



City of Grand Island

Tuesday, June 27, 2017

Council Session

Item I-4

#2017-191 - Consideration of Approving Economic Development Incentive Agreement with Hendrix ISA, LLC, 621 Stevens Road, Ephrata, Pennsylvania

Staff Contact: Marlan Ferguson

Council Agenda Memo

From: Marlan Ferguson, City Administrator

Meeting: June 27, 2017

Subject: Approving Economic Development Incentive Agreement with Henrix ISA, LLC

Presenter(s): Marlan Ferguson, City Administrator

Background

At the November 6, 2012 General Election, the voters of the City of Grand Island approved LB840 funding to enable the City to extend economic development incentives through the Grand Island Area Economic Development Corporation (GIAEDC). The Economic Development Corporation has received an application from Hendrix ISA, LLC, 621 Stevens Road, Ephrata, Pennsylvania for a new business located at 2325 Schimmer Drive. The Company is commencing operations in Grand Island and is constructing a world-class chicken hatchery. On March 16, 2017, the Executive Board of the GIEDC approved submission of the attached Economic Development Agreement to the Citizens Advisory Review Committee (CARC) for consideration and recommendation. The CARC met on June 14, 2017 and approved the request and Agreement for recommendation to the City Council for final action and approval.

Discussion

Hendrix ISA, LLC has submitted the required LB-840 application (see attached) for a forgivable loan in the amount of \$600,000.00. Proposed is the creation of 43 full-time equivalents (FTE) at an average minimum rate of \$13.50 per hour.

Job training totaling \$215,000.00 is to be paid within 60 days of the approval of the agreement and \$71,666.00 per year to be paid over three years. Job creation totaling \$250,000.00 is to be paid within 30 days of the first, second, and third anniversary of the agreement in the amount of \$83,334.00 per year or \$5,813.95 per FTE. A total of \$135,000.00 for infrastructure will be paid within 30 days of the issuance of a certificate of occupancy.

Alternatives

It appears that the Council has the following alternatives concerning the issue at hand. The Council may:

1. Move to approve the Economic Development Agreement with Hendrix ISA, LLC.
2. Do not approve the Economic Development Agreement with Hendrix ISA, LLC.
3. Postpone the issue to future date.
4. Take no action on the issue.

Recommendation

City Administration recommends that the Council consider the resolution authorizing the City to enter into the Economic Development Agreement with Hendrix ISA, LLC.

Sample Motion

Move to approve the resolution authorizing the City to enter into the Economic Development Agreement with Hendrix ISA, LLC.

Date Application Submitted: 9/26/16



Grand Island Area Economic Development Corporation LB-840 Application

The Grand Island Area Economic Development Corporation's mission is to facilitate the creation of jobs and economic opportunities for the regional trade area.

Part I. GENERAL INFORMATION

APPLICANT IDENTIFICATION

Company Name: Hendrix ISA, LLC

Mailing Address: 621 Stevens Road

City: Ephrata

State: PA

Zip Code: 17522

Phone: 717-738-0424

Applicant Website: <http://www.hendrix-genetics.com/>

Business Classification (select all that apply):

- New Business Expansion of Existing Business Spec Building Other
 Corporation Partnership Proprietor Other

Is this the business's first venture in Grand Island / Hall County? Yes No

Is this the business's first venture in Nebraska? Yes No

Does the business have a parent or subsidiaries? Yes No

If yes, Name of Parent or Subsidiary Company: Hendrix Genetics
Mailing Address: Spoorstaat 69, 5831 CK Boxmeer, Netherlands

MAIN CONTACT INFORMATION

Name: Bryan Rathman

Connection to Business: Director of Finance

Mailing Address: 621 Stevens Road

City: Ephrata

State: PA

Zip Code: 17522

Email Address: Bryan.Rathman@hendrix-genetics.com Phone Number: 717-738-0424

Company Name: Hendrix - IS, LLC
Date: 9/1/2017

Projected Completion

Date Application Submitted: 9/26/16

Part II. PROJECT INFORMATION

LOCATION

Address of proposed project: 2325 Schimmer Drive, Grand Island NE

The proposed project is located:

- Within Grand Island city limits
- Outside of city limits, but within a two (2) mile jurisdiction
- Outside the zoning jurisdiction of Grand Island

Do you currently own the land of proposed project: Yes No
Do you currently own the building of the proposed project: Yes No

JOB CREATION

Current number of full time employees at Grand Island location: 0
Number of new positions being created at Grand Island location: 42

On a separate document, identify the employment positions being added, number of employees per position and wage per position.

Supporting documentation submitted: Yes No

Describe any benefit packages available to new employees: See attached Benefits flyer.

PROJECT SUMMARY

On a separate document, provide a brief narrative describing the project for which LB-840 funds are being requested.

Narrative provided: Yes No

Company Name: Hendrix – IS, LLC
Date: 9/1/2017

Projected Completion

Date Application Submitted: 9/26/16

PROJECT INVESTMENT

Land purchase price:	\$300,000.00
New facility construction expense:	\$11,681,925.00
Building purchase / renovation expense:	\$0
Other infrastructure improvements: (parking lot, curb & gutter, landscaping, etc.)	\$0
New machinery / equipment expense:	\$4,736,900.00
Other:	\$1,551,175.00

TOTAL INVESTMENT: \$18,270,000.00

SUPPORTING DOCUMENTATION

Please include the following documents as attachments to the LB-840 application. The documents below must be submitted with your application to be considered complete. These documents will only be viewed by the GIAEDC President, Executive Board, Citizen's Review Authority Chairperson, city Finance Director, and the City Administrator.

- Business plan outlining product supply chain
- Articles/certificate of formation/incorporation
- Bylaws/operating agreement/partnership agreement
- Copies of material contracts, including but not limited to loan/financing documents
- 3 year pro forma
- Profit/ loss summary
- Balance sheet
- Cash flow statement
- Projected sales
- Brief resume of management team to be placed in Grand Island
- Other impacts on the area's economy
- Grand Island Area Economic Development membership application

Company Name: Hendrix – IS, LLC
Date: 9/1/2017

Projected Completion

Date Application Submitted: 9/26/16

PART III. SIGNATURES

I hereby represent, this application and supporting information is accurate, and may be relied upon by representatives of the Grand Island Area Economic Development Corporations and the City of Grand Island.

I further represent that there is no legal action underway or being contemplated that would impact the capacity of this company to effectively proceed with this project.

Dated this 26 day of September, 2016.

By: Bryan J. Rathman

Its: Bryan J. Rathman

As the President of the Grand Island Area Economic Development Corporation, I hereby represent that I have received and reviewed this application and its supporting information requesting the City of Grand Island's LB-840 funds.

Dated this 17 day of October, 2016.

By: Dave Ryan

Its: President

Company Name: Hendrix – IS, LLC
Date: 9/1/2017

Projected Completion

Date Application Submitted: 9/26/16

PART IV. APPROVAL OF AREA AGENCIES

Reviewed by the Grand Island Area Economic Development Elected Trustees

Date of review: 3/16/17

Comments:

Approved

Disapproved

Signature of Chairman: David Stueck

3/16/17

Reviewed by the Citizen's Review Committee

Date of Review: 6/14/17

Comments:

Approved

Disapproved

Signature of Chairman: [Signature]

Referred to the Grand Island City Council

Date of Review:

Comments:

Approved

Disapproved

Signature of Mayor: _____

Mayor Jeremy Jensen

Company Name: Hendrix – IS, LLC
Date: 9/1/2017

Projected Completion

ECONOMIC DEVELOPMENT AGREEMENT

THIS ECONOMIC DEVELOPMENT AGREEMENT (this "Agreement") is made and entered into effective as of the ____ day of _____, 2017 (the "Effective Date"), by and among the City of Grand Island, Nebraska (the "City"), the Grand Island Economic Development Corporation ("GIAEDC") and Hendrix ISA, LLC a Delaware limited liability company ("Company") (City, GIAEDC and Company, each a "Party" and collectively, the "Parties").

WITNESSETH:

WHEREAS, on September 26, 2016, Company filed an Application for Economic Development Incentives (the "Application") with City and GIAEDC;

WHEREAS, Company is commencing operations in Grand Island, will construct a world-class chicken hatchery and create forty-three (43) full-time equivalent additional employees in Grand Island by December 31, 2017;

WHEREAS, Company agrees to continue to employ at least forty-three (43) full-time equivalent employees in Grand Island from December 31, 2017 until at least the third (3rd) anniversary of after the Effective Date;

WHEREAS, City and GIAEDC find Company to be a qualifying business under the City's Economic Development Program, that the Company's project qualifies for economic development incentives under the Program, that the Company's project will be of substantial economic benefit to the people of Grand Island and the surrounding area, and the economic development incentive plan set forth in this Agreement constitutes a fulfillment of the major objectives of the City's Economic Development Plan;

WHEREAS, City and GIAEDC are willing to provide Company with up to \$215,000 in job training assistance, up to \$250,000 in job creation incentives and up to \$135,000 in infrastructure support at the times and upon the fulfillment of the conditions set forth in this Agreement provided that Company complies with the terms of this Agreement; and

WHEREAS, in furtherance of the foregoing recitals, the Parties desire to enter into this Agreement.

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained in this Agreement, the Parties agree as follows:

1. Definitions. As used in this Agreement, the following terms shall have the respective meanings ascribed to them in this Section 1:

(a) "Employment Certificate" shall mean a certification for the defined period containing the sworn statement of a duly authorized representative of Company specifically setting forth compliance with the FTE's and Minimum Hourly Rate terms of this Agreement. The Employment Certificate shall contain the following information and adhere to the following terms: (i) the total number of hours which FTE's worked and received compensation at Company's facilities in Grand Island; and (ii) the average hourly rate for all FTE's which shall meet or exceed the Minimum Hourly Rate. Company agrees that upon receipt of written notice pursuant to the terms of this Agreement, Company shall allow the City Administrator or his designee to personally inspect

Company's employment records as confirmation of the statements contained in the Employment Certificate.

(b) "Full-Time Equivalents" or "FTE's" shall mean persons hired by Company as part of its location of operations in Grand Island as detailed in the recitals to this Agreement. The total number of FTE's shall be determined by dividing the total number of hours Company employees worked at its facilities located in Grand Island by two thousand eighty (2,080).

(c) "Minimum Hourly Rate" shall mean an average minimum rate of \$13.50 per hour for each FTE employed as part of Company's location of its operations in Grand Island. The hourly rate shall be determined by dividing the total wages and salaries paid to FTE's by two thousand eighty (2,080).

2. Employment Requirements. Company shall meet each of the following employment requirements:

(a) Company shall have a minimum of forty-three (43) FTE's at its facilities in Grand Island being compensated at the Minimum Hourly Rate as of December 31, 2017;

(b) Company shall have a minimum of forty-three (43) FTE's at its facilities in Grand Island being compensated at the Minimum Hourly Rate as of the first (1st) anniversary of the Effective Date;

(c) Company shall have a minimum of forty-three (43) FTE's at its facilities in Grand Island being compensated at the Minimum Hourly Rate as of the second (2nd) anniversary of the Effective Date; and

(d) Company shall have a minimum of forty-three (43) FTE's at its facilities in Grand Island being compensated at the Minimum Hourly Rate as of the third (3rd) anniversary of the Effective Date.

3. Disbursement of LB 840 Funds for Job Training. Disbursement of the economic incentive funds for job training shall be paid to Company by City in accordance with the following schedule:

(a) A disbursement for training FTE's in the amount of Seventy-One Thousand Six Hundred Sixty-Six and No/100 Dollars (\$71,666.00) shall be paid by City to Company within sixty (60) days of the Effective Date.

(b) A disbursement for training FTE's in the amount of Seventy-One Thousand Six Hundred Sixty-Six and No/100 Dollars (\$71,666.00) shall be paid by City to Company within thirty (30) days of the first (1st) anniversary of the Effective Date provided that Company has delivered an Employment Certificate to the City and GIAEDC evidencing that Company has at least forty-three (43) FTE's at its facilities in Grand Island being compensated at the Minimum Hourly Rate.

(c) A disbursement for training FTE's in the amount of Seventy-One Thousand Six Hundred Sixty-Six and No/100 Dollars (\$71,666.00) shall be paid by City to Company within thirty (30) days of the second (2nd) anniversary of the Effective Date provided that Company has delivered an Employment Certificate to the City and GIAEDC evidencing

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that Company has at least forty-three (43) FTE's at its facilities in Grand Island being compensated at the Minimum Hourly Rate.

(d) The maximum amount the City shall disburse to Company for job training shall be Two-Hundred Fifteen Thousand and No/100 Dollars (\$215,000.00).

4. Disbursement of LB 840 Funds for Job Creation. Company shall be eligible for disbursements of up to Five Thousand Eight Hundred Thirteen and 95/100 Dollars (\$5,813.95) per FTE for forty-three (43) FTE's for a total disbursement of Two Hundred Fifty Thousand and No/100 Dollars (\$250,000.00). Disbursement of the economic incentive funds for job creation shall be paid to Company by City in accordance with the following schedule:

(a) A disbursement of Eighty-Three Thousand Three Hundred Forty-Four and No/100 Dollars (\$83,334) shall be paid by City to Company within thirty (30) days of the first (1st) anniversary of the Effective Date provided that Company has delivered an Employment Certificate to the City and GIAEDC evidencing that Company has at least forty-three (43) FTE's at its facilities in Grand Island being compensated at the Minimum Hourly Rate.

(b) A disbursement of Eighty-Three Thousand Three Hundred Forty-Four and No/100 Dollars (\$83,334) shall be paid by City to Company within thirty (30) days of the second (2nd) anniversary of the Effective Date provided that Company has delivered an Employment Certificate to City and GIAEDC evidencing that Company has at least forty-three (43) FTE's at its facilities in Grand Island being compensated at the Minimum Hourly Rate.

(c) A disbursement of Eighty-Three Thousand Three Hundred Forty-Four and No/100 Dollars (\$83,334) shall be paid by City to Company within thirty (30) days of the third (3rd) anniversary of the Effective Date provided that Company has delivered an Employment Certificate to City and GIAEDC evidencing that Company has at least forty-three (43) FTE's at its facilities in Grand Island being compensated at the Minimum Hourly Rate.

(d) The maximum amount City shall disburse to Company for job creation shall be Two Hundred Fifty Thousand and No/100 Dollars (\$250,000.00).

5. Disbursement of LB 840 Funds for Infrastructure. Disbursement of the economic incentive funds for infrastructure shall be paid to Company by City in accordance with the following schedule:

(a) A disbursement for infrastructure in the amount of One Hundred Thirty Five Thousand and No/100 Dollars (\$135,000.00) shall be paid by City to Company within thirty (30) days of the issuance of a certificate of occupancy for the chicken hatchery being constructed to commence operations in Grand Island;

(b) The maximum amount the City shall disburse to Company for infrastructure shall be One Hundred Thirty-Five Thousand and No/100 Dollars (\$135,000.00); and

(c) Company agrees to allow City and GIAEDC to inspect the chicken hatchery prior to the payments required by this Section 5.

6. Total Disbursements. The maximum total amount City shall disburse to Company pursuant to this Agreement shall be Six Hundred Thousand and No/100 Dollars (\$600,000.00).

7. Company's Representations and Warranties. Company represents and warrants to City and GIAEDC as follows:

(a) Organization, Standing and Power. Company is a limited liability company duly formed, validly existing and in good standing under the laws of the State of Delaware and has the legal power to carry on its business as it is now being conducted.

(b) Authority. The execution, delivery and performance of this Agreement by Company has been duly and validly authorized and approved by all necessary legal action on the part of Company.

(c) Binding Agreement. This Agreement, when executed and delivered, will constitute the legal, valid and legally binding agreement of Company, enforceable against Company in accordance with its terms.

(d) No Conflict with Other Instruments or Agreements. The execution, delivery and performance of this Agreement by Company will not result in a breach or violation of, or constitute a default under any agreement to which Company is bound, and will not be in violation of any statute, judgment, order, rule or regulation of any court, or any federal, state or other regulatory authority or governmental body having jurisdiction over Company in effect as of the Effective Date.

(e) No Brokers. Company has not retained or agreed to compensate any broker or finder in connection with the transactions contemplated by this Agreement.

(f) Operations. During the term of this Agreement, Company shall maintain operations in Grand Island, Nebraska and maintain the hatchery facility in good operating condition, ordinary wear and tear excepted.

(g) Minimum Number of Employees. From December 31, 2017 through the remainder of the term of this Agreement, Company shall employ at least forty-three (43) FTE's at the Minimum Annual Rate at the chicken hatchery in Grand Island, Nebraska.

In the event that Company breaches any of the foregoing representations and warranties, all amounts distributed by City to Company pursuant to this Agreement shall immediately become due and owing by Company to City and if unpaid shall accrue interest at the rate of eight percent (8%) per annum until such amounts are repaid in full.

8. Company's Obligation to Repay Funds. The Parties acknowledge and agree that the funds to be provided by City to Company pursuant to this Agreement are being provided in the form of an economic development loan and are subject to repayment in accordance with the terms and conditions of this Agreement if Company fails to perform its obligations under this Agreement. The Parties further acknowledge and agree that City shall forgive the entire economic development loan disbursed to Company representing a total of Six Hundred Thousand and No/100 Dollars (\$600,000.00) upon Company meeting the following conditions:

(a) Company shall have complied with the terms and provisions of Sections 2-7 of this Agreement in all respects; and

(b) If Company remains in compliance with the terms and provisions of Sections 2-7 of this Agreement in all respects, the economic development loan will be forgiven pursuant to the following schedule:

(i) On the first (1st) anniversary of the Effective Date, one-fourth (1/4) or One Hundred Fifty Thousand and No/100 Dollars (\$150,000.00) of the economic development loan shall be forgiven;

(ii) On the second (2nd) anniversary of the Effective Date, one-fourth (1/4) or One Hundred Fifty Thousand and No/100 Dollars (\$150,000.00) of the economic development loan shall be forgiven;

(iii) On the third (3rd) anniversary of the Effective Date, one-fourth (1/4) or One Hundred Fifty Thousand and No/100 Dollars (\$150,000.00) of the economic development loan shall be forgiven; and

(iv) On the fourth (4th) anniversary of the Effective Date, one-fourth (1/4) or One Hundred Fifty Thousand and No/100 Dollars (\$150,000.00) of the economic development loan shall be forgiven.

9. Default. In the event that Company fails to comply with any of the terms of this Agreement, City and GIAEDC may declare Company to be in breach. Any such declaration shall be in writing and delivered to Company at its last known address. In the event that City and GIAEDC declare Company to be in breach, all amounts distributed by City to Company pursuant to this Agreement shall immediately become due and owing by Company to City and if unpaid shall accrue interest at the rate of eight percent (8%) per annum until such amounts are repaid in full.

10. Actions after Effective Date. From time to time after the Effective Date, without further consideration, each of the Parties will execute and deliver such documents and instruments as any other Party shall reasonably request to give full effect to the transactions contemplated by this Agreement.

11. Term. This Agreement (and all representations, covenants, agreements, obligations and warranties of Company, City and the GIAEDC contained in this Agreement), shall remain in full force and effect until the earlier of the date that (a) the entire economic development loan has been forgiven pursuant to Section 8, or (b) Company has repaid all amounts provided to Company pursuant to this Agreement (in the event Company breaches its obligations under this Agreement) (such date, the "Termination Date"). From and after the Termination Date, this Agreement shall be of no further force or effect and no Party shall have any further obligations pursuant to this Agreement.

12. Amendment. No amendment or modification of this Agreement shall be binding on any Party unless the same shall be in writing and signed by all Parties.

13. Communication. Company agrees to inform City and GIAEDC of any changes in Company's address, telephone number, email address or leadership within three (3) business days of such changes. Company also agrees to fully respond within fifteen (15) calendar days to any request for information from City and/or GIAEDC related to Company's compliance with the terms of this Agreement. All responses to inquiries shall be in writing and provided to City and GIAEDC at the following addresses:

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Grand Island City Administrator
100 East First Street
P.O. Box 1968
Grand Island, NE 68802-1968
Cityadministrator@grand-island.com

Grand Island Area Economic Development Corporation
123 North Locust Street, Suite 201B
P.O. Box 1151
Grand Island, NE 68802
mberlie@grandisland.org

14. Indemnification. Company agrees to indemnify, defend and hold City, GIADEC and their employees, officers, directors, agents, attorneys, affiliates and their respective successors and assigns (collectively, the "Indemnified Parties") harmless from and against any and all loss, liability, obligation, damage, penalty, judgment, claim, deficiency and expense (including interest, penalties, attorneys' fees and amounts paid in settlement) to which the Indemnified Parties may become subject arising out of or based upon a breach or default by Company of this Agreement.

15. Expenses. The Parties shall all pay their respective expenses incident to the preparation, execution and consummation of this Agreement.

16. Binding Effect. This Agreement shall be binding upon, and shall inure to the benefit of, the Parties and their respective successors and assigns (including, without limitation, any purchaser of, or successor to, Company whether by purchase, merger, consolidation, reorganization, liquidation or any other type of transaction).

17. Severability. Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

18. Non-Waiver. Waiver of or acquiescence by City and/or GIAEDC in any default by Company, or any failure of City and/or GIAEDC to insist upon strict performance by Company of any warranties, agreements or other obligations contained in this Agreement shall not constitute a waiver of any subsequent or other default, failure or waiver of strict performance, whether similar or dissimilar.

19. Relationship of Parties. The Parties have entered into this Agreement solely for the purposes set forth in this Agreement. Nothing contained in this Agreement shall be construed to create or imply any (a) partnership or joint venture by or among of the Parties, or (b) any principal and agency relationship by or among the Parties.

20. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the state of Nebraska, without giving effect to its conflict of laws principles.

21. Entire Agreement. This Agreement and the documents referred to in this Agreement constitute the entire agreement of the Parties respecting the subject matter contained in this Agreement and supersede any prior offers, understandings, agreements or

representations by and between the Parties, written or oral, which may have related to the subject matter of this Agreement in any way.

22. Counterparts. This Agreement may be executed simultaneously in counterparts, each of which shall be deemed an original, but which together shall constitute the same instrument.

[The Remainder of This Page Intentionally Left Blank; Signature Page to Follow.]



IN WITNESS WHEREOF, the parties have signed this Agreement as of the date first above written.

Hendrix ISA, LLC, a Delaware limited liability company

By: Benjamin J. Rathman
Its: Director of Finance

City of Grand Island, Nebraska

By: _____
Its: _____

Grand Island Area Economic Development Corporation

By: Dave Tye
Its: President

RESOLUTION 2017-191

WHEREAS, on November 6, 2012, the City of Grand Island adopted an Economic Development Program and a Citizens Advisory Review Committee to oversee the process of approving applications for economic development incentives; and

WHEREAS, Hendrix ISA, LLC has applied for a forgivable loan for job creation, job training and infrastructure in the amount of \$600,000.00 from the Grand Island Area Economic Development Corporation in accordance with the Economic Development Program; and

WHEREAS, such application has been approved by the executive committee of the Economic Development Corporation on March 16, 2017 and was approved on June 14, 2017 by the Citizens Advisory Review Committee; and

WHEREAS, Hendrix ISA, LLC will be required to meet or exceed employment numbers and employee salary levels as outlined in the Economic Development Agreement to retain all of the economic incentives granted under the agreement; and

WHEREAS, it is in the best interests of the City to provide economic development funding to Hendrix ISA, LLC as provided by the Grand Island Economic Development Program.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the Economic Development Agreement by and between the City, the Grand Island Area Economic Development Corporation and Hendrix ISA, LLC, to provide \$600,000.00 in economic assistance to Hendrix ISA, LLC to be used for construction of its business in Grand Island, is hereby approved.

BE IT FURTHER RESOLVED, that the Mayor is hereby authorized and directed to execute such agreement on behalf of the City of Grand Island.

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Adopted by the City Council of the City of Grand Island, Nebraska, June 27, 2017.

Jeremy L. Jensen, Mayor

Attest:

RaNae Edwards, City Clerk

Approved as to Form	☒ _____
June 23, 2017	☒ City Attorney