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MONTGOMERY CO. OHIO  
14

IN THE COMMON PLEAS COURT OF MONTGOMERY COUNTY, OHIO  
CIVIL DIVISION

CITY OF HUBER HEIGHTS, OHIO \*

Plaintiff, \*

v. \*

DON ALLEN HOLBROOK, LLC \*

Defendant. \*

CASE NO. 2012-CV-02947  
JUDGE MICHAEL TUCKER

DON ALLEN HOLBROOK, LLC \*  
An Arizona Limited Liability Company \*  
9200 Dalmahoy Place \*  
Las Vegas, NV 89145 \*

Third-Party Plaintiff, \*

v. \*

HEATHER DOBROTT, \*  
aka "SOAPBOX MOM" \*  
2518 Suncrest Drive \*  
Garland, TX 75044-7032 \*

FRANK MAURIZIO \*  
581 China Street \*  
Pahrump, NV 89048-0782 \*

CRAIG MALISOW \*  
c/o The Houston Press \*  
1621 Milam Street, Suite 100 \*  
Houston, TX 77002 \*

THIRD-PARTY COMPLAINT OF  
DEFENDANT/THIRD-PARTY  
PLAINTIFF DON ALLEN HOLBROOK  
LLC, AGAINST THIRD-PARTY  
DEFENDANTS HEATHER DOBROTT,  
FRANK MAURIZIO, CRAIG  
MALISOW, THE HOUSTON PRESS,  
PAHRUMP VALLEY TIMES,  
CYNTHIA CALVERT, THE TRIBUNE,  
JOHN AND/OR JANE DOES, DOE INC.  
AND/OR DOE, LLC, FOR CIVIL  
CONSPIRACY, TORTIOUS  
INTERFERENCE WITH BUSINESS  
RELATIONS AND PROSPECTIVE  
BUSINESS RELATIONS,  
DEFAMATION PER SE AND/OR PER  
QUOD, COMPENSATORY  
DAMAGES, SPECIAL DAMAGES  
PUNITIVE DAMAGES, PRE-  
JUDGMENT AND POST-JUDGMENT  
INTEREST, ATTORNEY'S FEES AND  
COSTS WITH JURY DEMAND  
ENDORSED HEREON

THE HOUSTON PRESS \*

1201 E. Jefferson St. \*

Phoenix, AZ 85034 \*

THE HOUSTON PRESS dba \*

VILLAGE VOICE MEDIA \*

HOLDINGS, LLC dba \*

HOUSTON PRESS, LP dba \*

BACKPAGE.COM, LLC \*

Registered Agent: \*

National Registered Agents, Inc. \*

300 West Clarendon Ave. \*

Suite 230 \*

Phoenix, AZ 85013 \*

PAHRUMP VALLEY TIMES \*

2160 E. Calvada Blvd. \*

Pahrump, NV 89125 \*

PAHRUMP VALLEY TIMES, dba \*

STEPHENS MEDIA, LLC, dba \*

STEPHENS MEDIA GROUP \*

P.O. Box 70 \*

Las Vegas, NV 89125 \*

CYNTHIA CALVERT, Individually and as \*

Editor, Publisher, Chief Executive Officer \*

THE TRIBUNE, AKA, \*

OURTRIBUNE.COM \*

1036 First Street, Suite C \*

Humble, TX 77338 \*

John and/or Jane Does \*

Addresses unknown at this time \*

Doe, Inc. and/or Doe, LLC \*

Addresses unknown at this time \*

Third-Party Defendants. \*

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Defendant/Third-Party Plaintiff Don Allen Holbrook, LLC ("Don Allen Holbrook, LLC"), now states as follows for its Third-Party Complaint:

1. Don Allen Holbrook, LLC, is an Arizona limited liability company that is

registered as a foreign limited liability company to conduct business in the State of Ohio and also conducts business around the United States of America and elsewhere as an economic developer in the public and in the private sectors.

2. Third-Party Defendant Heather Dobrott ("Dobrott"), upon information and belief, is a resident of Garland, Texas, which is located about 25 miles northeast of Dallas and about 250 miles northwest of Houston, is also known by the user name "soapboxmom", is the administrator of a website with the address [www.realscam.com](http://www.realscam.com), regularly and frequently blogs, posts, re-posts, and posts links to defamatory, derogatory, and false statements on a variety of websites and blogs, including but not limited to defamatory, derogatory, and false statements about Don Allen Holbrook, LLC, at least since February 7, 2012, if not earlier, constituting cyber-stalking and cyber-harassment, including but not limited to,

<http://pvtimes.com/news/theme-park-contractor-holbrook-sued-by-ohio-town/>;

<http://www.topix.com/wire/city/huber-heights-oh>; <http://www.topix.com/wire/city/pahrump-nv?q=u:pvtimes.com>;

[http://blogs.houstonpress.com/hairballs/2012/05/earthquests\\_don\\_holbrook\\_sued\\_huber\\_heights.php](http://blogs.houstonpress.com/hairballs/2012/05/earthquests_don_holbrook_sued_huber_heights.php); <http://www.houstondinopark.com/discuss.php>; and

<http://kingwoodunderground.com/topic.jsp?topicId=11722526>, regularly and frequently posts links on "www.realscam.com" and other websites to postings and blogs written by Third-Party Defendant Frank Maurizio, Third-Party Defendant Craig Malisow, Third-Party Defendant Cynthia Calvert, and others that include defamatory, derogatory, and false statements about Don Allen Holbrook, LLC, in order that such postings exploit search engine optimization on websites such as Google and other search engine websites so that defamatory, derogatory, and false statements about Don Allen Holbrook, LLC, go "viral" and are listed at the beginning of any

search for "Don Allen Holbrook, LLC", "Don Holbrook", "Holbrook" or other variations on the name, on internet search engines and which postings have been seen and downloaded from the internet by persons residing in the State of Ohio.

3. Third-Party Defendant Frank Maurizio ("Maurizio"), upon information and belief, is a resident of the State of Nevada, regularly and frequently posts defamatory, derogatory, and false statements about Don Allen Holbrook, LLC on websites (<http://pvtimes.com/opinion/community-viewpoint-background-on-mr-holbrook-the-music-man-part-1/>; <http://pvtimes.com/opinion/community-viewpoint-background-on-mr-holbrook-the-music-man-part-2/>; <http://pvtimes.com/opinion/community-viewpoint-background-on-mr-holbrook-the-music-man-part-3/>), posts links on [www.realscam.com](http://www.realscam.com) and other websites and blogs to postings and blogs written by Third-Party Defendant Heather Dobrott, Third-Party Defendant Craig Malisow, Third-Party Defendant Cynthia Calvert, and others that include defamatory, derogatory, and false statements about Don Allen Holbrook, LLC, in order that such postings exploit search engine optimization on websites such as Google so that defamatory, derogatory, and false statements about Don Allen Holbrook, LLC, go "viral" and are listed at the beginning of a search for "Don Allen Holbrook, LLC", "Don Holbrook", "Holbrook" or other variations on the name, on internet search engines and which postings which have been seen and downloaded from the internet by persons residing in the State of Ohio.

4. Third-Party Defendant Craig Malisow ("Malisow"), upon information and belief, is affiliated with the Houston Press, which is a weekly publication, with the web address of [houstonpress.com](http://houstonpress.com), which is owned by Village Voice Media Holdings, LLC, and, on or about February 29, 2012, who telephoned the former City Manager of Huber Heights, Ohio, Gary Adams, knowing that the City had a contract with Don Allen Holbrook, LLC, and made



defamatory, derogatory, and false statements about Don Allen Holbrook, LLC to Mr. Adams that Malisow later posted on the website of the Houston Press, for the purpose of tortiously interfering with the contractual relationship between the City and Don Allen Holbrook, LLC, which has caused economic harm to Don Allen Holbrook, LLC, and he has participated in continuing to post and re-post defamatory, derogatory, and false statements about Don Allen Holbrook, LLC to exploit search engine optimization algorithms on websites such as Google so that defamatory, derogatory, and false statements about Don Allen Holbrook, LLC, go “viral” and are listed at the beginning of a search for “Don Allen Holbrook, LLC”, “Don Holbrook”, “Holbrook” or other variations on the name, on internet search engines and which postings which have been seen and downloaded from the internet by persons residing in the State of Ohio, including but not limited to, [http://blogs.houstonpress.com/hairballs/2012/05/earthquests\\_don\\_holbrook\\_sued\\_huber\\_heights.php](http://blogs.houstonpress.com/hairballs/2012/05/earthquests_don_holbrook_sued_huber_heights.php).

5. Third-Party Defendant The Houston Press, with the web address of [houstonpress.com](http://houstonpress.com), dba The Village Voice Media Holdings, LLC, dba The Backpage.com, LLC, upon information and belief is an Arizona limited liability company that publishes weekly in both hard copy and on the internet and permits unknown persons who register “usernames” with its website to post and re-post comments in response to articles or blogs featured on the website and fails to monitor such content, which have included defamatory, derogatory, and false statements about Don Allen Holbrook, LLC, which have been seen and downloaded from the internet by persons residing in the State of Ohio.

6. Third-Party Defendant The Pahrump Valley Times, dba Stephens Media, LLC, dba Stephens Media Group, upon information and belief is a Nevada limited liability company

that publishes weekly in both hard copy and on the internet at “<http://pytimes.com>” and permits unknown persons who register “usernames” with its website to post and re-post comments in response to articles or blogs featured on the website and fails to monitor such content, which have included defamatory, derogatory, and false statements about Don Allen Holbrook, LLC, which have been seen and downloaded from the internet by persons residing in the State of Ohio.

7. Third-Party Defendant Cynthia Calvert, individually, upon information and belief, is the owner, Chief Executive Officer, and publisher of a community newspaper, The Tribune, aka, “[ourtribune.com](http://ourtribune.com)”, serving the Atascosita, Humble, Kingwood, and Lake Houston area in the greater Houston, Texas area, which publishes in both hard copy and on the internet, and who has published articles and blogs including defamatory, derogatory, and false statements about Don Allen Holbrook, LLC, that she later posted on [ourtribune.com](http://ourtribune.com) and has re-posted others’ defamatory, derogatory, and false statements comments, in order that such postings exploit search engine optimization on websites such as Google so that defamatory, derogatory, and false statements about Don Allen Holbrook, LLC, go “viral” and are listed at the beginning of a search for “Don Allen Holbrook, LLC”, “Don Holbrook”, “Holbrook” or other variations on the name, on internet search engines and which postings which have been seen and downloaded from the internet by persons residing in the State of Ohio, including but not limited to, <http://www.ourtribune.com/article.php?id=13295>; <http://www.ourtribune.com/article.php?id=13408>; and <http://www.ourtribune.com/article.php?id=13452>.

8. Third-Party Defendant, The Tribune, aka, “[ourtribune.com](http://ourtribune.com)”, upon information and belief, is a community newspaper serving the Atascosita, Humble, Kingwood, and Lake Houston area in the greater Houston, Texas area and permits unknown persons who register “usernames” with its website to post and re-post comments in response to articles or blogs

featured on the website and fails to monitor such content, which have included defamatory, derogatory, and false statements about Don Allen Holbrook, LLC, which have been seen and downloaded from the internet by persons residing in the State of Ohio.

9. Third-Party Defendants John and or Jane Does, upon information and belief, are other individuals who participate with Third-Party Defendants Dobrott, Maurizio, and/or Calvert, under anonymous "usernames" and regularly and frequently blog, post, and re-post defamatory, derogatory, and false statements and comments about Don Allen Holbrook, LLC, at least since February 7, 2012 if not earlier, which constitutes cyber-stalking and cyber-harassment, on websites such as [www.realscam.com](http://www.realscam.com), blogs on [houstonpress.com](http://houstonpress.com), [ourtribune.com](http://ourtribune.com), and [pvtimes.com](http://pvtimes.com), and who are possibly posting and re-posting on other websites unknown at this time, in order that such postings and re-postings exploit search engine optimization logarithms on websites such as Google so that defamatory, derogatory, and false statements about Don Allen Holbrook, LLC, go "viral" and are listed at the beginning of a search for "Don Allen Holbrook, LLC", "Don Holbrook", "Holbrook" or other variations on the name, on internet search engines, which have been seen and downloaded from the internet by persons residing in the State of Ohio.

10. Third-Party Defendants Doe, Inc. and/or Doe, LLC, upon information and belief, are other organized entities which host websites and/or blogs and permit known and unknown individuals, under anonymous "usernames", to regularly and frequently blog, post, and re-post defamatory, derogatory, and false statements about Don Allen Holbrook, LLC, at least since February 7, 2012 if not earlier, which constitutes cyber-stalking and cyber-harassment, in order that such postings and re-postings exploit search engine optimization logarithms on websites such as Google so that defamatory, derogatory, and false statements about Don Allen Holbrook,

LLC, go “viral” and are listed at the beginning of a search for “Don Allen Holbrook, LLC”, “Don Holbrook”, “Holbrook” or other variations on the name, on internet search engines, which have been seen and downloaded from the internet by persons residing in the State of Ohio.

11. Jurisdiction against these non-resident Third-Party Defendants is proper in this Court because each of them voluntarily and knowingly posted and re-posted defamatory, derogatory, and false statements on the internet about Don Allen Holbrook, LLC, or have permitted others to post and re-post defamatory, derogatory, and false statements on the internet about Don Allen Holbrook, LLC, which they knew or had reason to know would be seen on the internet in Ohio and elsewhere, or as in the case of Malisow, placed a telephone call to the former City Manager of the City of Huber Heights, Ohio (the “City”) within the State of Ohio, Gary Adams, earlier this year, and during that telephone call published defamatory, derogatory, and false statements to Mr. Adams about Don Holbrook’s involvement with a project in Houston, Texas to procure a breach of the Agreement between the City and Don Allen Holbrook, LLC.

12. Upon information and belief, shortly after Malisow placed his telephone call on or about February 29, 2012, to Mr. Adams, persons either employed by the City or elected officials of the City, are believed to have conducted “internet research” on Don Allen Holbrook, LLC and, as a proximate result of the concerted action among Third-Party Defendants in posting and re-posting defamatory, derogatory, and false statements about Don Holbrook, causing them to “go viral” because of search engine optimization logarithms, persons either employed by the City or elected officials of the City found defamatory, derogatory, and false statements on the internet, including but not limited to defamatory statements (per se or per quod), by Dobrott, Maurizio, Malisow, Calvert, and possibly other unknown persons on the various websites

identified above, calling Don Allen Holbrook, LLC, a “scammer”, “scam artist”, “a work at home scam promotor”, “The Music Man” (making reference to Meredith Willson’s character “Harold Hill”, a confidence man, in the Broadway show, “The Music Man”), “selling bottles of magic water”, posting photos on websites allegedly showing “drunken dancing” on a table, “drunken antics”, “drunken soirees”, stating that Mr. Holbrook “misrepresented the [Houston Earthquest] project to folks in Pahrump [Nevada]”, stating that “expenses are downright criminal”, referring to “Holbrook and his flunkies”, stating “I am going to label this guy [Holbrook] nothing more than a self promoting and quite arrogant scammer”, and, upon information and belief, taking credit for ruining the business and reputation of Don Allen Holbrook, LLC on 03-30-2012 on [www.realscam.com](http://www.realscam.com): “Pardon me, but Mr. Holbrook brags of that 100 projects worth billions that created 50,000 jobs, but has yet to name even one of these. I want a complete list so I can verify that he was responsible for these lofty accomplishments he brags of. **His recent projects have been falling through.** Earthquest is in bankruptcy and the charitable institute part of that project is defunct after Don Holbrook walked away with 33% of the almost 1 million raised. **Other projects may well not go forward as his credentials and accomplishments are being investigated.**” Emphasis added.

13. With respect to its work with the City of Huber Heights (the “City”), Don Allen Holbrook, LLC sent a letter dated November 2, 2011, to Gary Adams, the City Manager at that time, which letter is attached hereto as Exhibit 1 (the “Agreement”) and is 8 pages with Addendum A and Addendum B on page 8.

14. In that Agreement, Don Allen Holbrook, LLC proposed to perform work for the City, which the City accepted by a Resolution on an “Emergency” basis (see Exhibit 2 attached hereto), adopted with a unanimous vote from the City Council.

15. The Resolution expressly states that the "City Manager is hereby authorized to enter into an agreement with Don Allen Holbrook, LLC substantially in the form attached hereto as Exhibit A (the "Agreement") for an amount not to exceed \$39,500.00 including expenses."

16. The Resolution further states that the "City Manager is further authorized to accept Addendum A of the Agreement regarding a retail competitive landscape analysis for an additional amount not to exceed \$26,500.00 including expenses."

17. The Agreement states that 3 payments will be invoiced in a total amount of \$66,000.00, of which the City has only paid \$53,800.00 leaving an outstanding balance of \$12,200.00 owed, thereby materially breaching the Agreement.

18. The Agreement expressly states that in order to perform an economic development business case analysis in 4 to 6 weeks, it was necessary to require the assistance of the City Staff and collaboration of the current developer to provide information and collaborate on conceptual development strategies. See Exhibit 1 to the Complaint.

19. The Agreement expressly states that the "recommended scope of work" included an "independent SWOT analysis of the current project from a regional perspective and coupled with City Council expectations for competing for future economic development growth." See Exhibit 1 to the Complaint.

20. The Agreement states that the recommended "scope of work . . . . would require the assistance of the City Staff and collaboration of the current developer to provide information and collaborate on conceptual development strategies." See Exhibit 1 to the Complaint.

21. Contrary to this express statement in the Agreement, on or about January 11, 2012, Don Allen Holbrook, LLC had a meeting with the City Staff to discuss the scope of work

under the Agreement and was told by the City Staff not to talk to William Jump, a real estate developer and owner of DEC Investment Group, which, upon information and belief, owns real estate in Huber Heights, and Don Allen Holbrook, LLC was told not to worry about the developer review part of the Agreement, but to focus on the entertainment, recreation, and leisure aspect to attract people to the City.

22. On or about January 24, 2012, Don Allen Holbrook, LLC, contacted Trisha Reents, Economic Development Assistant with the City, by email dated, to discuss economic development funding tools and concepts with her and also contacted Donnie Jones by email, the Assistant City Manager, to get his input on various incentives and financing models.

23. On or about January 31, 2012, in a conference call with the City Staff, Don Allen Holbrook, LLC discussed site requirements and the City Staff stated no disagreement with the discussion during the conference call.

24. The former City Manager, Gary Adams, directed Ms. Reents to look for alternative sites to Mr. Jump's property and directed Mr. Jones to work with Don Allen Holbrook, LLC on the incentives and financing models, which Mr. Jones stated he would do.

25. At a meeting on February 14, 2012, Don Allen Holbrook, LLC told the City Staff that their collaboration and feedback was needed to run incentive and hybrid financing concepts.

26. Upon information and belief and sometime on or before February 29, 2012, defamatory, untrue, derogatory, and false statements about Don Allen Holbrook, LLC were posted by internet bloggers Dobrott, Maurizio, and articles were posted on the internet by Malisow and Calvert on various websites, including but not limited to realscam.com, pvtimes.com, houstonpress.com, ourtribune.com, and were re-posted to exploit search engine optimization logarithms to cause harm to Don Allen Holbrook, LLC.

27. Upon information and belief and sometime on or before February 29, 2012, a Third-Party Defendant identifying himself as a reporter from the Houston Press, believed to be Malisow, telephoned Mr. Adams, specifically asked Mr. Adams if the City of Huber Heights had an Agreement with Don Allen Holbrook, LLC, specifically asked Mr. Adams when the Agreement was entered, which questions Mr. Adams answered, and, upon information and belief, then published to Mr. Adams defamatory, false, and derogatory statements about Don Allen Holbrook, LLC, Don Holbrook, and a project in Houston, Texas, known as Earthquest, which has no relation to any work that Don Allen Holbrook, LLC was performing for the City of Huber Heights, Ohio.

28. In an email dated February 29, 2012 to Don Allen Holbrook, LLC, Mr. Adams said that he had been contacted by a reporter in a city near Houston, Texas, asking if the City had a contract with Don Allen Holbrook, LLC, which Mr. Adams said he confirmed, and then Mr. Adams told Don Allen Holbrook, LLC in an email that it was a "strange conversation", but that he was not concerned about it because it did not pertain to the City.

29. Upon information and belief, a person or persons unknown who are affiliated with the City either as an employee or as an elected official, and without giving any notice, warning, or opportunity to Don Allen Holbrook, LLC to respond, conducted internet searches on "Don Allen Holbrook, LLC" or "Don Allen Holbrook" or "Don Holbrook" on unknown internet search engines and/or websites and/or blogs for any harmful, defamatory, derogatory, false, or other scurrilous information which, although the City has never told Don Allen Holbrook, LLC the reason for its decision to breach the Agreement at the March 14, 2012 meeting, is believed to be the reason the City breached its Agreement with Don Allen Holbrook, LLC.

30. In an email dated March 1, 2012 from Don Allen Holbrook, LLC to Mr. Jones,



Don Allen Holbrook, LLC sought to open a discussion with Mr. Jones about finance models, assumptions, approximate costs, and other factors to be considered for financing issues.

31. Don Allen Holbrook, LLC received no substantive response from Mr. Jones to numerous phone calls and emails to address the economic business case analysis for the final report.

32. On March 9, 2012, the Dayton Daily News published a story that on or about March 16, 2012, Mr. Adams would resign as City Manager after only 10 months in that position.

33. At a meeting on March 14, 2012 between Don Allen Holbrook, LLC and members of the City Staff, including Mayor Ron Fisher and Mark Campbell, a member of the City Council, Mr. Campbell said, without any warning to Don Allen Holbrook, LLC, that the City no longer wanted a relationship with Don Allen Holbrook, LLC, did not believe that the City had received any value for the monies paid, and demanded a full refund of all monies paid under the Agreement.

34. At the meeting on March 14, 2012, Don Allen Holbrook, LLC, unaware of the defamatory, false, and derogatory material from the internet being circulated, immediately offered to address any specific dissatisfaction and offered to provide additional information and clarification on the findings, conclusions, and next step recommendations within the original scope of work to continue to move the project forward.

35. Mr. Campbell said again that the City wanted all of its money back without giving Don Allen Holbrook, LLC any opportunity to remedy any alleged dissatisfaction, without any specific explanation, and threatened to take legal action within 48 hours.

36. No one else from the City said anything during the meeting.

37. Upon learning later that defamatory, false, and derogatory internet postings may

have wrongfully contributed to the City's unwarranted change in position without notice to Don Allen Holbrook, LLC, Don Allen Holbrook, LLC sent a litigation hold letter to counsel for the City and also made a public records request of the City asking the right to inspect and make copies of any documents: (1) relating to Don Allen Holbrook, LLC, Don Allen Holbrook, and/or to the Economic Development Business Case Analysis performed by Don Allen Holbrook, LLC, including all correspondence, electronic correspondence, documentation of conversations, meetings, notes, memoranda or other written documentation; and (2) between any member of the City Council, the City Manager, Donnie Jones, any staff person employed by the City in connection with Don Allen Holbrook, LLC, Don Allen Holbrook, and/or the Economic Development Business Case Analysis performed by Don Allen Holbrook, LLC.

38. Although the City provided Don Allen Holbrook, LLC with electronic copies of documents purportedly responding to the public records request, the City failed to provide any records relating to any contact by a reporter in a city near Houston, Texas, asking Mr. Adams if the City had a contract with Don Allen Holbrook, LLC and failed to provide any records from any internet searches or searches of websites and/or blogs relating to Don Allen Holbrook, LLC, Don Allen Holbrook, and/or the Economic Development Business Case Analysis performed by Don Allen Holbrook, LLC on internet sites or comments by bloggers later exchanged between members of the City Council, the City Manager, Donnie Jones, or any staff person employed by the City.

39. Should it be learned through the course of these proceedings that the City has knowingly withheld information that was the subject of this public records request or that the City has spoliated or taken other steps to erase, delete, or hide electronic or other evidence relating to any telephone calls from any reporter or any information from internet bloggers and

websites, Don Allen Holbrook, LLC will seek leave of this Court to supplement its Counterclaim to include a claim of spoliation of evidence, punitive damages, pre-judgment and post-judgment interest, and its attorney's fees and costs in defending this action against the City.

40. As a proximate result of the defamatory statements (per se or per quod) and internet postings and re-postings by Third-Party Defendants, their unlawful conspiracy to take advantage of "search engine optimization" by constantly posting and re-posting each other's comments to deprive Don Allen Holbrook, LLC of its business and reputation, their tortious interference with the Agreement with the City, Don Allen Holbrook, LLC has been harmed and suffered economic injury and injury to reputation and good will including, but not limited to the breach of Agreement by the City with Don Allen Holbrook, LLC, and the loss of other pending and future business and profits, including but not limited to a pending contract with Pahrump, Nevada, have resulted in compensatory damages to Don Allen Holbrook, LLC in excess of \$25,000.00 to be shown at trial, punitive damages in excess of \$50,000.00 to be shown at trial, special damages for out-of-pocket expenses to repair its reputation on the internet in excess of approximately \$25,000.00 for the first year and approximately \$8,000.00 per year thereafter, pre-judgment and post-judgment interest, and its attorney's fees and costs.

**COUNT ONE AGAINST ALL THIRD-PARTY DEFENDANTS:  
CIVIL CONSPIRACY**

41. Third-Party Plaintiff incorporates completely each of its allegations against Third-Party Defendants as stated above in the previous paragraphs as if fully rewritten.

42. As a proximate result of a malicious combination by Third-Party Defendants to injure Don Allen Holbrook, LLC, in a way not competent for one person or entity alone, Third-Party Defendants have unlawfully conspired to publish and post defamatory statements on numerous websites and blogs and have re-published and re-posted such statements on each

other's websites and blogs to take advantage of search engine optimization algorithms, or have hosted such websites and blogs including statements alleging that Don Allen Holbrook, LLC has engaged in criminal activity by using the words "scammer" and confidence man, alleging unethical and unprofessional conduct, alleging "drunken antics", among other untrue and defamatory statements, and have engaged in a concerted effort against Don Allen Holbrook, LLC of cyber-stalking and cyber-harassment.

43. The malicious combination by Third-Party Defendants has resulted in harm to Don Allen Holbrook, LLC because the City, without warning or notice, materially breached its Agreement with Don Allen Holbrook, LLC and demanded a full refund when the Agreement has no provision for a refund, resulting in damages to Don Allen Holbrook, LLC in the amount of \$66,000.00, plus punitive damages in excess of \$50,000.00 to be shown at trial, pre-judgment and post-judgment interest, and its attorney's fees and costs.

44. The malicious combination by Third-Party Defendants has resulted in other harm to pending and prospective future contracts and business of Don Allen Holbrook, LLC with other private and/or public entities, resulting in damages in excess of \$25,000.00 to be shown at trial, plus punitive damages in excess of \$50,000.00 to be shown at trial, pre-judgment and post-judgment interest, and its attorney's fees and costs.

**COUNT TWO AGAINST ALL THIRD-PARTY DEFENDANTS:  
TORTIOUS INTERFERENCE WITH CONTRACT  
AND PROSPECTIVE BUSINESS RELATIONS**

45. Third-Party Plaintiff incorporates completely each of its allegations against Third-Party Defendants as stated above in the previous paragraphs as if fully rewritten.

46. Upon information and belief, Third-Party Defendants learned about and had knowledge that Don Allen Holbrook, LLC had an Agreement with the City.

47. On or about February 29, 2012 and upon information and belief, Malisow telephoned Mr. Adams, specifically asked Mr. Adams if the City of Huber Heights had an Agreement with Don Allen Holbrook, LLC, specifically asked Mr. Adams when the Agreement was entered, which questions Mr. Adams answered, and, later published defamatory, false, and derogatory statements about Don Allen Holbrook, LLC, Don Holbrook, and a project in Houston, Texas, known as Earthquest, which has no relation to any work that Don Allen Holbrook, LLC was performing for the City of Huber Heights, Ohio.

48. Mr. Adams sent an email to Don Holbrook on February 29, 2012 about this “strange” telephone conversation.

49. Shortly thereafter and without any lawful or proper justification, Third-Party Defendants wrongfully and intentionally procured a material breach of the Agreement between the City and Don Allen Holbrook, LLC, resulting in possible compensatory damages in excess of \$66,000.00 to be shown at trial for the breach of the Agreement with the City, and resulting in the loss of a continuation of another pending contract with Pahrump, Nevada with compensatory damages in excess of \$25,000.00 to be shown at trial, and possible other compensatory damages for loss of other prospective business relations, plus punitive damages in excess of \$50,000.00 to be shown at trial, pre-judgment and post-judgment interest, and its attorney’s fees and costs.

**COUNT THREE AGAINST ALL THIRD-PARTY DEFENDANTS:  
DEFAMATION (PER SE OR PER QUOD)**

50. Third-Party Plaintiff incorporates completely each of its allegations against Third-Party Defendants as stated above in the previous paragraphs as if fully rewritten.

51. Third-Party Defendants have intentionally published statements on websites and in blogs that are defamatory per se about Don Allen Holbrook, LLC and were intended to injure and harm its business reputation, to expose Don Allen Holbrook, LLC to public ridicule, shame

and/or disgrace, and to adversely affect Don Allen Holbrook in its trade, business, or profession by posting and re-posting their own and other Third-Party Defendants' defamatory per se statements about Don Allen Holbrook, LLC to exploit search engine optimization algorithms and which constitute cyber-bullying, cyber-stalking, and cyber-harassment.

52. Many of the statements about alleged public drunkenness, alleged criminal activity, and/or alleged unethical conduct are defamatory per se and have directly proximately resulted in injury to Don Allen Holbrook, LLC, in excess of \$66,000.00 in compensatory damages to be shown at trial relating to the Agreement with the City, proximately resulted in the loss of a continuation of another pending contract with Pahrump, Nevada, with compensatory damages in excess of \$25,000.00 to be shown at trial, and proximately resulted in other injuries for loss of other pending and prospective business relations in amounts believed to be in excess of \$25,000.00 to be shown at trial, plus punitive damages in excess of \$50,000.00 to be shown at trial, pre-judgment and post-judgment interest, and its attorney's fees and costs.

53. To the extent that any of the statements are determined to be defamatory per quod, they resulted in special damages to Don Allen Holbrook, LLC in excess of \$25,000.00 to be shown at trial in the loss of the Agreement with the City, the loss of a continuation of a contract with Pahrump Nevada in the approximate amount of \$80,000.00, and the loss of other pending or future work because of its injured reputation, compensatory damages to repair its reputation on the internet in the approximate amount of \$25,000.00 for the first year and approximately \$8,000.00 per year thereafter, to be shown at trial, pre-judgment and post-judgment interest, plus punitive damages in excess of \$50,000.00 to be shown at trial, and its attorney's fees and costs.

**WHEREFORE,** Third-Party Plaintiff Don Allen Holbrook, LLC prays for this Court as

follows:

A. On Count One for Civil Conspiracy, Third-Party Plaintiff Don Allen Holbrook, LLC asks this Court to grant judgment in its favor and against all Third-Party Defendants, compensatory damages in favor of Third-Party Plaintiff Don Allen Holbrook, LLC in an amount in excess of \$25,000.00 to be shown at trial, punitive damages in an amount in excess of \$50,000.00 to be shown at trial, pre-judgment and post-judgment interest, its attorney's fees and all costs of this action and the Complaint filed against it;

B. On Count Two for Tortious Interference with Contractual Relations with the City, with Pahrump Nevada, and tortious interference with prospective business relations against all Third-Party Defendants, Third-Party Plaintiff Don Allen Holbrook, LLC asks this Court to grant judgment in its favor and against these Third-Party Defendants, compensatory damages in an amount in excess of \$25,000.00 to be shown at trial, punitive damages in an amount in excess of \$50,000.00 to be shown at trial, pre-judgment and post-judgment interest, its attorney's fees and all costs of this action and the Complaint filed against it;

C. On Count Three of the Third-Party Complaint for Defamation per se and/or per quod, Third-Party Plaintiff Don Allen Holbrook, LLC asks this Court to grant judgment in its favor and against all Third-Party Defendants, compensatory damages in an amount in excess of \$25,000.00 to be shown at trial or if such statements are determined to be defamatory per quod, special damages in an amount in excess of \$66,000.00 for any losses relating to the City, special damages in an amount in excess of \$80,000.00 for any losses relating to a pending contract with Pahrump, Nevada, special damages in an amount in excess of \$25,000.00 relating to any other losses that may be shown at trial relating to existing, pending and/or future losses of business with existing and/or prospective clients, compensatory damages to repair its reputation on the

internet in the approximate amount of \$25,000.00 for the first year and approximately \$8,000.00 per year thereafter, to be shown at trial, punitive damages in an amount in excess of \$50,000.00 to be shown at trial, pre-judgment and post-judgment interest, its attorney's fees and all costs of this action and the Complaint filed against it; and

D. For such other legal and/or equitable relief this Court deems just and proper.

Respectfully Submitted,

s/Sue Seeberger

Sue Seeberger (0059730)

5975 Kentshire Drive, Suite D

Dayton, Ohio 45440-4264

Voice: (937) 291-8646

Fax: (937) 291-8650

sueseeberger@biegeltye.com

Attorney for Defendant/Third-Party Plaintiff

Don Allen Holbrook, LLC

Third-Party Plaintiff asks for a jury trial all on claims against Third-Party Defendants.

s/Sue Seeberger

Sue Seeberger (0059730)

#### CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served by the Court's e-filing system on this 12<sup>th</sup> day of June, 2012, upon the following:

L. Michael Bly (mbly@pselaw.com)

Joshua M. Kin (jkin@pselaw.com)

Pickerel, Schaeffer & Ebeling Co.

2700 Kettering Tower

Dayton, Ohio 45423

s/Sue Seeberger



Don Allen Holbrook, LLC.  
9200 Dalmahoy Place, Las Vegas, NV 89145  
(928) 706-4440

Gary Adams, City Manager  
City of Huber Heights Ohio  
City Hall  
6131 Taylorsville Road, Huber Heights, Ohio 45424

Nov 2, 2011

Ref: Economic Development Business Case Analysis

Dear Gary;

As we discussed this week after meeting with the City Council members and the developer Mr. William Jump, I believe prior to making any definitive decisions as to how to proceed or more importantly when and how to proceed with the current development concept, it would be essential to do some in-depth analysis of the project situation.

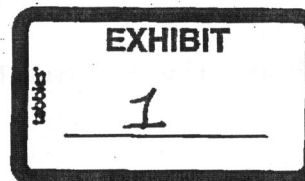
For example I believe this project if approached properly should and can be a major community and regional based legacy project to address the needs of not only Huber Heights residents but also from the perspective of being developed as a regional destination attraction area for the entire Greater Dayton Region. The development of the project as presented to me by Mr. William Jump presents a unique opportunity to enhance the currently planned build out by the developer to create such additional capacity. I believe in order to approach this type of additional enhancement via an eventual development agreement modification with the developer much greater information and analysis is required prior to committing to such a project in an enhanced public-private partnership such as you have commenced already with Mr. Jump. I would suggest that in order to create such a project the City Council should understand the process we would recommend for such an undertaking (our 3 step process). Then develop some framework of understanding the feasibility of the planned build out economically from an independent and impartial economic research group that can determine the current retail opportunities and the threat assessment of how the competitive landscape will impact such a development. This independent retail market analysis normally runs approximately \$25,000.00 in most cases and is not included in this scope of work by the consultant. (See Addendum A)

I would suggest that my work at a minimum should focus on the SWOT analysis of the current project to determine viability of adding the destination shopping and entertainment venue to their current plans, and the potential for modifying it with destination attraction components that would be regionally oriented, an also an analysis of the economic development incentives currently in place and that could also be modified an enhanced to further act as a catalyst to attract additional investment into the project area. My final analysis would either recommend or not the expansion of the project to include further aesthetic and thematic attraction components that Contour Entertainment could develop and present as part of a major project enhancement to the current development, and the merits of utilizing Contour for such an undertaking and the associated process and timeline for such a further engagement or not. Focusing on the added economic potential for undertaking such a destination experience project.

**Recommended scope of work:**

Create an economic development business case for the City of Huber Heights with regard to expanding the current project (William Jump) and the potential positive outcomes to the region for undertaking this investment and/or whether an another developer may be necessary specific to the greater needs of the concept recommended for going forward. In other words what is being

Scope of Work and Fees for Services Proposal



Don Allen Holbrook, LLC.  
9200 Dalmahoy Place, Las Vegas, NV 89145  
(928) 706-4440

proposed and why? How does this better improve the ability of the City of Huber Heights to compete for regional retail and job creation in the region?

Is the current retail assessment valid and realistic? What steps might be needed to mitigate the current proposed project in order to create a more robust regional destination attraction if any? What is the best course of action for developing the project to include such enhancements?

An independent SWOT analysis of the current project from a regional economic development perspective and coupled with City Council expectations for competing for future economic development growth.

Conduct a capital assessment as to what modification might be useful to the current economic development financial incentives to attract more significant investment and the ROI justification for such use of expanded incentives by the City of Huber Heights. This will be useful to attracting and/or expanding the investor support for the project.

Recommendation as to the use of further strategic partners to fill in details and conceptual strategies once the underpinning economic analysis determines the best and most practical course to undertake that will support the expectations of the City of Huber Heights and that are realistic given the actual market conditions. For example preparing some illustrative examples of the potential final outcomes possible for such a project would be highly desirable and recommended. Contour Entertainment could supply such preliminary hypothetical images if the City so desires. (See addendum B)

This scope of work would take approximately 4-6 weeks and would require the assistance of the City Staff and collaboration of the current developer to provide information and collaborate on conceptual development strategies. I believe this would require three trips to Dayton for this project as part of the travel expenses.

Fee for services would be \$36,000.00

**Payment Schedule:**

Upon Commencement of the project 30% payment - \$10,800.00  
Expenses are not included in the project fees.

Travel Expense Payment- \$3500.00 upon commencement

Total commencement payment is due of \$14,300.00

Interim Report is given to City Manager and Staff for their input (Economic Development Business Case) is presented 50% payment- \$18,000.00

Final Report is given to the City Council and the remaining 20% is paid upon arrival- \$7,200.00

Total Contracted amount of Payments including expenses = \$39,500.00

Checks should be made payable to (I prefer wire transfers if possible):  
Don Allen Holbrook, LLC.  
9200 Dalmahoy Place

Scope of Work and Fees for Services Proposal

Don Allen Holbrook, LLC.  
9200 Dalmahoy Place, Las Vegas, NV 89145  
(928) 706-4440  
Las Vegas, NV 89145

**Timeline:**

**Upon Commencement of Work: Trip One;**

Conduct meetings in Ohio with developer, city staff and other economic development related entities to establish a base understanding and establish considerations and driving factors from an expectations and market reality perspective. 4 days of in market work.

Decide on the use of an enhanced economic market feasibility analysis by a recognized outside independent international firm. Discuss the merits of such with the City Staff if this becomes a major concern.

**Anticipated Commencement December 2011.**

**Interim Report: Trip Two; 4 days in Market**

This would be the period of time where the initial SWOT analysis would be discussed and the findings from the initial analysis for consideration as an enhanced regional destination development are presented and supported or discussion of further mitigation is recommended. Staff comments and input will be incorporated into the final report after discussion in the interim report stage with the consultant.

**Anticipated Trip would be early January 2012.**

**Final Report: Trip Three; 2 days in Market**

The final report would be presented to the City Council and/or their directed entity for their review and consideration of recommendations. The consultant would further meet with the City Manager and Staff after words to prepare next step strategies if the City Council so directs such action after their review of the report.

**Anticipated Trip would be early February 2012.**

I have reviewed the above scope of work and would like to retain the services of Don Allen Holbrook, LLC. in order for them to provide these services to the City of Huber Heights, Ohio, and I am authorizing such a contract on behalf of the City Council of Huber Heights, Ohio.

Signed:

Gary D. Adams Dated: 12/15/11

Title: City Manager

Accepted by

Don A. Holbrook, CEED, CEDFP, FM  
Managing Partner  
Don Allen Holbrook, LLC.

Dated: 12/9/11

**Example Illustrations of Destination Development Projects with Public Partners;**  
**Pahrump NV-Developing A Competitive Landscape adjacent to Las Vegas**

# Adventure Springs Resort

- 1 Main Entry
- 2 Visitor Center
- 3 Hotel Parking
- 4 Resort Hotel
- 5 Waterpark Parking
- 6 Waterpark
- 7 Baking Cakes
- 8 Go Cart Tracks
- 9 Hot Shots Dining Range
- 10 Main Parking Lot
- 11 Manure and Road Electric
- 12 Table Games Restaurant
- 13 Family Entertainment Center
- 14 Cafe
- 15 Playump/Space & Snack Bar
- 16 Cinema
- 17 Hotel
- 18 Adventure Tennis
- 19 Mini Golf
- 20 Event Space

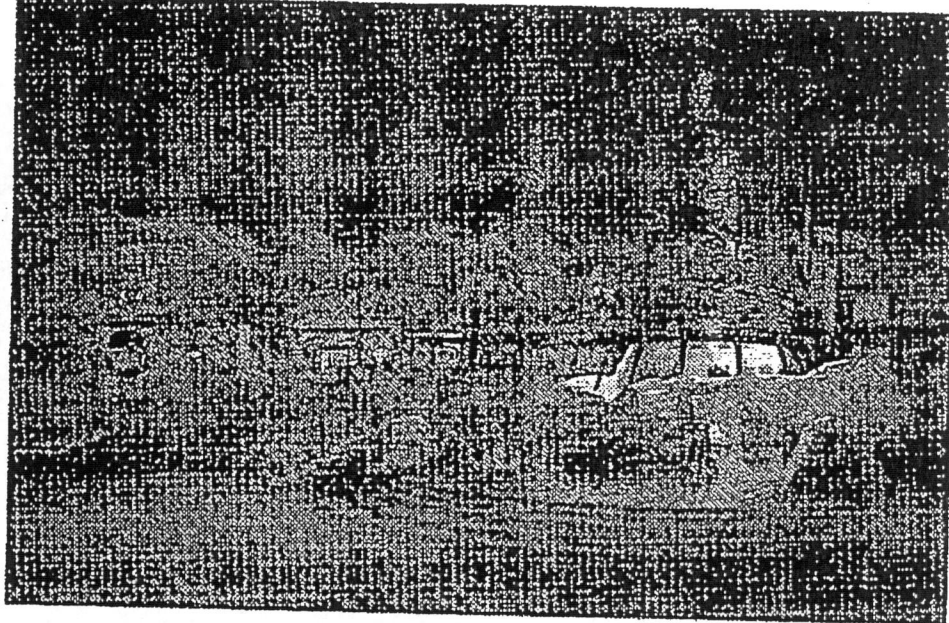
CONTOUR  
Charlotte, NC

8/1/2002  
8/1/2002

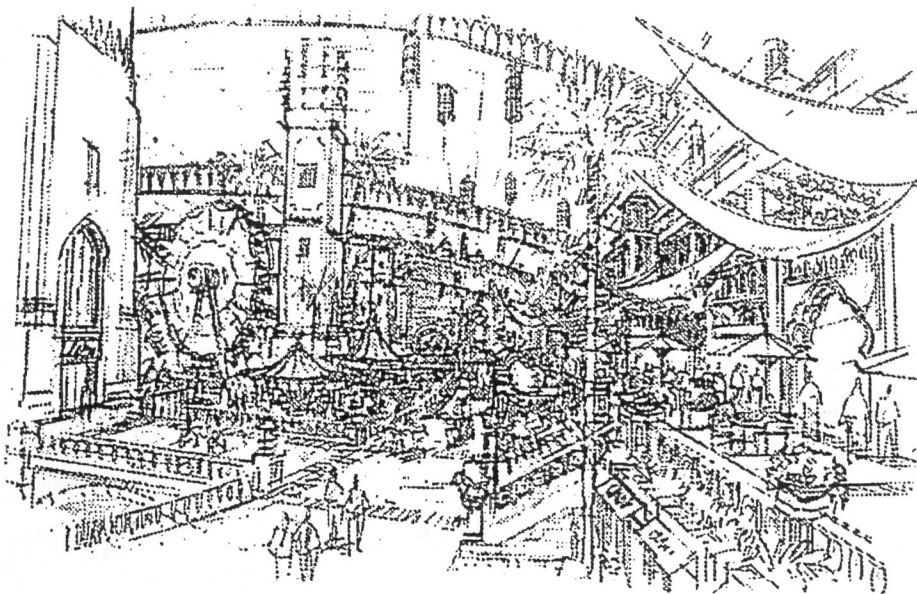
### Street View of Pahrump Concept

Q1

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(928) 706-4440



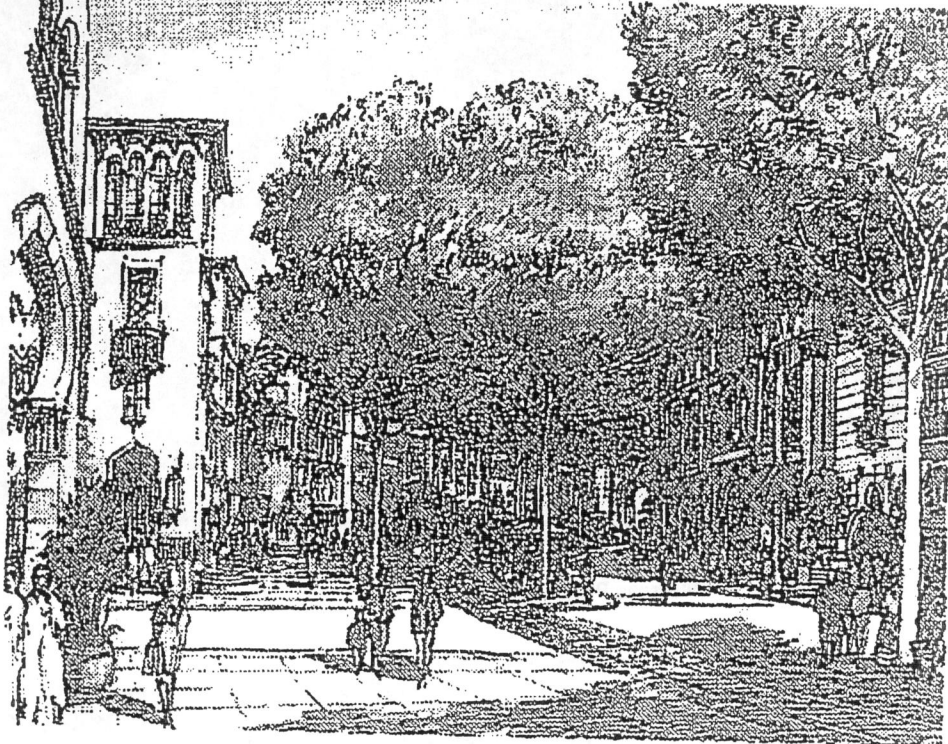
Streetscapes from Overseas Projects;



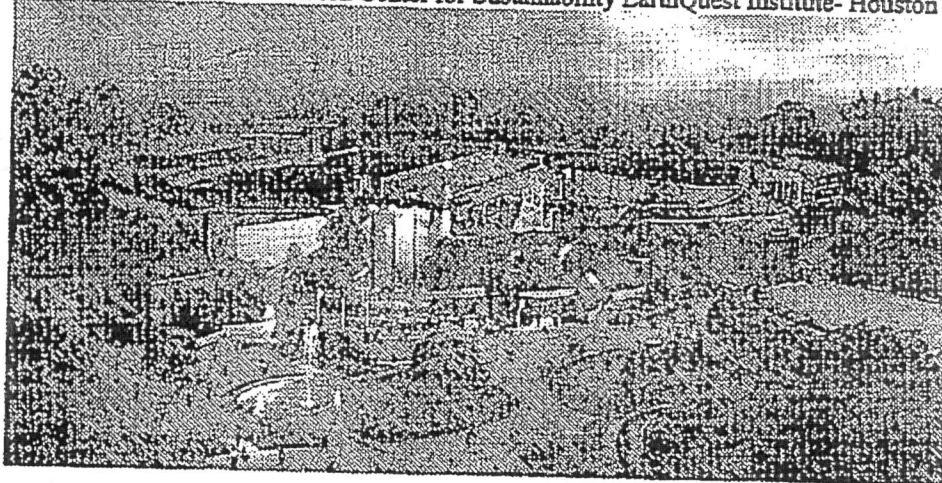
6/11

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Typical Lifestyle Streetscape;



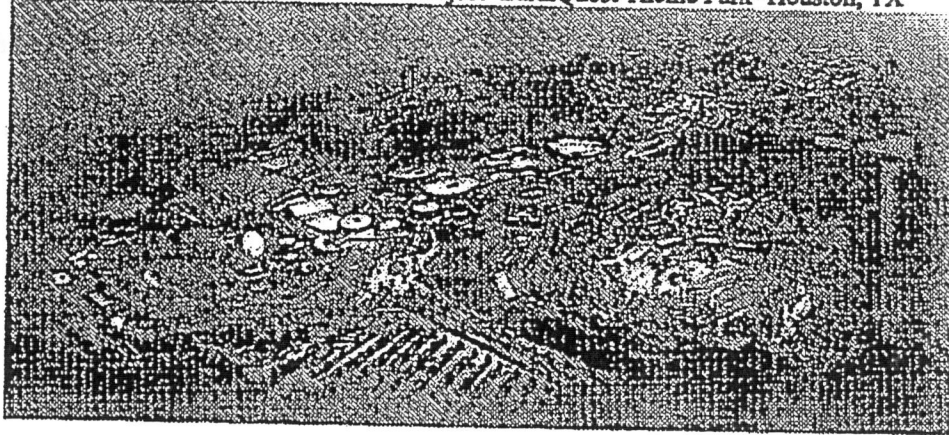
The anchor Non-Profit Research Center for Sustainability EarthQuest Institute- Houston



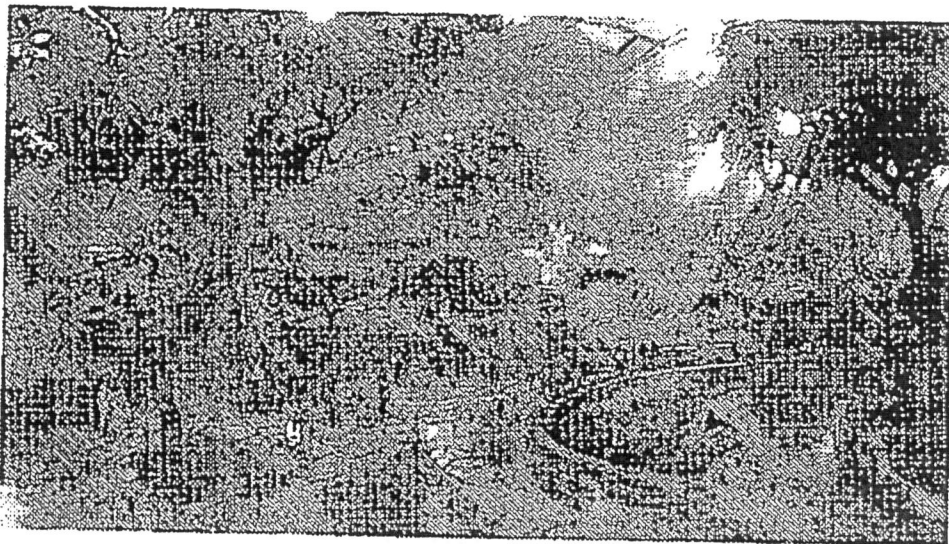


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**Recommended Thematic Destination Project- EarthQuest Theme Park- Houston, TX**



**Typical Destination Project overseas;**



*DAH*

Don Allen Holbrook, LLC.  
9200 Dalmahoy Place, Las Vegas, NV 89145  
(928) 706-4440

#### Addendum A

Don Allen Holbrook, LLC. shall contract with ProForma Associates (Mr. John Turner) to conduct a retail competitive landscape analysis as to the market considerations that should be understood in building a major retail driven entertainment destination development concept in Huber Heights. This report will give market overview, SWOT of retail market, and recommendations to support the expansion of a new destination retail and thematic entertainment development that would be capable of addressing greater Dayton regional economic opportunities.

The cost of this analysis and report would be \$25,000.00 plus 1 trip to the market at a travel allocation of no more than \$1500.00- all addendum quotes include a 13% administrative management fee for directing their work and incorporating the work into the final over-all report to the City of Huber Heights.

Breakdown of Payment for Services is as follows:

30% upon Commencement- \$7500.00 plus \$1500.00 travel funds- \$9,000.00 total  
50% upon submittal of the Interim Report- \$12,500.00  
20% upon submittal of the final report- \$5,000.00

\_\_\_\_\_ Initial for authorization from City of Huber Heights

#### Addendum B

Don Allen Holbrook, LLC. shall contract with Contour Entertainment (Mr. Chris Brown) to produce some illustrative examples of the potential development of a retail oriented thematic entertainment supported concept for Huber Heights to be used as illustrative potential examples and not to be considered as the actual recommendation of venues specific to Huber Heights. The cost of developing such illustrative examples for public communication purposes shall cost approximately not to exceed \$15,000.00-. No travel is anticipated for this developmental concept work.

Breakdown of Payment for Services is as follows:

30% upon Commencement- \$4,500.00  
50% upon submittal of the Interim Report- \$7,500.00  
20% upon submittal of the final report- \$3,000.00

In both Addendums Don Allen Holbrook, LLC will act as the Master Consultant to the City of Huber Heights and shall sub-contract with the aforementioned vendors if so directed by the City of Huber Heights to undertake this additional project scope of work.

\_\_\_\_\_ Initial for authorization from City of Huber Heights



CITY OF HUBER HEIGHTS  
STATE OF OHIO

RESOLUTION NO. 2011-R-5559

**AUTHORIZING THE CITY MANAGER TO ENTER INTO AN ECONOMIC DEVELOPMENT BUSINESS CASE ANALYSIS CONTRACT WITH DON ALLEN HOLBROOK, LLC, AND DECLARING AN EMERGENCY.**

WHEREAS, the City is currently exploring development opportunities in the City including but not limited to those associated with the proposed Recreation Amenity that can potentially be regional based projects; and

WHEREAS, Council has deemed it to be in the best interest of the City to engage the services of Don Allen Holbrook, LLC to provide in-depth analysis of the existing and future development opportunities and future economic growth.

NOW, THEREFORE, BE IT RESOLVED by the City Council of Huber Heights, Ohio that:

Section 1. The City Manager is hereby authorized to enter into an agreement with Don Allen Holbrook, LLC substantially in the form attached hereto as Exhibit A (the "Agreement") for an amount not to exceed \$39,500.00/including expenses.

Section 2. The City Manager is further authorized to accept Addendum A of the Agreement regarding a retail competitive landscape analysis for an additional amount not to exceed \$26,500.00 including expenses.

Section 3. It is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this Resolution were adopted in an open meeting of this Council and that all deliberations of this Council and of any of its Committees that resulted in such formal action were in meetings open to the public and in compliance with all legal requirements including Section 121.22 of the Ohio Revised Code.

Section 4. This Resolution is hereby declared to be an emergency measure necessary for the immediate preservation of public peace, health, safety and welfare and for the further reason that completing the study at the earliest possible time is proper and coordinate development of the existing projects, therefore, this Resolution shall take effect immediately upon its adoption by Council.

Passed by Council on the 12<sup>th</sup> day of December, 2011;  
7 Year, 0 Mays.

Effective Date: December 12, 2011

**AUTHENTICATION:**

Anthony C. Rossi  
Clerk of Council

12-13-11  
Date

Ron Fisher  
Mayor

12-14-11  
Date

EXHIBIT

2