

REQUESTED BY:

DATE OF FIRST READING: 7-1-2014

WAIVE RULES?  YES  NO

FINAL ACTION DATE: 7-1-2014

VOTE:  YES  NO

SUSPENSION OF TWO READING RULE:

ADOPTION OF ORDINANCE:

YES	NO
<u>ABSENT</u>	_____
<input checked="" type="checkbox"/>	_____
<input checked="" type="checkbox"/>	_____
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<u>6</u>	<u>0</u>

DENISE LINGO  
 JAMES WOLF  
 JENNIFER MOODY  
 GERALDINE BRANDY  
 ROBERT PARSONS  
 JEANNE GEORGE  
 JUDY PETERSEN  
 TOTALS

YES	NO
<u>ABSENT</u>	_____
<input checked="" type="checkbox"/>	_____
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<u>6</u>	<u>0</u>

ORDINANCE NO. 14-1707

**AN ORDINANCE APPROVING A CONTRACT WITH THE SPRINGFIELD TOWNSHIP JOINT ECONOMIC DEVELOPMENT ZONE I BOARD OF DIRECTORS FOR THE ADMINISTRATION, COLLECTION AND ENFORCEMENT OF THE JEDZ I TAX AND DECLARING AN EMERGENCY**

**WHEREAS**, pursuant to Section 715.691(H)(4) of the Ohio Revised Code and Section 4.3 of the Springfield Township Joint Economic Development Zone I Contract with the City of Mt. Healthy ("JEDZ I Contract"), the Springfield Township JEDZ I Board of Directors ("JEDZ I Board") adopted Resolution Number 02-2014 levying an income tax in the JEDZ I territory and mandating that the JEDZ I Board of Directors, by separate resolution, enter into an agreement with the City of Mt. Healthy to administer, collect, and enforce the income tax on behalf of the JEDZ I territory; and

**WHEREAS**, the terms of the agreement for the administration, collection and enforcement of the JEDZ I income tax were, in large part, included in the JEDZ I Contract and the City of Mt. Healthy desires to fulfill its obligations under the terms of that Contract;

**NOW THEREFORE**, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MT. HEALTHY, STATE OF OHIO:

**Section 1.** The City Council of the City of Mt. Healthy hereby approves the Agreement for the Administration, Collection and Enforcement of an Income Tax in the Joint Economic Development Zone I Territory ("Agreement") as follows:

**AGREEMENT FOR THE ADMINISTRATION, COLLECTION AND ENFORCEMENT OF AN INCOME TAX IN THE JOINT ECONOMIC DEVELOPMENT ZONE I TERRITORY**

This Agreement For the Administration, Collection And Enforcement Of An Income Tax In The Joint Economic Development Zone I Territory (hereinafter referred to as the "Agreement") is made and entered this 1st day of July, 2014, by and between the Springfield Township Joint Economic Development Zone I Board of Directors

(hereinafter referred to as the "JEDZ I Board" or the "Board") and the City of Mt. Healthy, located in Hamilton County, Ohio (hereinafter referred to as "Mt. Healthy" or "the City"). The parties hereto may be collectively referred to as the "Contracting Parties" and individually as the "Contracting Party."

**WITNESSETH:**

**WHEREAS**, Ohio Revised Code Section 715.691(B) authorizes one or more townships and one or more municipal corporations to enter into a contract whereby they agree to share in the costs of improvements for an area located in one or more of the contracting parties which they designate as a joint economic development zone (hereinafter referred to as a "JEDZ") for the purpose of facilitating new or expanded growth for commercial or economic development in the state;

**WHEREAS**, Springfield Township and Mt. Healthy created such a JEDZ area in Springfield Township and entered into a contract pursuant to Section 715.691 of the Ohio Revised Code for the purposes stated therein;

**WHEREAS**, on May 6, 2014, a majority of the electors of Springfield Township voting on the issue of the creation of the JEDZ I territory approved the creation of the territory and the contract between Springfield Township and the City of Mt. Healthy;

**WHEREAS**, on May 21, 2014, the Hamilton County Board of Elections certified the results of the election and the passage of the issue to approve the creation of the JEDZ I territory and the contract between Springfield Township and the City of Mt. Healthy;

**WHEREAS**, on July 1, 2014, pursuant to Section 3.11 and Article IV of the Springfield Township Joint Economic Development Zone I Contract with Mt. Healthy ("JEDZ I Contract"), the JEDZ I Board of Directors adopted Resolution 02-2014, levying an income tax within the entire JEDZ I territory at a rate of one and one half percent (1½ %);

**WHEREAS**, pursuant to Section 715.691(H)(4) of the Ohio Revised Code and Section 4.3 of the JEDZ I Contract, Resolution Number 02-2014 mandated that the JEDZ I Board of Directors, by separate resolution, enter into an agreement with Mt. Healthy to administer, collect, and enforce the income tax on behalf of the JEDZ I territory; and

**WHEREAS**, the JEDZ I Board of Directors wishes to enter into an agreement with Mt. Healthy to administer, collect, and enforce the income tax on behalf of the JEDZ I Board of Directors.

**NOW, THEREFORE**, in consideration of the mutual promises contained in this Agreement, the JEDZ I Board and Mt. Healthy agree to bind themselves, their agents, employees and successors as follows:

**ARTICLE I**

**Consistency with the Mt. Healthy City Tax Ordinance No. 384-A**

**Section 1.1:** The income tax levied in the JEDZ I territory shall be consistent with the provisions of the City Tax Ordinance No. 384-A, thereafter codified as Chapter 39 (incorporated herein by reference), as it may be amended from time to time; subject however to exceptions, limitations, or other provisions in this Agreement, the JEDZ I Contract, or according to law.

**Section 1.2:** Notwithstanding the above, the Board may designate those provisions of the City Income Tax Ordinance, and as it may be amended from time to time, which are not applicable to taxation within the JEDZ I; provided however, the Board may not exceed the taxing authority permitted by the City Income Tax Ordinance without consent of Springfield Township and the City of Mt. Healthy.

## **ARTICLE II**

### **Designation of Administrator/Tax Collection Service Provider**

**Section 2.1:** Mt. Healthy's Finance Director hereinafter referred to as "the Administrator") shall serve as the Administrator of the income tax derived from the JEDZ I and shall be responsible for the receipt, safekeeping, accounting, and investment of income tax revenues pending disbursement.

**Section 2.2:** Mt. Healthy shall contract with the Regional Income Tax Agency (hereinafter referred to as "RITA") for registration, collection, compliance, and enforcement services related to the JEDZ I income tax. In the event that RITA ceases to exist or is no longer deemed to be an acceptable service provider, a new tax collection service provider shall be selected by mutual agreement of the parties and such successor shall have the same authority and obligations as are outlined for RITA under the terms of this Agreement.

## **ARTICLE III**

### **Duties/Authority of Administrator/Tax Collection Service Provider**

**Section 3.1:** RITA has authority to grant refunds and to compromise claims for tax, penalties, and interest. RITA has authority to commence legal proceedings pertaining to delinquent tax collection and enforcement, and declaratory judgment regarding disputed interpretation and applicability of the City Income Tax Ordinance within the JEDZ I. RITA is authorized to investigate and audit taxpayer returns and to issue subpoenas in furtherance of its duties.

**Section 3.2:** RITA shall disburse all tax revenues, collections, or payments of any kind received by RITA (minus any service fees authorized by this Agreement) to the Administrator on at least a monthly basis.

**Section 3.3:** The Administrator shall deposit all receipts received from RITA into a separate JEDZ I account which shall not be mingled with revenue from other sources. Earnings on the JEDZ I account and investments related thereto shall be added to the account.

**Section 3.4:** The Administrator, the City, and/or RITA are designated to be interested parties and are authorized to commence and defend legal proceedings in the name of the JEDZ I in any way pertaining to the income taxation within the JEDZ I.

**Section 3.5:** The Administrator or the City shall report quarterly to the Board and Springfield Township regarding receipt and distribution of income tax revenue including amounts retained in escrow. The Administrator shall furthermore report quarterly regarding JEDZ I operating income and expenses for the preceding quarter and, if requested by Springfield Township or the City, shall provide short term and long range projections concerning anticipated income and expenses associated with JEDZ I operations. The Administrator shall provide monthly reports to the Board Secretary regarding all revenue with taxpayer sources.

## **ARTICLE IV**

### **Compensation**

**Section 4.1:** In consideration of the services rendered pursuant to this Agreement, RITA shall be paid a service fee equal to the percentage charged by RITA based on its standard formula for cost recovery up to a maximum annual service fee of SEVENTY-FIVE THOUSAND DOLLARS (\$75,000.00). Given the length of the term of the JEDZ I Contract, the maximum annual service fee may be increased, to compensate for inflation, by mutual, written agreement of Springfield Township and Mt. Healthy.

Should the annual service fee exceed Seventy-Five Thousand dollars (\$75,000.00) or other maximum amount established by the Parties, any such excess shall be paid to RITA directly by the City and shall not be paid by a reduction in the Net Tax Revenue distribution amount received by the City pursuant to Section 6.3 of this Agreement.

**Section 4.2:** Some or all of this service fee may be retained by RITA from tax revenues received prior to transfer of the funds to the Administrator for disbursement. In the event that the annual service fee exceeds the amount retained by RITA pursuant to this Section, RITA shall invoice the Administrator for the balance of the annual service fee at the end of the calendar year. Pursuant to the JEDZ I Contract, Springfield Township shall pay the invoice up to the amount, if any, which, when added to the prior service fee payment amounts, does not exceed the maximum annual service fee outlined in this Agreement or later established by the Parties. That portion of the invoice, if any, which, when added to the prior service fee payments made, results in an annual service fee exceeding the maximum annual service fee outlined in this Agreement or later established by the Parties shall be paid by the City.

**Section 4.3:** The service fee may be applied to administrative costs at RITA's discretion, but shall also be applied to the costs of collection and litigation, including, but not limited to, attorney fees, court costs, expert fees, and court reporter fees.

## **ARTICLE V**

### **Escrow Account and JEDZ Board Maintenance/Expense Funds**

**Section 5.1:** The Administrator shall pay two percent (2%) of the Gross Tax Revenue into escrow. Escrow proceeds may be utilized to pay refunds, and in general to balance accounts. In the event of an escrow deficiency, the Administrator may invoice Springfield Township and Mt. Healthy according to their Net Tax Revenue distribution percentages established in Section 6.3 to satisfy the deficiency. Invoices for deficiency are due and payable within thirty (30) days from the date of the notice. At the end of each calendar year, any escrow surplus shall be distributed as part of the Net Tax Revenue. Earnings achieved on any surplus escrow shall be added to the escrow fund.

**Section 5.2:** During the first year of the JEDZ I, the Administrator shall pay ONE THOUSAND DOLLARS (\$1,000.00) to the Board for maintenance of the JEDZ I and reasonable expenses of the Board. Springfield Township and Mt. Healthy may authorize the Administrator to pay additional funds to the Board if they determine by mutual agreement that such funds are warranted. In subsequent years, the Administrator shall pay to the Board such amounts as are necessary to ensure that the Board begins each year with a balance of one thousand dollars (\$1,000.00) or such other amount as has been determined by Springfield Township and Mt. Healthy. In the event that the Board is unable to utilize any funds authorized and paid by the Administrator for the purposes for which the funds were authorized, those funds shall be returned to Springfield Township and Mt. Healthy by the Board within ninety (90) days after it is determined that the funds cannot be utilized for their authorized purposes. Any such returned funds will be distributed according to the Net Tax Revenue distribution percentages established in Section 6.3 of this Agreement.

## **ARTICLE VI**

### **Calculation and Distribution of Tax Revenues**

**Section 6.1:** The Administrator shall determine the Gross Tax Revenue and the Net Tax Revenue amounts as follows:

The Gross Tax Revenue shall be the total amounts collected by RITA in any given time period, without regard to the tax year in which the amount should or could have been collected and without subtracting any fees, costs or expenses.

The Net Tax Revenue shall be the Gross Tax Revenue minus the sum of the service fee retained by or paid to RITA (up to the annual maximum service fee amount) and the escrow payment and the maintenance/expense fund payment.

**Section 6.2:** The Net Tax Revenue shall be distributed to Springfield Township and Mt. Healthy pursuant to Section 6.3 of this Agreement.

**Section 6.3:** Net Tax Revenue from the JEDZ I shall be paid at least monthly according to the following formula:

- a. Until such time as the Annual Gross Tax Revenue exceeds \$1.5 million, Springfield Township shall receive eighty-five percent (85%) of the Net Tax Revenue and Mt. Healthy shall receive fifteen percent (15%) of the Net Tax Revenue.
- b. Once the Annual Gross Tax Revenue exceeds \$1.5 million, Springfield Township shall receive ninety (90%) of the Net Tax Revenue derived from Annual Gross Tax Revenue above \$1.5 million, and Mt. Healthy shall receive ten percent (10%).

Annual Gross Tax Revenue shall be the total amounts collected by RITA during any given calendar year, without regard to the tax year in which the amount should or could have been collected and without subtracting any fees, costs or expenses.

## **ARTICLE VII Miscellaneous Provisions**

**Section 7.1:** The Agreement may be amended from time to time pursuant to a written agreement authorized by the JEDZ I Board and the City.

**Section 7.2:** Non-performance of a contractual duty, unless excused by consent or by operation of law shall constitute a default. A Contracting Party who questions another party's ability to perform may request adequate assurances in lieu of declaring a default. Any Party who contends the existence of a default shall provide notice declaring default to the other Contracting Party. A defaulting party shall have sixty (60) days in which to cure the default or to indicate action intended to cure the default by substantial performance as soon as practicable.

In the event that a default is not cured, the Party who contends the existence of a default may initiate legal proceedings. In the alternative to judicial legal proceedings, the Contracting Parties may consent to alternative dispute resolution. The parties acknowledge that specific performance and other equitable remedies may be appropriate to assure performance due to the potential for irreparable harm upon a default.

**Section 7.3:** This Agreement shall be governed exclusively by and construed in accordance with the laws of the State of Ohio. All disputes, suits, and legal claims of any type related to this Agreement or its breach shall be brought in the courts of Hamilton County, Ohio.

**Section 7.4:** Each section, paragraph, provision, covenant, agreement, obligation or action or any part thereof, shall be deemed to be effective, operative, made, assumed, entered into or taken in the manner and to the full extent permitted by law. The invalidity or unenforceability of any term or covenant of this Agreement shall not affect the validity or enforceability of the remaining terms and covenants.

**Section 7.5:** The captions and headings contained in this Agreement are provided for convenience and are not intended to affect interpretation or application of any provision of the Agreement.

**Section 7.6:** All notices, demands, or required communications between the Contracting Parties shall be in writing and shall be sent via U.S. mail or by courier with delivery receipt as follows:

- A. JEDZ I Board of Directors

Springfield Township Administration Building  
9150 Winton Road  
Springfield Township, Ohio 45231

Attn: Township Administrator  
Michael T. Hinnenkamp

With a copy to:

Springfield Township Law Director  
Laura A. Abrams  
The Abrams Law Firm LLC  
365 Wood Street  
Batavia, Ohio 45103

B. City of Mt. Healthy  
7700 Perry Street  
Mt. Healthy, Ohio 45231

Attn: City Manager  
Bill Kocher

With a copy to:

City of Mt. Healthy Law Director  
Stephen G. Wolf  
7700 Perry Street  
Mt. Healthy, Ohio 45231

A contracting party may designate a substitute or additional contacts. Any communications disseminated via electronic media (e.g., facsimile, E-MAIL) or other media shall not be effective unless confirmed in writing. The parties may dispense with written notice as a condition to any action by written consent or agreement.

**INTENDING TO BE LEGALLY BOUND**, the JEDZ I Board of Directors and the City of Mt. Healthy City Council have caused this Agreement to be duly executed by their authorized signatories.

**JEDZ I Board of Directors**

By: \_\_\_\_\_  
Chris Gilbert , Chairperson

Pursuant to Authority of Resolution No. 02-2014

**City of Mt. Healthy City Council**

By: \_\_\_\_\_  
Joseph Roetting, Mayor

Pursuant to Authority of Ordinance No. 14-1707

**Approved:**

\_\_\_\_\_  
Laura A. Abrams  
Law Director  
Springfield Township

\_\_\_\_\_  
Stephen G. Wolf  
Law Director  
City of Mt. Healthy

**Section 2.** The Mayor is hereby authorized to execute the Agreement on behalf of the City of Mt. Healthy.

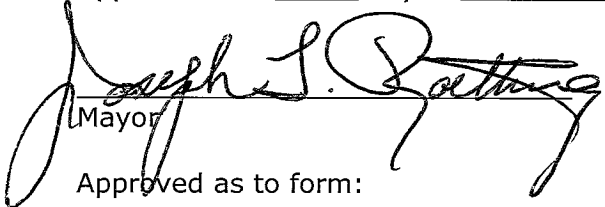
**Section 3.** This ordinance is declared to be an emergency measure necessary for the immediate preservation of the public peace, healthy, and safety of the City of Mt. Healthy and its inhabitants. The reason for the emergency is to provide for the timely compliance with the JEDZ I Contract and efficient collection of the Income Tax within the JEDZ I territory.

Passed this 1 day of July, 2014.


  
\_\_\_\_\_  
President of Council

Attest:   
\_\_\_\_\_  
Clerk of Council

Approved this 1 day of July, 2014.

  
\_\_\_\_\_  
Mayor

Approved as to form:

  
\_\_\_\_\_  
Law Director