

Mascoutah City Council

August 4, 2014

REGULAR MEETING AGENDA

City Council Meeting - 7:00 pm

1. PRAYER & PLEDGE OF ALLEGIANCE
2. CALL TO ORDER
3. ROLL CALL
4. AMEND AGENDA – consideration of items to be added/ deleted to /from the meeting agenda. *No action can be taken on added items, but may be discussed only. Exceptions – emergency items as authorized by law.*
5. MINUTES, July 21, 2014 City Council Meeting (Page 1 to Page 20)
6. PUBLIC COMMENTS (3 minutes) – opportunity for the public to comment.
7. SWEARING IN OF NEW POLICE OFFICER
8. REPORTS AND COMMUNICATIONS
 - A. Mayor
 - B. City Council
 - C. City Manager
 - D. City Attorney
 - E. City Clerk
9. COUNCIL BUSINESS
 - A. Council Items for Action:
 1. First Amendment to the Final Development Agreement – DSS Properties, LLC and SDS Stores, Inc. d/b/a Eddies, Inc. (First Reading)
(Page 1 to Page 32)
Description: Approval of the First Amendment to the Final Development Agreement for Eddies Fuel Cell/Convenience Store and Huddle House Restaurant project with DSS Properties, LLC and SDS Stores, Inc. d/b/a Eddies, Inc. by adoption of Ordinance.
Recommendation: First reading.
 - B. Council – Miscellaneous Items
 - C. City Manager
9. PUBLIC COMMENTS (3 MINUTES)
10. ADJOURNMENT TO EXECUTIVE SESSION - NONE
11. MISCELLANEOUS OR FINAL ACTIONS
12. ADJOURNMENT

POSTED 8/1/14 at 5:00 PM

**1CITY OF MASCOUTAH
CITY COUNCIL MINUTES
#3 WEST MAIN STREET
MASCOUTAH, IL 62258-2030**

JULY 21, 2014

The minutes of the regular meeting of the City Council of the City of Mascoutah.

PRAYER AND PLEDGE OF ALLEGIANCE

City prayer was delivered by City Clerk Kari Haas. The Council remained standing and recited the Pledge of Allegiance.

CALL TO ORDER

Mayor Gerald Daugherty called the meeting to order at 7:00 p.m.

ROLL CALL

Present: Mayor Gerald Daugherty and Council members Ben Grodeon, Paul Schorr and John Weyant.

Absent: Council member Pat McMahan.

Other Staff Present: City Manager Cody Hawkins, City Clerk Kari Haas, City Attorney Al Paulson, Fire Chief Joe Zinck, Police Chief Bruce Fleshren, City Engineer Ron Yeager, Finance Coordinator Lynn Weidenbenner, and Assistant City Manager Lisa Koerkenmeier.

Establishment of a Quorum: A quorum of City Council members was present.

AMEND AGENDA

None.

MINUTES

The minutes of the July 7, 2014 regular City Council meeting were presented and stood as presented.

Motion passed. Passed by unanimous yes voice vote.

PUBLIC COMMENTS

None.

DEPARTMENT REPORTS

Fire Chief Joe Zinck – June 2014 report was provided.

Public Safety Director Bruce Fleshren – June 2014 report was provided. Councilman Schorr commended staff with the fixing of the waterline break and the use of the Code Red notification system.

Finance Coordinator Lynn Weidenbenner – Monthly financials provided.

City Engineer/Director of Public Works Ron Yeager – Status report on public projects and monthly building permits report provided. Councilman Schorr asked about the right of way acquisitions on Fuesser Road. City Engineer stated that they are coming along very well, only have two more to acquire. Councilman Schorr asked about the 2013 roads program and the close-out items and if we are holding money until those are done. City Engineer stated that we are holding money and the close-out items are done but he hasn't had time to review. Mayor asked about the safe route to schools grant and if it is going to be completely funded by the grant or if the City will have expenses. City Engineer stated that right now the project is 100% covered by the grant but if anything goes over the City would have to pay for those. Councilman Grodeon asked about the 2014 roads program and if there was going to be a section done out of MFT. City Engineer stated that John Street will be done for the 2014 roads program and should have bid documents put together soon for construction to start after school starts.

REPORTS AND COMMUNICATIONS

Mayor

Attended the following meetings and functions: Habitat for Humanity meeting, IML Executive Board selection meeting, hosted international visitor from Brussels with representatives from Shiloh and O'Fallon, worked on project at Leu Civic Center to place roof over ADA ramp, Library reading program, SLM Water Commission meeting.

City Council

Grodeon – Attended the following meetings and functions: Habitat for Humanity meeting.

Schorr – Nothing to report.

Weyant – Attended the following meetings and functions: Worked on project at Leu Civic Center to place roof over ADA ramp.

City Manager – Nothing to report.

City Attorney – Nothing to report.

City Clerk – Nothing to report.

COUNCIL BUSINESS

CONSENT CALENDAR (OMNIBUS)

The June 2014 Fund Balance Report and Claims & Salaries Report were provided under the omnibus consideration.

Mayor asked about the expense for Bio Solutions. City Manager stated that it is an annual treatment for the lagoon that is under contract.

Councilman Grodeon asked about the expense with Okawville Electric for a tractor accident. City Manager stated that it was repair due to the tractor accident on North 6th

Street from back in May. City Attorney stated that the City has filed a lawsuit with Wuebbels Farming to recoup all costs involved with the repair.

Weyant moved, seconded by Schorr, to accept all items under Omnibus consideration.

Motion passed. AYE's – Grodeon, Schorr, Weyant, Daugherty. NAY's – none.
ABSENT – McMahan.

PC14-04 – REZONING OF 8.8 ACRES NORTH OF INTERSTATE 64 AND WEST OF IL ROUTE 4 FROM GC, GENERAL COMMERCIAL, TO RM, MULTIPLE-FAMILY RESIDENTIAL (SECOND READING)

City Manager presented report for Council consideration of approval of rezoning of 8.8 acres north of Interstate 64 and west of IL Route 4 from GC, General Commercial, to RM, Multiple-Family Residential, by adoption of ordinance to approve or adoption of resolution to deny.

Schorr moved, seconded by Grodeon, to adopt Resolution No. 14-15-11, denying the rezoning of 8.8 acres north of Interstate 64 and west of Illinois Route 4, subject to the Findings for Denial.

Motion passed. AYE's – Grodeon, Schorr, Weyant, Daugherty. NAY's – none.
ABSENT – McMahan.

POLICE IN-CAR VIDEO PURCHASE

City Manager presented report for Council consideration of approval of the purchase of an in-car video system for the police department.

Councilman Schorr asked about when cars are retired if the equipment will be transferred to the new vehicles. Police Chief stated that the equipment would transfer from car to car.

Councilman Grodeon asked about the information from other departments. Police Chief stated that they have been looking into this for years and there are bugs with any system but this system seems to work very well and is very reliable.

Councilman Schorr asked how long the data would be stored. Police Chief stated that the timeframe will be determined by the City.

Weyant moved, seconded by Grodeon, to approve the purchase of the in-car video system from L3 Mobile Vision, Inc. in the amount of \$49,232.80 and authorize appropriate officials to execute the required documents.

Motion passed. AYE's – Grodeon, Schorr, Weyant, Daugherty. NAY's – none.
ABSENT – McMahan.

BID AWARD – 2014 MFT OIL & CHIP PROGRAM

City Manager presented report for Council consideration of approval and authorization of bids for furnishing and applying oil and chip sealing on various streets identified for the 2014 MFT Oil & Chip Program.

City Manager requested Council table the item until questions regarding the bids can be answered and clarified by IDOT.

Grodeon moved, seconded by Schorr, to table item until next meeting.

Motion passed. AYE's – Grodeon, Schorr, Weyant, Daugherty. NAY's – none.
ABSENT – McMahan.

BID AWARD – MAINTENANCE SHED FOR ELECTRIC DEPARTMENT

City Manager presented report for Council consideration of approval and authorization of bids for furnishing all labor, materials, and equipment to construct the Maintenance Shed for the Electric Department.

Councilman Grodeon stated that he had concerns regarding this item during budget and with the payback being almost 28 years, he still thinks the City would be better off renting a building instead of building one.

Schorr moved, seconded by Weyant, to approve the low bid for furnishing all labor, materials, and equipment for the Maintenance Shed for the Electric Department, awarding it to KRB Excavating Inc. of Trenton, IL in the amount of \$241,000.00 and authorize appropriate officials to execute the necessary documents.

Motion passed. AYE's – Schorr, Weyant, Daugherty. NAY's – Grodeon. ABSENT – McMahan.

ENGINEERING SERVICES – HARNETT STREET IMPROVEMENTS

City Manager presented report for Council consideration of approval of modified Engineering Services Agreement with Oates Associates for providing construction staking for the Harnett Street Improvements Project.

Councilman Grodeon asked if this was in addition to the staking included in the bid award at the last meeting. City Engineer stated that the staking for the contractor is different than that needed and required by City engineering.

Grodeon moved, seconded by Schorr, to accept the City Manager's engineering recommendation to approve the modified contract with Oates Associates for engineering services for the Harnett Street Improvements Project and authorize appropriate City officials to execute the necessary documents.

Motion passed. AYE's – Grodeon, Schorr, Weyant, Daugherty. NAY's – none.
ABSENT – McMahan.

COUNCIL – MISCELLANEOUS ITEMS

Mayor commented on the upcoming Homecoming Parade.

Mayor stated that he supports the City Manager's recommendation on the problem with a building at Scheve Park.

Councilman Grodeon asked if the list of streets to be oiled and chipped can be listed on the website. City Manager stated that it is always included in the newspaper and will be included on the website as well.

Councilman Schorr stated that he had a resident ask about a hump on the bridge on Main Street close to the museum and that it is causing vibration in their house. City Manager stated that it would be an IDOT issue but we could ground it down to try to help alleviate the problem but it will require a more permanent fix from IDOT.

Councilman Weyant asked about the state accepting the maintenance from the City for Main Street and Route 4. City Manager stated that it was done in June. Councilman Weyant asked about the intersection of Route 4 and Route 177 being redone. City Manager stated that we are on IDOT's schedule and are hoping that construction starts in 2015.

Mayor asked about a property on Phillips Street that has trash and other junk and debris in the yard. City Manager stated that they have sent written notices to the owners before and will check on it again.

Mayor asked about property at 305 North 6th Street. City Manager stated that the City has mowed the grass and put liens on the property and will make sure that it is cleaned up again prior to Homecoming.

Councilman Weyant asked about keeping people from blowing grass clippings into the street. City Manager stated that the problem is catching them in the act but to let him know and they will try to contact them to let them know they have to clean it up.

CITY MANAGER – MISCELLANEOUS ITEMS

City Manager provided information to Council regarding the Phase II Electric Project. City Manager stated that funds are budgeted this fiscal year for easement acquisitions and wanted to make sure that it is the direction that Council still wants to go. Council was in agreement to keep moving forward on the project and start easement acquisitions.

PUBLIC COMMENTS

None.

MISCELLANEOUS OR FINAL ACTIONS

None.

ADJOURNMENT

Weyant moved, seconded by Schorr, to **adjourn at 7:44 p.m.**

Motion passed. Motion passed by unanimous yes voice vote.


Kari D. Haas, City Clerk

CITY OF MASCOUTAH

Staff Report

TO: Honorable Mayor and City Council

FROM: Cody Hawkins City Manager

SUBJECT: **First Amendment to the Final Development Agreement – DSS Properties, LLC and SDS Stores, Inc. d/b/s Eddies, Inc. (First Reading)**

MEETING DATE: August 4, 2014

REQUESTED ACTION:

Approval of the First Amendment to the Final Development Agreement for Eddies Fuel Cell/Convenience Store and Huddle House Restaurant Project with DSS Properties, LLC and SDS Stores, Inc. d/b/a Eddies, Inc. by adoption of Ordinance.

BACKGROUND AND STAFF COMMENTS:

On September 6, 2011, the City Council approved by motion a Final Development Agreement with DSS Properties, LLC and SDS Stores, Inc. d/b/a Eddies, Inc. The core of the original agreement included establishment of a Business District and the imposition of a 1% sales tax for a period of up to 23 years to fund the construction of improvements to Perrin Road. Taxable bonds were to be issued for the Perrin Road project for an amount not to exceed \$750,000. Additionally, the City pledged 1% of its portion of regular sales tax generated (1.25%) from the project towards repayment of the issuance of a tax exempt bond. Tax exempt bonds were to be issued for project costs not to exceed \$1.815 million or 30% of the total cost of the project, whichever was the lesser. The amount of sales tax generated from the project, based upon the pro forma submitted by the developer, determined the bond amount in the original development agreement.

The project was completed at a cost of approximately \$6.8 million and has been in operation since the middle of January this year. Perrin Road was constructed at a cost of approximately \$650,000. Prior to the issuance of the bonds, it is required that independent revenue studies are prepared. Development Strategies, Inc. of St. Louis prepared revenue studies for the Huddle House project. The revenue study came in lower than the developer's revenue study and therefore the tax exempt bond amount for the project has been decreased to \$1,416,437. Along with specifying the amount of tax-exempt and taxable bonds to be issued based upon the independent revenue studies, it has also been recommended by our bond counsel that we amend the Development Agreement to include specifically how the developer is to report sales tax revenues, and lastly, that the developer agrees to prohibit all retail entities located on the property from selling any biodiesel fuel that is presently exempt from sales taxes as provided in the Sales Tax Acts while any of the bonds issued by the City for the project are outstanding.

RECOMMENDATION:

Staff recommends that the Council approve the First Amendment to the Final Development Agreement.

SUGGESTED MOTION:

I move that the City Council approve Ordinance 14-____, Approving an Amendment to the Final Development Agreement among the City of Mascoutah, DDS Properties, LLC and SDS Stores, Inc. d/b/a Eddies.

Prepared By: 
Lisa Koerkenmeier, AICP
Assistant City Manager

Approved By: _____
Cody Hawkins
City Manager

Attachments: A – Ordinance
B – First Amendment to Final Development Agreement
C – Original Final Development Agreement

GILMORE & BELL, P.C.
DRAFT 1 – JULY 25, 2014
FOR DISCUSSION PURPOSES ONLY

ORDINANCE NO. _____

AN ORDINANCE APPROVING AN AMENDMENT TO THE FINAL DEVELOPMENT AGREEMENT AMONG THE CITY OF MASCOUTAH, ILLINOIS, DSS PROPERTIES LLC AND SDS STORES, INC. d/b/a EDDIES, INC.

WHEREAS, the City of Mascoutah, Illinois (the “City”) entered into a Final Development Agreement dated as of May 16, 2012 (the “Development Agreement”) with DSS Properties LLC, an Illinois limited liability company (“DSS”), and SDS Stores, Inc. d/b/a Eddies, Inc., an Illinois corporation (“SDS” and, together with DSS, the “Developer”); and

WHEREAS, pursuant to the Development Agreement and to induce the Developer’s undertaking and performance of the project described in the Development Agreement (the “Project”), the City agreed to reimburse the Developer for certain costs related to the Project and to construct certain improvements to Perrin Road; and

WHEREAS, the Developer has completed the Project, which includes a Huddle House restaurant and a fuel service station with convenience store, and the City has completed the improvements to Perrin Road; and

WHEREAS, the City and the Developer desire to enter into a First Amendment to Final Development Agreement (the “First Amendment”) to amend the Development Agreement to, among other things, clarify certain terms of the Development Agreement, including the amount of tax-exempt and taxable bonds to be issued by the City; and

WHEREAS, the City Council hereby determines that the implementation of the First Amendment and the fulfillment of the Development Agreement, as amended by the First Amendment, are in the best interests of the City and the welfare of its residents, and will serve the needs of the community, create jobs, further the development of adjacent areas and strengthen the commercial sector of the City and the region.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF MASCOUTAH, ILLINOIS, AS FOLLOWS:

Section 1. Approval of First Amendment. The City hereby approves the First Amendment, in substantially the form set forth as **Exhibit A** hereto, between the City and the Developer, with such changes therein as shall be approved by the officers of the City executing the First Amendment, such officers’ signatures thereon being conclusive evidence of their approval and the City’s approval thereof.

Section 2. Execution of First Amendment. The Mayor is hereby authorized and directed to execute and deliver the First Amendment, and such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Ordinance for and on behalf of and as the act and deed of the City. The City Clerk is hereby authorized and directed to attest to the First

Attachment A

Amendment and such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Ordinance.

Section 3. Severability. It is hereby declared to be the intention of the City Council that each and every part, section and subsection of this Ordinance shall be separate and severable from each and every other part, section and subsection hereof and that the City Council intends to adopt each said part, section and subsection separately and independently of any other part, section and subsection. If any part, section or subsection of this Ordinance shall be determined to be or to have been unlawful or unconstitutional, the remaining parts, sections and subsections shall be and remain in full force and effect, unless the court making such finding shall determine that the valid portions standing alone are incomplete and are incapable of being executed in accord with the legislative intent.

Section 4. Governing Law. This Ordinance shall be governed exclusively by and construed in accordance with the applicable laws of the State of Illinois.

Section 5. Recitals. The facts and statements contained in the preamble to this Ordinance are found to be true and correct and are hereby adopted as part of this Ordinance.

Section 6. Adoption. This Ordinance shall be in full force and effect from and after its passage, approval and publication, if required, as provided by law.

Passed by the City Council of the City of Mascoutah, Illinois on this 18th day of August, 2014 on the following vote:

YEAS: _____.

NAYS: _____.

ABSENT: _____.

Gerald Daugherty, Mayor

[SEAL]

ATTEST:

Kari Haas, City Clerk

EXHIBIT A

FORM OF FIRST AMENDMENT TO FINAL DEVELOPMENT AGREEMENT

FIRST AMENDMENT TO FINAL DEVELOPMENT AGREEMENT

THIS FIRST AMENDMENT TO FINAL DEVELOPMENT AGREEMENT (this “Amendment”) is made and entered into as of _____, 2014 (the “Effective Date”), by and among the **CITY OF MASCOUTAH, ILLINOIS**, a home rule municipality organized as a municipal corporation of the State of Illinois (the “City”), **DSS PROPERTIES LLC**, an Illinois limited liability company (“DSS”) and **SDS STORES, INC. d/b/a EDDIES, INC.** (“SDS” and collectively with DSS, the “Developer”). *Capitalized terms used herein and not otherwise defined shall have the meanings set forth in the below-defined Original Development Agreement.*

RECITALS

A. The City and the Developer are parties to a Final Development Agreement dated May 16, 2012 (the “Original Development Agreement” and, together with this Amendment, this “Agreement”), pursuant to which the Developer agreed to construct a project described therein (the “Project”) on the real property described on **Exhibit A** hereto and the City agreed, in recognition of the Project’s potential for job creation and stimulation of further investment, to provide the Developer with certain incentives to assist in the development of the Project.

B. The City and the Developer desire to amend the Original Development Agreement to, among other things, clarify certain terms of the Original Development Agreement, including the amount of tax-exempt and taxable bonds to be issued by the City.

AGREEMENT

NOW THEREFORE, in consideration of the above premises and the mutual obligations of the parties hereto, each party hereby agrees that the Original Development Agreement shall be and is hereby amended as provided below.

1. Amount of Tax-Exempt Bonds. Notwithstanding anything in the Original Development Agreement to the contrary, the amount of tax-exempt bonds to be issued to reimburse the Developer for eligible project costs (net of capitalized interest, costs of issuance and any reserve fund requirement) will be the least of (a) \$1,815,000, (b) 30% of the total cost of the Project, or (c) the amount supported by the revenue study prepared by Development Strategies as determined by Stifel Nicolaus & Company, Incorporated.

2. Amount of Taxable Bonds. Notwithstanding anything in the Original Development Agreement to the contrary, the amount of taxable bonds to be issued to pay or reimburse the City for improvements to Perrin Road (net of capitalized interest, costs of issuance and any reserve fund requirement) will be \$650,000.

3. Cooperation in Determining Sales Tax Revenues. The Developer agrees to cooperate and take all reasonable actions necessary to cause (a) the sales tax levied by the State of Illinois and collected on the City’s behalf by the Department of Revenue pursuant to the Illinois Retailers’

Attachment B

Occupation Tax Act, 35 ILCS 120/1 et seq. and the Illinois Service Occupation Tax Act, 35 ILCS 115/1 et seq. (the 1% local portion), and such other authority as shall be applicable pursuant to any successor statutes that result from retail sales of all businesses located at the Project (the "Sales Tax Revenues") and (b) the one percent (1%) retailers' occupation and service occupation tax imposed by the City pursuant to the Business District Act and collected from all retail sales of all businesses located at the Project (the "Business District Sales Tax Revenues") to be paid into the funds and accounts as provided in the trust indentures authorizing the bonds, including the City's enforcement and collection of all such payments through all reasonable and ordinary legal means of enforcement.

To assist the City in calculating Sales Tax Revenues and Business District Sales Tax Revenues, the Developer (or its successor(s) in interest as owner or owner(s) of the Project) agrees to use all reasonable efforts to:

(a) Cause businesses operating within the Project and required by law to file a Sales Tax Report, to file a separate Sales Tax Report for each separate business operation within the Project in order to separately identify and declare all Sales Tax Revenues and Business District Sales Tax Revenues.

(b) Cause any business operating within the Project and required by law to file a Sales Tax Report, to designate sales subject to the Sales Tax Acts to be reported as originating from within the Project to the fullest extent permitted by law (including, but not limited to, the inclusion of a clause so providing in any subleases of the Project).

(c) Cause any retail business operating within the Project and required by law to file a Sales Tax Report, at the time of each filing of an Illinois Department of Revenue form ST-1 or any successor reporting form with the Illinois Department of Revenue, to provide a copy of such form to the City.

(d) Cause any retail business operating within the Project and required by law to file a Sales Tax Report, to supply or cause to be supplied the appropriate authorizations to the Illinois Department of Revenue in substantially the form attached hereto as **Exhibit B** to provide such information directly to the City.

The Developer agrees to cooperate and to take all additional reasonable actions necessary to ensure accurate calculation and deposits of all Sales Tax Revenues and Business District Sales Tax Revenues. The City shall arrange with the Illinois Department of Revenue for the systematic receipt of sales tax information for the Project.

The Developer consents to the (a) release to Stifel, Nicolaus & Company, Incorporated and its consultants by the appropriate officials of the City, of the Sales Tax Revenues and Business District Sales Tax Revenues generated from sales occurring at the Project, and (b) continuing disclosure of such sales tax information as part of any continuing disclosure obligations undertaken in connection with bond financings relating thereto.

For the purposes of **Sections 3 and 4**, the following terms shall have the following meanings:

"Sales" shall mean all taxable transactions pursuant to the Sales Tax Acts, including sales of qualifying food, drugs, medical appliances, items required to be titled or registered and all other general merchandise from the Project as required to be reported in the Sales Tax Reports.

"Sales Tax Acts" shall mean the Service Occupation Tax Act (35 ILCS 115/), the Retailers' Occupation Tax Act (35 ILCS 120/) and any new or successor statutes or enabling authority authorizing the imposition of taxes on Sales or transactions similar to those subject taxation pursuant to the acts set forth in this sentence.

"Sales Tax Report" shall mean any of forms ST-1, ST-2 and ST-556 and any reports of taxable Sales required to be filed pursuant to the Sales Tax Acts, including any successor or comparable forms promulgated by the Illinois Department of Revenue.

Any purchaser or transferee of real property upon which the Project is situated, and any lessee or other user of such real property, shall use all reasonable efforts to timely furnish to the City such documentation as is required by this **Section 3**. So long as any bonds issued by the City for the Project are outstanding, such obligation shall be a covenant running with the land and shall be enforceable as if such purchaser, transferee, lessee or other user of such real property were originally a party to and bound by this Agreement.

4. Bio-Diesel Fuel. The Developer covenants to prohibit all retail entities located on the Property from selling any biodiesel fuel that is exempt from sales taxes as provided in the Sales Tax Acts while any of the bonds issued by the City for the Project are outstanding. So long as any such bonds are outstanding, such prohibition shall be a covenant running with the land and shall be enforceable as if such purchaser, transferee, lessee or other user of such real property were originally a party to and bound by this Agreement.

5. Ratification and Approval. This Amendment is made in accordance with Section (10)b of the Original Development Agreement. Except as modified herein, the Original Development Agreement is hereby ratified and confirmed, and except for the modifications contained herein, all other terms and conditions of the Original Development Agreement shall remain unchanged and in full force and effect.

6. Binding Effect. This Amendment shall be binding upon the Developer and the City and their respective successors and assigns.

7. Counterparts. This Amendment may be executed in counterparts, each of which shall be deemed an original and all of such counterparts, taken together, shall constitute one and the same agreement, even though all of the parties hereto may not have executed the same counterpart of the Amendment.

8. Severability. If any provision of this Amendment shall be unlawful, then such provision shall be null and void, but the remainder of this Amendment shall remain in full force and effect and be binding on the parties.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the City, DSS and SDS have caused this Amendment to be executed as of the date set forth above.

CITY OF MASCOUTAH, ILLINOIS

(SEAL)

By: _____
Gerald E. Daugherty, Mayor

Attest:

Kari Haas, City Clerk

STATE OF ILLINOIS)
) SS
COUNTY OF ST. CLAIR)

On this ____ day of August, 2014, before me appeared **GERALD E. DAUGHERTY**, to me personally known, who, being by me duly sworn, did say that he is the Mayor of the **CITY OF MASCOUTAH, ILLINOIS**, a home rule municipality organized as a municipal corporation of the State of Illinois, and that the seal affixed to the foregoing instrument is the seal of said City, and said instrument was signed and sealed in behalf of said City by authority of its City Council, and said **GERALD E. DAUGHERTY** acknowledged said instrument to be the free act and deed of said City.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

Name: _____
Notary Public - State of Illinois
Commissioned in _____ County

(SEAL)

My Commission Expires:

DSS PROPERTIES LLC

By: _____
Name: _____
Title: _____

STATE OF ILLINOIS)
) SS
COUNTY OF ST. CLAIR)

On this _____ day of August, 2014, before me appeared _____, to me personally known, who, being by me duly sworn, did say that he is the _____ of **DSS PROPERTIES LLC**, an Illinois limited liability company, and that he is authorized to sign the instrument on behalf of said company, and acknowledged to me that he executed the within instrument as said company's free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

Name: _____
Notary Public - State of Illinois
Commissioned in _____ County

(SEAL)

My Commission Expires:

SDS STORES INC. d/b/a EDDIES, INC.

By: _____
Name: _____
Title: _____

STATE OF ILLINOIS)
) SS
COUNTY OF ST. CLAIR)

On this _____ day of August, 2014, before me appeared _____, to me personally known, who, being by me duly sworn, did say that he is the _____ of **SDS STORES INC. d/b/a EDDIES, INC.**, an Illinois corporation, and that he is authorized to sign the instrument on behalf of said corporation, and acknowledged to me that he executed the within instrument as said company's free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

Name: _____
Notary Public - State of Illinois
Commissioned in _____ County

(SEAL)

My Commission Expires:

EXHIBIT A
LEGAL DESCRIPTION OF PROJECT SITE

EXHIBIT B

AUTHORIZATION TO RELEASE SALES TAX INFORMATION TO LOCAL GOVERNMENTS

City of Mascoutah

#3 West Main
Mascoutah, Illinois
62258
(618) 566-2964



FINAL DEVELOPMENT AGREEMENT

This Agreement made and entered into this 16th day of MAY, 2012 by and between the City of Mascoutah, Illinois, a Home Rule municipality organized as a municipal corporation of the State of Illinois (hereinafter the "City"), and DSS Properties LLC, SDS Stores Inc., d/b/a Eddies, Inc (hereinafter "Owner/Developer" or "Developer").

WITNESSETH:

Whereas, Owner has a contract with the owner of record to purchase certain real property located in the City of Mascoutah IL., in St. Clair County, Illinois more fully described on **Exhibit A** attached hereto and incorporated herein by reference (hereinafter the "Property"); and

Whereas, the Developer is desirous of constructing certain improvements including, but not limited to, a fuel service station – convenience store with attached 24 hour Huddle House restaurant, with separate fuel canopies for automobiles and tractor-trailers

Whereas, Developer has represented and demonstrated to City that significant potential public benefits attend the development of the Property; and

Attachment C

within the City limits north of Interstate 64, at one percent, for uses hereinafter specified, including, but not limited to, the improvement of approximately 900 feet of Perrin Road east from Illinois Route 4, consistent with City and IDOT specifications for tractor trailers.

- 5.) The City agrees to request that the Project be added to the adjacent Enterprise Zone and that all sales tax on construction materials for the Project be waived in accordance with the Enterprise Zone Statutes and Illinois Department of Revenue regulations thereby. The City and Developer hereby agree to cooperate in the application for and coordination of the sales tax abatement referred to in this Paragraph 5.
- 6.) The City hereby certifies that the Project is currently zoned "GC" General Commercial and is suited for the Developer's proposed uses including, but not limited to, a fuel cell gas/diesel convenience station with attached 24 hour Huddle House restaurant. The Developer certifies that the Project will conform to the general use restrictions of the City's Airport Overlay Zoning District, as stated in Section 34-6-8 of the City Development Code.
- 7.) The Developer will commence permitting and construction of the Project within 24 months of approval of this Agreement.
- 8.) Upon substantial completion of construction the City shall commence improvements to Perrin Road, which shall be reimbursed through payments from District revenues.

but are not limited to fuel or fuel supplies, retail stock, food supplies, office supplies, equipment or other start up costs to run the business.

- h. Don Schomaker and Tim Armstrong, and their spouses, agree they shall pledge a signed personal guarantee for the project improvements funded by the taxable bonds, excluding public improvements (i.e.: Perrin Road) should the Project cease operations after said improvements are completed. This Paragraph shall be in effect for a period of seven (7) years, or until the costs said improvements are reimbursed, whichever comes first.

10.) The intensity of the development warrants completion of street improvements to Perrin Road. The improvement shall consist of upgrading Perrin Road to City and IDOT standards for tractor trailer traffic, along the north and east property boundaries of the site as depicted in **Exhibit A**.

A. The Developer shall be responsible for the cost *and the construction(which may be completed by the City)* of this Perrin Road improvement.

B. To assist with the cost of Perrin Road improvements:

- 1. The City shall institute a Special Business District (SBD) Sales Tax to fund the construction of improvements to Perrin Road, as well as other items so listed within

the District Ordinance, but excluding soft costs as noted in Paragraph 9.g of this Agreement.

2. Taxable bonds shall be issued for said improvements, for an amount not to exceed \$750,000.
3. Improvements to Perrin Road shall be funded to a maximum of \$300,000.
4. Additional project improvements shall be funded to a maximum of \$325,000.
5. Proceeds from the taxable bond sale shall be held by the City; the Developer shall submit invoices for payment upon commencement of construction of the aforementioned project and public improvements, which shall be verified and paid by the City, up to the maximums noted in the two previous paragraphs.

Basic Legal Items

- (1) **Ordinance.** This Agreement and the effectiveness of the zoning as described herein shall be expressly contingent upon proper ordinances being duly enacted as herein described upon the terms and conditions as herein agreed to.
- (2) **Severability.** In the event any part or portion of this Agreement is held partially invalid or unenforceable by a court of competent

jurisdiction, the remaining portions hereof shall continue in full force and effect.

- (3) **Continuity of Obligations.** Except as otherwise herein provided, this Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns, including successor corporate authorities to the City.
- (4) **Covenants Running with the Land.** The covenants and agreements herein contained, including the covenants and agreements in respect to payments to be made by any party to another as well as the covenants and agreements in respect to the benefits to be derived by such payments shall run with the land, and the liability to perform and the right to enforce performance of the same shall pass to the heirs and assigns of the respective parties hereto. This Agreement may be recorded by any party.
- (5) **Representations.** The parties hereto represent and warrant to each other as of the date hereof that the execution, delivery and performance of this Agreement by each of them has been duly authorized and the Agreement constitutes the valid and binding obligation of each of them.
- (6) **Additional City Covenants.**

- (7) **Notices.** All notices, requests and demand required or permitted hereunder shall be in writing and shall be deemed given when personally delivered or three (3) business days after deposit with the U.S. Postal Service, postage prepaid, registered or certified mail, return receipt requested, as follows:

a. If to the City:

City of Mascoutah, Illinois
Attn: City Manager
#3 West Main Street
Mascoutah, Illinois 62258

b. If to Developer:

_DSS Properties Inc., d/b/a SDS Stores, Inc.
Attn: Don Schomaker
7680 St. Highway 161
Germantown, IL 62245

(8) **Continuing Cooperation.**

- a. The parties hereto shall deliver or cause to be delivered at such times and places as shall be reasonably agreed, such additional instruments as any party may reasonably request for the purpose of carrying out this Agreement.
- b. City and Developer agree that they shall not unreasonably withhold or delay any action required to carry out the terms provisions and intent of this Agreement, provided that nothing herein shall be construed to obligate the City to grant municipal permits or other approvals it would not

be obligated to grant, acting as a municipal corporation, absent this Agreement.

(9) **Choice of Law.** This Agreement shall be construed and enforced in accordance with the laws of the State of Illinois. Any action under this Agreement and any action arising out of, or concerning, this Agreement shall only be brought in the Circuit Court of St. Clair County, Illinois.

(10) **Entire Agreement.**

- a. This Agreement constitutes the entire agreement among the parties hereto relating to the subject matter hereof, and no other agreements or representations other than those contained herein have been made by the parties.
- b. This Agreement may be amended only by written amendment duly signed by the parties hereto, and shall be effective only when signed by the authorized agents of such parties.
- c. This Agreement shall inure to the benefit of the successors and assigns of any of the other parties.

(11) **Headings.** The headings contained in this Agreement are for convenience of reference only, and shall not be deemed to limit or expand the contents of the paragraphs contained in this Agreement.

(12) **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall constitute an original, but all of which taken together shall constitute one and the same instrument. Signature to any one counterpart shall be deemed signature to all.

In Witness Whereof, the parties have hereunto set their hands the day and year first above written.

CITY OF MASCOUTAH, ILLINOIS

By: Gerald E. Daugherty

Gerald Daugherty, Mayor

SEAL:



Attest: Melissa A. Schanz

Title Deputy City Clerk

By: Don Schomaker

Name DON SCHOMAKER

By: Timothy E. Armstrong

TIMOTHY E. ARMSTRONG

DSS PROPERTIES

a LLC company

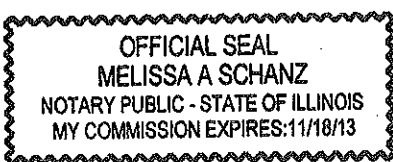
By: Don Schomaker

SEAL:

State of Illinois)
) ss
County of St. Clair)

On this 16th day of May, 2012, before me, a Notary Public in and for said state, personally appeared Gerald Daugherty, Mayor, known to me to be the person who executed the foregoing instrument on behalf of the City of Mascoutah, Illinois, and that the seal affixed to the foregoing instrument is the corporate seal of said City and that said instrument was signed and sealed on behalf of said City by authority of its City Council and said Gerald Daugherty acknowledged said instrument to be the free act and deed of said City.

In Testimony Whereof, I have set my hand and affixed my official seal.



Melissa A. Schanz
Notary Public

My Commission Expires: 11-18-13

State of Illinois)
) ss
County of St. Clair)

On this 16TH day of MAY, 2012, before me, a Notary Public in and for said state, personally appeared DON SCHOMAKER & TIMOTHY B. ARMSTRONG known to me to be the persons who executed the foregoing


Notary Public

"OFFICIAL SEAL"
RICHARD J. KNEBEL
 Notary Public, State of Illinois
 My commission expires 4/16/2015

Richard D. Hubel
Notary Public

"OFFICIAL SEAL"
RICHARD J. KNEBEL
 Notary Public, State of Illinois
 My commission expires 4/16/2015

