you familiar with the content of the agreement?
A. To a certain extent, yes.

Q. Your name is on the agreement; correct?
A. Yes.
Q. You signed the agreement?
A. Yes.
Q. How did you learn about the agreement?
MR. HAM: Object to form.
THE WITNESS: I don't know if I understand your question.
BY MS. THORSON:
Q. Did anyone approach you with -- with -- did anyone -- whose idea was it to execute this agreement?
MR. HAM: Object to form and foundation.
THE WITNESS: We saw that it was offered through the program the City was implementing. So I stumbled across it and read into it and decided to move forward with it.
BY MS. THORSON:
Q. Okay. And what is your general understanding of the agreement's purpose?
MR. HAM: Form and foundation.
THE WITNESS: The general purpose was to help get a tenant base into the area. For me, specifically, it was a partnership in covering costs, that it would take significant costs to get the tenant into that building. And so this is a partnership. We have obligations. And if we

met those obligations, we would see some reimbursement.
BY MS. THORSON:
Q. Why would there be significant costs to get the tenant in the building?
A. It's a -- you know, it's a multistory building that has -- that was a specific use for a hair salon, and it took quite a bit of work to re-purpose it for a specific user, being the university.
Q. Okay. What does your company get from the agreement?
A. We receive a reimbursement of costs that we have paid for in order to do the tenant improvement.
Q. Okay. Let's go to item I on page 2 of the agreement. And if you could read that.
A. The City, in the exercise of its legislative functions, and finding in such legislative capacity that the benefits conferred upon Arrowhead by this Agreement are not grossly disproportionate to the benefits being received by the City, by its Resolution No. 2016-23, adopted on March 15, 2016, has authorized the execution and performance of this Agreement and has otherwise taken all action required by law to enter into this Agreement and make it binding upon the City.
Q. Okay. So it says, "the benefits being received by

the City." What are those, the benefits being received by the City?
MR. HAM: Object to form and foundation.
THE WITNESS: I'm not sure.
BY MS. THORSON:
Q. What do you have to give the City under the agreement?
A. Sorry?
Q. What does Arrowhead have to give the City under this agreement?
MR. HAM: Form and foundation.
THE WITNESS: We had to improve the building, and we also have a tenant that's coming into the building.
BY MS. THORSON:
Q. And do you have to --
A. And we also -- obviously, we had to give them a position on the deed for the dollars.
Q. Okay. I do have a question going back to, you said that it was -- there was significant cost in improving the building --
A. Correct.
Q. -- for the tenant?
How does that compare to other development projects as far as cost and significant improvements?
MR. HAM: Form and foundation.

THE WITNESS: Every project is different. It's based on the condition of the project. It's based on if it's a new build. It's based on the tenant requirements. It's based on the integrity of the building itself. Many different factors.

BY MS. THORSON:

Q. Okay. Since it was significant, I would -- does that mean, then, that generally, you're -- when you're taking on a property that is already developed and you're renovating it, does that mean that the improvements you did for this property are more than when you renovate a property, typically?

A. For this project it was more, yes.

Q. Okay. So let's go to page 3 of the agreement. And if you could, please, read out loud item A entitled "Tenant Improvements."

A. Arrowhead will cause to be constructed the tenant improvements at and within the Premises generally in accordance with the schedule attached to this Agreement as Exhibit A ("Tenant Improvements"). Arrowhead will cause the completion of construction of the Tenant Improvements (established by the issuance of a certificate of occupancy for the Premises issued by the City) no later than seven months from the Effective Date, so that Tenant may

open for business to the general public on a full-time basis no later than October 15, 2016.

Q. Did Arrowhead make those improvements?

A. Yes.

Q. Did Arrowhead complete the improvements by October 15th, 2016?

A. I'm fairly certain we did.

Q. Okay. Did Arrowhead make those improvements for Huntington?

MR. HAM: Object to form.

THE WITNESS: We made it for -- in accordance with our lease, that is correct.

BY MS. THORSON:

Q. Were those improvements necessary for Arrowhead's lease with Huntington?

MR. HAM: Form.

THE WITNESS: Yes.

BY MS. THORSON:

Q. In other words, there would be no lease with Huntington if Arrowhead had not made those improvements; is that correct?

A. That's hard to say. It's always a negotiation. We would have to deal with it at that point in time.

Q. Would Huntington have leased that property as it was from you?

MR. HAM: Form and foundation.

THE WITNESS: More than likely, no.

BY MS. THORSON:

Q. Okay. Did Huntington tell Arrowhead what improvements it wanted?

A. Yes.

Q. Who imposed the October deadline?

A. It was a mutual agreed-upon date based on what we felt the process would take for permitting and construction drawing, you know, creating construction drawings and completing the project.

Q. So did Arrowhead ask for that deadline?

A. It was a joint decision between Arrowhead and Huntington University.

Q. Did Huntington University want an earlier deadline?

MR. HAM: Object to foundation.

THE WITNESS: I don't recall.

BY MS. THORSON:

Q. Do you recall if Huntington proposed the deadline initially?

A. No, I don't recall.

Q. So the October deadline, as far as you recall, was simply because that's when you could get the project done or were there other factors?

MR. HAM: Form and foundation.

BY MS. THORSON:

Q. Was it simply because that's when you could get the project done?

A. It was getting the project done. It was a time frame for, if I remember correctly, enrollment so they can actually open up as a university.

Q. Okay. So did that deadline benefit Huntington?

A. It benefited --

MR. HAM: Object to foundation.

THE WITNESS: -- Arrowhead and Huntington.

BY MS. THORSON:

Q. How so?

A. The sooner you get a project done, the sooner they open up their doors and start getting the students enrolled.

Q. Why is it better to get the students enrolled sooner rather than later?

A. I would have to let HU speak to that.

Q. Okay. Let's go to item B, No. 1 on the same page. If you could read that out loud.

A. The City's Economic Services Development Department ("Department") will have determined the suitability of each of the Tenant Improvements or architectural expense for which reimbursement is requested.

Q. Did Peoria's department determine the suitability

of the tenant improvements or architectural expenses?
A. They had a very thorough process, yes.
Q. What did that process entail?
A. Qualifying which -- which items were acceptable to their program.
Q. Do you know what those qualifications were?
A. No.
Q. Is that something that Arrowhead had to do?
A. What's that?
Q. Was Arrowhead involved with this process?
A. Yes.
Q. What did Arrowhead have to do for that process?
A. We had to follow the program to submit paperwork according to what the program requires.
Q. What kind of paperwork?
A. Budget, bids from contractors.
Q. And how often did Arrowhead have to do that?
A. I don't recall how often it was.
Q. When did Arrowhead have to do that?
A. I don't have the exact time frame, but prior to this agreement, obviously.
Q. Was it on a rolling basis or did you have deadlines when you had to submit the paperwork?
MR. HAM: Form and foundation.
THE WITNESS: There weren't deadlines. It was

just going through the process and responding to comments that they had.
BY MS. THORSON:
Q. Comments that the City had?
A. Correct.
Q. About what you submitted to them?
A. Uh-huh. Yes.
Q. Okay. Please read item B, No. 2 out loud.
A. No reimbursement will be made for any item or charge that is deemed by the Department, in its sole discretion, to be extravagant, exorbitant, excessive or overpriced; that has been supplied, provided or performed prior to the Effective Date; that is for FF&E (furnishings, fixtures and equipment, as that term is understood in the education industry); or that has been supplied, provided or performed by Arrowhead or its affiliates unless consistent with the budget approved by the City.
Q. Okay. What was the budget approved by the City?
MR. HAM: Object to form, foundation.
THE WITNESS: A budget.
BY MS. THORSON:
Q. Was that the budget for the Huntington project?
A. Correct.

Q. And what did Arrowhead have to do in order to fulfill the requirement in No. 2 that you just read?
A. What did we have to do?
Q. Uh-huh.
A. We supplied budget information.
Q. If you could read item B, No. 3. You can read it to yourself.
A. Okay. Okay.
Q. What was involved in supplying that evidence to Peoria?
A. Again, another process. We followed the instructions here and submitted contractor waivers and invoices and information that would substantiate the work that we performed out there.
Q. So is that like Arrowhead keeping track of its -- what money it spends on the project?
MR. HAM: Form, foundation.
THE WITNESS: This is asking for receipts, lien waivers for items performed on the project, yes.
BY MS. THORSON:
Q. Is it ordinary for Arrowhead to track its expenses for development projects?
A. That's a single-purpose entity.
Q. Is it ordinary for Part-Time Equities to track its expenses on development projects?

A. For any projects it has, yes.
Q. Is it ordinary to keep receipts?
A. Yes.
Q. Is it difficult to keep track of the receipts?
A. No.
Q. Is it difficult to keep track of expenses?
A. It's work. But no, it's not difficult.
Q. Was it more difficult to keep track of the receipts for this project than for other development projects?
A. No.
Q. And going back to No. 2, did the City determine that any of the items or charges were extravagant?
A. I don't know about extravagant, but I do know the City denied certain things we were trying to get reimbursed for.
Q. Okay. What did they deny and why?
A. I do not recall.
Q. Did they deny any items that -- did the City deny any items that it considered exorbitant?
MR. HAM: Form and foundation.
THE WITNESS: They didn't define it as each one of these items. They just denied certain aspects.
BY MS. THORSON:
Q. Okay. But not according to what it says in No. 2? You're saying they didn't use the word "exorbitant"?

Page 89

A. All I know is that they denied certain aspects that we tried to get reimbursement for.
Q. Okay. What aspects?
A. I don't recall.
Q. Were they items that Huntington wanted?
A. They were certain items related to the improvements for Huntington University.
Q. The items that were denied, are those items that you typically perform in other projects?
A. Yes.
Q. So who ended up paying for the items that the City would not reimburse Arrowhead for?
A. Arrowhead.
Q. Okay. Is there anything that you could read over to refresh your memory about the items that the City would not reimburse?
A. Not that I recall. There may be emails that have gone back and forth. We had a lot of phone conversations as well.
Q. Okay. So can you read item B, No. 4? And you can just read it to yourself.
A. Okay.
Q. Were the plans and specifications the City's plans and specifications?
A. No. These were plans and specifications that were

Page 90

designed between Arrowhead and Huntington University and then approved by the City.
Q. Okay. Did Arrowhead work with the City on the plans?
A. Yes.
Q. How so?
A. Through the submittal, review and approval process.
Q. Did the City change the plans?
A. Typical process is review and approvals on projects like this. So there should have been a review and approval process we went through, and we received a permit.
Q. Okay. You're referring to building permits?
A. Uh-huh.
Q. So you said you also worked with Huntington on the plans and specifications?
A. Correct.
Q. So those wouldn't involve building permits?
A. That's what you use to obtain a building permit.
Q. Are those more like designs?
A. They're plans.
Q. Okay. So the City reviewed those plans?
A. Correct.
Q. But did Huntington help you with designing the plans?
A. They sat in on design meetings with us and our

Page 91

architect.
Q. Did they tell you what they wanted?
A. Yes.
Q. Okay. Did Huntington benefit from the completion of construction?
A. To what extent?
Q. Did they benefit in any way from the completion of construction?
A. They were able to move in.
Q. Okay. Did Arrowhead have to complete the construction to perform its lease with Huntington?
A. Yes.
Q. Okay. Please read item B, No. 5.
A. "The Premises" -- okay.
Q. Is it ordinary for Arrowhead to pass fire and building inspections for its development projects?
A. Yes.
Q. Or I should say is it ordinary for Part-Time to pass fire and building inspections for its development projects?
A. Yes.
Q. Would Arrowhead have made sure to pass the inspections even if this wasn't listed as a requirement in the agreement?
A. Yes.

Page 92

Q. Why?
A. So we can get a CFO and allow them to occupy it.
Q. Is that a Certificate of Occupancy?
A. Correct.
Q. And is that standard for all development projects?
A. Yes.
Q. Please read item B, No. 6.
A. Okay.
Q. You said earlier that Arrowhead met that deadline; is that correct?
A. I'm fairly certain we did.
Q. Is it ordinary for Arrowhead to agree to deadlines on development projects?
MR. HAM: Form, foundation.
THE WITNESS: It depends. Fifty percent of the time.
BY MS. THORSON:
Q. If you don't agree to a deadline on a development project, how do you determine when the project will be completed?
A. When we receive that City approval.
Q. Do you typically agree to complete your end of the work by a due date?
A. No.
Q. If not, then how do your clients ensure that they

will get their project in time for what their purpose is?
A. They always have the ability to go to a different project if they choose to.
Q. So --
A. We can be in default on the agreement if we don't end up finally producing a project for them. So occasionally, there will be a time frame, but not the majority of the time.
Q. So you said 50 percent of the time there is --
A. Correct.
Q. -- no due date --
A. Correct.
Q. -- for a project?
A. I mean, the motivating factor for us is we have financing in place. And if the project isn't cash-flowing, then we're losing money.
Q. If a client approaches you with a development project and there's no due date, how does that work?
A. Every project is different. It depends on what we're talking about.
Q. So can you give me an example of a project that has no due date on your end?
A. Yeah. Right now, I'm developing a project in Chandler. And it's a project that we have great investment partners on, and we're moving it forward as quickly as we can

to ensure the best return on their investment. It's through pad sales, lease rentals. It could be a flip of the property. There's many different things you can do in regards to these deals that doesn't have time frames.
Q. So tell me -- give me an example of a project you've done that does have a due date other than the Huntington project.
A. I've developed -- I'm thinking through. When you say "due date," sometimes it's within that certain year. So we've done a Dollar General in New Mexico. They wanted to be open by a certain calendar year, and we made sure we performed that.
Q. Okay. So some of your development projects do require deadlines; is that correct?
A. About 50 percent of the time.
Q. Okay. In this project, Arrowhead was required to meet the deadline; correct?
A. Correct.
Q. And it did so as part of its lease with Huntington; is that correct?
A. We had a time frame in our lease as well, correct.
Q. Did Arrowhead benefit from meeting that deadline?
A. Yes.
Q. How so?
A. You get a tenant in, they start paying rent.

Q. Okay. Can you please look at item C labeled "Performance Criteria"? And if you could read No. 1.
A. Okay.
Q. Does the tenant benefit from this requirement?
MR. HAM: Form, foundation.
THE WITNESS: If they're open for business, one would think they're going to benefit.
BY MS. THORSON:
Q. And the tenant is Huntington University?
A. Correct.
Q. Can you read No. 2?
A. Okay.
Q. Is it customary for Arrowhead to be in material compliance with applicable laws?
A. Yes.
Q. Is it customary for Part-Time to be in compliance with applicable laws?
A. Yes.
Q. And is it customary for Glenwood Development to be in compliance with applicable laws?
A. Yes.
Q. Why?
A. Because we like to follow the law. And we want to make sure we're, obviously, following all local ordinances and laws that allow our tenant to stay open for business.

Q. Okay. Can you please read No. 3?
A. Okay.
Q. Is it customary for Arrowhead to be in material compliance with applicable building, fire and safety requirements?
A. Yes.
Q. How about for Part-Time?
A. Yes.
Q. And for Glenwood Development?
A. Yes.
Q. Why?
A. Again, you don't want your tenant to have to close their doors. If you're not in compliance, they can't remain open for business.
Q. And can you please read No. 4?
A. Okay.
Q. Is it customary for Arrowhead to comply with its leases?
A. Yes.
Q. And for Part-Time?
A. Yes.
Q. For Glenwood Development?
A. Yes.
Q. And why is that?
A. We don't want to be in default under our lease.

Q. And why do you not want to be in default of your lease?
A. Because, obviously, the tenant can stop paying rent and move on.
Q. Including all the requirements of the agreement we just went over, how much money did it cost Arrowhead to do these things?
A. To do what?
Q. To complete the requirements that we just went over.
MR. HAM: Form and foundation.
THE WITNESS: When we say the "requirements," that would cause us to do a ton of demolition and a ton of construction. So --
BY MS. THORSON:
Q. Did Arrowhead give the money from the demolition, the construction, to the City?
A. Did we give the money to the City? We paid a contractor.
Q. Okay. Did it cost Arrowhead anything else to fulfill the agreement?
A. I mean, there's many costs involved. There's our time. There's, obviously, a list of things we put out in the budgets already, what it took to accomplish this.
Q. Did those resources go to the City?

A. No. They were paid to the contractor.
Q. What exactly did Arrowhead give to the City under the agreement if not money?
MR. HAM: Form and foundation.
THE WITNESS: I don't know if I understand your question.
BY MS. THORSON:
Q. Did you have to pay the City any money?
A. No.
Q. Did Arrowhead have to do these things that we just went over in order to lease the property to Huntington?
MR. HAM: Form and foundation.
THE WITNESS: Yes.
BY MS. THORSON:
Q. And why is that?
A. Why did we have to do them? So they can occupy the space so it can be up to code so they can open business.
Q. Okay. Other than what Arrowhead had to spend to make the improvements for Huntington, did Arrowhead have to give the City anything of value?
MR. HAM: Form, foundation.
THE WITNESS: Obviously, we have a deed on our property.
BY MS. THORSON:
Q. Okay.

A. So --
Q. Is this agreement with the City risky for Arrowhead?
A. I don't feel it's risky.
Q. Why not?
A. Because, number one, it's the City. Number two, we plan on following through on our obligations. And we did not feel it was a risk.
Q. When you say, "Number one, it's the City," what does that mean?
A. It's a program implemented by the City that we reviewed and felt confident with.
Q. Is the agreement expensive for Arrowhead?
MR. HAM: Form, foundation.
THE WITNESS: Is the agreement expensive with Arrowhead? I don't understand how to answer that question.
BY MS. THORSON:
Q. Is the agreement with the City more expensive for Arrowhead than just having an agreement with Huntington?
A. No.
Q. Are there additional costs for Arrowhead to have this agreement with the City other than the cost for having the agreement with Huntington?
A. Obviously, this is a separate agreement. So we had an attorney involved helping us negotiate this. If this

agreement didn't exist, then we wouldn't have that attorney involved.
Q. Okay. Were there any other costs other than the attorneys' fees?
A. Related to the agreement?
Q. With the City.
A. I don't recall.
Q. Did Arrowhead get a good deal on this agreement with the City?
MR. HAM: Object to form and foundation.
THE WITNESS: I don't understand that.
BY MS. THORSON:
Q. Do you think that Arrowhead benefited more than what it lost in executing this agreement with the City?
MR. HAM: Form and foundation.
THE WITNESS: I wouldn't know how to answer that.
BY MS. THORSON:
Q. Do the benefits of this agreement with the City for Arrowhead outweigh the costs for Arrowhead?
MR. HAM: Form and foundation.
THE WITNESS: I believe that this agreement helped us accomplish the project. I couldn't sit there and weigh the costs right now.
///

BY MS. THORSON:
Q. You said that the costs associated with the agreement were attorneys' fees.
A. I said -- and I also said I couldn't recall everything else.
Q. Of the costs that you can recall, do they -- are they less than the benefits that you get from this agreement with the City?
A. It's -- again, it's hard to tabulate all my costs. I'd have to be looking through everything.
Q. What does Arrowhead get from this agreement?
MR. HAM: Form, foundation.
THE WITNESS: Get reimbursement for some of the landlord's work that we did to the building.
BY MS. THORSON:
Q. How much reimbursement?
A. If I remember correctly, it was 50 percent.
Q. So what does that total?
MR. HAM: Form and foundation.
THE WITNESS: It looks like the agreement on page 4 says 737,596 total.
BY MS. THORSON:
Q. So is that amount that you are reimbursed for expenses, is that a benefit for Arrowhead?
A. It's a benefit for the project.

MR. HAM: Form, foundation.
BY MS. THORSON:
Q. If the project -- if it's a benefit for the project, isn't it a benefit for everyone involved?
A. Correct. Including -- yeah, everyone involved, I think, is a winner.
Q. Is it more of a benefit for Arrowhead -- is this project more of a benefit with the agreement than it would be without the agreement?
MR. HAM: Form and foundation.
THE WITNESS: It's hard to say.
BY MS. THORSON:
Q. So if --
A. Mainly since this is drawn out over seven years, I may never see those dollars.
Q. Which dollars?
A. The full reimbursement amount.
Q. What dollars have you seen so far?
A. Reimbursement we've seen so far is the 221,000.
Q. So is that reimbursement better than receiving no money from the City?
MR. HAM: Form and foundation.
THE WITNESS: Obviously, getting more money is going to help a project. But -- yeah, so it is a little bit better off.

BY MS. THORSON:
Q. So then would you say that this agreement with the City is beneficial to Arrowhead?
A. It's beneficial to everyone involved.
Q. Is it beneficial to Arrowhead?
A. Yes.
Q. Is it beneficial to the investors, the investors of the project?
A. Yes.
Q. Why?
A. Again, it's a judgment call that was made in the time of developing this, thinking that this would be a helpful way to make the project successful, to get Huntington University there, which is a strong tenant.
Q. What makes them a strong tenant?
A. Well, part of it for us is they were -- have been around for, I think, over a hundred years. I visited their campus, and I've seen their financials. And we definitely felt that they are a great fit for this partnership.
Q. Okay. What happens if Arrowhead doesn't fulfill its duties under the agreement?
MR. HAM: Form and foundation.
THE WITNESS: If we don't fulfill our duties? It has two aspects in here. One is they have a deed for the first 220 some odd thousand dollars that they can, obviously,

try to foreclose on. For the remaining balance, I just don't receive it.
BY MS. THORSON:
Q. Okay.
A. It's on a percentage completion standpoint.
Q. So the risk is that you would have to return the money that was given to you?
A. Correct.
Q. And is there a risk Arrowhead might not fulfill its duties under the agreement?
A. No.
Q. Why not?
A. We feel confident with the project.
Q. You feel confident that Arrowhead will perform its requirements?
A. Yes.
Q. What about -- what happens if Huntington doesn't fulfill its requirements? What happens?
MR. HAM: Form and foundation.
THE WITNESS: They could be in default on their lease and we look for options.
BY MS. THORSON:
Q. What does that mean?
A. Look for other tenants.
Q. Okay. Would it be difficult to find another tenant

Page 105

for that particular building now?
MR. HAM: Form and foundation.
THE WITNESS: It's difficult for every project.
BY MS. THORSON:
Q. Would you have to make further improvements to the building for a different tenant?
A. It's hard to say.
MR. HAM: Form and foundation.
BY MS. THORSON:
Q. Is that building specifically tailored for Huntington?
A. To a certain degree, yes.
Q. How so?
A. They are in the digital media arts business, and so there's soundproofing, and there's electrical requirements and things that they've -- they've asked to be part of that.
Q. Would you be able to find another tenant that would have those same requirements for the building?
MR. HAM: Form and foundation.
THE WITNESS: Not sure. Not sure. It depends.
BY MS. THORSON:
Q. What does that depend on?
A. How many -- I know it's a growing business. It

Page 106

depends if I want to even go that route again. I may look for a different tenant. It just depends on who is out in the market looking to lease.
Q. Okay. If you did have to find a different type of tenant, what would you have to do to lease the building?
MR. HAM: Form and foundation.
THE WITNESS: It depends on the tenant.
BY MS. THORSON:
Q. So what -- is the lease -- you told me what happens if Huntington doesn't fulfill the lease with Arrowhead. Did you tell me what happens?
A. Yes.
Q. So is the lease with Huntington more risky than a lease with a different client?
A. It's the same risk.
Q. Why?
A. Everything we do is a speculation. It depends on how every business that we work with, how every tenants is successful in their business.
Q. Okay. How much money did it cost Arrowhead to renovate the property at 8385 Mariners Way?
A. I'd have to look at the budgets.
Q. Okay. Please look at Exhibit 3. It contains Arrowhead's response to the material that we subpoenaed.
MR. HAM: Before you answer or ask any

Page 107

questions on this, can I just clarify?
Do I understand you correctly as saying that Exhibit 3 contains every document that Arrowhead produced in response to the subpoena duces tecum?
MS. THORSON: Correct.
MR. HAM: Okay. Thank you.
BY MS. THORSON:
Q. Okay. So if you could please turn to AHE 000002.
MR. MANLEY: And just to clarify, these documents have been disclosed to defendants previously, yes.
MR. HAM: Yes, I believe that's right. I just wanted to make sure that that's -- there was nothing missing in this exhibit. This is the entirety of it.
MR. MANLEY: That's correct.
MR. HAM: Okay.
BY MS. THORSON:
Q. So do you recognize this document?
A. Yes.
Q. What is it?
A. This is a budget.
Q. A budget of what?
A. Soft costs and hard costs related to the project.
Q. Is it accurate?
A. It should be.
Q. Okay. So looking at this document, can you tell

Page 108

how much money it cost Arrowhead to renovate the property at 8385 Mariners Way?
A. There's many different aspects here that seem to be very self-explanatory. The bottom half of the projects, the project budget 1 through 59, all relates to hard costs, which is costs directly with the contractor. And there's other costs above there that are soft costs that are related to plans and acquisition of the building to every other aspect we need to do in order to accomplish this.
Q. So it's like you said. Obvious to you, I'm sure. It's not obvious to me because I don't -- you know, this isn't my field. I don't -- I really wouldn't be able to read the document the way that you're able to.
I see that there is a number on the right that's highlighted in green, 1,811,880.80?
A. Yeah. I don't know why he has that there.
Q. Okay. You don't know what number -- what that --
A. No.
Q. -- represents?
Okay. If you look at the soft costs, there is an item labeled "Marketing and Leasing." And it says $260,000 for marketing and leasing; is that correct?
A. Correct.
Q. Why did it cost 260,000 for marketing and leasing?
A. The commissions that are paid out to brokers that

BY MS. THORSON:
Q. What other conversations did you have with Mr. Berggren about the P83 program?
A. What conversations did I have?
Q. Yes.
A. I'm sure there were conversations that it existed and -- but I don't know the details of those.
Q. Can you remember what Mr. Berggren told you about the P83 program?
A. No, because I was able to research it myself and understand it.
Q. Did Huntington tell you how it wanted Arrowhead to improve the building?
A. Yes.
Q. So did Arrowhead renovate the building for Huntington?
A. Yes.
Q. And can you describe the relationship between Huntington and Arrowhead during that process?
A. The relationship?
Q. Uh-huh. Did you have a good relationship with Huntington during the process?
MR. HAM: Form, foundation.
THE WITNESS: It seemed to go okay.
///

BY MS. THORSON:
Q. Let's turn to AHE 000209.
MR. HAM: "209" you said?
MS. THORSON: Yes.
BY MS. THORSON:
Q. Okay. Were you copied on this email string?
A. It looks like it.
Q. Okay. Now, let's go to 221. As far as you can tell, is that part of the same email string?
A. What was the previous exhibit?
Q. It was 209 was the beginning of that email.
A. It's hard to say. I'm looking for the "Subject" line on this. So if you're telling me it's the same email string, then I'll say that it is.
Q. Well, you can --
A. It's hard to tell.
Q. Yeah. You can take a moment, if you need to, to separate that out and --
A. What's the question?
Q. I just wanted to ask you a question about 221.
A. Okay.
Q. It talks about a seven-year termination right. Do you see where it mentions the seven-year termination right?
A. Yes.
Q. Are you familiar with the context of the seven-year

termination right?
A. If I remember correctly when we were doing this, they were just looking for a seven-year term. I think we moved it to an eight-year term because we wanted a longer term.
Q. Okay. You wanted one more year --
A. Correct.
Q. -- than Huntington did?
A. Correct.
Q. And why is that?
A. It's just a better deal for our investors.
Q. Okay. On that same page, there's an email time stamped at 4:04 p.m. from Bob Klepinger.
A. Okay.
Q. Can you provide context for the numbers that he mentions?
A. No. It looks like he's referring to, at the time, an estimated number that I gave him of 1.4 million for the total number for landlord's costs. And then the 1.85 million is what I think he -- "he" meaning Bob -- may have heard that HU was getting on a EDA.
THE REPORTER: On what?
THE WITNESS: EDA, an Economic Development Agreement.
///

BY MS. THORSON:
Q. So it says:
The lender's underwriting did not make any mention of the TI reimbursement by Peoria (totaling as much as 700,000), so that is one pot we can pull from to try to bring the scale back to equilibrium and still keep lenders moving forward.
What does that mean?
A. The 700,000 is half of the 1.4 million in order to help make the project pencil, which is the P83 program.
Q. Okay. And the 1.4 million in TI allowance was the number you came up with for Huntington, as far as the number you would not exceed for their tenant improvements?
A. This was, I think, all negotiations happening here. The actual lease you read was 1.160.
Q. Right. But that's where that 1.4 comes from. That was your initial number?
A. Initial number, yes.
Q. Okay. And then why would the 1.85 million be in addition to the 1.4 million as why -- I don't understand how those are related.
MR. HAM: Form and foundation.
THE WITNESS: Yeah, I'm not sure what he was trying to say there.
///