

**BIRMINGHAM CITY COMMISSION AGENDA**

**AMENDED August 29, 2022**

**MUNICIPAL BUILDING, 151 MARTIN**

**7:30 P.M.**

**I. CALL TO ORDER AND PLEDGE OF ALLEGIANCE**

Therese Longe, Mayor

**II. ROLL CALL**

Alexandria Bingham, City Clerk

**III. PROCLAMATIONS, CONGRATULATORY RESOLUTIONS, AWARDS, APPOINTMENTS, RESIGNATIONS AND CONFIRMATIONS, ADMINISTRATION OF OATHS, INTRODUCTION OF GUESTS AND ANNOUNCEMENTS.**

**ANNOUNCEMENTS**

- The City continues to recommend the public wear masks while attending City meetings. All City employees, commissioners, and board members must wear a mask while indoors because adequate ventilation cannot be maintained. This is to ensure the continuity of government is not affected by an exposure to COVID-19 that can be prevented by wearing a mask. The City continues to provide KN-95 respirators and triple-layered masks for all in-person meeting attendees.
- The Clerk's office would like to remind voters to turn in an absentee ballot application if they wish to vote by mail for the November 8, 2022 State General Election. Absentee Ballots are tentatively scheduled to be mailed out the last week of September. If you have already turned in your application to receive a November absentee ballot and need to change the mailing location, please contact the Clerk's office as soon as possible. To review your specific voting information, request an absentee ballot, or update your voter name or address go to [mi.gov/vote](http://mi.gov/vote). The online and mail voter registration deadline is October 24th. After October 24th new voters must register in person at the clerk's office.
- National Recovery Month Proclamation
- Village Players Proclamation
- **Timothy J. Currier Proclamation<sup>1</sup>**

**APPOINTMENTS**

- A. Appointments to the Advisory Parking Committee
1. Kevin Kozlowski
  2. Lisa Silverman

To appoint \_\_\_\_\_ to the Advisory Parking Committee as a regular member who is a resident shopper to serve a three-year term to expire September 1, 2025.

To appoint \_\_\_\_\_ to the Advisory Parking Committee as a regular member who is a representative of a downtown Birmingham professional firm to serve a three-year term to expire September 1, 2025.

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<sup>1</sup> Addition to agenda 8/29/22 11:30am

To appoint \_\_\_\_\_ to the Advisory Parking Committee as a regular member who is a resident to serve a three-year term to expire September 1, 2025.

- B. Appointment to the Board of Review
  - 1. Maria Chirco

To appoint \_\_\_\_\_ to the Board of Review as an alternate member to serve the remainder of a three-year term to expire December 31, 2023.

- C. Appointment to Hearing Officer
  - 2. Lawrence Lyng

To appoint \_\_\_\_\_ as the Hearing Officer to serve a three-year term to expire June 30, 2025.

- D. Appointment to the Board of Zoning Appeals
  - 1. Richard Lilley

To appoint \_\_\_\_\_ as an alternate member to the Board of Zoning Appeals to serve the remainder of a three-year term to expire February 18, 2023.

- E. Appointment to the Triangle District Corridor Improvement Authority
  - 1. Erica Ahmed

To appoint \_\_\_\_\_ to the Triangle District Corridor Improvement Authority as a member with ownership or business interest in property located in the Development Area to serve the remainder of a four-year term to expire December 15, 2022.

To appoint \_\_\_\_\_ to the Triangle District Corridor Improvement Authority as a member with ownership or business interest in property located in the Development Area to serve the remainder of a four-year term to expire December 15, 2023.

- F. Appointment to the Brownfield Redevelopment Authority
  - 1. Harry Awdey

To appoint \_\_\_\_\_ as a regular member to the Brownfield Redevelopment Authority to serve the remainder of a three-year term to expire May 23, 2024.

To appoint \_\_\_\_\_ as a regular member to the Brownfield Redevelopment Authority to serve a three-year term to expire May 23, 2025.

<b>IV. OPEN TO THE PUBLIC FOR MATTERS NOT ON THE AGENDA</b>
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**V. CONSENT AGENDA**

All items listed on the consent agenda are considered to be routine and will be enacted by one motion and approved by a roll call vote. There will be no separate discussion of the items unless a Commissioner or citizen so requests, in which event the item will be removed from the general order of business and considered under the last item of new business.

*\*Minutes from the City Commission workshop of August 24, 2022 will be available at the September 12, 2022 meeting.*

- A. Resolution to approve the City Commission meeting minutes of August 15, 2022.
- B. Resolution to approve the warrant list, including Automated Clearing House payments, dated August 17, 2022, in the amount of \$8,340,531.37.
- C. Resolution to approve the warrant list, including Automated Clearing House payments, dated August 24, 2022, in the amount of \$1,075,548.31.
- D. Resolution to approve the purchase of the Nutanix expansion for the Hyper-converged infrastructure from CDWG at total cost not to exceed \$33,608.00. Funds are available in the Machinery and Equipment fund account #636.0-228.000-971.0100.
- E. Resolution to approve the First Amendment Software Agreement between the City and Sensus (needed to initiate the software upgrade),

AND

Resolution to approve an agreement with ETNA Supply Company for the one-time Sensus Meter System Upgrade and the year one hosting fee totaling (\$82,450) and to approve the annual web hosting fees to be paid over the following four years as cited below. Funding will be available in account number 591-537.001-811.0000 for the system upgrade and annual costs; further, to approve the appropriation and amendment to the fiscal year 2022 thru 2027 Water Fund budget as follows:

**Expenses:**

Fiscal Year 2022-2023

591-537.001-811.0000	One-time Upgrade Fee	\$49,000
591-537.007-811.0000	Fiscal Year 2022-2023 Annual Hosting Fee	<u>\$33,450</u>
		\$82,450

Upcoming Annual Cost Schedule

Fiscal Year 2023-2024	Annual Hosting Fee	\$35,210
Fiscal Year 2024-2025	Annual Hosting Fee	\$37,070
Fiscal Year 2025-2026	Annual Hosting Fee	\$39,020
Fiscal Year 2026-2027	Annual Hosting Fee	<u>\$41,070</u>
Four-Year Total		\$152,370

And further, to authorize the Mayor and City Clerk to sign the agreement on behalf of the City.

- F. Resolution confirming the City Manager’s authorization for the emergency expenditure related to the repair of a brick wall on the east side entrance of the Park Street Structure by Pullman SST Inc. for a cost not to exceed \$8,400.00 to be charged to the Automobile Parking System Fund, Park Street Structure Building Maintenance Account #514.1-594.003-930.0500. Furthermore, to direct the City Attorney to continue to seek restitution from the responsible driver’s insurance company for \$8,400.00.
- G. Resolution approving the purchase of two (2) 2022 Chevrolet Tahoe vehicles for \$40,466 each, from Berger Chevrolet located at 2525 28th Street S.E., Grand Rapids, MI 49512, under the State of Michigan MiDeal extendable purchasing contract #071B7700184, in the amount not to exceed \$80,932 for both vehicles. Funds for this purchase are available in the FY 2022-2023 Auto Equipment Fund account #641-441.006.971.0100.
- H. Resolution approving the sculpture donations of “Untitled #1” and “Untitled #2” by Hank Marx to be installed at Martha Baldwin Park.
- I. Resolution approving the sculpture donation of “Khyber” by Tom Fitzgerald, donated by Carolle Baskin to be installed at Fairway Park.
- J. Resolution to move the third strategic planning workshop from September 27, 2022 to October 11, 2022 at 7 p.m.
- K. Resolution to appoint City Engineer Melissa Coatta as Representative of the City of Birmingham on the SOCWA Board of Trustees for the remainder of the 2022/2023 fiscal year.
- L. Resolution to accept the resignation of Caitlin Rosso from the Museum Board, to thank her for her service and to direct the City Clerk to begin the process of filling the vacancy.

<b>VI. UNFINISHED BUSINESS</b>
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<b>VII. NEW BUSINESS</b>
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- A. Public Hearing – Confirming Roll for Westwood Cape-Seal Treatment Special Assessment District #898
  - 1. Resolution confirming special assessment roll 898 as indicated in the staff report.
- B. Public Hearing – Confirming Roll for Westwood, Raynale and Oak Sewer and Water Lateral Replacement Special Assessment District #898S and #898W
  - 1. Resolution confirming special assessment rolls 898S and 898W as indicated in the staff report.
- C. Public Hearing - Request to Rezone - 695 W. Brown - parcel # 08-19-36-151-027 from R8 Attached Single-Family Residential to R2 Single-Family Residential on Watkins Street
  - 1. Motion adopting an ordinance amendment to rezone a portion of 695 W. Brown, parcel #19-36-151-027, from R8 Attached Single Family to R2 Single Family Residential.
- D. Public Hearing – Proposed Lot Division on Watkins and Brown St. - 695 W. Brown Street, parcel # 19-36-159-009 & parcel # 19-36-151-027
  - 1. Resolution to approve the lot division of 695 W. Brown, parcel # 19-36-159-009 & parcel # 19-36-151-027.

- E. Resolution to appoint \_\_\_\_\_ as the City of Birmingham’s official voting delegate and \_\_\_\_\_ as the alternate delegate, for the Michigan Municipal League Annual Meeting to be held in Muskegon, Michigan on October 19, 2022.
- F. Commission Items for Future Discussion. A motion is required to bring up the item for future discussion at the next reasonable agenda, no discussion on the topic will happen tonight.
- G. Commission discussion on items from a prior meeting:
  - 1. Birmingham Country Club – Pickleball
  - 2. Traffic Calming Measures – Speed Tables/Speed Humps
- H. Resolution to meet in closed session to discuss pending litigation pursuant to MCL § 15.268 Sec. 8(e) of the Open Meetings Act regarding John Reinhart, et al the v City of Birmingham; U.S. District Court Case No.: 2:22-cv-11074-MAG-DRG.

AND

Resolution to meet in closed session to discuss a written attorney/client privilege communication pursuant to MCL § 15.268 Sec. 8(h) of the Open Meetings Act.

**A roll call vote is required and the vote must be approved by a 2/3 majority of the commission. The commission will adjourn to closed session after all other business has been addressed in open session and reconvene to open session, after the closed session, for purposes of taking formal action resulting from the closed session and for purposes of adjourning the meeting.**

**VIII. REMOVED FROM CONSENT AGENDA**

**IX. COMMUNICATIONS**

**X. REPORTS**

- A. Commissioner Reports
  - 1. Notice of Intention to Appoint to the Museum Board
- B. Commissioner Comments
- C. Advisory Boards, Committees, Commissions’ Reports and Agendas
- D. Legislation
- E. City Staff
  - 1. City Manager’s Report

INFORMATION ONLY

**XI. ADJOURN**

Should you wish to participate in this meeting, you are invited to attend the meeting in person or virtually through ZOOM: <https://zoom.us/j/655079760> Meeting ID: 655 079 760  
 You may also present your written statement to the City Commission, City of Birmingham, 151 Martin Street, P.O. Box 3001, Birmingham, Michigan 48012-3001 prior to the hearing.

*NOTICE: Individuals requiring accommodations, such as mobility, visual, hearing, interpreter or other assistance, for effective participation in this meeting should contact the City Clerk's Office at (248) 530-1880 (voice), or (248) 644-5115 (TDD) at least one day in advance to request mobility, visual, hearing or other assistance.*

*Las personas que requieren alojamiento, tales como servicios de interpretación, la participación efectiva en esta reunión deben ponerse en contacto con la Oficina del Secretario Municipal al [\(248\) 530-1880](tel:2485301880) por lo menos el día antes de la reunión pública. (Title VI of the Civil Rights Act of 1964).*



## *Proclamation*

### **National Recovery Month-September 2022**

- Whereas,** according to the Substance Abuse and Mental Health Services Administration (SAMHSA), In 2020, 40.3 million people aged 12 or older (14.5 percent) had an Substance Use Disorder (SUD) in the past year, including 28.3 million who had alcohol use disorder; 18.4 million who had an illicit drug use disorder and 6.5 million people who had both alcohol use disorder and an illicit drug use disorder; and
- Whereas,** according to SAMHSA, in 2020, 22.2 percent of Americans (or 61.6 million people) 12 years or older, were binge alcohol users in the past month. The percentage was highest among young adults aged 18 to 25; and
- Whereas,** according to the Centers for Disease Control and Prevention (CDC) nearly 92,000 overdose deaths occurred in the United States in 2020, which was a 31% increase from 2019; and
- Whereas,** substance use recovery is important for individual well-being and vitality, as well as for families, friends, communities, and businesses; and
- Whereas,** Oakland Community Health Network (OCHN) continues to educate and raise awareness of the risks and potential harm associated with prescription drug misuse; and
- Whereas,** stigma and stereotypes associated with substance use disorders often keep people from seeking treatment that could improve their quality of life; and
- Whereas,** substance use disorders occur when the re-current use of alcohol and/or other drugs cause clinically or functionally significant impairment, such as health problems, disability, and failure to meet major responsibilities at work, school, or home; and
- Whereas,** substance use disorder recovery is a journey of healing and transformation, enabling people to live in a community of their choice while striving to achieve his/her full potential; and
- Whereas,** substance use disorder recovery benefits individuals with substance use disorders by focusing on their abilities to live, work, learn, and fully participate and contribute to society and also enriches the community culture; and

**NOW, THEREFORE, BE IT PROCLAIMED** that, I, Therese Longe, Mayor for the City of Birmingham, on behalf of the Birmingham City Commission hereby recognize September 2022 as National Recovery Month. OCHN calls upon our citizens, government agencies, public and private institutions, businesses, and schools to re-commit our state to increasing awareness and understanding of substance use, and the need for appropriate and accessible services to promote recovery.



On behalf of the City of Birmingham and the residents of Birmingham this 29<sup>th</sup> day of August, 2022.

Therese Longe, Mayor



## **PROCLAMATION**

### ***Birmingham Village Players Centennial***

**WHEREAS,** for 100 seasons, the Birmingham Village Players have provided quality community theatre to the residents of Birmingham and the surrounding communities. It is the third oldest community theater in Michigan having been founded in 1923 and ranks among the 50 oldest theater groups in the United States; and

**WHEREAS,** the mission of Birmingham Village Players is to produce plays and to study drama, play direction, costuming and scenery design to promote interest in drama as well as encourage the writing of plays. All of this is done through voluntary involvement within the community through outreach programs; and

**WHEREAS,** the Birmingham Village Players embrace a policy of racial and gender-inclusive casting and strive to produce thought-provoking theater and musicals. The Birmingham Village Players consists of approximately 200 members that volunteer to direct, produce, choreograph, design, and act in their productions; and

**WHEREAS,** the Birmingham Village Players have been a strong supporter and partner with the City of Birmingham throughout its 100 seasons; and

**WHEREAS,** a year-long celebration of this exciting milestone begins on September 9, 2022 at the opening of the first play of their 100th season, ***Arsenic and Old Lace***. Local elected officials as well as Birmingham Village Players leaders and members will be there to kick-off the next century of community theatre in Birmingham; and

**NOW, THEREFORE, BE IT PROCLAIMED** that, I, Therese Longe, Mayor for the City of Birmingham, on behalf of the Birmingham City Commission, extend my congratulations to the Birmingham Village Players for 100 seasons of invaluable contributions to the community by providing quality live theatre, arts education, and a sense of community to all, adults and children alike, who share the delight and magic of theatre.

On behalf of the City of Birmingham and the  
residents of Birmingham this 29<sup>th</sup> day of August, 2022.

Therese Longe, Mayor



***PROCLAMATION***

***In Recognition of Timothy J. Currier for  
30 Years of Service as City Attorney for the City of Birmingham.***

***WHEREAS,*** we are here today to express special recognition to Timothy (Tim) J. Currier and to honor him for his distinguished 30 year career as City Attorney for the City of Birmingham and his many contributions to the City; and

***WHEREAS,*** Tim graduated from the University of Notre Dame in 1975 and from the University of Detroit Law School in 1978 while serving as a sheriff's deputy with the Oakland County Sheriff's Office; and

***WHEREAS,*** during his 44 year legal career, the past 30 years as the City Attorney for Birmingham, Tim demonstrated his dedication to the City and its citizens through his leadership, professional legal skills, commitment of time and energy, and admirable character; and

***WHEREAS,*** Tim served with honor, diligence and integrity as City Attorney, earning awards such as Michigan Municipal Attorney of the Year (2012) and numerous other honors: one of the Best Lawyers in America, Michigan Super Lawyer and Municipal "Lawyer of the Year" (2015);

***WHEREAS,*** during his years of distinguished service, Tim will always be remembered for his work ethic, outgoing personality and as a true friend and colleague; and

***NOW THEREFORE,*** the Birmingham City Commission extends its appreciation and gratitude to Tim and recognizes him for his outstanding service and numerous contributions to the City of Birmingham by dedicating a park bench on City Hall property in his honor. We wish him all the best in his future endeavors.

*On behalf of the City Commission and the residents of  
Birmingham on this 29<sup>th</sup> day of August 2022.*

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*Therese Longe, Mayor*





**NOTICE OF INTENTION TO APPOINT TO THE  
ADVISORY PARKING COMMITTEE**

At the regular meeting of Monday, August 29, 2022, the Birmingham City Commission intends to appoint three regular members to the Advisory Parking Committee to serve three-year terms expiring September 1, 2025 who is a resident shopper, a representative of a downtown Birmingham professional firm and a resident.

Interested citizens may submit an application available at the City Clerk’s Office or online at [www.bhamgov.org/boardopportunities](http://www.bhamgov.org/boardopportunities). Applications must be submitted to the City Clerk’s Office on or before noon on Wednesday, August 24, 2022. These documents will appear in the public agenda for the regular meeting at which time the City Commission will discuss recommendations, and may make nominations and voter on appointments.

Committee Duties

The Advisory Parking Committee shall provide guidance to the City Commission in the management of Birmingham's Auto Parking System. The Committee shall recognize parking requirements of the CBD and fairly assess the costs to users. It will provide for attractive, maintained and safe facilities.

Applicant(s) Presented For City Commission Consideration:

<b>Applicant Name</b>	<b>Criteria/Qualifications.</b>
Kevin Kozlowski	Resident Shopper
Lisa Silverman	Resident, re-appointment

*NOTE: All members of boards and commissions are subject to the provisions of City of Birmingham City Code Chapter 2, Article IX, Ethics and the filing of the Affidavit and Disclosure Statement.*

**SUGGESTED ACTION:**

To appoint \_\_\_\_\_ to the Advisory Parking Committee as a regular member who is a resident shopper to serve a three-year term to expire September 1, 2025.

To appoint \_\_\_\_\_ to the Advisory Parking Committee as a regular member who is a representative of a downtown Birmingham professional firm to serve a three-year term to expire September 1, 2025.

To appoint \_\_\_\_\_ to the Advisory Parking Committee as a regular member who is a resident to serve a three-year term to expire September 1, 2025.



# ADVISORY PARKING COMMITTEE

Resolution No. 8-882-84 - August 6, 1984. Amended by Resolution No. 9-989-84 September 4, 1984. Amended by Resolution No. 05-152-00 May 22, 2000. Amended by Resolution No. 05-139-17 May 22, 2017. Amended by Resolution No. 10-258-19, October 28, 2019.

Terms: Three years

Appointment requirements for regular members: The majority of the members shall be residents and membership shall be as follows:

Downtown commercial representatives - large retail - 1 member; small retail - 1 member; professional firm - 1 member; Birmingham Shopping District - 1 member; restaurant owner - 1 member; downtown employee representative - 1 member; residential - two members who do not qualify under any of the previous categories, and one resident shopper.

2 alternate members may be appointed who own property, own a business or work in the parking assessment district.

The Advisory Parking Committee shall provide guidance to the City Commission in the management of Birmingham's Auto Parking System. The committee shall recognize parking requirements of the CBD and fairly assess the costs to users. It will provide for attractive, maintained and safe facilities.

Last Name	First Name	Home Business E-Mail	Appointed	Term Expires
<b>Arpin</b>	<b>James J.</b>	313-949-0252	5/9/2022	9/4/2024
410 Southfield Road			Resident/Engineer/Consultant	
Birmingham	48009	<i>jjarpin@gmail.com</i>		
<b>Astrein</b>	<b>Richard</b>	(248) 399-4228	12/9/2019	9/4/2024
13125 Ludlow			BSD member	
Huntington Woods	48070	<i>richard@astreins.com</i>		
<b>Black</b>	<b>Aaron</b>	(248)283-4200	12/8/2020	9/4/2022
2243 Dorchester Rd			Resident shopper	
Birmingham	48009	<i>ablack@daxtonhotel.com</i>		

<b>Last Name</b>	<b>First Name</b>	<b>Home Business E-Mail</b>	<b>Appointed</b>	<b>Term Expires</b>
<b>Cobb</b> 2056 Dorchester Birmingham	<b>Kelly</b> 48009	(313)434-4413 <i>kellywcobb@gmail.com</i>	4/25/2022 Restaurant Owner	9/4/2023
<b>Kalczynski</b> 100 Townsend Birmingham	<b>Steven</b> 48009	(248) 642-7900 <i>skalczynski@yahoo.com</i>	11/26/2012 Large retail	9/4/2023
<b>Krueger</b> 348 Ferndale Ave Birmingham	<b>Lisa</b> 48009	(248) 921-0099 <i>lisakrug21@gmail.com</i>	3/30/2015 Downtown employee member	9/4/2023
<b>Paskiewicz</b> 560 Woodland Birmingham	<b>Judith</b> 48009	248-642-3337 <i>judithpaskiewicz@hotmail.com</i>	Professional firm	9/4/2022
<b>Petcoff</b> 463 Henley Birmingham	<b>Mary-Claire</b> 48009	(410)-991-1460 <i>mcp@wwrplaw.com</i>	12/21/2020 Alternate	9/4/2023
<b>Silverman</b> 1200 Latham Birmingham	<b>Lisa</b> 48009	248-642-3337 <i>lisas229@aol.com</i>	10/7/2019 Resident	9/4/2022
<b>Vaitas</b> 2633 Endsleigh Drive Bloomfield Village	<b>Algirdas</b> 48301	(248) 593-3177 <i>alvortho@aol.com</i>	11/13/2006 Small retail	9/4/2024
<b>Yert</b> 490 Park St. Birmingham	<b>Jennifer</b> 48009	617-308-0080 <i>sulesq@yahoo.com</i>	8/13/2018 Alternate (Downtown employee)	9/4/2023



<b>OFFICE USE ONLY</b>	
Meets Requirements?	<input checked="" type="radio"/> Yes <input type="radio"/> No
<input checked="" type="radio"/> Will Attend	<input type="radio"/> Unable to Attend

### APPLICATION FOR CITY BOARD OR COMMITTEE

Thank you for your interest in serving on a Board or Committee. The purpose of this form is to provide the City Commission with basic information about applicants considered for appointment. NOTE: Completed applications are included in the City Commission agenda packets. The information included on this form is open to the public. All Board and Committee members are subject to the provisions of the Ethics Ordinance (Chapter 2, Article IX of the City Code).

Information on various Boards and Committees and a list of current openings can be found on the City website at [www.bhamgov.org/boardopportunities](http://www.bhamgov.org/boardopportunities).

(Please print clearly)

Board/Committee of Interest \_\_\_\_\_

Specific Category/Vacancy on Board \_\_\_\_\_ (see back of this form for information)

Name \_\_\_\_\_

Phone \_\_\_\_\_

Residential Address \_\_\_\_\_

Email \* \_\_\_\_\_

Residential City, Zip \_\_\_\_\_

Length of Residence \_\_\_\_\_

Business Address \_\_\_\_\_

Occupation \_\_\_\_\_

Business City, Zip \_\_\_\_\_

Reason for Interest: Explain how your background and skills will enhance the board to which you have applied \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

List your related employment experience \_\_\_\_\_

\_\_\_\_\_

List your related community activities \_\_\_\_\_

\_\_\_\_\_

List your related educational experience \_\_\_\_\_

\_\_\_\_\_

To the best of your knowledge, do you or a member of your immediate family have any direct financial or business relationships with any supplier, service provider or contractor of the City of Birmingham from which you or they derive direct compensation or financial benefit? If yes, please explain: \_\_\_\_\_

\_\_\_\_\_

Do you currently have a relative serving on the board/committee to which you have applied? \_\_\_\_\_

Are you an elector (registered voter) in the City of Birmingham? \_\_\_\_\_

Kevin Kozlowski  
Signature of Applicant

\_\_\_\_\_  
Date

Return the completed and signed application form to: City of Birmingham, City Clerk's Office, 151 Martin, Birmingham, MI 48009 or by email to [clerksoffice@bhamgov.org](mailto:clerksoffice@bhamgov.org) or by fax to 248.530.1080. Updated 3/24/2021

\*By providing your email to the City, you agree to receive news & notifications from the City. If you do not wish to receive these messages, you may unsubscribe at any time.





<b>OFFICE USE ONLY</b>	
Meets Requirements?	<input checked="" type="radio"/> Yes <input type="radio"/> No
<input checked="" type="radio"/> Will Attend	<input type="radio"/> Unable to Attend

## APPLICATION FOR CITY BOARD OR COMMITTEE

Thank you for your interest in serving on a Board or Committee. The purpose of this form is to provide the City Commission with basic information about applicants considered for appointment. NOTE: Completed applications are included in the City Commission agenda packets. The information included on this form is open to the public. All Board and Committee members are subject to the provisions of the Ethics Ordinance (Chapter 2, Article IX of the City Code).

Information on various Boards and Committees and a list of current openings can be found on the City website at [www.bhamgov.org/boardopportunities](http://www.bhamgov.org/boardopportunities).

(Please print clearly)

Board/Committee of Interest Advisory Parking Committee

Specific Category/Vacancy on Board Resident (see back of this form for information)

Name Lisa Silverman

Phone 248-895-3230

Residential Address 1200 Lathan St.

Email \* LisaS229@aol.com

Residential City, Zip Birmingham, 48009

Length of Residence 30 years

Business Address 1019 Hayne St.

Occupation Clinical psychologist

Business City, Zip Birmingham, 48009

Reason for Interest: Explain how your background and skills will enhance the board to which you have applied \_\_\_\_\_

I'm a current member of the Committee, & was told my term is set to expire in 9/22 & I need to re-apply in order to continue. I've been on the Committee since 11/19.

List your related employment experience \_\_\_\_\_

List your related community activities \_\_\_\_\_

List your related educational experience \_\_\_\_\_

Please see my original application, & add to it my service to the Committee for the past three years.

To the best of your knowledge, do you or a member of your immediate family have any direct financial or business relationships with any supplier, service provider or contractor of the City of Birmingham from which you or they derive direct compensation or financial benefit? If yes, please explain: \_\_\_\_\_

No

Do you currently have a relative serving on the board/committee to which you have applied? No

Are you an elector (registered voter) in the City of Birmingham? Yes

Lisa Silverman  
Signature of Applicant

8/6/22  
Date

Return the completed and signed application form to: City of Birmingham, City Clerk's Office, 151 Martin, Birmingham, MI 48009 or by email to [clerksoffice@bhamgov.org](mailto:clerksoffice@bhamgov.org) or by fax to 248.530.1080. Updated 3/24/2021

*\*By providing your email to the City, you agree to receive news & notifications from the City. If you do not wish to receive these messages you may unsubscribe at any time*



## CITY BOARD/COMMITTEE ATTENDANCE RECORD

Name of Board: **Advisory Parking Committee**

Year: **2020**

Members Required for Quorum: **4**

MEMBER NAME	JAN	FEB	MAR	APR	5/6	5/15	JUN	JULY	AUG	SEP	OCT	NOV	DEC	MTG	Mtgs.	Absent	Attended
<b>REGULAR MEMBERS</b>																	
Champagne, Gayle	P	P	P	NM	P	P	P	NM	P	NM	P	P	NA		9	0	100%
Honhart, Anne	A	A	P	NM	A	A	A	NM	A	NM	A	A	A		1	9	10%
Kalczynski, Steven	P	P	P	NM	A	P	P	NM	P	NM	P	P	P		9	1	90%
Krueger, Lisa	P	P	A	NM	A	P	A	NM	A	NM	P	A	P		5	5	50%
Paskiewicz, Judith	P	P	P	NM	A	A	P	NM	P	NM	P	P	P		8	2	80%
Vaitas, Al	A	P	P	NM	P	P	P	NM	A	NM	P	P	P		8	2	80%
Astrein, Richard	P	P	P	NM	P	P	P	NM	P	NM	P	P	P		10	0	100%
Silverman, Lisa	P	A	P	NM	P	P	P	NM	P	NM	A	P	A		7	3	70%
<b>ALTERNATES</b>																	
Yert, Jennifer (8/2018)	P	P	A	NM	P	A	P	NM	P	NM	P	P	P				
Horowitz, Michael	A	A	A	NM	P	P	P	NM	P	NM	NA	NA	NA				
Present or Available	<b>7</b>	<b>7</b>	<b>7</b>	<b>0</b>	<b>6</b>	<b>7</b>	<b>8</b>	<b>0</b>	<b>7</b>	<b>0</b>	<b>7</b>	<b>7</b>	<b>6</b>	<b>0</b>			

- KEY:**
- A = Member absent**
  - P = Member present or available**
  - CP = Member available, but meeting canceled for lack of quorum**
  - CA = Member not available and meeting was canceled for lack of quorum**
  - NA = Member not appointed at that time**
  - NM = No meeting scheduled that month**
  - CM = Meeting canceled for lack of business items**

\_\_\_\_\_  
Department Head Signature

## CITY BOARD/COMMITTEE ATTENDANCE RECORD

Name of Board: **Advisory Parking Committee**

Year: **2021**

Members Required for Quorum: **4**

MEMBER NAME	JAN	FEB	MAR	APR	MAY	6/2	6/16	JULY	AUG	SEPT	OCT	NOV	DEC	MTG	Mtgs.	Absent	Attended
<b>REGULAR MEMBERS</b>																	
Astrein, Richard	CM	CM	P	P	P	P	P	NM	P	P	P	CM	P		9	0	100%
Honhart, Anne	CM	CM	A	A	A	A	A	NM	A	NA	NA	CM	NA		0	6	0%
Kalczynski, Steven	CM	CM	P	P	A	P	P	NM	A	P	A	CM	P		6	3	67%
Krueger, Lisa	CM	CM	A	P	A	P	P	NM	P	A	P	CM	A		5	4	56%
Paskiewicz, Judith	CM	CM	A	A	P	A	P	NM	A	A	P	CM	P		4	5	44%
Vaitas, Al	CM	CM	P	P	P	P	P	NM	P	P	A	CM	P		8	1	89%
Black, Aaron	CM	CM	P	A	P	A	P	NM	P	A	P	CM	P		6	3	67%
Silverman, Lisa	CM	CM	P	P	P	P	A	NM	P	P	P	CM	P		8	1	89%
Nasserian, Sarshar	CM	CM	NA	NA	NA	NA	NA	NA	NA	A	A	CM	A		0	3	0%
<b>ALTERNATES</b>																	
Yert, Jennifer (8/2018)	CM	CM	P	A	P	A	P	NM	P	P	A	CM	P		6	3	67%
Petcoff, Mary-Claire	CM	CM	P	P	P	P	P	NM	P	P	A	CM	A		7	2	78%
Present or Available	0	0	7	6	7	6	8	0	7	6	5	0	7	0			

- KEY:**
- A = Member absent**
  - P = Member present or available**
  - CP = Member available, but meeting canceled for lack of quorum**
  - CA = Member not available and meeting was canceled for lack of quorum**
  - NA = Member not appointed at that time**
  - NM = No meeting scheduled that month**
  - CM = Meeting canceled for lack of business items**

\_\_\_\_\_  
Department Head Signature

## CITY BOARD/COMMITTEE ATTENDANCE RECORD

CITY BOARD/COMMITTEE ATTENDANCE RECORD																
Name of Board:		Advisory Parking Committee						Year:		2022						
Members Required for Quorum:				4												
MEMBER NAME	JAN	FEB	MAR	APR	MAY	June	JULY	AUG	SEPT	OCT	NOV	DEC	MTG	Mtgs.	Absent	Attended
<b>REGULAR MEMBERS</b>																
Astrein, Richard	CM	P	CM	P	P	CM	CM	P						4	0	100%
Kalczynski, Steven	CM	P	CM	P	P	CM	CM	P						4	0	100%
Krueger, Lisa	CM	P	CM	A	P	CM	CM	A						2	2	50%
Paskiewicz, Judith	CM	P	CM	P	P	CM	CM	P						4	0	100%
Vaitas, Al	CM	P	CM	P	P	CM	CM	P						4	0	100%
Black, Aaron	CM	A	CM	A	A	CM	CM	NA						0	3	0%
Silverman, Lisa	CM	P	CM	P	P	CM	CM	P						4	0	100%
Cobb, Kelly	NA	NA	NA	NA	P	CM	CM	P						2	0	100%
<b>ALTERNATES</b>																
Yert, Jennifer (8/2018)	CM	P	CM	P	P	CM	CM	P						4	0	100%
Petcoff, Mary-Claire	CM	P	CM	P	P	CM	CM	P						4	0	100%
Present or Available	0	8	0	7	9	0	0	8	0	0	0	0	0			
<b>KEY:</b>																
A = Member absent																
P = Member present or available																
CP = Member available, but meeting canceled for lack of quorum																
CA = Member not available and meeting was canceled for lack of quorum																
NA = Member not appointed at that time																
NM = No meeting scheduled that month																
CM = Meeting canceled for lack of business items																
													<b>Department Head Signature</b>			



**05-152-00: INTERVIEW FOR ADVISORY PARKING COMMITTEE**

Mr. Peter Wilde of the Townsend Hotel was interviewed for appointment to the advisory parking committee. Commissioner Lanzetta expressed concern about the legalities of the appointment of Mr. Wilde as the "large retail" member of this committee. The city attorney advised that the commission could amend the original resolution for the advisory parking committee to broaden the interpretation of large retail representative to include retail services as well as retail goods.

**MOTION:** Motion by Lanzetta, seconded by Chafetz:  
To interpret the category of large retail representative on the advisory parking committee to include retail services as well as retail goods.

VOTE: Yeas, 4 Nays, None Absent, 3 (DeLaura, McKeon, Wooley)

**MOTION:** Motion by Moss, Seconded by Chafetz  
To determine that Mr. Peter Wilde of the Townsend Hotel meets the criteria as the large retail representative on the advisory parking committee and, further, to continue this appointment until the city commission meeting of June 12, 2000.

VOTE: Yeas, 4 Nays, None Absent, 3 (DeLaura, McKeon, Wooley)

**05-139 -17 USE OF ALTERNATES, REPORTING BOARD ATTENDANCE, AND MODIFYING REQUIREMENTS FOR BOARD MEMBERS**

Assistant to the City Manager Haines presented results of a review of board and committee attendance suggesting that three groups might benefit from having two alternate positions added to increase attendance and/or achieve quorum: 1) Advisory Parking Committee, 2) Parks and Recreation Board, and 3) Public Arts Board.

**MOTION:** Motion by Commissioner Bordman, seconded by Mayor Pro Tem Harris:  
To amend the ordinances of the Advisory Parking Committee, the Parks and Recreation Board, and the Public Arts Board, to add 2 alternate positions to each as follows:

To amend Resolution No. 08-882-84 – August 6, 1984, Advisory Parking Committee, Members.

**AND**

To amend Part II of the City Code, Chapter 78, Parks and Recreation, Article II., Parks and Recreation Board, Section 78-26, Created; composition.

**AND**

To amend Part II of the City Code, Chapter 78, Public Arts Board, Article V., Public Arts Board, Section 78-103, Composition and terms of members.

**AND**

To direct the city clerk to standardize the attendance reporting of all city boards and committees as outlined in the May 12, 2017 memorandum to the city manager and as clarified by the Commission and to direct staff to amend the Recommended Process for Use of Alternates as clarified by Commissioner Bordman.

VOTE: Yeas, 7  
Nays, 0  
Absent, 0

**10-258 -19                    AMEND ADVISORY PARKING COMMITTEE MEMBERSHIP**

City Manager Valentine presented this item.

- Recommending a modification to the composition of the board to enable the City to fill some long-time vacancies.
- Replace a building owner with a BSD board member to participate on the board
- Remove the City Engineer and Replace with the City Manager or his designee.

Brad Host expressed that he thought it might be a mistake to eliminate a representative from Engineering.

**MOTION:**                    Motion by Commissioner Sherman, seconded by Commissioner Harris:  
To adopt the resolution to amend Advisory Parking Committee membership to remove the Building Owner position and replace it with a board member of the Birmingham Shopping District and to remove the City Engineer (non-voting, ex-officio) position and to replace this position with the City Manager, or his/her designee.

VOTE:	Ayes:	5
	Nays:	0
	Absent:	2

Referred to the Traffic and Safety Board for review of meters in the following locations to determine if they are still appropriate in view of the change in the entrance to the Baldwin Library: twelve 30-minute meters on Martin between Bates and Chester; five 15-minute meters on Bates between Maple and Martin; three 15-minute meters on Bates near the former entrance on Martin Street to the library.

8:07

08-881-84: CITY COMMISSIONER REPORTS

Commissioner Miller reported that the Otsu Children's Choir will sing at the Community House at 2:00 P.M., Saturday, August 11, 1984. She also commented that AAA will provide transportation for the children to Bob-Lo.

Mayor Appleford reported that he attended a reception in Ann Arbor last week for the Governor of Shiga Province.

8.08

08-882-84: ADVISORY PARKING COMMITTEE ESTABLISHED

MOTION: Motion by Miller, supported by Hockman:

To receive the report of the City Manager re: Advisory Parking Committee; to establish an Advisory Parking Committee as follows:

PURPOSE: There is hereby established an Advisory Parking Committee to provide guidance to the Birmingham City Commission in the management of the Birmingham Auto Parking System that will: recognize parking requirements of the various interests in the Central Business District (CBD); fairly assess the costs of the parking system to users of the facility; create the least possible traffic impact on the CBD and the immediately abutting residential areas; provide for attractive, well-maintained, safe facilities; include plans for an orderly and responsive answer to future parking needs.

MEMBERS: The Birmingham City Commission shall appoint the Advisory Parking Committee, consisting of seven (7) members, each to be appointed for a term of three (3) years, but in the first instance, two (2) members shall be appointed for terms expiring on the first Monday in September, 1985, two (2) members shall be appointed for terms expiring on the first Monday in September, 1986, and three (3) members shall be appointed for terms expiring on the first Monday in September, 1987.

The majority of the members shall be residents and there shall be one member representing each of the following:

- I. Downtown Commercial Representatives -
  - A. Retail - Two (2) members
  - B. Professional Firm - One (1) member
  - C. Building Owner - One (1) member
- II. Downtown Employee Representative - One (1) member
- III. Residential - Two (2) members who do not qualify under any of the above categories.

Members of the Committee can be removed for cause determined at a public hearing at any time by the City Commission. Vacancies occurring shall be filled for the unexpired term by the City Commission.

**ORGANIZATION:** The Committee shall elect a Chairperson from its membership annually at its first meeting after the first Monday of September. The City Engineer shall be a non-voting, ex-officio member of the Committee and shall serve as the coordinating link between the Committee and various City Departments. A secretary shall be furnished by the City for the purpose of keeping Minutes of Committee meetings.

**MEETINGS:** The Committee shall hold at least one (1) regular public meeting in each quarter on such date and at such time and place as may be established by resolution of the Committee. Special meetings may be called by the Chairperson of the Committee or by request of any three (3) members of the Committee. There shall be at least a two (2) day notice for any special meeting. The Committee shall adopt such rules for the conduct of its business as it may from time to time adopt by resolution. The Committee shall keep a written or printed record of its proceedings which shall be a public record and property of the City.

**EXPENDITURES:** The Committee shall have the power to expend such funds as may from time to time be appropriated to it by the City Commission for the purpose of carrying out the powers and duties of the Committee. Funds expended by the Committee shall be processed through regular City channels and be accounted for in the Auto Parking Fund budget.

**POWERS AND DUTIES:** The Committee shall recommend:

1. A proper rate relationship between the charges for street meters, parking lot fees (short term and long term), and permit fees.
2. Parking fees that, while maintaining the financial integrity of the system, are still attractive to users.
3. The proper ratio between the number of short term, long term, and permit parkers in the attendant-operated lots and structures.
4. The area in each structure that should be assigned for short term, long term, and permit parking.
5. An equitable method of assigning permit parking spaces.
6. Financial objectives that reflect the requirements of ordinances and the need for information on the revenue received from specific users of the system.
7. A public relations program that will educate the public to the location of parking facilities, their ease of use, their close proximity to many fine stores offering a great variety of merchandise and the benefits of validated parking.
8. Corrective steps if the level of either maintenance or policing of the system facilities is inadequate.
9. Specific ordinance changes that will encourage private off-street parking in the CBD and/or help to improve the system operation as a whole.

REPORTS: The Committee shall make and submit to the City Commission an annual report in January regarding the general activities, operations and accomplishments of the Committee for the preceding year. The Committee shall, from time to time as occasion requires, advise the City Commission in writing on recommendations for the improvement of the Auto Parking System.

BUDGET: Not later than the first day of February of each year, the Committee shall present to the City Commission a request for funds which the Committee believes necessary to carry out its function as an advisory committee.

VOTE: Yeas, 6 Nays, None Absent, Sights

MOTION: Motion by Kain, supported by Jeske:  
That the Ad Hoc Parking Committee be dissolved.

VOTE: Yeas, 6 Nays, None Absent, Sights

Resumes for membership on the Committee are to be submitted by August 27, 1984, and Commissioners are to submit names to the Mayor by the first meeting in September. They are also to advise the Mayor if they have a particular area in which they are interested.

MOTION: Motion by Hockman, supported by Miller:  
That resumes for appointment to the Advisory Parking Committee be submitted by August 27, 1984, for consideration by the City Commission at its September 4 meeting.

VOTE: Yeas, 6 Nays, None Absent, Sights

8:50

08-883-84: BORDERLINE TREES

MOTION: Motion by Jeske, supported by Jensen:  
To receive the report of the City Engineer and the City Manager re: Borderline Trees; to direct the Administration to draft an ordinance whereby sidewalks damaged by trees which are entirely or partly in the public right-of-way will be City responsibility.

MOTION: Motion by Kain, supported by Hockman:  
To amend the previous Motion by directing that the proposed ordinance state that the cost of sidewalk replacement resulting from damage caused by borderline trees be borne equally by the City and the property owner.

VOTE ON AMENDMENT: Yeas 3 (Hockman, Kain, Miller)  
Nays, 3  
Absent, Sights

AMENDING MOTION FAILED

VOTE ON MAIN MOTION: Yeas, 3 (Appleford, Jensen, Jeske)  
Nays, 3  
Absent, Sights

MOTION FAILED

9:28

09-987-84: ORDINANCE AMENDMENT - B-4 PARKING  
REQUIREMENTS

MOTION: Motion by Jeske, supported by Sights:  
To receive the report of the City Planner and the City  
Manager re: Amendment to B-4 Parking Requirements; to  
refer to the Planning Board for public hearing and  
recommendation to the City Commission.

VOTE: Yeas, 7 Nays, None

9:29

09-988-84: INVOICE RE: BUTZEL, LONG, GUST,  
KLEIN AND VAN ZILE

Report received from the Director of Finance and the City  
Manager re: Invoice from Butzel, Long, Gust, Klein and  
Van Zile.

9:30

09-989-84: ADVISORY PARKING COMMITTEE APPOINTMENTS

MOTION: Motion by Hockman, supported by Sights:  
To receive the report of the City Clerk re: Appointments  
to Advisory Parking Committee; to direct that street  
parking meters be included in the charge to the Advisory  
Parking Committee.

MOTION: Motion by Kain, supported by Jensen:  
To amend the previous Motion to include only those street  
parking meters in the Parking Assessment District.

VOTE ON AMENDMENT: Yeas, 3 (Jensen, Kain, Sights)  
Nays, 4

MOTION FAILED

VOTE ON MAIN MOTION: Yeas, 7 Nays, None

MOTION: Motion by Jeske:  
To appoint Dante Lanzetta as a Resident Member to the  
Advisory Parking Committee.

MOTION: Motion by Kain:  
To appoint Anne Honhart to a one-year term as Resident  
Member of the Advisory Parking Committee.

MOTION: Motion by Jensen:  
To appoint Keith Ege as the Small Retail Member of the  
Advisory Parking Committee.

MOTION: Motion by Appleford:  
To appoint Katharine Beebe as the Professional Member of  
the Advisory Parking Committee.

MOTION: Motion by Miller:  
To appoint Samuel Walker to a one-year term as the Building  
Owner Member of the Advisory Parking Committee.

MOTION: Motion by Hockman:  
To appoint Katharine Thibodeau as the Downtown Employee  
Representative Member of the Advisory Parking Committee.

MOTION: Motion by Sights:  
To appoint James Peabody as the Large Retail Member of the  
Advisory Parking Committee.

Discussion was held on whether or not Mr. Peabody met the qualifications for the Large Retail Member and Mr. Walker for the Building Owner Member.

MOTION: Motion by Kain, supported by Sights:  
That the Commission recess for five minutes.

VOTE: Yeas, 7 Nays, None

10:05 P.M. - Meeting recessed.

10:22 P.M. - Meeting reconvened.

MOTION: Motion by Jeske, supported by Miller:  
That the Advisory Parking Committee be expanded to nine members to include a Restaurant Owner Member and a Resident Shopper Member.

MOTION: Motion by Kain, supported by Sights:  
To amend the previous Motion by adding an ex officio member for a three-year term to the Advisory Parking Committee, the number of committee members to remain at seven.

VOTE ON AMENDMENT: Yeas, 2 (Kain, Sights) Nays, 5

MOTION FAILED

VOTE ON MAIN MOTION: Yeas, 4 Nays, 3 (Jensen, Kain, Sights)

MOTION: Motion by Sights, supported by Kain:  
To vote for the nominations on the floor, and to appoint the Large Retailer Member and Resident Shopper Member at the Commission Meeting of September 10, 1984.

In response to a question from Commissioner Jeske, Commissioner Sights stated that he is changing his nomination of Mr. Peabody from the Large Retail Member to that of Restaurant Owner Member.

VOTE: Yeas, 7 Nays, None

MOTION: Motion by Kain, supported by Hockman:  
That the term of office for the nine-member Advisory Parking Committee shall be three years, but, in the first instance, three members shall be appointed for terms expiring on the first Monday in September, 1985, three members shall be appointed for terms expiring on the first Monday in September, 1986, and three members shall be appointed for terms expiring on the first Monday in September, 1987.

VOTE: Yeas, 7 Nays, None

MOTION: Motion by Jeske, supported by Jensen:  
That the terms of the seven remaining members be decided by draw.

VOTE: Yeas, 7 Nays, None



**NOTICE OF INTENTION TO APPOINT TO  
BOARD OF REVIEW**

On August 29, 2022 the City Commission intends to appoint one alternate member to serve the remainder of a three-year term to expire December 31, 2023. Applicants must be property owners and electors of the City of Birmingham.

The Board of Review, consisting of two panels of three local citizens who must be property owners and electors, is appointed by the City Commission for three-year terms. Although a general knowledge of the City is very helpful, more important are good judgment and the ability to listen carefully to all sides of an issue before making a decision. Approximately three weeks in March are scheduled for taxpayers to protest their assessments and one day each in July and December for correcting clerical errors and mutual mistakes of fact. Two training sessions in February are also required.

Interested citizens may submit an application available at the Clerk’s office or online at [www.bhamgov.org/boardopportunities](http://www.bhamgov.org/boardopportunities). Applications must be submitted to the City Clerk’s office on or before noon on Wednesday, August 24, 2022. These documents will appear in the public agenda for the regular meeting at which time the City Commission will interview applicants and may make nominations and vote on appointments.

Board members are paid \$110 per diem.

Applicant(s) Presented For City Commission Consideration:

<b>Applicant Name</b>	<b>Criteria/Qualifications</b>
Maria Chirco	Property Tax Appeals & Real Estate

*NOTE: All members of boards and commissions are subject to the provisions of City of Birmingham City Code Chapter 2, Article IX, Ethics and the filing of the Affidavit and Disclosure Statement.*

**SUGGESTED RESOLUTION:**

To appoint \_\_\_\_\_ to the Board of Review as an alternate member to serve the remainder of a three-year term to expire December 31, 2023.





# BOARD OF REVIEW

City Charter – Chapter III, Section 14

Terms: Three Years

Members: Members must be property owners and electors of the City of Birmingham

Appointed by the City Commission

The Board of Review hear appeals from property owners regarding their assessments. Approximately three weeks in March are scheduled for taxpayers to protest their assessments and one day each in July and December for correcting clerical errors and mutual mistakes of fact. Two training sessions in February are also required.

Last Name	First Name	Home Business E-Mail	Appointed	Term Expires
<b>Devereaux</b> 1019 Rivenoak	<b>Kathleen</b>	(248) 840-5310 <i>kddevereaux@wowway.com</i>	2/22/2016	12/31/2022
<b>Di Placido</b> 726 Lakeside Dr.	<b>Guy</b>	(248) 644-1708	1/10/1994	12/31/2023
<b>Katrib</b> 1832 East Lincoln	<b>Elicia</b>	(248) 379-3577 <i>e.katrib@gmail.com</i>	2/22/2016	12/31/2023
<b>Loafman</b> 580 Oakland Ave	<b>Thomas</b>	(248)840-6678 <i>thosloafman@gmail.com</i>	11/22/2021	12/31/2024
<b>Rose</b> 1011 Clark	<b>Cynthia</b>	(248) 752-2667 <i>crose@cbwm.com</i>	3/2/2009	12/31/2024

Last Name	First Name	Home Business E-Mail	Appointed	Term Expires
Rosenberg 1590 E. Maple	Harvey	(313) 510-0190 <i>harvey48301@yahoo.com</i>	2/13/2017 alternate	12/31/2022
Stress 784 Westchester Way	Jill	(586) 246-6700 <i>jill.stress@yahoo.com</i>	2/13/2017	12/31/2022
<b>VACANT</b>			alternate	12/31/2023



<b>OFFICE USE ONLY</b>	
Meets Requirements?	<input checked="" type="radio"/> Yes <input type="radio"/> No
Will Attend / Unable to Attend	

**APPLICATION FOR CITY BOARD OR COMMITTEE**

Thank you for your interest in serving on a Board or Committee. The purpose of this form is to provide the City Commission with basic information about applicants considered for appointment. NOTE: Completed applications are included in the City Commission agenda packets. The information included on this form is open to the public. All Board and Committee members are subject to the provisions of the Ethics Ordinance (Chapter 2, Article IX of the City Code).

Information on various Boards and Committees and a list of current openings can be found on the City website at [www.bhamgov.org/boardopportunities](http://www.bhamgov.org/boardopportunities).

(Please print clearly) /

Board/Committee of Interest Board of Review

Specific Category/Vacancy on Board Board of Review (see back of this form for information)

Name Maria Chirco Phone 586.596.1518

Residential Address 711.5 Old Woodward #929 Email \* Chirco maria@gmail

Residential City, Zip 48009 Length of Residence on & off for years

Business Address — Occupation Realtor

Business City, Zip —

Reason for Interest: Explain how your background and skills will enhance the board to which you have applied \_\_\_\_\_

I did property tax appeals w/Harold Hoyt for 12 years. I have been a realtor for 10+ years.

List your related employment experience Pre-forming property tax appeals & Real estate

List your related community activities \_\_\_\_\_

List your related educational experience Real estate license

To the best of your knowledge, do you or a member of your immediate family have any direct financial or business relationships with any supplier, service provider or contractor of the City of Birmingham from which you or they derive direct compensation or financial benefit? If yes, please explain: \_\_\_\_\_

Do you currently have a relative serving on the board/committee to which you have applied? no

Are you an elector (registered voter) in the City of Birmingham? Yes

Signature of Applicant [Signature] Date 2/8/22

Return the completed and signed application form to: City of Birmingham, City Clerk's Office, 151 Martin, Birmingham, MI 48009 or by email to [clerk@bhamgov.org](mailto:clerk@bhamgov.org) or fax to 248.530.1080. Updated 11/18/2020

\*By providing your email to the City, you agree to receive news & notifications from the City. If you do not wish to receive these messages, you may unsubscribe at any time.



**NOTICE OF INTENTION TO APPOINT  
HEARING OFFICER**

At the regular meeting of Monday, August 29, 2022, the Birmingham City Commission intends to appoint the hearing officer to serve a three-year term to expire June 30, 2025. The Hearing Officer shall be responsible for hearing disputes to a fee or bill that a property owner or resident of the city shall receive pursuant to the fee collection ordinances (section 1-17).

The hearing officer and alternate shall be residents of the City of Birmingham who have legal, administrative or other desirable qualifications that will aid him or her in the performance of the duties in accordance with provisions of the applicable code. The hearing officer and the alternate hearing office shall serve without compensation.

The hearing officer or alternate shall schedule periodic meetings for hearings as needed.

Interested citizens may submit an application available at the City Clerk's office on or before noon on Wednesday, August 24, 2022. These applications will appear in the public agenda for the regular meeting at which time the City Commission will discuss recommendations, and may make nominations and vote on the appointment.

Applicant(s) Presented For City Commission Consideration:

<b>Applicant Name</b>	<b>Criteria/Qualifications</b>
Lawrence Lyng	Applicants shall be residents of the City who have legal, administrative or other desirable qualifications that will aid him or her in the performance of the duties of the hearing officer. Current Alternate Hearing Officer, applying for Regular position

*NOTE: All members of boards and commissions are subject to the provisions of City of Birmingham City Code Chapter 2, Article IX, Ethics and the filing of the Affidavit and Disclosure Statement.*

**SUGGESTED ACTION:**

To appoint \_\_\_\_\_ as the Hearing Officer to serve a three-year term to expire June 30, 2025.



# HEARING OFFICER

Ordinance #2178, Adopted March 28, 2016

Term: 3 years

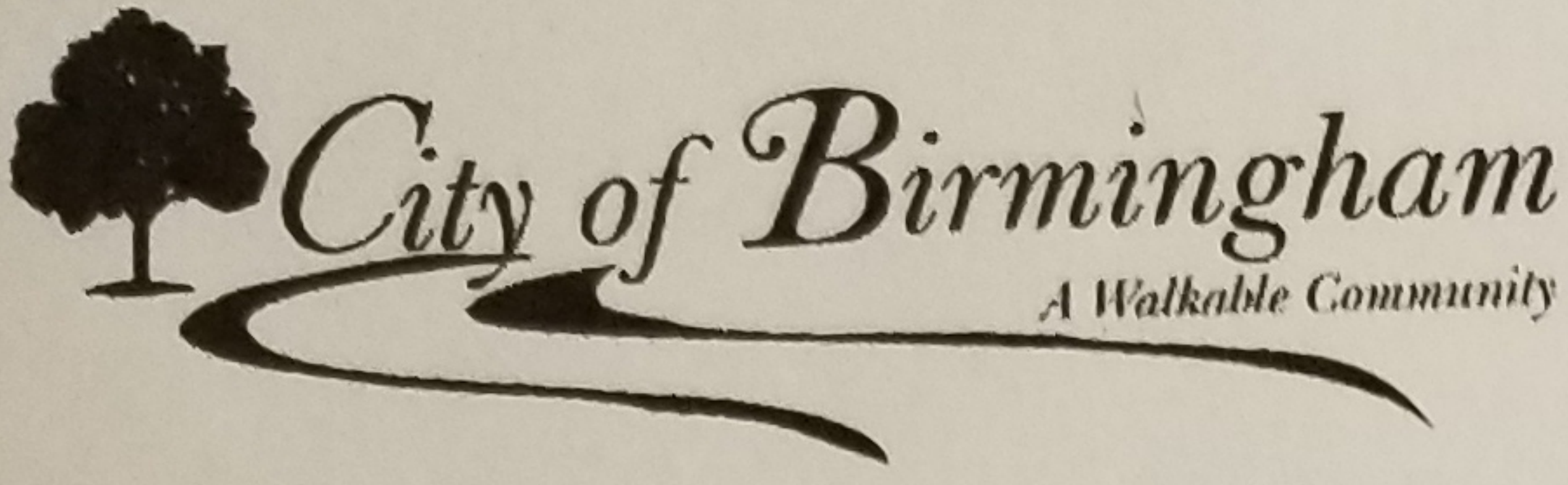
Appointed by the city commission

Qualifications: The hearing officer and alternate shall be residents of Birmingham who have legal, administrative, or other desirable qualifications that will aid him/her in the performance of their duties. The hearing officer and alternate shall serve without compensation and shall not be elected officials or persons appointed to elective office.

Duties: The hearing officer shall be responsible for hearing disputes to a fee or bill that a property owner or resident of the city shall receive pursuant to any of the fee collection ordinances of the code of the City of Birmingham that specifically relate to: returned check fees by real property owners (section 1-15), the removal of debris from a private property upon a public street, alley, sidewalk, or other public place or right-of-way (section 50-27), false alarms (section 74-31), snow removal (section 98-68), sidewalk repair fees (section 98-62), cross connection inspections (section 114-5), and weed cutting (section 118-68). The alternate hearing officer shall be responsible for hearing disputes in the absence of the hearing officer.

Last Name	First Name	Home Business	Appointed	Term Expires
Lyng	Larry	(248) 346-1533 <i>larry.lyng@sbcglobal.net</i>	2/28/2022 Alternate	6/30/2024
Vacant				6/30/2025





<b>OFFICE USE ONLY</b>	
Meets Requirements?	<input checked="" type="radio"/> Yes <input type="radio"/> No
Will Attend /	<input checked="" type="radio"/> Unable to Attend

**APPLICATION FOR CITY BOARD OR COMMITTEE**

Thank you for your interest in serving on a Board or Committee. The purpose of this form is to provide the City Commission with basic information about applicants considered for appointment. NOTE: Completed applications are included in the City Commission agenda packets. The information included on this form is open to the public. All Board and Committee members are subject to the provisions of the Ethics Ordinance (Chapter 2, Article IX of the City Code).

Information on various Boards and Committees and a list of current openings can be found on the City website at [www.bhamgov.org/boardopportunities](http://www.bhamgov.org/boardopportunities).

(Please print clearly)

Board/Committee of Interest Hearing Officer

Specific Category/Vacancy on Board Hearing Officer (see back of this form for information)

Name Lawrence Lyng Phone 248-346-1533

Residential Address 644 Bird Avenue Email \* larry.lyng@sbcglobal.net

Residential City, Zip Birmingham, 48009 Length of Residence 6.5 years

Business Address N/A Occupation Retired

Business City, Zip \_\_\_\_\_

Reason for Interest: Explain how your background and skills will enhance the board to which you have applied \_\_\_\_\_

I am currently serving as the Alternate Hearing Officer so taking over the vacant Hearing Officer role is a natural progression.

List your related employment experience I have run a number of automotive supplier companies during my 40 year career. I am comfortable making tough decisions.

List your related community activities Alternate Hearing Officer for Birmingham. Election Inspector for Birmingham.

List your related educational experience Bachelors Degree in Mechanical Engineering. Masters Degree in Business Administration.

To the best of your knowledge, do you or a member of your immediate family have any direct financial or business relationships with any supplier, service provider or contractor of the City of Birmingham from which you or they derive direct compensation or financial benefit? If yes, please explain: No

Do you currently have a relative serving on the board/committee to which you have applied? No

Are you an elector (registered voter) in the City of Birmingham? Yes

Lawrence Lyng  
Signature of Applicant

August 5, 2022  
Date

Return the completed and signed application form to: City of Birmingham, City Clerk's Office, 151 Martin, Birmingham, MI 48009 or by email to [clerksoffice@bhamgov.org](mailto:clerksoffice@bhamgov.org) or by fax to 248.530.1080. Updated 3/24/2021

\*By providing your email to the City, you agree to receive news & notifications from the City. If you do not wish to receive these messages, you may unsubscribe at any time.



**CITY BOARD/COMMITTEE ATTENDANCE RECORD**

Board/Committee: Hearing Officer

Year 2021

MEMBER NAME	4/5/2021	12/14/2021													Total Mtgs. Att.	Total Absent	Percent Attend
<b>REGULAR MEMBERS</b>																	
Alexander Stotland	P	P													2	0	100%
<b>ALTERNATES</b>																	
Vacant															0		
Members in attendance	1	1	0	0	0	0	0	0	0	0	0	0	0	0			

**KEY:** A = Absent  
P = Present  
NM = No Meeting  
na = not appointed at that time

  
 Department Head Signature

**CITY BOARD/COMMITTEE ATTENDANCE RECORD**

Board/Committee: **Hearing Officer**

Year **2022**

MEMBER NAME	6/7/2022	6/9/2022	6/22/2022								Total Mtgs. Att.	Total Absent	Percent Attend
<b>REGULAR MEMBERS</b>													
Alexander Stotland	P	A	P								2	1	67%
<b>ALTERNATES</b>													
Larry Lyng	A	P	A								1	2	33%
Members in attendance	1	1	1	0	0	0	0	0	0	0			

**KEY:**  
 A = Absent  
 P = Present  
 NM = No Meeting  
 na = not appointed at that time

  
 Department Head Signature



Sec. 1-17. - Hearing officer for disputed fees.

(a) *Hearing officer.*

- (1) The city commission shall appoint a hearing officer, who shall be responsible for hearing disputes to a fee or bill that a property owner or resident of the city shall receive pursuant to any of the fee collection ordinances of the Code of the city that specifically relate to: returned check fees by real property owners (section 1-15), the removal of debris from a private property upon a public street, alley, sidewalk, or other public place or right-of-way (section 50-27), false alarms (section 74-31), snow removal (section 98-68), sidewalk repair fees (section 98-62), cross connection inspections (section 114-5), and weed cutting (section 118-68).

The city commission shall also appoint an alternate hearing officer who shall be responsible for hearing such disputes in the hearing officer's absence.

- (2) The hearing officer shall be appointed for a three-year term. The initial alternate hearing officer shall be appointed for a two-year term. Terms shall begin on July 1, 2004 and shall expire on June 30 of the respective years. Thereafter, terms shall be three years so that both terms do not expire on the same year. The hearing officer and alternate shall serve at the will of the commission. The hearing officer and alternate shall hold office until their successors are appointed. The city commission shall fill a vacancy by an appointment only.
- (3) The hearing officer and alternate shall be residents of the city who have legal, administrative or other desirable qualifications that will aid him or her in the performance of the duties of the hearing officer.
  - a. The hearing officer and alternate shall serve without compensation, and shall not be elected officials, or persons appointed to elective office.
  - b. The hearing officer and alternate shall establish such procedures as deemed necessary or appropriate to perform the functions as set forth in this section.

- (b) *Functions of the hearing officer.* When there is a question or a dispute as to the applicability of any invoice received by a property owner or resident of the city pursuant to any of the fee collection ordinances of this Code, as described in subsection 1-17(a)(1), to a particular situation, that question or dispute shall be directed to the hearing officer. It shall then be the function of the hearing officer to conduct a hearing and make a determination, as applicable.

The actual invoice shall notify the property owner or resident of his or her right to dispute all or any part of the bill as established in this section.

- (1) Hearings. The hearing officer shall follow the following hearing procedure:
  - a. The hearing officer shall, upon receiving notice from the debtor that they are requesting a hearing within the time frames established by the appropriate fee collection ordinance,

- arrange for a mutually convenient date to hear the dispute.
- b. Any person requesting an appearance before the hearing officer to dispute a permissible invoice may request one extension that may be granted by the hearing officer only under extreme circumstances.
  - c. All hearings at which any person shall be requested to appear shall be subject to the Open Meetings Act.
  - d. All findings, including a finding of extreme circumstances of the hearing officer shall be published in permanent form and communicated to the city treasurer and other appropriate city staff, the debtor, and the city commission, subject to the requirements of the Open Meetings Act.
- (2) The hearing officer shall determine as follows:
- a. Determine whether there has been a violation by the debtor of one or more of the ordinances set forth in subsection (a)(1) of this section.
  - b. Determine whether the city has performed the work prescribed in the ordinances set forth in subsection (a)(1) of this section for which the debtor has been invoiced.
  - c. Determine whether the debtor was invoiced the proper amount for the work actually performed by the city.
  - d. Determine whether the fees should be waived due to the existence of "extreme circumstances". By way of example, "extreme circumstances" may include, but are not limited to, the following examples: an unexpected death of a member of the household or a member of the households' family resulting in all members of the household becoming unavailable to perform the obligation of the ordinances set forth in subsection (a)(1) of this section; a sudden illness or injury resulting in all members of the household becoming unavailable to perform the obligation of the ordinances set forth in subsection (a)(1) of this section; natural disasters declared by federal, state or local authorities resulting in circumstances rendering performance of the obligations of the ordinances set forth in subsection (a)(1) of this section impracticable or in direct contradiction of said declaration; emergencies declared by federal, state or local authorities resulting in circumstances rendering performance of the obligations of the ordinances set forth in subsection (a)(1) of this section impracticable or in direct contradiction of said declaration; and, police, fire or other local circumstances, when authorized by the police chief, fire chief or the city manager or his designee resulting in circumstances rendering performance of the obligations of the ordinances set forth in subsection (a)(1) of this section impracticable or in direct contradiction of said authorization.

**Editor's note**— Prior to the reenactment of section 1-17 by Ord. No. 2178, adopted March 28, 2016, Ord. No. 2077, adopted January 23, 2012, repealed the former section 1-17 in its entirety, which pertained to hearing officer for disputed fees and derived from Ord. No. 1823, § 1, adopted April 19, 2004, and Ord. No. 1970, adopted September 8, 2008.



**NOTICE OF INTENTION TO APPOINT TO  
BOARD OF ZONING APPEALS**

At the regular meeting of Monday, August 29, 2022 the Birmingham City Commission intends to appoint an alternate member to the Board of Zoning Appeals to serve the remainder of a vacant three-year term to expire February 18, 2023.

Interested parties may recommend others or themselves for these positions by submitting a form available from the City Clerk's office. Applications must be submitted to the City Clerk's office on or before noon on Wednesday, August 24, 2022. Applications will appear in the public agenda at which time the City Commission will discuss recommendations, and may make nominations and vote on appointments.

Duties of Board

The Board of Zoning Appeals acts on questions arising from the administration of the zoning ordinance, including the interpretation of the zoning map. The Board hears and decides appeals from and reviews any order, requirement, decision or determination made by the Building Official.

<b>Applicant Name</b>	<b>Criteria/Qualifications</b>
Richard Lilley	Applicants shall be property owners of record and registered voters. Layperson

*NOTE: All members of boards and commissions are subject to the provisions of City of Birmingham City Code Chapter 2, Article IX, Ethics and the filing of the Affidavit and Disclosure Statement.*

**SUGGESTED ACTION:**

To appoint \_\_\_\_\_ as an alternate member to the Board of Zoning Appeals to serve the remainder of a three-year term to expire February 18 2023.



# BOARD OF ZONING APPEALS

Chapter 126 – Section 126-671 – Seven Members – Three Year Terms  
 Requirements – Property owners of record and registered voter

The Board of Zoning Appeals acts on questions arising from the administration of the zoning ordinance, including the interpretation of the zoning map. The board hears and decides appeals from and reviews any order, requirement, decision or determination made by the building official.

Last Name	First Name	Home Business E-Mail	Appointed	Term Expires
<b>Canvasser</b> 369 Kimberly	<b>Jason</b>	(248) 231-9972  <i>jcanvasser@clarkhill.com</i>	7/9/2018 Attorney	10/10/2023
<b>Hart</b> 2051 Villa	<b>Kevin</b>	(248) 4967363  <i>khartassociates@aol.com</i>	2/27/2012 Architect	10/10/2023
<b>Kona</b> 439 W. Merrill St	<b>Carl</b>	(248)540-2810  <i>carlsbox@hotmail.com</i>	4/25/2022 Alternate Member, Financial Services	2/17/2023
<b>Lillie</b> 496 S. Glenhurst	<b>Charles</b>	(248) 642-6881  <i>lilliecc@sbcglobal.net</i>	1/9/1984 Attorney	10/10/2022
<b>Miller</b> 544 Brookside	<b>John</b>	(248) 703-9384  <i>jnmillerstudio@gmail.com</i>	1/23/2012 Architect	10/10/2024
<b>Morganroth</b> 631 Ann	<b>Erik</b>	(248) 762-9822  <i>emorganroth@comcast.net</i>	10/12/2015 Real Estate/Builder	10/10/2024

Last Name	First Name	Home Business E-Mail	Appointed	Term Expires
<b>Reddy</b> 763 Wallace	<b>Ron</b>	(313) 820-7491 <i>ron.reddy01@gmail.com</i>	2/11/2019 Regular member	10/10/2022
<b>Vacant</b>			Alternate Member	2/18/2023
<b>Yaldo</b> 1936 Graefield	<b>Pierre</b>	(248) 534-5585 <i>pierreyaldo1@gmail.com</i>	2/28/2022 Attorney	10/10/2022



<b>OFFICE USE ONLY</b>	
Meets Requirements?	<input checked="" type="radio"/> Yes <input type="radio"/> No
Will Attend / Unable to Attend	<input checked="" type="radio"/> Will Attend <input type="radio"/> Unable to Attend

### APPLICATION FOR CITY BOARD OR COMMITTEE

Thank you for your interest in serving on a Board or Committee. The purpose of this form is to provide the City Commission with basic information about applicants considered for appointment. NOTE: Completed applications are included in the City Commission agenda packets. The information included on this form is open to the public. All Board and Committee members are subject to the provisions of the Ethics Ordinance (Chapter 2, Article IX of the City Code).

Information on various Boards and Committees and a list of current openings can be found on the City website at [www.bhamgov.org/boardopportunities](http://www.bhamgov.org/boardopportunities).

(Please print clearly)

Board/Committee of Interest Board of Zoning Appeals

Specific Category/Vacancy on Board Alternate (see back of this form for information)

Name Richard M Lilley

Phone 248-594-6737

Residential Address 648 Cherry Ct

Email \* dicklilley@icloud.com

Residential City, Zip Birmingham, 48009

Length of Residence 60+ years

Business Address \_\_\_\_\_

Occupation Retired

Business City, Zip \_\_\_\_\_

Reason for Interest: Explain how your background and skills will enhance the board to which you have applied I was previously appointed \_\_\_\_\_

I would like to be reinstated on the Board as an alternate. I served on the BZA for 3 years but stepped down due to medical issues.

List your related employment experience Only "lay" person on the Board

List your related community activities BZA, Allen House Board, Maple Road Widening Commission Birmingham Dream Cruise Committee - 20+ years

List your related educational experience \_\_\_\_\_

To the best of your knowledge, do you or a member of your immediate family have any direct financial or business relationships with any supplier, service provider or contractor of the City of Birmingham from which you or they derive direct compensation or financial benefit? If yes, please explain: NO

Do you currently have a relative serving on the board/committee to which you have applied? NO

Are you an elector (registered voter) in the City of Birmingham? Yes

[Signature]  
Signature of Applicant

Aug 12 2022  
Date

Return the completed and signed application form to: City of Birmingham, City Clerk's Office, 151 Martin, Birmingham, MI 48009 or by email to [clerksoffice@bhamgov.org](mailto:clerksoffice@bhamgov.org) or by fax to 248.530.1080. Updated 3/24/2021

*\*By providing your email to the City, you agree to receive news & notifications from the City. If you do not wish to receive these messages, you may unsubscribe at any time.*

## CITY BOARD/COMMITTEE ATTENDANCE RECORD

Name of Board: Board of Zoning Appeals

Year: 2020

Members Required for Quorum: 4

MEMBER NAME	JAN	FEB	MAR	APR	MAY	JUNE	JULY	AUG	SEPT	OCT	NOV	DEC	SPEC MTG	SPEC MTG	Total Mtgs. Att.	Total Absent	Percent Attended Available
<b>REGULAR MEMBERS</b>																	
Lillie, Charles	A	A	P	P	P	P	A	P	P	P	A	P	NM	NM	8	4	67%
Miller, John	P	P	P	A	A	P	P	P	P	P	P	P	NM	NM	10	2	83%
Hart, Kevin	A	P	P	P	A	A	A	P	A	P	P	P	NM	NM	7	5	58%
Morganroth, Erik	P	P	P	P	P	P	P	P	P	P	P	P	NM	NM	12	0	100%
Canvasser, Jason	P	P	P	P	P	P	P	P	A	P	P	P	NM	NA	11	1	92%
Rodriguez, Francis	P	P	A	P	P	A	P	A	P	P	A	P	NM	NM	8	4	67%
Lilley, Richard	P	A	A	P	P	P	P	P	P	P	A	P	NM	NM	9	3	75%
Reserved															0	0	#DIV/0!
Reserved															0	0	#DIV/0!
<b>ALTERNATES</b>																	
Reddy, Ron	P	P	P	P	P	P	P	P	P	P	P	P	NM	NM	12	0	100%
Attia, Jerry	P	A	A	A	A	A	A	A	A	P	P	NA	NA	NA	3	8	27%
Reserved															0	0	#DIV/0!
Reserved															0	0	#DIV/0!
Present or Available	7	6	6	7	6	6	6	7	6	9	6	8	0	0			

- KEY:**
- A = Member absent
  - P = Member present or available
  - CP = Member available, but meeting canceled for lack of quorum
  - CA = Member not available and meeting was canceled for lack of quorum
  - NA = Member not appointed at that time
  - NM = No meeting scheduled that month
  - CM = Meeting canceled for lack of business items

  
 \_\_\_\_\_  
 Department Head Signature



## CITY BOARD/COMMITTEE ATTENDANCE RECORD

Name of Board: Board of Zoning Appeals

Year: 2021

Members Required for Quorum: 4

MEMBER NAME	JAN	FEB	MAR	APR	MAY	JUNE	JULY	AUG	SEPT	OCT	NOV	DEC	SPEC MTG	SPEC MTG	Total Mtgs. Att.	Total Absent	Percent Attended Available
<b>REGULAR MEMBERS</b>																	
Lillie, Charles	P	P	P	P	P	P	P	A	P	P	P	P	NM	NM	11	1	92%
Miller, John	P	P	P	P	P	P	A	P	P	P	P	P	NM	NM	11	1	92%
Hart, Kevin	P	P	A	P	A	P	A	P	P	P	P	A	NM	NM	8	4	67%
Morganroth, Erik	P	P	P	P	P	P	P	P	P	A	P	P	NM	NM	11	1	92%
Canvasser, Jason	P	P	P	P	P	P	A	P	P	P	P	P	NM	NM	11	1	92%
Rodriguez, Francis	P	A	P	P	P	P	A	P	P	A	A	A	NM	NM	7	5	58%
Lilley, Richard	P	P	P	P	P	P	P	P	P	P	A	P	NM	NM	11	1	92%
Reserved															0	0	#DIV/0!
Reserved															0	0	#DIV/0!
<b>ALTERNATES</b>																	
Reddy, Ron	P	P	P	P	P	P	P	P	P	P	P	P	NM	NM	12	0	100%
Rodenhouse, Erin J.	P	P	P	P	P	P	P	P	P	P	P	P	NM	NM	12	0	100%
Reserved															0	0	#DIV/0!
Reserved															0	0	#DIV/0!
Present or Available	9	8	8	9	8	9	5	8	9	7	7	7	0	0			

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  - CA = Member not available and meeting was canceled for lack of quorum**
  - NA = Member not appointed at that time**
  - NM = No meeting scheduled that month**
  - CM = Meeting canceled for lack of business items**



\_\_\_\_\_  
Department Head Signature

## CITY BOARD/COMMITTEE ATTENDANCE RECORD

Name of Board: **Board of Zoning Appeals**  
 Members Required for Quorum: **4**

Year: **2022**

MEMBER NAME	JAN	FEB	MAR	APR	MAY	JUNE	JULY	AUG	SEPT	OCT	NOV	DEC	SPEC MTG	SPEC MTG	Total Mtgs. Att.	Total Absent	Percent Attended Available
<b>REGULAR MEMBERS</b>																	
Lillie, Charles	A	A	A	P	A	A	P	P					P		4	5	44%
Miller, John	A	P	A	P	P	P	P	P					P		7	2	78%
Hart, Kevin	CP	P	P	P	P	P	A	P					P		7	1	88%
Morganroth, Erik	A	P	P	P	P	P	P	P					P		8	1	89%
Canvasser, Jason	A	P	P	P	P	P	P	P					P		8	1	89%
Reddy, Ron	NA	NA	P	P	P	P	P	P					P		7	0	100%
Yaldo, Pierre	NA	NA	P	P	A	P	P	P					P		6	1	86%
Rodriguez, Francis	CP	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA			0	0	#DIV/0!
Reserved															0	0	#DIV/0!
<b>ALTERNATES</b>																	
Reddy, Ron	CP	A	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	0	1	0%
Rodenhouse, Erin J.	CP	P	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	1	0	100%
Kona, Carl	NA	NA	NA	NA	P	P	P	P					P		5	0	100%
Reserved															0	0	#DIV/0!
Present or Available	<b>4</b>	<b>5</b>	<b>5</b>	<b>7</b>	<b>6</b>	<b>7</b>	<b>7</b>	<b>8</b>	0	0	0	0	<b>8</b>	0			

- KEY:**
- A** = Member absent
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  - CA** = Member not available and meeting was canceled for lack of quorum
  - NA** = Member not appointed at that time
  - NM** = No meeting scheduled that month
  - CM** = Meeting canceled for lack of business items

\_\_\_\_\_  
 Department Head Signature

## CHAPTER 126 - ZONING

### ARTICLE 8: ENFORCEMENT AND PENALTIES

#### 8.01 The Board of Zoning Appeals

- A. Establish: There shall be established and appointed by the City Commission, in accordance with Section 5, Act No. 207 of the Public Acts of Michigan of 1921 (MCL 125.585, MSA 5.2935), as amended, a Board of Zoning Appeals consisting of seven members each to be appointed for a term of three years.
- B. Alternate Members: The City Commission may also appoint not more than two alternate members for the same term as regular members of the Board of Zoning Appeals. The alternate member may be called on a rotating basis to sit as a regular member of the Board of Zoning Appeals in the absence of a regular member. An alternate member may also be called to service in the place of a regular member for the purpose of reaching a decision on a case in which the regular member has abstained for reasons of conflict of interest. The alternate member having been appointed shall serve in the case until a final decision has been made. The alternate member shall have the same voting rights as a regular member of the Board of Zoning Appeals.
- C. Procedure: Meetings of the Board of Zoning Appeals shall be held at the call of the chairperson, and at such other times as the Board of Zoning Appeals may determine. Such chairperson, or in his/her absence, the acting chairperson, may administer oaths and compel the attendance of witnesses. The Board of Zoning Appeals shall adopt rules of procedure and shall keep records of applications and the action thereon, which shall be a public record.
- D. Appeals: An appeal to the Board of Zoning Appeals, based in whole or in part on the provisions of the Zoning Ordinance, may be taken by any person aggrieved, or by any governmental officer, department, Board of Zoning Appeals or bureau affected by the decision of the Building Official. Such appeal shall be taken by filing with the Board of Zoning Appeals a notice of appeal, on forms provided by the Building Official, specifying the ground thereof, and by paying the required fee. The Building Official shall transmit to the Board of Zoning Appeals all papers constituting the records upon which the appeal action was taken.
- E. Hearing and Notice: The Board of Zoning Appeals shall fix a reasonable time for the hearing of an appeal and shall give due notice of the appeal to the persons to whom real property within 300 feet of the premises in question is assessed, and to the occupants of single- and two-family dwellings within 300 feet, the notice to be delivered personally or by mail to the respective owners and tenants at the address given in the last assessment roll. If the tenant's name is not known, the term "occupant" may be used. A notice sign shall also be posted in a conspicuous place on the subject property. Notice signs will be provided by the City of Birmingham. It is the responsibility of the applicant to post the notice sign as required, to ensure that the notice sign remains posted during the entire notice period and to remove the notice sign the day after the public hearing the notice sign was advertising. At the hearing, any person or party may appear in person, by agent or by attorney. All such hearings shall be open to the public.
- F. Powers and Duties: The Board of Zoning Appeals shall have the powers and duties set forth in MCL 125.581 et seq., MSA 5.2931 et seq. and as more particularly hereinafter enumerated. The Board of Zoning Appeals shall not have the power to change the zoning district of any property. The Board of Zoning Appeal's power and duties shall include the following:
1. Review of administrative decisions.
    - a. The Board of Zoning Appeals shall hear and decide appeals from and review any order, requirement, decision or determination made by an administrative official charged with the enforcement of the Zoning Ordinance.
    - b. It may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from and shall make such order, requirement, decision or determination as in its opinion ought to be made in the situation, and to that end shall have all the powers of the officer from whom the appeal is taken.
  2. Mapping disputes.
    - a. Where disputes arise as to the location of the floodplain boundary or the limits of the floodway, the Board of Zoning Appeals shall resolve the dispute and establish the boundary location in accordance with Section 1.15.

In all cases, the decision of the Board of Zoning Appeals shall be based upon the most current floodplain studies issued by the Office of Federal Insurance and Hazard Mitigation. Where the Office of Federal Insurance and Hazard Mitigation information is not available, the best available floodplain information shall be utilized.

- b. Where a dispute involves an allegation that the boundary is incorrect as mapped and Office of Federal Insurance and Hazard Mitigation floodplain studies are being questioned, the Board of Zoning Appeals shall modify the boundary of the floodplain or the floodway only upon receipt of an official letter of map amendment issued by the Office of Federal Insurance and Hazard Mitigation.

### 3. Variances.

- a. The Board of Zoning Appeals shall hear and grant or deny requests for variances from the strict application of the provisions of the Zoning Ordinance where there are practical difficulties or unnecessary hardships in carrying out the strict letter of such chapter. In granting a variance, the Board of Zoning Appeals may attach such conditions as it may deem reasonably necessary to promote the spirit and intent of the Zoning Ordinance. The Board of Zoning Appeals shall not grant any variance unless it first determines that:
  - i. Because of special conditions applicable to the property in question, the provisions of the Zoning Ordinance, if strictly applied, unreasonably prevent the property owner from using the property for a permitted purpose;
  - ii. Literal enforcement of the chapter will result in unnecessary hardship;
  - iii. The granting of the variance will not be contrary to the spirit and purpose of the Zoning Ordinance nor contrary to the public health, safety and welfare; and
  - iv. The granting of the variance will result in substantial justice to the property owner, the owners of property in the area and the general public.
- b. Variances from the provisions of Section 4.13, Floodplain Regulations, shall only be granted by the Board of Zoning Appeals upon a determination of compliance with the general standards for variances contained in the Zoning Ordinance and in accordance with the following:
  - i. The variance granted will not result in flood heights in excess of those permitted by the Zoning Ordinance, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing laws or ordinances.
  - ii. The variance granted shall be the minimum necessary, considering the flood hazard, to afford relief to the applicant.
  - iii. Variances may be granted for the reconstruction, rehabilitation or restoration of structures listed on the National Register of Historic Places or the Michigan Historic Markers listing of historic sites, or any other state register of historic places without meeting the requirements of this section.
- c. Sign Variance Procedure. Any person who feels aggrieved by a decision of the City Planner or Design Review Board may have the sign reviewed by the Board of Zoning Appeals. A variance may be granted by the Board of Zoning Appeals only in cases involving practical difficulties when the evidence in the official record of the appeal supports all the following affirmative findings:
  - i. That the alleged practical difficulties are peculiar to the property of the person requesting the variance by reasons of the physical and/or dimensional constraints of the building and/or site, and result from conditions which do not exist generally throughout the City;
  - ii. That the granting of the requested variance would not be materially detrimental to the property owners in the immediate vicinity;
  - iii. That the granting of the variance would not be contrary to the general objectives of this Chapter and is in keeping with the spirit and intent of this ordinance; and
  - iv. That granting the variance will result in substantial justice being done, considering the public benefits intended to be secured by this Chapter, the individual hardships that will be suffered by a failure of the Board of Zoning Appeals to grant a variance, and the rights of others whose property would be affected by the allowance of the variance.

- v. In granting a variance, the Board of Zoning Appeals may attach such conditions as it may deem reasonably necessary to promote the spirit and intent of the Zoning Ordinance and the conditions specified in the sign ordinance, Chapter 86, Article 02, Section 2.06.

G. Miscellaneous:

1. No order of the Board of Zoning Appeals permitting the erection or alteration of buildings shall be valid for a period longer than one year, unless a building permit for such erection or alteration is obtained within such period and such erection or alteration is commenced and proceeds to completion in accordance with the terms of such permit.
2. No order of the Board of Zoning Appeals permitting a use of a building or premises shall be valid for a period longer than one year unless such use is established within such period; provided, however, that if the use of such permit is dependent upon the erection or alteration of a building, such order shall continue in full force and effect if a building permit for such use, erection or alteration is obtained within such period and such erections or alterations are commenced and proceed to completion in accordance with the terms of such permit.



**NOTICE OF INTENTION TO APPOINT TO  
BIRMINGHAM TRIANGLE DISTRICT CORRIDOR IMPROVEMENT AUTHORITY**

At the regular meeting of Monday, August 29, 2022 the Birmingham City Commission intends to appoint to the Birmingham Triangle District Corridor Improvement Authority regular members who have an ownership or business interest in property located in the Development Area District, to serve the remainder of a four-year terms to expire December 15, 2022, and December 15, 2023;

**Members shall be appointed by the Mayor, subject to approval by the City Commission.**

Not less than a majority of the members shall be persons having an ownership or business interest in property located in the Development Area. Not less than 1 of the members shall be a resident of the Development Area, or of an area within 1/2 mile of any part of the Development Area.

The authority shall operate to correct and prevent deterioration in business districts, to redevelop the City’s commercial corridors and promote economic growth, pursuant to Act 280 of the Public Acts of Michigan, 2005, as amended.

Interested parties may recommend others or themselves for these positions by submitting a form available from the city clerk's office. Applications must be submitted to the city clerk's office on or before noon on Wednesday, August 24, 2022. Applications will appear in the public agenda at which time the commission will discuss recommendations, and may make nominations and vote on appointments.

Applicant(s) Presented For City Commission Consideration:

<b>Applicant Name</b>	<b>Criteria/Qualifications</b>
	Must have an ownership or business interest in property located in the Development Area
Erica Ahmed	Has ownership or business interest in property located in the Development Area

**SUGGESTED ACTION:**

To appoint \_\_\_\_\_ to the Triangle District Corridor Improvement Authority as a member with ownership or business interest in property located in the Development Area to serve the remainder of a four-year term to expire December 15, 2022.

To appoint \_\_\_\_\_ to the Triangle District Corridor Improvement Authority as a member with ownership or business interest in property located in the Development Area to serve the remainder of a four-year term to expire December 15, 2023.

# BIRMINGHAM TRIANGLE DISTRICT CORRIDOR IMPROVEMENT AUTHORITY

Resolution # 11-363-08

The authority shall operate to correct and prevent deterioration in business districts, to redevelop the City's commercial corridors and promote economic growth, pursuant to Act 280 of the Public Acts of Michigan, 2005, as amended.

The Authority shall be under the supervision and control of the Board. The Board shall consist of the Mayor, or his or her assignee, and six additional members. Members shall be appointed by the Mayor, subject to approval by the City Commission. Not less than a majority of the members shall be persons having an ownership or business interest in property located in the Development Area. Not less than 1 of the members shall be a resident of the Development Area, or of an area within 1/2 mile of any part of the Development Area.

Members shall be appointed to serve for a term of four years.

Upon completion of its purposes, the Authority may be dissolved by the City Commission. The property and assets of the Authority, after dissolution and satisfaction of its obligations, shall revert to the City.

Last Name	First Name	Home Business Fax	E-Mail	Appointed	Term Expires
<b>Baldwin</b> 1043 Chestnut Birmingham	<b>Timothy</b>  48009	(248) 837-9293	<i>timbaldwin1969@gmail.com</i>	1/10/2022 Resident	12/15/2025
<b>Baller</b> 822 Shirley Birmingham	<b>Clinton</b>  48009	(248) 703-8365	<i>cballer@bhamgov.org</i>	11/8/2021 City Commission member (appointed by Mayor)	11/1/2023
<b>Cantrick Jr.</b> 774 Lakeside Birmingham	<b>Kip</b>  48009	248-540-3741 (248) 644-7622	<i>gcantrick@kipcantrickcompany.com</i>	1/28/2013 has an ownership or business interest in property located in the development area	12/15/2024

Last Name	First Name	Home Business Fax	E-Mail	Appointed	Term Expires
<b>Guastello</b> 347 Pine Ridge Bloomfield Hills	<b>Thomas</b> 48304	949-500-5566	<i>thomasguastello@aol.com</i>	8/9/2021 has ownership or business interest	12/15/2024
<b>Oh</b> 820 Hazel St Birmingham	<b>Samuel</b> 48009	(312)339-8309	<i>samuel.e.oh@gmail.com</i>	12/8/2020 Resident	12/15/2023

**VACANT** 12/15/2022  
has ownership or business interest in a property located in the development area

**VACANT** 12/15/2023  
has ownership or business interest in a property located in the development area





<b>OFFICE USE ONLY</b>	
Meets Requirements?	<input checked="" type="radio"/> Yes <input type="radio"/> No
<input checked="" type="radio"/> Will Attend	<input type="radio"/> Unable to Attend

Rcvd 8/12/22

### APPLICATION FOR CITY BOARD OR COMMITTEE

Thank you for your interest in serving on a Board or Committee. The purpose of this form is to provide the City Commission with basic information about applicants considered for appointment. NOTE: Completed applications are included in the City Commission agenda packets. The information included on this form is open to the public. All Board and Committee members are subject to the provisions of the Ethics Ordinance (Chapter 2, Article IX of the City Code).

Information on various Boards and Committees and a list of current openings can be found on the City website at [www.bhamgov.org/boardopportunities](http://www.bhamgov.org/boardopportunities).

(Please print clearly)

Board/Committee of Interest Triangle District Corridor Improvement Authority

Specific Category/Vacancy on Board One regular member (see back of this form for information)

Name Erica Ahmed Phone 248-376-3302

Residential Address 639 Puritan Email \*ericahmed21@gmail.com

Residential City, Zip Birmingham Length of Residence 9 years

Business Address 2400 Col St, 10905 Adams, 645 S. Eton Occupation owner Platinum motorcars

Business City, Zip Birmingham 48009

Reason for Interest: Explain how your background and skills will enhance the board to which you have applied \_\_\_\_\_

Excellent at community organizing, very familiar with neighborhood, close relationships with other business owners in the area.

List your related employment experience owner Platinum motorcars - we rent or own 3 commercial spaces in Triangle district.

List your related community activities Parent of 3 kids in Birmingham schools, business owner & resident - living & breathing all of Birmingham

List your related educational experience MBA Wayne state

To the best of your knowledge, do you or a member of your immediate family have any direct financial or business relationships with any supplier, service provider or contractor of the City of Birmingham from which you or they derive direct compensation or financial benefit? If yes, please explain: \_\_\_\_\_

No

Do you currently have a relative serving on the board/committee to which you have applied? No

Are you an elector (registered voter) in the City of Birmingham? Yes

Erica Ahmed  
Signature of Applicant

8/12/22  
Date

Return the completed and signed application form to: City of Birmingham, City Clerk's Office, 151 Martin, Birmingham, MI 48009 or by email to [clerk@bhamgov.org](mailto:clerk@bhamgov.org) or fax to 248.530.1080. Updated 11/18/2020

\*By providing your email to the City, you agree to receive news & notifications from the City. If you do not wish to receive these messages, you may unsubscribe at any time.

CITY OF BIRMINGHAM  
COUNTY OF OAKLAND, MICHIGAN

RESOLUTION ESTABLISHING  
CORRIDOR IMPROVEMENT AUTHORITY  
AND DESIGNATION OF DEVELOPMENT AREA

Minutes of a regular meeting of the City Commission of the City of Birmingham, County of Oakland, Michigan, held in the City Hall on the 10th day of November, 2008, at 7:30 o'clock p.m., Eastern Daylight Time.

PRESENT: Mayor Sherman, Mayor Pro Tem Hoff, Commissioners Carney, Dilgard, McDaniel, Moore, and Rinschler

ABSENT: None

The following preamble and resolution were offered by Commissioner McDaniel and supported by Commissioner Rinschler:

WHEREAS, the City of Birmingham (the "City"), is authorized by the provisions of Act 280, Public Acts of Michigan, 2005, as amended ("Act 280"), to create a corridor improvement authority; and

WHEREAS, the City Commission held a public hearing on August 25, 2008 pursuant to Act 280 in connection with the establishment of a corridor improvement authority and the designation of the proposed development area; and

WHEREAS, at least 60 days have passed since the public hearing; and

WHEREAS, the City Commission intends to proceed with the establishment of a corridor improvement authority.

NOW, THEREFORE, BE IT RESOLVED THAT:

1. Determination of Necessity; Purpose. The City Commission hereby determines that it is necessary for the best interests of the public to create a public body corporate which shall operate to correct and prevent deterioration in business districts, to redevelop the City's commercial corridors and promote economic growth, pursuant to Act 280 of the Public Acts of Michigan, 2005, as amended.

2. Definitions. The terms used in this resolution shall have the same meaning as given to them in Act 280 or as hereinafter in this section provided unless the context clearly indicates to the contrary. As used in this resolution:

"Authority" means the [Birmingham Triangle District Corridor Improvement Authority] created by this resolution.

"Act 280" means Act No. 280 of the Public Acts of Michigan of 2005, as amended.

"Board" or "Board of Directors" means the Board of Directors of the Authority, the governing body of the Authority.

"Chief Executive Officer" means the Mayor of the City.

"City" means the City of Birmingham, Oakland County, Michigan.

"City Commission" means the City Commission of the City of Birmingham.

"Development Area" means the development area designated by this resolution, as now existing or hereafter amended, and within which the Authority shall exercise its powers.

3. Creation of Authority. There is hereby created pursuant to Act 280 a Corridor Improvement Authority for the City. The Authority shall be a public body corporate and shall be known and exercise its powers under title of the **BIRMINGHAM TRIANGLE DISTRICT CORRIDOR IMPROVEMENT AUTHORITY**. The Authority may adopt a seal, may sue and be sued in any court of this State and shall possess all of the powers necessary to carry out the purposes of its incorporation as provided by this resolution and Act 280. The enumeration of a power in this resolution or in Act 280 shall not be construed as a limitation upon the general powers of the Authority.

4. Termination. Upon completion of its purposes, the Authority may be dissolved by the City Commission. The property and assets of the Authority, after dissolution and satisfaction of its obligations, shall revert to the City.

5. Description of Development Area. The Development Area shall consist of the territory in the City described in Exhibit A, attached hereto and made a part hereof, subject to such changes as may hereinafter be made pursuant to this resolution and Act 280.

6. Board of Directors. The Authority shall be under the supervision and control of the Board. The Board shall consist of the Chief Executive Officer, or his or her assignee, and six additional members. Members shall be appointed by the Chief Executive Officer, subject to approval by the City Commission. Not less than a majority of the members shall be persons having an ownership or business interest in property located in the Development Area. Not less than 1 of the members shall be a resident of the Development Area, or of an area within 1/2 mile of any part of the Development Area. Members shall be

appointed to serve for a term of four years, except that of the members first appointed, an equal number, as near as is practicable, shall be appointed for terms of 1 year, 2 years, 3 years, and 4 years. A member shall hold office until the member's successor is appointed and qualified. Before assuming the duties of office, a member shall qualify by taking and subscribing to the constitutional oath of office. An appointment to fill a vacancy shall be made by the Chief Executive Officer for the unexpired term only. Members of the Board shall serve without compensation, but shall be reimbursed for actual and necessary expenses. The Chairperson of the Board shall be elected by the Board. The Board shall adopt Bylaws governing its procedures subject to the approval of the City Commission.

In the event that the Board determines to employ a Director of the Authority, such Director shall furnish a bond in the penal sum of One Thousand Dollars (\$1,000) payable to the Authority for use and benefit of the Authority and shall file the same with the City Clerk of the City.

7. Powers of Authority. Except as specifically otherwise provided in this resolution, the Authority shall have all powers provided by law subject to the limitations imposed by law and herein.

8. Fiscal Year; Adoption of Budget.

(a) The fiscal year of the Authority shall begin on July 1st of each year and end on June 30th, or such other fiscal year as may hereafter be adopted by the City Commission.

(b) The Board shall prepare annually a budget and shall submit it to the City Commission for approval in the manner and at the time, and which budget shall contain the information, required of municipal departments. The Board shall not finally adopt a budget for any fiscal year until the budget has been approved by the City Commission.

(c) The Authority shall submit financial reports to the City Commission at the same time and on the same basis as departments of the City are required to submit reports. The Authority shall be audited annually by the same independent auditors auditing the City and copies of the audit report shall be filed with the City Commission.

9. Section Headings; Severability; Repealer. Section headings are provided for convenience only and are not intended to be part of this resolution. If any portion of this resolution shall be held to be unlawful, the remaining portions shall remain in full force and effect. All resolutions and parts of resolutions in conflict herewith are hereby repealed.



10. Publication, Recording and Filing. This resolution shall be published once after its adoption in full in the *Birmingham Eccentric*, a newspaper of general circulation in the City of Birmingham and the City Clerk shall file a certified copy of the resolution with the Michigan Secretary of State promptly after its adoption.

11. Effective Date. This resolution shall take effect immediately upon its publication.

12. Conflict and Rescission. All resolutions and parts of resolutions insofar as they conflict with the provisions of this resolution be and the same hereby are rescinded.

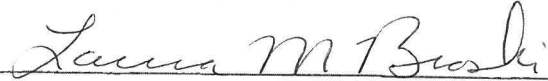
AYES: Mayor Sherman, Mayor Pro Tem Hoff, Commissioners Carney, Dilgard, McDaniel, Moore, and Rinschler

NAYS: None

RESOLUTION DECLARED ADOPTED.

  
\_\_\_\_\_  
City Clerk

I hereby certify that the foregoing is a true and complete copy of a resolution adopted by the City Commission of the City of Birmingham, County of Oakland, State of Michigan, at a regular meeting held on November 10, 2008, and that said meeting was conducted and public notice of said meeting was given pursuant to and in full compliance with the Open Meetings Act, being Act 267, Public Acts of Michigan, 1976, as amended, and that the minutes of said meeting were kept and will be or have been made available as required by said Act.

  
\_\_\_\_\_  
City Clerk





**NOTICE OF INTENTION TO APPOINT TO THE  
CITY OF BIRMINGHAM  
BROWNFIELD REDEVELOPMENT AUTHORITY**

At the regular meeting of Monday, August 29, 2022 the Birmingham City Commission intends to appoint a member to the City of Birmingham Brownfield Redevelopment Authority. The board has openings for a regular member to serve the remainder of a three-year term to expire May 23, 2024, or a regular member to serve a three-year term ending May 23, 2025.

The authority shall have the powers and duties to the full extent as provided by and in accordance with the provisions of the Brownfield Redevelopment Financing Act, being Act 381 of the Public Acts of the state of Michigan of 1996, as amended. Among other matters, in the exercise of its powers, the Board may prepare Brownfield plans pursuant to Section 13 of the Act and submit the plans to the Commission for consideration pursuant to Section 13 and 14 of the Act.

**Members shall be appointed by the Mayor, subject to approval by the City Commission.**

Interested citizens may submit an application available at the city clerk’s office or online at [www.bhamgov.org/boardopportunities](http://www.bhamgov.org/boardopportunities). Applications must be submitted to the city clerk's office on or before noon on Wednesday, August 24, 2022. These documents will appear in the public agenda for the regular meeting at which time the City Commission will discuss recommendations, and may make nominations and vote on appointments.

Applicant(s) Presented For City Commission Consideration:

<b>Applicant Name</b>	<b>Criteria/Qualifications</b>
Harry Awdey	Applicants shall, in so far as possible, be residents of the City of Birmingham. Resident, re-appointment

*NOTE: All members of boards and commissions are subject to the provisions of City of Birmingham City Code Chapter 2, Article IX, Ethics and the filing of the Affidavit and Disclosure Statement.*

**SUGGESTED ACTION:**

To appoint \_\_\_\_\_ as a regular member to the Brownfield Redevelopment Authority to serve the remainder of a three-year term to expire May 23, 2024.

To appoint \_\_\_\_\_ as a regular member to the Brownfield Redevelopment Authority to serve a three-year term to expire May 23, 2025.



# BROWNFIELD REDEVELOPMENT AUTHORITY

Resolution # 04-123-05

5 members, three-year terms, appointed by the mayor subject to approval of the commission.

The authority shall have the powers and duties to the full extent as provided by and in accordance with the provisions of the Brownfield Redevelopment Financing Act, being Act 381 of the Public Acts of the state of Michigan of 1996, as amended. Among other matters, in the exercise of its powers, the Board may prepare Brownfield plans pursuant to Section 13 of the Act and submit the plans to the Commission for consideration pursuant to Section 13 and 14 of the Act.

Last Name	First Name	Home Business E-Mail	Appointed	Term Expires
<b>Awdey</b> 1633 Graefield	<b>Harry</b>	(586) 453-4677  <i>hawdey@gmail.com</i>	9/25/2017	5/23/2022  <i>Next term to expire 5/23/2025</i>
<b>Gotthelf</b> 363 Catalpa	<b>Beth</b>	(248) 227.6920  <i>gotthelf@butzel.com</i>	5/9/2005	5/23/2023
<b>Runco</b> 1556 Lakeside	<b>Robert</b>	(248) 388-8100  <i>rrunco@runcowaste.com</i>	5/9/2005	5/23/2023
<b>Torcolacci</b> 2047 Windemere	<b>Daniella</b>	2482174805  <i>dtorcolacci@gmail.com</i>	5/23/2022	5/23/2025
<b>Vacant</b>				5/23/2024



<b>OFFICE USE ONLY</b>	
Meets Requirements?	<input checked="" type="radio"/> Yes <input type="radio"/> No
Will Attend /	<input checked="" type="radio"/> Unable to Attend

Rcvd 8/19/22

### APPLICATION FOR CITY BOARD OR COMMITTEE

Thank you for your interest in serving on a Board or Committee. The purpose of this form is to provide the City Commission with basic information about applicants considered for appointment. NOTE: Completed applications are included in the City Commission agenda packets. The information included on this form is open to the public. All Board and Committee members are subject to the provisions of the Ethics Ordinance (Chapter 2, Article IX of the City Code).

Information on various Boards and Committees and a list of current openings can be found on the City website at [www.bhamgov.org/boardopportunities](http://www.bhamgov.org/boardopportunities).

(Please print clearly)

Board/Committee of Interest Brownfield

Specific Category/Vacancy on Board \_\_\_\_\_ (see back of this form for information)

Name Harry Awdey Phone 586-453-4677

Residential Address 1633 Graefield Email \* hawdey@gmail.com

Residential City, Zip \_\_\_\_\_ Length of Residence 5 Years

Business Address 550 W Merrill Ste 200 Occupation Insuranec Underwriter

Business City, Zip \_\_\_\_\_

Reason for Interest: Explain how your background and skills will enhance the board to which you have applied \_\_\_\_\_  
Applying for reappointment

List your related employment experience \_\_\_\_\_

List your related community activities \_\_\_\_\_

List your related educational experience \_\_\_\_\_

To the best of your knowledge, do you or a member of your immediate family have any direct financial or business relationships with any supplier, service provider or contractor of the City of Birmingham from which you or they derive direct compensation or financial benefit? If yes, please explain: No

Do you currently have a relative serving on the board/committee to which you have applied? No

Are you an elector (registered voter) in the City of Birmingham? Yes

Harry Awdey \_\_\_\_\_ 8/18/2022 \_\_\_\_\_  
Signature of Applicant Date

Return the completed and signed application form to: City of Birmingham, City Clerk's Office, 151 Martin, Birmingham, MI 48009 or by email to [clerk@bhamgov.org](mailto:clerk@bhamgov.org) or fax to 248.530.1080. Updated 11/18/2020

*\*By providing your email to the City, you agree to receive news & notifications from the City. If you do not wish to receive these messages, you may unsubscribe at any time.*



## CITY BOARD/COMMITTEE ATTENDANCE RECORD

Name of Board: **Brownfield Redevelopment Authority**

Year: **2022**

Members Required for Quorum: **4**

MEMBER NAME	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	SPEC MTG	SPEC MTG	Total Mtgs. Att.	Total Absent	Percent Attended Available
REGULAR MEMBERS																	
Beth Gotthelf	NM	NM	NM	NM	NM	NM	NM	NM							0	0	#DIV/0!
Robert Runco	NM	NM	NM	NM	NM	NM	NM	NM							0	0	#DIV/0!
Daniella Torcolaci	NM	NM	NM	NM	NM	NM	NM	NM							0	0	#DIV/0!
Vacant	NM	NM	NM	NM	NM	NM	NM	NM							0	0	#DIV/0!
Vacant	NM	NM	NM	NM	NM	NM	NM	NM							0	0	#DIV/0!
															0	0	#DIV/0!
															0	0	#DIV/0!
ALTERNATES																	
															0	0	#DIV/0!
															0	0	#DIV/0!
															0	0	#DIV/0!
															0	0	#DIV/0!
TOTAL	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	#DIV/0!

- KEY:**
- A = Member absent**
  - P = Member present or available**
  - CP = Member available, but meeting canceled for lack of quorum**
  - CA = Member not available and meeting was canceled for lack of quorum**
  - NA = Member not appointed at that time**
  - NM = No meeting scheduled that month**
  - CM = Meeting canceled for lack of business items**

\_\_\_\_\_  
Department Head Signature

CITY OF BIRMINGHAM  
RESOLUTION  
ESTABLISHING A BROWNFIELD REDEVELOPMENT AUTHORITY

At a regular meeting of the City Commission of the City of Birmingham, Oakland County, Michigan, held in the Commission Chambers at 151 Martin, Birmingham, Michigan at 7:30 p.m., on the 25<sup>th</sup> day of April, 2005

The following resolution was offered by Commissioner Thorsby and supported by Commissioner McKeon.

WHEREAS, the City Commission of the City of Birmingham (the "Commission"), by resolution adopted on March 21, 2005, (the "Resolution"), determined that it is in the best interests of the public to facilitate the implementation of plans relating to the identification and treatment of distressed areas so as to promote revitalization in certain areas of the City of Birmingham and declared its intention to provide for the operation of a Brownfield Redevelopment Authority for the City of Birmingham (the "Authority") pursuant to and in accordance with the provisions of the Brownfield Redevelopment Financing Act, being Act 381 of the Public Acts of the State of Michigan of 1996, as amended (the "Act"); and

WHEREAS, on this date, pursuant to and in accordance with the Act and the Resolution of Intent, the Commission held a public hearing, notice of which was given as required by Section 4(2) of the Act, on the adoption of a resolution creating the Authority; and

WHEREAS, all citizens, taxpayers and property owners of the City of Birmingham and officials of the affected taxing jurisdictions had the right and opportunity to be heard at the public hearing on the establishment of the Authority; and

WHEREAS, the Commission desires to proceed with the establishment of the Authority for the City within which the Authority shall exercise its powers, all pursuant to and in accordance with the Act.

NOW, THEREFORE, BE IT RESOLVED THAT:

1. Authority Created. Pursuant to the authority vested in the Commission by the Act, the Authority is hereby established and shall be known as the City of Birmingham Brownfield Redevelopment Authority.
2. Supervision of the Authority. The Authority shall be under the supervision and control of a board of five persons (the "Board") appointed by the Mayor of the City of Birmingham, in accordance with the membership provisions set forth in Section 5(1) of the Act, subject to the approval of the Commission. The members of the Board shall hold office, and the Board shall conduct its procedures, in accordance with the Act, and, in particular, Section 5 thereof.
3. Powers and Duties of the Authority. The Authority shall have the powers and duties to the full extent as provided by and in accordance with the Act. Among other matters, in the exercise of its powers the Board may prepare Brownfield plans pursuant to Section 13 of the Act and submit the plans to the Commission for consideration pursuant to Sections 13 and 14 of the Act.
4. Bylaws and Rules of the Authority. The Authority shall elect officers and adopt bylaws and rules governing its procedures and the holding of its meetings, all in accordance with Sections 5(3) and 5(5) of the Act, and shall immediately forward a copy of the bylaws and rules after adoption by the Board to the Commission in care of the City Clerk of the City of Birmingham (the "City Clerk"). The Authority's bylaws and rules shall be subject to the approval of the Commission; provided, however, that if the Commission fails to either approve or disapprove the Authority's bylaws and





# City of Birmingham

*A Walkable Community*

**BIRMINGHAM CITY/ELECTION COMMISSION  
MARCH 21, 2005  
RESOLUTION 03-96-05  
RESOLUTION OF INTENT TO CREATE A  
BROWNFIELD REDEVELOPMENT AUTHORITY**

Present: Mayor Hoff, Commissioners Carney, McDaniel, McKeon, Moore, Plotnik,  
Thorsby  
Absent: None

At a regular meeting of the Birmingham City Commission held at 151 Martin Street, Birmingham, Michigan on Monday, March 21, 2005, the commission adopted the following resolution:

**MOTION:** Motion by Thorsby, seconded by Moore:

WHEREAS, the City Commission of the City of Birmingham (the "Commission") has received and reviewed testimony that it is in the best interests of the public to facilitate the implementation of Brownfield plans relating to the designation and treatment of areas within the City of Birmingham (the "City") and to promote the revitalization of distressed areas within the City; and

WHEREAS, in order to further such interests, it is appropriate for the Commission to create and provide for the operation of a Brownfield redevelopment authority (the "authority") within the municipal limits of the City pursuant to and in accordance with the provisions of the Brownfield Redevelopment Financing Act, being Act 381 of the Public Acts of the State of Michigan of 1996, as amended (the "Act"); and

WHEREAS, pursuant to the Act, this Commission is required to hold a public hearing on the adoption of a proposed resolution creating a Brownfield redevelopment authority under the Act, and to publish notice of the public hearing in a newspaper of general circulation in the City, all in accordance with Section 4(2) of the Act.

NOW, THEREFORE, BE IT RESOLVED THAT:

1. The Commission hereby determines that it is in the best interests of the public to facilitate the implementation of Brownfield redevelopment plans relating to the designation and treatment of areas within the City to promote the revitalization of distressed areas.

2. The Commission hereby declares its intention to create and provide for the operation of the Authority within the City pursuant to and in accordance with the provisions of the Act.

3. A public hearing shall be held before the Commission on the 25<sup>th</sup> day of April, 2005 at 7:30 p.m. in the Commission Chambers in the Birmingham City Hall, 151 Martin,


Birmingham, Michigan, on the adoption of a resolution creating the Authority within the City boundaries, within which the Authority shall exercise its powers.

4. The City Clerk of the City (the "City Clerk") shall give notice to the public of the public hearing by causing notice to be published, in the form attached hereto as Exhibit A, a daily newspaper of general circulation in the City, on March 27, 2005 and March 31, 2005 pursuant to the practice of the City Clerk.

Stuart Sherman urged the commission to pass this and move forward expeditiously. He stated there is no reason to give up dollars to the county to administer this program.

VOTE: Yeas, 7  
Nays, None  
Absent, None

I, Nancy M. Weiss, Clerk of the City of Birmingham, do hereby certify that the above is a true and correct copy of a resolution adopted by the Birmingham City Commission at their regular meeting of March 21, 2005.

  
Nancy M. Weiss  
City Clerk

**Birmingham City Commission Minutes**

**August 15, 2022**

**Municipal Building, 151 Martin**

**7:30 p.m.**

**Vimeo Link: <https://vimeo.com/733446146>**

**I. CALL TO ORDER AND PLEDGE OF ALLEGIANCE**

Therese Longe, Mayor, opened the meeting with the Pledge of Allegiance.

**II. ROLL CALL**

Alexandria Bingham, City Clerk, called the roll.

Present: Mayor Longe  
Mayor Pro Tem Boutros  
Commissioner Baller  
Commissioner Haig  
Commissioner Host  
Commissioner Schafer

Absent: Commissioner McLain

Administration: City Manager Markus, City Clerk Bingham, Senior Planner Cowan, Planning Director Dupuis, Assistant City Manager Ecker, City Attorney Kucharek, Department of Public Services Director Wood, Assistant City Engineer Zielinski

**III. PROCLAMATIONS, CONGRATULATORY RESOLUTIONS, AWARDS, APPOINTMENTS, RESIGNATIONS AND CONFIRMATIONS, ADMINISTRATION OF OATHS, INTRODUCTION OF GUESTS AND ANNOUNCEMENTS.**

**Announcements**

- The City continues to recommend the public wear masks while attending City meetings per CDC guidelines. The cases of COVID-19 are increasing in the area. All City employees, commissioners, and board members must wear a mask while indoors when 6-feet of social distancing cannot be maintained. This is to ensure the continuity of government is not affected by an exposure to COVID-19 that can be prevented by wearing a mask. The City continues to provide KN-95 respirators and triple-layered masks for all in-person meeting attendees.
- Enjoy Birmingham's Concert in the Park on August 17th at 12 p.m. with UC3 Acoustic Trio and at 7 p.m. the return of crowd favorite, Mainstreet Soul. Our last concert of the season will be Wednesday, August 24th at 7 p.m. with Captain Fantastic Detroit and The Donny Rod Show. We wish to thank our sponsors and concertgoers for another fantastic season!
- The Clerk's Office would like to thank all of the Election Inspectors and City Staff that helped with conducting a successful August 2nd State Primary Election. We appreciate all of the voters who participated safely, turnout for this election was 35.33%, which was above the 30.04% average for Oakland County. Unofficial results are available at oakgov.com/elections under the August election tab. Official results will be available after the completion of the canvass of the Oakland County Board of Canvassers.

**IV. OPEN TO THE PUBLIC FOR MATTERS NOT ON THE AGENDA**

Susan Randall, Maureen Field, Tom Schneider, and Pete Webster spoke against the proposed location of the Birmingham Country Club’s pickleball courts, saying the courts should be relocated in order to minimize any impact on the Club’s residential neighbors.

**V. CONSENT AGENDA**

All items listed on the consent agenda are considered to be routine and will be enacted by one motion and approved by a roll call vote. There will be no separate discussion of the items unless a commissioner or citizen so requests, in which event the item will be removed from the general order of business and considered under the last item of new business.

**08-208-22 Consent Agenda**

Commissioner Haig noted that he would be recused from voting on Item O, citing his residency on one of the affected streets.

**MOTION:** Motion by MPT Boutros, Commissioner Host:  
To approve the Consent Agenda, noting Commissioner Haig’s recusal from Item O.

ROLL CALL VOTE: Ayes, Commissioner Baller  
MPT Boutros  
Commissioner Schafer  
Commissioner Host  
Mayor Longe  
Commissioner Haig

Nays, None

- A. Resolution to approve the City Commission meeting minutes of July 25, 2022.
- B. Resolution to approve the warrant list, including Automated Clearing House payments, dated July 27, 2022, in the amount of \$7,149,774.29.
- C. Resolution to approve the warrant list, including Automated Clearing House payments, dated August 3, 2022, in the amount of \$426,183.56.
- D. Resolution to approve the warrant list, including Automated Clearing House payments, dated August 10, 2022, in the amount of \$598,607.66
- E. Motion to adopt an ordinance amending Chapter 54 – Fire Prevention and Protection, Article II. – Fire Prevention Code, Sec. 54-26, Sec. 54-27 and 54-28, which adopt the International Fire Code and its amendments.
- F. Resolution to approve the contract from Air Handler Services to replace the HVAC system at Fire Station 1 and the additionally contingency funds for repairs etc. in the amount not to exceed \$149,008 from the Capital Projects Fund #403.0-339.000-977.0000. In addition, to authorize the Mayor, City Clerk, City Manager, City Attorney, Finance Director, and Fire Chief to sign the contract on behalf of the City and further, to approve the appropriations and amendment to the Capital Projects Fund budget as follows:

<u>Revenue:</u>		
Draw from Fund Balance	403.0-000.000-400.0000	\$149,008

Expenditures:

Buildings – Adams Fire Station 403.0-346.001-977.0000 \$149,008

- G. Resolution to approve the contract from Royal Roofing Company Inc. to replace the steel roof system at Fire Station 1 in the amount not to exceed \$236,960 from the Capital Projects Fund #403.0-346.0019-977.0000. In addition, to authorize the Mayor, City Clerk, City Manager, City Attorney, Finance Director, and Fire Chief to sign the contract on behalf of the City and further, to approve the appropriations and amendment to the General Fund and Capital Projects Fund budgets as follows:

General Fund Revenues:

Draw from Fund Balance 101.0-000.000-400.0000 \$85,968

Expenditures:

Transfers Out 101.0-999.000-955.4030 \$85,968

Capital Projects Fund Revenues:

Draw from Fund Balance 403.0-000.000-400.0000 \$150,992

Transfers In 403.0-346.001-699.0101 \$85,968

Total Revenues \$236,960

Expenditures:

Buildings – Adams Fire Station 403.0-346.001-977.0000 \$236,960

- H. Resolution to approve the purchase of the replacement monitor for Fire Station One and the additional monitor for Fire Station Two from CDWG with a total cost of \$19,884.10. Funds are available in the machinery and equipment fund account # 636.0-228.000-971.0100.

- I. Resolution to purchase one (1) 2023 Chevrolet Traverse AWD SL SUV, from Berger Chevrolet Inc., located at 2525 28<sup>th</sup> Street S.E., Grand Rapids, MI 49512, under the State of Michigan MiDeal extendable purchasing contract #071B7700184, in the amount not to exceed \$29,916.00. Funds for this purchase are available in the FY 2022-2023 Auto Equipment Fund account#641.0-441.006.971.0100.

- J. Resolution to confirm the City Manager’s authorization for the emergency expenditure related to the purchase of a new breaker. AIS Construction Equipment Corp., which is located at 56555 Pontiac Trail, New Hudson, MI 48165, will provide a new breaker for the amount of \$12,380.50. The funds for the purchase will be charged to the Auto Equipment account #641.0-441.006-971.0100.

- K. Resolution to approve the purchase of eleven (11) Dumor benches, five (5) litter receptacles, and five (5) recycled plastic park benches for a total purchase price of \$39,820.00 from the sole source vendor, Penchura, LLC and charge the purchase to account # 101.0-751.000-729.0000. Further, to approve and amend the General Fund budget as follows:

General Fund Revenues

Draw from Fund Balance 101.0-000.000-400.0000 \$39,820

Expenditures

Parks Operating Supplies 101.0-751.000-729.0000 \$39,820

- L. Resolution to approve the agreement with Goddard Coatings Company for the Crestview Park Pickleball project in the amount of \$63,750 and charge the purchase to the Land Improvement Account # 408.1-751.000-979.0000. Further, to appropriate and amend the Park System Construction Fund budget as follows:

Park System Construction Fund



<u>Revenues</u>		
Draw from Fund Balance	408.1-000.000-400.0000	\$63,750
<u>Expenditures</u>		
Land Improvements	408.1-751.000-979.0000	\$63,750

- M. Resolution approving the service agreement with Next in the amount of \$122,944 for services described in Attachment A of the agreement for fiscal year 2022-2023, account number 101.0-656.000-811.0000, and further direct the Mayor and City Clerk to sign the agreement on behalf of the City.
- N. Resolution to award the 2021-2022 Public Services contract totaling \$36,912.00 for Yard Services, Senior Outreach Services, and Minor Home Repair to NEXT under the Community Development Block Grant Program; and further, to authorize the Mayor to sign the contract on behalf of the City.
- O. Resolution to set the Public Hearing of Necessity for the road surface cape-seal treatment for all properties within the project on Taunton between Woodward and Lincoln, Torry between Emmons and Sheffield, Bradford between Sheffield and Eton, Croft between Bradford and 14 Mile Road, Penistone between Torry and 14 Mile Road, Banbury between Torry and Sheffield, Humphrey between Torry and Eton, and Melton between Taunton to Eton on Monday, September 12, 2022 at 7:30 P.M.; and

If necessity is determined on September 12, 2022, to meet on Monday, September 19, 2022 at 7:30 P.M., for the purpose of conducting the Public Hearing to Confirm the Assessment Roll for the road surface cape-seal treatment for all properties within the project area on Taunton between Woodward and Lincoln, Torry between Emmons and Sheffield, Bradford between Sheffield and Eton, Croft between Bradford and 14 Mile Road, Penistone between Torry and 14 Mile Road, Banbury between Torry and Sheffield, Humphrey between Torry and Eton, and Melton between Taunton to Eton.

- P. Resolution to set a public hearing date of September 19, 2022 to consider the Special Land Use Permit, Final Site Plan and Design Review application for 460 N. Old Woodward – Wilders.
- Q. Resolution to release one grave in section B, row 12-A, for a family seeking one additional space adjacent to their currently owned plot in order to keep their family members together in Greenwood Cemetery.

**VI. UNFINISHED BUSINESS**

**VII. NEW BUSINESS**

**08-209-22                      Public Hearing – Westwood, Raynale & Oak Street Project, Hearing of Necessity for Cape Seal Special Assessment District**

The Mayor opened the public hearing at 7:47 p.m.

ACE Zielinski presented the item.

Public Comment

Brock Rooney, resident of Westwood, said he believed that the charges for resurfacing Westwood should be discounted. He opined the street had service life left and so the City should compensate the Westwood

residents for the payments they previously made towards maintaining the street's surface. Mr. Rooney stated that he did not recall previously paying to resurface Oak Street. He stated that no water or sewer repairs were planned west of Westwood to the City line and recommended that any proposed work in that area be eliminated. Mr. Rooney concluded by saying that the residents within the Special Assessment District (SAD) for this project should not be charged for sidewalk installations in the as part of the project.

ACE Zielinski stated that sidewalks, drive approaches, intersections, and drainage are part of the necessary work of cape seal project. He said the Engineering Department would determine whether the area west of Westwood should be included in the SAD.

The Mayor closed the public hearing at 7:55 p.m.

**MOTION:** Motion by MPT Boutros, Commissioner Schafer:  
To declare necessity and approve a Special Assessment District with special assessments levied in accordance with benefits against the properties within such assessment district. The Special Assessment District shall include all properties within the following district of 23 parcels (listed in report), and the City Commission will meet on Monday, August 29, 2022 at 7:30 P.M. for the purpose of conducting the Confirmation of the Assessment Roll for cape-seal for properties within the project area on Westwood between Raynale & Oak, Raynale between N. Glenhurst and the west City limits, and Oak between N. Glenhurst & the west City Limits.

ROLL CALL VOTE: Ayes, Commissioner Baller  
MPT Boutros  
Commissioner Schafer  
Commissioner Host  
Mayor Longe  
Commissioner Haig

Nays, None

**08-210-22 Public Hearing – Westwood, Raynale & Oak Street Project Hearing of Necessity for Water and Sewer Lateral Special Assessment District**

The Mayor opened the public hearing at 7:58 p.m.

ACE Zielinski presented the item.

Public Comment

Mr. Rooney contended that this work would not be necessary if not for prior City work on the sewer connections and water drainage lines. He opined that since prior City work necessitated this work, the City should pay the water and sewer lateral replacements in the project area.

The Mayor closed the public hearing at 8:01 p.m.

**MOTION:** Motion by MPT Boutros, Commissioner Host:  
To declare necessity and approve a Special Assessment District with special assessments levied in accordance with benefits against the properties within such assessment district. The special assessment district shall include all properties within the following district of 13 parcels (listed in report), and the City Commission will meet on Monday, August 29, 2022 at 7:30 P.M. for the purpose of conducting the Public

Hearing to Confirm the Assessment Roll for the water and sewer lateral replacements for properties within the project area on Westwood between Raynale & Oak, Raynale between N. Glenhurst and the west City limits, and Oak between N. Glenhurst & the west City Limits.

ROLL CALL VOTE:     Ayes, Commissioner Baller  
  MPT Boutros  
  Commissioner Schafer  
  Commissioner Host  
  Mayor Longe  
  Commissioner Haig

Nays, None

Mr. Rooney was informed that the assessment rolls for the prior two items would be before the Commission on August 29, 2022.

**08-211-22                   Public Hearing - Lot Combination of 770 S. Adams and 1000 Haynes Street (Former Citizens Bank & Office Building)**

The Mayor recused herself from this item citing a business relationship between her spouse and the property owners and stepped out of the meeting.

MPT Boutros assumed facilitation of the meeting.

MPT Boutros opened the public hearing at 8:02 p.m.

SP Cowan presented the item.

Seeing no public comment, MPT Boutros closed the public hearing at 8:07 p.m.

Rick Rattner, attorney, and Nico Schultz, co-owner, were present on behalf of the request.

**MOTION:**                   Motion by Commissioner Haig, Commissioner Host:  
To approve the proposed lot combination of 770 S. Adams and 1000 Haynes Street, Parcel ID # 19-36-283-016 & Parcel ID # 19-36-283-024.

Commissioner Baller spoke in support of the project and noted that it might be the largest residential project in Birmingham to date.

Commissioner Host and MPT Boutros also spoke in support.

ROLL CALL VOTE:     Ayes, Commissioner Baller  
  MPT Boutros  
  Commissioner Schafer  
  Commissioner Host  
  Commissioner Haig

Nays, None

**Commission Items for Future Discussion.** A motion is required to bring up the item for future discussion at the next reasonable agenda, no discussion on the topic will happen tonight.

Mayor Longe rejoined the meeting and resumed facilitation.

**08-212-22                    Birmingham Country Club Pickleball Issue**

**MOTION:**                    Motion by Commissioner Host, Commissioner Haig:  
To discuss potential next steps regarding resident concerns about the Birmingham Country Club’s pickleball courts at the August 29, 2022 Commission meeting.

VOICE VOTE:                    Ayes, Commissioner Baller  
    MPT Boutros  
    Commissioner Schafer  
    Commissioner Host  
    Commissioner Haig  
    Mayor Longe

Nays, None

**08-213-22                    Speed Bumps and Similar Devices**

**MOTION:**                    Motion by Commissioner Haig, Commissioner Host:  
To introduce speed bumps or similar devices as a form of speed management within the City of Birmingham.

Commissioners Baller and Host voiced support for the topic.

VOICE VOTE:                    Ayes, Commissioner Baller  
    MPT Boutros  
    Commissioner Schafer  
    Commissioner Host  
    Commissioner Haig  
    Mayor Longe

Nays, None

**Commission Discussion On Items From Previous Meetings**

None.

**08-214-22                    Closed Session pursuant to MCL § 15.268 Sec. 8(e) of the Open Meetings Act**

**(A roll call vote is required and the vote must be approved by a 2/3 majority of the commission. The commission will adjourn to closed session after all other business has been addressed in open session and reconvene to open session, after the closed session, for purposes of taking formal action resulting from the closed session and for purposes of adjourning the meeting.)**

**MOTION:** Motion by MPT Boutros, Commissioner Baller:  
To meet in closed session to discuss pending litigation pursuant to MCL § 15.268 Sec. 8(e) of the Open Meetings Act regarding John Reinhart, et al the v City of Birmingham; U.S. District Court Case No.: 2:22-cv-11074-MAG-DRG.

ROLL CALL VOTE: Ayes, Commissioner Baller  
MPT Boutros  
Commissioner Schafer  
Commissioner Host  
Commissioner Haig  
Mayor Longe

Nays, None

The Commission went into closed session at 8:50 p.m.

The Commission returned from closed session at 9:13 p.m.

**VIII. REMOVED FROM CONSENT AGENDA**

**IX. COMMUNICATIONS**

**X. REPORTS**

- A. Commissioner Reports
  - 1. Notice of Intent to appoint: Design Review Board
  - 2. Notice of Intent to appoint: Historic District Commission
- B. Commissioner Comments

In reply to Commissioner Haig, CM Markus said sound control fencing for the pickleball courts at Crestview Park could be considered for the future if necessary.

- C. Advisory Boards, Committees, Commissions' Reports and Agendas
- D. Legislation
- E. City Staff
  - 1. 1923 Fairview Tree Removal

DPSD Wood presented the item.

CA Kucharek spoke about the City's liability in this case.

The Mayor noted that two independent tree contractors, unaffiliated with the City's forestry contract, performed the Basic Tree Risk Assessment and the Resistograph Test on the tree in question. Both found the tree had moderate and high risk ratings as noted in DPSD Wood's report.

MPT Bourtos thanked Staff for their work on this issue. He stated that the City's forestry contractor, J.H. Hart has been a great contractor for the City for 35 years. He offered both Staff and J.H. Hart his support.

The Mayor noted that the City has now invested thousands of dollars to attempt to investigate this matter to the owner's satisfaction.

Commissioner Host observed how comprehensive the City's investigation of this issue was.

Public Comment

John Hart, of J.H. Hart, clarified that he and his staff make recommendations to City Staff about City trees, and that City Staff are the decisors.

Alan Walborn, resident at 1923 Fairview, commented on the matter.

INFORMATION ONLY

**XI. ADJOURN**

Mayor Longe adjourned the meeting at 9:14 p.m.

Alexandria Bingham  
City Clerk



Laura Eichenhorn  
City Transcriptionist



**City of Birmingham**  
**Warrant List Dated 08/17/2022**

Meeting of 08/29/2022

Check Number	Early Release	Vendor #	Vendor	Amount
<u>PAPER CHECK</u>				
287275		005430	21ST CENTURY MEDIA- MICHIGAN	1,250.50
287276	*	000855	48TH DISTRICT COURT	607.00
287277		003708	AIRGAS USA, LLC	357.44
287278		009088	ALADTEC INC	3,354.00
287279		BDREFUND	ALL AMERICAN CONSTRUCTION	100.00
287280	*	008015	ALL PHASE LOCK AND SAFE	31.50
287282		BDREFUND	ALS ASPHALT PAVING CO	100.00
287283		009260	ARCHIVESOCIAL INC	4,990.00
287284	*	006759	AT&T	139.89
287285		BDREFUND	BASEMENT CRACKS & LEAKS/METRO	200.00
287286		BDREFUND	BELL, MICHAEL C	200.00
287287		BDREFUND	BERGSMAN WIAND BOUCHARD & CO	150.00
287288	*	006894	DAVID BIANCHETTE	261.26
287289		BDREFUND	BIRMINGHAM PLBG CO INC	1,000.00
287290		004244	BOLYARD LUMBER	20.38
287291		003526	BOUND TREE MEDICAL, LLC	614.18
287292		BDREFUND	Bruce Kezlarian	1,000.00
287293		005717	BSB COMMUNICATIONS, INC.	217.64
287294		BDREFUND	BUSH BROS ASPHALT INC	100.00
287295		003907	CADILLAC ASPHALT, LLC	951.15
287296		BDREFUND	CAMERON INVESTMENT PROPERTY LLC	1,000.00
287297		BDREFUND	CASWELL MODERNIZATION CO INC	100.00
287298		BDREFUND	CHINOSKI BUILDING GROUP	200.00
287299		000605	CINTAS CORPORATION	328.12
287300		000605	CINTAS CORPORATION	26.60
287301	*	008955	COMCAST	363.61
287302		008512	COOL THREADS EMBROIDERY	2,339.82
287303		BDREFUND	CUNNINGHAM, KEVIN	100.00
287304		009309	DEALER AUTO PARTS	70.28
287306		BDREFUND	EDWARDS PLUMBING & HEATING	1,000.00
287307	*	007538	EGANIX, INC.	720.00
287308		000196	EJ USA, INC.	59.04
287308	*	000196	EJ USA, INC.	2,416.90
287309	*	008970	ENCODEPLUS, LLC	108.00
287311		001495	ETNA SUPPLY	1,580.00
287312	*	007415	EZ GOLF CART CO. INC	8,388.09
287313		BDREFUND	FALLERT, JOE	100.00
287314	*	001223	FAST SIGNS	220.63
287315		BDREFUND	FAWAZ, ALEX	200.00
287317		BDREFUND	FOUNDATION SYSTEMS OF MICHIGAN INC.	100.00
287318		BDREFUND	GITTLEMAN CONSTRUCTION INC.	500.00
287319	*	004604	GORDON FOOD	103.96

# City of Birmingham

## Warrant List Dated 08/17/2022

Meeting of 08/29/2022

Check Number	Early Release	Vendor #	Vendor	Amount
287320		BDREFUND	GREAT LAKES CUSTOM BUILDER LLC	300.00
287321		001531	GUNNERS METER & PARTS INC	3,710.00
287322		001447	HALT FIRE INC	261.12
287323	*	001956	HOME DEPOT CREDIT SERVICES	885.15
287324		BDREFUND	HOME INSPECTION PLUS INC	200.00
287325		000342	IBS OF SE MICHIGAN	374.22
287326		000344	J.T. EXPRESS, LTD.	5,958.55
287327	*	007973	JB CONTRACTORS INC	167,612.30
287328		BDREFUND	JESKE, STEPHEN	1,000.00
287329		005452	KNOX COMPANY	1,004.00
287331		009524	KRAEMER DESIGN GROUP LLC	1,150.00
287332		BDREFUND	LARSON, DAVID W	100.00
287333	*	TAXMISC	LERETA LLC	1,691.68
287334		009375	LITHIA MOTORS, INC SUPPORT SERVICES	41.87
287335		BDREFUND	MAPLE ROOFING CONSTRUCTION INC	100.00
287336		BDREFUND	MARTINO ENTERPRISES INC	100.00
287337		000888	MCKENNA ASSOCIATES INC	30,127.50
287338		009445	MCSA GROUP, INC.	1,496.50
287339		008207	METAL MART U.S.A.	447.24
287340	*	004738	MGFOA	120.00
287341	*	009200	MICHAEL MORRISON	4,525.00
287342	*	009143	MICHAEL SHUKWIT	1,000.00
287343		003099	MICHIGAN POLICE EQUIP.	2,490.00
287344		007819	MICHIGAN STATE UNIVERSITY	1,350.00
287345		007163	MOBILE HEALTH RESOURCES	1,590.77
287346		BDREFUND	MULLIGAN CONSTRUCTION	100.00
287347		009276	NEWTONS SOLUTIONS LLC	10,925.00
287348		BDREFUND	Northville Lumber's Novi Home Desig	500.00
287349		BDREFUND	OAKES ROOFING SIDING & WINDOWS INC	100.00
287350	*	003461	OBSERVER & ECCENTRIC	44.61
287351		BDREFUND	PAM PROPERTIES LLC	100.00
287352	*	MISC	PAUL DAVID WEISBERGER	3,751.58
287353		BDREFUND	PRM CUSTOM BUILDERS LLC	1,700.00
287354	*	006625	PTS COMMUNICATIONS, INC	78.00
287355		009324	PULLMAN SST INC	57,762.50
287356		004137	R & R FIRE TRUCK REPAIR INC	180.00
287357	*	MISC	RALPH SAROTTE	1,942.23
287358		BDREFUND	RANDY J FAYNE	100.00
287359		BDREFUND	RENAISSANCE RESTORATIONS INC	200.00
287360		BDREFUND	RENEWAL BY ANDERSEN	500.00
287361		MISC	RESCUE DIRECT	2,753.88
287362	*	009144	RICHARD TRUDO	5,200.00
287363		BDREFUND	ROCK BUILDING & REMODELING	500.00

**City of Birmingham**  
**Warrant List Dated 08/17/2022**

Meeting of 08/29/2022

Check Number	Early Release	Vendor #	Vendor	Amount
287364	*	006590	SECURE DOOR, LLC	159.00
287365		009178	SERVICE GLASS COMPANY INC	530.02
287366	*	004202	SHRED-IT USA	187.72
287367		009325	SMITH'S WATERPROOFING LLC	243,777.56
287368	*	008713	STEFAN SYTS	140.23
287369		009201	STEPHEN SHUKWIT	1,500.00
287370		004544	STRYKER SALES CORPORATION	416.50
287372		BDREFUND	THORNTON & GROOMS INC.	1,000.00
287373		BDREFUND	TITLE BROTHERS CONSTRUCTION LLC	100.00
287374		BDREFUND	TRADEMARK CONSTRUCTION SERVICES	200.00
287375		BDREFUND	TRESNAK CONSTRUCTION INC	100.00
287376	*	004379	TURNER SANITATION, INC	170.00
287377		BDREFUND	UNITED BUILDING SERVICE	100.00
287378		008941	UPTOWN MARKET OF BIRMINGHAM	119.27
287379	*	000293	VAN DYKE GAS CO.	56.18
287380	*	000158	VERIZON WIRELESS	316.95
287381		BDREFUND	WALLSIDE WINDOWS	500.00
287382	*	005794	WINDSTREAM HOLDINGS INC	1,197.83
287383	*	008391	XEROX CORPORATION	343.33
SUBTOTAL PAPER CHECK				\$600,658.28
<u>EFT TRANSFER</u>				
" "		CC MISC	7-ELEVEN	76.21
" "		CC MISC	AMAZON	21.05
" "		009521	AWS	176.94
" "	*	005742	CRAIN'S DETROIT BUSINESS	169.00
" "	*	000179	DTE ENERGY	120.00
" "		008730	FACEBOOK HEADQUARTERS	15.00
" "		009427	GO DADDY	20.17
" "		CC MISC	GOOGLE	3.98
" "		004878	GOVERNMENT FINANCE OFFICERS	670.00
" "		CC MISC	HANSONS RUNNING SHOP	148.40
" "		CC MISC	HOME AGAIN	375.00
" "		005990	ICC INC	230.00
" "		CC MISC	MCX CORE BRANDS CORPS VALUE	412.91
" "		004663	MGIA-MICHIGAN GREEN INDUSTRY ASSOC.	400.00
" "		000377	MICHIGAN MUNICIPAL LEAGUE	(329.00)
" "		CC MISC	MML	100.00
" "		CC MISC	NORTH AMERICAN RESCUE	248.36
" "		CC MISC	NORTH AMERICAN RESCUE	408.82
" "		CC MISC	SHANTY CREEK RESORT	195.17
" "		CC MISC	STAYBRIDGE SUITES QUANTICO	156.10
" "		CC MISC	WELCOME APLUS	74.98
" "		CC MISC	ACME PARTYWORKS	563.33

**City of Birmingham**  
**Warrant List Dated 08/17/2022**

Meeting of 08/29/2022

Check Number	Early Release	Vendor #	Vendor	Amount
" "		CC MISC	JCPENNEY.COM	768.50
" "		CC MISC	MANGAR, INC.	1,762.90
" "		CC MISC	OHD	150.00
" "		CC MISC	WEBSTAIRANT STORE	225.18
" "		CC MISC	SHANTY CREEK	279.20
" "		CC MISC	USPS	24.00
" "	*	CC MISC	USPS	18.00
" "		009470	GREAT LAKES WINE & SPIRITS	357.96
" "		009481	PREMIUM DISTRIBUTORS	710.91
" "		009471	RAVE ASSOCIATES	266.40
" "		009469	TRI-COUNTY DISTRIBUTORS	347.00
SUBTOTAL EFT TRANSFER				\$9,166.47

ACH TRANSACTION

5846	*	008840	BIRMINGHAM PUBLIC SCHOOLS-TAXES	2,724,179.39
5847	*	008843	OAKLAND COUNTY TREASURER- TAX PYMNT	4,424,776.37
5848	*	008847	ABS- AUTOMATED BENEFIT SVCS, INC	68,790.67
5849		009126	AMAZON CAPITAL SERVICES INC	1,388.82
5849	*	009126	AMAZON CAPITAL SERVICES INC	25.89
5851		006683	BIRMINGHAM LAWN MAINTENANCE, INC	20,493.00
5851	*	006683	BIRMINGHAM LAWN MAINTENANCE, INC	478.80
5852	*	000542	BLUE WATER INDUSTRIAL PRODUCTS INC	84.00
5853		009183	BOB ADAMS TOWING	100.00
5854	*	008983	BRENNA SANDLES	346.00
5855		002668	CONTRACTORS CLOTHING CO	400.00
5856	*	009195	CROWN CASTLE FIBER LLC	4,605.55
5857	*	007359	DETROIT CHEMICAL & PAPER SUPPLY	69.58
5858	*	001077	DUNCAN PARKING TECH INC	11,202.75
5859	*	000995	EQUATURE	3,500.00
5860		001023	GABRIEL, ROEDER, SMITH & CO.	6,300.00
5861	*	000243	GRAINGER	112.56
5862		000261	J.H. HART URBAN FORESTRY	55,491.50
5863		009298	JCR SUPPLY INC	31.03
5864	*	003458	JOE'S AUTO PARTS, INC.	259.90
5865	*	004085	KONE INC	2,086.45
5866	*	005550	LEE & ASSOCIATES CO., INC.	1,216.60
5868	*	001194	NELSON BROTHERS SEWER	1,749.50
5869	*	007755	NETWORK SERVICES COMPANY	1,544.08
5870	*	007856	NEXT	31,288.50
5871	*	006359	NYE UNIFORM COMPANY	493.00
5872	*	006027	PENCHURA, LLC	480.00
5873	*	008866	PRECISION CONCRETE CUTTING INC	26,985.60
5874	*	001097	SOCWA	278,551.40

**City of Birmingham**  
**Warrant List Dated 08/17/2022**

Meeting of 08/29/2022

<b>Check Number</b>	<b>Early Release</b>	<b>Vendor #</b>	<b>Vendor</b>	<b>Amount</b>
5875	*	004355	SYMETRA LIFE INSURANCE COMPANY	60,075.45
5876	*	001255	TEKNICOLORS INC	16.01
5877	*	004320	TRI-COUNTY POWER RODDING, INC	900.00
5878	*	000969	VIGILANTE SECURITY INC	220.50
5879	*	007278	WHITLOCK BUSINESS SYSTEMS, INC.	1,828.72
5880		002088	WM. CROOK FIRE PROTECTION CO.	635.00
SUBTOTAL ACH TRANSACTION				\$7,730,706.62
GRAND TOTAL				\$8,340,531.37

All bills, invoices and other evidences of claim have been audited and approved for payment.



Mark Gerber  
Finance Director/ Treasurer

\*-Indicates checks released in advance and prior to commission approval in order to avoid penalty or to meet contractual agreement/obligation.

**City of Birmingham**  
**Warrant List Dated 08/24/2022**

Meeting of 08/29/2022

Check Number	Early Release	Vendor #	Vendor	Amount
<u>PAPER CHECK</u>				
287384		005430	21ST CENTURY MEDIA- MICHIGAN	3,073.75
287385	*	006965	7UP DETROIT	120.00
287386		BDREFUND	ACES AROUND CONSTRUCTION	100.00
287388		008106	ACUSHNET COMPANY	280.68
287390		007622	ALLSTAR PRO GOLF	219.04
287391		007033	APPLIED IMAGING	6,984.70
287392		000500	ARTECH PRINTING INC	49.00
287393	*	006759	AT&T	250.00
287394	*	006759	AT&T	140.22
287395	*	006759	AT&T	287.97
287396		003294	CITY OF AUBURN HILLS	8,820.35
287397	*	004027	AUTOMATED BENEFIT SVCS INC	18,283.71
287398		008059	BALL EQUIPMENT	99.99
287399		BDREFUND	BENINATI POOL AND SPA	1,560.00
287400		008095	BIRMINGHAM BLOOMFIELD ART CENTER	500.00
287401		000524	BIRMINGHAM LOCKSMITH INC	164.90
287402		BDREFUND	BOJI GROUP	200.00
287403		003526	BOUND TREE MEDICAL, LLC	1,256.33
287404		BDREFUND	BRUTTELL ROOFING INC	100.00
287405	*	006520	BS&A SOFTWARE, INC	1,345.00
287406		005717	BSB COMMUNICATIONS, INC.	2,299.56
287407		003907	CADILLAC ASPHALT, LLC	770.44
287409		000444	CDW GOVERNMENT INC	519.28
287410		009137	CGS, INC	3,100.00
287411		000605	CINTAS CORPORATION	164.06
287412		000605	CINTAS CORPORATION	422.47
287413	*	008006	CLEAR RATE COMMUNICATIONS, INC	1,625.43
287414		004905	COCM	570.00
287415	*	004026	COFINITY	1,592.50
287416		007774	COMCAST BUSINESS	150.01
287416	*	007774	COMCAST BUSINESS	149.99
287417	*	000627	CONSUMERS ENERGY	2,777.86
287418		008512	COOL THREADS EMBROIDERY	299.96
287419	*	006907	DENTEMAX, LLC	154.80
287420		BDREFUND	DODAJ, KRISTJAN	100.00
287421	*	000179	DTE ENERGY	31.41
287422	*	000180	DTE ENERGY	9,363.73
287423		000274	E-Z-GO DIVISION OF TEXTRON INC	275.24
287424		000493	ED RINKE CHEVROLET BUICK GMC	3,955.37
287425		BDREFUND	EDGE CONSTRUCTION	500.00
287426		BDREFUND	EDGE CONSTRUCTION	2,000.00
287427		BDREFUND	ELIE'S HOME IMPROVEMENT LLC	200.00



**City of Birmingham**  
**Warrant List Dated 08/24/2022**

Meeting of 08/29/2022

Check Number	Early Release	Vendor #	Vendor	Amount
287429	*	009100	ENZO WATER SERVICE	550.00
287430		001223	FAST SIGNS	195.02
287431	*	007366	FIRST ADVANTAGE OCCUPATIONAL CORP	828.23
287432		BDREFUND	FORTUNA CONSTRUCTION	100.00
287433		BDREFUND	G H INVESTMENT PARTNERSHIP	100.00
287434		BDREFUND	GGA SERVICES LLC	400.00
287435	*	004604	GORDON FOOD	1,860.17
287436		001047	GRAYWOLF PRINTING	10.00
287437		009275	GREAT LAKES COCA-COLA DISTRIBUTION	345.50
287438		000249	GUARDIAN ALARM	259.05
287439		001531	GUNNERS METER & PARTS INC	4,345.00
287440		001447	HALT FIRE INC	145.78
287441		009527	HFF MICHIGAN HOLDINGS INC	263.99
287442		007339	HIGHEST HONOR, INC	1,334.25
287443	*	001956	HOME DEPOT CREDIT SERVICES	704.74
287444		005990	ICC INC	13,338.00
287445		BDREFUND	IDEAL BUILDERS AND REMODELING INC	400.00
287449		BDREFUND	INGRAM ROOFING INC	100.00
287450		BDREFUND	INTERCITY NEON	100.00
287451		BDREFUND	JOHNSTON, CAITLYN	100.00
287452	*	009403	JUSTIN ZAYID	250.00
287453		BDREFUND	KEARNS BROTHERS INC	100.00
287454		BDREFUND	KEARNS BROTHERS INC	100.00
287455		BDREFUND	KEARNS BROTHERS INC	100.00
287456		BDREFUND	KELLY MANLEY	1,000.00
287458		004904	KONICA MINOLTA BUSINESS SOLUTIONS	2,899.00
287459	*	000362	KROGER COMPANY	28.66
287460		BDREFUND	LAKES DEVELOPMENT GROUP	1,000.00
287461		BDREFUND	LAPERRE, ROBERT	100.00
287462	*	009386	LAW OFFICE OF BRIAN P. FENECH	850.00
287463	*	009388	LAW OFFICE OF PATRICK G. GAGNIUK	800.00
287464		BDREFUND	MARTINES, JEFFREY	1,000.00
287465		BDREFUND	MCALPINE, BRIAN	200.00
287467		007833	MICHIGAN ASSOCIATION OF PLANNING	675.00
287468		007479	MICHIGAN BREAD BAKERY	92.60
287469		BDREFUND	MICHIGAN BUILDING & REMODELING INC	100.00
287470		007214	MIDWEST ARBORIST SUPPLIES	315.35
287471		008319	MKSK INC	4,595.50
287472	*	006371	MPELRA	150.00
287473	*	008211	MULTI-PLAN	4.50
287474		BDREFUND	NEWMYER INC.	300.00
287475		000477	OAKLAND COUNTY	309,159.68
287475	*	000477	OAKLAND COUNTY	186,110.84

**City of Birmingham**  
**Warrant List Dated 08/24/2022**

Meeting of 08/29/2022

Check Number	Early Release	Vendor #	Vendor	Amount
287476	*	003461	OBSERVER & ECCENTRIC	2,385.81
287477	*	004370	OCCUPATIONAL HEALTH CENTERS	419.00
287478	*	009478	ODP BUSINESS SOLUTIONS, LLC	755.11
287480		001626	OXFORD OVERHEAD DOOR SALES CO.	2,110.00
287481	*	001753	PEPSI COLA	541.10
287483		BDREFUND	PRM CUSTOM BUILDERS LLC	1,000.00
287484		009324	PULLMAN SST INC	1,665.00
287485		009324	PULLMAN SST INC	48,777.75
287486		009324	PULLMAN SST INC	28,979.46
287487		009324	PULLMAN SST INC	13,319.64
287488		002393	R & R PRODUCTS INC	174.80
287489	*	009397	RABAA PLLC	500.00
287490		BDREFUND	RENEWAL BY ANDERSEN	500.00
287491		BDREFUND	RICHARD KEITH WIAND	1,000.00
287492		BDREFUND	ROOF ONE LLC	100.00
287494	*	002806	SAM'S CLUB/SYNCHRONY BANK	272.18
287495		006590	SECURE DOOR, LLC	159.00
287498	*	008713	STEFAN SYTS	86.92
287499		BDREFUND	SUSAN SCHMIDT	1,000.00
287500		BLREFUND	TEE SHIRT PALACE	60.00
287501		009526	TELLURIS ARCHITECTURE & URBAN PLANN	1,840.00
287502	*	009384	THE EDITH BLAKNEY LAW FIRM, PLLC	300.00
287503		007226	VALLEY CITY LINEN, INC	315.88
287504	*	000158	VERIZON WIRELESS	128.72
287505	*	000158	VERIZON WIRELESS	308.16
287506	*	000158	VERIZON WIRELESS	49.23
287508	*	008391	XEROX CORPORATION	351.60
287509	*	008902	ZORO TOOLS, INC.	67.43
SUBTOTAL PAPER CHECK				\$717,435.40

ACH TRANSACTION

5881	*	008847	ABS- AUTOMATED BENEFIT SVCS, INC	12,938.10
5887	*	008847	ABS- AUTOMATED BENEFIT SVCS, INC	117,884.77
5888	*	002284	ABEL ELECTRONICS INC	150.00
5889	*	007013	AHEAD USA LLC	668.61
5890		009126	AMAZON CAPITAL SERVICES INC	1,709.76
5890	*	009126	AMAZON CAPITAL SERVICES INC	243.42
5892	*	009383	BATTI LAW PLLC	850.00
5893	*	000517	BEIER HOWLETT P.C.	38,771.00
5894		007345	BEVERLY HILLS ACE	8.60
5894	*	007345	BEVERLY HILLS ACE	19.77
5895	*	009183	BOB ADAMS TOWING	405.00
5896		002668	CONTRACTORS CLOTHING CO	1,699.93
5897	*	000565	DORNBOS SIGN & SAFETY INC	205.68

**City of Birmingham**  
**Warrant List Dated 08/24/2022**

Meeting of 08/29/2022

Check Number	Early Release	Vendor #	Vendor	Amount
5898	*	007807	G2 CONSULTING GROUP LLC	18,450.29
5899	*	000243	GRAINGER	743.00
5900		003870	GREAT LAKES TURF, LLC	584.08
5901	*	009382	HB LAW, PLLC	250.00
5903		000331	HUBBELL ROTH & CLARK INC	9,350.00
5904	*	009390	IDUMESARO LAW FIRM, PLLC	600.00
5905		000261	J.H. HART URBAN FORESTRY	29,411.50
5906		009298	JCR SUPPLY INC	431.97
5907		000155	JOHNSON CONTROLS SECURITY SOLUTIONS	1,331.42
5909	*	000891	KELLER THOMA	866.25
5910		004085	KONE INC	77.95
5911	*	009392	LAMB LEGAL CONSULTING SERVICES	600.00
5912	*	009385	LAW OFFICE OF MICHAEL J. DICK	1,450.00
5914	*	009398	MARCIA C ROSS PC	1,190.00
5917	*	001035	MUNICIPAL EMERGENCY SERVICES INC	533.50
5920		001864	NOWAK & FRAUS ENGINEERS	34,437.00
5921	*	006359	NYE UNIFORM COMPANY	867.00
5922	*	009395	ORLANDO LAW PRACTICE PC	800.00
5923	*	002767	OSCAR W. LARSON CO.	984.00
5924	*	003554	RKA PETROLEUM	1,578.35
5925		000254	SOCRRA	73,144.00
5925	*	000254	SOCRRA	150.00
5926	*	001255	TEKNICOLORS INC	199.96
5928	*	000969	VIGILANTE SECURITY INC	528.00
5929	*	009402	WILKERSON LAW, PLLC	250.00
5930	*	009379	YELLOW DOOR LAW	3,750.00
SUBTOTAL ACH TRANSACTION				\$358,112.91
GRAND TOTAL				\$1,075,548.31

All bills, invoices and other evidences of claim have been audited and approved for payment.



Mark Gerber  
 Finance Director/ Treasurer

\*-Indicates checks released in advance and prior to commission approval in order to avoid penalty or to meet contractual agreement/obligation.



## **MEMORANDUM**

(Information Technology)

**DATE:** August 29, 2022

**TO:** Thomas M. Markus, City Manager

**FROM:** Eric Brunk, IT Manager

**SUBJECT:** Nutanix Infrastructure Expansion

---

### **Introduction:**

The current server infrastructure at the City of Birmingham is in need of expansion as we are running tight on available space. The IT department would like to purchase an expansion module for our existing Nutanix Hyper-converged server infrastructure from CDWG using governmental Extendable contracts.

### **Background:**

The IT department replaced the server infrastructure in 2017 using the current infrastructure load as a base and included a 5-year expected growth model for sizing. The infrastructure has performed well and we are now at the point where we expected to need an increase in storage space. The IT department contacted Nutanix and their vendor of choice CDWG to get a quote on upgrades to our existing hyper-converged environment and they proposed to add a node to our environment which will increase space as well as memory and processor power to our existing environment. That quote came in at \$33,608.00 and is based on Michigan Master Computing-MiDEAL extendable contract 071B6600110. The IT department would like to purchase an expansion module for our existing Nutanix Hyper-converged server infrastructure from CDWG using governmental Extendable contracts.

### **Legal Review:**

The Purchase documents have been sent to the city attorney for review. Although not in our format because it's part of the state cooperative purchasing program they will be allowed.

### **Fiscal Impact:**

This is a budgeted Item – Total expense for the CDWG – Nutanix quote is \$33,608.00 and is based on Michigan Master Computing-MiDEAL extendable contract 071B6600110. There is money budgeted in the Machinery and Equipment fund account # 636.0-228.000- 971.0100 to cover this expense.

**Summary:**

The IT department would like authorization to purchase an Nutanix expansion module for our existing Hyper-converged server infrastructure from CDWG using governmental Extendable contracts. Total cost of equipment is \$33,608.00 using funds from the Machinery and Equipment fund account # 636.0-228.000-971.0100

**SUGGESTED COMMISSION ACTION:**

To make a motion adopting a resolution to approve the purchase of the Nutanix expansion for the Hyper-converged infrastructure from CDWG at total cost not to exceed \$33,608.00. Funds are available in the Machinery and Equipment fund account # 636.0-228.000- 971.0100.



# QUOTE CONFIRMATION

**ERIC BRUNK,**

Thank you for considering CDW•G for your computing needs. The details of your quote are below. [Click here](#) to convert your quote to an order.

**Convert Quote to Order**

QUOTE #	QUOTE DATE	QUOTE REFERENCE	CUSTOMER #	GRAND TOTAL
MWKS238	7/20/2022	MWKS238	5969901	<b>\$33,608.00</b>

**QUOTE DETAILS**

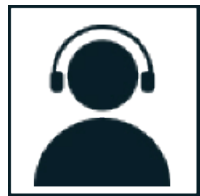
ITEM	QTY	CDW#	UNIT PRICE	EXT. PRICE
<a href="#">Nutanix AOS Pro - subscription license + Production Support - 1 license</a> Mfg. Part#: SW-AOS-PRO-PRD Electronic distribution - NO MEDIA Contract: Michigan Master Computing-MiDEAL (071B6600110)	1	6499807	\$21,175.00	\$21,175.00
<a href="#">Nutanix AOS Pro - subscription license + Production Support - 1 CPU core</a> Mfg. Part#: L-CORES-PRO-PRD Electronic distribution - NO MEDIA Contract: Michigan Master Computing-MiDEAL (071B6600110)	20	6499811	\$0.00	\$0.00
<a href="#">Nutanix AOS Pro - subscription license + Production Support - 1 TiB capacity</a> Mfg. Part#: L-FLASHTIB-PRO-PRD Electronic distribution - NO MEDIA Contract: Michigan Master Computing-MiDEAL (071B6600110)	14	6499812	\$0.00	\$0.00
<a href="#">Nutanix AOS Pro - Term License - 1 license</a> Mfg. Part#: TERM-MONTHS Electronic distribution - NO MEDIA Contract: Michigan Master Computing-MiDEAL (071B6600110)	36	6501791	\$0.00	\$0.00
<a href="#">NUTANIX 24X7 PROD HW SUP HCI APP</a> Mfg. Part#: S-HW-PRD Electronic distribution - NO MEDIA Contract: Michigan Master Computing-MiDEAL (071B6600110)	1	5642018	\$835.00	\$835.00
<a href="#">NUTANIX SUPPORT TERM</a> Mfg. Part#: SUPPORT-TERM Electronic distribution - NO MEDIA Contract: Michigan Master Computing-MiDEAL (071B6600110)	36	5642025	\$0.00	\$0.00
<a href="#">Nutanix NX-1175S-G8 1 Node Xeon Silver 4316 Application Accelerator</a> Mfg. Part#: NX-1175S-G8-4316-CM Contract: Michigan Master Computing-MiDEAL (071B6600110)	1	6846751	\$4,545.00	\$4,545.00

**QUOTE DETAILS (CONT.)**

<a href="#">Nutanix - DDR4 - 64 GB - DIMM 288-pin - 3200 MHz PC4-25600 - registered</a>	8	6321359	\$400.00	\$3,200.00
Mfg. Part#: C-MEM-64GB-3200-CM Contract: Michigan Master Computing-MiDEAL (071B6600110)				
<a href="#">Nutanix NO Hard Drive</a>	1	4891111	\$0.00	\$0.00
Mfg. Part#: C-HDD-NONE-CM Contract: Michigan Master Computing-MiDEAL (071B6600110)				
<a href="#">Nutanix 3.84TB Solid State Drive</a>	4	6673743	\$770.00	\$3,080.00
Mfg. Part#: C-SSD-3.84TB-A-CM Contract: Michigan Master Computing-MiDEAL (071B6600110)				
<a href="#">Nutanix 25GbE 2-Port SFP28 Network Adapter</a>	1	6516087	\$335.00	\$335.00
Mfg. Part#: C-NIC-25G2A1-CM Contract: Michigan Master Computing-MiDEAL (071B6600110)				
<a href="#">Nutanix - power supply - 600 Watt</a>	2	6810971	\$205.00	\$410.00
Mfg. Part#: C-PSU-600-A-CM Contract: Michigan Master Computing-MiDEAL (071B6600110)				
<a href="#">Nutanix - power cable - IEC 380-C13 to IEC 60320 C14 - 4 ft</a>	2	6688036	\$14.00	\$28.00
Mfg. Part#: C-PWR-4FC13C14A-CM Contract: Michigan Master Computing-MiDEAL (071B6600110)				

<b>SUBTOTAL</b>	\$33,608.00
<b>SHIPPING</b>	\$0.00
<b>SALES TAX</b>	\$0.00
<b>GRAND TOTAL</b>	<b>\$33,608.00</b>

PURCHASER BILLING INFO	DELIVER TO
<b>Billing Address:</b> CITY OF BIRMINGHAM ACCOUNTS PAYABLE 151 MARTIN ST PO BOX 3001 BIRMINGHAM, MI 48009-3368 <b>Phone:</b> (248) 530-1850 <b>Payment Terms:</b> Net 30 Days-Govt State/Local	<b>Shipping Address:</b> CITY OF BIRMINGHAM ERIC BRUNK 151 MARTIN ST BIRMINGHAM, MI 48009-3368 <b>Phone:</b> (248) 530-1885 <b>Shipping Method:</b> DROP SHIP-GROUND
	<b>Please remit payments to:</b>  CDW Government 75 Remittance Drive Suite 1515 Chicago, IL 60675-1515



**Sales Contact Info**

**Ryan Marron** | (877) 219-8208 | [ryamarr@cdwg.com](mailto:ryamarr@cdwg.com)

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		Call 800.800.4239



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For more information, contact a CDW account manager

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## TERMS AND CONDITIONS

# SALES AND SERVICE PROJECTS

### PLEASE READ THESE TERMS AND CONDITIONS VERY CAREFULLY

THE TERMS AND CONDITIONS OF PRODUCT SALES AND SERVICE PROJECTS ARE LIMITED TO THOSE CONTAINED HEREIN. ANY ADDITIONAL OR DIFFERENT TERMS OR CONDITIONS IN ANY FORM DELIVERED BY YOU ("CUSTOMER") ARE HEREBY DEEMED TO BE MATERIAL ALTERATIONS AND NOTICE OF OBJECTION TO THEM AND REJECTION OF THEM IS HEREBY GIVEN.

BY ACCEPTING DELIVERY OF THE PRODUCTS OR BY ENGAGING THE CDW AFFILIATE IDENTIFIED ON THE INVOICE, STATEMENT OF WORK OR OTHER CDW DOCUMENTATION ("SELLER") TO PROVIDE PRODUCT OR PERFORM OR PROCURE ANY SERVICES, CUSTOMER AGREES TO BE BOUND BY AND ACCEPTS THESE TERMS AND CONDITIONS UNLESS CUSTOMER AND SELLER HAVE SIGNED A SEPARATE AGREEMENT, IN WHICH CASE THE SEPARATE AGREEMENT WILL GOVERN.

ANY GENERAL DESCRIPTION OF THE TYPES OF PRODUCTS OR SERVICES AND RESULTS THEREOF POSTED ON ANY SELLER WEBSITE OR MOBILE APPLICATION DO NOT CONSTITUTE PART OF THE AGREEMENT BETWEEN SELLER AND CUSTOMER.

### Important Information About These Terms and Conditions

These Terms and Conditions constitute a binding contract between Customer and Seller and are referred to herein as either "Terms and Conditions" or this "Agreement". Customer accepts these Terms and Conditions by making a purchase from or placing an order with Seller or shopping on any Seller Website or Mobile Application (each, a "Site") or otherwise requesting products (the "Products") or engaging Seller to perform or procure any Services (as this and all capitalized terms are defined herein). These Terms and Conditions are subject to change without prior notice, except that the Terms and Conditions posted on a Site at the time Customer places an order or signs a Statement of Work will govern the order in question, unless otherwise agreed in writing by Seller and Customer.

Customer consents to receiving electronic records, which may be provided via a Web browser or e-mail application connected to the Internet; individual consumers may withdraw consent to receiving electronic records or have the record provided in non-electronic form by contacting Seller. In addition, Internet connectivity requires access services from an Internet access provider. Contact your local access provider for details. Electronic signatures (or copies of signatures sent via electronic means) are the equivalent of written and signed documents.

Customer may issue a purchase order for administrative purposes only. Additional or different terms and conditions contained in any such purchase order will be null and void. No course of prior dealings between the parties and no usage of trade will be relevant to determine the meaning of these Terms and Conditions or any purchase order or invoice, or any document in electronic or written form that is signed and delivered by each of the parties for the performance of Services other than Third Party Services (each, a "Statement of Work"). This Agreement contains the entire understanding of the parties with respect to the matters contained herein and supersedes and replaces in its entirety any and all prior communications and contemporaneous agreements and understandings, whether oral, written, electronic or implied, if any, between the parties with respect to the subject matter hereof.

### Governing Law

THESE TERMS AND CONDITIONS, ANY STATEMENTS OF WORK, THE SERVICES HEREUNDER AND ANY SALE OF PRODUCTS HEREUNDER WILL BE GOVERNED BY THE LAWS OF THE STATE OF ILLINOIS, WITHOUT REGARD TO CONFLICTS OF LAWS RULES. ANY ARBITRATION, ENFORCEMENT OF AN ARBITRATION OR LITIGATION WILL BE BROUGHT EXCLUSIVELY IN COOK COUNTY, ILLINOIS, AND CUSTOMER CONSENTS TO THE JURISDICTION OF THE FEDERAL AND STATE COURTS LOCATED THEREIN, SUBMITS TO THE JURISDICTION THEREOF AND WAIVES THE RIGHT TO CHANGE VENUE. CUSTOMER FURTHER CONSENTS TO THE EXERCISE OF PERSONAL JURISDICTION BY ANY SUCH COURT WITH RESPECT TO ANY SUCH PROCEEDING. Except in the case of nonpayment, neither party may institute any action in any form arising out of these Terms and Conditions more than one (1) year after the cause of action has arisen. The rights and remedies provided Seller under these Terms and Conditions are cumulative, are in addition to, and do not limit or prejudice any other right or remedy available at law or in equity.

## Title; Risk of Loss

If Customer provides Seller with Customer's carrier account number or selects a carrier other than a carrier that regularly ships for Seller, title to Products and risk of loss or damage during shipment pass from Seller to Customer upon delivery to the carrier (F.O.B. Origin, freight collect). For all other shipments, title to Products and risk of loss or damage during shipment pass from Seller to Customer upon delivery to the specified destination (F.O.B. Destination, freight prepaid and added). Notwithstanding the foregoing, title to software will remain with the applicable licensor(s), and Customer's rights therein are contained in the license agreement between such licensor(s) and Customer.

## Services

Customers may order services (collectively, "Services") from or through Seller from time to time. Certain Services may be provided by third parties, including, but not limited to, extended warranty service by manufacturers, and are sold by Seller as distributor or sales agent ("Third Party Services").

In the case of Third Party Services, Customer shall consider the third party to be the contracting party and the third party shall be the party responsible for providing the services to the Customer and Customer will look solely to the third party for any loss, claims or damages arising from or related to the provision of such Third Party Services. Customer and Customer's Affiliates (defined below) hereby release Seller and Seller's Affiliates (defined below) from any and all claims arising from or relating to the purchase or provision of any such Third Parties Services. Any amounts, including, but not limited to, taxes, associated with Third Party Services which may be collected by Seller will be collected solely in the capacity as an independent sales agent. "Affiliate" means, with respect to a party, an entity that controls, is controlled by, or is under common control with such party.

Where Services are ordered in a Statement of Work, each Statement of Work hereby incorporates these Terms and Conditions and constitutes a separate agreement with respect to the Services performed. Seller, or any of its Affiliates on behalf of Seller, may execute a Statement of Work. In the event of an addition to or a conflict between any term or condition of the Statement of Work and these Terms and Conditions, these Terms and Conditions will control, except as expressly amended in the applicable Statement of Work by specific reference to this Agreement. Each such amendment will be applicable only with respect to such Statement of Work and not to future Statements of Work. Changes to the scope of the Services described in a Statement of Work will be made only in a writing executed by authorized representatives of both parties. Seller will have no obligation to commence work in connection with any such change, unless and until the change is agreed upon in that writing executed by both parties. All such changes to the scope of the Services will be governed by these Terms and Conditions and the applicable Statement of Work. Each Statement of Work may be signed in separate counterparts each of which shall be deemed an original and all of which together will be deemed to be one original.

## Cooperation

In addition to any specific Customer duties set forth in any applicable Statement of Work, Customer agrees to cooperate with Seller in connection with performance of the Services by providing: (i) timely responses to Seller's inquiries and requests for approvals and authorizations, (ii) access to any information or materials reasonably requested by Seller which are necessary or useful as determined by Seller in connection with providing the Services, including, but not limited to, physical and computer access to Customer's computer systems, and (iii) all Required Consents necessary for Seller to provide the Services. "Required Consents" means consents or approvals required to give Seller, its

Affiliates, and its and their subcontractors the right or license to access, use and modify all data and third party products. Customer acknowledges and agrees that the Services are dependent upon the completeness and accuracy of information provided by Customer and the knowledge and cooperation of the agents, employees or subcontractors ("Personnel") engaged or appointed by Customer who are selected by Customer to work with Seller.

Seller will follow all reasonable Customer security rules and procedures, as communicated in writing by Customer to Seller from time to time.

## Access

Seller may perform the Services at Customer's place of business, at Seller's own facilities or such other locations as Seller and Customer deem appropriate. When the Services are performed at Customer's premises, Seller will attempt to perform such Services within Customer's normal business hours unless otherwise jointly agreed to by the parties. Customer will also provide Seller access to Customer's staff and any other Customer resources (and when the Services are provided at another location designated by Customer, the staff and resources at such location) that Seller determines are useful or necessary for Seller to provide the Services. When the Services are provided on Customer's premises or at another location designated by Customer, Customer agrees to maintain adequate insurance coverage to protect Seller and Customer's premises and to indemnify and hold Seller and its Affiliates, and its and their agents and employees harmless from any loss, cost, damage or expense (including, but not limited to, attorneys' fees and expenses) arising out of any product liability, death, personal injury or property damage or destruction occurring at such location in connection with the performance of the Services, other than solely as a result of Seller's gross negligence or willful misconduct.

## Payment

Orders are not binding upon Seller until accepted by Seller. Customer agrees to pay the total purchase price for the Products plus shipping (to the extent shipping is not prepaid by Customer), including shipping charges that are billed to Seller as a result of using Customer's carrier account number. Terms of payment are within Seller's sole discretion. In connection with Services being performed pursuant to a Statement of Work, Customer will pay for the Services in the amounts and in accordance with any payment schedule set forth in the applicable Statement of Work. If no payment schedule is provided, Customer will pay for the Services as invoiced by Seller. Invoices are due and payable within the time period specified on the invoice, measured from the date of invoice, subject to continuing credit approval by Seller. Seller, or any of its Affiliates on behalf of Seller may issue an invoice to Customer. Seller may invoice Customer separately for partial shipments, and Seller may invoice Customer for all of the Services described in a Statement of Work or any portion thereof. Customer agrees to pay interest on all past-due sums at the lower of one and one-half percent (1.5%) per month or the highest rate allowed by law. Customer will pay for, and will indemnify and hold Seller and its Affiliates harmless from, any applicable sales, use, transaction, excise or similar taxes and any federal, state or local fees or charges (including, but not limited to, environmental or similar fees), imposed on, in respect of or otherwise associated with any Statement of Work, the Products or the Services. Customer must claim any exemption from such taxes, fees or charges at the time of purchase and provide Seller with the necessary supporting documentation. In the event of a payment default, Customer will be responsible for all of Seller's costs of collection, including, but not limited to, court costs, filing fees and attorneys' fees. In addition, if payments are not received as described above, Seller reserves the right to suspend Services until payment is received. Customer hereby grants to Seller a security interest in the Products to secure payment in full. Customer authorizes Seller to file a financing statement reflecting such security interest. Except as otherwise specified on an applicable Statement of Work, Customer will reimburse Seller for all reasonable out-of-pocket expenses incurred by Seller in connection with the performance of the Services, including, but not limited to, travel and living expenses.

## Export Sales

If this transaction involves an export of items (including, but not limited to, commodities, software or technology) subject to the Export Administration Regulations, such items were exported from the United States by Seller in accordance with the Export Administration Regulations. Customer agrees that it will not divert, use, export or re-export such items contrary to United States law. Customer expressly acknowledges and agrees that it will not export, re-export, or provide such items to any entity or person within any country that is subject to United States economic sanctions imposing comprehensive embargoes without obtaining prior authorization from the United States Government. The list of such countries subject to United States economic sanctions or embargoes may change from time to time

but currently includes Cuba, Iran, Sudan and Syria. Customer also expressly acknowledges and agrees that it will not export, re-export, or provide such items to entities and persons that are ineligible under United States law to receive such items, including but not limited to, any person or entity on the United States Treasury Department's list of Specially Designated Nationals or on the United States Commerce Department's Denied Persons List, Entity List or Unverified List. In addition, manufacturers' warranties for exported Products may vary or may be null and void for Products exported outside the United States.

## Warranties

Customer understands that Seller is not the manufacturer of the Products purchased by Customer hereunder and the only warranties offered are those of the manufacturer, not Seller or its Affiliates. In purchasing the Products, Customer is relying on the manufacturer's specifications only and is not relying on any statements, specifications, photographs or other illustrations representing the Products that may be provided by Seller or its Affiliates. SELLER AND ITS AFFILIATES HEREBY EXPRESSLY DISCLAIM ALL WARRANTIES EITHER EXPRESS OR IMPLIED, RELATED TO PRODUCTS, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF TITLE, ACCURACY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WARRANTY OF NONINFRINGEMENT, OR ANY WARRANTY RELATING TO THIRD PARTY SERVICES. THE DISCLAIMER CONTAINED IN THIS PARAGRAPH DOES NOT AFFECT THE TERMS OF ANY MANUFACTURER'S WARRANTY. Customer expressly waives any claim that it may have against Seller or its Affiliates based on any product liability or infringement or alleged infringement of any patent, copyright, trade secret or other intellectual property rights (each a "Claim") with respect to any Product and also waives any right to indemnification from Seller or its Affiliates against any such Claim made against Customer by a third party. Customer acknowledges that no employee of Seller or its Affiliates is authorized to make any representation or warranty on behalf of Seller or any of its Affiliates that is not in this Agreement.

Seller makes no warranties to the Customer and the Customer hereby acknowledges that Seller makes no warranties in regard to the applicability of all laws and regulations affecting, without limitation the manufacture, performance, sale, packaging and labelling of the Products which are in force within the Customer's territory.

Customer further acknowledges and agrees that Seller makes no representations, warranties or assurances that the Products are designed for or suitable for use in any high risk environment, including but not limited to aircraft or automobile safety devices or navigation, life support systems or medical devices, nuclear facilities, or weapon systems, and Customer agrees to indemnify Seller in connection with any such use of the Products. Customer further agrees to review and comply with the manufacturer's disclaimers and restrictions regarding the use of the Products in high risk environments.

Seller warrants that the Services will be performed in a good and workmanlike manner. Customer's sole and exclusive remedy and Seller's entire liability with respect to this warranty will be, at the sole option of Seller, to either (a) use its reasonable commercial efforts to reperform or cause to be reperformed any Services not in substantial compliance with this warranty or (b) refund amounts paid by Customer related to the portion of the Services not in substantial compliance; provided, in each case, Customer notifies Seller in writing within five (5) business days after performance of the applicable Services. EXCEPT AS SET FORTH HEREIN OR IN ANY STATEMENT OF WORK THAT EXPRESSLY AMENDS SELLER'S WARRANTY, AND SUBJECT TO APPLICABLE LAW, SELLER MAKES NO OTHER, AND EXPRESSLY DISCLAIMS ALL OTHER, REPRESENTATIONS, WARRANTIES, CONDITIONS OR COVENANTS, EITHER EXPRESS OR IMPLIED (INCLUDING WITHOUT LIMITATION, ANY EXPRESS OR IMPLIED WARRANTIES OR CONDITIONS OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, DURABILITY, TITLE, ACCURACY OR NON-INFRINGEMENT) ARISING OUT OF OR RELATED TO THE PERFORMANCE OR NON-PERFORMANCE OF THE SERVICES, INCLUDING BUT NOT LIMITED TO ANY WARRANTY RELATING TO THIRD PARTY SERVICES, ANY WARRANTY WITH RESPECT TO THE PERFORMANCE OF ANY HARDWARE OR SOFTWARE USED IN PERFORMING SERVICES AND ANY WARRANTY CONCERNING THE RESULTS TO BE OBTAINED FROM THE SERVICES. THIS DISCLAIMER AND EXCLUSION SHALL APPLY EVEN IF THE EXPRESS WARRANTY AND LIMITED REMEDY SET FORTH HEREIN FAILS OF ITS ESSENTIAL PURPOSE. CUSTOMER ACKNOWLEDGES THAT NO REPRESENTATIVE OF SELLER OR OF ITS AFFILIATES IS AUTHORIZED TO MAKE ANY REPRESENTATION OR WARRANTY ON BEHALF OF SELLER OR ANY OF ITS AFFILIATES THAT IS NOT IN THIS AGREEMENT OR IN A STATEMENT OF WORK EXPRESSLY AMENDING SELLER'S WARRANTY.

Customer shall be solely responsible for daily back-up and other protection of its data and software against loss, damage or corruption. Customer shall be solely responsible for reconstructing data (including but not limited to data located on disk files and memories) and software that may be lost, damaged or corrupted during the performance of Services. SELLER, ITS AFFILIATES, AND ITS AND THEIR SUPPLIERS, SUBCONTRACTORS AND AGENTS ARE HEREBY RELEASED AND SHALL CONTINUE TO BE RELEASED FROM ALL LIABILITY IN

CONNECTION WITH THE LOSS, DAMAGE OR CORRUPTION OF DATA AND SOFTWARE, AND CUSTOMER ASSUMES ALL RISK OF LOSS, DAMAGE OR CORRUPTION OF DATA AND SOFTWARE IN ANY WAY RELATED TO OR RESULTING FROM THE SERVICES.

Seller will not be responsible for and no liability shall result to Seller or any of its Affiliates for any delays in delivery or in performance which result from any circumstances beyond Seller's reasonable control, including, but not limited to, Product unavailability, carrier delays, delays due to fire, severe weather conditions, failure of power, labor problems, acts of war, terrorism, embargo, acts of God or acts or laws of any government or agency. Any shipping dates or completion dates provided by Seller or any purported deadlines contained in a Statement of Work or any other document are estimates only.

### Pricing Information; Availability Disclaimer

Seller reserves the right to make adjustments to pricing, Products and Service offerings for reasons including, but not limited to, changing market conditions, Product discontinuation, Product unavailability, manufacturer price changes, supplier price changes and errors in advertisements. All orders are subject to Product availability and the availability of Personnel to perform the Services. Therefore, Seller cannot guarantee that it will be able to fulfill Customer's orders. If Services are being performed on a time and materials basis, any estimates provided by Seller are for planning purposes only.

### Credits

Any credit issued by Seller to Customer for any reason must be used within two (2) years from the date that the credit was issued and may only be used for future purchases of Products and/or Services. Any credit or portion thereof not used within the two (2) year period will automatically expire.

### Limitation of Liability

**UNDER NO CIRCUMSTANCES AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDY SET FORTH HEREIN, WILL SELLER, ITS AFFILIATES OR ITS OR THEIR SUPPLIERS, SUBCONTRACTORS OR AGENTS BE LIABLE FOR: (A) ANY INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES INCLUDING BUT NOT LIMITED TO, LOSS OF PROFITS, BUSINESS, REVENUES OR SAVINGS, EVEN IF SELLER HAS BEEN ADVISED OF THE POSSIBILITIES OF SUCH DAMAGES OR IF SUCH DAMAGES ARE OTHERWISE FORESEEABLE, IN EACH CASE, WHETHER A CLAIM FOR ANY SUCH LIABILITY IS PREMISED UPON BREACH OF CONTRACT, WARRANTY, NEGLIGENCE, STRICT LIABILITY OR OTHER THEORY OF LIABILITY; (B) ANY CLAIMS, DEMANDS OR ACTIONS AGAINST CUSTOMER BY ANY THIRD PARTY; (C) ANY LOSS OR CLAIM ARISING OUT OF OR IN CONNECTION WITH CUSTOMER'S IMPLEMENTATION OF ANY CONCLUSIONS OR RECOMMENDATIONS BY SELLER OR ITS AFFILIATES BASED ON, RESULTING FROM, ARISING OUT OF OR OTHERWISE RELATED TO THE PRODUCTS OR SERVICES; OR (D) ANY UNAVAILABILITY OF THE PRODUCT FOR USE OR ANY LOST, DAMAGED OR CORRUPTED DATA OR SOFTWARE. IN THE EVENT OF ANY LIABILITY INCURRED BY SELLER OR ANY OF ITS AFFILIATES, THE ENTIRE LIABILITY OF SELLER AND ITS AFFILIATES FOR DAMAGES FROM ANY CAUSE WHATSOEVER WILL NOT EXCEED THE LESSER OF: (A) THE DOLLAR AMOUNT PAID BY CUSTOMER FOR THE PRODUCT(S) GIVING RISE TO THE CLAIM OR THE SPECIFIC SERVICES GIVING RISE TO THE CLAIM; OR (B) \$50,000.00.**

### Limited License

Customer's sole rights to the work product, materials and other deliverables to be provided or created (individually or jointly) in connection with the Services, including but not limited to, all inventions, discoveries, methods, processes, formulae, ideas, concepts, techniques, know-how, data, designs, models, prototypes, works of authorship, computer programs, proprietary tools, methods of analysis and other information (whether or not capable of protection by patent, copyright, trade secret, confidentiality, or other proprietary rights) or discovered in the course of performance of this Agreement that are embodied in such work or materials ("Work Product") will be, upon payment in full, a non-transferable, non-exclusive, royalty-free license to use such Work Products solely for Customer's internal use. Customer will have no ownership or other property rights thereto and Customer shall have no right to use any such Work Product for any other purpose whatsoever. Customer acknowledges that Sellers may incorporate intellectual property created by third parties into the Work Product ("Third Party Intellectual Property"). Customer agrees that its right to

use the Work Product containing Third Party Intellectual Property may be subject to the rights of third parties and limited by agreements with such third parties.

## Confidential Information

Each party anticipates that it may be necessary to provide access to information of a confidential nature of such party, the Affiliates or a third party (hereinafter referred to as "Confidential Information") to the other party in the performance of this Agreement and any Statement of Work. "Confidential Information" means any information or data in oral, electronic or written form which the receiving party knows or has reason to know is proprietary or confidential and which is disclosed by a party in connection with this Agreement or which the receiving party may have access to in connection with this Agreement, including but not limited to the terms and conditions of each Statement of Work. Confidential Information will not include information which: (a) becomes known to the public through no act of the receiving party; (b) was known to the receiving party, or becomes known to the receiving party from a third party having the right to disclose it and having no obligation of confidentiality to the disclosing party with respect to the applicable information; or (c) is independently developed by agents, employees or subcontractors of the receiving party who have not had access to such information. To the extent practicable, Confidential Information should be clearly identified or labeled as such by the disclosing party at the time of disclosure or as promptly thereafter as possible, however, failure to so identify or label such Confidential Information will not be evidence that such information is not confidential or protectable.

Each party agrees to hold the other party's Confidential Information confidential for a period of three (3) years following the date of disclosure and to do so in a manner at least as protective as it holds its own Confidential Information of like kind but to use no less than a reasonable degree of care. Disclosures of the other party's Confidential Information will be restricted (i) to those individuals who are participating in the performance of this Agreement or the applicable Statement of Work and need to know such Confidential Information for purposes of providing or receiving the Products or Services or otherwise in connection with this Agreement or the applicable Statement of Work, or (ii) to its business, legal and financial advisors, each on a confidential basis. Each party agrees not to use any Confidential Information of the other party for any purpose other than the business purposes contemplated by this Agreement and the applicable Statement of Work. Upon the written request of a party, the other party will either return or certify the destruction of the Confidential Information of the other party.

If a receiving party is required by law, rule or regulation, or requested in any judicial or administrative proceeding or by any governmental or regulatory authority, to disclose Confidential Information of the other party, the receiving party will give the disclosing party prompt notice of such request so that the disclosing party may seek an appropriate protective order or similar protective measure and will use reasonable efforts to obtain confidential treatment of the Confidential Information so disclosed.

## Return Privileges

CDW allows Customer returns based on the policies of the original product manufacturer. Software is not returnable if the packaging has been opened. If software was distributed electronically, it is not returnable if the licenses were downloaded. For additional information see CDW's full Product Return Policy at the following link: [Return Policy](#). Customers should contact CDW Customer Relations at 866.SVC.4CDW or e-mail at [Customer Relations](#) to initiate a return or for additional information. Customers must notify CDW Customer Relations of any damaged Products within fifteen (15) days of receipt.

## Termination

Either party may terminate performance of a Service or a Statement of Work for cause if the other party fails to cure a material default in the time period specified herein. Any material default must be specifically identified in a written notice of termination. After written notice, the notified party will, subject to the provision of warranties herein, have thirty (30) days to remedy its performance except that it will only have ten (10) days to remedy any monetary default. Failure to remedy any material default within the applicable time period provided for herein will give cause for immediate termination, unless such default is incapable of being cured within the time period in which case the defaulting party will not be in breach (except for Customer's payment obligations) if it used its reasonable efforts to cure the default. In the event of any termination of the Services or a Statement of Work, Customer will pay Seller for all Services performed and expenses incurred up to and including the date of termination plus any termination fee if one is set forth in the applicable Statement of



Work. In such event Customer will also pay Seller for any out-of-pocket demobilization or other direct costs resulting from termination. Upon termination, all rights and obligations of the parties under this Agreement will automatically terminate except for any right of action occurring prior to termination, payment obligations and obligations that expressly or by implication are intended to survive termination (including, but not limited to, limitation of liability, indemnity, confidentiality, or licensing of Work Product and this survival provision).

## Provisions Related to Custom Imaging

If in connection with the provision of Products or Services, Customer desires to have Seller provide installation of custom software images, Customer will be required to execute an Installation Indemnity Agreement, a form of which is provided at <https://www.cdw.com/content/cdw/en/landing-pages/installation-and-custom-engraving-indemnity-agreement.html>

## Arbitration

Any claim, dispute, or controversy (whether in contract, tort or otherwise, whether preexisting, present or future, and including, but not limited to, statutory, common law, intentional tort and equitable claims) arising from or relating to the Products, the Services, the interpretation or application of these Terms and Conditions or any Statement of Work or the breach, termination or validity thereof, the relationships which result from these Terms and Conditions or any Statement of Work (including, to the full extent permitted by applicable law, relationships with third parties who are not signatories hereto), or Seller's or any of its Affiliates' advertising or marketing (collectively, a "Claim") WILL BE RESOLVED, UPON THE ELECTION OF ANY OF SELLER, CUSTOMER OR THE THIRD PARTIES INVOLVED, EXCLUSIVELY AND FINALLY BY BINDING ARBITRATION. If arbitration is chosen, it will be conducted pursuant to the Rules of the American Arbitration Association. If arbitration is chosen by any party with respect to a Claim, neither Seller nor Customer will have the right to litigate that Claim in court or to have a jury trial on that Claim or to engage in pre-arbitration discovery, except as provided for in the applicable arbitration rules or by agreement of the parties involved. **Further, Customer will not have the right to participate as a representative or member of any class of claimants pertaining to any Claim.** Notwithstanding any choice of law provision included in these Terms and Conditions, this arbitration agreement is subject to the Federal Arbitration Act (9 U.S.C. §§ 1-16). The arbitration will take place exclusively in Chicago, Illinois. Any court having jurisdiction may enter judgment on the award rendered by the arbitrator(s). Each party involved will bear its own cost of any legal representation, discovery or research required to complete arbitration. The existence or results of any arbitration will be treated as confidential. **Notwithstanding anything to the contrary contained herein, all matters pertaining to the collection of amounts due to Seller arising out of the Products or Services will be exclusively litigated in court rather than through arbitration.**

## Data Protection

This Section shall apply to the extent Seller performs any operation or set of operations, including collecting, recording, storing, retaining, using, disclosing or otherwise accessing, (collectively, "Process," "Processed," or "Processing") on any information that identifies, relates to, describes, is capable of being associated with, or could reasonably be linked, directly or indirectly, with a particular individual or household in connection with the Services ("Personal Data"), including without limitation any information that qualifies as "personal information" under the California Consumer Privacy Act, Cal. Civ. Code §§ 1798.100 et seq. ("CCPA"). Seller shall only Process Personal Data in accordance with the instructions of Customer as detailed in the Agreement or the applicable SOW or PO and applicable data privacy law, including, if applicable, the CCPA ("Privacy Laws"). For the avoidance of doubt, it is the intention of the Parties that Seller be a "service provider" of Customer pursuant to the CCPA. Notwithstanding the foregoing, to the extent expressly set forth in the Agreement, Seller (1) shall have the right to retain, use or disclose de-identified or aggregated data derived from Personal Data ("Seller Data"), provided that Seller Data shall not include any Personal Data, and (2) if Seller Processes any "personal information" as such term is defined in the CCPA in connection with the Services, Seller shall have the right to Process such "personal information" for any purpose permitted by the CCPA. Where applicable law requires Seller to Process Personal Data under terms other than those of the Agreement, Seller shall promptly notify Customer of such legal requirement before Processing, unless applicable law prohibits such disclosure. Where required by applicable law, Seller shall also notify Customer if Seller determines any of Customer's instructions infringe applicable Privacy Laws.

The Parties agree that Customer is responsible for obtaining any consents required by applicable Privacy Laws, as well as providing and ensuring the accuracy of any notices required to disclose Personal Data to Seller, Seller's Affiliates, or any Seller subcontractor providing Services for use in accordance with the Agreement. Furthermore, Customer warrants that all Personal Data provided to Seller has been obtained, Processed, and provided to Seller in accordance with all applicable laws and ensured that there are legitimate grounds for Processing any and all Personal Data by Seller, Seller's Affiliates, or any Seller subcontractor providing Services for use in accordance with the Agreement.

Seller shall promptly notify Customer of any request, complaint, claim, or other communication received by Seller or a subcontractor regarding its Processing of Personal Data. Seller shall cooperate with and provide any necessary assistance to Customer in responding to any such inquiries, in so far as possible and taking into account the nature of Seller's Processing and the Personal Data available to Seller. Seller shall be obliged to provide such assistance only in so far that the Customer cannot respond to such request on its own. Notwithstanding anything to the contrary in the Agreement, Customer is obliged to reimburse Seller for out of pocket expenses in connection with such requests. Such expenses will be invoiced to Customer in accordance with the Agreement.

Customer acknowledges that Seller is reliant on Customer for instruction as to the extent to which Seller is entitled to use and Process Personal Data, and that Seller is not liable for any claim brought by a data subject to the extent that such claim arises from the Customer's instructions.

Upon request, Seller shall provide reasonable cooperation and assistance to Customer with its obligations under applicable Privacy Laws, in so far as possible in connection with the Services, taking into account the nature of Seller's Processing and the Personal Data available to Seller. Seller shall be obliged to provide such assistance only in so far that Customer's obligations cannot be met by Customer through other means. Notwithstanding anything to the contrary in the Agreement, Customer is obliged to reimburse Seller for out of pocket expenses in connection with such assistance. Such expenses will be invoiced to Customer in accordance with the Agreement.

To the extent that Personal Data includes information about individuals who are located in the European Economic Area ("EEA") and/or Switzerland, and Seller stores or otherwise obtains access to such Personal Data outside of the EEA and/or Switzerland, Seller agrees it has implemented appropriate measures to address the cross-border transfer of Personal Data.

Seller shall implement and maintain an information security program that includes appropriate technical and procedural safeguards to protect Personal Data, taking into account the nature of Seller's Processing and the Personal Data available to Seller. To the extent required by applicable Privacy Laws, upon request, Seller shall make available to Customer information reasonably necessary to demonstrate compliance with this obligation.

The parties agree that Seller may subcontract its obligations to subcontractors as necessary to perform the Services under the Agreement. Seller shall remain responsible for subcontractors' performance under the Agreement, and shall enter into an agreement with subcontractors that impose materially the same obligations as set forth in this Section. Seller also agrees that any subcontractors who have access to Personal Data are bound to Process Personal Data in accordance with Seller's instructions and are subject to obligations to maintain confidentiality.

Notwithstanding any provisions in the Agreement to the contrary, Seller shall promptly notify Customer in the event Seller discovers or is notified of a known breach of security leading to unauthorized disclosure of or access to Personal Data as a result of its Processing of Personal Data ("**Security Breach**"). Seller shall reasonably cooperate in the investigation of the Security Breach.

The parties agree that to the extent required by applicable Privacy Laws, and upon thirty (30) days written notice to Seller, and no more than once per calendar year, Customer may request reasonable access to Seller's facilities, systems, and supporting documentation used to provide the Services, to the extent necessary to assess Seller's compliance with its obligations under this Section. Such assessments shall be subject to Seller's security and confidentiality policies, and shall be conducted in a manner that minimizes any disruption of Seller's performance of services and other normal operations. Such expenses will be invoiced to Customer in accordance with the Agreement.

Notwithstanding any other provision of the Agreement to the contrary, upon termination of the Agreement or otherwise at Customer's written request, Seller shall, at the choice of Customer, either return or delete Personal Data from its systems unless required by law, rule

or regulation, or requested in any judicial or administrative proceeding or by any governmental or regulatory authority.

Customer shall reimburse Seller and its managers, officers, directors, employees, agents, affiliates, successors and permitted assigns (collectively, "Reimbursed Party") against any and all losses costs, or expenses of whatever kind, including professional fees and attorney's fees, that are incurred by any Reimbursed Party for any investigation or any preparation for any investigation by any governmental or regulatory authority arising out of Customer's violation of any Privacy Laws in connection with this Agreement.

### Miscellaneous

Seller may assign or subcontract all or any portion of its rights or obligations with respect to the sale of Products or the performance of Services or assign the right to receive payments, without Customer's consent. Customer may not assign these Terms and Conditions, or any of its rights or obligations herein without the prior written consent of Seller. Subject to the restrictions in assignment contained herein, these Terms and Conditions will be binding on and inure to the benefit of the parties hereto and their successors and assigns. No provision of this Agreement or any Statement of Work will be deemed waived, amended or modified by either party unless such waiver, amendment or modification is in writing and signed by both parties. The relationship between Seller and Customer is that of independent contractors and not that of employer/employee, partnership or joint venture. If any term or condition of this Agreement or a Statement of Work is found by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable, the same shall not affect the other terms or conditions hereof or thereof or the whole of this Agreement or the applicable Statement of Work. Notices provided under this Agreement will be given in writing and deemed received upon the earlier of actual receipt or three (3) days after mailing if mailed postage prepaid by regular mail or airmail or one (1) day after such notice is sent by courier or facsimile transmission. Any delay or failure by either party to exercise any right or remedy will not constitute a waiver of that party to thereafter enforce such rights.

Version Date: 12-27-2019

### Related Links

- [Site Use](#)
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## WE GET GETTING RESULTS

With full-stack expertise, CDW helps you design, orchestrate and manage technologies that drive business success.

What We Solve  
Research Hub  
Products

My Account  
Quick Order Status

#### ABOUT US

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Nutanix License and Services Agreement

This Nutanix License and Services Agreement (“Agreement”) governs Your receipt and use of any Products (as defined below) and becomes effective when you (a) issue a purchase order for the Products; (b) click the “ACCEPT” button when downloading or installing the Software; or (c) access or use the Software or Cloud Services. This Agreement is entered into between Nutanix Inc., located at 1740 Technology Dr. Ste. 150, San Jose, CA 95110, United States, if You are contracting in the Americas, or Nutanix Netherlands B.V., located at Mercuriusplein 1, 2132 HA Hoofddorp, The Netherlands, if You are contracting anywhere else in the world, or both if you are contracting globally (“Us”, “We” or “Our”) and your organization (“You or “Your”). You represent and warrant that You have the authority to enter into this Agreement on behalf of Your organization.

**1. Definitions.**

- 1.1. **“Affiliates”** means any corporation or other business entity which controls, is controlled by or is under common control with You through the ownership of more than fifty percent (50%) of the outstanding voting stock of the controlled corporation or more than fifty percent (50%) of the equity interest of a non-corporate entity. If You are a public sector entity, an Affiliate is an organization over which You exercise administrative control by applicable laws, regulations or governmental decree.
- 1.2. **“Certified Hardware”** means computer equipment that has been approved and certified by Us as interoperable with Our Software. A list of that hardware can be found at <https://www.nutanix.com/products/hardware-platforms>. Other hardware may be submitted for general or limited certification.
- 1.3. **“Cloud Services”** means Our internet-based or hosted offerings.
- 1.4. **“Documentation”** means Our operating manuals and technical literature describing the features, functions, certifications and other characteristics of the Software and Cloud Services.
- 1.5. **“Delivery”** means the date on which We make the license key for the applicable Software available to You or when We make the Software or Cloud Services otherwise available to You for use.
- 1.6. **“Entitlement”** means Our statement of the SKUs, types, quantities or other metrics for Our Products provided to You. We will supply You with a copy of each Entitlement and make it available in the Portal.
- 1.7. **“Error”** means any reproducible failure of the Software or Cloud Services to substantially perform any material function as set forth in the Documentation.
- 1.8. **“FlexCredits”** means the pre-paid credits which can be redeemed against Professional Services.
- 1.9. **“Partner”** means any entity that is authorized by Us to distribute, resell, act as a service provider or otherwise provide Our Products to You.
- 1.10. **“Portal”** means Our website for the receipt by You of Support Services, management of Entitlements, download of Software etc. which can be found at <https://portal.nutanix.com>
- 1.11. **“Previews”** means Products provided for preview, evaluation, demonstration or trial purposes, or early access (e.g. alpha, beta, pre-release) versions of the Products. Previews also include Products that are provided free of charge (“No-Charge Products”).
- 1.12. **“Products”** means Our Software, Cloud Services, Support Services, Professional Services and applicable Documentation.
- 1.13. **“Professional Services”** means consulting, implementation, optimization, training, certification or other services related to the Software and Cloud Services.
- 1.14. **“Service Levels”** means the availability and uptime warranties applicable to the Cloud Services which can be found at <https://www.nutanix.com/support-services/product-support/policies> subject to planned downtime and any unscheduled emergency maintenance.
- 1.15. **“Service Provider”** means a Nutanix Partner who has entered into an agreement with Nutanix to act as a provider of a service which employs the Software or Cloud Services.
- 1.16. **“Software”** means the Nutanix-branded computer programs specified in the Entitlement, Updates and Upgrades provided as part of Support Services, and APIs, libraries, utilities, tools, add-ons, license keys and other executables related to the Software or Cloud Services.
- 1.17. **“SOW”** means a document issued by Us that describes the Professional Services.
- 1.18. **“Subscription Term”** means the duration of Your subscription to the applicable Software, Support Services and/or Cloud Services as specified in the Entitlement.
- 1.19. **“Support Guide”** means the Nutanix Worldwide Support Program Guide which can be found at <https://www.nutanix.com/content/dam/nutanix/resources/support/nutanix-support-guide.pdf>.
- 1.20. **“Support Policies”** means Our Software End of Life Policy, Our Versioning and Compatibility Matrix, Our extended Support Policy, Our Third Party Hardware and Software Policy and Our Return Material Authorization Policy, which can be found at <https://www.nutanix.com/support-services/product-support/policies>.
- 1.21. **“Support Services”** means Our Software support and maintenance offerings described in the Support Guide.
- 1.22. **“Update”** means either a Minor Release, Maintenance Release or Patch Release as defined in the Support Guide.
- 1.23. **“Upgrade”** means a Major Release as defined in the Support Guide.
- 1.24. **“Usage Capacity”** means the maximum permitted usage of the i) Software based on certain licensing metrics such as the number of raw CPU cores, raw total flash drive capacity in terabytes, cores managed, used terabytes, named users or concurrent users, VMs or VM packs, per node or configured node, percentage of cloud spend, vCPU of each managed database server, per cluster or per vCPU, GB RAM and DR characteristic, per edge instance, or any other applicable licensing metrics; or ii) Cloud Services based on certain metrics, as specified in the Entitlement and described in the applicable Documentation.
- 1.25. **“Your Content”** means any data, software, applications, content, websites, platforms and services that You introduce into or otherwise use in connection with the Products.

**2. Software.**

- 2.1. **License Grant.** We grant You a limited, non-exclusive, non-transferable, worldwide license to download, install and use the Software (in object code form only) and its Documentation for Your internal business purposes only. The Software is licensed either: (a) independently of hardware nodes, portable between hardware nodes and for a fixed Subscription Term (a “Term Based License”); or (b) for use solely on the hardware node on which it was initially installed and supplied for the life of that hardware node (a “Life of Device License”), or as may be otherwise indicated in Your Entitlement. Subject to Section 13 “Term and Termination”, the licenses for the Software and its Documentation expire when the: (a) subscription term ends in the case of Term Based Licenses; or (b) original hardware node is decommissioned in the case of Life of Device Licenses. Both Term Based Licenses and Life of Device Licenses are subject to the Usage Capacity.
- 2.2. **License Restrictions.** You agree not to: (a) exceed the Usage Capacity or otherwise use the Software or its Documentation in breach of the Entitlement or this Agreement; (b) transfer, rent, lease, distribute, sublicense or otherwise use Software or its Documentation in a service bureau, commercial hosting service or any similar capacity unless: (i) as agreed with Nutanix in Your capacity as a Service Provider; or (ii) as otherwise explicitly permitted in the Entitlement; (c) disclose the results of any Software benchmark tests or competitive analysis; (d) decompile, disassemble or reverse-engineer any Software, or determine or attempt to determine any source code, algorithms, methods or techniques embodied in the Software, except to the extent expressly permitted by applicable law; (e) install or use the Software on (i) any hardware other than Certified Hardware and certified public cloud bare metal offerings; or (ii) grey-market hardware or components; (f) transfer or use any Life of Device Licenses on the hardware node other than that on which it was initially installed and supplied; (g) modify, adapt or create a derivative work of the Software or Documentation; or (h) remove, conceal or alter any product identification, copyright or other proprietary notices in the Software or Documentation; (i) assist or encourage any third party to do any of the foregoing or; (j) use the Products after the expiration of a Term.
- 2.3. **License Conversion.** Subject to Your placing a valid purchase order for the same with a Partner, You may convert legacy Life of Device Licenses into Term Based Licenses, in which case, We will alter Your Entitlement to reflect the different usage model.
- 2.4. **Previews License Grant.** Subject to Your compliance with this Agreement, and the licenses granted hereunder, We grant You a license to Previews, for the purposes of evaluation, or as applicable, to Previews specifically identified as alpha, beta, pre-release, demonstration or preview and its Documentation for Your internal business purposes within the Usage Capacity or other licensing metrics as applicable. Previews may only be used in non-production environments and not for commercial purposes or the processing of any production data. Notwithstanding the foregoing within this section 2.4, and subject to Your compliance with the rest of this Agreement, We grant You a non-exclusive, non-transferable, non-sublicensable, terminable (in accordance with Section 13 herein) license to Use the No-Charge Products solely for internal purposes on Licensee’s own premises. Previews are likely to be under development, and might not ever be generally released.

**3. Support Services.**

- 3.1. **General.** Depending on the software license type You purchase, Support Services are either included in the subscription (Term Based License) or available separately for a fee (Life of Device License). We will provide to You the level of Support Services specified in the Entitlement. The Support Services will be provided in the English language.
- 3.2. **Scope of Support Services.** Under a valid Support Service Entitlement, We shall: (a) provide You with access to the Portal; (b) provide telephone and web-based Support 24x7 in accordance with the Support Guide and the Support Policies; (c) respond to reported issues within the applicable timeframes in accordance with the mutually agreed priority level ascribed to the Error; (d) address Errors in the form of Updates or Upgrades, workarounds, procedural solutions, correction of Documentation errors, or other remedial measures as We may reasonably determine to be appropriate; and (e) provide You with access to the current versions of released software, including bug fixes, patches and any generally available Updates and Upgrades.
- 3.3. **Out of Scope Support Services.** Support Services exclude: (a) Software installation; (b) education, training, consulting and Professional Services; (c) services relating to third-party integrations, modifications or customizations; and (d) Software that is end-of-life and no longer supported as outlined in Our Support Policies.
- 3.4. **Exclusions.** We shall have no obligation to provide Support Services for: (a) Software that is not registered and validly licensed; (b) any Errors which are attributable to third party products or modifications, alterations or repairs to the Software made by a party other than Us or a party authorized by Us; (c) any Errors which are attributable to the installation, operation or maintenance of the Software on hardware other than Certified Hardware or authorized public cloud bare metal offerings or otherwise not in accordance with the Documentation; or (d) for Software which is installed on hardware which is not currently covered under a valid support contract or if such hardware has greymarket or second-hand parts installed. We do not guarantee that Software will be compatible with the hardware You purchased except for Certified Hardware in accordance with Our Support Policies.
- 3.5. **Your Responsibilities.** It is Your responsibility to: (a) register an account with Us at Our Portal, to keep Your account profile up to date and to designate, in accordance with the Support Guide, a number of authorized persons who have completed the Nutanix NP certification class (“Technical Personnel”) which will be the preferred contacts for the receipt of Support Services from Us; (b) provide Us with access to Your systems, network and personnel and make available to Us data, information and other materials necessary to perform the Support Services; (c) install Updates as reasonably directed by Us, ensure that licenses have been obtained for all Software and adhere to all licensing

terms and conditions; (d) swiftly notify Us of any Error; and (e) screen first-line technical inquiries and escalate to Us only issues that Technical Personnel have not been able to resolve.

**3.6. Reinstatement of Support.** In the event that You wish to reinstate Support for Life of Device Licenses after a lapsed period, following expiration or termination of the original Support term, the applicable support fee for reinstated Support will be calculated as follows: (i) the pro rata Support fees that would have been payable at Nutanix's then applicable annual rate of Support for the lapsed Support period; and (ii) the Support fees for the future period commencing upon the reinstatement of Support.

**3.7. Support for NX Branded Hardware.** The NX brand is licensed by Us to third party hardware contract manufacturers. We do not supply or warrant NX branded hardware. If You purchase hardware Support for Your NX branded hardware, it will be governed by the Hardware Support Appendix attached to this Agreement as Appendix 1.

#### 4. Professional Services.

You have the option to purchase Professional Services which We will deliver in accordance with the terms of this Agreement and as specified in the Entitlement and an SOW. We do not do any custom development work. You shall provide Us with any equipment, software, information, timely decisions, directions and facilities necessary for Us to perform the Professional Services. You grant Us a non-exclusive, worldwide, royalty-free license to use Your intellectual property solely for the purpose of performing the Professional Services. We grant You a license to use any deliverables provided as part of the Professional Services on the terms specified in Section 2 above. Any FlexCredits or prepaid Professional Services must be used within twelve (12) months from the purchase date, after which they will automatically expire and are non-refundable.

#### 5. Cloud Services.

**5.1. General.** If You purchase Cloud Services, We will make the Cloud Services available to You during the Subscription Term in accordance with the terms of this Agreement, the applicable Entitlement and Documentation.

**5.2. Service Levels.** The Service Levels will apply to the Cloud Services. If We fail to meet these Service Levels, Your sole and exclusive remedy will be the service credits specified therein.

**5.3. Access Right and Right to Use.** Subject to the terms of this Agreement, We grant You a limited, non-exclusive, non-transferable and revocable right to (a) access and use the Cloud Services and its Documentation for Your internal business purposes only in accordance with this Agreement and the Entitlement for the Usage Capacity and subscription term only; and (b) use any applicable Software made available to You in connection with the Cloud Services and in accordance with the Documentation on the terms specified in Section 2 above.

**5.4. Usage Restrictions.** Except as expressly permitted by this Agreement, You will not and have no rights to: (a) use the Cloud Services in excess of the Usage Capacity or otherwise in breach of the Entitlement or this Agreement, (b) use the Cloud Services, the APIs or the Software for service bureau or managed service purposes, or otherwise commercially exploit the Cloud Services unless (i) as agreed with Nutanix in Your capacity as a Service Provider; or (ii) as otherwise explicitly permitted in the Entitlement, (c) publicly communicate, transform, or sublicense the Cloud Services or otherwise assign any rights to the Cloud Services in whole or in part to any third party unless explicitly permitted in the Entitlement, (d) decompile, disassemble or reverse-engineer or determine or attempt to determine any source code, algorithms, methods or techniques embodied in the Cloud Services, the APIs or the Software, except to the extent expressly permitted by applicable law, (e) access or use disabled functions, (f) publish the results of any Cloud Services benchmark tests or competitive analysis without Our prior written consent, (g) modify, adapt or create a derivative work based on the Cloud Services, (h) use the Cloud Services for any illegal or fraudulent purposes (i) circumvent any security features; (j) use the Cloud Services in any way that poses security threats or otherwise introduces security or performance vulnerabilities into the Cloud Services, or (k) assist or encourage any third party to do any of the foregoing.

**5.5. Security and Protection of Your Content.** If the Cloud Services include the transmission and processing of Your Content by Us, then We will maintain administrative, physical and technical safeguards to protect the security, confidentiality and integrity of Your Content as specified in the Documentation. You are responsible for using and configuring the Cloud Services in such a manner that it will provide an appropriate level of security and protection from unauthorized access to Your Content.

**5.6. License to use Your Content.** By making Your Content available, You grant Us a worldwide, royalty free, non-exclusive license to use Your Content solely to provide the Cloud Services to You.

**5.7. Your Obligations.** You are solely responsible to ensure that the use of the Cloud Services and the use of Your Content by its Users is in compliance with this Agreement and all applicable laws. You represent and warrant that Your use of Your Content in connection with Your Products will not violate any third-party rights or Your obligations to any third party. It is Your sole responsibility to provision and control the credentials of Your employees, agents, contractors and other users of the Products ("User(s)").

**5.8. Transmission of Your Content.** If the applicable Cloud Services involves the transmission of Your Content, including to a third-party platform, then You are responsible for the transmission of and the security of Your Content to and from the Cloud Services.

**5.9. Acceptable Use.** You shall not use the Cloud Services to: (a) transmit or store any content that may pose threats or otherwise engage in any conduct that may disrupt the operation of the Cloud Services or interfere with any third-party; (b) manage specifically regulated data, including, but not limited to data subject to the Health Insurance Portability and Accountability Act, Basel II, Graham Leach Bliley and Payment Card Industry regulations; (c) conduct any abusive, harassing, slanderous, fraudulent, illegal, or defamatory activity; (d) violate any laws or third-party rights, including any intellectual property rights, personal data and privacy rights; or (e) conduct, directly or indirectly, any activities associated with cryptocurrency mining or similar endeavors.

**5.10. Temporary Suspension.** We may temporarily suspend Your rights to access the Cloud Services if You use the Cloud Services outside the scope of this Section 5.

#### 6. Proprietary Rights.

**6.1. Our Products.** We and Our licensors own all worldwide right, title and interest in the Products including all related including copyrights, trademarks, service marks, patents, trade secrets, know-how, moral rights and all other proprietary rights, including registrations, applications, renewals and extensions of such rights existing anywhere in the world, whether registered or unregistered ("Intellectual Property Rights"). The Products are Our valuable trade secrets and constitute Our Confidential Information. Except for the rights explicitly granted to You in this Agreement, all right, title and interest in the Products are reserved and retained by Us, Our affiliates, and/or Our licensors. You do not acquire any intellectual property or other rights in the Products as a result of downloading, installing, accessing or using the Products except as specified in this Agreement.

**6.2. Your Content.** You or Your licensors shall own all right, title and interest in and to all of Your Content and You shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of all Your Content.

**6.3. Feedback.** If You choose to give Us any ideas, suggestions, enhancement requests, recommendations or any other materials in connection with this Agreement or Our Products (collectively, "Feedback"), You grant Us a royalty-free, fully paid-up, worldwide, transferable, sub-licensable, irrevocable and perpetual license to implement, use, modify, and/or incorporate the Feedback into Our Products or otherwise commercially exploit such Feedback.

#### 7. Warranties and Disclaimer.

**7.1. Software Warranty.** We warrant to You that for a period of ninety (90) days from the date of first Delivery of the Software ("Software Warranty Period"), the Software will perform the functions described in the Documentation when used in accordance with that Documentation. The Software is not warranted to be Error free. In the event of a breach of this warranty that is reported to Us during the Software Warranty Period, We shall at Our election either (i) repair or replace the Software so that it conforms to the foregoing warranty or (ii) terminate the license with respect to the non-conforming Software and refund the license fees paid by You for the non-conforming Software. This warranty excludes defects resulting from accidents, abuse, unauthorized repair, modifications, misapplication, or use of the Software in a manner that is inconsistent with the Documentation. If You use the Software in excess of the Usage Capacity or the scope of this Agreement, this warranty becomes void. We warrant, that at Delivery, the Software contains no known virus, malware, spyware, trojan horse or other disabling code.

**7.2. Support Services Warranty.** We warrant to You that for the duration of the Support term, Support Services will be performed with industry standard care and skill and in a professional and workmanlike manner. Should You believe that Support Services have not been performed in accordance with this warranty, You must provide Us with a reasonably detailed written notice within thirty (30) days of occurrence of the nonconformance. We will reperform any nonconforming Support Services.

**7.3. Professional Services Warranty.** We warrant to You that Professional Services will be provided in a professional and workmanlike manner in accordance with good industry practice. Your sole and exclusive remedy for a breach of this warranty is reperformance of the Professional Services or at Our discretion a refund of the fees paid by You, provided that You notify Us of any non-conformity within thirty (30) days of the provision of the non-conforming Professional Services.

**7.4. Cloud Services Warranty.** We warrant that the Cloud Services will perform substantially in accordance with the Documentation during the Subscription Term. We do not warrant that the Cloud Services will be uninterrupted or Error free. This warranty shall not apply to the extent of any non-conformance which is (i) caused by use of the Cloud Services contrary to the Documentation or instructions, or modification or alteration of the Cloud Services by any party other than Us or Our duly authorized contractors or agents; or (ii) due to Your Content. If the Cloud Services do not conform with this warranty, We will, at Our expense, use all reasonable commercial endeavours to correct any such non-conformance promptly. Subject to Section 7.2 above, if a correction of such non-conformance is not possible, then We will terminate the Cloud Services and refund any prepaid subscription fees for the affected Cloud Service covering the remainder of the applicable Subscription Term after the date You notified Us of any non-conformance.

**7.5. Disclaimer.** TO THE EXTENT PERMITTED BY APPLICABLE LAWS, THE WARRANTIES IN THIS SECTION 7 ARE YOUR SOLE AND EXCLUSIVE WARRANTY AND REMEDY. EXCEPT FOR THE WARRANTY SPECIFICALLY DESCRIBED ABOVE, ALL PRODUCTS ARE PROVIDED "AS-IS" AND ALL OTHER WARRANTIES INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, ACCEPTABLE QUALITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT ARE EXPRESSLY DISCLAIMED.

**7.6. Previews Disclaimer.** THE WARRANTIES IN THIS SECTION 7 DO NOT APPLY TO PREVIEWS. PREVIEWS ARE PROVIDED "AS-IS", "WITH ALL FAULTS" AND "AS AVAILABLE". NUTANIX MAY CHANGE OR DISCONTINUE PREVIEWS AT ANY TIME WITHOUT NOTICE. WE DISCLAIM ALL LIABILITIES TO THE MAXIMUM EXTENT PERMITTED BY LAW.

#### 8. Indemnification.

**8.1. Indemnification by Us.** Subject to the limitations in this Section 8, We will (a) defend and indemnify You against any third-party claim alleging that the Products infringe or misappropriate a third-party intellectual property right; and (b) pay any settlement amount or the damages and losses finally awarded against You by a court of competent jurisdiction as a result of the claim.

**8.2. Exclusion.** We have no obligation to indemnify You and accept no responsibility or liability for any third party infringement claims arising out of: (a) any use of the Products in a manner that is not permitted under this Agreement or the applicable Documentation; (b) any modification of the Products by anyone other than Us, except a third party acting on Our behalf; (c) the combination or use of the Products, as applicable, with any other product, service, software, data, content or method; (d) Your continued use of Products that are no longer supported by Us; or (e) any failure by You to implement Updates or Upgrades provided under Support ("Excluded Claims").



- 8.3. Indemnification Claims.** If an infringement claim is made or appears likely to be made, We may, at Our own expense and discretion, do any of the following: (a) modify the Products so that it is no longer infringing without substantially limiting its functionality; (b) obtain a license for you to continue to use the Products; or (c) terminate this Agreement and refund the fees paid for the infringing Products. For Term Based Licenses, associated Support Services or Cloud Services, the refund will be calculated on a straightline amortisation basis over the subscription term. For Life of Device Licenses and associated Support Services, the refund will be calculated on a straightline amortization basis over five (5) years. For Professional Services, the refund will be the total fees for those services.
- 8.4. Indemnification by You.** You will defend and indemnify Us against any claim brought against Us by a third party arising out of or relating to any Excluded Claim or Your Content including any third-party claim alleging that any of Your Content infringes or misappropriates that third-party intellectual property or violates Your obligations to any third party and You agree to pay any settlement amount, or the damages and losses finally awarded against Us by a court of competent jurisdiction as a result of the claim.
- 8.5. Process.** Each party's defense and indemnity obligations in this Section 8 will apply only if the party seeking defense or indemnity: (a) gives the other party prompt written notice of the claim; (b) permits the other party to control the defense and settlement of the claim; and (c) reasonably cooperates with the other party in the defense and settlement of the claim. In no event will a party agree to any settlement of any claim that involves any admission of wrong doing or acceptance of a material obligation by the other party without the prior written consent of the other party.
- 8.6. Entire liability and remedies.** The remedies in this Section 8 represent Our entire liability and obligation and Your sole and exclusive remedy with respect to third-party intellectual property rights infringement claims related to the Products.
- 9. Limitation of Liability.**
- 9.1. Liability Exclusions.** Regardless of the basis of the claim or theory of liability, neither You nor Us will be liable for: (a) any special, indirect, incidental, consequential, or punitive damages, (b) damages arising from the loss of use, loss or corruption of data, lost profits, lost revenue, business interruption or cost of procuring substitute Products, or (c) unavailability of the Cloud Services.
- 9.2. Damages Cap.** Neither You nor Our aggregate liability shall exceed the greater of five hundred thousand United States dollars (US\$ 500,000) or the amount received by Us for the applicable Products in the twelve (12) months prior to the event giving rise to this liability.
- 9.3. Exceptions.** Sections 9.1 and 9.2 do not apply to usage in excess of an Entitlement, a breach of Our intellectual property rights, an indemnification claim under Section 8, a breach of the confidentiality obligations set forth in Section 10, in case of gross negligence, willful misconduct, fraud, personal injury, or to any liability pursuant to an applicable legislation that does not permit to limit or exclude any liability.
- 10. Confidential Information.**
- 10.1. Confidential Information.** Confidential Information means any non-public information disclosed by one party to the other party in connection with this Agreement and any information that is marked "confidential" or "proprietary" at the time of disclosure; if disclosed orally or visually, is designated "confidential" or "proprietary" at the time of disclosure or would be deemed to be confidential or proprietary to a reasonable recipient. Confidential Information includes copies of such information, but excludes information that: (a) is or becomes a part of the public domain through no action or omission of the receiving party ("Recipient"); (b) was in the receiving party's lawful possession prior to the disclosure and had not been obtained by the receiving party from the disclosing party ("Discloser"); (c) is lawfully disclosed to the receiving party by a third-party without restriction on the disclosure; or (d) is independently developed by the receiving party. Subject to applicable law, the Software, pricing information and Services Data are Confidential Information.
- 10.2. Treatment.** Confidential Information shall remain the property of the Discloser. Each Party shall have the right to use the other's Confidential Information solely for the purpose of fulfilling its obligations under this Agreement. Each party agrees: (a) to hold the other party's Confidential Information in confidence for a period of three (3) years from the date of disclosure; and (b) to disclose the other party's Confidential Information only to those employees or agents on a need to know basis provided that they are required to protect such Confidential Information against unauthorized disclosure under terms no less restrictive than those specified herein. Recipient shall protect the Confidential Information from unauthorized use, access or disclosure in the same manner as it protects its own confidential or proprietary information of a similar nature, and in any event with at least a reasonable degree of care. Recipient may disclose the other party's Confidential Information to the extent that such disclosure is required pursuant to a judicial or administrative proceeding, provided that, prior to such disclosure, Recipient gives Discloser prompt written notice thereof and the opportunity to seek a protective order or other legal remedies.
- 10.3. Return or Destruction.** Upon termination of this Agreement or Discloser's written request, all Confidential Information (including all copies thereof) of Discloser shall be returned or destroyed and provide written certification of this destruction, unless Recipient is required to retain such information by law, and the receiving party shall certify its compliance with this Section 10.3.
- 10.4. Injunctive Relief.** Recipient agrees that, due to the unique nature of the Confidential Information, the unauthorized disclosure or use of the Confidential Information may cause irreparable harm to the disclosing party, the extent of which will be difficult to ascertain and for which there will be no adequate remedy at law. Accordingly, Recipient agrees that Discloser, in addition to any other available remedies, will have the right to an immediate injunction and other equitable relief enjoining any breach or threatened breach of this section 10, without the necessity of posting any security. Recipient will notify Discloser in writing immediately upon the receiving party becoming aware of any breach or threatened breach.
- 11. Data Privacy.**
- 11.1. Services Data.** Notwithstanding anything to the contrary in the Agreement (including the Data Processing Addendum <https://www.nutanix.com/legal/data-processing-addendum> ("DPA"), where applicable), You agree that We shall have the right to use data pertaining to You and Your users and data related to You and Your users' use of the Products, support and/or operation of the Products, for Our legitimate business purposes, such as billing, account management, security and support, as well as to develop, improve and market, products and services provided that We will process such data in accordance with Applicable Privacy Law (as defined in the DPA) and our data privacy statement which can be found at <https://www.nutanix.com/legal/privacy-statement>
- 11.2. Data Processing.** If We process any personal data (as defined under Applicable Privacy Law) on Your behalf when performing Our obligations under this Agreement, subject to Applicable Privacy Law, You are the controller and We are the processor. Our DPA will apply when and to the extent We process Customer Data protected by Applicable Privacy Law (all as defined in the DPA). In the event of a conflict between this Agreement and the DPA, the DPA shall control.
- 12. Compliance.**
- 12.1. Compliance with Documentation.** You agree that You will comply with all instructions and requirements in any Product specification sheets, user guides, security best practices and policies, and other documentation that We provide or make available to You in connection with the use of the Products.
- 12.2. Compliance with Anti-Corruption Laws.** We and You shall comply with all applicable laws and regulations including but not limited to those relating to anti-corruption or anti-bribery e.g. the U.S. Foreign Corrupt Practices Act, as amended, the U.K. Bribery Act and legislation implementing the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.
- 12.3. Export Control.** The Products are subject to export restriction in the U.S. and other jurisdictions. You are responsible to fully comply with all applicable export laws and regulations that apply to the download, installation and use of the Products in Your jurisdiction. You represent and warrant that You are not subject to sanctions or otherwise designated on any list of prohibited or restricted parties, or owned or controlled by such a party, including but not limited to the lists maintained by the United Nations Security Council, the U.S. Government (e.g., the U.S. Department of Treasury's Specially Designated Nationals list and Foreign Sanctions Evaders list, and the U.S. Department of Commerce's Entity List), the European Union or its member states, or other applicable government authority.
- 12.4. US Government Restrictions.** You acknowledge that the Products were developed entirely at private expense and no part of the Products were first produced in the context of a government contract. The Products are provided to the U.S. Government as "commercial items," "commercial computer software," "commercial computer software documentation," and "technical data" with the same rights and restrictions generally applicable to the Products. If You are using the Products on behalf of the U.S. Government and these terms fail to meet the U.S. Government's needs or are inconsistent in any respect with federal law, You will immediately discontinue Your use of the Products. The terms "commercial item" "commercial computer software," "commercial computer software documentation," and "technical data" are defined in the Federal Acquisition Regulation and the Defense Federal Acquisition Regulation Supplement.
- 13. Term and Termination.**
- 13.1. Term.** This Agreement will remain effective until terminated in accordance with this Section 13.
- 13.2. Subscription Renewal.** Your subscription for the Software, Support Services and Cloud Services will automatically renew for a term equal to the previous Subscription Term, or such other term agreed by Us in writing. You may cancel the automatic renewal by providing Us with ninety (90) days written notice prior to the end of Your Subscription Term. Unless You have provided notice of cancellation, You agree to raise a valid purchase order prior to the commencement of the renewal Subscription Term and We or Our Partner will be entitled to invoice You for the applicable fees. If you fail to renew Your subscription for the Software, Support Services and Cloud Services in a timely manner, backdated fees will be due for the continued use of the same, calculated from the end of preceding Subscription Term in addition to any fees due for future periods.
- 13.3. Termination.** Either party has the right to suspend or terminate this Agreement upon written notice to the other party if the other party: (a) is in default of any material obligation and the default has not been cured within thirty (30) days of receipt of written notice specifying the default; or (b) becomes insolvent, makes a general assignment for the benefit of creditors, suffers or permits the appointment of a receiver for its business or assets, becomes subject to any proceeding under any bankruptcy or insolvency law domestic or foreign, or has been liquidated.
- 13.4. Effect of Termination or Expiration of Entitlement.** Upon any termination of this Agreement or the expiration of any Entitlement issued hereunder, the rights and licenses granted to You will automatically terminate, and You agree to immediately cease using the Products, return or destroy all copies of the Products, Documentation and other Confidential Information in Your possession and certify to Us in writing completion of the return or destruction. Upon termination We will have no obligation to refund any fees or other amount received from You during the Term and You shall be required to pay immediately all outstanding amounts. All Software license fees and fees paid or owed for any Services rendered or expenses incurred as of the date of termination are non-cancellable, non-contingent and non-refundable
- 13.5. Return of Your Content.** If the applicable Cloud Services involves the transmission of Your Content, then You may retrieve and remove Your Content in accordance with the Documentation. We shall have no obligation to provide Your Content thirty (30) days following the termination date.

**13.6. Previews Term and Expiration.** Unless otherwise specified in the Entitlement, Previews, except for No-Charge Products, may be used for a period not exceeding ninety (90) days from Delivery or access being granted ("Evaluation Period"). You agree to uninstall, delete and cease using such Previews at the end of the Evaluation Period. No-Charge Products may be used in accordance with this Section 13.

**14. Authorized Partners.**

The terms of the agreement between You and a Partner for the procurement of the Products applies solely between You and that Partner.

**15. Governing Law and Jurisdiction.**

**15.1. Governing Law and Jurisdiction.** This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation shall be governed and construed in accordance with the laws and under the exclusive jurisdiction of the competent courts as follows:

**15.2**

You are domiciled in	Nutanix contracting entity	Governing law	Courts with exclusive jurisdiction
The Americas	Nutanix Inc.	State of California and controlling United States law	Federal or state courts located in San Francisco
U.S. Federal Government	Nutanix, Inc.	Federal Law	US District Court or the US Court of Federal Claims
France	Nutanix Netherlands B.V.	French law	Paris
Germany	Nutanix Netherlands B.V.	German law	Munich
United Kingdom	Nutanix Netherlands B.V.	English law	England and Wales
Australia, New Zealand, Hong Kong, Korea and Taiwan	Nutanix Netherlands B.V.	State of New South Wales	Sydney
Japan	Nutanix Netherlands B.V.	Japan	District Court of Tokyo
Malaysia, Philippines, Singapore and Thailand	Nutanix Netherlands B.V.	Singapore	Singapore
China	Nutanix Netherlands B.V.	China	CIETAC Beijing
Any other country	Nutanix Netherlands B.V.	The Netherlands	Amsterdam

**15.3 Exclusion.** The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement.

**16. Certification and Audit.**

You agree to maintain accurate records as necessary to verify Your compliance with this Agreement. Upon Our request, no more than once every twelve (12) months, You agree to furnish Us with a written certification signed by one Your authorized representatives verifying that the Products are being used in accordance with this Agreement and the Entitlement. We or Our independent third-party accountant may examine and audit Your books and records relating to this Agreement and Your access, use, and deployment of the Products to the extent necessary to verify Your compliance with this Agreement and the Entitlement. Any audit will be conducted during regular business hours at Your facilities, will not unreasonably interfere with Your business and will comply with Your reasonable security procedures. If an audit reveals that You have exceeded the Usage Capacity, Usage Limits, other licensing metrics or the scope of Your license granted during the period audited, additional fees for Your excess usage are payable net thirty (30) days.

**17. General.**

**17.1. Affiliates and Contractors.** You may permit Your Affiliates and/or any contractor acting on Your behalf to use the Products within the Usage Capacity as specified in the Entitlement provided that they comply with the terms of this Agreement. You will be jointly and severally liable for any breach of this Agreement by any of the foregoing users.

**17.2. Assignment.** You may not assign this Agreement or any rights that We have given You under it unless We provide written consent, which We shall not unreasonably withhold. Either party can assign this Agreement to a successor in interest in the context of a change of control.

**17.3. Third-Party and Open Source Software.** The Products may contain components of copyrighted third-party software or open source software. Third party and open source software that is delivered as part of the Software is included in the warranty, support and indemnification provisions applicable to the Software provided it is not removed or used separately from the Software. Your internal use of open source software included in the Products without modification and in compliance with this Agreement will not result in the imposition of "copyleft" obligations with respect to Your intellectual property.

**17.4. No Third-Party Beneficiaries.** This Agreement does not confer any rights on any person or party other than the parties to this Agreement except as set forth in Section 1.3., 2, 3, and 9.

**17.5. Relationship of the Parties.** We perform Support Services as an independent contractor, and not as an employee, agent, joint venturer or partner of You, and neither You or We have the authority to bind the other by contract or otherwise.

**17.6. Waiver.** Failure to enforce any provision of this Agreement will not constitute a waiver. Any waiver must be in writing and signed by the waiving party.

**17.7. Subcontractors.** We may use subcontractors, but We shall remain liable to You for all of Our obligations under this Agreement.

**17.8. Force Majeure.** We will not be liable for performance delays during the performance of Support Services or Professional Services or for nonperformance, due to causes beyond Our reasonable control.

**17.9. Severability.** If any provision in this Agreement is found to be unenforceable by a court of competent jurisdiction, the remainder of this Agreement will remain in full force and effect.

**17.10. Notices.** Our notice address is: Nutanix, Inc., 1740 Technology Drive, Suite 150, San Jose, CA 95110, Attn: Chief Legal Officer.

**17.11. Survival.** Sections 2.2, 5.4, 6, 8, 9, 10, 12, 16 and 17.9 shall survive the expiration or termination of this Agreement.

**17.12. Entire Agreement.** This Agreement, together with any additional terms incorporated by reference, including the Entitlement and the Appendices hereto, constitute the complete and exclusive understanding and agreement between You and Us and supersedes any written or oral prior or contemporaneous agreements, communications and understandings. Any terms and conditions contained or referenced by either party in a quote, purchase order, acceptance, invoice or any similar document purporting to modify the terms and conditions contained in this Agreement will be disregarded and have no effect unless otherwise expressly agreed to by You and Us.



**Appendix 1: Hardware Support for NX Branded Hardware**

1. **Scope of Hardware Support Services.** We will only provide Hardware Support for NX branded hardware ("Hardware") under a valid Entitlement. If We determine that replacement parts are required for Hardware Support, then We will replace any failed part with a functional equivalent that will have equal or higher specifications. Replacement parts may be new or refurbished, at Our option. All defective parts must be returned following Nutanix's return material authorization ("RMA") policy which can be found at <https://www.nutanix.com/support-services/product-support/policies>. If You have purchased the Nutanix non-return disk option, all defective parts except the relevant disks must be returned following the Nutanix RMA policy. If You do not follow Nutanix's RMA policy, Nutanix may invoice You through its Partners the full cost of the replacement part(s). Returned and defective parts become Our property.
2. **Exclusions.** We shall have no obligation to provide Support Services for Hardware (a) that has been mishandled, altered or damaged due to willful or negligent acts or omissions or force majeure, or operation of the Hardware other than as specified in the documentation accompanying the Hardware; (b) modified, altered or repaired by a party other than Us or a party authorized by Us; (c) that was subjected to fire suppression discharge or a power failure; that was subjected to abnormal physical or electrical stress, abnormal environmental conditions or environmental and storage conditions (including temperature and/or humidity ranges) which are not in accordance with the documentation accompanying the Hardware; or (d) that has installed Software which is subject to Nutanix's Software End of Life Policies which can be found at <https://www.nutanix.com/support-services/product-support/policies>.

## Appendix 2: Direct Purchase Terms

The following terms apply only if You purchase Products directly from Us.

### 1. Definitions

- 1.1. **“Delivery”** means the date when We make the license key for the applicable Software available to You or when We make the Software otherwise available to You or when We render the Professional, Support and Cloud Services.
- 1.2. **“Flexcredits”** means the pre-paid credits which can be redeemed against Professional Services.
- 1.3. **“Price List”** means Our the-current list of Products and their associated prices as amended from time to time.
- 1.4. **“Purchase Orders”** means the electronic or written order issued by You directly to Nutanix consistent with the corresponding price quotation for the purchase of the Products.

### 2. Orders & Acceptance

- 2.1. **Purchase Orders.** You shall issue binding, non-contingent, written or electronic Purchase Orders consistent with the corresponding price quote for the purchase of the Products. Your Purchase Orders shall refer exclusively to these Terms and the NLSA or any version thereof negotiated between You and Us.
- 2.2. **Acceptance.** Acceptance by You of the Software occurs upon Delivery. Acceptance of Professional, Support and Cloud Services occurs when such services are rendered unless otherwise agreed between You and Us in a separate document.

### 3. Pricing & Payments

- 3.1. **Pricing.** We may change in Our sole discretion the prices specified in Our price list and add or remove items at any time. A Purchase Order received after the effective date of a price change, but pursuant to a valid and unexpired quote shall be invoiced at the price stated on that quote.
- 3.2. **Payment Terms.** You shall make full payment in the currency specified in the invoice not later than thirty (30) days from the date of Our invoice. The rights to use the Software and Documentation, access the Cloud Services, receive the Support Services and Professional Services are subject to payment in accordance with this Section 3.2. All fees are non-refundable, non-contingent and non-cancellable.
- 3.3. **Credit Cards.** Cloud Services may also be purchased via a credit card through the Nutanix billing center available in the MyNutanix portal which may be found at <https://my.nutanix.com>.

### 4. Flexcredits

You may use FlexCredits, as specified below, to purchase Professional Services. FlexCredits, identified by SKU FLEX-CST-CR on Our price list, or such other SKU as We may determine from time to time, may only be used for packaged or custom Professional Services, technical account manager or resident consultant resources, education offerings, including certifications or any additional services as We may determine at Our discretion. Additional information on Professional Services against which FlexCredits may be utilised is available at: <https://www.nutanix.com/support-services/consulting-services> for consulting services and for education and certification. The cost of FlexCredits is as per the then current price list. FlexCredits expire twelve (12) months from the purchase date, are non-refundable and can be applied to any Professional Services made available by Us at the time of redemption. Balances can be pooled toward a single redemption and may be purchased upfront. You don't have to select in advance the Professional Services against which FlexCredits are to be redeemed.

### 5. Taxes & Duties

You are solely responsible for the payment of taxes, fees, withholding, duties and charges and all related penalties and interest that arise from utilization of or provision of the Software, Cloud Services, Support Services and Professional Services including any taxes that arise on the provision of products to Your affiliates. Taxes include, without limitation, VAT, Service tax, GST, excise taxes, sales and transaction taxes or any other like taxes that are owed with respect to any order placed under this agreement. If You are tax-exempt, provide us with tax exemption certificates or other documentation acceptable to the taxing authorities not later than thirty (30) days from the date you give us an Order. If You don't, We may include such taxes in the invoice and you are obligated to pay them. All payments pursuant to this Agreement shall be made without any withholding or deduction of any withholding tax or other tax or mandatory payment to government agencies. If you are legally required to make any such withholding or deduction from any payment due to us under this Agreement, the sum payable by you upon which such withholding or deduction is based shall be increased to the extent necessary to ensure that, after such withholding or deduction, We receive and retain, free from liability for such withholding or deduction, a net amount equal to the amount We would have received and retained in the absence of such required withholding or deduction. A valid Tax registration number is required for all Non-US orders.

### 6. Conflicting Terms.

The above terms prevail over any conflicting or additional terms referred to in any Purchase Order, quote or similar communication between You and Us. Purchase Orders issued by You shall be deemed to incorporate these Terms except where You and Us have expressly agreed in writing to variations thereto.



**STATE OF MICHIGAN**  
**CENTRAL PROCUREMENT SERVICES**  
 Department of Technology, Management, and Budget  
 320 S. WALNUT ST., LANSING, MICHIGAN 48933  
 P.O. BOX 30026 LANSING, MICHIGAN 48909

**CONTRACT CHANGE NOTICE**

Change Notice Number **3**

to

Contract Number **071B6600110**

<b>CONTRACTOR</b>	CDW GOVERNMENT INC
	One CDW Way, 230 N. Milwaukee Ave.
	Vernon Hills, IL 60061
	Kathleen Wedig
	513-596-8972
	kathleen.wedig@cdwg.com
	CV0017662

<b>STATE</b>	<b>Program Manager</b>	Mary Ladd	MULTI
		517-241-7561	
	LaddM@michigan.gov		
	<b>Contract Administrator</b>	Sean Regan	DTMB
517-243-8459			
regans@michigan.gov			

**CONTRACT SUMMARY**

PRE-QUAL PROGRAM MICHIGAN MASTER COMPUTING PROGRAM

INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE
July 15, 2016	July 31, 2026	10 - 1 Year	July 31, 2026

PAYMENT TERMS	DELIVERY TIMEFRAME

ALTERNATE PAYMENT OPTIONS	EXTENDED PURCHASING
<input type="checkbox"/> P-Card <input type="checkbox"/> PRC <input type="checkbox"/> Other	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

**MINIMUM DELIVERY REQUIREMENTS**

**DESCRIPTION OF CHANGE NOTICE**

OPTION	LENGTH OF OPTION	EXTENSION	LENGTH OF EXTENSION	REVISED EXP. DATE
<input type="checkbox"/>		<input type="checkbox"/>		N/A
CURRENT VALUE	VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE		
\$120,000,000.00	\$0.00	\$120,000,000.00		

**DESCRIPTION**

Effective 7/25/2022, the Federal Provisions Addendum and Byrd Anti-Lobbying Certification are hereby incorporated into the Contract.

Please note the Contractor's Contract Administrator has been changed to Kathleen Wedig and the State's Contract Administrator has been changed to Sean Regan.

All other terms, conditions, specifications, and pricing remain the same. Per contractor, agency and DTMB procurement.

# FEDERAL PROVISIONS ADDENDUM

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This addendum applies to purchases that will be paid for in whole or in part with funds obtained from the federal government. The provisions below are required and the language is not negotiable. If any provision below conflicts with the State's terms and conditions, including any attachments, schedules, or exhibits to the State's Contract, the provisions below take priority to the extent a provision is required by federal law; otherwise, the order of precedence set forth in the Contract applies. Hyperlinks are provided for convenience only; broken hyperlinks will not relieve Contractor from compliance with the law.

## 1. Equal Employment Opportunity

If this Contract is a “**federally assisted construction contract**” as defined in [41 CFR Part 60-1.3](#), and except as otherwise may be provided under [41 CFR Part 60](#), then during performance of this Contract, the Contractor agrees as follows:

(1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in

response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Contractor's legal duty to furnish information.

(4) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The Contractor will comply with all provisions of [Executive Order 11246](#) of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The Contractor will furnish all information and reports required by [Executive Order 11246](#) of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this Contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in [Executive Order 11246](#) of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in [Executive Order 11246](#) of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of [Executive Order 11246](#) of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: *Provided*, that if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

## **2. Davis-Bacon Act (Prevailing Wage)**

If this Contract is a **prime construction contracts** in excess of \$2,000, the Contractor (and its Subcontractors) must comply with the Davis-Bacon Act ([40 USC 3141-3148](#)) as supplemented by Department of Labor regulations ([29 CFR Part 5](#), "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"), and during performance of this Contract the Contractor agrees as follows:

- (1) All transactions regarding this contract shall be done in compliance with the Davis-Bacon Act (40 U.S.C. 3141- 3144, and 3146-3148) and the requirements of 29 C.F.R. pt. 5 as may be applicable. The contractor

shall comply with 40 U.S.C. 3141-3144, and 3146-3148 and the requirements of 29 C.F.R. pt. 5 as applicable.

- (2) Contractors are required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor.
- (3) Additionally, contractors are required to pay wages not less than once a week.

### **3. Copeland “Anti-Kickback” Act**

If this Contract is a contract for construction or repair work in excess of \$2,000 where the Davis-Bacon Act applies, the Contractor must comply with the Copeland “Anti-Kickback” Act ([40 USC 3145](#)), as supplemented by Department of Labor regulations ([29 CFR Part 3](#), “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”), which prohibits the Contractor and subrecipients from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled, and during performance of this Contract the Contractor agrees as follows:

- (1) Contractor. The Contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.
- (2) Subcontracts. The Contractor or Subcontractor shall insert in any subcontracts the clause above and such other clauses as FEMA or the applicable federal awarding agency may by appropriate instructions require, and also a clause requiring the Subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.
- (3) Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a Contractor and Subcontractor as provided in 29 C.F.R. § 5.12.

### **4. Contract Work Hours and Safety Standards Act**

If the Contract is **in excess of \$100,000** and **involves the employment of mechanics or laborers**, the Contractor must comply with [40 USC 3702](#) and [3704](#), as supplemented by Department of Labor regulations ([29 CFR Part 5](#)), as applicable, and during performance of this Contract the Contractor agrees as follows:

- (1) Overtime requirements. No Contractor or Subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- (2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section the Contractor and any Subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and Subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.
- (3) Withholding for unpaid wages and liquidated damages. The State shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or Subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.
- (4) Subcontracts. The Contractor or Subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the Subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.



## 5. Rights to Inventions Made Under a Contract or Agreement

If the Contract is funded by a federal “funding agreement” as defined under [37 CFR §401.2 \(a\)](#) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with [37 CFR Part 401](#), “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

## 6. Clean Air Act and the Federal Water Pollution Control Act

If this Contract is **in excess of \$150,000**, the Contractor must comply with all applicable standards, orders, and regulations issued under the Clean Air Act ([42 USC 7401-7671q](#)) and the Federal Water Pollution Control Act ([33 USC 1251-1387](#)), and during performance of this Contract the Contractor agrees as follows:

### Clean Air Act

1. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
2. The Contractor agrees to report each violation to the State and understands and agrees that the State will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency or the applicable federal awarding agency, and the appropriate Environmental Protection Agency Regional Office.
3. The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA or the applicable federal awarding agency.

### Federal Water Pollution Control Act

- (1) The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
- (2) The Contractor agrees to report each violation to the State and understands and agrees that the State will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency or the applicable federal awarding agency, and the appropriate

Environmental Protection Agency Regional Office.

- (3) The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA or the applicable federal awarding agency.

## 7. Debarment and Suspension

A “contract award” (see [2 CFR 180.220](#)) must not be made to parties listed on the government-wide exclusions in the [System for Award Management](#) (SAM), in accordance with the OMB guidelines at [2 CFR 180](#) that implement [Executive Orders 12549 \(51 FR 6370; February 21, 1986\)](#) and [12689 \(54 FR 34131; August 18, 1989\)](#), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than [Executive Order 12549](#).

- (1) This Contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the Contractor is required to verify that none of the Contractor’s principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
- (2) The Contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- (3) This certification is a material representation of fact relied upon by the State. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the State, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
- (4) The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

## 8. Byrd Anti-Lobbying Amendment

Contractors who apply or bid for an award of **\$100,000 or more** shall file the required certification in Exhibit 1 – Byrd Anti-Lobbying Certification below. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any

person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

## **9. Procurement of Recovered Materials**

Under [2 CFR 200.322](#), Contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act.

- (1) In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired—
  - a. Competitively within a timeframe providing for compliance with the contract performance schedule;
  - b. Meeting contract performance requirements; or
  - c. At a reasonable price.
- (2) Information about this requirement, along with the list of EPA-designated items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.
- (3) The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

## **10. Additional FEMA Contract Provisions.**

The following provisions apply to purchases that will be paid for in whole or in part with funds obtained from the Federal Emergency Management Agency (FEMA):

- (1) Access to Records. The following access to records requirements apply to this contract:
  - a. The Contractor agrees to provide the State, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.

- b. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- c. The Contractor agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.
- d. In compliance with the Disaster Recovery Act of 2018, the State and the Contractor acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

(2) Changes.

See the provisions regarding modifications or change notice in the Contract Terms.

(3) DHS Seal, Logo, And Flags.

The Contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.

(4) Compliance with Federal Law, Regulations, and Executive Orders.

This is an acknowledgement that FEMA financial assistance will be used to fund all or a portion of the contract. The Contractor will comply with all applicable Federal law, regulations, executive orders, FEMA policies, procedures, and directives.

(5) No Obligation by Federal Government.

The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the State, Contractor, or any other party pertaining to any matter resulting from the Contract.”

(6) Program Fraud and False or Fraudulent Statements or Related Acts.

The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor’s actions pertaining to this contract.

# ATTACHMENT 1- BYRD ANTI LOBBYING CERTIFICATION

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Contractor must complete this certification if the purchase will be paid for in whole or in part with funds obtained from the federal government and the purchase is greater than \$100,000.

## APPENDIX A, 44 C.F.R. PART 18 – CERTIFICATION REGARDING LOBBYING

### Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the

required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor, \_\_\_\_\_ certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

\_\_\_\_\_  
Signature of Contractor's Authorized Official

\_\_\_\_\_  
Name and Title of Contractor's Authorized Official

\_\_\_\_\_  
Date



**STATE OF MICHIGAN**  
**CENTRAL PROCUREMENT SERVICES**  
 Department of Technology, Management, and Budget  
 525 W. ALLEGAN ST., LANSING, MICHIGAN 48913  
 P.O. BOX 30026 LANSING, MICHIGAN 48909

**CONTRACT CHANGE NOTICE**

Change Notice Number **2**

to

Contract Number **071B6600110**

<b>CONTRACTOR</b>	CDW Government Inc.
	One CDW Way, 230 N. Milwaukee Ave.
	Vernon Hills, IL 60061
	Paul Somers
	(312) 705-9567
	paulsom@cdwg.com
	CV0017662

<b>STATE</b>	<b>Program Manager</b>	Mary Ladd	MULTI
		(517) 241-7561	
		LaddM@michigan.gov	
	<b>Contract Administrator</b>	Joshua Wilson	DTMB
		(517) 249-0444	
		wilsonj31@michigan.gov	

**CONTRACT SUMMARY**

**MICHIGAN MASTER COMPUTING PROGRAM (MMCP) - PREQUALIFICATION PROGRAM**

INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE
August 1, 2016	July 31, 2026	10 - 1 Year	July 31, 2026
PAYMENT TERMS		DELIVERY TIMEFRAME	
NET45		N/A	
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING
<input type="checkbox"/> P-Card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

**MINIMUM DELIVERY REQUIREMENTS**

N/A

**DESCRIPTION OF CHANGE NOTICE**

OPTION	LENGTH OF OPTION	EXTENSION	LENGTH OF EXTENSION	REVISED EXP. DATE
<input type="checkbox"/>	N/A	<input type="checkbox"/>	N/A	
CURRENT VALUE	VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE		
\$80,000,000.00	\$40,000,000.00	\$120,000,000.00		

**DESCRIPTION**

Effective September 21, 2018, this Contract is hereby increased by \$40,000,000.00.

Please note that the Contract Administrator is hereby updated to Joshua Wilson (Standard Contract Terms, Section 9. Contract Administrator). Please also note Change Notice No. 1 erroneously reflected the Contract Term and this Change Notice No. 2 hereby corrects this error affirming the Contract Term is August 1, 2016 through July 31, 2026 with ten (10), one (1) year renewal options.

All other terms, conditions, specifications and pricing remain the same per Contractor and Agency agreement, DTMB Procurement approval and State Administrative Board approval dated June 21, 2016.





**STATE OF MICHIGAN  
ENTERPRISE PROCUREMENT**  
Department of Technology, Management, and Budget  
525 W. ALLEGAN ST., LANSING, MICHIGAN 48913  
P.O. BOX 30026 LANSING, MICHIGAN 48909

**CONTRACT CHANGE NOTICE**

Change Notice Number **1**  
to  
Contract Number **071B6600110**

<b>CONTRACTOR</b>	CDW Government Inc.
	One CDW Way, 230 N. Milwaukee Ave.
	Vernon Hills, IL 60061
	Paul Somers
	312-705-9567
	paulsom@cdwg.com
	CV0017662

<b>STATE</b>	<b>Program Manager</b>	Mary Ladd	MULTI
		517-241-7561	
	LaddM@michigan.gov		
	<b>Contract Administrator</b>	Garrick Paraskevin	DTMB
(517) 284-6993			
paraskeving@michigan.gov			

**CONTRACT SUMMARY**

MICHIGAN MASTER COMPUTING PROGRAM (MMCP)

INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
July 15, 2016	July 31, 2026	10 - 1 Year	July 31, 2026

PAYMENT TERMS	DELIVERY TIMEFRAME

ALTERNATE PAYMENT OPTIONS	EXTENDED PURCHASING
<input type="checkbox"/> P-Card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

**MINIMUM DELIVERY REQUIREMENTS**

**DESCRIPTION OF CHANGE NOTICE**

OPTION	LENGTH OF OPTION	EXTENSION	LENGTH OF EXTENSION	REVISED EXP. DATE
<input type="checkbox"/>		<input type="checkbox"/>		July 31, 2026
CURRENT VALUE	VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE		
\$80,000,000.00	\$0.00	\$80,000,000.00		

**DESCRIPTION**

Effective 6/13/2018, the vendor's Single Point of Contact is being changed to Paul Somers (formerly Mike Musser). Paul can be reached at (312) 705-9567 or paulsom@cdwg.com.

All other terms, conditions, specifications, and pricing remain the same. Per the contractor, agency and DTMB procurement.

Form No. DTMB-3522 (Rev. 10/2015)  
 AUTHORITY: Act 431 of 1984  
 COMPLETION: Required  
 PENALTY: Contract change will not be executed unless form is filed

**STATE OF MICHIGAN**  
 DEPARTMENT OF TECHNOLOGY, MANAGEMENT & BUDGET  
 PROCUREMENT

525 W. ALLEGAN STREET  
 LANSING, MI 48933

P.O. BOX 30026  
 LANSING, MI 48909

**NOTICE OF CONTRACT NO. 071B6600110**

between

**THE STATE OF MICHIGAN**

and

NAME & ADDRESS OF CONTRACTOR	PRIMARY CONTACT	EMAIL
CDW Government LLC One CDW Way, 230 N. Milwaukee Ave. Vernon Hills, IL 60061	Michael Musser	michmus@cdwg.com
	PHONE	VENDOR TAX ID # (LAST FOUR DIGITS ONLY)
	866-339-3642	0110

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
PROGRAM MANAGER	DTMB	Chad Hardin	517-241-7114	Hardinc1@michigan.gov
CONTRACT ADMINISTRATOR	DTMB	Lorri White	517-284-7088	WhiteL13@michigan.gov

CONTRACT SUMMARY

**DESCRIPTION:**

Michigan Master Computing Program Contract – To purchase standardized and as-needed IT commodities and services.

INITIAL TERM	EFFECTIVE DATE	INITIAL EXPIRATION DATE	AVAILABLE OPTIONS
10 years	08/1/2016	07/31/2026	1, 3, or 5 year options.
PAYMENT TERMS	F.O.B.	SHIPPED TO	
Net 45	Delivered	Per Contract	

ALTERNATE PAYMENT OPTIONS	EXTENDED PURCHASING
<input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

**MINIMUM DELIVERY REQUIREMENTS**

Per Contract

**MISCELLANEOUS INFORMATION**

ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION	<b>\$80,000,000.00</b>
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**For the Contractor:**

\_\_\_\_\_  
**Christina V. Rother,**  
**President**  
**CDW Government, LLC**

\_\_\_\_\_  
**Date**

**For the State:**

\_\_\_\_\_  
**William Pemble,**  
**Director, IT Procurement**  
**State of Michigan**

\_\_\_\_\_  
**Date**



# STATE OF MICHIGAN

## STANDARD CONTRACT TERMS

This STANDARD CONTRACT (“**Contract**”) is agreed to between the State of Michigan (the “**State**”) and CDW Government, LLC (“**Contractor**”), an Illinois Limited Liability Corporation. This Contract is effective on August 1, 2016 (“**Effective Date**”), and unless terminated, expires on July 31, 2026 (the “**Term**”).

This Contract may be renewed at the discretion of the State, in one-year, three-year, or five-year periods. Renewal must be by written notice from the State and will automatically extend the Term of this Contract.

The parties agree as follows:

1. **Definitions.** For the purposes of this Contract, the following terms have the following meanings:

“**Agency Business Owner**” is the individual appointed by the end-user agency procuring Services or Deliverables under an Engagement SOW to (a) act as such agency’s representative in all matters relating to such Engagement SOW, and (b) co-sign off on the State’s notice of acceptance for all Services and Deliverables. The Agency Business Owner will be identified in the Engagement SOW.

“**Authorized Users**” means all Persons authorized by the State to access and use the Products, Services and Deliverables under this Contract, subject to the maximum number of users specified in an applicable Purchaser Order or Engagement SOW.

“**Business Day**” means a day other than a Saturday, Sunday or other day on which the State is authorized or required by Law to be closed for business.

“**Confidential Information**” has the meaning set forth in **Section 30.a**.

“**Contract**” has the meaning set forth in the preamble.

“**Contract Administrator**” is the individual appointed by each party to (a) administer the terms of this Contract, and (b) approve any Change Notices under this Contract. Each party’s Contract Administrator will be identified in **Section 9**.

“**Contract SOW**” means the statement of work entered into by the parties and attached as **Schedule A** to this Contract.

“**Contractor**” has the meaning set forth in the preamble.

“**Contractor Personnel**” means all employees of Contractor or any Subcontractors involved in the performance of Services hereunder.

“**Data Exchange Gateway**” means the State’s secure electronic file transfer solution.



“**Deliverables**” means documentation, reports, and all other materials that Contractor or any Subcontractor is required to provide to the State under this Contract and otherwise in connection with any Services, including all items specifically identified as Deliverables in the Contract SOW or an individual Engagement SOW.

“**Dispute Resolution Procedure**” has the meaning set forth in **Section 40**.

“**Documentation**” means all user manuals, operating manuals, technical manuals and any other instructions, specifications, documents or materials, in any form or media, that describe the functionality, installation, testing, operation, use, maintenance, support, technical or other components, features or requirements of the Products.

“**DTMB**” means the Michigan Department of Technology, Management and Budget.

“**DTMB Business Manager**” means the applicable business relationship manager or comparable identified authority.

“**DTMB IT Project Manager**” is the individual appointed by each party under an Engagement SOW to (a) monitor and coordinate the day-to-day activities of the Engagement SOW, and (b) in the case of the State, co-sign off on its notice of acceptance for all Services and Deliverables. Each party’s IT Project Manager will be identified in the Engagement SOW

“**Effective Date**” has the meaning set forth in the preamble.

“**Engagement SOW**” means a statement of work entered into by the State and Contractor for the provision of specified Services and Deliverables by the Contractor or its Subcontractor.

“**Incident**” means any interruption in Services.

“**Intellectual Property Rights**” means all or any of the following: (a) patents, patent disclosures, and inventions (whether patentable or not); (b) trademarks, service marks, trade dress, trade names, logos, corporate names, and domain names, together with all of the associated goodwill; (c) copyrights and copyrightable works (including computer programs), mask works and rights in data and databases; (d) trade secrets, know-how and other confidential information; and (e) all other intellectual property rights, in each case whether registered or unregistered and including all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection provided by applicable Law in any jurisdiction throughout the world.

“**ITAM**” means the State’s Information Technology Asset Management System.

“**ITRAC**” means the State’s web application for requesting and tracking IT commodity, maintenance, and service purchases.

“**Key Personnel**” means any Contractor Personnel identified as key personnel in the Statement of Work.

“**Law**” means any statute, law, ordinance, regulation, rule, code, order, constitution, treaty, common law, judgment, decree or other requirement or rule of any federal, state, local or foreign government or political subdivision thereof, or any arbitrator, court or tribunal of competent jurisdiction.



“**Loss or Losses**” means all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs or expenses of whatever kind, including reasonable attorneys' fees and the costs of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers.

“**OEM**” Original Equipment Manufacturer

“**Person**” means an individual, corporation, partnership, joint venture, limited liability company, governmental agency, governmental department, governmental commission, governmental authority, unincorporated organization, trust, association or other entity.

“**Products**” means hardware, software, components, and accessories that are sold to or provided to the State.

“**Product Web Catalog**” mean the online list of State-approved Products.

“**Recycling**” The series of activities by which materials that are no longer useful to the generator are collected, sorted, processed, and converted into raw materials and used in the production of new products. This definition excludes the use of these materials as a fuel substitute or for energy production.

“**Reports**” means any and all reports that Contractor is obligated to or otherwise does provide under the Contract SOW.

“**Representatives**” means a party's employees, officers, directors, partners, shareholders, agents, attorneys, successors and permitted assigns.

“**Reuse**” means using a product or component of municipal solid waste in its original form more than once.

“**RFP**” means a Request for Proposal.

“**Services**” means any of the services Contractor, or any Subcontractor, is required to or otherwise does provide under this Contract, or an Engagement SOW, including but not limited to installation, implementation, integration, field support, and incident response. “**SIGMA**” means the Statewide Integrated Governmental Management Applications, which is the State’s future ERP system.

“**SLA**” means Service Level Agreement

“**SPOC**” means a Single Point of Contact.

“**State**” means the State of Michigan.

“**State Data**” has the meaning set forth in **Section 29.a**.

“**Stop Work Order**” has the meaning set forth in **Section 20**.

“**Subcontractor**” means any Person with whom Contractor contracts with to provide Services or Deliverables under an Engagement SOW.



“**Supplier**” means any third-party manufacturer, publisher, supplier or material provider that provides Products to the State.

“**Term**” has the meaning set forth in the preamble.

“**Transition Period**” has the meaning set forth in **Section 23**.

“**Transition Responsibilities**” has the meaning set forth in **Section 23**.

“**Unauthorized Removal**” has the meaning set forth in **Section 7.d.ii**.

“**Unauthorized Removal Credit**” has the meaning set forth in **Section 7.d.iii**.

“**User Data**” means all data, information and other content of any type and in any format, medium or form, whether audio, visual, digital, screen, GUI or other, that is input, uploaded to, placed into or collected, stored, processed, generated or output by any device, system or network by or on behalf of the State, including any and all works, inventions, data, analyses and other information and materials resulting from any use of the Software by or on behalf of the State under this Contract, except that User Data does not include the Software or data, information or content, including any GUI, audio, visual or digital or other display or output, that is generated automatically upon executing the Software without additional user input.

“**Verifiable Price Index**” (“VPI”) mean prices recorded in a catalog, price list, schedule, or other verifiable and established record that is regularly maintained by Contractor and is published or otherwise available for customer inspections.

2. **Ordering.** Products, Services and Deliverables must be ordered by one of the following two methods:
  - a. **Engagement Statements of Work.** The State may order Services and Deliverables pursuant to an Engagement SOW. For billing purposes, all Engagement SOWs must have an associated Purchase Order issued by the State. THE TERMS AND CONDITIONS OF THIS CONTRACT WILL APPLY AT ALL TIMES TO ANY ENGAGEMENT SOW ENTERED INTO BETWEEN THE PARTIES.

Engagement SOWs entered into under this Contract shall be developed and agreed to by the parties as set forth below:

- i. The State shall deliver its proposed Engagement SOW to the Contractor engaged to perform the Services, whereupon the Contractor shall review and approve, or raise any exceptions or clarifications to the State’s proposed Engagement SOW. If Contractor raises any such exceptions, the parties shall negotiate in good faith to amend the proposal, provided that:
  1. to the extent that the Contractor’s response does not comply with the requirements of this Contract and the business requirements set forth in the State’s proposed Engagement SOW, it shall be amended to so comply; and
  2. either party may terminate negotiations if the parties fail to agree on a final Engagement SOW.
- ii. Upon the parties' agreement to a final Engagement SOW, each party shall cause the same to be signed by its duly authorized representative. The only individuals authorized to sign on behalf of the State are the DTMB Business Manager and the Agency Business Owner, both of whom must sign for the final Engagement SOW to be valid. Upon its mutual execution, the final Engagement SOW shall be attached to its associated Purchase Order.



- b. **Purchase Orders.** The State may order Products, Services and Deliverables pursuant to a Purchase Order issued by the State, and signed by Contactor. The State reserves the right to cancel any Purchase Order at any time prior to shipment of the Products or delivery of the Services or Deliverables and shall not be subject to any charges or other fees whatsoever as a result of such cancellation. The State may, by written communication, make changes to any Purchase Order subject to an equitable adjustment in the price, delivery schedule, or both, where appropriate. Notwithstanding the foregoing, if Contractor’s quote contains notice of non-returnable or non-cancelable Products, the previous two sentences shall not apply. THE TERMS AND CONDITIONS OF THIS CONTRACT WILL APPLY AT ALL TIMES TO ANY PURCHASE ORDERS ISSUED BY THE STATE.
- 3. **Invoicing.** Requirements for invoicing are set forth in the Contract SOW. THE TERMS AND CONDITIONS OF THIS CONTRACT WILL APPLY AT ALL TIMES TO ANY INVOICES.
- 4. **Quotes.** Requirements for quotes are set forth in the Contract SOW. THE TERMS AND CONDITIONS OF THIS CONTRACT WILL APPLY AT ALL TIMES TO ANY QUOTES
- 5. **Delivery.** Delivery requirements are set forth in the Contract SOW.
- 6. **Warranty.** For orders placed under a Purchase Order, to the extent permitted by the Supplier, Contractor will assign to the State all manufacturer or publisher’s warranties on all Products. For orders placed under an Engagement SOW, the terms of the Engagement SOW will control Contractor’s and Subcontractor’s warranty obligations, if any.
- 7. **Performance of Services.** Contractor, and all Subcontractors will provide all Services and Deliverables in a timely, professional and workmanlike manner and in accordance with the terms, conditions, and specifications set forth in this Contract, the Contract SOW, and any applicable Engagement SOW.

**a. State Standards**

- i. The Contractor and all Subcontractors must adhere to all existing standards as described within the comprehensive listing of the State’s existing technology standards at <http://www.michigan.gov/dmb/0,4568,7-150-56355-108233--,00.html>
- ii. To the extent that Contractor or any Subcontractor has access to the State’s computer system, Contractor or Subcontractor must comply with the State’s Acceptable Use Policy, see [http://michigan.gov/cybersecurity/0,1607,7-217-34395\\_34476---,00.html](http://michigan.gov/cybersecurity/0,1607,7-217-34395_34476---,00.html). All Contractor and Subcontractor personnel will be required, in writing, to agree to the State’s Acceptable Use Policy before accessing the State’s system. The State reserves the right to terminate Contractor’s or Subcontractor’s access to the State’s system if a violation occurs.

**b. Contractor Personnel**

- i. Contractor is solely responsible for all Contractor personnel and for the payment of their compensation, including, if applicable, withholding of income taxes, and the payment and withholding of social security and other payroll taxes, unemployment insurance, workers’ compensation insurance payments and disability benefits.
- ii. Prior to any Contractor personnel performing any Services, Contractor will:
  - 1. ensure that such Contractor personnel have the legal right to work in the United States; and





2. require such Contractor personnel to execute written agreements, in form and substance acceptable to the State, that bind such Contractor personnel to confidentiality provisions that are at least as protective of the State's information (including all Confidential Information) as those contained in this Contract.
  - iii. Contractor and all Contractor Personnel will comply with all rules, regulations, and policies of the State that are communicated to Contractor in writing, including security procedures concerning systems and data and remote access, building security procedures, including the restriction of access by the State to certain areas of its premises or systems, and general health and safety practices and procedures.
  - iv. The State reserves the right to require the removal of any Contractor Personnel found, in the judgment of the State, to be unacceptable. The State's request must be written with reasonable detail outlining the reasons for the removal request. Replacement personnel for the removed person must be fully qualified for the position. If the State exercises this right, and Contractor cannot immediately replace the removed personnel, the State agrees to negotiate an equitable adjustment in schedule or other terms that may be affected by the State's required removal.
- c. **Background Checks.** If Contractor or its Subcontractor will have access to State systems, State facilities, or State Data, upon request, Contractor must perform background checks on all employees and Subcontractors and its employees prior to their assignment. The scope is at the discretion of the State and documentation must be provided as requested. Contractor is responsible for all costs associated with the requested background checks. The State, in its sole discretion, may also perform background checks.
- d. **Contractor's Key Personnel**
- i. The State has the right to recommend and approve in writing the initial assignment, as well as any proposed reassignment or replacement, of any Key Personnel. Before assigning an individual to any Key Personnel position, Contractor will notify the State of the proposed assignment, introduce the individual to the State's Contract Administrator, and provide the State with a resume and any other information about the individual reasonably requested by the State. The State reserves the right to interview the individual before granting written approval. In the event the State finds a proposed individual unacceptable, the State will provide a written explanation including reasonable detail outlining the reasons for the rejection.
  - ii. Contractor will not remove any Key Personnel from their assigned roles on this Contract without the prior written consent of the State. The Contractor's removal of Key Personnel without the prior written consent of the State, not to be unreasonably withheld, is an unauthorized removal ("**Unauthorized Removal**"). An Unauthorized Removal does not include replacing Key Personnel for reasons beyond the reasonable control of Contractor, including illness, disability, leave of absence, personal emergency circumstances, resignation, or for cause termination of the Key Personnel's employment. Any Unauthorized Removal may be considered by the State to be a material breach of this Contract, in respect of which the State may elect to terminate this Contract for cause under **Section 21**.
  - iii. It is further acknowledged that an Unauthorized Removal will interfere with the timely and proper completion of this Contract, to the loss and damage of the State, and that it would be impracticable and extremely difficult to fix the actual damage sustained by the State as a result of any Unauthorized Removal. Therefore, Contractor and the State agree that in the case of any Unauthorized Removal in respect of which the State does not elect to exercise its rights under **Section 21**, Contractor will issue to the State the corresponding credits set forth below (each, an "**Unauthorized Removal Credit**"):



1. For the Unauthorized Removal of any Key Personnel designated in the applicable Statement of Work, the credit amount will be \$25,000.00 per individual if Contractor identifies a replacement approved by the State and assigns the replacement to shadow the Key Personnel who is leaving for a period of at least 30 calendar days before the Key Personnel's removal.
2. If Contractor fails to assign a replacement to shadow the removed Key Personnel for at least 30 calendar days, in addition to the \$25,000.00 credit specified above, Contractor will credit the State \$833.33 per calendar day for each day of the 30 calendar-day shadow period that the replacement Key Personnel does not shadow the removed Key Personnel, up to \$25,000.00 maximum per individual. The total Unauthorized Removal Credits that may be assessed per Unauthorized Removal and failure to provide 30 calendar days of shadowing will not exceed \$50,000.00 per individual.
- iv. Contractor acknowledges and agrees that each of the Unauthorized Removal Credits assessed under **Subsection iii** above: (i) is a reasonable estimate of and compensation for the anticipated or actual harm to the State that may arise from the Unauthorized Removal, which would be impossible or very difficult to accurately estimate; and (ii) may, at the State's option, be credited or set off against any Fees or other charges payable to Contractor under this Contract.

8. **Notices.** All notices and other communications required or permitted under this Contract must be in writing and will be considered given and received: (a) when verified by written receipt if sent by courier; (b) when actually received if sent by mail without verification of receipt; or (c) when verified by automated receipt or electronic logs if sent by facsimile or email.

<p>If to State:</p> <p>Lorri White DTMB Procurement State of Michigan 525 W. Allegan, 1<sup>st</sup> Floor Lansing, MI 48933 <a href="mailto:whitel13@michigan.gov">whitel13@michigan.gov</a> 517-284-7088</p>	<p>If to Contractor:</p> <p>CDW Government, LLC Attn: Director, Program Sales 2 Corporate Drive Suite 800 Shelton, CT 06484 <a href="mailto:ContMgt@cdw.com">ContMgt@cdw.com</a> 800-800-4239</p>
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9. **Contract Administrators.** The following individuals are each party's Contract Administrator:

<p>State:</p> <p>Lorri White DTMB Procurement State of Michigan 525 W. Allegan, 1<sup>st</sup> Floor Lansing, MI 48933 <a href="mailto:whitel13@michigan.gov">whitel13@michigan.gov</a> 517-284-7088</p>	<p>Contractor:</p> <p>Jumana Dihu 120 S. Riverside Chicago, IL 60606 <a href="mailto:jumdihu@cdwg.com">jumdihu@cdwg.com</a> 312-705-9437</p>
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10. **Insurance Requirements.** Contractor must maintain the insurances identified below and is responsible for all deductibles. All required insurance must: (a) protect the State from claims that may arise out of, are alleged to arise out of, or result from Contractor's or a Subcontractor's performance; (b) be primary and non-contributing to any comparable liability insurance (including self-insurance) carried by the State; and (c) be provided by a company with an A.M. Best rating of "A-" or better and a financial size of VII or better.



Insurance Type	Additional Requirements
<b>Commercial General Liability Insurance</b>	
<u>Minimal Limits:</u> \$1,000,000 Each Occurrence Limit \$1,000,000 Personal & Advertising Injury Limit \$2,000,000 General Aggregate Limit \$2,000,000 Products/Completed Operations	Contractor must have their policy endorsed to add “the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents” as additional insureds – see endorsement.
<b>Umbrella or Excess Liability Insurance</b>	
<u>Minimal Limits:</u> \$5,000,000 General Aggregate	Coverage must follow form of underlying primary policies.
<b>Automobile Liability &amp; Hired and Non-Owned Vehicle Insurance</b>	
<u>Minimal Limits:</u> \$1,000,000 Per Occurrence	Contractor must have their policy endorsed to add “the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents” as additional insureds.
<b>Workers' Compensation Insurance</b>	
<u>Minimal Limits:</u> Coverage according to applicable laws governing work activities.	Waiver of subrogation, except where waiver is prohibited by law.
<b>Employers Liability Insurance</b>	
<u>Minimal Limits:</u> \$500,000 Each Accident \$500,000 Each Employee by Disease \$500,000 Aggregate Disease.	
<b>Professional Liability (Errors and Omissions) Insurance</b>	
<u>Minimal Limits:</u> \$4,000,000 Each Occurrence \$4,000,000 Annual Aggregate	Policy must cover information security and privacy liability, privacy notification costs, regulatory defense and penalties, and website media content liability.

If any of the required policies provide claim-made coverage, the Contractor must: (a) provide coverage with a retroactive date before the effective date of the contract or the beginning of Services; (b) maintain coverage and provide evidence of coverage for at least three (3) years after completion of the Services; and (c) if coverage is canceled or not renewed, and not replaced with another claims-made policy form with a retroactive date prior to the contract effective date, Contractor must purchase extended reporting coverage for a minimum of three (3) years after completion of work.

Contractor must: (a) provide insurance certificates to the Contract Administrator, containing the agreement or purchase order number, at Contract formation and within 30 calendar days of the expiration date of the applicable policies; and (b) waive all rights against the State for damages covered by insurance. Failure to maintain the required insurance does not limit this waiver. The insurer for each insurance policy required herein shall provide notice of cancellation subject to the notification provisions of the policy.



This Section is not intended to and is not be construed in any manner as waiving, restricting or limiting the liability of either party for any obligations under this Contract (including any provisions hereof requiring Contractor to indemnify, defend and hold harmless the State).

11. **Administrative Fee and Reporting.** Contractor must pay an administrative fee of 2% on all payments made to Contractor under the Contract including transactions with the State (including its departments, divisions, agencies, offices, and commissions), MiDEAL members, and other states (including governmental subdivisions and authorized entities). Administrative fee payments must be made by check payable to the State of Michigan and mailed to:

**Department of Technology, Management and Budget  
Financial Services – Cashier Unit  
Lewis Cass Building  
320 South Walnut St.  
P.O. Box 30681  
Lansing, MI 48909**

Contractor must submit an itemized purchasing activity report, which includes at a minimum, the name of the purchasing entity and the total dollar volume in sales. Reports should be mailed to DTMB-Procurement.

The administrative fee and purchasing activity report are due within 30 calendar days from the last day of each calendar quarter.

12. **Extended Purchasing Program.** This Contract is extended to MiDEAL members. MiDEAL members include local units of government, school districts, universities, community colleges, and nonprofit hospitals. A current list of MiDEAL members is available at [www.michigan.gov/mideal](http://www.michigan.gov/mideal). Upon written agreement between the State and Contractor, this Contract may also be extended to: (a) State of Michigan employees and (b) other states (including governmental subdivisions and authorized entities).

If extended, Contractor must supply all Products, Services, and Deliverables at the established Contract prices and terms. The State reserves the right to negotiate additional discounts based on any increased volume generated by such extensions.

Contractor must submit invoices to, and receive payment from, extended purchasing program members on a direct and individual basis.

13. **Independent Contractor.** Contractor is an independent contractor and assumes all rights, obligations and liabilities set forth in this Contract. Contractor, its employees, and agents will not be considered employees of the State. No partnership or joint venture relationship is created by virtue of this Contract. Contractor, and not the State, is responsible for the payment of wages, benefits and taxes of Contractor's employees and any Subcontractors. Prior performance does not modify Contractor's status as an independent contractor.

14. **Intellectual Property Rights.**

- a. **Reports.** As to any Reports, Contractor hereby acknowledges that the State is and will be the sole and exclusive owner of all right, title, and interest in such Reports and all associated Intellectual Property Rights, if any. Such Reports are works made for hire as defined in Section 101 of the Copyright Act of 1976. To the extent any Reports and related Intellectual Property Rights do not qualify as works made for hire under the Copyright Act, Contractor will, and hereby does, immediately on its creation, assign, transfer and otherwise convey to the State, irrevocably and in perpetuity, throughout the universe, all right, title and interest in and to the Reports, including all Intellectual Property Rights therein, except however, that Contractor will retain all Intellectual Property Rights that it owned or controlled prior to the effective date of the agreement between the parties or that it develops or acquires from activities independent of the service performed under the agreement between the parties ("**Background IP**"). Contractor hereby grants to the State and its Authorized Users a perpetual, non-exclusive, world-wide, fully paid and royalty free license to use Background IP for its internal business purposes.



- b. Non-Report Deliverables. Intellectual Property Rights with respect to non-Report Deliverables will be governed by the individual license agreement or Engagement SOW that pertain to that particular Deliverable.

- 15. **Assignment.** Contractor may not assign this Contract to any other party without the prior written approval of the State. Upon notice to Contractor, the State, in its sole discretion, may assign in whole or in part, its rights or responsibilities under this Contract to any other party.
- 16. **Change of Control.** Contractor will notify the State, at least 30 calendar days before the effective date, of a change in Contractor's organizational structure or ownership. For purposes of this Contract, a change in control means any of the following: (a) a sale of more than 50% of Contractor's stock; (b) a sale of substantially all of Contractor's assets; (c) a change in a majority of Contractor's board members; (d) consummation of a merger or consolidation of Contractor with any other entity; (e) a change in ownership through a transaction or series of transactions; (f) or the board (or the stockholders) approves a plan of complete liquidation. A change of control does not include any consolidation or merger effected exclusively to change the domicile of Contractor, or any transaction or series of transactions principally for bona fide equity financing purposes.

In the event of a change of control, Contractor must require the successor to assume this Contract and all of its obligations under this Contract.

17. **Acceptance.**

- a. Products, Services and Deliverables are subject to inspection and testing by the State in accordance with the Contract SOW and any applicable Purchase Order Requirements.
- b. Unless otherwise specified in the applicable Engagement SOW, all Services and Deliverables provided under an Engagement SOW are subject to the acceptance procedures set forth below:
  - i. All Services and Deliverables are subject to inspection and testing by the State within 15 Business Days of the State's receipt of them. The Services and Deliverables must be accepted in writing by the State's IT Project Manager and its Agency Business Owner. If the State finds deficiencies in the Services and Deliverables, it may: (1) demand performance at no additional cost, in the form a written notice to cure; or (2) reject the deficient Services and Deliverables without performing any further inspections, and terminate the Engagement SOW and associated Purchase Order, in whole or in part, in accordance with Section 22. The State's failure to provide notice of acceptance or deficiencies within 5 Business Days of the expiration of the inspection or testing period will constitute acceptance of the Services and Deliverables.
  - ii. Within 15 Business Days from the date of Contractor's receipt of a notice to cure, Contractor must cure, at no additional cost, the noted deficiencies and deliver acceptable Services and Deliverables to the State.
  - iii. If Contractor is unable or refuses to correct the noted deficiencies within the time response standards set forth in subsection (b) above, the State may terminate the Engagement SOW and associated Purchase Order, in whole or in part, in accordance with Section 21. The State, or a third party identified by the State, may provide the Services and Deliverables and the State may recover the difference between the cost to cure and the Contract price plus an additional 10% administrative fee.

- 18. **Terms of Payment.** All undisputed amounts are payable within 45 days of the State's receipt of a valid invoice. Contractor may only charge for Products, Services and Deliverables provided as specified in the Purchase Order or Engagement SOW. Invoices must include an itemized statement of all charges. The State is exempt from State sales tax for direct purchases and may be exempt from federal excise tax, if Products, Services and Deliverables purchased under this Contract are for the State's exclusive use. Provided the State delivers to Contractor its tax-exempt certificate, Contractor will not add any sales or use tax to the price of Products or Services.





The State has the right to withhold payment of any disputed amounts until the parties agree as to the validity of the disputed amount. The State will notify Contractor of any dispute within a reasonable time. Payment by the State will not constitute a waiver of any rights as to Contractor's continuing obligations, including claims for deficiencies or substandard Products, Services or Deliverables. Contractor's acceptance of final payment by the State constitutes a waiver of all claims by Contractor against the State for payment under this Contract, other than those claims previously filed in writing on a timely basis and still disputed.

The State will only disburse payments under this Contract through Electronic Funds Transfer (EFT). Contractor must register with the State at <http://www.michigan.gov/cpexpress> to receive electronic fund transfer payments. If Contractor does not register, the State is not liable for failure to provide payment.

Without prejudice to any other right or remedy it may have, the State reserves the right to set off at any time any amount then due and owing to it by Contractor against any amount payable by the State to Contractor.

19. **Liquidated Damages.** Liquidated damages, if applicable, will be assessed as described in the Contract Statement of Work, or an Engagement SOW if applicable.
20. **Stop Work Order.** The State may suspend any or all Services under the Contract, an individual Purchase Order or an individual Engagement SOW at any time. The State will provide Contractor, or Subcontractor if applicable, a written stop work order detailing the suspension. Contractor, or Subcontractor if applicable, must comply with the stop work order upon receipt. Within 90 calendar days, or any longer period agreed to by Contractor, the State will either: (a) issue a notice authorizing Contractor to resume work, or (b) terminate the Contract. Unless the work covered by the stop work order is subsequently terminated for cause, the State will pay Contractor reasonable, direct and verifiable costs resulting from the stop work order. Further, the parties will agree upon an equitable adjustment with respect to Contractor Personnel staffing requirements, if as a result of the stop work order, its staffing of the project is affected by such stop work order. For the avoidance of doubt, the State is not liable to Contractor for loss of profits because of a stop work order issued under this Section 20..
21. **Termination for Cause.** The State may terminate this Contract, an individual Purchase Order or an individual Engagement SOW for cause, in whole or in part, if Contractor or its Subcontractors, as determined by the State: (a) endangers the value, integrity, or security of any State location, data, or personnel; (b) becomes insolvent, petitions for bankruptcy court proceedings, or has an involuntary bankruptcy proceeding filed against it by any creditor; (c) fails to perform Services under an Engagement SOW with sufficient personnel and equipment or with sufficient material to ensure adequate performance of the Services; (d) breaches any of its material duties or obligations under this Contract, an individual Purchase Order, or an individual Engagement SOW; or (e) fails to cure a breach within 30 days after a notice of breach. Any reference to specific breaches being material breaches within this Contract will not be construed to mean that other breaches are not material.

If the State terminates this Contract under this Section, the State will issue a termination notice specifying whether Contractor must: (a) cease performance immediately, or (b) continue to perform in accordance with **Section 23**, Transition Responsibilities. If it is later determined that Contractor was not in breach of the Contract, the termination will be deemed to have been a Termination for Convenience, effective as of the same date, and the rights and obligations of the parties will be limited to those provided in **Section 22**, Termination for Convenience.

The State will only pay for amounts due to Contractor for Products, Services and Deliverables accepted by the State on or before the date of termination, subject to the State's right to set off any amounts owed by the Contractor for the State's reasonable costs in terminating this Contract. The Contractor must pay all direct and verifiable costs incurred by the State in terminating this Contract for cause, including administrative costs, attorneys' fees, and court costs.



22. **Termination for Convenience.** The State may terminate this Contract, an individual Purchase Order or an individual Engagement SOW on 30 days written notice, in whole or in part, without penalty and for any reason, including but not limited to, appropriation or budget shortfalls. The termination notice will specify whether Contractor or Subcontractor must: (a) cease performance of the Services immediately, or (b) continue to perform the Services in accordance with **Section 23**, Transition Responsibilities. If the State terminates this Contract for convenience, the State will pay all reasonable costs, as determined by the State, for State approved Transition Responsibilities.
23. **Transition Responsibilities.** Upon termination or expiration of this Contract for any reason, Contractor must, for a period of time specified by the State (not to exceed 180 calendar days), provide all reasonable transition assistance requested by the State, to allow for the expired or terminated portion of the Services to continue without interruption or adverse effect, and to facilitate the orderly transfer of such Services to the State or its designees. Such transition assistance may include, but is not limited to: (a) continuing to perform the Services at the established Contract rates; (b) taking all reasonable and necessary measures to transition performance of the work, including all applicable Services, training, reports and other documentation, to the State or the State's designee; (c) taking all necessary and appropriate steps, or such other action as the State may direct, to preserve, maintain, protect, or return to the State all materials, data, property, and Confidential Information provided directly or indirectly to Contractor by any entity, agent, vendor, or employee of the State; (d) transferring title in and delivering to the State, at the State's discretion, all completed or partially completed Deliverables prepared under this Contract as of the Contract termination date; and (e) preparing an accurate accounting from which the State and Contractor may reconcile all outstanding accounts (collectively, "**Transition Responsibilities**"). This Contract will automatically be extended through the end of the transition period.
24. **General Indemnification.** Contractor must defend, indemnify and hold the State, its departments, divisions, agencies, offices, commissions, officers, and employees harmless, without limitation, from and against any and all third-party actions, claims, losses, liabilities, damages, costs, attorney fees, and expenses (including those required to establish the right to indemnification), arising out of or relating to: (a) any breach by Contractor (or any of Contractor's employees, agents, Subcontractors, or by anyone else for whose acts any of them may be liable) of any of the promises, agreements, representations, warranties, or insurance requirements contained in this Contract; (b) any infringement, misappropriation, or other violation of any Intellectual Property Right of any third party caused by Contractor or Subcontractor; (c) any bodily injury, death, or damage to real or tangible personal property occurring wholly or in part due to negligent action or inaction by Contractor (or any of Contractor's employees, agents, Subcontractors, or by anyone else for whose acts any of them may be liable); and (d) any negligent acts or omissions of Contractor (or any of Contractor's employees, agents, Subcontractors, or by anyone else for whose acts any of them may be liable).

The State will notify Contractor in writing if indemnification is sought; however, failure to do so will not relieve Contractor, except to the extent that Contractor is materially prejudiced. Contractor must, to the satisfaction of the State, demonstrate its financial ability to carry out these obligations.

The State is entitled to: (i) regular updates on proceeding status; (ii) participate in the defense of the proceeding; and (iii) employ its own counsel. Contractor will not, without the State's written consent (not to be unreasonably withheld), settle, compromise, or consent to the entry of any judgment in or otherwise seek to terminate any claim, action, or proceeding. To the extent that any State employee, official, or law may be involved or challenged, the State may, at its own expense, control the defense of that portion of the claim.

Any litigation activity on behalf of the State, or any of its subdivisions under this Section, must be coordinated with the Department of Attorney General. An attorney designated to represent the State may not do so until approved by the Michigan Attorney General and appointed as a Special Assistant Attorney General.

25. **Infringement Remedies.** If, in either party's opinion, any of the Services or Deliverables supplied by Contractor or its Subcontractors, or its operation, use or reproduction, is likely to become the subject of a copyright, patent, trademark, or trade secret infringement claim, Contractor must, at its expense: (a) procure for the State the right to continue using the Services or Deliverables, or if this option is not reasonably



available to Contractor, (b) replace or modify the same so that it becomes non-infringing; or (c) accept its return by the State with appropriate credits to the State against Contractor's charges and reimburse the State for any losses or costs incurred as a consequence of the State ceasing its use and returning it.

26. **Limitation of Liability.** NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR BY STATUTE OR OTHERWISE, FOR ANY CLAIM RELATED TO OR ARISING UNDER THIS CONTRACT FOR CONSEQUENTIAL, INCIDENTAL, INDIRECT, OR SPECIAL DAMAGES, INCLUDING WITHOUT LIMITATION LOST PROFITS AND LOST BUSINESS OPPORTUNITIES. IN NO EVENT WILL EITHER PARTY'S AGGREGATE LIABILITY TO THE OTHER PARTY UNDER THIS CONTRACT, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR BY STATUTE OR OTHERWISE, FOR ANY CLAIM RELATED TO OR ARISING UNDER THIS CONTRACT, EXCEED THE MAXIMUM AMOUNT OF FEES SPECIFIED IN THE APPLICABLE PURCHASE ORDER OR ENGAGEMENT STATEMENT OF WORK GIVING RISE TO THE CLAIM.
27. **Disclosure of Litigation, or Other Proceeding.** Unless precluded by law, Contractor must notify the State within 14 calendar days of receiving notice of litigation, investigation, arbitration, or other proceeding (collectively, "**Proceeding**") involving Contractor, a Subcontractor, or an officer or director of Contractor or Subcontractor, that arises during the term of the Contract, that would have a material effect on Contractor's performance under this Contract, including: (a) a criminal Proceeding; (b) a parole or probation Proceeding; (c) a Proceeding under the Sarbanes-Oxley Act; (d) a civil Proceeding involving: (1) a claim that might reasonably be expected to adversely affect Contractor's viability or financial stability; or (2) a governmental or public entity's claim or written allegation of fraud; or (e) a Proceeding involving any license that Contractor is required to possess in order to perform under this Contract.
28. **State Data.**
- a. **Ownership.** The State's data ("**State Data**," which will be treated by Contractor as Confidential Information) includes: (a) User Data; and (b) the State's data collected, used, processed, stored, or generated in connection with the Services, including but not limited to (i) personally identifiable information ("**PII**") collected, used, processed, stored, or generated as the result of the Services, including, without limitation, any information that identifies an individual, such as an individual's social security number or other government-issued identification number, date of birth, address, telephone number, biometric data, mother's maiden name, email address, credit card information, or an individual's name in combination with any other of the elements here listed; and (ii) personal health information ("**PHI**") collected, used, processed, stored, or generated as the result of the Services, which is defined under the Health Insurance Portability and Accountability Act ("**HIPAA**") and its related rules and regulations. State Data is and will remain the sole and exclusive property of the State and all right, title, and interest in the same is reserved by the State. This Section survives the termination of this Contract.
- b. **Contractor Use of State Data.** Unless expressly specified in an Engagement SOW, the Services to be provided by Contractor will not require or involve access, collection, use, processing, storing, or generating any State Data. The State will not enable, and will use commercially reasonable efforts to prevent access and disclosure of State Data to Contractor. Contractor will use commercially reasonable efforts to prevent gaining access to State Data. If Contractor inadvertently receives access to State Data in the performance of Services despite the parties' efforts, then Contractor shall handle such State Data in accordance with Section 29. If the parties enter into an Engagement SOW that expressly identifies that Contractor or its Subcontractor will require access to State Data to be utilized by Contractor or its Subcontractor in the provision of Services, Contractor will be provided a limited license to State Data for the sole and exclusive purpose of providing the Services, including a license to collect, process, store, generate, and display State Data only to the extent necessary in the provision of the Services. Contractor must: (a) keep and maintain State Data in strict confidence, using such degree of care as is appropriate and consistent with its obligations as further described in



this Contract and applicable law to avoid unauthorized access, use, disclosure, or loss; (b) use and disclose State Data solely and exclusively for the purpose of providing the Services, such use and disclosure being in accordance with this Contract, any applicable Statement of Work, and applicable law; and (c) not use, sell, rent, transfer, distribute, or otherwise disclose or make available State Data for Contractor's own purposes or for the benefit of anyone other than the State without the State's prior written consent. This Section survives the termination of this Contract.

- c. Compromise of State Data. In the event of any act, error or omission, negligence, misconduct, or breach on the part of Contractor that compromises or is suspected to compromise the security, confidentiality, or integrity of State Data or the physical, technical, administrative, or organizational safeguards put in place by Contractor that relate to the protection of the security, confidentiality, or integrity of State Data, Contractor must, as applicable: (a) notify the State as soon as practicable but no later than seventy-two (72) hours of becoming aware of such occurrence; (b) cooperate with the State in investigating the occurrence, including making available all relevant records, logs, files, data reporting, and other materials required to comply with applicable law or as otherwise required by the State; (c) in the case of PII or PHI, at the State's sole election, (i) with approval and assistance from the State, notify the affected individuals who comprise the PII or PHI as soon as practicable but no later than is required to comply with applicable law, or, in the absence of any legally required notification period, within five (5) calendar days of the occurrence; or (ii) reimburse the State for any costs in notifying the affected individuals; (d) in the case of PII, provide third-party credit and identity monitoring services to each of the affected individuals who comprise the PII for the period required to comply with applicable law, or, in the absence of any legally required monitoring services, for no less than twenty-four (24) months following the date of notification to such individuals; (e) perform or take any other actions required to comply with applicable law as a result of the occurrence; (f) pay for any costs associated with the occurrence, including but not limited to any costs incurred by the State in investigating and resolving the occurrence, including reasonable attorney's fees associated with such investigation and resolution; (g) without limiting Contractor's obligations of indemnification as further described in this Contract, indemnify, defend, and hold harmless the State for any and all claims, including reasonable attorneys' fees, costs, and incidental expenses, which may be suffered by, accrued against, charged to, or recoverable from the State in connection with the occurrence; (h) be responsible for recreating lost State Data in the manner and on the schedule set by the State without charge to the State; and (i) provide to the State a detailed plan within ten (10) calendar days of the occurrence describing the measures Contractor will undertake to prevent a future occurrence. Notification to affected individuals, as described above, must comply with applicable law, be written in plain language, not be tangentially used for any solicitation purposes, and contain, at a minimum: name and contact information of Contractor's representative; a description of the nature of the loss; a list of the types of data involved; the known or approximate date of the loss; how such loss may affect the affected individual; what steps Contractor has taken to protect the affected individual; what steps the affected individual can take to protect himself or herself; contact information for major credit card reporting agencies; and, information regarding the credit and identity monitoring services to be provided by Contractor. The State will have the option to review and approve any notification sent to affected individuals prior to its delivery. Notification to any other party, including but not limited to public media outlets, must be reviewed and approved by the State in writing prior to its dissemination. This Section survives termination or expiration of this Contract.

29. **Non-Disclosure of Confidential Information.** The parties acknowledge that each party may be exposed to or acquire communication or data of the other party that is confidential, privileged communication not intended to be disclosed to third parties. The provisions of this Section survive the termination of this Contract.

- a. Meaning of Confidential Information. For the purposes of this Contract, the term "**Confidential Information**" means all information and documentation of a party that: (a) has been marked "confidential" or with words of similar meaning, at the time of disclosure by such party; (b) if disclosed orally or not marked "confidential" or with words of similar meaning, was subsequently summarized in writing by the disclosing party and marked "confidential" or with words of similar





meaning; and, (c) should reasonably be recognized as confidential information of the disclosing party. The term "Confidential Information" does not include any information or documentation that was or is: (a) subject to disclosure under the Michigan Freedom of Information Act (FOIA) by the receiving party; (b) already in the possession of the receiving party without an obligation of confidentiality; (c) developed independently by the receiving party, as demonstrated by the receiving party, without violating the disclosing party's proprietary rights; (d) obtained from a source other than the disclosing party without an obligation of confidentiality; or, (e) publicly available when received, or thereafter became publicly available (other than through any unauthorized disclosure by, through, or on behalf of, the receiving party). For purposes of this Contract, in all cases and for all matters, State Data is deemed to be Confidential Information.

- b. Obligation of Confidentiality. The parties agree to hold all Confidential Information in strict confidence and not to copy, reproduce, sell, transfer, or otherwise dispose of, give or disclose such Confidential Information to third parties other than employees, agents, or Subcontractors of a party who have a need to know in connection with this Contract or to use such Confidential Information for any purposes whatsoever other than the performance of this Contract. The parties agree to advise and require their respective employees, agents, and Subcontractors of their obligations to keep all Confidential Information confidential. Disclosure to a Subcontractor is permissible where: (a) use of a Subcontractor is authorized under this Contract; (b) the disclosure is necessary or otherwise naturally occurs in connection with work that is within the Subcontractor's responsibilities; and (c) Contractor obligates the Subcontractor in a written contract to maintain the State's Confidential Information in confidence. At the State's request, any employee of Contractor or any Subcontractor may be required to execute a separate agreement to be bound by the provisions of this Section.
  - c. Cooperation to Prevent Disclosure of Confidential Information. Each party must use its best efforts to assist the other party in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the foregoing, each party must advise the other party immediately in the event either party learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Contract and each party will cooperate with the other party in seeking injunctive or other equitable relief against any such person.
  - d. Remedies for Breach of Obligation of Confidentiality. Each party acknowledges that breach of its obligation of confidentiality may give rise to irreparable injury to the other party, which damage may be inadequately compensable in the form of monetary damages. Accordingly, a party may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies which may be available, to include, in the case of the State, at the sole election of the State, the immediate termination, without liability to the State, of this Contract or any Statement of Work corresponding to the breach or threatened breach.
  - e. Surrender of Confidential Information upon Termination. Upon termination of this Contract or a Statement of Work, in whole or in part, each party must, within 5 calendar days from the date of termination, return to the other party any and all Confidential Information received from the other party, or created or received by a party on behalf of the other party, which are in such party's possession, custody, or control; provided, however, that Contractor must return State Data to the State following the timeframe and procedure described further in this Contract. Should Contractor or the State determine that the return of any Confidential Information is not feasible, such party must destroy the Confidential Information and must certify the same in writing within 5 calendar days from the date of termination to the other party.
30. **Data Privacy and Information Security.** Without limiting Contractor's obligation of confidentiality as further described, Contractor is responsible for establishing and maintaining a data privacy and information security program, including physical, technical, administrative, and organizational safeguards, that is designed to: (a)





ensure the security and confidentiality of State Data; (b) protect against any anticipated threats or hazards to the security or integrity of State Data; (c) protect against unauthorized disclosure, access to, or use of State Data; (d) ensure the proper disposal of State Data; and (e) ensure that all employees, agents, and Subcontractors of Contractor, if any, comply with all of the foregoing. In no case will the safeguards of Contractor's data privacy and information security program be less stringent than the safeguards used by the State, and Contractor must at all times comply with all applicable State IT policies and standards, which shall be provided to Contractor, which shall be treated as Confidential Information.

31. **Records Maintenance, Inspection, Examination, and Audit.** The State or its designee may, upon 30 days prior written notice, audit Contractor to verify compliance with this Contract. Contractor must retain, and provide to the State or its designee and the auditor general upon request, all financial and accounting records related to the Contract through the term of the Contract and for 4 years after the latter of termination, expiration, or final payment under this Contract or any extension ("**Financial Audit Period**"). If an audit, litigation, or other action involving the records is initiated before the end of the Audit Period, Contractor must retain the records until all issues are resolved.

After providing the notice specified above, the State and its authorized representatives or designees have the right to enter and inspect Contractor's premises or any other places where Services are being performed, and examine, copy, and audit all records related to this Contract. Contractor must cooperate and provide reasonable assistance. If any financial errors are revealed, the amount in error must be reflected as a credit or debit on subsequent invoices until the amount is paid or refunded. Any remaining balance at the end of the Contract must be paid or refunded within 45 calendar days.

This Section applies to Contractor, any parent, affiliate, or subsidiary organization of Contractor, and any Subcontractor that performs Services in connection with this Contract.

32. **Warranties and Representations.** Contractor represents and warrants to the State that:
- a. it will perform all Services in a professional and workmanlike manner in accordance with best industry standards and practices for similar services, using personnel with the requisite skill, experience and qualifications, and will devote adequate resources to meet its obligations under the applicable Statement of Work;
  - b. the Services and Deliverables provided by Contractor will not infringe the patent, trademark, copyright, trade secret, or other proprietary rights of any third party;
  - c. it has the full right, power, and authority to enter into this Contract, to grant the rights granted under this Contract, and to perform its contractual obligations;
  - d. all information furnished and representations made in connection with the award of this Contract is true, accurate, and complete, and contains no false statements or omits any fact that would make the information misleading;
  - e. it acknowledges that the State cannot indemnify any third parties, including but not limited to any Suppliers or Subcontractors. Notwithstanding anything to the contrary contained in any third-party license agreement or end user license agreement, the State will not indemnify any third-party for any reason whatsoever during the term of this Contract. EXCEPT AS EXPRESSLY STATED HEREIN CONTRACTOR, (INCLUDING ITS AFFILIATES, CONTRACTORS, AND AGENTS, AND EACH OF THEIR RESPECTIVE EMPLOYEES, DIRECTORS, AND OFFICERS), ON BEHALF OF ITSELF AND ITS SUBCONTRACTORS DISCLAIMS, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, WITH RESPECT TO ANY OF THE PRODUCTS, SERVICES, AND DELIVERABLES, INCLUDING BUT NOT LIMITED TO ANY WARRANTY (1) OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, PERFORMANCE, OR SUITABILITY; OR (2) RELATING TO THIRD-PARTY PRODUCTS OR SERVICES.



A breach of this Section is considered a material breach of this Contract, which entitles the State to terminate this Contract under **Section 21**, Termination for Cause.

33. **Conflicts and Ethics.** Contractor will uphold high ethical standards and is prohibited from: (a) holding or acquiring an interest that would conflict with this Contract; (b) doing anything that creates an appearance of impropriety with respect to the award or performance of the Contract; (c) attempting to influence or appearing to influence any State employee by the direct or indirect offer of anything of value; or (d) paying or agreeing to pay any person, other than employees and consultants working for Contractor, any consideration contingent upon the award of the Contract. Contractor must immediately notify the State of any violation or potential violation of these standards. This Section applies to Contractor, any parent, affiliate, or subsidiary organization of Contractor, and any Subcontractor that performs Services in connection with this Contract.
34. **Compliance with Laws.** Both parties must comply with all federal, state and local laws, rules and regulations.
35. **Nondiscrimination.** Under the Elliott-Larsen Civil Rights Act, 1976 PA 453, MCL 37.2101, *et seq.*, and the Persons with Disabilities Civil Rights Act, 1976 PA 220, MCL 37.1101, *et seq.*, Contractor and its Subcontractors agree not to discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or a matter directly or indirectly related to employment, because of race, color, religion, national origin, age, sex, height, weight, marital status, or mental or physical disability. Breach of this covenant is a material breach of this Contract.
36. **Unfair Labor Practice.** Under MCL 423.324, the State may void any Contract with a Contractor or Subcontractor who appears on the Unfair Labor Practice register compiled under MCL 423.322.
37. **Governing Law.** This Contract is governed, construed, and enforced in accordance with Michigan law, excluding choice-of-law principles, and all claims relating to or arising out of this Contract are governed by Michigan law, excluding choice-of-law principles. Any dispute arising from this Contract must be resolved in Michigan Court of Claims. Contractor consents to venue in Ingham County, and waives any objections, such as lack of personal jurisdiction or *forum non conveniens*. Contractor must appoint agents in Michigan to receive service of process.
38. **Non-Exclusivity.** Nothing contained in this Contract is intended nor will be construed as creating any requirements contract with Contractor. This Contract does not restrict the State or its agencies from acquiring similar, equal, or like Products, Services, and Deliverables from other sources.
39. **Force Majeure.** Neither party will be in breach of this Contract because of any failure arising from any disaster, acts of God, or supply chain disruptions not caused by Contractor that are beyond their control and without their fault or negligence. Each party will use commercially reasonable efforts to resume performance. Contractor will not be relieved of a breach or delay caused by its Subcontractors. If immediate performance is necessary to ensure public health and safety, the State may immediately contract with a third party.
40. **Dispute Resolution.** The parties will endeavor to resolve any Contract dispute in accordance with this provision. The dispute will be referred to each party's respective Contract Administrator. Such referral must include a description of the issues and all supporting documentation. The parties will continue performing while a dispute is being resolved, unless the dispute precludes performance. A dispute involving payment does not preclude performance.

Litigation to resolve the dispute will not be instituted until after the dispute has been elevated to the parties' senior executive and either concludes that resolution is unlikely, or fails to respond within 15 business days. The parties are not prohibited from instituting formal proceedings: (a) to avoid the expiration of statute of limitations period; (b) to preserve a superior position with respect to creditors; or (c) where a party makes a determination that a temporary restraining order or other injunctive relief is the only adequate remedy. This Section does not limit the State's right to terminate the Contract.



41. **Media Releases.** News releases (including promotional literature and commercial advertisements) pertaining to the Contract or project to which it relates must not be made without prior written State approval, and then only in accordance with the explicit written instructions of the State.
42. **Severability.** If any part of this Contract is held invalid or unenforceable, by any court of competent jurisdiction, that part will be deemed deleted from this Contract and the severed part will be replaced by agreed upon language that achieves the same or similar objectives. The remaining Contract will continue in full force and effect.
43. **Waiver.** Failure to enforce any provision of this Contract will not constitute a waiver.
44. **Survival.** The provisions of this Contract that impose continuing obligations, including warranties and representations, termination, transition, insurance coverage, indemnification, and confidentiality, will survive the expiration or termination of this Contract.
45. **Entire Agreement.** This Contract, including the Statement of Work, constitutes the sole and entire agreement of the parties to this Contract with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings and agreements, both written and oral, with respect to such subject matter. In the event of any conflict between the terms of this Contract and those of the Statement of Work or other document, the following order of precedence governs: (a) first, this Contract; (b) second, the Statement of Work; (c) third, attachments and exhibits to the Statement of Work. **EXCEPT FOR LICENSE AGREEMENTS WITH SUPPLIERS AGREED TO IN WRITING BY THE STATE, NO TERMS ON ANY INVOICE, QUOTE, PURCHASE ORDER, WEBSITE, BROWSE-WRAP, SHRINK-WRAP, CLICK-WRAP OR OTHER NON-NEGOTIATED TERMS AND CONDITIONS PROVIDED WITH ANY OF THE PRODUCTS, SERVICES, OR DELIVERABLES (INCLUDING SOFTWARE AND HARDWARE) OR DOCUMENTATION, WHETHER BY CONTRACTOR, SUPPLIER, OR SUBCONTRACTOR, WILL CONSTITUTE A PART OR AMENDMENT OF THIS CONTRACT OR IS BINDING ON THE STATE OR ANY AUTHORIZED USER FOR ANY PURPOSE. ALL SUCH OTHER TERMS AND CONDITIONS HAVE NO FORCE AND EFFECT AND ARE DEEMED REJECTED BY THE STATE, EVEN IF ACCESS TO OR USE OF SUCH PRODUCT, SERVICE, DELIVERABLE (INCLUDING SOFTWARE AND HARDWARE) OR DOCUMENTATION REQUIRES AFFIRMATIVE ACCEPTANCE OF SUCH TERMS AND CONDITIONS.**



Schedule A – Statement of Work  
Exhibit 1 – General Overview

**1.0 GENERAL OVERVIEW**

**1.0.1 PURPOSE**

The purpose of this Contract is for the Contractor to provide as needed IT commodities and services as noted below:

1. Hardware Module (Schedule A, Exhibit 1 and 3) – Computer hardware (including OEM Software), hardware maintenance, & associated assessment, installation, integration, and implementation services purchased through the Contract(s)
2. Software Module (Schedule A, Exhibit 2 and 3) – Licensed software , software maintenance, & associated assessment, installation, integration, and installation services purchased through the Contract(s)

**1.0.2 PROGRAM**

The Michigan Master Computing Program (MMCP) is supported by a bid process to compete for the State’s IT purchases that are in scope for each exhibit (Hardware & supporting services; software & supporting services; or both). The MMCP prequalification program consists of multiple contractors.

**1.0.3 IN SCOPE**

Any IT purchase not specifically listed the Out of Scope section below. The scope and requirements related to the purchase of specific IT commodities and services are noted in each exhibit included in Schedule A. The State reserves the right to refresh the vendor pool (increase or decrease) annually as it sees fit in the best interest of the State; including increasing or decreasing the number of modules a contractor is awarded.

Contract shall be available to the State’s MiDEAL Program and other states. The MiDEAL program allows local government partners and other states to use State contracts for their procurement needs. Contractor will provide all available products and services to MIDEAL members at their option. The value of MiDEAL procurements will count toward the State’s aggregate purchase volume for purposes of calculating volume discounts.

**1.0.4 OUT OF SCOPE**

The following are out of the scope:

- Desktop Application commodity product training required by the State for End-users.
- Staff Augmentation Services as it relates to consultants and specific tool sets not mentioned in this Contract.
- Software Development.
- Professional services for hardware or software not purchased through this Contract.

Individual exhibits in Schedule A may identify other out-of-scope items.

**1.0.5 REQUIREMENTS/DELIVERABLES FOR ALL PRODUCTS**

Contractor will provide State-approved products and services; the State will approve all additions, deletions, or changes to the State-approved products. At the State’s request Contractor will source and quote new products and services, including one-time purchases and additions to the Catalog. Contractor will notify the State as specified in each Module of any changes to these products.

Contractor, upon commercial announcement of new components that can be technically and economically substituted or added for/to items listed in the current Product Web Catalog, will offer said items for addition or substitution to the Product Web Catalog. These item(s) may be accepted at the option of the State, provided at least equivalent performance with economic benefits or significantly enhanced performance at no additional cost per unit of capability accrues to the State. End of life (“sunsetting”) products frequently purchased by the State should be offered to the State at discounted rates as Contractor sells off its inventory of such items.



### 1.0.5.1 ERP Integration

#### 1.0.5.1.1 ITRAC

The State currently has an Intranet web application, ITRAC, which is used for requesting, approving, reporting and tracking IT commodity and maintenance purchases. Contractor will provide a file that contains the common commodities that are ordered by the State.

The following requirements must be met for integration with ITRAC:

- 1) Catalog file is a text file (flat file) with data elements delimited by tab characters,
- 2) Contractor will provide incremental updates to the catalog received daily (Monday-Friday 6 PM EST)
- 3) A full load file will be received weekly (Friday 6 PM EST)
- 4) The file will be transferred to the State Data Exchange Gateway using FTP.
- 5) The length of "Description" field will be kept under 255 characters.
- 6) The catalog file structure/format may be changed as a new design is implemented in the ITRAC system.
- 7) The Description file must support the addition of a 4 character identification code used to match commonly purchased items. Example: "E01-"
- 8) Required data elements are:
  - OPERATION\_CODE
  - ITEM\_NUMBER
  - MANUFACTURER
  - VENDOR
  - BLANKET PURCHASE ORDER NUMBER
  - DESCRIPTION
  - CATEGORY
  - SKU
  - PRICE
  - AGENCY\_APPROVED

#### 1.0.5.1.2 Future ERP Integration

The State is currently engaged in a project to implement the new State-wide Integrated Governmental Management Applications (SIGMA) ERP System, which is based on the CGI Advantage suite of applications. This is expected to replace ITRAC and other legacy State systems and become the new requisition and procurement system for the State. Migration to SIGMA is tentatively targeted for 2017.

Contractor shall, at no additional cost to the State, provide a State Web Portal and integrate it with the State' ERP Solution when the State migrates purchasing operations to the new system. Contractor will work with the State's identified ERP migration project team to obtain specific integration requirements. The Contractor will supply a catalog for products available under the Contract, which will reflect real-time product inventory, pricing, and availability information.

Contractor will grant the State and the State's authorized ERP provider a non-exclusive, limited license to use, reproduce, transmit, distribute, and publicly display within the ERP Solution the Contractor's punch-out catalog-site, including all of Contractor's trademarks, service marks, logos, trade dress, or other branding designation of Contractor that identifies the products made available under the Contract.

#### 1.0.5.2 MIDEAL WEB PORTAL

Contract shall be available to members of the State's MiDEAL Program. This program allows local governments, other states, and other authorized entities to use State contracts for their procurement needs. The State does not restrict what products and services are available through MiDEAL, so long as they meet the Contract's scope. As a result the Contractor will need to provide a separate, web-based, secure MiDEAL catalog and portal. Contractor' MiDEAL Web Portal will provide to the State on-line, searchable reports on the business conducted through the contract to MiDEAL members. Please see Sections 11 and 12 of the Terms and Conditions.





### **1.0.5.3 ORDER PROCESS**

#### ***1.0.5.3.1 ORDER PROCESSING***

Upon receipt of an approved, executed purchase order, Contractor will fully validate the order to make sure that each product is still valid and that each price is correct.

- i. If the product is valid but the catalog price is lower than the price quoted on the original order, the lower price will be invoiced.
- ii. If the catalog price is higher than an active quoted price, the quoted price will be applied to the order.

After the order is validated, Contractor will send an acknowledgement to the order submitter.

### **1.0.5.4 SUBSTITUTIONS**

Substitutions may be made when the product is not available because the manufacturer has discontinued its production or due to a documented product constraint. Contractor must notify State of substitutions before sending the replacement product for State approval.

Contractor will offer an equivalent or better substitute at or below the original price, with the State's permission. The offering being substituted must be from the same manufacturer as the product that is discontinued or unavailable.

Contractor will provide the State with written documentation substantiating the need for substitution and that the requirements are met by the product being substituted. The State will review the information submitted and determine in its sole discretion whether substitution is acceptable.

### **1.0.5.5 DELIVERY**

The Contractor will deliver the product(s) as listed on the State's order. Unless otherwise specified within an individual order, the following are applicable to all orders issued under this Contract. Specific delivery metrics and Service Level Agreements (SLA's) are detailed in Section 1.0.13 Contract Performance, below.

Products purchased and services performed under this Contract shall be delivered to a F.O.B. Destination specified by the State upon issuance of individual purchase orders. The location will be specified at time of delivery. The Contractor is responsible for ensuring the products are transported from the delivery vehicle to the delivery point specified.

Contractor will provide the following delivery options:

- Standard Delivery, meaning where the product is delivered to a fixed delivery point (such as a State Warehouse) and State employees perform the unloading of the truck for the logistics company. Loading dock is available.
- Inside Delivery, meaning where the product is delivered to a location inside of a State building location. Contractor's logistics company is responsible to unload the delivery vehicle. Loading dock may or may not be available.
- Deskside Delivery, meaning where the Contractor's logistics company delivers the product directly to the end users' desk location within a State building. Loading dock may or may not be available.

Items shall not be considered delivered if they are refused due to damage or otherwise considered not to meet original order specifications.

Contractor will provide options to the State for Overnight and Second Day delivery.

### **1.0.5.6 SHIPMENT NOTIFICATION**

For each order submitted, the Contractor will send e-mail notifications to the order's submitter by the next business day, concerning shipment and expected delivery dates.

### **1.0.5.7 ACCEPTANCE CRITERIA FOR DELIVERY**

The State will consider products accepted when delivery of product is made to the specified delivery address, complete packing slips with applicable serial numbers are provided to the State, and equipment passes inspection. Equipment discovered to be damaged, defective or failing to conform to the specifications may be



rejected upon initial inspection or at any later time if the defects contained in the equipment or non-compliance with the specifications was not reasonably ascertainable upon initial inspection.

Contractor will not invoice for equipment, and the State will not authorize payment of invoices, until both of the above conditions have been met.

Contractor is responsible to ensure that a copy of the signed receiving documents are forwarded to the State before payment will be authorized.

### **1.0.5.8 PACKAGE LABELS AND PACKING SLIPS**

#### **1.0.5.8.1 BAR-CODING**

Bar-Coded Information – The following information will be required on the vertical face of packages containing IT assets in a standard bar code format:

- a. State of Michigan Purchase Order Number
- b. Model Number(s)
- c. Serial Number(s)

The data for each field must be in standard print beside/above/below each bar code.

#### **1.0.5.8.2 PACKING SLIPS**

Contractor shall provide a packing slip for each physical shipment. The packing slip shall display:

- a. Purchaser's Name (Procurement Liaisons name)
- b. Ship to address
- c. Order Date
- d. Shipped from (Vendor) information
- e. Shipping Carriers Name
- f. Carriers Tracking Number
- g. Date Shipped
- h. Total Number of Packages
- i. State Purchase Order (PO) Number (or MiDEAL P.O.)
- j. Item / Part Number
- k. Line item description
- l. Quantity ordered
- m. Quantity included in shipment (of total quantity ordered)
- n. Any back order items and date they will be filled
- o. Equipment serial number

### **1.0.5.9 RETURNED PRODUCTS**

#### **Delivery Errors**

Contractor will provide a product return process that protects the State from any financial obligation and/or costs arising from the delivery of incorrect or wrong and damaged products. This must cover Dead on Arrivals (DOA), damaged products, duplicate deliveries, and incorrect product deliveries.

#### **Returns or Amendments at State's Request**

Contractor will provide an order cancellation and amendment process that will allow the State to return products up to 20 business days from the date of receipt. The State may cancel an order prior to shipment at no cost.

### **1.0.5.10 PRODUCT RECALL NOTIFICATIONS**

Contractor must provide prompt notice to the DTMB Program Manager in writing of any product recall within three business days. Contractor will also inform the DTMB Program Manager of any potential recalls that Contractor is aware of that could or would impact State purchasing of such products.

### **1.0.5.11 PROCESS FOR OBTAINING QUOTES**



Contractor will provide a quoting service for products and services ("Quote Desk"). The Quote Desk must also be available in the event an emergency situation. The Quote Desk will facilitate the State's communication with OEM's and Publishers so that the State may uniquely configure hardware and software solutions, obtain technical guidance or expertise, and any other information needed for the basis of quotes.

All quotes, except quotes for servers and or server components from the major manufacturers, will be valid for a period of thirty (30) business days from the date the quote is received by the State.

Quotes for servers and server components from the major manufacturers will be valid for a period of sixty (60) business days from the date the quote is received. Quotes will be subject to change if any quoted component becomes unavailable. Contractor will notify the State of this occurrence. Contractor will then submit a revised quote to the State to satisfy the request, along with explanation.

For any Software quote request where the manufacturer requires the State to sign or agree to a licensing agreement, the Contractor will furnish the licensing agreement as an attachment to the quote.

### **1.0.6 ENGAGEMENT STATEMENT OF WORK PROCESS**

Unless where otherwise specified, Engagement Statements of Work (SOW) shall be used to define engagement-specific services. Please refer to Modules 1 and 2 for specific services allowable for each Module. Services purchased from this Contract must comply with the Contract's allowable scope. See Exhibit E for the Service Engagement Statement of Work Template.

At the State's request, the Contractor will develop and propose in writing a solution, including price that shall be valid for 30 business days. The proposed solution will be submitted to the requestor within 10 business days from the request. Cost structures for all SOW's shall be based on: a) defined milestones or deliverables; or b) per-device fees.

DTMB will execute a Statement of Work through a purchase order.

### **1.0.7 LEASING (Optional)**

Contractor will provide options to lease products to the State, which will include acquisition, installation, maintenance, removal and disposal. Lease options may be either capital or operational. Lease options will be consistent with Governmental Accounting Standards Board (GASB) standards.

### **1.0.8 REPORTS**

Contractor shall publish the following reports in a Web portal for authorized users, and make available as identified below, and update at minimum according to the frequencies listed below. All reports must be exportable to common formats from the Web portal.

#### **1.0.8.1 DAILY REPORTS**

##### **1.0.8.1.1 Shipping Report**

The Contractor will provide a daily shipping report that details the following information on an individual PO line item basis. Items with serial numbers must be on individual lines of the report.

- Ship To Location
- Address
- City
- Zip
- Shipper Tracking Number
- Service Tag
- State PO Number
- Agency
- Category (Server, Desktop, Laptop, Tablet, Software)
- Model / Title
- Quantity
- Unit Price



- Ship Date
- Manufacturer Part#
- Contractor PO Number
- Shipment Carrier
- Agency Code
- Manufacturer/Publisher Name
- Manufacturer Order#
- Expected Delivery Date
- Warranty Start Date
- Warranty End Date

#### 1.0.8.1.2 Open Order Report

Contractor will provide a daily report of all open orders that details the following information on an individual PO basis. The report will include:

- State PO#
- Contractor PO#
- Product Description
- Quantity
- OEM Part#/SKU#

#### 1.0.8.2 MONTHLY REPORTS

Contractor will provide the following reporting solutions:

##### 1.0.8.2.1 Monthly Contract Updates on Prices/Products

Contractor will provide a monthly Contract update to the State as prices and products change. Any update will state:

Changes (product additions/deletions, State price changes, manufacturer's part numbers changes, etc.) that have occurred since the last monthly Contract update and must include the following items:

1. Publisher or Manufacturer's part number, description, State price, type of change, and explanation.
2. Manufacturer/Contractor web address for more detailed product information,
3. Price for added products

#### Vendor Activity Report

Contractor will provide a monthly report of all activities transacted under the contract, which will include:

- Purchase Orders Processed
- Purchase Orders Fulfilled, including days to delivery
- New OEM's Provided
- Invoices Issues
- Invoices Paid
- Quotes Requested and Provided, including days to provide

#### Aged Receivable Report

Contractor will provide a monthly report of all past-due State invoices for payment under the contract, which will include:

- Invoice Number
- Purchase Order Number
- Invoice Issue Date
- Invoice Due Date
- Days Past Due
- Invoice Status

#### DOA Report/Warranty Report



Contractor will provide a monthly report of all products noted as Dead On Arrival (DOA), whose delivery was refused.

- SOM PO Number
- Product Description
- Manufacturer Name (Dell, HP, Lenovo, APC, Oracle, etc.)
- Model Number
- Product Category (Desktop, Laptop, Tablet, Server, etc)
- Serial Number (Vendor Unique Service Tag Number) from Replaced PC
- Warranty End Date
- New Serial Number
- Incident Date
- New Order Ship Date
- Problem Description

### **1.0.8.3 Asset Report**

The Contractor will transmit a file that interfaces with the State's asset management system, Information Technology Asset Management (ITAM), and the State Data Center's Configuration Management Data Base process, for asset reporting at no additional cost to the State.

#### **1.0.8.3.1 Hardware Asset Report**

- Ship To Location
- Address
- Service Tag
- State PO Number
- Agency
- Model
- Category (ex: Server, PC)
- Ship Date
- Agency Code
- Warranty/Maintenance Start Date
- Warranty/Maintenance End Date

#### **1.0.8.3.2 Software Asset Report**

- Ship To Location
- Address
- State PO Number
- Agency
- Title
- Category (ex: Perpetual, Subscription, Maintenance)
- License Metric (ex: User, Device, Processor)
- Quantity
- Software Key
- Ship Date
- Agency Code
- Term Start Date
- Term End Date
- License Cost

### **1.0.8.4 QUARTERLY AND ANNUAL REPORTS**

Contractor will report, within ten (10) days of the end of each quarter the following summary reports:

- Metrics and SLA Summary, showing all SLA's (for each unmet SLA, detailed explanation must be provided)
- Warranty and Maintenance Services Summary, including % of services that met SLA





- Quarterly Purchases Volume, including breakdown by Top 20 OEM's
- MiDEAL Members Purchase Volumes
- Lease Report, detailing initiation and expiration
- Warranty, Maintenance, & Subscription Expiration Report, up to six months in advance.
- State administrative fees collected and payable

The State may require new or different reports over the Contract's term. Contractor will work with the State to revise reports.

Contractor will provide the following annual reports

- SLA Report
- Active Service Engagements
- Annual Purchase Volumes
- Annual Lease Volumes
- MiDEAL members Purchase Volumes

#### **1.0.8.5 AD-HOC REPORTS**

Contractor will provide the ability to generate ad-hoc electronic reports using a report template or other easy to use query tool. Reports must be electronic in the State-requested format. These reports will be made available free of charge as often as needed by the State.

#### **1.0.8.6: REPORT DASHBOARD**

Contractor will provide an online dashboard through their Portal that will show the following reports, which shall be updated monthly:

- Metrics and SLA's
- Volume of End-user Devices ordered by category
- Volume of Servers ordered by manufacturer
- Program Activity Volume:
  - Number of orders
  - Number of quotes
  - Number of SOW's
  - Dollars Spent
  - Savings realized in relation to the proposed cost model

#### **1.0.9 CONTRACTOR STAFF, ROLES & RESPONSIBILITIES**

The Contractor is responsible for:

- Monitoring and proactively resolving issues with delivery dates, quality of products/services, mean time between failure after repairs, billing/invoicing, and other service level agreements.
- Notify the MMCC Program Manager within one business day when products are constrained or otherwise unavailable so that the Program Manager can work with the Contractor to find an appropriate means to resolve these issues.
- The Contractor, its subcontractors and subcontracted staff shall comply with all security standards and the security access requirements for individual State facilities.

The State may, at its sole discretion and expense, conduct a background check of any Contractor resource who is proposed to perform services under this Agreement at a State site, provided that the background check complies with all applicable local, state and federal laws. The State will notify Contractor whether the Resource has or has not passed the background check. No other information, including any detail about the checks performed or results obtained, will be provided to the Contractor. If the State notifies Contractor that the resource has not passed, Contractor will not assign that resource to perform the services. The State will treat any such information provided by, and/or obtained about, a resource as part the background check process as Confidential Information.

#### **1.0.9.1 Technical Support**



The State reserves the right to obtain OEM/Publisher technical support for all products and services on this contract.

#### 1.0.9.2 Key Personnel:

The State has identified the following as **key personnel** for this project:

1. Single Point of Contact (SPOC)
2. Contract Program Manager (CPM)
3. Contract Transition Manager

- **Single Point of Contact (SPOC)**

The Contractor will identify a SPOC for State and MIDEAL authorized personnel to call to obtain order and delivery statuses and to resolve issues (such as configurations, price, returns, inquiries, delivery status questions, etc.), billing/invoicing issues, warranty work, technical advice and remedial maintenance. Access to the SPOC will be provided through a toll free line to the State and MiDEAL Members. This SPOC will be available after business hours for issue escalation.

The State reserves the right to require a change in the current SPOC if the assigned SPOC is not, in the opinion of the State, adequately serving the needs of the State.

- **Contract Program Manager (CPM)**

The Contractor will identify a **Contract Program Manager (CPM)** to oversee all aspects of the Contract including the management of all vendor personnel. The CPM will work closely with the designated personnel from the State. The CPM will coordinate all of the activities of the Contractor personnel assigned to the project and create all reports required by State. The CPM to oversee all aspects of the statewide Contract for the commodity awarded, including the management of all customer representatives and personnel identified in Contractor's proposal. The CPM's responsibilities include, at a minimum:

- Manage Contractor's subcontractors
- Develop the initial project plan and schedule, and update as needed for the Contract implementation and administration of the Contract.
- Serve as the point person for all project issues
- Coordinate and oversee the day-to-day activities of the Contract team
- Assess and report project feedback and status
- Escalate issues, risks, and other concerns
- Review all deliverables and provide feedback
- Proactively propose/suggest options and alternatives for consideration
- Utilize change control procedures
- Prepare documents and materials

#### **Contract Transition Manager**

Contractor will identify a Contract Transition Manager to oversee all aspects of transition and implementation of the Contract as described in Section 1.0.12. The Contract Transition Manager will remain Key Personnel until successful transition to operations of all Contract activities. Likewise, Contractor will identify a Contract Transition Manager as Key Personnel to oversee all aspects of transition at Contract's end, as described in 1.0.12.

#### **Organizational Chart**

The Contractor will provide, and update when changed, an organizational chart indicating lines of authority for personnel involved in performance of this Contract and relationships of this staff to other programs or functions of the firm. This chart must also show lines of authority to the next senior level of management and indicate who within the firm will have prime responsibility and final authority for the work. When changes occur to the organizational structure an updated organizational chart must be sent to the DTMB Buyer and the DTMB Program Manager within 2 weeks.

#### **Contractor Identified Key Personnel**



Single Point of Contact	Contract Program Manager	Contract Transition Manager
<p><i>Mike Musser</i>                      120 S. Riverside                      Chicago, IL 60606  <a href="mailto:MMCC@cdwg.com">MMCC@cdwg.com</a>                      866-339-6942</p>	<p><i>Jumana DiHu</i>                      120 S. Riverside                      Chicago, IL 60606  <a href="mailto:jumdiHu@cdwg.com">jumdiHu@cdwg.com</a>                      312-705-9437</p>	<p><i>Joseph Old</i>                      300 S. Washington Square, Suite 200                      Lansing, MI 48933  <a href="mailto:Joe.Old@dewpoint.com">Joe.Old@dewpoint.com</a>                      810-625-6873</p>

**1.0.10 ROLES & RESPONSIBILITIES OF THE STATE**

State will assign a Program Manager or designee as a single point of contact for all communications. The Program Manager or designee will:

- Serve as the State’s Point of Contact between the Contractor and all other individuals participating in this Contract.
- Review and approve Contract product and support offerings including service levels, delivery times, performance metrics, cost basis and price.
- Act as the authority for determining compliance with SLA’s.

**State Michigan Master Computing Program Manager:**

Chad Hardin  
 517-241-7114  
 Hardinc1@michigan.gov

**1.0.11 CONTRACT PROGRAM IMPLEMENTATION**

The Contractor will provide sufficient staff that will have explicit responsibility for the administration of this Contract along with responsibility for planning all Contract transition start up activities, day-to-day Contract processes, and the subsequent transitional activities at the end of this Contract.

**1.0.12 TRANSITION PLAN AT THE END OF THE CONTRACT**

Along with all requirements and responsibilities specified in Section 24 of the Contract Terms and Conditions, Contractor will provide:

- **Transition Plan.** The Contractor will work together with the State and/or a Third Party Provider to develop a transition plan (the “Transition Plan”) setting forth the respective tasks to be accomplished by each Party in connection with the Transition and a schedule pursuant to which such tasks are to be completed. The Contractor will also participate in the execution of the Transition Plan by performing tasks mutually agreed upon in the development of the Transition Plan.
- **Knowledgeable Personnel.** The Contractor will make available to the State or the Third Party Provider knowledgeable personnel familiar with the operational processes and procedures used to develop products and services to the State.
- **Single Point of Contact.** The Contractor will maintain a Single Point of Contact (SPOC) for the State after termination of the Contract until all product and service obligations have expired.

**1.0.13 CONTRACT PERFORMANCE**

**1.0.13.1 METRICS**

The Contractor and the State of Michigan will establish procedures to manage all the service providers to be used under this contract. The State and the Contractor will monitor performance throughout the course of this Contract.

The contractor will monitor the performance and coverage of all warranty and maintenance services. In addition to monitoring of repair cases, the Contractor will meet regularly with service providers to discuss



performance metrics, issues affecting the industry or clients, new initiatives, and new innovations in technology. The primary focus is on making sure service commitments are met or exceeded.

Contractor will provide the Services according to the metrics detailed below; based on the awarded module(s). Metrics will be completed with the following operational considerations:

I: Service Metric #	II: Service	III: State Minimum Metric
A1	PC Delivery, No installation (hardware module)	10 business days, aggregate of all line item units delivered
A2	PC Delivery, with installation (hardware module)	15 business days, aggregate of all line item units delivered
A3	Commodity Server Delivery (hardware module)	15 business days, aggregate of all line item units delivered
A4	Custom-configured Server Delivery (hardware module)	20 business days, aggregate of all line item units delivered
A5	Software Delivery (software module)	10 business days, inclusive of all line item units delivered
A6	Non-Server Quote Delivery (all modules)	3 business days from request
A7	Server Quote Delivery (hardware module)	5 business days from request
A8	Engagement Statement of Work (all modules)	10 business days from request
A9	PC Warranty & Maintenance (hardware module)	Next business-day response
A10	Server Onsite Warranty & Maintenance: critical (hardware module)	2-hour response
A11	Server Onsite Warranty & Maintenance: high (hardware module)	4-hour response
A12	Server Onsite Warranty & Maintenance: standard (hardware module)	Next business-day response

**1.0.13.2 SERVICE LEVEL AGREEMENTS AND LIQUIDATED DAMAGES**

Contractor will report on a quarterly basis on all SLA’s calculated from service metrics based on the awarded module(s), which are defined below.

The Contractor acknowledges that late or improper completion of the Services will cause loss and damage to the State, and that it would be impracticable and extremely difficult to determine the actual damage sustained by the State as a result. If there is late or improper completion of the Services, the State is entitled to collect liquidated damages in the amounts designated for the following cases:

- Missed Service Level Agreements will be assessed the amounts detailed in Table 1.0.13.2-A below.
- Unauthorized Removal of Key Personnel will be assessed as detailed in the Contract Terms and Conditions Section 7: Performance of Services.

In the event the Contract is terminated, the State will be entitled to collect liquidated damages. These amounts are not intended to be a penalty.

I: Service Metric#	II: Service	III: Quarterly SLA (% of purchase orders)	IV: Assessed LD
A1	PC Delivery, No installation (hardware module)	95%	10% of order's late line item cost
A2	PC Delivery, with installation (hardware module)	95%	10% of order's late line item cost
A3	Commodity Server Delivery (hardware module)	95%	10% of order's late line item cost
A4	Custom-configured Server Delivery (hardware module)	95%	10% of order's late line item cost



I: Service Metric#	II: Service	III: Quarterly SLA (% of purchase orders)	IV: Assessed LD
A5	Software Delivery (software module)	95%	10% of order's late line item cost
A9	PC Warranty & Maintenance (hardware module)	95%	\$25 per late response
A10	Server Warranty & Maintenance: critical (hardware module)	95%	\$1,000 per late response
A11	Server Warranty & Maintenance: high (hardware module)	95%	\$100 per late response
A12	Server Warranty & Maintenance: standard (hardware module)	95%	\$25 per late response

**1.0.14 PRICING AND INVOICING REQUIREMENTS**

Attached as Schedule B is Contractor product pricing to the State, based on a minimum percentage discount off a verifiable price index (VPI) which will be used to establish a product's not-to-exceed price to the State. Contractor may (and is encouraged) to provide additional discounts. Contractor must notify the MMCC Program Manager of any price increases before the change is made. The State reserves the right to negotiate individual transaction and agreement pricing, as it deems in its best interests. The State reserves the right to establish and use other contracts, as it deems in its best interests.

Contractor will be paid for services as identified in the State's issued Purchase Order. Payments for installation, integration, and implementation services will be set according to an approved Engagement Statement of Work.

Contractor shall invoice the State in order to receive payment. Invoices will be sent to the State address or email account as noted on the purchase order. The State will pay Contractor by EFT.

Contractor will provide the following data as part of all invoices, the absence whereof shall qualify as grounds for the State to reject the invoice for correction and resubmission:

- Invoice Number (unique)
- Invoice Date
- State Purchase Order Number
- Bill-To Address
- Ship-To Address
- Payment Terms
- Commodity/Service Name
- Description
- Unit/Deliverable Price
- Total Price
- Invoice Subtotal
- Shipping and Handling (if applicable)
- Total
- Invoice Payment Due Date
- Period of Service, if applicable





Schedule A  
Exhibit 2 – Hardware Module

## 1.1 HARDWARE

### 1.1.1 PURPOSE

Contractor has been selected to provide the State a broad range of Hardware products and services as listed in this module. These include core hardware and optional hardware, as defined below.

The State does not guarantee it will buy any specific item or any total amount.

### 1.1.2 BACKGROUND

Currently, the State has standardized on specific devices for End-user hardware and servers. The State reviews manufacturer and product standards on an annual basis.

### 1.1.3 IN SCOPE

Contractor, at the State's request, will provide:

- End-User Devices, servers, racking infrastructure, storage, back-up and associated peripherals including any bundled software.
- Assessment, integration, installation, and implementation services in support of the commodities purchased through the resulting Contract.

Warranty and maintenance services will be provided on all equipment that is offered and purchased or leased through this Contract. Delivery, support, warranty and maintenance may be provided by the Contractor using subcontractors. The Contractor will be responsible for the timeliness and quality of all services provided by individual subcontractors.

The Contractor will deliver to locations requested by the State.

Warranty and Maintenance purchased prior to the effective date of this Contract will remain in force with the manufacturer until the end of the service period. Only new services will be purchased through this Contract.

### 1.1.4 RESERVATION OF RIGHTS

The State reserves the right to purchase products outside of the Contract based on its sole determination of best value.

### 1.1.5 REQUIREMENTS/DELIVERABLES

If installation services are required, all equipment delivered will be fully configured, bootable and ready to operate.

#### 1.1.5.1 END-USER DEVICES

The State identifies standards for desktop, laptop and tablet systems bundles/solutions. These are typically reviewed on a yearly basis or as market conditions dictate. The State intends to have End-User Device solutions in place for a minimum of six months with a maximum of 2 configuration changes per year.

Contractor will meet the following requirements:

1. Equipment that has not yet entered the production phase of the manufacturer may not be included in the Contractor portal.
2. The equipment must include associated hardware and OEM software that will allow the operation of the product as a stand-alone unit, a networked unit in a local area network (LAN), a networked unit in a wide area network (WAN), wireless applications or any combination of the four.
3. Where the State does not require an OEM operating system software license, the State expects a decrease in the packaged unit price of the END-USER DEVICE.



4. Contractor will furnish the models, configurations and price on the following desktop, laptop, and tablet products provided in the Hardware Pricing, Schedule B, Exhibit 1; Standard products and pricing for Standard products will be updated periodically through the Program as requested by the Program Manager.
  - a. Contractor should provide any additional discounts available if the equipment is bundled such as a desktop purchased with a standard monitor.
  - b. Contractor should provide any additional discounts available for quantities obtained.
5. Non-Standard Products - In addition to the desktop and laptop models listed in Hardware Pricing, Schedule B, Exhibit 1, Contractor will be required to furnish the complete product line of End-user devices.
6. As part of on-going product refresh, Contractor will provide new product models of equivalent or superior function relevant to end of life models. Contractor will inform the MMCP Program Manager of any product refresh in advance. The Program Manager will advise Contractor of the State's decision on configuration and pricing.
7. Contractor will provide warranty coverage for all End-user devices purchased, or leased, per the following requirements:
  - a. Desktops, laptops, and tablets shall be a minimum of onsite, four (4)-years parts and labor and expense warranty, with next business day repair, and must be included in the purchase price of all equipment. All repairs and component replacements shall be performed by the Warranty Provider.
  - b. The Contractor will provide manufacturer-certified systems engineers, in adequate numbers, to provide support for the State's infrastructure for warranty service and any support required. These engineers must be able to be reached by phone via the toll-free number for problem resolution, and should be able to be onsite within the time frame indicated under the warranty or maintenance service purchased.
  - c. It will be the responsibility of the Contractor to complete warranty requests and to notify the State of service completion, either directly or through a third party provider. Contractor or a designated subcontractor must be a manufacturer's authorized service representative for all equipment on the Contract.
  - d. The Contractor will serve as an agent for the State in obtaining the best (in terms of coverage, pricing, and duration) warranties available and work with manufacturers so that warranty commitments are met.
  - e. All standard warranty costs, excluding any upgrades or extensions, are to be included with the equipment prices.
  - f. State offices are dispersed geographically throughout Michigan. Contractor will provide warranty and/or maintenance services at all State locations, including the Upper Peninsula and State Correctional Facilities.
  - g. Principle Period of Maintenance (PPM) will be the same hours as the State's normal working hours (currently Monday through Friday, 8:00 a.m. to 5:00 p.m., excepting State-observed holidays). The principle period of maintenance hours may be changed upon 20 business days written notice by mutual agreement (between the individual State agency and the Contractor), except that the Contractor shall make every reasonable effort to change its schedule in a shorter period of time, if requested by the State.
  - h. All defective items must be replaced at no additional cost to the State. All equipment dead on arrivals (DOAs) will be replaced with new equipment and treated as a Second Day Rush order delivery at no additional cost to the State or, at the State's option, Contractor will repair the equipment per the terms of the equipment warranty.

The DTMB Client Service Center (CSC) will determine to their best ability the root cause of the failure. The CSC will then notify the Contractor, who will then take ownership of the cases and provide the CSC with a tracking number. The Contractor will include the DTMB tracking number in its information. The Contractor



will maintain status information within its case log and notify the CSC using the DTMB tracking number when repair is completed.

Equipment that cannot be repaired within the response time frame shall be replaced. Replacement equipment provided by Contractor must be from the same manufacturer (unless the device is no longer manufactured) and equal to or better than the original equipment being replaced (e.g. higher resolution monitor, or larger hard drive) at no additional cost to the State.

Defective hard drives that have been in use by the State, regardless of warranty or maintenance status, will not be returned to the manufacturer or the Contractor at completion of replacement due to security issues. DTMB will provide, at Contract signing, the procedure for handling defective drives.

MIDEAL End-User Device Purchases

Contractor will be required to furnish models available to the State as well as other desktop manufacturers to MiDEAL members as long as those manufacturers are appropriate to this Contract.

**1.1.5.2 PERIPHERALS**

Peripherals include but are not limited to monitors, storage, keyboards, uninterruptible power supplies (UPS), optical drives, mice, keyboards, multi-media projectors, memory, speakers, hard drives, GPS receivers, digital cameras, CAD equipment, and Adaptive/Assistive technology devices.

Contractor will furnish peripherals to support the desktop, laptop, and tablet manufacturer models that are offered throughout the Contract’s term.

Peripherals will be covered under the manufacturer’s warranty.

**1.1.5.3 END-USER DEVICE ASSET TAGGING**

Each END-USER DEVICE delivered to the State, will be tagged with the following information:

	State of Michigan	
Bar Code		“Service Tag”
Service Tag #		Serial Number
Model #		Model No. per manufacturer
Client Service Center #		(517) 241-9700
Toll Free #		(800) 968-2644
Warranty End Date		mm/dd/yyyy
MAC Address		Device’s MAC Address

Service Tag # = Serial Number

Model = Model number per manufacturer.

Phone Numbers furnished by State and constant on all tags.

An example of an existing State asset tag follows here:





#### **1.1.5.4 STATE HARD DRIVE IMAGE**

Contractor or their original equipment manufacturer (OEM) will load State-approved images to any requested system hard drive during the factory build process. Contractor will provide the following services:

- Receive, install and manage State-supplied images
- Provide technical resources to support DTMB, test, identify and resolve problems.

Contractor will furnish a device drivers and utilities as needed to perform image development.

System images will be created and maintained by DTMB and uploaded to manufacturer. These images shall not be changed or altered in any fashion except in instances of DTMB approval.

#### **1.1.5.5 EVALUATIONS UNITS**

Contractor will provide DTMB evaluation units of new computer models as they come into existence, without initial cost, for analysis and image adjustment, for a time frame not less than 60 business days. DTMB will return or take an option to purchase the device at the end of the evaluation period.

#### **1.1.5.6 SERVERS**

The State determines standard Server brands and technologies it uses according to its Technology Roadmap.

##### **1.1.5.6.1 CORE SERVER BRANDS**

The State has defined its Core Server Brands. Contractor will provide applicable hardware, maintenance, and onsite field engineer support for Dell, HP, or IBM servers. Additionally, Contractor will provide hardware, maintenance, and support for APC racks.

Contractor will provide the following server warranty options:

- Onsite 2 hour response; 7x24 coverage with 6-hour resolution
- Onsite 4-hour response; 7X24 coverage
- Onsite 8-hour response; 7x24 coverage
- Next Business Day Onsite

At the State's request, the Contractor must furnish manufacturer extended warranties (beyond the originally purchased warranty), warranty upgrades, and time and materials warranty support through the equipment manufacturers or third party providers. Manufacturer's extended warranty service may be purchased in conjunction with or separately at any time. Only Contractors authorized by the manufacturer or distributor of the equipment may provide manufacturer's warranty Services. Extended warranties shall be inclusive of the services provided under the State's normal warranty process.

Defective hard drives that have been in use by the State, regardless of warranty or maintenance status, will not be returned to the manufacturer or the Contractor at completion of replacement due to security issues. DTMB will provide, at Contract signing, the procedure for handling defective drives.

##### **1.1.5.6.2 OPTIONAL SERVER BRANDS**

The State has existing contracts for Cisco and Oracle Servers and Network Storage. The State is interested in options Contractor may provide to procure these solutions.

###### **1.1.5.6.2.1 CISCO SERVERS**

The State may procure Cisco servers, along with maintenance, access to onsite field engineer support, and installation, integration, and implementation services.

###### **1.1.5.6.2.2 ORACLE SERVERS**

The State may procure Oracle servers, along with maintenance, access to onsite field engineer support, and installation, integration, and implementation services.



#### 1.1.5.6.2.3 LENOVO SERVERS

The State may procure Lenovo servers, along with maintenance, access to onsite field engineer support, and installation, integration, and implementation services..

#### 1.1.5.6.2.4 STORAGE SOLUTIONS

The State may procure storage solutions including but not limited to hardware, software, maintenance, support, and services; including but not limited to orchestration, fabric, storage, and backup/continuity.

#### 1.1.5.6.2.5 CUSTOMER-PREMISE TELECOMMUNICATIONS AND SECURITY SOLUTIONS

The State may procure customer-premise telecommunications and security solutions including maintenance, support, and services. Customer-premise telecommunications, security hardware and software, and associated services include but are not limited to; network routers and switches, network management hardware and software, warranty maintenance, pre-sales support, and installation, integration, and implementation services. IP video, IP telephony, and unified communications hardware and software are considered network components.

### 1.1.6 DISCRETIONARY HARDWARE

The State at its option and based on its determination of best value may procure other Hardware through the Contract. This will be effected through a quote process with final decision based on best value. Contractor will provide requested hardware, hardware maintenance, and support, if requested.

Hardware components or peripherals must also be available and may include, additional processors, server rack rails, memory, cables and power cords in varying lengths, extra hard drive units, tape storage backups drives, Network Attached Storage (NAS), direct attached storage (DAS) etc.

The State will have a need to acquire parts for server-based computing platforms already in place at the State, through this Contract. The Contractor must be able to provide these parts as needed during the term of the Contract at the percent off of list, or markup percentage as denoted on the cost model.

### 1.1.7 PRODUCT TECHNOLOGY ROADMAPS

Contractor will provide quarterly technology roadmap updates relevant to changes in products in use by the State. In particular, Contractor will provide six months' advance notice to the State on chipset changes or Product scheduled to go end of life (EOL).

### 1.1.8 HARDWARE ASSESSMENT, INSTALLATION, IMPLEMENTATION, AND INTEGRATION SERVICES

At the option of the State, through a Statement of Work, the State may purchase Installation, Implementation, and Integration service on fixed per-unit basis or as fixed deliverable price. Reimbursement for travel and expenses shall be factored into the cost.

Services will vary, based on the type of equipment being installed. Contractor will ensure the equipment will operate properly in the State's environment at the end of installation. Installation Services may include, but are not limited to:

A. End-User Computing Device Installation - Installation capabilities may include, but not be limited to:

1. Site Hardware Set-Up, which may include
  - a. Desk-side delivery
  - b. Unpack system
  - c. Save files from old systems by copying to server or media
  - d. Removal of old system
  - e. Wipe or remove hard drive for data destruction, as defined
  - f. Pack old system for Asset Recovery
  - g. Install system unit and any previously attached peripherals
  - h. Connect to network and test connection
  - i. Complete User login





- j. Set up and test printer connection
  - k. Initiate Software push
  - l. Confirm successful completion of all activities
- B. Solution training for State administrators and operators

### 1.1.9 DATA RECOVERY (OPTIONAL)

Contractor will provide data recovery services on end-user computing devices and servers.

### 1.1.10 ENVIRONMENTAL (GREEN) REQUIREMENTS

In compliance with the State's directive for energy efficiency, recycling, environmentally-sound disposal and low-toxicity materials. (See Executive Directive 2007-22 at [http://www.michigan.gov/formergovernors/0,4584,7-212-57648\\_36898-180298--,00.html](http://www.michigan.gov/formergovernors/0,4584,7-212-57648_36898-180298--,00.html)). Contractor shall, wherever applicable, provide products that comply with industry-wide standards.

The State requires that the devices be Energy Star compliant, be so labeled, and the Contractor will document, when required, the energy savings the State can expect to realize per year by implementing suggested devices. The devices must also be EPEAT rated, and the vendor must show that the devices they are suggesting for State of Michigan use are in the EPEAT registry. The devices must also minimize the amount of overhead needed during operation. This includes power consumption, heat, and air conditioning

1. Contractor will identify and offer power-state management tools.
2. Contractor will identify and offer a disposal program that ensures value is obtained for old equipment. Such programs may include recycling of the devices through refurbishment, redeploying the equipment in another jurisdiction and/or recycling of parts or materials of the equipment. This program must meet zero landfill requirements and provide for the secure disposal of computer data-storage components at either DoD-standard erasure level, or approved physical destruction of said components.
3. Contractor will offer products whose manufacturer offers a free packaging take-back program where the packaging material can be collected/returned to manufacturer or recycler for reuse or recycling at the State's option. As an option, Contractor may propose bulk packaging such as shipping an order in one pallet or container without individual packaging of equipment.

Contractor will provide products whose manufacturers provide a publicly available written corporate environmental policy consistent with the aspects of the policy requirements laid out in the ISO 14001 standard.

"ISO 14001" is the conformance standard within the family of ISO 14000 documents developed by the International Organization for Standardization (ISO) in Geneva, Switzerland. Similar in structure to the ISO 9000 quality management system standard, ISO 14001 outlines key requirements companies should comply with in order to operate in an environmentally responsible manner. Utilizing ISO 14001, companies can merge environmental programs into one coherent system to efficiently manage all environmental activities. In short, ISO 14001 provides organizations with a way to demonstrate to their customers that their environmental processes and impact are effectively managed, continually improving, and part of the corporate management system. For more information, please refer to [www.iso.org](http://www.iso.org).

### 1.1.11 CONTRACTOR VALUE ADDED SERVICES

Contractor proposed value added services are captured in Schedule C, Exhibit 1- Value Added Services for use by the Michigan Master Computer Program upon the request of the State's Program Manager so support the program activities and goals.



Schedule A  
Exhibit 3 – Software Module

## 1.2 LICENSED SOFTWARE

### 1.2.1 PURPOSE

Contractor will provide a broad range of Software products and services as listed in this module. These include Core Software, Discretionary Software, and Optional Software, as defined below

The total quantity of purchase of any individual item on a contract is not known. The State does not guarantee it will buy any specific item or any total amount.

### 1.2.2 BACKGROUND

The State of Michigan purchases Software licenses and renewable maintenance and support as needed. The State establishes the best portfolio of contracts to provide Software.

### 1.2.3 IN SCOPE

Contractor, at the State's request, will provide Licensed Software to the State. Licensed Software is hereby defined as:

- Commercial off the Shelf (COTS), pre-packaged software , which may be installed on end-user devices, servers, or other computing equipment
- Software maintenance, which is defined herein as related standard commercial Software Publisher's software support services, which may come bundled with the software license or sold separately. Software support services are dictated by the Software Publisher, and may often include bug fixes, error-corrective services, update, and new versions that are improvements, extensions, or other changes that are logical improvements or extensions of the original product. It may also include software documentation or access to remote technical support.
- Pre-configured, pre-integrated Software appliances.

Contractor's services to be provided to the State will include:

- Quote Licensed Software
- Assistance with renewal of Licensed Software subscriptions and software maintenance

Contractor will provide the following services

- Onsite software field technical support and security incident response services at the State's discretion
- Assessment, Installation, Integration, and Implementation services (see Section 1.2.6) at the State's discretion for specific Software engagements, which will be paid based on defined deliverables found on the State's Engagement Statement of Work as agreed to between the State and Contractor/Subcontractor to support software purchased through the Contract.

### 1.2.4 OUT OF SCOPE

- Software services for development, customization, modifications, and/or creation of enhancements are not within the scope of this Contract.
- Enhancements altering the functionality, and/or adding new functions not related to a maintenance modification or a commercial, generally available Software release are not within the scope of the Contract.

The State reserves the right to purchase Licensed Software outside of the Contract when it determines that an items' pricing is not competitive with the open market.

New products and services may be added to the Contract as requested by the DTMB Program Manager.

### 1.2.5 SOFTWARE REQUIREMENTS



### **1.2.5.1 SOFTWARE DELIVERY AND LICENSING**

The Contractor will supply the State with the Publisher's Licensed Software in any media the Publisher makes available and will provide the media requested by the State. If Contractor is unable to obtain the commitment to deliver the software within the applicable delivery metric after receipt of order, Contractor will advise DTMB of the non-delivery. DTMB will determine, in consultation with Contractor, the method of resolution of the request.

The Contractor will ensure that the State shall be the designated Licensee and owner of all entitlements for all purchases made.

### **1.2.5.2 PUBLISHER SOFTWARE LICENSE AGREEMENTS**

The State will enter into software license agreements with specific publishers when those programs are in the best interest of the State. Contractor will facilitate and support both existing and new Software license agreements.

Contractor will assist the State in identifying software publishers that may be receptive to volume purchasing agreements, and recommend additional such programs that may be advantageous to the State.

The State will be contractually responsible for the agreements, while the Contractor will administer the Agreement programs and serve as the program reseller under the requirements of the specific program.

### **1.2.5.3 CORE SOFTWARE**

Core software are those State-standard brands for which this Contract will become the State's primary procurement vehicle. The State-standard brands will change over time as the State sets new standards. Contractor will work vendors identified to provide new State-standard brands. The State has designated the following Core Software brands as critical to operations and data security:

1. Adobe
2. BMC
3. Citrix
4. HP
5. Microsoft
6. Symantec
7. VMWare

Specific requirements for providing Core Software are detailed in the sub-sections below.

#### **1.2.5.3.1 ADOBE SOFTWARE**

Contractor will provide access to and support the State's existing Adobe agreements for Licensed Software, and, at the State's option, assist in the establishment and renewal of new agreements.

#### **1.2.5.3.2 BMC SOFTWARE**

Contractor will provide access to licensing and support of BMC Software, and, at the State's option, assist in the establishment and renewal of new agreements.

#### **1.2.5.3.3 CITRIX SOFTWARE**

Contractor will provide access to and support the State's existing Citrix agreements for Licensed Software, and, at the State's option, assist in the establishment and renewal of new agreements.

#### **1.2.5.3.4 Hewlett Packard Solutions Software**

Contractor will provide access to licensing support for Hewlett Packard Solutions Software, and, at the State's option, assist in the establishment and renewal of new agreements.

#### **1.2.5.3.5 MICROSOFT SOFTWARE**

Contractor will provide access to and support the State's existing Microsoft Agreements, and, at the State's option, assist in the establishment and renewal of new agreements.



#### **1.2.5.3.6 SYMANTEC SOFTWARE**

Contractor will provide access to and support the State's existing Symantec agreement for Licensed Software, and, at the State's option, assist in the establishment and renewal of new agreements.

#### **1.2.5.3.7 VMWARE SOFTWARE**

Contractor will provide access to Software license, including federal sku# products, and support for VMWare Software, and, at the State's options, assist in the establishment and renewal of new agreements.

#### **1.2.5.4 DISCRETIONARY SOFTWARE**

The State at its option and based on its determination of best value may procure other Licensed Software titles through the Contract. Contractor will provide requested software with value-add, including renewals of software maintenance and support.

#### **1.2.5.5 OPTIONAL SOFTWARE**

The State has certain core software brands that are currently procured through direct contracts with the Software Publishers. The State wishes to determine whether a VAR contract vehicle may provide cost-competitive pricing for these products, relative to the direct contracts. The State reserves the right to include Optional Software, either in award of this Contract or as result of future negotiations, on a brand-by-brand basis.

##### **1.2.5.5.1 CA SOFTWARE**

Contractor may provide access to CA software licenses, maintenance, support services, and training to perform server operation monitoring.

##### **1.2.5.5.2 COMPUWARE/DYNATRACE**

Contractor may provide access to Compuware/Dynatrace software licenses, maintenance, support services, and training.

##### **1.2.5.5.3 IBM SOFTWARE**

Contractor may provide access to IBM software licenses, maintenance, support services, and training.

##### **1.2.5.5.4 NOVELL SOFTWARE**

Contractor may provide access to Novell software licenses, maintenance, support services, and training.

##### **1.2.5.5.5 ORACLE SOFTWARE**

Contractor may provide access to Oracle software licenses, maintenance, support services, and training.

##### **1.2.5.5.6 SAP SOFTWARE**

Contractor may provide access to SAP software licenses, maintenance, support services, and training.

#### **1.2.6 SOFTWARE ASSESSMENT, IMPLEMENTATION, INTEGRATION, INSTALLATION SERVICES**

Contractor will provide assessment, implementation, integration, and installation services at the State's option, for specific, deliverable-based service engagements, including solution training for State administrators and operators. Contractor will supply trained, qualified personnel on a case-by-case basis, who will provide these services, based on the State's needs. The State will provide an Engagement Statement of Work to the Contract which will be managed, provided to Contractor, and updated by the DTMB Program Manager.



Schedule B - Pricing  
Exhibit 1 - Hardware Price Tables

1. Core End-User Device Configurations

- a. Pricing will be determined by the annual competitive bidding process between vendors who have been selected to source hardware to the State through the Michigan Master Computing Program. If the primary vendor selected during the annual competitive bidding process cannot provide all products a secondary vendor will be selected to provide the remaining products. This will be added as a change notice to each contract in the year awarded.
- b. Not to Exceed Prices based on Contractor's verifiable price index (VPI) for remainder of calendar 2016 and into calendar year 2017 until bidding process is opened for next annual sourcing (anticipated to be January 2017).
- c. The price lists and products listed are subject to change over time; standard products will be changed in accordance with the State standards kept and updated by DTMB.
  - i. Hardware

Line Item	MFR	Hardware Item	Contractor's Minimum % Discount to VPI Cost
1	Dell	Dell-SFF-wo-Monitor	14.0%
2	Dell	Dell-SFF-w-Monitor	13.9%
3	Dell	Dell Micro-wo-Monitor	14.1%
4	Dell	Dell Micro-w-Monitor	14.0%
5	Dell	Dell CAD-GIS	19.1%
6	Dell	14" Laptop wo Port Rep	19.1%
7	Dell	14" Laptop w Port Rep	19.0%
8	Dell	15" Laptop wo Port Rep	19.1%
9	Dell	15" Laptop w Port Rep	19.1%
10	Dell	CAD GIS Laptop	16.5%
11	Dell	Dell Rugged Extreme	7.6%
12	Dell	Dell Latitude 14 Rugged	19.1%
13	Dell	Dell Latitude 14 Rugged w Port Rep	19.1%
14	Dell	Dell Rugged Tablet	7.6%
15	Dell	Dell Rugged Tablet w Dock	7.6%
16	Dell	Dell 2 in 1 (7275)	7.6%
17	Dell	Dell 7370 Laptop	7.6%
18	Dell	Dell Ultrabook 7250	19.1%
19	Microsoft	Surface Pro 4	4.9%
20	Lenovo	Lenovo X1 Yoga	0.5%
21	Lenovo	Lenovo X1 Tablet	1.0%





ii. Accessories

Part Number	Commodity Description and Part Number	Contractor's Minimum % Discount to VPI Cost*	Comments
469-4546	DELL 90W AUTO/AIR DC TRAVEL ADAPTER (469-4546)	12%	
331-6304	Dell E-series E/port Plus Advanced Port Replicator (331-6304)	2%	
331-6307	Dell E-series E/port Simple Port Replicator (331-6307)	2%	
330-0875	Dell CRT Monitor Stand (330-0875)	6%	
A0390912	Targus Rolling Laptop backpack style carrying case - fits laptops of screen sizes up to 15.4" (A0390912)	10%	
330-9456	Dell MS111 USB Optical Mouse OptiPlex and Fixed Precision (330-9456)	22%	
570-AANS	Dell Wireless Mouse - WM324 (570-AANS)	22%	
331-9653	Dell Business Multimedia Keyboard (331-9653)	22%	
429-AAUX	Dell External DVD/RW (429-AAUX)	5%	
A4051230	Dell Wireless Desktop MK320 Keyboard/Mouse Bundle(A4051230)	21%	
A1586557	Dell Dual-Monitor Stand Flat-Panels Only (A1586557)	6%	
12000 mAh)(451-BBLZ	Dell Power Companion (12000 mAh)(451-BBLZ)	3%	
18000 mAh)(451-BBKV	Dell Power Companion (18000 mAh)(451-BBKV)	2%	
450-AEVM	Dell Thunderbolt Dock-240W (Required for 7370 & 7510)	2%	
390 Watt BE650G Back UPS	APC 390 Watt BE650G Back UPS	12%	
C920	Logitech Web Camera HD Pro C920	6%	
460-BBLR	Nylon Carrying Case	17%	
537-BBCC	Dell Rugged Desk Dock, Customer-Install (537-BBCC)	2%	
A8007905	Vehicle Dock DEVMT,DOCKST,DELL,LAT12-14,SP, (A8007905)	2%	
859-BBBC	Dell 23" Touch Monitor P2314T	3%	
320-9794	320-9794 Dell 24 Monitor - P2414H	2%	
983-7873	983-7873 4th Year Limited Warranty Extension, Monitor, Advanced Exchange	0%	included in part# 320-9794
B00E7W1UFQ	Satechi 3-Port Portable USB 3.0 Hub and Ethernet LAN Network Adapter for Windows Mac and Linux		Not Available in Distribution
4XA0E97775	ULTRASLIM USB DVD BURNER THINKPAD	6%	



45J7915	DISPLAYPORT TO SINGLE-LINK DVI-D MONITOR CABLE	33%	
4X40E77324	PROFESSIONAL BACKPACK	17%	
470-ABQN	Dell Adapter - USB-C to HDMI/VGA/Ethernet/USB 3.0	12%	
4X90E51405	THINKPAD USB3.0 TO ETHERNET ADAPT	12%	
4X50L08495	BATT_BO TP X1 PRODUCTIVITY MODULE	0%	Included in X1 Tablet not sold separately b/c federal law
40A40090US	Lenovo ThinkPad OneLink+ Dock - Port replicator - 90 Watt - for ThinkPad Yoga 260 20FD, 20FE, 20GS	2%	
R9Q-00001	Microsoft Surface Pro 4 Type Cover - Keyboard - English - North American layout - black - commercial	17%	
Q5N-00001	Microsoft Surface 65W Power Supply - Power adapter - 65 Watt - commercial - for Surface Book	17%	
320-9704	Dell P2213 22" Monitor with HAS 22.0 Inch VIS Widescreen VGA/DVI/DC/DP	2%	
983-7873	983-7873 4th Year Limited Warranty Extension, Monitor, Advanced Exchange	0%	included in part# 320-9704
4X40E77325	Case_BO Professional Slim Top Load	17%	
4X40E48910	ThinkPad 14" Sleeve SBR Neoprene	18%	
4X80K32539	Lenovo ThinkPad Pen Pro-X1 Yoga	18%	
0B46994	ThinkPad 90W AC Adapter	4%	
4X20E75131	Lenovo USB-C 45W AC Adapter	12%	

2. Server Configurations - Pricing will be determined on a per-purchase competitive bidding process between vendors who have been selected to source hardware to the State through the Michigan Master Computing Program. Below are guaranteed minimum discounts available to the State:

Line Item	MFR	Hardware Item	Contractor's Minimum % Discount to VPI Cost	Comments
1	IBM	P750 (or equivalent)	10.8%	CDW-G recommends the replacement model: IBM S8284-22a.
2	HP	DL380 (or equivalent)	10.0%	
3	Dell	PowerEdge R820 (or equivalent)	10.0%	
4	APC	APC NetShelter Rack (or equivalent)	8.75%	
* Bidders VPI cost is CDWG Advertised which is publically available at <a href="http://www.cdwg.com">www.cdwg.com</a>				
** Equivalent products are the newest models or an updated product line that replaced a current product line used by the State.				



3. Discretionary Hardware - Pricing will be determined on a per-purchase competitive bidding process between vendors who have been selected to source hardware to the State through the Michigan Master Computing Program. Below are guaranteed minimum discounts available to the State:

Transaction Cost Band	Contractor's Minimum % Discount to VPI Cost	Comments
Less than \$10,000	5%	CDW-G will provide our entire hardware catalog based on this minimum discount.
\$10,000 - less than \$25,000	5%	CDW-G will provide our entire hardware catalog based on this minimum discount.
\$25,000 - less than \$250,000	5%	CDW-G will provide our entire hardware catalog based on this minimum discount.
\$250,000 - less than \$2.5 million	5%	CDW-G will provide our entire hardware catalog based on this minimum discount.

4. Optional Server Brands - Pricing will be determined on a per-purchase competitive bidding process between vendors who have been selected to source hardware to the State through the Michigan Master Computing Program. Below are guaranteed minimum discounts available to the State:

Publisher	Minimum % Discount to Bidder's VPI Price on Purchases less than \$500,000	Minimum % Discount to Bidder's VPI Price on Purchases \$500,000 or greater	Estimated Cost to renew FY2017 Hardware Maintenance/Support	Additional % Discount to Other Titles for Inclusion in Contract	Comments
Cisco	58% off hardware, 17% off 3yr Smartnet	58% off hardware, 17% off 3yr Smartnet	Cost will depend on Specific BOMs	0%	Applies to Cisco UCS line only
Oracle	25.0%	25.0%	Cost will depend on Specific BOMs	0%	
Lenovo	5.0%	5.0%	Cost will depend on Specific BOMs	0%	

5. Storage Solutions - Pricing will be determined on a per-purchase competitive bidding process between vendors who have been selected to source hardware to the State through the Michigan Master Computing Program or through other State contracts specifically to storage solutions. Below are guaranteed minimum discounts available to the State:

- a. EMC

EMC Price Offer*		
Category	Product Categories	Contract Discount
A	Enterprise Hardware: Symmetrix, Celerra, Vplex	60%
B	Mid Tier Hardware: Clariion, Celerra, Centera, Disk Library, Appliances, Atmos	41%
C	Enterprise HW: Connectrix Family	53%
D1	Enterprise Platform Software: Symmetrix, Celerra, Connectrix Family	41%
D2	Mid Tier Platform Software: Clariion, Centera, Recoverpoint	41%
D3	Multi Platform SW : Xtender, Ionix, Avamar Networker Families	41%
DE	Enterprise Hardware/Software Data Domain	23%



DH	Mid-Tier Hardware/Software Data Domain	32%
DM	Entry Level Hardware/Software Data Domain	32%
E	EMC 3rd party Hardware and Software Switches	41%
I	Education Services/ Training	10%
F1	PS - Applied to EMC Professional Services Packaged Solutions	10%
UE	VNX HW & SW (Entry Level)	23%
UM-S & UM-H	Unified Mid Tier, VNX HW & SW	25%
PH	High-End Systems (BRS: Data Domain, Disk Library)	32%
PM	Midrange Systems (BRS: Data Domain, Avamar, Atmos, Disk Library)	32%
PE	Entry Systems (BRS: Data Domain)	23%
EN-H	Hardware VMAX - VMAX 10K/20K/40K	41%
EN-S	Software VMAX - VMAX 10K/20K/40K	41%
F2	Services - Residencies	10%
J	Server Flash, VFCache, AX/NX, Insignia	22%

\* CDW•G's Price offer for EMC will be based as a discount by product category from EMC's Retail Pricelist, which is publically available at [www.EMC.com](http://www.EMC.com)

b. NetApp

NetAPP Price offer*		
NetApp Pricing Category	Description	MINIMUM PERCENT DISCOUNT FROM MSRP
A	HW Controllers	17.1%
B	HW Disk/Misc.	17.1%
C	Third Party OEM Switches	3%
D	FAS HW	9%
E	ON Command SW	17%
J	SW	17%
K	FAS SW	9%
L	HW Controllers	17%
M	HW Disk/Misc	15%
N	SW	15%
P	PS	16%
S	Maint @POS	16%
T	Maint @POS	15%
V	Maint Renewal	15%
W	Maint Renewal	15%

\* CDW•G's Price offer for NetApp will be the minimum discount by product category indicated above calculated from NetApp's Retail pricelist, which is publically available at [www.Netapp.com](http://www.Netapp.com)



c. Other Storage Solutions

Additional Storage Brands available from CDW•G	Minimum discount from CDW-G VPI: www.cdwg.com
3WARE	10%
ADAPTEC	10%
ADDONICS	10%
ADVANCED MEDIA SERVICES	10%
ALERA TECHNOLOGIES	10%
ALURATEK	10%
AMC OPTICS	10%
APPLE	10%
APRICORN	10%
ARECA	10%
ASUS	10%
ATTO TECHNOLOGY	10%
AVOCENT	10%
AXIOM	10%
AXIS COMMUNICATIONS	10%
BARRACUDA NETWORKS	10%
BELKIN	10%
BLACK BOX	10%
BROCADE	10%
BUFFALO TECHNOLOGIES	10%
BUSLINK	10%
BYTECC	10%
CHENBRO	10%
CMS PERIPHERALS	10%
Compellent	10%
CORSAIR	10%
CRU	10%
CRUCIAL TECHNOLOGY	10%
DATALOCKER	10%
Dell	10%
D-LINK	10%
DOT HILL SYSTEMS	10%
DROBO	10%
EDGE TECH	10%
EDP	10%
EL GATO	10%
EMULEX NETWORK SYSTEMS	10%
ENHANCE-TECH	10%
ENVOY DATA	10%
EPSON	10%
EVGA	10%
EXAGRID	10%
EXTREME NETWORKS	10%
FANTOM MICRONET	10%
FIREEYE	10%
FUJIFILM	10%
FUJITSU	10%
FUSION IO	10%
GETAC	10%
G-TECH	10%





HIGHPOINT TECHNOLOGIES	10%
HITACHI	10%
HITACHI DATA SYSTEMS	10%
IMATION	10%
INFORTREND	10%
INNOVERA	10%
INTEL	10%
INTELLIGENT COMPUTER SOLUTIONS	10%
IOGEAR	10%
IOMAGIC	10%
IOSAFE	10%
JVC	10%
KANGURU	10%
KINGSTON	10%
LANTRONIX	10%
LENOVO	10%
LG ELECTRONICS	10%
LITE-ON	10%
LOGICUBE	10%
LSI LOGIC	10%
MACALLY	10%
MAXELL	10%
MICROBOARD RIMAGE	10%
MIDDLEATLANTIC	10%
MITSUI ADVANCED MEDIA	10%
MONSTER CABLE	10%
NETGEAR	10%
NEW PARTNER EXCEPTION PURCHASE	10%
NIMBLE STORAGE	10%
NUTANIX	10%
OCZ	10%
ORACLE	10%
OVERLAND	10%
PANASONIC	10%
PANDUIT	10%
PHILIPS	10%
PI ENGINEERING	10%
PINNACLE SYSTEMS	10%
PIONEER NEW MEDIA TECHNOLOGY	10%
PLASMON	10%
PNY TECHNOLOGIES	10%
POLYCOM	10%
PRIMERA	10%
PROLINE	10%
PROMISE TECHNOLOGY	10%
QLOGIC	10%
QNAP	10%
QUANTUM	10%
RETAIL SERVICE PARTS	10%
SAMSUNG	10%
SANDISK	10%
SEAGATE TECHNOLOGY	10%
SIIG	10%
SILEX	10%
SONNET TECHNOLOGIES	10%



SONY	10%
SORNA	10%
SPECTRA LOGIC	10%
STARTECH COM	10%
SUPER MICRO COMPUTER	10%
SYMANTEC	10%
SYNOLOGY	10%
TAIYO YUDEN	10%
TANDBERG DATA	10%
TEAC AMERICA	10%
TEGILE	10%
TEXEL-PLEXTOR	10%
THERMALTAKE TECHNOLOGY	10%
TINTRI	10%
TOSHIBA	10%
TOTAL MICRO TECHNOLOGIES	10%
TP-LINK	10%
TRANSCEND	10%
TRENDWARE INTERNATIONAL	10%
TRIPP LITE	10%
UNIDEN	10%
UNITRENDS	10%
VCE	10%
VERBATIM	10%
VISIONTEK	10%
WESTERN DIGITAL	10%
WIEBETECH	10%
XEROX	10%

6. Customer-Premise Telecommunications and Security Solutions - Pricing will be determined on a per-purchase competitive bidding process between vendors who have been selected to source hardware to the State through the Michigan Master Computing Program. Below are guaranteed minimum discounts available to the State:

Brand	Minimum % Discount to Bidder's VPI Price on Purchases less than \$500,000	Minimum % Discount to Bidder's VPI Price on Purchases \$500,000 or greater	Additional % Discount to Other Titles for Inclusion in Contract	Comments
Cisco	40% off hardware, 17% off 3yr Smartnet	40% off hardware, 17% off 3yr Smartnet	0%	Cisco Pricing will be derived as a discount from Cisco Global Price List.
All other Telecommunications and Security Solutions	10%	10%	0%	All other Telecommunications and Security Solutions pricing will be derived as a discount from CDW-G's VPI available at <a href="http://www.cdwg.com">www.cdwg.com</a>



Schedule B - Pricing  
Exhibit 2 - Software Price Tables

1. The price lists and products listed are subject to change over time; standard products will be changed in accordance with the State standards kept and updated by DTMB.
2. Pricing will be determined on a per-purchase competitive bidding process between vendors who have been selected to source software to the State through the Michigan Master Computing Program. Below are guaranteed minimum discounts available to the State.
3. Core Software Titles
  - a. Microsoft -

<b>la1: Microsoft Enterprise Agreement, runs through 5.31.2018</b>			
<b>Description</b>		<b>Quantity</b>	<b>Minimum % Discount from VPI Cost</b>
CX2-00093	WINENTFORSAWMDOP ALNG SA MVL PLTFRM	55000	19.3%
U3J-00004	CORECALBRIDGEOFF365 ALNG SA MVL PLTFRM USRCAL	59000	22.4%
D87-01159	VISIOPRO ALNG SA MVL	2	18.0%
D86-01253	VISIOSTD ALNG SA MVL	10	18.1%
9ED-00073	VSPREMWMSDN ALNG SA MVL	28	17.8%
77D-00110	VSPROWMSDN ALNG LICSA PK MVL	10	-1.5%
77D-00111	VSPROWMSDN ALNG SA MVL	100	17.8%
L5D-00162	VSTSTPROWMSDN ALNG SA MVL	4	17.8%
9JD-00053	VSULTWMSDN ALNG SA MVL	44	17.8%
ZFA-00229	DYNCRMPROCAL ALNG SA MVL DVCCAL	18	17.7%
ZFA-00221	DYNCRMPROCAL ALNG SA MVL USRCAL	141	17.9%
N9J-00524	DYNCRMSVR ALNG SA MVL	5	17.7%
395-02504	EXCHGSVRENT ALNG SA MVL	1	17.7%
H04-00268	SHAREPOINTS VR ALNG SA MVL	2	17.7%
359-00792	SQLCAL ALNG SA MVL DVCCAL	6	17.8%
7JQ-00343	SQLSVRENTCORE ALNG SA MVL 2LIC CORELIC	194	17.7%



228-04433	SQLSVRSTD ALNG SA MVL	12	17.7%
7NQ-00292	SQLSVRSTDCORE ALNG SA MVL 2LIC CORELIC	36	17.8%
T9L-00223	SYSCTRSTD ALNG SA MVL 2PROC	912	18.1%
125-00124	VSTEAMFNDTNSVR ALNG SA MVL	1	17.7%
126-00196	VSTEAMFNDTNSVRCAL ALNG SA MVL USRCAL	40	18.2%
6VC-01254	WINRMTDSKTPSRVCSCAL ALNG SA MVL USRCAL	3200	18.1%
P71-07282	WINSVRDATACTR ALNG SA MVL 2PROC	237	17.8%
R39-00396	WINSVREXTCONN ALNG SA MVL	2	17.9%
P73-05898	WINSVRSTD ALNG SA MVL 2PROC	538	18.1%
7R2-00001	O365GOVE3FROMSA SHRDSVR ALNG SUBSVL MVL PERUSR 12 MONTHS	59000	37.9%
J5U-00001	AZUREMNTRYCMMTMNTG SHRDSVR ALNG SUBSVL	34	20.0%
U2V-00007	BINGMAPSENTPLATFORM ALNG SUBSVL MVL SRVCS	1	18.1%
T9V-00014	BINGMAPSPUBLICWBST ALNG SUBSVL MVL	2	17.7%
DSD-00030	DYNCRMONLNPRO SHRDSVR ALNG SUBSVL MVL	40	20.1%
V9W-00001	DYNCRMONLNPRODINST SHRDSVR ALNG SUBSVL MVL RESTRICTED SRVCS 12 MONTHS	1	19.9%
V6W-00001	DYNCRMONLNTSTINST SHRDSVR ALNG SUBSVL MVL RESTRICTED SRVCS 12 MONTHS	1	20.0%

1a2: Microsoft Premier Support, runs 6.1.2016 - 5.31.2017, equivalent to one year				
	Quantity	Bidder's VPI Cost	Minimum % Discount from VPI Cost	Evaluation Comments
Application Development and Infrastructure Consulting Services	300 hours	238	0%	
Support Account Management	420 hours	227	0%	
Service Delivery Management	80 hours	227	0%	
Support Assistance	750 hours	232	0%	
Problem Resolution Support	450 hours	220	0%	
Onsite Services Resource Site Visits	18 visits	75	0%	
Senior Consultant	2300 hours	263	0%	



Engagement Manager	150 hours	263	0%	
Unlimited Access to Premier Online Services	1 year	0	0%	
Third Tier Support for Exchange	1 year	27944	0%	
Third Tier Support for System Center	1 year	13974	0%	

<b>1a3: Microsoft Select Plus Agreement, Level D Discount Level</b>								
							<b>Minimum % Discount from VPI Cost</b>	<b>Evaluation Comments</b>
							15%	

b. Symantec

<b>1b: Symantec True-Up Agreement, Software Maintenance 10/1/2016-9/30/2017</b>				
Description		Quantity	Minimum % Discount from VPI Cost	Evaluation Comments
NHT0XZZ0-ER1GS	SYMC CONTROL COMPLIANCE SUITE STANDARDS MANAGER 11.0 XPLAT PER MANAGED SERVER RENEWAL ESSENTIAL 12 MONTHS GOV BAND S 10/1/16 - 9/30/17	102	17%	
6ZKLOZZ0-ER1GH	SYMC CRITICAL SYSTEM PROTECTION CLIENT EDITION 6.0 PER NODE RENEWAL ESSENTIAL 12 MONTHS GOV BAND H 10/1/16 - 9/30/17	100	17%	
RU1QOZZ0-ER1GS	SYMC DATA CENTER SECURITY SERVER ADVANCED 6.0 PER MANAGED SERVER RENEWAL ESSENTIAL 12 MONTHS GOV BAND S 10/1/16 - 9/30/17	5	17%	
0E7IOZZ0-ER1GH	SYMC ENDPOINT PROTECTION 12.1 PER USER RENEWAL ESSENTIAL 12 MONTHS GOV BAND H 10/1/16 - 9/30/17	305	17%	
14055203	SYMC GHOST SOLUTION SUITE 2.5 WIN DEVICE RENEWAL ESSENTIAL 12 MONTHS GOV BAND H 10/1/16 - 9/30/17	53,967	17%	
4GMSOZZ0-ER1GH	SYMC PROTECTION SUITE ENTERPRISE EDITION 4.0 PER USER RENEWAL ESSENTIAL 12 MONTHS GOV BAND H 10/3/16 - 10/2/17	56,160	17%	
21236908	SYMC BUSINESS CRITICAL SERVICES PREMIER FOR ENDPOINT PROTECTION FAMILY 10/1/16 - 9/30/17	1	17%	
21170448	SYMC DEEPSIGHT EARLY WARNING SERVICES SILVER PACK 8.0 1000-4999 PER NODE SUB LIC GOV BAND S ESSENTIAL 12 MONTHS 10/1/16 - 9/30/17	1	17%	
11642046	Third Year Expert Residency Services	1	17%	





**1c: BMC Software Maintenance, 10/1/2016-9/30/2017**

Description		Quantity	Minimum % Discount from VPI Cost	Comments
LP#1825367	BMC Remedy IT Service Management Suite - per enterprise	1		We understand the State of Michigan recently renewed all of their BMC support contracts through Dec 31, 2018. At this time CDW does not anticipate anything to quote per the term 10/1/2016 – 9/30/2017; however, we can honor the existing discount of record which we reflected in our offer.
LP#1825375	BMC Remedy IT Service Management Suite - Floating User License Add-on - per concurrent user	330		
LP#1825386	BMC Remedy IT Service Management Suite - User License Add-on - per named user	260		
LP#1825407	BMC Remedy Knowledge Management Specialist - Floating User Add-On License - per concurrent user	10		
LP#1825408	BMC Remedy Knowledge Management Specialist - User Add - On License - per named user	10		
LP#1825441	BMC Remedy Self Service - Floating User Add - On License 25-Pk Lsn - per concurrent user	1		
LP#1863612	BMC Service Desk - Floating User License Addon - per concurrent user	25		
LP#1863619	BMC Service Desk - User License Add-on - per named user	15		
LP#1825437	BMC Service Management Specialist - Floating User License Add-on - per concurrent user	34		
LP#1825440	BMC Service Management Specialist - User License Add-on - per named user	10		
LP#18254402	BMC Premier Advanced Support - Shared Engineer - Remedy IT Service Management - per License Add-on - Original	1		
LP#2142357	BMC Atrium Dashboards and Analytics - User License Add-on - per named user	10		
LP#2347532	BMC Atrium Discovery and Dependency Mapping - per managed asset - server endpoint	3500		
LP#2347542	BMC Atrium Discovery and Dependency Mapping Extended Data Pack - License Add-on - per managed asset - server endpoint	3500		
LP#2564645	BMC Atrium Discovery for Storage - per managed asset - server endpoint	3500		
LP#2564646	BMC Atrium Orchestrator - Development Pack License Addon - per enterprise	1		
LP#2142355	BMC BladeLogic Automation Suite - Base License - per enterprise	1		
LP#2347540	BMC Cloud Lifecycle Management - Core License Add-on - per managed asset - server endpoint	50		
LP#2142356	BMC Server Automation - License Add-on - per managed asset - server endpoint	5		
				Comments



c. BMC

d. Adobe

<b>1d: Adobe Enterprise Term License Agreement, 11/1/2016-10/31/2017</b>				
<b>Description</b>		<b>Quantity</b>	<b>Minimum % Discount from VPI Cost</b>	<b>Comments</b>
210-3280-1	Adobe Acrobat Standard - Term License & Maintenance & Support 1 User - 12 Month - FLP	53	10.8%	
210-3280-1	Adobe Acrobat Professional - Term License & Maintenance & Support 1 User - 12 Month - FLP	238	10.8%	
210-3280-1	Adobe After Effects - Term License & Maintenance & Support 1 User - 12 Month - FLP	1	10.8%	
210-3280-1	Adobe Audition - Term License & Maintenance & Support 1 User - 12 Month - FLP	1	10.8%	
210-3280-1	Adobe Dreamweaver - Term License & Maintenance & Support 1 User - 12 Month - FLP	14	10.8%	
210-3280-1	Adobe Flash Professional - Term License & Maintenance & Support 1 User - 12 Month - FLP	1	10.8%	
210-3280-1	Adobe Illustrator - Term License & Maintenance & Support 1 User - 12 Month - FLP	1	10.8%	
210-3280-1	Adobe InCopy - Term License & Maintenance & Support 1 User - 12 Month - FLP	1	10.8%	
210-3280-1	Adobe InDesign - Term License & Maintenance & Support 1 User - 12 Month - FLP	3	10.8%	
210-3280-1	Adobe Photoshop - Term License & Maintenance & Support 1 User - 12 Month - FLP	16	10.8%	
210-3280-1	Adobe Premiere Pro - Term License & Maintenance & Support 1 User - 12 Month - FLP	3	10.8%	
210-3280-1	Adobe Design Standard - Term License & Maintenance & Support 1 User - 12 Month - FLP	1	10.8%	
210-3280-1	Adobe Design & Web Premium - Term License & Maintenance & Support 1 User - 12 Month - FLP	12	10.8%	
210-3280-1	Adobe Production Premium - Term License & Maintenance & Support 1 User - 12 Month - FLP	1	10.8%	
210-3280-1	Adobe Creative Cloud Enterprise - Term License & Maintenance & Support 1 User - 12 Month - FLP	4	10.8%	



210-3280-1	Adobe Lightroom - Term License & Maintenance & Support 1 User - 12 Month - FLP	1	10.8%	
210T-3238	Adobe FrameMaker Enterprise Term License with Maintenance & Gold Support - 12 Months	1	10.8%	
210T-3251	Adobe RoboHelp Office Enterprise Term License with Maintenance & Gold Support - 12 Months	1	10.8%	
210T-3251-S	Adobe RoboHelp Server Enterprise Term License with Maintenance & Gold Support - 12 Months	1	10.8%	
210T-3225	Adobe Captivate Enterprise Term License with Maintenance & Gold Support - 12 Months	1	10.8%	
210T-6178	Adobe Presenter Enterprise Term License with Maintenance & Gold Support - 12 Months	1	10.8%	
210T-3230	Adobe eLearning Suite Enterprise Term License with Maintenance & Gold Support - 12 Months	1	10.8%	
210-3280-1	Adobe Photoshop Elements - Term License & Maintenance & Support 1 User - 12 Month - FLP	1	10.8%	
				Comments



e. Citrix

<b>1e: Citrix Software Maintenance, 10/1/2016 - 9/30/2017</b>			
<b>Description and Quantity</b>	<b>Quantity</b>	<b>Minimum % Discount from VPI Cost</b>	<b>Evaluation Comments</b>
XenApp Platinum Edition 4.5 with Feature Pack 1 from XenApp Enterprise Upgrade - User Count 410 - Coverage dates: 10/1/14 - 7/1/17	1	10.8%	
XenApp Platinum Edition 4.5 with Feature Pack 1 from XenApp Enterprise Upgrade - User Count 390 - Coverage dates: 10/1/14 - 7/1/17	1	10.8%	
XenApp Platinum Edition 4.5 with Feature Pack 1 from XenApp Enterprise Upgrade - User Count 25 - Coverage dates: 10/1/14 - 7/1/17	1	10.8%	
XenApp Platinum Edition 4.5 with Feature Pack 1 from XenApp Enterprise Upgrade - User Count 70 - Coverage dates: 3/29/15 - 7/1/17	1	10.8%	
UPG XENAPP PLAT ED F/ ENT - X1 CONC U CONN LICS W/ SUB ADV ELP-3	1	10.8%	
ELA-3 XENDESKTOP PLAT ED TRADE UP FROM XENAPP ADV X1 CCU	1	10.8%	
NETSCALER MPX 12500 FIPS PLAT ED 2X10GX SFP+ 8X1000BX SFP+ ELA-3	1	10.8%	
NETSCALER MPX 9700 FIPS PLAT ED 2X10GX SFP+ 8X1000BASE-X SFP+ ELA-3	1	10.8%	
ELA3 3YR GOLD MNT NETSCALER MPX 12500 FIPS 10GE PLAT ED	1	10.8%	
ELA3 3YR GOLD MNT NETSCALER MPX 9700 FIPS 10GE PLAT ED	1	10.8%	
300M NETSCALER SFP+ 10GB ENET SHORT RANGE SINGLE ELA-3	1	10.8%	
NETSCALER APP SWITCH SFP PACK 4GFB	1	10.8%	
PREFERRED EXT HOURS SUPPORT SOFTWARE	1	10.8%	
SOFTWARE PREFERRED 200HRS TRM ADD-ON	1	10.8%	
2YR SUB XENAPP PLAT ED ADV ADD-ON ELP-3	1	10.8%	
ELA-3 2YR XENDESKTOP PLAT ED SUB ADV ADD ON X1 CCU	1	10.8%	
			Comments



f. HP

1f: HP Software Maintenance, 10/1/2016 - 9/30/2017			
Description		Quantity	Minimum % Discount from VPI Cost
T6489AAE	HP Enterprise Std Unlimited Support for QC Add'l Defects Site CC Usr SW LTU	7	10%
T6471AAE	HP Enterprise Std Unlimited Support for QC Ent Area 5 CC Usr Pk SW LTU	1	10%
T6481AAE	HP Enterprise Std Unlimited Support for QC Ent Area CC Usr SW E-LTU	5	10%
T6821AA	HP Enterprise Std Unlimited Support for QTP Siebel Add-in Site CC Usr SW LTU	5	10%
T6822AA	HP Enterprise Std Unlimited Support for QTP Site CC Usr SW LTU	5	10%
A8F90AAE	HP Enterprise SW maintenance for HP LR Foundation Entitlement SW E-LTU	1	10%
A8F57AAE	HP Enterprise SW maintenance for HP LR Oracle EB 1-499 VU+C SW E-LTU	200	10%
TF063AAE	HP FT Seat to UFT Seat Upgrade SW E-LTU / HP SW Tech Unlimited Sppt & HP SW Updts Svc	5	10%
TA332AAE	HP FT Seat Usr SW E-LTU	5	10%
TF060AAE	HP FT Site to UFT CC User UPG SW E-LTU	15	10%
TD028AAE	HP LR Database 100-499 VU SW E-LTU	100	10%
TD010AAE	HP LR Oracle EB 500-4999 VU SW E-LTU	2000	10%
TC969AAE	HP LR Web 2.0 500-4999 VU SW E-LTU	2000	10%
TC967AAE	HP LR Web/Mmed 100-499 VU SW E-LTU	200	10%
TC964AAE	HP LR Web/Mmed 500-4999 VU SW E-LTU	2400	10%
TC964AAE	HP LR Web/Mmed 500-4999 VU SW E-LTU	500	10%
TB141AAE	HP LR/PC Diag for Comp Applnst SW E-LTU	17	10%
T6234AAE	HP LRner Cntrl & Monitors SW E-LTU	4	10%
T6482AAE	HP QC ENT Global CC User SW E-LTU	30	10%
T6470AAE	HP QC Ent Site 5 CC Usr Pk SW E-LTU	1	10%
T6480AAE	HP QC Ent Site CC Usr SW E-LTU	57	10%
T6480AAE	HP QC Ent Site CC Usr SW E-LTU - HP SW Technical Unlimited Support & SW Updates Svc	15	10%
T6822AA	HP QTP Site CC Usr SW LTU	10	10%
T9871AAE	HP Software Enterprise Basic Support for HP ALM Area CC Usr SW E-LTU	5	10%
TF008AAE	HP Software Enterprise Basic Support for HP UFT CC User SW E-LTU	15	10%





T7373AAE	HP SW Enterprise Basic Support - HP PPM DM Oracle Ext Named Usr SW E-LTU	1	10%
TA333AAE	HP SW Enterprise Basic Support for HP Functional Test Site CC Usr SW E-LTU	15	10%
TD038AAE	HP SW Technical Unlimited Support & Updates Svc for HP LR .NET 100-499 VU SW E-LTU	100	10%
TC997AAE	HP SW Technical Unlimited Support & Updates Svc for HP LR RIA 100-499 VU SW E-LTU	100	10%
T6481AAE	HP SW Technical Unlimited Support & Updates Svc for HP QC Ent Area CC Usr SW E-LTU	15	10%
T9500AAE	HP Tech Sppt & Updates Svc for AM Srv SW LTU	1	10%
T9503AAE	HP Tech Sppt & Updates Svc forAM Asset Portfolio CC Usr SW LTU	5	10%
T9502AAE	HP Tech Sppt & Updates Svc forAM Asset Portfolio Nmd Usr SW LTU	5	10%
T9513AAE	HP Tech Sppt & Updates Svc forAM Contract Mgmt Flt Usr SW LTU	5	10%
T9512AAE	HP Tech Sppt & Updates Svc forAM Contract Mgmt Nmd Usr SW LTU	5	10%
T9509AAE	HP Tech Sppt & Updates Svc forAM Financial Mgmt Flt Usr SW LTU	5	10%
T9508AAE	HP Tech Sppt & Updates Svc forAM Financial Mgmt Nmd Usr SW LTU	5	10%
T9520AAE	HP Tech Sppt & Updates Svc forAM Procurement Flt Usr SW LTU	5	10%
T9519AAE	HP Tech Sppt & Updates Svc forAM Procurement Nmd Usr SW LTU	5	10%
T4247AAE	HP Tech Sppt & Updates Svc forCnct Base Connectors SW E-LTU	1	10%
TF235AAE	HP Tech Sppt & Updates Svc forUCMDB 10.00+ FndFedTpl Entitlement SW E-LTU	1	10%
T4247AAE	HP Tech Support and Updates Svc for HP Cnct Base Connectors SW E-LTU	1	10%
T4503AAE	HP Tech Support and Updates Svc for HP Cnct Database Usr SW E-LTU	10	10%
T4505AAE	HP Tech Support and Updates Svc for HP Cnct Email Usr SW E-LTU	10	10%
T4511AAE	HP Tech Support and Updates Svc for HP Cnct LDAP Usr SW E-LTU	10	10%
T9768AAE	HP Tech Support and Updates Svc for HP IT Change Mgmt Suite Nmd Usr SW E-LTU	10	10%
T5015AAE	HP Tech Support and Updates Svc for HP SM Foundation Nmd Usr SW E-LTU	10	10%
T5017AAE	HP Tech Support and Updates Svc for HP SM Help Desk Nmd Usr SW E-LTU	10	10%
T5000AAE	HP Tech Support and Updates Svc for HP SM Server SW E-LTU	1	10%
T5025AAE	HP Tech Support and Updates Svc for HP SM SLM Nmd Usr SW E-LTU	10	10%
TF235AAE	HP Tech Support and Updates Svc for HP UCMDB 10.00+ FndFedTpl Entitlement SW E-LTU	1	10%
TF008AAE	HP UFT CC User SW E-LTU - HP SW Enterprise Standard Support	10	10%



g. VMWare

<b>1g: VMWare Enterprise License Agreement, 1/1/2016-12/31/2019</b>			
<b>Description</b>	<b>Quantity</b>	<b>Minimum % Discount from VPI Cost</b>	<b>Comments</b>
vCenter Server Standard	2	8.0%	
vCenter Site Recovery Manager	1	8.0%	
vCloud Suite Enterprise	40	8.0%	
vSphere with Operations Management Standard for 1 Processor	4	8.0%	
Horizon Suite 10 Pack	3	8.0%	
vCenter Ops Management Suite Standard (25 VM Pack)	1	8.0%	
Workstation for Linux and Windows	5	8.0%	
Workstation for Linux and Windows (volume pricing for 10-99 licenses)	15	8.0%	
Fusion Professional Edition	10	8.0%	
			<b>Comments</b>

4. Discretionary Software

<b>II: Discretionary Software</b>		
For each Transaction Cost Band in the table below, please provide the % discount from VPI, which shall be used to calculate the maximum, not-to-exceed price of software products to be purchased.		
<b>Transaction Cost Band</b>	<b>Minimum % Discount from VPI Cost</b>	<b>Comments</b>
Less than \$10,000	5%	Discount will apply to all software titles not referenced above using the VPI displayed at <a href="http://www.cdwg.com">www.cdwg.com</a>
\$10,000 - less than \$25,000	5%	
\$25,000 - less than \$250,000	5%	
\$250,000 - less than \$2.5 million	5%	



5. Optional Software Titles

<b>III: Optional Software Titles</b>					
1. For each Publisher in the table below, please provide the Minimum % Discount to Bidder VPI Cost for transaction valued at less than \$500,000 and for transactions valued at \$500,000 or greater.					
2. For each Publisher in the table below, please provide the estimate cost to renew the State's FY2017 Software Maintenance or Support under your Contract.					
3. For each Publisher in the table below, please provide the additional discount to other Title you will provide, if the State includes the Publisher under your Contract.					
<b>Publisher</b>	<b>Maximum (not-to-exceed) % Markup to Bidder cost on Purchases less than \$500,000</b>	<b>Minimum % Discount to Bidder VPI cost on Purchases \$500,000 or greater</b>	<b>Estimated Cost to renew FY2017 Software Maintenance/Support</b>	<b>Additional % Discount to Other Titles for Inclusion in Contract</b>	<b>Comments</b>
CA		5%	CDW•G understands the State's CA legacy deployment and will work with CA Technologies to establish the most cost effective Enterprise Agreement upon award. Baseline discounts will be at least 30% for licenses and 20% for SaaS*. *Certain discount restrictions may apply contingent upon final approval by CA.	0%	If the state can provide a BOM for these titles, we can make an informed decision on costs to renew as well as additional discounts CDW-G can offer.
Compuware		5%	CDW-G is not currently authorized to provide an accurate quote for this publisher. However, we are actively involved in an onboarding process with our distributors so that we can provide all budgetary information and custom quotes in the near future.	0%	If the state can provide a BOM for these titles, we can make an informed decision on costs to renew as well as additional discounts CDW-G can offer.
IBM		5%	CDW•G is working with IBM on this contract renewal and will facilitate the IBM maintenance renewal process.	0%	If the state can provide a BOM for these titles, we can make an informed decision on costs to renew as well as



					additional discounts CDW-G can offer.
Novell		5%	CDW•G is working with Novell on this contract renewal and will facilitate the Novell maintenance renewal process.	0%	If the state can provide a BOM for these titles, we can make an informed decision on costs to renew as well as additional discounts CDW-G can offer.
Oracle		39%*	CDW•G is working with Oracle on this contract renewal and will facilitate the Oracle maintenance renewal process.	0%	If the state can provide a BOM for these titles, we can make an informed decision on costs to renew as well as additional discounts CDW-G can offer.
SAP		5%	CDW•G is working with SAP on this contract renewal and will facilitate the SAP maintenance renewal process.	0%	If the state can provide a BOM for these titles, we can make an informed decision on costs to renew as well as additional discounts CDW-G can offer.

6. Installation, integration and implementation hourly rates – see Schedule B, Exhibit 3 – Services Price Tables



Schedule B - Pricing  
Exhibit 3 -Services Price Tables

- Hardware Services- Pricing will be determined on a per-purchase competitive bidding process between vendors who have been selected to source hardware to the State through the Michigan Master Computing Program. Below are guaranteed not to exceed hourly rates available to the State (services are not limited to the individual positions below):

<b>Hardware Installation, Integration, and Implementation Hourly Rates (not to exceed).</b>			
Not to be used for billing, but for calculation of deliverable costs.			
Please list all applicable rates. Individual rates may be specified for specific brands.			
Description	Hourly Rate		
<b>Bidder's Badged Resources</b>			
Digital Forensics Analyst	\$ 142.36		
Field Services Technician - Junior	\$ 72.22		
Field Services Technician - Senior	\$ 94.44		
Network Analyst	\$ 86.58		
Network Analyst Sr.	\$ 132.67		
Network Administrator	\$ 97.40		
Network Administrator Sr.	\$ 140.96		
Support Engineer	\$ 97.40		
Support Engineer Sr	\$ 127.31		
Support Engineer, Level 3	\$ 140.69		
System Technician	\$ 83.33		
System Technician Sr.	\$ 105.56		
Security Analyst	\$ 134.92		
Security Specialist	\$ 183.69		
<b>OEM Badged Resources - End-User Hardware</b>			
Dell -	\$ 145.56	CDW•G and our Partners are fully certified to deliver Dell End-User Professional Services	
Lenovo -	\$ 145.56	CDW•G and our Partners are fully certified to deliver Lenovo End-User Professional Services	
<b>OEM Badged Resources - Server Hardware</b>			
Dell	\$ 162.22	CDW•G and our Partners are fully certified to deliver Dell Server Professional Services	
HP	\$ 273.61	CDW•G and our Partners are fully certified to deliver HP Server Professional Services	S1 Technician; 8 hour minimum
IBM	\$300 - \$395	CDW•G and our Partners are fully certified to deliver IBM Server (AIX) Professional Services	Hardware Engineer Services





APC	\$185-\$290	CDW•G and our Partners are fully certified to deliver APC Professional Services	
<b>OEM Badged Resources -Optional Server Hardware</b>			
Cisco	\$210-\$235	CDW•G and our Partners are fully certified to deliver Cisco UCS Professional Services	
Oracle	\$325-\$450	CDW•G and our Partners are fully certified to deliver Oracle Server Professional Services	
Lenovo	\$ 162.22	CDW•G and our Partners are fully certified to deliver Lenovo Server Professional Services	
<b>OEM Badged Resources - Optional Storage Solutions</b>			
EMC	\$ 233.33	CDW•G and our Partners are fully certified to deliver EMC Professional Services	8 hour minimum / VNX, VNXe, Avamar, Data Domain, Isilon
NetApp	\$210-225	CDW•G and our Partners are fully certified to deliver NetApp Professional Services	8 hour minimum/Engineer - Consultant
Brocade	\$235-\$295	CDW•G and our Partners are fully certified to deliver Brocade Professional Services	
Dell Storage	\$250-\$345	CDW•G and our Partners are fully certified to deliver Dell Storage Professional Services	
Nimble	\$ 233.33	CDW•G and our Partners are fully certified to deliver Nimble Storage Professional Services	8 hour minimum / CSXXX Storage Arrays, SmartStack Arrays, HFS, AFS
<b>OEM Badged Resources - Customer-Premise Telecommunications and Security Solutions</b>			
Cisco UC or Cisco Security	\$220-\$285	CDW•G and our Partners are fully certified to deliver Cisco UC & Security Professional Services	
Avaya UC	\$ 183.33	CDW•G and our Partners are fully certified to deliver Avaya UC Professional Services	Plan, Design, Configure, Install
Avaya UC	\$ 145.56		Smart Hands Only (no engineering)



2. Software Services – Pricing will be determined on a per-purchase competitive bidding process between vendors who have been selected to source hardware to the State through the Michigan Master Computing Program. Below are guaranteed not to exceed hourly rates available to the State (services are not limited to the individual positions below):

<b>Software Installation, Integration, and Implementation Hourly Rates (not to exceed).</b>		
Not to be used for billing, but for calculation of deliverable costs.		
Please list all applicable rates. Individual rates may be specified for specific brands.		
Description	Hourly Rate	Comments
<b>Bidder's Badged Resources</b>		
Application/Software Engineer	\$ 108.02	
Application/Software Engineer Sr	\$ 129.63	
Application/Software Engineer, Level 3	\$ 154.32	
Systems Analyst	\$ 101.01	
Systems Analyst Sr	\$ 131.17	
Database Administrator	\$ 108.23	
Database Administrator Sr.	\$ 138.89	
Database Analyst	\$ 92.59	
Database Analyst Sr.	\$ 147.85	
Technical Writer	\$ 82.97	
Technical Writer Sr.	\$ 111.11	
Testing Technician	\$ 84.88	
Testing Technician Sr.	\$ 111.11	
Quality Assurance Analyst	\$ 100.31	
Quality Assurance Analyst Sr.	\$ 128.82	
Security Analyst	\$ 134.92	
Security Specialist	\$ 183.69	
Field Services Technician - Junior	\$ 56.33	
Field Services Technician - Senior	\$ 79.37	
<b>Microsoft Resources (if not included already)</b>		
CDW•G Project Manager	\$ 220.00	CDW•G is fully certified to deliver Microsoft Professional Services
CDW•G Architect	\$ 235.00	
CDW•G Senior Consultant	\$ 220.00	
CDW•G Consultant	\$ 210.00	
CDW•G Development	\$ 133.00	Visual Studio, .Net, C++
<b>Symantec &amp; Veritas Badged Resources</b>		
CDW•G Application Engineer Level 3	\$ 154.32	CDW•G is fully certified to deliver Symantec & Veritas Professional Services
<b>BMC Badged Resources</b>		



CDW•G Senior Remedy Integrations Consultant	\$ 252.78	CDW•G and our Partners are fully certified to deliver BMC professional services
CDW•G Remedy Solutions Architect	\$ 247.22	
CDW•G Senior Remedy Consultant	\$ 238.89	
CDW•G Mid-Level Remedy Consultant	\$ 225.00	
CDW•G Senior BI Consultant	\$ 238.89	
CDW•G Service Automation Architect	\$ 261.11	
CDW•G Service Automation Consultant	\$ 238.89	
CDW•G Project Manager - Level 1	\$ 194.44	
CDW•G Project Manager - Level 2	\$ 180.56	
<b>Adobe Badged Resources</b>		
CDW•G Adobe	\$ 194.44	CDW•G and our Partners are fully certified to deliver Adobe professional services
<b>Citrix Badged Resources</b>		
CDW•G Project Manager	\$ 220.00	CDW•G and our Partners are fully certified to deliver Citrix professional services
CDW•G Architect	\$ 250.00	
CDW•G Senior Consultant	\$ 235.00	
CDW•G Consultant	\$ 215.00	
<b>HP Software Badged Resources</b>		
CDW•G	\$ 194.44	CDW•G and our Partners are fully certified to deliver HP professional services
<b>VMWare Badged Resources</b>		
CDW•G Project Manager	\$ 220.00	CDW•G and our Partners are fully certified to deliver VMware professional services
CDW•G Architect	\$ 250.00	
CDW•G Senior Consultant	\$ 235.00	
CDW•G Consultant	\$ 215.00	
<b>CA Badged Resources (Optional)</b>		
CA Consulting Various Roles	\$290 - \$575	CDW•G and our Partners are fully certified to deliver CA professional services



<b>Compuware Badged Resources (Optional)</b>		
Compuware Consulting various roles	\$310 - \$465	CDW•G and our Partners are fully certified to deliver Compuware professional services
<b>IBM Badged Resources (Optional)</b>		
IBM Consulting for Software Deployment various roles	\$330 - \$575	CDW•G and our Partners are fully certified to deliver IBM professional services
<b>Novell Badged Resources (Optional)</b>		
CDW•G Consulting various roles	\$210 - \$375	CDW•G and our Partners are fully certified to deliver Novell professional services
<b>Oracle Badged Resources (Optional)</b>		
Oracle Consulting various roles	\$345 - \$675	CDW•G and our Partners are fully certified to deliver Oracle professional services
<b>SAP Badged Resources (Optional)</b>		
CDW•G Consulting		CDW•G and our Partners are fully certified to deliver Oracle professional services
CDW•G SAP Developer	\$ 177.78	K1 Level
CDW•G SAP Analyst	\$ 200.00	K1 & K2 Level
CDW•G SAP Basis Consultant	\$ 250.00	K2 & K3 Level
CDW•G SAP Senior Consultant	\$ 277.78	K3 & K4 Level



Schedule C  
Exhibit 1 – Value Added Services

CDW•G Value Added Services

For ease of review, CDW•G has laid out our value added services in the charts below. In addition to the hardware and software value added services, we provide significant value to the State for both hardware and software in the final chart.

Based on the typical rate for the Hardware and Software value added services below, we offer an **estimated value for the State in excess of \$2 million over the contract duration.**

Hardware		
Value Add	Description	Cost to Michigan and Estimated Value
<b>New Product Roadshow</b>	CDW•G plans to host an annual “New Product Roadshow” for the State of Michigan and MiDEAL members, to raise awareness of current and upcoming products available in the market, At this Michigan-based, open-house style event, the State and MiDeal members will have the opportunity to meet with several key resources including the CDW•G account team, manufacturers, services providers, and the CDW•G contracts team. The event provides an opportunity to explore IT needs and receive immediate answers to questions.	<b>CDW•G-Funded: No Charge to State of Michigan</b> <i>Value Added Worth:</i> \$7,500
<b>CDW•G provided 30 day warranty</b>	CDW•G funds a <b>30 day warranty</b> for all products we sell, including products that have no manufacturer warranty. Once the 30 days have expired, CDW•G’s technical support or the State’s dedicated SPOC facilitates the manufacturer warranty service, as needed.	<b>CDW•G-Funded: No Charge to State of Michigan</b> <i>Value Added Worth:</i> <i>0.25% of items purchased. If the State purchases \$30 million worth of product per year the value is \$75,000 or \$300,000 over four years</i>
<b>Certified Technician Support</b>	We provide toll-free, email, and on-line chat technical support on all hardware and operating systems for up to <u>two years</u> after purchase from CDW•G. Our technical support technicians are US-based. All of our technicians are US-based, CompTIA certified, and hold, at minimum, A+ and Network+ certifications. The State can monitor this support, including the frequency and type of request, via the CDW•G Account Center.	<b>CDW•G-Funded: No Charge to State of Michigan</b> <i>Value Added Worth:</i> <i>Estimated usage 500 hours annually,</i> <i>value \$50,000 over four years</i>
<b>Extensive Pre-Sales Engineering Support</b>	As of this writing, we have <b>over 1,060 service-dedicated coworkers, nationwide</b> , aiding in pre- and post-sale questions. As with the technical support above, a key to our engineer support is that many are “vendor neutral.” This allows them to support the interoperability of the State’s entire solution, not promote a single brand. We know certain solutions also call for OEM-specific expertise, such as Cisco UC or Microsoft SharePoint, so our engineer total also includes such experts. All of CDW•G’s experienced and certificated engineers provide support with configurations and infrastructure shifts.	<b>CDW•G-Funded: No Charge to State of Michigan</b> <i>Value Added Worth:</i> <i>Estimated usage 2,000 hours annually,</i> <i>Value \$1,600,000 over four years</i>





Software		
Value Add	Description	Estimated Value
<b>Software License Review</b>	Through the Software License Review, the State can recognize over- or under-licensing situations, giving you the tools to consolidate licenses and fill in gaps. This review provides a report of all the software assets and licenses purchased throughout the organization, no matter what vendor the State purchased its licenses through. A CDW•G licensing specialist then leads the State to potential savings in over-licensing situations and possibly avoiding large fines by ensuring all software being used has the appropriate licensing. Our licensing strategy consultations include analysis of current usage and gaps; procurement preferences; and side by side comparisons of potential solutions. Our licensing experts then use the gathered information to predict future needs.	<b>CDW•G-Funded: No Charge to State of Michigan</b> <i>Estimated Value Added Worth: 0.5% of the software purchased. If the State purchases \$30 million worth of software the value is \$150,000 annually or \$600,000 over four years</i>
<b>Citrix Health Check</b>	CDW•G offers the State a <b>two week engagement with our Citrix engineering team</b> . The particular focus of this engagement can vary, but typically the recommended first step is a XenApp health check. At the conclusion of the engagement, CDW•G discusses the health check findings and recommendations to ensure the system is functioning to industry best practices and provides the State a PDF report of our findings	<b>CDW•G-Funded: No Charge to State of Michigan</b> <i>Value Added Worth: \$19,800</i>
<b>Active Directory Health Check</b>	<b>CDW•G offers the State an Active Directory Health Check (or similar service) four week engagement</b> . This engagement provides tremendous value to the State to understand the current state of its Active Directory to industry best practice. If desired, CDW•G will also discuss a future roadmap to ensure the State can maintain its directory structure.	<b>CDW•G-Funded: No Charge to State of Michigan</b> <i>Value Added Worth: \$39,600</i>
<b>VMWare Health Check</b>	CDW•G offers highly experienced and certified specialists to assist the State's team with technical issues and architecture to leverage the exciting, virtual capabilities of the VMware solution set. <b>We offer the State a four week Health Check of your vSphere environment, conducted by CDW•G experts</b> . The scope of the effort analyzes up to 30 ESX/ESXi hosts and one vCenter and provides a written report and conference call discussion as follow-up. The target audience for this engagement includes infrastructure and IT managers and the implementers/administrators of the ESX/ESXi system.	<b>CDW•G-Funded: No Charge to State of Michigan</b> <i>Value Added Worth: \$39,600</i>

Additional Value Added Services		
Value Add	Description	
<b>Local Team</b>		
<b>CDW•G and Dewpoint – A National and Local Team</b>	Through our strategic partnership the State receives technology products, expertise, customer support, and competitive pricing tailored to your needs. We provide this assistance via a team of 300 Michigan-based coworkers with a proven record supporting some of the most critical solutions of the State. These individuals <b>help</b> to bring the State's procurement of IT solutions to the next level. In one interaction, the SPOC can deliver to the State complementary quotes for notebooks/mobile devices (including tablets), network communications, converged infrastructure, video monitors, printers, desktop computers, and servers because they understand the State's IT infrastructure as a whole, rather than a single purchase.	
<b>Vendor Neutral</b>		
<b>Vendor Neutral Solutions – A Win for Michigan</b>	We offer over 1,000 leading OEMs partnerships to the State and access to additional OEMs through our distribution partners, ensuring that we always consider the best value outcome for your purchases. As, CDW•G has no ownership ties to specific manufacturers or vendors, we are <b>free to act in the best interest of the State of Michigan</b> .	



Additional Value Added Services	
Value Add	Description
	Our vested OEM partnerships and product management team provides the State additional benefits such as advance product notifications, consistent checks on pricing, and extended warranty options. Should a frequently product be no longer available or the State is looking for a cost-effective alternative, you can be sure your SPOC will provide recommendations based solely on your specific needs.
<b>eProcurement</b>	
<b>Cutting-Edge eProcurement Capabilities</b>	Our tools allow customers to flip quotes to orders on the website as well as create and flip a quote to an order via a Punchout tool. We offer same day turnaround with Punchout credentials.
<b>Dedicated eProcurement Team Keeps Ecommerce Reliable</b>	CDW•G has <b>over 140 coworkers dedicated to improving our ecommerce capabilities.</b> Our in-house, highly experience e-procurement team provides assistance for any integration the State or MiDeal members seek. Fourteen of those ecommerce coworkers are dedicated to integrations, such as for ITRAC and future CGI integration for the State. Additionally, we work with three third-party services partners to ensure the product data remains current. They have performed no-cost integrations with over 72 eProcurement vendors. Our resources and partnerships allow us to provide early notice for when products will be discontinued.
<b>Bundled Purchases Allow End Users Convenient Access to State Standards</b>	CDW•G offers the State the ability to create bundled peripherals to form a complete desktop solution, all in one package. The peripheral bundles can be designed to complement the State's predetermined device standards. For example, bundles are common for a headset that needs a particular cable every time that is ordered, or a user set-up that might include a mixture of products such as a notebook, docking station, external keyboard/mouse, and cables. These commonly bundled items can be created in your shopping cart in the Account Center, and they viewed on the Premium Page dedicated to MMCC. Users can then quickly find the correct product mix to create an order.
<b>Distribution Model</b>	
<b>Distribution Model Provides Quick Access to the Products Michigan Needs</b>	Our own distribution centers have a million square feet of storage space and stock over \$200 million in inventory at any given time. This combination of stock and shipping infrastructure allows us to ship on average 37,000 boxes per day. We utilize a blended distribution model, so we are not rely solely on these two facilities to support our customers. With roughly 50% of our orders drop shipped, our model leverages an extensive partner network for competitively priced products and quick delivery. This in turn, <b>allows approximately 90% of our orders to be available for shipping the same day the order is place.</b>
<b>Extensive Shipping Options to Meet Purchasing and Project Requirements</b>	We understand that our logistical capabilities have to match the diverse needs of the State and offer a variety of options for shipping from a packaging, carrier service, and speed perspective. We provide the option to receive products in single shipments or partial shipment. We utilize our shipping partnerships with carriers such as UPS, FedEx, AIT, CEVA, Dynamex, and Veterans Messenger service to allow shipment anywhere within the State via same day (where available), overnight, 2nd day, 3rd day, or ground commitments. <b>Custom Shipping Solutions</b> If the State requires deliveries to be palletized, we can do that too. Our custom shipping solutions include pre-assembling kits for remote employees or offices, palletizing large orders, and shipping equipment inside customized rugged containers, as examples. This benefits the State by lowering the cost of shipping for large deliveries and can reduce implementation time upon delivery as equipment arrives ready to "plug and play".
<b>Configuration Center</b>	
<b>Asset Tracking via the State's Web Portal Account Center</b>	The asset tag reference number is captured along with the serial number of the product into CDW's Order Processing system. This automatically syncs to the Asset Management page of the MMCC Account Center on your web portal. The State can use this Asset Management Tool to track their packages or import the information via a comma delimited file to the State's asset management tool. For any products not purchased through CDW•G, users can upload device information to track alongside CDW•G purchases.
<b>Contract Management and Contract Promotion</b>	



Additional Value Added Services	
Value Add	Description
<b>Maximizing the value of the State's Licensing Agreements</b>	As a part of our total software management methodology, our team conducts regular business reviews and examines the contract to help manage the State's licenses over the lifetime of MMCC. Prior to software purchase and any renewals, we evaluate total spend, assets, usage, and purchase history. Our recommendations may include any potential options that would optimize investment through vendor and contract consolidation; including volume transactional purchasing options or contractual volume agreements. Additionally, our team is educated in the nuances of software contracts and informs the State of any aggregate purchase opportunities specific to the contract or related entities that may be available to leverage.
<b>Reporting Capabilities – Best in Class and Specific to the State's Needs</b>	While the State has the option to receive daily reports from our Program Management team, authorized users from both the State and MiDEAL member community can pull reports directly from their CDW•G Web Portal. As a rich source of detail on purchase history, license agreements, and asset tracking, CDW•G lightens the burden of generating reports. <b>The reporting options in the Web Portal give authorized users the exact detail they require, whenever they need it.</b>
Resources	
<b>MiDEAL Focus – Supporting the State's Partnerships</b>	Combined, CDW•G and Dewpoint currently does business with approximately 33% of the 1049 members of MiDEAL. Since MiDEAL members are already familiar with either CDW•G or Dewpoint in most cases, this allows for smooth transitions and for us to focus on expanding the number of entities that take advantage of the program. To demonstrate the impact of these relationships, <b>CDW•G's current business with 1,376 current potential MiDEAL members totals \$30 million annually.</b>
<b>Dynamic Pricing – We Have It Covered</b>	We have a team dedicated to monitoring our Nationally Advertised Pricing (NAP) to ensure it remains aligned with market trends. Different than a stagnant price point of an MSRP list, our NAP is a dynamic list; providing the greatest value in a fast moving industry like IT. Because our price offer is based on our NAP it allows the State to take advantage of price reductions in the timeliest manner possible. Through MMCC, <b>the State has access to CDW•G's Verifiable Price Index 24/7 via cdwg.com. You can feel confident that your pricing is both up-to-date and competitive.</b>
<b>OEM Resources Partnering with CDW•G Ensure Michigan's Success</b>	Many of our OEM partners have staff dedicated to supporting CDW•G customers exclusively. As of this writing, <b>over 900 OEM resources from over 164 of our partners were collocated with CDW•G, collaborating with our account team and engineers to quickly provide expert help to the State.</b> The variety of partners that are on-site more easily facilitates our ability to help the State analyze the best value among the products under consideration and provide the right product the first time.



## **MEMORANDUM**

Department of Public Services

**DATE:** July 21, 2022

**TO:** Thomas M. Markus, City Manager

**FROM:** Lauren A. Wood, Director of Public Services  
Mike Bernal, Public Services Manager

**SUBJECT:** Sensus AMI Upgrade, Hosting Fees, & First Amendment Agreement

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### **INTRODUCTION:**

The Department of Public Services recommends upgrading the Sensus meter system web host and base station. The current system will no longer be supported as the technology has become obsolete. Because of this, the prices for the annual web service are set to increase significantly.

### **BACKGROUND:**

In late 2011, the Department of Public Services (DPS) implemented a smart water meter system through ETNA Supply Company, which enabled the City to access water meter reads through a web-based portal. The hosting technology is now outdated and needs an upgrade. Along with the web host agreement, the First Amendment Agreement will need to be signed.

### **LEGAL REVIEW:**

All documentation has been reviewed and approved by the City Attorney's Office.

### **FISCAL IMPACT:**

The funds for this purchase, (\$49,000) for the upgrade and (\$33,450) for year one of the annual hosting fee, totaling (\$82,450) for fiscal year 22-23. Additional funds needed over the next four years will total (\$152,370). Cost schedule breakdown is listed under the "Expense" section. Funds for this purchase are available in the Water Supply System Fund, Account #591-537.001-811.0000.

### **PUBLIC COMMUNICATIONS:**

ETNA Supply Company is a sole-source provider of Sensus meter systems and web hosts. No communication is necessary for this purchase.

### **SUMMARY**

The Department of Public Services recommends upgrading the meter system host (\$49,000) and the year one annual host fee (\$33,450) totaling (\$82,450). Thereafter, the annual host fees will total (\$152,370) over the next four years. The annual cost schedule breakdown can be found under "Expenses". All services will be provided through ETNA Supply Company, a sole-source provider of Sensus Meter Systems and web hosts.

**ATTACHMENTS:**

This report includes the agreement, web host agreement, quote, insurance, and First Amendment Agreement.

**SUGGESTED COMMISSION ACTION:**

Make a motion adopting a resolution to approve the First Amendment Software Agreement between the City and Sensus (needed to initiate the software upgrade),

And,

Make a motion adopting a resolution to approve an agreement with ETNA Supply Company for the one-time Sensus Meter System Upgrade and the year one hosting fee totaling (\$82,450) and to approve the annual web hosting fees to be paid over the following four years as cited below. Funding will be available in account number 591-537.001-811.0000 for the system upgrade and annual costs; further, to approve the appropriation and amendment to the fiscal year 2022 thru 2027 Water Fund budget as follows:

**Expenses:**

<u>Fiscal Year 2022-2023</u>		
591-537.001-811.0000	One-time Upgrade Fee	\$49,000
591-537.007-811.0000	Fiscal Year 2022-2023 Annual Hosting Fee	<u>\$33,450</u>
		\$82,450
 <u>Upcoming Annual Cost Schedule</u>		
Fiscal Year 2023-2024	Annual Hosting Fee	\$35,210
Fiscal Year 2024-2025	Annual Hosting Fee	\$37,070
Fiscal Year 2025-2026	Annual Hosting Fee	\$39,020
Fiscal Year 2026-2027	Annual Hosting Fee	<u>\$41,070</u>
	Four Year Total	\$152,370

And further, to authorize the Mayor and City Clerk to sign the agreement on behalf of the City.



**AGREEMENT FOR SENSUS AMI UPGRADE & YEARLY HOSTING FEES BETWEEN THE CITY OF BIRMINGHAM & ETNA SUPPLY COMPANY**

**THIS AGREEMENT** is entered into this \_\_\_\_ day of \_\_\_\_\_, 2022, by and between the **CITY OF BIRMINGHAM**, whose address is 151 Martin Street, Birmingham, MI 48009 (hereinafter referred to as the City) and ETNA Supply Company a Michigan company, whose address is 2158 Gratiot Avenue, Detroit, MI 48207, (hereafter referred to as Vendor) and the foregoing shall collectively be referred to as the parties.

**WHEREAS**, the City desires to purchase an AMI upgrade for the smart water system host and the Annual Hosting Fees as more fully described in Attachment "A"; and

**WHEREAS**, the Vendor has qualifications that meet the project requirements and has provided a response and cost proposal to perform the system upgrade and provide the replacement chamber parts.

**NOW, THEREFORE**, in consideration of the foregoing preambles, the adequacy of which is acknowledged by and between the parties to this Agreement, the parties agree as follows:

**1. MUTUALLY AGREE:** It is mutually agreed by and between the parties that the Vendor's Quotation shall be incorporated herein by reference, shall become a part of this Agreement, and shall be binding upon both parties hereto. (Attached hereto as Attachment "A.") In the event of a conflict in any of the terms of this agreement and the Vendor's Quotation, the terms of this Agreement shall prevail.

**2. TERM:** This Agreement shall have a one-time upgrade service and equipment fee, and a five year term for the provided hosting service, as quoted in Attachment "A".

**3. TERMS OF PAYMENT:** The City shall pay a one-time fee of Forty-Nine Thousand and 00/Dollars (\$49,000.00), for the AMI upgrade, which will include the Sensus RNI Setup Fee, Sensus SA-Enhanced Integration Fee, Sensus SA-Enhanced Education Fee, Data Migration from Logic to Sensus SA, and the Base Station Upgrade from S50 to M400, and Thirty-Three Thousand Four Hundred Fifty and 00/Dollars (\$33,450.00) for the first year of service beginning on September 20, 2022, thru September 19, 2023. Thereafter, annual hosting costs shall be invoiced annually, according to the cost schedule listed below. Payment shall be payable thirty (30) days after the date of invoice.

Year 2: 09/20/2023 thru 09/19/2024, Thirty-Five Thousand Two Hundred Ten and 00/Dollars (\$35,210.00);

Year 3: 09/20/2024 thru 09/19/2025, Thirty-Seven Thousand Seventy and 00/Dollars (\$37,070.00);

Year 4: 09/20/2025 thru 09/20/2025 thru 9/19/2026 Thirty-Nine Thousand Twenty and 00/Dollars (\$39,020.00);

Year 5: 09/20/2026 thru 09/19/2027 Forty-One Thousand Seventy and 00/Dollars (\$41,070.00). Payment shall be payable thirty (30) days after being invoiced.

4. Vendor shall employ personnel of good moral character and fitness in performing all services under this Agreement.

5. **INSURANCE SUBMISSION REQUIREMENTS:** The Vendor has submitted proof to the City that it meets all City insurance requirements. Insurance, with coverage amounts at no less than the City's minimum requirements, must be held by the Vendor throughout the term of this Agreement. Certificates of insurance as stated below will be required no later than five (5) business days from the date of Vendor's acceptance of the terms of this Agreement.

6. **CONFIDENTIAL AND OR PROPRIETARY INFORMATION:** The Vendor acknowledges that in performing services pursuant to this Agreement, certain confidential and/or proprietary information (including, but not limited to, internal organization, methodology, personnel and financial information, etc.) may become involved. The Vendor recognizes that unauthorized exposure of such confidential or proprietary information could irreparably damage the City. Therefore, the Vendor agrees to use reasonable care to safeguard the confidential and proprietary information and to prevent the unauthorized use or disclosure thereof. The Vendor shall inform its employees of the confidential or proprietary nature of such information and shall limit access thereto to employees rendering services pursuant to this Agreement. The Vendor further agrees to use such confidential or proprietary information only for the purpose of performing services pursuant to this Agreement.

7. **INDEPENDENT VENDOR:** The Vendor and the City agree that the Vendor is acting as an independent contractor with respect to the Vendor role in providing services to the City pursuant to this Agreement, and as such, shall be liable for its own actions and neither the Vendor nor its employees shall be construed as employees of the City. Nothing contained in this Agreement shall be construed to imply a joint venture or partnership and neither party, by virtue of this Agreement, shall have any right, power or authority to act or create any obligation, express or implied, on behalf of the other party, except as specifically outlined herein. Neither the City nor the Vendor shall be considered or construed to be the agent of the other, nor shall either have the right to bind the other in any manner whatsoever, except as specifically provided in this Agreement, and this Agreement shall not be construed as a contract of agency. The Vendor shall not be considered entitled or eligible to participate in any benefits or privileges given or extended by the City, or be deemed an employee of the City for purposes of federal or state withholding taxes, FICA taxes, unemployment, workers' compensation or any other employer contributions on behalf of the City.

8. **COMPLIANCE WITH LAWS:** The Vendor agrees to fully and faithfully carry out the duties of set forth herein using its best efforts in accomplishing all assignments from the City, and further, in addition to upholding all federal, and state laws and applicable codes of professional conduct to which Vendor is subject, Vendor hereby agrees to be bound by all Federal, State, or City of Birmingham ordinances, rules, regulations and policies as are amended from time to time, and including without limitation the Fair Labor Standards Act, the Equal Employment Opportunity rules and regulations, the Transportation Safety Act and the Occupational Safety and Health Acts.

9. **NON-COMPLIANCE WITH INSURANCE REQUIREMENTS:** Failure to deliver and maintain insurance in accordance with the terms of this Agreement will be cause for the City,

by and through its City Manager, to terminate this Agreement, or at the City's option, the City may purchase on the open market such required insurance and shall be entitled to charge any additional cost to the Vendor, either by offset to any amounts due and owing Vendor for services provided to the City, or, by separate bill and demand for payment. Nothing in this paragraph shall be deemed to create or be interpreted as establishing a "for cause" termination; Vendor agrees and understands that its engagement is at will and may be terminated by the City Manager for any cause or no cause.

**10. INDEMNIFICATION:** To the fullest extent permitted by law, the Vendor and any entity or person for whom the Vendor is legally liable, agrees to be responsible for any liability, defend, pay on behalf of, indemnify, and hold harmless the City of Birmingham, its elected and appointed officials, employees and volunteers and others working on their behalf against any and all claims, demands, suits, or loss, including all costs and reasonable attorney fees connected therewith, and for any damages which may be asserted, claimed or recovered against or from the City, its elected and appointed officials, employees, volunteers or others working on their behalf, by reason of personal injury, including bodily injury and death and/or property damage, including loss of use thereof, which arise out of the acts, errors or omissions of the Vendor including its employees and agents, in the performance of this Agreement. Such responsibility shall not be construed as liability for damage caused by or resulting from the sole act or omission of its elected or appointed officials, employees, volunteers or others working on behalf of the City.

**11. STANDARD INSURANCE REQUIREMENTS:**

The Vendor shall maintain during the life of this Agreement the applicable types of insurance coverage and minimum limits as set forth below:

A. Workers' Compensation Insurance:

For Non-Sole Proprietorships: Vendor shall procure and maintain during the life of this Agreement, Workers' Compensation Insurance, including Employers Liability Coverage, in accordance with all applicable statutes of the State of Michigan.

For Sole Proprietorships: Vendor shall complete and furnish to the City prior to the commencement of work under this Agreement a signed and notarized Sole Proprietor Form, for sole proprietors with no employees or with employees, as the case may be.

B. Commercial General Liability Insurance: Vendor shall procure and maintain during the life of this Agreement, Commercial General Liability Insurance on an "Occurrence Basis" with limits of liability not less than **\$1,000,000** per occurrence combined single limit, Personal Injury, Bodily Injury and Property Damage. Coverage shall include the following extensions: (A) Contractual Liability; (B) Products and Completed Operations; (C) Independent Vendor Coverage; (D) Broad Form General Liability Extensions or equivalent; (E) Deletion of all Explosion, Collapse and Underground (XCU) Exclusions, if applicable.

C. Additional Insured: Commercial General Liability and Motor Vehicle Liability Insurance, as described above, shall include an endorsement stating the following

**Additional Insureds: The City of Birmingham, including all elected and appointed officials, all employee and volunteers, all boards, commissions and/or authorities and board members, including employees and volunteers thereof.** This coverage shall be primary to any other coverage that may be available to the additional insured, whether any other available coverage by primary, contributing or excess.

D. Professional Liability: If applicable, professional liability insurance with limits of not less than \$2,000,000 per claim if Vendor will provide services that are customarily subject to this type of coverage.

E. Coverage Expiration: If any of the above coverages expire during the term of this Agreement, Vendor shall deliver renewal certificates and/or policies to the City at least (10) days prior to the expiration date.

F. Proof of Insurance Coverage: Vendor shall provide the City of Birmingham at the time the Agreement is returned for execution, Certificates of Insurance and/or policies, acceptable to the City of Birmingham, as listed below.

- 1) Two (2) copies of Certificate of Insurance for Workers' Compensation Insurance, or a signed and notarized copy of the Sole Proprietor Form;
- 2) Two (2) copies of Certificate of Insurance for Commercial General Liability Insurance;
- 3) Two (2) copies of Certificate of Insurance for Vehicle Liability Insurance;
- 4) Two (2) copies of Certificate of Insurance for Professional Liability Insurance, if applicable;
- 5) If so requested, Certified Copies of all policies mentioned above will be furnished.

G. Maintaining Insurance: Upon failure of the Vendor to obtain or maintain such insurance coverage for the term of the Agreement, the City of Birmingham may, at its option, purchase such coverage and subtract the cost of obtaining such coverage from the Agreement amount. In obtaining such coverage, the City of Birmingham shall have no obligation to procure the most cost-effective coverage but may contract with any insurer for such coverage.



**12. WRITTEN NOTICES:** Written notices regarding this Agreement shall be addressed to the following:

City: City of Birmingham  
P.O. Box 3001  
Birmingham, Michigan 48012  
Attn: [Mike Bernal](#)

ETNA Supply Company:  
2158 Gratiot Ave.  
Detroit, MI 48207  
Attn: Todd Bennett

**13. COVID:** The Vendor shall follow all of the City's COVID-19 safety protocols while on City property. Additionally, Vendor staff which will be in physical contact with city staff must have current vaccinations against COVID-19. The City, at its discretion, may ask for proof of vaccination of Vendor staff. Failure to provide proof of vaccination when requested will cause the City to request un-vaccinated personnel to leave, request alternate staff, and if the Vendor is unable to comply, this violation of safety protocols will constitute a breach of contract by the Vendor.

**14. AMENDMENTS:** No amendment, modification or supplement to this Agreement shall be binding unless it is in writing and signed by authorized representatives of the parties.

**15. WAIVER OF BREACH:** No waiver by either party of any breach of any of the terms, covenants or conditions herein contained by the other party shall be construed as a waiver of any succeeding breach of this same or of any other term, covenant or condition.

**16. COMPLETE AGREEMENT:** The parties agree that the conditions set forth in this Agreement sets forth all terms and conditions of Vendor agreement with the City of Birmingham. This Agreement supersedes all prior agreements or understandings between the parties. There are no promises, conditions or understandings other than those stated herein, and, that any prior negotiations, terms or conditions discussed between the City and the Vendor shall not constitute a part of this Agreement. The term "agreement" as used in this clause shall include any future written amendments, modifications, or supplements made in accordance herewith.

**17. DIRECT OR INDIRECT INTEREST:** If, after the effective date of this Agreement, any official of the City, or spouse, child, parent or in-law of such official or employee shall become directly or indirectly interested in this Agreement or the affairs of the Vendor, the City shall have the right to terminate this Agreement without further liability to the Vendor if the disqualification has not been removed within thirty (30) days after the City has given the Vendor notice of the disqualifying interest. Ownership of less than one percent (1%) of the stock or other equity interest in a corporation or partnership shall not be a disqualifying interest. Employment shall be a disqualifying interest.



**18. FAILURE TO PERFORM.** If Vendor fails to perform its obligations hereunder, the City may take any and all remedial actions provided by the general specifications or otherwise permitted by law.

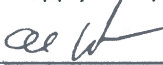
**19. LEGAL PROCEEDINGS:** Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled either by commencement of a suit in Oakland County Circuit Court, the 48<sup>th</sup> District Court or by arbitration. If both parties elect to have the dispute resolved by arbitration, it shall be settled pursuant to Chapter 50 of the Revised Judicature Act for the State of Michigan and administered by the American Arbitration Association with one arbitrator being used, or three arbitrators in the event any party's claim exceeds \$1,000,000. Each party shall bear its own costs and expenses and an equal share of the arbitrator's and administrative fees of arbitration. Such arbitration shall qualify as statutory arbitration pursuant to MCL §600.5001 et seq., and the Oakland County Circuit Court or any court having jurisdiction shall render judgment upon the award of the arbitrator made pursuant to this Agreement. The laws of the State of Michigan shall govern this Agreement, and the arbitration shall take place in Oakland County, Michigan. In the event that the parties elect not to have the matter in dispute arbitrated, any dispute between the parties may be resolved by the filing of a suit in a federal or state court with jurisdiction over Oakland County, Michigan.

**20. RESPONSE TO GOVERNMENTAL COOPERATIVE PURCHASING AGREEMENT:** The Vendor shall be held to and bound by all terms, conditions, warranties and representations which it made in its written response dated August 8, 2022, to the City's Cooperative Purchasing Agreement, dated \_\_\_\_\_. In the event of a conflict in any of the terms of this Agreement and the Vendor August 8, 2022 (date of response) response, the terms of this Agreement shall prevail.

**21. FAIR PROCUREMENT OPPORTUNITY:** Procurement for the City of Birmingham will be handled in a manner providing fair opportunity for all businesses. This will be accomplished without abrogation or sacrifice of quality and as determined to be in the best interest of the City of Birmingham.

**22. IN WITNESS WHEREOF,** the parties hereto agree to be bound by the above terms and conditions, and Vendor, by its authorized signature below, expressly accepts this Agreement upon the above provided terms and conditions contained in this Agreement as of the date first above written.

ETNA Supply Company

By:   
Its: MUNICIPAL D.V. Mgr

STATE OF MICHIGAN )  
 ) ss:  
COUNTY OF OAKLAND )

On this 8<sup>th</sup> day of August, 2022 before me personally appeared Al Weber, who acknowledged that with authority on behalf of Etna Supply to do so he/she signed this Agreement.

[Signature]  
Notary Public  
Canadian County, Michigan Oklahoma  
Acting in Canadian County, Michigan Oklahoma  
My commission expires: 3/15/23



**CITY OF BIRMINGHAM:**

By: \_\_\_\_\_  
Therese Longe, Mayor

By: \_\_\_\_\_  
Alexandria D. Bingham, City Clerk

**APPROVED:**

[Signature]  
Thomas M. Markus, City Manager  
(Approved as to substance)

[Signature]  
Lauren Wood, Director of Public  
Services  
(Approved as to substance)

[Signature]  
Mary M. Kucharek, City Attorney  
(Approved as to form)

[Signature]  
Mark A. Gerber, Finance Director  
(Approved as to Financial Obligation)

# ATTACHMENT A

**City of Birmingham  
AMI Upgrade**

QUOTE: 02-11-2

Description	Quantity	Unit Price	Total Price
Sensus RNI Set up Fee	1	INCLUDED	INCLUDED
Sensus SA-Enhanced Integration Fee	1	\$ 5,000.00	\$ 5,000.00
Sensus SA-Enhanced Education Fee - Remote	1	\$ 2,500.00	\$ 2,500.00
<b>Total</b>			<b>\$ 7,500.00</b>

Description - Optional	Quantity	Unit Price	Total Price
Data Migration from Logic to Sensus SA	1	\$ 6,500.00	\$ 6,500.00
Base Station Upgrade from S50 to M400	1	\$ 35,000.00	\$ 35,000.00

Description	Quantity	Unit Price	Total Price
Annual RNI Hosting Fee - 09-20-22 thru 09-19-23	1	\$ 16,725.00	\$ 16,725.00
Sensus SA-Enhanced -Water - Hosting Fee - 09-20-22 thru 09-19-23	1	\$ 16,725.00	\$ 16,725.00
<b>Total - Year 1</b>			<b>\$ 33,450.00</b>

Description	Quantity	Unit Price	Total Price
Annual RNI Hosting Fee - 09-20-23 thru 09-19-24	1	\$ 17,605.00	\$ 17,605.00
Sensus SA-Enhanced -Water - Hosting Fee - 09-20-23 thru 09-19-24	1	\$ 17,605.00	\$ 17,605.00
<b>Total - Year 2</b>			<b>\$ 35,210.00</b>

Description	Quantity	Unit Price	Total Price
Annual RNI Hosting Fee - 09-20-24 thru 09-19-25	1	\$ 18,535.00	\$ 18,535.00
Sensus SA-Enhanced -Water - Hosting Fee - 09-20-24 thru 09-19-25	1	\$ 18,535.00	\$ 18,535.00
<b>Total - Year 3</b>			<b>\$ 37,070.00</b>

Description	Quantity	Unit Price	Total Price
Annual RNI Hosting Fee - 09-20-25 thru 09-19-26	1	\$ 19,510.00	\$ 19,510.00
Sensus SA-Enhanced -Water - Hosting Fee - 09-20-25 thru 09-19-26	1	\$ 19,510.00	\$ 19,510.00
<b>Total - Year 4</b>			<b>\$ 39,020.00</b>

Description	Quantity	Unit Price	Total Price
Annual RNI Hosting Fee - 09-20-26 thru 09-19-27	1	\$ 20,535.00	\$ 20,535.00
Sensus SA-Enhanced -Water - Hosting Fee - 09-20-26 thru 09-19-27	1	\$ 20,535.00	\$ 20,535.00
<b>Total - Year 5</b>			<b>\$ 41,070.00</b>





Client#: 167734

ETNADIS

**ACORD****CERTIFICATE OF LIABILITY INSURANCE**

DATE (MM/DD/YYYY)

6/23/2022

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must have **ADDITIONAL INSURED** provisions or be endorsed. If **SUBROGATION IS WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer any rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> <b>EPIC Insurance Midwest</b> <b>560 5th Street, Suite 202</b> <b>Grand Rapids, MI 49504</b>	<b>CONTACT NAME:</b> Patti Zuk	
	<b>PHONE (A/C, No, Ext):</b> -	<b>FAX (A/C, No):</b>
<b>E-MAIL ADDRESS:</b> patti.zuk@epicbrokers.com		
<b>INSURER(S) AFFORDING COVERAGE</b>		<b>NAIC #</b>
<b>INSURER A:</b> Zurich American Insurance Company		<b>16535</b>
<b>INSURER B:</b> Travelers Property Casualty Co of Amer		<b>25674</b>
<b>INSURER C:</b>		
<b>INSURER D:</b>		
<b>INSURER E:</b>		
<b>INSURER F:</b>		

**INSURED**  
**Etna Distributors, Inc.**  
**Etna Supply Co.**  
**4901 Clay Ave**  
**Grand Rapids, MI 49548**

<b>COVERAGES</b>	<b>CERTIFICATE NUMBER:</b>	<b>REVISION NUMBER:</b>
THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.		

FORM LTR	TYPE OF INSURANCE	ADDITIONAL INSURER	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> <b>COMMERCIAL GENERAL LIABILITY</b> <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input checked="" type="checkbox"/> LOC <input type="checkbox"/> OTHER	X X	GLO0381011	07/01/2022	07/01/2023	EACH OCCURRENCE <b>≤1,000,000</b> DAMAGE TO RENTED PREMISES (Ea occurrence) <b>≤1,000,000</b> MED EXP (Any one person) <b>≤10,000</b> PERSONAL & ADV INJURY <b>≤1,000,000</b> GENERAL AGGREGATE <b>≤2,000,000</b> PRODUCTS - COMPROP AGG <b>≤2,000,000</b> \$
A	<input checked="" type="checkbox"/> <b>AUTOMOBILE LIABILITY</b> <input checked="" type="checkbox"/> ANY AUTO OWNED <input checked="" type="checkbox"/> AUTOS ONLY <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY	X X	BAP0381012	07/01/2022	07/01/2023	COMBINED SINGLE LIMIT (Ea accident) <b>≤1,000,000</b> BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
B	<input checked="" type="checkbox"/> <b>UMBRELLA LIAB</b> <input type="checkbox"/> EXCESS LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS-MADE DED <input checked="" type="checkbox"/> RETENTION <b>≤10,000</b>	X X	CUP4T60069722NF	07/01/2022	07/01/2023	EACH OCCURRENCE <b>≤5,000,000</b> AGGREGATE <b>≤5,000,000</b> \$
A	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N N N/A	WC0381010	07/01/2022	07/01/2023	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER E.L. EACH ACCIDENT <b>≤1,000,000</b> E.L. DISEASE - EA EMPLOYEE <b>≤1,000,000</b> E.L. DISEASE - POLICY LIMIT <b>≤1,000,000</b>
A	<b>Hired Auto Physical Damage</b>		BAP0381012	07/01/2022	07/01/2023	<b>ACV</b> <b>\$250 Comp/\$500 Coll Ded</b> <b>\$2,500 Ded. Tractors</b>

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

The City of Birmingham, including all elected and appointed officials, all employees and volunteers, all boards, commissions and/or authorities and board members, including employees and volunteers thereof are named as additional insureds as required by written contract.

<b>CERTIFICATE HOLDER</b>	<b>CANCELLATION</b>
<b>City of Birmingham</b> <b>851 S. Eaton St.</b> <b>Birmingham, MI 48012</b>	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	<b>AUTHORIZED REPRESENTATIVE</b> <i>David J. Hop</i>



FIRST AMENDMENT TO THE  
SOFTWARE AS A SERVICE AGREEMENT  
("First Amendment")

This First Amendment is made this \_\_\_ day of \_\_\_\_\_ 2022 ("Effective Date"), by and between Sensus USA Inc., a corporation of the State of Delaware with offices at 637 Davis Drive, Morrisville, North Carolina 27560 ("Sensus"), and City of Birmingham, a city formed in the State of Michigan, ("Customer").

WHEREAS, Sensus and Customer entered into an Advanced Metering Infrastructure Agreement on April 26, 2019 ("Agreement"); and

WHEREAS, the parties are currently in the Initial Term of the Agreement, and

WHEREAS the parties desire to amend the Agreement according to the terms and conditions in this First Amendment; and

NOW THEREFORE, in consideration of the mutual covenants, terms, and conditions set forth in this First Amendment, the parties hereto mutually covenant and agree to amend the Agreement as follows:

1. **Defined Terms.** Any terms used in this First Amendment as defined terms, and which are not defined herein, shall have the meanings given to those terms in the Agreement.
2. **Software.** By way of this First Amendment, Customer hereby elects to utilize the Sensus Analytics Enhanced Package software in lieu of the Harris-licensed Logic software. Accordingly, Exhibit A of the Agreement is hereby replaced in its entirety with the Exhibit A attached hereto. For clarity and avoidance of doubt, the penalties and fees associated with the termination of an Application, as outlined in Section 1(C) of Exhibit A in the Agreement, will not be assessed to the Customer for the transition from Harris Logic to the Sensus Analytics Enhanced Package.
3. **Entire Agreement.** The Agreement, as amended by this First Amendment, constitutes and contains the entire understanding and agreement of the parties. To the extent that the provisions of this First Amendment are inconsistent with the Agreement, the terms of this First Amendment shall control. Except as expressly amended or modified in this First Agreement, all other terms and conditions of the Agreement shall remain in full force and effect and this First Amendment shall be binding upon the parties.

[Signature page follows]

IN WITNESS WHEREOF, the parties hereto have caused this First Amendment to be signed by their respective officers, authorized as of the day and year written above.

**SENSUS USA INC**

By: 

Name: Tim Harriger

Title: VP Sales

Date: 7/28/2022

**CITY OF BIRMINGHAM**

By: \_\_\_\_\_

Name: Therese Longe

Its: Mayor

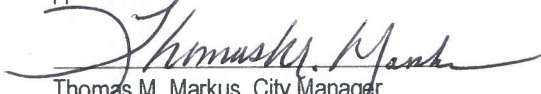
Date: \_\_\_\_\_


By: \_\_\_\_\_


Name: Alexandria D. Bingham

Its: City Clerk

Approved:

  
Thomas M. Markus, City Manager  
(Approved as to substance)

  
Lauren Wood, Director of Public Services  
(Approved as to substance)

  
Mark A. Gerber, Director of Finance  
(Approved as to financial obligation)

  
Mary M. Kucharek, City Attorney  
(Approved as to form)

**Exhibit A**  
**Software**

**I. Software as a Service**

**1. Description of Services.**

This exhibit contains the details of the Software as a Service that Sensus shall provide to Customer if both; (i) pricing for the application of Software as a Service has been provided to the Customer; and (ii) the Customer is current in its payments to Sensus' authorized distributor for such application of Software as a Service.

**A. Software as a Service Generally.**

Software as a Service is a managed service in which Sensus will be responsible for the day-to-day monitoring, maintenance, management, and supporting of Customer's software applications. In a Software as a Service solution, Sensus owns all components of the solution (server hardware, storage, data center, network equipment, Sensus software, and all third-party software) required to run and operate the application. These software applications consist of the following (each an "Application"):

- Regional Network Interface (RNI) Software
- Sensus Analytics
  - Enhanced Package

The managed application systems consist of the hardware, Sensus Software, and other third-party software that is required to operate the software applications. Each Application will have a production, and Disaster Recovery (as described below) environment Test environments are not provided unless otherwise specifically agreed by Sensus in writing. Sensus will manage the Applications by providing 24 x 7 x 365 monitoring of the availability and performance of the Applications.

**B. Use of Software as a Service.** Subject to the terms of this Agreement, Sensus shall make Software as a Service available to Customer to access and use solely for the Permitted Use and solely for so long as Customer is current in its payments to Sensus or its authorized distributor for Software as a Service. The Software as a Service term commences on the date that Sensus first makes Software as a Service available to Customer for use, and ends upon the earlier of: (i) the expiration or termination of the Agreement; (ii) breach by Customer of this exhibit or the Agreement; or (iii) Customer's termination of Software as a Service as set forth in paragraph (C) below.

**C. Termination of an Application.** Customer shall have the option at any time before the end of the Term to terminate any Application by giving Sensus one hundred twenty (120) days prior written notice. Such notice, once delivered to Sensus, is irrevocable. Should Customer elect to terminate any Application, Customer acknowledges that: (a) Customer shall pay all applicable fees, including any unpaid Software as a Service fees due in the current calendar year plus a ten percent (10%) early termination fee, where such fee is calculated based on the annual Software as a Service fee due in the current calendar year; and (b) Software as a Service for such Application shall immediately cease. If Customer elects to terminate the RNI Application in the Software as a Service environment but does not terminate the Agreement generally, then upon delivery of the notice to Sensus, Customer shall purchase the necessary (a) RNI hardware from a third party and (b) RNI software license at Sensus' then-current pricing. No portion of the Software as a Service fees shall be applied to the purchase of the RNI hardware or software license.

**D. Software as a Service means only the following services:**

- i. Sensus will provide the use of required hardware, located at Sensus' or a third-party's data center facility (as determined by Sensus), that is necessary to operate the Application.
- ii. Sensus will provide production and disaster recovery environments for Application.
- iii. Sensus will provide patches, updates, and upgrades to latest Sensus Hosted Software release.
- iv. Sensus will configure and manage the equipment (server hardware, routers, switches, firewalls, etc.) in the data centers:
  - (a) Network addresses and virtual private networks (VPN)
  - (b) Standard time source (NTP or GPS)
  - (c) Security access points
  - (d) Respond to relevant alarms and notifications
- v. Capacity and performance management. Sensus will:
  - (a) Monitor capacity and performance of the Application server and software applications 24x7x365 using KPI metrics, thresholds, and alerts to proactively identify any potential issues related to system capacity and/or performance (i.e. database, backspool, logs, message broker storage, etc.)
  - (b) If an issue is identified to have a potential impact to the system, Sensus will open an incident ticket and manage the ticket through resolution per Exhibit B, Technical Support.
  - (c) Manage and maintain the performance of the server and perform any change or configuration to the server, in accordance to standard configuration and change management policies and procedures.
  - (d) Manage and maintain the server storage capacity and performance of the Storage Area Network (SAN), in accordance to standard configuration and change management policies and procedures.
  - (e) Exceptions may occur to the system that require Sensus to take immediate action to maintain the system capacity and performance levels, and Sensus has authority to make changes without Customer approval as needed, in accordance to standard configuration and change management policies and procedures.
- vi. Database management. Sensus will:
  - (a) Implement the data retention plan and policy, and will provide the policy upon request.
  - (b) Monitor space and capacity requirements.
  - (c) Respond to database alarms and notifications.
  - (d) Install database software upgrades and patches.
  - (e) Perform routine database maintenance and cleanup of database to improve capacity and performance, such as rebuilding indexes, updating indexes, consistency checks, run SQL query/agent jobs, etc.

- vii. Incident and Problem Management. Sensus will:
  - (a) Proactively monitor managed systems (24x7x365) for key events and thresholds to proactively detect and identify incidents.
  - (b) Respond to incidents and problems that may occur to the Application(s).
  - (c) Maintain policies and procedures for responding to incidents and performing root cause analysis for ongoing problems.
  - (d) Correlate incidents and problems where applicable.
  - (e) Sensus personnel will use the self-service portal to document and track incidents.
  - (f) In the event that Sensus personnel is unable to resolve an issue, the issue will be escalated to the appropriate Subject Matter Expert (SME).
  - (g) Maintain responsibility for managing incident and problems through resolution and will coordinate with Customer's personnel and/or any required third-party vendor to resolve the issue.
  - (h) Provide telephone support consistent with Exhibit B, Technical Support in the case of undetected events.
- viii. Security Management. Sensus will:
  - (a) Monitor the physical and cyber security of the server and Application(s) 24x7x365 to ensure system is highly secure in accordance with NIST Security Standards.
  - (b) Perform active intrusion prevention and detection of the data center network and firewalls, and monitor logs and alerts.
  - (c) Conduct period penetration testing of the network and data center facilities.
  - (d) Conduct monthly vulnerability scanning by both internal staff and external vendors.
  - (e) Perform anti-virus and Malware patch management on all systems.
  - (f) Install updates to virus protection software and related files (including virus signature files and similar files) on all servers from the update being generally available from the anti-virus software provider.
  - (g) Respond to any potential threat found on the system and work to eliminate any virus or malware found.
  - (h) Adhere to and submit certification to NERC/CIP Cyber Security standards.
  - (i) Monitors industry regulation/standards regarding security – NERC, FERC, NIST, OpenSG, etc. through the dedicated Sensus security team.
  - (j) Provide secure web portal access (SSL) to the Application(s).
- ix. Backup and Disaster Recovery Management. Sensus will:
  - (a) Perform daily backups of data providing one (1) year of history for auditing and restoration purposes.
  - (b) Back-up and store data (on tapes or other storage media as appropriate) off-site to provide protection against disasters and to meet file recovery needs.
  - (c) Conduct incremental and full back-ups to capture data, and changes to data, on the Application(s).
  - (d) Replicate the Application(s) environments to a geographically separated data center location to provide a full disaster recovery environment for the Application production system.
  - (e) Provide disaster recovery environment and perform fail-over to Disaster Recovery environment within forty-eight (48) hours of declared event.
  - (f) Generate a report following each and any disaster measuring performance against the disaster recovery plan and identification of problem areas and plans for resolution.
  - (g) Maintain a disaster recovery plan. In the event of a disaster, Sensus shall provide the services in accordance with the disaster recovery plan.
  - (h) In the case of a disaster and loss of access to or use of the Application, Sensus would use commercially reasonable efforts per the Recovery Time Objectives (RTO) and Recovery Point Objectives (RPO) specified herein to restore operations at the same location or at a backup location within forty-eight (48) hours.
  - (i) The Application shall have a RTO of forty-eight (48) hours.
  - (j) The RPO shall be a full recovery of the Application(s), with an RPO of one (1) hours, using no more than a twenty-four (24) hour old backup. All meter-related data shall be pushed from each Base Station/TGB restoring the database to real-time minus external interfaced systems from the day prior.
  - (k) Data from external interfaced systems shall be recreated within a forty-eight (48) hour period with the assistance of Customer personnel and staff, as needed.

**E. Customer Responsibilities:**

- i. Coordinate and schedule any changes submitted by Sensus to the system in accordance with standard configuration and change management procedures.
- ii. Participate in all required configuration and change management procedures.
- iii. Customer will log incidents related to the managed Application with Sensus personnel via email, web portal ticket entry, or phone call.
- iv. Responsible for periodic processing of accounts or readings (i.e., billing files) for Customer's billing system for billing or other analysis purposes.
- v. Responsible for any field labor to troubleshoot any SmartPoint modules or smart meters in the field in populations that have been previously deployed and accepted.
- vi. First response labor to troubleshoot FlexNet Base Station, R100s, Remote Transceivers or other field network equipment.
- vii. Responsible for local area network configuration, management, and support.
- viii. Identify and research problems with meter reads and meter read performance.
- ix. Create and manage user accounts.
- x. Customize application configurations.
- xi. Support application users.
- xii. Investigate application operational issues (e.g., meter reads, reports, alarms, etc.).
- xiii. Respond to alarms and notifications.



xiv. Perform firmware upgrades over-the-air, or delegate and monitor field personnel for on-site upgrades.

F. **Software as a Service** does not include any of the following services:

- i. Parts or labor required to repair damage to any field network equipment that is the result of a Force Majeure event.
- ii. Any integration between applications, such as Harris MeterSense, would require a Professional Services contract agreement to be scoped, submitted, and agreed in a signed writing between Sensus and all the applicable parties.

**If an item is not listed in subparagraphs in item (D) above, such item is excluded from the Software as a Service and is subject to additional pricing.**

**II. Further Agreements**

**A. System Uptime Rate.**

- i. Sensus (or its contractor) shall manage and maintain the Application(s) on computers owned or controlled by Sensus (or its contractors) and shall provide Customer access to the managed Application(s) via internet or point to point connection (i.e., Managed-Access use), according to the terms below. Sensus endeavors to maintain an average System Uptime Rate equal to ninety-nine (99.0) per Month (as defined below). The System Uptime Rate, cumulative across all Applications, shall be calculated as follows:

$$\text{System Uptime Rate} = 100 \times \frac{\text{TMO} - \text{Total Non-Scheduled Downtime minutes in the Month}}{\text{TMO}}$$

ii. **Calculations**

- a. **Targeted Minutes of Operation** or **TMO** means total minutes cumulative across all Applications in the applicable month minus the Scheduled Downtime in the Month.
- b. **Scheduled Downtime** means the number of minutes during the Month, as measured by Sensus, in which access to any Application is scheduled to be unavailable for use by Customer due to planned system maintenance. Sensus shall provide Customer notice (via email or otherwise) at least seven (7) days in advance of commencement of the Scheduled Downtime.
- c. **Non-Scheduled Downtime** means the number of minutes during the Month, as measured by Sensus, in which access to any Application is unavailable for use by Customer due to reasons other than Scheduled Downtime or the Exceptions, as defined below (e.g., due to a need for unplanned maintenance or repair).

iii. **Exceptions.** Exceptions mean the following events:

- Force Majeure
- Emergency Work, as defined below; and
- Lack of Internet Availability, as described below.
- a. **Emergency Work.** In the event that Force Majeure, emergencies, dangerous conditions or other exceptional circumstances arise or continue during TMO, Sensus shall be entitled to take any actions that Sensus, in good faith, determines is necessary or advisable to prevent, remedy, mitigate, or otherwise address actual or potential harm, interruption, loss, threat, security or like concern to any of the Application(s) ("**Emergency Work**"). Such Emergency Work may include, but is not limited to: analysis, testing, repair, maintenance, re-setting and other servicing of the hardware, cabling, networks, software and other devices, materials and systems through which access to and/or use of the Application(s) by the Customer is made available (the "**Managed Systems**"). Sensus shall endeavor to provide advance notice of such Emergency Work to Customer when practicable and possible.
- b. **Lack of Internet Availability.** Sensus shall not be responsible for any deterioration of performance attributable to latencies in the public internet or point-to-point network connection operated by a third party. Customer expressly acknowledges and agrees that Sensus does not and cannot control the flow of data to or from Sensus' networks and other portions of the Internet, and that such flow depends in part on the performance of Internet services provided or controlled by third parties, and that at times, actions or inactions of such third parties can impair or disrupt data transmitted through, and/or Customer's connections to, the Internet or point-to-point data connection (or portions thereof). Although Sensus will use commercially reasonable efforts to take actions Sensus may deem appropriate to mitigate the effects of any such events, Sensus cannot guarantee that such events will not occur. Accordingly, Sensus disclaims any and all liability resulting from or relating to such events.

iv. **System Availability.** For each month that the System Uptime Rates for the production RNI falls below 99.0%, Sensus will issue Customer the following Service Level Credits:

System Uptime Rate per calendar month	Service Level Credit
Less than 99.0% but at least 97.5%	5% of the monthly RNI SaaS Fees in which the service level default occurred (Note: SaaS fees are pre-paid annually and for purposes of SLA Credits are computed on a monthly basis.)
Less than 97.5% but at least 95.0%	10% of the monthly RNI SaaS Fees in which the service level default occurred
Less than 95.0%	20% of the monthly RNI SaaS Fees in which the service level default occurred

Service Level Credits for any single month shall not exceed 20% of the RNI SaaS Fee associated with the month in which the service level default occurred. Sensus records and data will be the sole basis for all Service Level Credit calculations and determinations, provided that such records and data must be made available to Customer for review and agreement by Customer. To receive a Service Level Credit, Customer must issue a written request no later than ten (10) days after the Service Level Credit has accrued. Sensus will apply each valid Service Level Credit to the Customer's invoice within 2 billing cycles after Sensus' receipt of Customer's request and confirmation of the failure to meet the applicable Service Level Credit. Service Level Credits will not be payable for failures to meet the System Uptime Rate caused by any Exceptions. No Service Level Credit will apply if Customer is not current in its undisputed payment obligations under the Agreement. Service Level Credits are exclusive of any applicable taxes charged to Customer or collected by Sensus. Sensus shall not refund an unused Service Level Credits or pay cash to Customer for any unused Service Level Credits. Any unused Service Level Credits at the time the Agreement terminates will be forever forfeited. THE SERVICE LEVEL CREDITS DESCRIBED IN THIS SECTION ARE THE SOLE AND EXCLUSIVE REMEDY FOR SENSUS' FAILURE TO MEET THE SYSTEM UPTIME REQUIREMENT OR ANY DEFECTIVE SAAS



PERFORMANCE. IN NO EVENT SHALL THE AGGREGATE AMOUNT OF SERVICE LEVEL CREDITS IN ANY ANNUAL PERIOD EXCEED 20% OF THE ANNUAL RNI SAAS FEE.

- B. Data Center Site-Security.** Although Sensus may modify such security arrangements without consent or notice to Customer, Customer acknowledges the following are the current arrangements regarding physical access to and support of the primary hardware components of the Managed Systems:
- i. The computer room(s) in which the hardware is installed is accessible only to authorized individuals.
  - ii. Power infrastructure includes one or more uninterruptible power supply (UPS) devices and diesel generators or other alternative power for back-up electrical power.
  - iii. Air-conditioning facilities (for humidity and temperature controls) are provided in or for such computer room(s) and can be monitored and adjusted for humidity and temperature settings and control. Such air systems are supported by redundant, back-up and/or switch-over environmental units.
  - iv. Such electrical and A/C systems are monitored on an ongoing basis and personnel are available to respond to system emergencies (if any) in real time.
  - v. Dry pipe pre-action fire detection and suppression systems are provided.
  - vi. Data circuits are available via multiple providers and diverse paths, giving access redundancy.
- C. Responsibilities of Customer.**
- i. Customer shall promptly pay all Software as a Service fees.
  - ii. Customer may not (i) carelessly, knowingly, intentionally or maliciously threaten, disrupt, harm, abuse or interfere with the Application(s), Managed Systems or any of their functionality, performance, security or integrity, nor attempt to do so; (ii) impersonate any person or entity, including, but not limited to, Sensus, a Sensus employee or another user; or (iii) forge, falsify, disguise or otherwise manipulate any identification information associated with Customer's access to or use of the Application(s).
  - iii. The provisioning, compatibility, operation, security, support, and maintenance of Customer's hardware and software ("Customer's Systems") is exclusively the responsibility of Customer. Customer is also responsible, in particular, for correctly configuring and maintaining (i) the desktop environment used by Customer to access the Application(s) managed by Sensus; and (ii) Customer's network router and firewall, if applicable, to allow data to flow between the Customer's Systems and Sensus' Managed Systems in a secure manner via the public Internet.
  - iv. Upon receiving the system administrator account from Sensus, Customer shall create username and passwords for each of Customer's authorized users and complete the applicable Sensus registration process (Authorized Users). Such usernames and passwords will allow Authorized Users to access the Application(s). Customer shall be solely responsible for maintaining the security and confidentiality of each user ID and password pair associated with Customer's account, and Sensus will not be liable for any loss, damage or liability arising from Customer's account or any user ID and password pairs associated with Customer. Customer is fully responsible for all acts and omissions that occur through the use of Customer's account and any user ID and password pairs. Customer agrees (i) not to allow anyone other than the Authorized Users to have any access to, or use of Customer's account or any user ID and password pairs at any time; (ii) to notify Sensus immediately of any actual or suspected unauthorized use of Customer's account or any of such user ID and password pairs, or any other breach or suspected breach of security, restricted use or confidentiality; and (iii) to take the Sensus-recommended steps to log out from and otherwise exit the Application(s) and Managed Systems at the end of each session. Customer agrees that Sensus shall be entitled to rely, without inquiry, on the validity of the user accessing the Application(s) application through Customer's account, account ID, usernames or passwords.
  - v. Customer shall be responsible for the day-to-day operations of the Application(s) and FlexNet System. This includes, without limitation, (i) researching problems with meter reads and system performance, (ii) creating and managing user accounts, (iii) customizing application configurations, (iv) supporting application users, (v) investigating application operational issues, (vi) responding to alarms and notifications, and (vii) performing over-the-air commands (such as firmware updates or configuration changes).
- D. Software Solution Components.**
- i. **Description of Software Solutions.** Sensus software consists of a core communication module and a set of applications. Some applications are required to perform basic solution capabilities, other applications are optional and add additional capabilities and function to the overall solution. As Customer's business process expands and/or new Sensus offerings are made available, additional applications and functionality can dynamically be added to the solution, provided Customer purchases such additional applications.
  - ii. **Regional Network Interface.** The Regional Network Interface (RNI) or Sensus head-end is the centralized intelligence of the FlexNet network; the RNI's primary objective is to transfer endpoint (such as meters) data to the Customer and the advanced feature applications. The RNI is adaptable to Customer configurations by simultaneously supporting a wide range of FlexNet enabled endpoints; including but not limited to meters (electric, water, gas), street lighting, and Home Area Network devices.
    - a. Core Package
      - (i) Communication
        1. Manages all inbound and outbound traffic to and from endpoints
        2. Outbound routing optimization
        3. Route analyzer
        4. AES256 bit encryption of radio messages
        5. Reports and metric details of network performance and troubleshooting aids
        6. Management of RF equipment (base stations and endpoint radios)
      - (ii) Data Collection
        1. Missing read management
        2. Management of duplicate reads
        3. 60 day temporary storage
      - (iii) Application integration
        1. To Sensus Analytics applications
        2. Enable 3<sup>rd</sup> party application integration

3. Batch CMEP file export
4. Real-time access through MultiSpeak
- (iv) Endpoint Management
  1. Gas, water, electric, lighting concurrent support
  2. Remote configuration
  3. Remote firmware updates
  4. Reports, metrics and Troubleshooting
- (v) User Management
  1. Secure access
  2. Password management
  3. Definable user roles
  4. User permissions to manage access to capabilities
- b. Integration of RNI. Sensus shall provide RNI integration support services to Customer only to the extent specifically provided below:
  - (i) Sensus shall meet with the representative from the Customer's system(s) targeted for integration to determine which integration method is appropriate (e.g., Multispeak, CMEP, etc.).
    1. In scope and included integration efforts: Provide the gateway URLs to the integrating system as needed, provide Customer with standard integration API documentation, validate and test that the correct Customer information is flowing into and/or out of the RNI.
    2. Out of scope and subject to additional charges: Modifications or extensions to the standard API provided by Sensus and any integration efforts not outlined above as in scope and included.
  - (ii) Customer Responsibilities:
    1. Provide Sensus with information about the relevant information Customer wishes to transfer and integrate with the RNI.
    2. Establish the network and security required for the two systems to reasonably communicate.
    3. Verify integration to third party system functionality is working as intended.
  - (iii) If an item is not listed in subparagraph (i) above, such item is excluded from the integration of Sensus RNI Support and is subject to additional pricing.

### III. Sensus Analytics

Sensus Analytics is a cloud-based solution and data platform that allows storage and retrieval of raw reads and data from other sources for analysis, exportation, and inquiry or reporting. The platform provides applications and reporting capabilities.

#### A. Essential Package. The Essential Package of the Sensus Analytics Application shall consist of the following modules:

- i. Device Access
  - a. Allows search for meter details by using data imported from the billing system or the Sensus Device ID or AMI ID.
  - b. Allows a view of the meter interval or register reads.
  - c. Meter data is available to be copied, printed, or saved to certain user programs or file formats, specifically CSV, PDF, and Spreadsheet.
  - d. Allows the current and historical data to be viewed.
  - e. Allows the current usage to be compared to historical distribution averages.
  - f. Allows the user to see the meter location on a map view.
  - g. Allows notifications for an event on a single meter to be forwarded to a Customer employee.
  - h. Allows details to be viewed about a meter – (dependent on the data integrated from other systems).
- ii. Meter Insight (provides the following)
  - a. # of active meters.
  - b. # of orphaned meters with drill down to the list of meters.
  - c. # of inactive meters with usage drill down to the list of meters.
  - d. # of stale meters with drill down to the list of meters.
  - e. # of almost stale meters with drill down to the list of meters.
  - f. # of meters where no read is available with drill down to the list of meters.
  - g. # of meters with maximum threshold exceptions with drill down to the list of meters.
  - h. # of meters with minimum threshold exceptions with drill down to the list of meters.
  - i. # of unknown radios with drill down to the list of meters.
- iii. Report Access
  - a. Allows the user to see meter alarms and choose a report from a list of standard reports.
  - b. Master Route Register Reads: Shows the latest reads for all meters within specified time window.
  - c. Meter Route Intervals Reads: Allows users to inspect intervals of a single meter over a period of time.
  - d. Master Route No Readings: List all meters that are active in the system, but have not been sending reads within the specified time window.
  - e. Consumption Report: List meters' consumption based on meter readings within the specified time window.
  - f. Zero Consumption for Period: List meters whose readings do not change over a period of time.
  - g. Negative Consumption: Shows the number of occurrences and readings of negative consumption for the last 24hr, 48hr and 72hr from the entered roll up date.
  - h. High Low Exception Report: Displays meters whose reads exceed minimum or/and maximum threshold, within a time range.

- i. Consumption vs Previous Reported Read: Compares latest reading (from RNI) with last known read received from CIS.
  - j. Consumption Exception 24 hour Report: This report shows meters that satisfy these two conditions: (1) The daily average consumptions exceed entered daily consumption threshold; (2) The number of days when daily thresholds are exceeded are greater than the entered exception per day threshold.
  - k. Endpoint Details: Shows the current state of meters that are created within the specified time range.
  - l. Orphaned Meters: List meters that are marked as 'orphaned', which are created as of entered Created as of parameter.
  - m. Billing Request Mismatch: Displays meters in a billing request that have different AMR id with the ones sent by RNI. It also shows AMR id in billing request that have different meter Id in the RNI. Users must enter which billing request file prior to running the report.
  - n. All Alarms Report: List all alarms occurred during a time window. Users can select which alarm to show.
- iv. Billing Access
    - a. Initiate the creation of billing export files formatted to the import needs of the billing system.
    - b. Receive billing request files from the billing system to identify what meters to include in the billing export file in the case where billing request file option is used.
    - c. Provides a repository of past billing files that were either used for billing preparation or actually sent to the billing system.
    - d. Will store created billing files for a period of three years unless otherwise denoted.
    - e. The system will allow creation of test files before export to the billing system.
  - v. Billing Adaptor
    - a. The underlying configurator and tools mapping the extraction of billing data to enable integration to the utility's billing system.
  - vi. Data Store
    - a. Allows storage of meter reading data including Intervals, Registers, and Alarms to be stored.
    - b. Stored data is available online for reports and analysis.
    - c. Data will be retained for 3 years. Additional duration can be purchased.
- B. Enhanced Package.** The Enhanced Package shall consist of the modules listed above in the Essential Package, as well as the following additional modules:
- i. Alarm Insight
    - a. Allows the user to summarize and filter alarms by a date range.
    - b. Allows the user to review all alarm types on a single screen.
    - c. The user can filter out the alarms not wanted on the screen.
    - d. Alarm totals can be visualized.
    - e. Adds a view of trending alarms over time.
    - f. Click to drill down on an alarm to gain more information on specific events.
    - g. Click to analyze a specific event on a particular device.
  - ii. Alert Manager
    - a. Allows creation of alert groups who will be notified when an alarm occurs.
    - b. Users can manage alert groups by adding and removing group members.
    - c. Allows selection of notification method for how end users in the group will be notified; email or SMS (text message).
    - d. Allows creation of an alert from the available system events from smart points and assign to a group.
    - e. Monitors the systems meters for events. When an event is triggered, all users in the group will be notified.
- C. Integration of Sensus Analytics.** Sensus shall provide integration support services to Customer only to the extent specifically provided below:
- i. Sensus shall provide Customer with a simple flat file specification known as VFlex for the integration of the Customer's back office system to the Sensus Analytics modules. The VFlex shall contain the following types of information: Device ids, end users in the system, end user status, end user account information, end user name, and other end user details. This flat file may be delimited or fixed width. Customer shall produce this file and transmit it to the FTP location designated by Sensus. When sent to the Sensus FTP servers, this file exchange will enable the system to become operational with the Customer's systems. Customer shall produce this file and transmit it to the FTP location designated by Sensus. Sensus will provide reasonable support to explain to Customer the required vs. optional fields that are in the specification, testing and validation of the file format and content.
  - ii. In scope and included integration efforts: kick-off meeting to engage all required parties, mapping the Customer's fields to the VFlex specification, validation of expected output, and a two (2) hour system review of Sensus Analytics application and integration with the Customer's system (conducted remotely).
  - iii. Out of scope and subject to additional charges will be the transformation of data where business logic including code must be written to modify the field content or format of the data to meet the VFlex specification.
  - iv. Sensus' integration services consist of four (4) hours of assistance (remote or on-site, as determined by Sensus). If additional time is needed to complete the integration efforts, Sensus shall invoice Customer for additional fees on an actual time and materials basis.
  - v. **If an item is not listed in subparagraphs (i) or (ii) above, such item is excluded from the integration of Sensus Analytics Support and is subject to additional pricing.**
  - vi. **Data Import.** The Sensus Analytics Application contains adapters for the import of data from; (a) Customer's FlexNet System; and/or (b) AutoRead application for handheld and drive by systems, as applicable.
  - vii. **Customer Acknowledgements.**
    - a. Customer acknowledges that the Sensus Analytics Application provides up to fifty (50) user logins for Customer's use.

- b. Customer acknowledges and agrees the Sensus Analytics Application is based upon the actual number of End Users within Customer's Service Territory. Pricing may increase if Customer's Service Territory or actual number of End Users expands.
- c. Customer acknowledges that all data related to the Sensus Analytics Applications is geographically hosted within the United States of America. Customer accepts the geographic location of such hosting, and indemnifies Sensus for any claims resulting therefrom.
- d. Customer acknowledges and agrees that the Intellectual Property provisions of this Agreement apply in all respects to Customer's access to and use of the Sensus Analytics Applications.
- e. Customer is responsible for validating the data analyzed by the Sensus Analytics Applications. Sensus makes no promises of improving Customer's operations or saving Customer money, nor is Sensus liable for any damages resulting from decisions made by Customer related to Customer's use of Sensus Analytics.

**IV. Third Party Software.**

- A. RedHat Linux.** If Sensus is providing Customer with a license to use RedHat Linux Software, Customer agrees to the following:

By entering into this Agreement, Customer agrees to abide by and to be legally bound by the terms and conditions of the Red Hat End User License Agreements identified below, each of which are incorporated into this Agreement by reference and are available at the websites identified below. Please read the Red Hat End User License Agreements and incorporated references carefully.

Subscription:	End User License Agreement:
Red Hat Enterprise Linux	<a href="http://www.redhat.com/licenses/rhel_rha_eula.html">http://www.redhat.com/licenses/rhel_rha_eula.html</a>
JBoss Enterprise Middleware	<a href="http://www.redhat.com/licenses/jboss_eula.html">http://www.redhat.com/licenses/jboss_eula.html</a>



# **MEMORANDUM**

**Parking Department**

**DATE:** August 23, 2022  
**TO:** Thomas Markus, City Manager  
**FROM:** Aaron Ford, Parking System Manager  
**SUBJECT:** Park Structure Emergency Masonry Wall Repair

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## **INTRDUCTION:**

In July of 2022, City staff noticed that a brick wall near the east entrance of the Park Street Structure had been damaged. Upon inspection, the wall had been struck by a motor vehicle and was now leaning over. The wall was determined to be a public safety hazard. The damaged wall was temporarily secured from the public by yellow caution tape and cones.

## **BACKGROUND:**

In July of 2022, City staff noticed that a brick wall near the entrance of the Park Street Structure was damaged. The damaged wall was in jeopardy of falling over and determined to be a public safety hazard requiring immediate repair for safety reasons. Upon investigation, the police department took an accident report on 5/21/22 that was the cause of the damage to the wall. The police department completed the accident report (UD-10 report) and the driver who was at fault in the accident was issued a civil infraction citation. The identity of the driver and insurance information is in possession of the City.

Pullman SST Inc. was working on parking structure repairs for the City on a separate contract. At the City's request, Pullman SST Inc. was asked to assess the wall and prepare an estimate to repair the wall. Pullman SST Inc. already had the necessary equipment and personnel in the City to address the repair in a timely, cost effective manner. Pullman SST Inc. prepared an estimate to repair the wall and the concrete brick associated with the wall for \$8,400.00. Wiss, Janney, Elster Associates (WJE), is currently the engineering company tasked with overseeing the ongoing parking structure repair project for the City. WJE reviewed the quote provided by Pullman Inc. and believed it to be accurate and reasonable. The City Manager authorized the work as an emergency repair pursuant to Section 2-286 of The City Code.



#### LEGAL REVIEW:

The City Attorney was consulted on the case. The City Attorney will prepare a letter to the responsible driver's insurance company seeking full restitution for the cost (\$8,400.00) associated with the repair.

#### FISCAL IMPACT:

The cost of the repair is \$8,400.00. There are sufficient funds in the Automobile Parking System Fund, Park Street Structure Building Maintenance Account (514.1-594.003-930.0500) to cover the cost of the repairs. The City will seek to recover the \$8,400.00 cost through restitution from the responsible driver's insurance company.

#### PUBLIC COMMUNICATIONS:

None

#### SUMMARY:

A brick wall on the east entrance of the Park Street Structure was damaged as a result of a vehicle traffic accident. The responsible driver was identified and cited for being at fault in the accident. The damaged wall created a public safety hazard (wall could fall over at any time) and required an emergency repair. The City had a contractor, Pullman SST Inc., currently working on other parking structures related repairs in the City. Pullman SST Inc. was asked to examine the wall and offer an estimate for the repair of the wall and associated concrete masonry unit. The estimate came in at \$8,400.00. WJE Engineering, the engineering company overseeing the construction management services for the City on the City's parking structure repairs examined the estimate provided by Pullman SST Inc. and felt it was accurate and reasonable. Pullman SST Inc. already had the necessary equipment and staffing in the City to address the repair in an efficient, cost effective manner. The cost of the repair will be drawn from the Automobile Parking System Fund, Building Maintenance Account for the Park Street Structure in an amount not to exceed \$8,400.00. The City Attorney will seek restitution from the responsible driver's insurance company to cover the cost associated with the repair.

#### ATTACHMENTS:

1. Photos of damaged wall
2. Estimate from Pullman Inc. to complete repairs

**SUGGESTED COMMISSION ACTION:**

Make a motion adopting a resolution confirming the City Manager's authorization for the emergency expenditure related to the repair of a brick wall on the east side entrance of the Park Street Structure by Pullman SST Inc. for a cost not to exceed \$8,400.00 to be charged to the Automobile Parking System Fund, Park Street Structure Building Maintenance Account # 514.1-594.003-930.0500. Furthermore, to direct the City Attorney to continue to seek restitution from the responsible driver's insurance company for \$8,400.00.



**Detroit Branch**  
280 West Jefferson  
Trenton, MI 48183  
Phone 734-282-7760  
www.pullman-services.com

August 7, 2022

City of Birmingham  
151 Martin Street  
Birmingham, Michigan 48009

Wiss, Janney, Elstner Associates, Inc.  
30700 Telegraph Road, Ste, 3580  
Bingham Farms, Michigan 48025

**RE: 2021 PARKING STRUCTURE REPAIR PROJECTS  
REQUEST FOR CHANGE ORDER  
PARK STREET ACCENT WALL**

This correspondence is related to a request by the city of Birmingham to repair a masonry wall near the main entrance of the Park Street parking garage. Pullman will demo the damaged portion of the wall, and reinstall the brick as best possible. New CMU block will be utilized.

As such, Pullman SST, Inc. is pleased to present the following:

**SCOPE OF WORK: PLUMBING REPAIRS**

1. General Conditions
  - a. Project Planning
  - b. Mobilization / Demobilization
  - c. Project Supervision
  - d. Safety requirements as necessary, including temporary barricades for work area
2. Demo existing/damaged area and salvage brick
3. Furnish and install CMU block for support
4. Reinstall brick and mortar to match existing
5. Clean masonry and final jobsite clean-up

**TOTAL COST:** .....\$ **8,400.00**

**WORKING CONDITIONS**

1. Workdays / Workhours: M – F, 7:00am – 5:00pm, Saturday 7:00am to 5:00pm as required

**SUPPORT BY OTHERS (at no cost to PULLMAN SST) SHALL INCLUDE THE FOLLOWING:**

1. Parking for service vehicles.
2. Storage area for equipment and materials
3. Restroom Facilities
4. Temporary heat or cold weather protection

8/4/2022

Page 2

5. 110V Electric
6. Potable Water
7. Testing and inspection
8. Hazardous material and/or abatement
9. Unobstructed access to work area
10. Inspections and/or permits

**SCHEDULE:**

Work would commence immediately upon approval, and take approx. 3-4 days to complete.

We appreciate the opportunity to work with you on this project and please contact us at 734.282.7760 (office) with any questions that you may have.

Sincerely,

**Pullman SST, Inc.**

**James Travnik**  
Project Manager





























**MEMORANDUM**

Department of Public Services

**DATE:** August 29, 2022  
**TO:** Thomas M. Markus, City Manager  
**FROM:** Lauren Wood, Director of Public Services  
 Mike Bernal, Public Services Manager  
**SUBJECT:** Replacement of Vehicles 560 & 568

**INTRODUCTION:**

Due to the hours and condition, the Department of Public Services recommends the replacement of police vehicles 560 & 568, both 2017 Ford Explorers. The current hours on vehicle 560 are 23,313. The current hours on vehicle 568 are 21,388.

Due to better pricing and availability, the Police Department has elected to purchase two (2) 2022 Chevrolet Tahoes in place of the Ford Explorers under the State of Michigan MiDeal pricing.

**BACKGROUND:**

Vehicles 560 & 568 are identified for replacement and listed in the Vehicle/Equipment Replacement Schedule, as published in the FY 2022-2023 budget. Both qualify for replacement, as illustrated by the assessment below.

2017 Ford Explorers		#560	#568
FACTOR	DESCRIPTION	POINTS	POINTS
Age	1 point each year of age	5	5
Miles/Hours	1 point for each 250 hours of usage	93	85
Type of Service	Type 5 – Police, Fire, and Rescue Services	5	5
Reliability	Level 2 – In shop one time within three month period, one breakdown within same period	3	3
M&R Costs	Level 4 – Maintenance costs are 61-80% of replacement cost	5	4
Condition	Level 4 – Poor paint and body condition, rust, bad interior	3	3
<b>Total Points 28+, poor needs priority replacement</b>		<b>114</b>	<b>105</b>

Both vehicles qualify under the replacement guidelines for "Needs priority replacement." The Department of Public Services recommends replacing both vehicles with two (2) 2022 Chevrolet Tahoes in place of the Ford Explorers through the State of Michigan MIDEAL extendable purchasing contract #071B7700184. Once ordered, the lead-time is 30-60 days.

**LEGAL REVIEW:**

This purchase has been reviewed and approved by the City Attorney.

**FISCAL IMPACT:**

Funds for this purchase, totaling \$80,932 for both vehicles, is available in the Auto Equipment Fund, account #641-441.006.971.0100.

**PUBLIC COMMUNICATIONS:**

This does not apply to this purchase.

**SUMMARY:**

Based on mileage and condition, the Department of Public Services recommends the replacement of vehicles 560 & 568 with two (2) 2022 Chevrolet Tahoe vehicles in place of the Ford Explorers under the State of Michigan MiDeal pricing from Berger Chevrolet located at 2525 28th Street S.E., Grand Rapids, MI 49512. Upon receipt of the replacement vehicles, the old vehicles will be listed and sold on the Michigan Governmental Trade Network (MITN) for public auction.

**ATTACHMENTS:**

Attached to this report is the agreement, and the vendor quote, including specifications and warranty info.

**SUGGESTED COMMISSION ACTION:**

To make a motion approving the purchase of two (2) 2022 Chevrolet Tahoe vehicles for \$40,466 each, from Berger Chevrolet located at 2525 28th Street S.E., Grand Rapids, MI 49512, under the State of Michigan MiDeal extendable purchasing contract #071B7700184, in the amount not to exceed \$80,932 for both vehicles. Funds for this purchase are available in the FY 2022-2023 Auto Equipment Fund account #641-441.006.971.0100.

**AGREEMENT FOR VEHICLE PURCHASE BETWEEN THE CITY OF BIRMINGHAM AND  
BERGER CHEVRLOET INC.**

**THIS AGREEMENT** is entered into this \_\_\_ day of \_\_\_\_\_, 2022, by and between the **CITY OF BIRMINGHAM**, whose address is 151 Martin Street, Birmingham, MI 48009 (hereinafter referred to as the City) and Berger Chevrolet a Michigan Corporation, whose address is 2525 28<sup>th</sup> Street S.E., Grand Rapids, MI 49512, (hereafter referred to as Vendor) and the foregoing shall collectively be referred to as the parties.

**WHEREAS**, the City desires to purchase two (2) 2022 Chevrolet Tahoe 4WD through a governmental cooperative purchasing agreement; and

**WHEREAS**, Vendor has qualifications that meet the project requirements and has provided a response and cost proposal.

**NOW, THEREFORE**, in consideration of the foregoing preambles, the adequacy of which is acknowledged by and between the parties to this Agreement, the parties agree as follows:

**1. MUTUALLY AGREE:** It is mutually agreed by and between the parties that Vendor's Bid Per Enclosed Specifications be fully incorporated herein by reference and shall become a part of this Agreement, and shall be binding upon both parties hereto (attached hereto as Attachment "A"). In the event of a conflict in any terms of this Agreement and the Vendor's Sale of New Vehicles, the terms of this Agreement shall prevail.

**2. TERM:** This Agreement shall have no term as it is an outright sale

**3. TERMS OF PAYMENT:** The Vendor will invoice the City for the sale. The City may, at its sole discretion demand review and the right to request at any time further detailed accounting information for any or all bills. The right to inspection of any bill and invoice shall never be at any cost or billings to the City, nor shall preparation of said invoices be billed to the City or against the general retainer. Payment terms will be net 30 days unless otherwise specified by the City.

**4.** The Vendor shall employ personnel of good moral character and fitness in performing all services under this Agreement.

**5. CONFIDENTIAL AND OR PROPRIETARY INFORMATION:** The Vendor acknowledges that in performing services pursuant to this Agreement, certain confidential and/or proprietary information (including, but not limited to, internal organization, methodology, personnel and financial information, etc.) may become involved. The Vendor recognizes that unauthorized exposure of such confidential or proprietary information could irreparably damage the City. Therefore, the Vendor agrees to use reasonable care to safeguard the confidential and proprietary information and to prevent the unauthorized use or disclosure thereof. The Vendor shall inform its employees of the confidential or proprietary nature of such information and shall limit access thereto to employees rendering services pursuant to this Agreement. The Vendor further agrees to use such confidential or proprietary information only for the purpose of performing services pursuant to this Agreement.

**6. INDEPENDENT VENDOR:** The Vendor and the City agree that the Vendor is acting as an independent contractor with respect to the Vendor's role in providing equipment to the City pursuant to this Agreement, and as such, shall be liable for its own actions and neither the Vendor nor its employees shall be construed as employees of the City. Nothing contained in

this Agreement shall be construed to imply a joint venture or partnership and neither party, by virtue of this Agreement, shall have any right, power or authority to act or create any obligation, express or implied, on behalf of the other party, except as specifically outlined herein. Neither the City nor the Vendor shall be considered or construed to be the agent of the other, nor shall either have the right to bind the other in any manner whatsoever, except as specifically provided in this Agreement, and this Agreement shall not be construed as a contract of agency. The Vendor shall not be considered entitled or eligible to participate in any benefits or privileges given or extended by the City, or be deemed an employee of the City for purposes of federal or state withholding taxes, FICA taxes, unemployment, workers' compensation or any other employer contributions on behalf of the City.

**7. COMPLIANCE WITH LAWS:** Vendor agrees to fully and faithfully carry out the duties set forth herein using its best efforts in accomplishing all assignments from the City, and further, in addition to upholding all federal, and state laws and applicable codes of professional conduct to which Vendor is subject, Vendor hereby agrees to be bound by all Federal, State, or City of Birmingham ordinances, rules, regulations and policies as are amended from time to time, and including without limitation the Fair Labor Standards Act, the Equal Employment Opportunity rules and regulations, the Transportation Safety Act and the Occupational Safety and Health Acts.

**8. INDEMNIFICATION:** To the fullest extent permitted by law, the Vendor and any entity or person for whom the Vendor is legally liable, agrees to be responsible for any liability, defend, pay on behalf of, indemnify, and hold harmless the City of Birmingham, its elected and appointed officials, employees and volunteers and others working on their behalf against any and all claims, demands, suits, or loss, including all costs and reasonable attorney fees connected therewith, and for any damages which may be asserted, claimed or recovered against or from the City, its elected and appointed officials, employees, volunteers or others working on their behalf, by reason of personal injury, including bodily injury and death and/or property damage, including loss of use thereof, which arise out of the acts, errors or omissions of the Vendor including its employees and agents, in the performance of this Agreement. Such responsibility shall not be construed as liability for damage caused by or resulting from the sole act or omission of its elected or appointed officials, employees, volunteers or others working on behalf of the City.

**9. WRITTEN NOTICES:** Written notices regarding this Agreement shall be addressed to the following:

City: City of Birmingham  
P.O. Box 3001  
Birmingham, Michigan 48012  
Attn: Mike Bernal

Vendor: Berger Chevrolet Inc.  
2525 28<sup>th</sup> Street S.E.  
Grand Rapids, MI 49512  
Attn: Robert Evans

**10. COVID:** The Vendor shall follow all of the City's COVID-19 safety protocols while on City property. Additionally, Vendor staff which will be in physical contact with city staff must have current vaccinations against COVID-19. The City, at its discretion, may ask for proof of vaccination of Vendor staff. Failure to provide proof of vaccination when requested will cause the City to request un-vaccinated personnel to leave, request alternate staff, and if the is unable to comply, this violation of safety protocols will constitute a breach of contract by the Vendor.

**11. AMENDMENTS:** No amendment, modification or supplement to this Agreement shall be binding unless it is in writing and signed by authorized representatives of the parties.

**12. WAIVER OF BREACH:** No waiver by either party of any breach of any of the terms, covenants or conditions herein contained by the other party shall be construed as a waiver of any succeeding breach of this same or of any other term, covenant or condition.

**13. COMPLETE AGREEMENT:** The parties agree that the conditions set forth in this Agreement sets forth all terms and conditions of Vendor agreement with the City of Birmingham. This Agreement supersedes all prior agreements or understandings between the parties. There are no promises, conditions or understandings other than those stated herein, and, that any prior negotiations, terms or conditions discussed between the City and the Vendor shall not constitute a part of this Agreement. The term "agreement" as used in this clause shall include any future written amendments, modifications, or supplements made in accordance herewith.

**14. DIRECT OR INDIRECT INTEREST:** If, after the effective date of this Agreement, any official of the City, or spouse, child, parent or in-law of such official or employee shall become directly or indirectly interested in this Agreement or the affairs of the Vendor, the City shall have the right to terminate this Agreement without further liability to the Vendor if the disqualification has not been removed within thirty (30) days after the City has given the Vendor notice of the disqualifying interest. Ownership of less than one percent (1%) of the stock or other equity interest in a corporation or partnership shall not be a disqualifying interest. Employment shall be a disqualifying interest.

**15. FAILURE TO PERFORM.** If Vendor fails to perform its obligations hereunder, the City may take any and all remedial actions provided by the general specifications or otherwise permitted by law.

**16. LEGAL PROCEEDINGS:** Any controversy or claim arising out of or relating 7 to this Agreement, or the breach thereof, shall be settled either by commencement of a suit in Oakland County Circuit Court, the 48th District Court or by arbitration. If both parties elect to have the dispute resolved by arbitration, it shall be settled pursuant to Chapter 50 of the Revised Judicature Act for the State of Michigan and administered by the American Arbitration Association with one arbitrator being used, or three arbitrators in the event any party's claim exceeds \$1,000,000. Each party shall bear its own costs and expenses and an equal share of the arbitrator's and administrative fees of arbitration. Such arbitration shall qualify as statutory arbitration pursuant to MCL §600.5001 et seq., and the Oakland County Circuit Court or any court having jurisdiction shall render judgment upon the award of the arbitrator made pursuant to this Agreement. The laws of the State of Michigan shall govern this Agreement, and the arbitration shall take place in Oakland County, Michigan. In the event that the parties elect not to have the matter in dispute



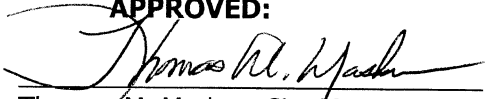


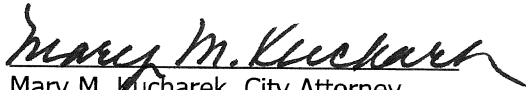
**CITY OF BIRMINGHAM:**

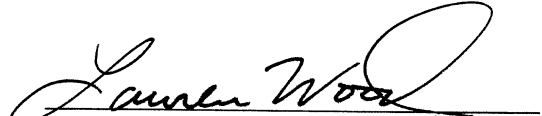
By: \_\_\_\_\_  
Therese Longe, Mayor

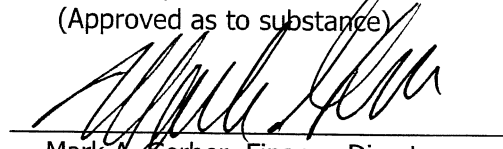
By: \_\_\_\_\_  
Alexandria D. Bingham, City Clerk

**APPROVED:**

  
Thomas M. Markus, City Manager  
(Approved as to substance)

  
Mary M. Kucharek, City Attorney  
(Approved as to form)

  
Lauren Wood, Director of Public Services  
(Approved as to substance)

  
Mark A. Gerber, Finance Director  
(Approved as to Financial Obligation)

# ATTACHMENT A

## BID PER ENCLOSED SPECIFICATIONS

Cost per vehicle \$40,466.00

Number of units 1

Total Bid Amount \$40,466.00

Vehicle Description:

Year 202

Make Chevrolet

Model Tahoe 4wd  
police package  
w/ dual spot lights

Vendor:

Berger Chevrolet Inc.

Address 2525 28th Street S.E.

Grand Rapids, MI 49512

Phone (616) 949-5200

Fax (616) 988-9178

Bid Prepared For :

City of Birmingham

Price includes title fee and Delivery. Price based on  
Municipal discount.

Signature *Robert Evans*

Printed Signature Robert M. Evans

Date 8/18/2022



Birmingham 2022 Chevrolet Tahoe (CK10706) 4WD 4dr Commercial 7X3 (✔ Complete)

**Selected Model and Options**

**MODEL**

CODE	MODEL
CK10706	2022 Chevrolet Tahoe 4WD 4dr Commercial

**COLORS**

CODE	DESCRIPTION
GBA	Black

**OPTIONS**

( † Denotes a Custom Equipment Option )

CODE	DESCRIPTION
—	Seat belts, 3-point, all seating positions (Included and only available with (9C1) Police Vehicle or (5W4) Special Service Vehicle.)
—	Capless Fuel Fill (Included and only available with (9C1) Police Vehicle or (5W4) Special Service Vehicle.)
—	Protected idle allows vehicle engine to remain idling and vehicle immobilized while FOB is outside vehicle (Included and only available (9C1) Police Vehicle or (5W4) Special Service Vehicle.)
—	Instrumentation, analog with certified 140 mph speedometer, odometer with trip odometer, engine hour meter, fuel level, voltmeter, engine temperature, oil pressure and tachometer (Included and only available with (9C1) Police Vehicle or (5W4) Special Service Vehicle.)
—	Exterior ornamentation delete (front & rear Chevrolet bowties will remain) (Included and only available with (9C1) Police Vehicle or (5W4) Special Service Vehicle.)
—	Power supply, 100-amp, auxiliary battery, rear electrical center (Included and only available with (9C1) Police Vehicle or (5W4) Special Service Vehicle.)
—	Power supply, 120-amp, (4) 30-amp circuit, Primary battery relay controlled, passenger compartment harness wiring (Included and only available with (9C1) Police Vehicle or (5W4) Special Service Vehicle.)
—	Power supply, 50-amp, power supply, auxiliary battery passenger compartment wiring harness (Included and only available with (9C1) Police Vehicle or (5W4) Special Service Vehicle.)
—	Theft-deterrent system, vehicle, PASS-Key III (Included and only available with (9C1) Police Vehicle or (5W4) Special Service Vehicle.)
001†	LED spot lights†
002†	Dash black out switch†
00Z	Not Equipped with Front and Rear Park Assist, see dealer for details (Vehicles built prior to January 24, 2022, include Front and Rear Park Assist. Certain vehicles built on or after January 24, 2022, will be forced to include (00Z) Not Equipped with Front and Rear Park Assist, which removes Front and Rear Park Assist. See the window label for the features on a specific vehicle.) *CREDIT*
1FL	Commercial Preferred Equipment Group includes standard equipment
5J3	Calibration, Surveillance Mode interior lighting (Included and only available with (9C1) Police Vehicle or (5W4) Special Service Vehicle.)

This document contains information considered Confidential between GM and its Clients uniquely. The information provided is not intended for public disclosure. Prices, specifications, and availability are subject to change without notice, and do not include certain fees, taxes and charges that may be required by law or vary by manufacturer or region. Performance figures are guidelines only, and actual performance may vary. Photos may not represent actual vehicles or exact configurations. Content based on report preparer's input is subject to the accuracy of the input provided.

Data Version: 17229. Data Updated: Aug 17, 2022 6:52:00 PM PDT.





Birmingham 2022 Chevrolet Tahoe (CK10706) 4WD 4dr Commercial 7X3 (✔ Complete)

**OPTIONS**

( † Denotes a Custom Equipment Option )

CODE	DESCRIPTION
5J9	Calibration, taillamp flasher, Red/White (Included and only available with (9C1) Police Vehicle or (5W4) Special Service Vehicle.)
5LO	Calibration, taillamp flasher, Red/Red (Included and only available with (9C1) Police Vehicle or (5W4) Special Service Vehicle.)
5T5	Seats, front cloth and second row vinyl (Not available with (A50) front bucket seats.)
6C7	Lighting, red and white front auxiliary dome Red and white LED auxiliary dome lamp is located on headliner between front row seats. The auxiliary lamp is wired independently from standard dome lamp (Requires (9C1) Police Vehicle or (5W4) Special Service Vehicle.)
6E2	Fleet Calibration provides a single key with a specific code that is common to the door locks of all the vehicles in the vehicle fleet. Key code is an alternate to SEO (6E8) complete vehicle fleet common key. NOTE: NOT COMPATIBLE with previous model years (Requires (AMF) Remote Keyless Entry Package. Includes (AU7) fleet common key and (9C1) Police Vehicle or (5W4) Special Service Vehicle. Not available with SEO (6E8) Fleet Calibration.)
6J3	Wiring, grille lamps and siren speakers (Requires (9C1) Police Vehicle or (5W4) Special Service Vehicle.)
6J4	Wiring, horn and siren circuit (Requires (9C1) Police Vehicle or (5W4) Special Service Vehicle.)
6J7	Flasher system, headlamp and taillamp, DRL compatible with control wire (Included and only available with (9C1) Police Vehicle or (5W4) Special Service Vehicle.)
6N5	Switches, rear window inoperative (rear windows can only operate from driver's position.) (Requires (9C1) Police Vehicle or (5W4) Special Service Vehicle.)
6N6	Door locks and handles, inside rear doors inoperative (door can only be opened from outside) (Requires (9C1) Police Vehicle or (5W4) Special Service Vehicle.)
7X2	Spotlamps, left- and right-hand Not available with SEO (7X3) left-hand spotlamp. Requires (9C1) Police Vehicle or (5W4) Special Service Vehicle.)
9C1	Identifier for Police Package Vehicle includes, (K47) heavy-duty air filter, (KX4) 250 amp high output alternator, (K6K) 760 cold-cranking amps auxiliary battery, electrical power & vehicle signals for customer connection located at the center front floor. Auxiliary battery circuit for customer connection located in the rear cargo area, (Z56) heavy-duty, police-rated suspension, (XCS) 275/55R20SL all-season tires, (RAV) 275/55R20 all-season spare tire, Police brakes, (RC1) front skid plate, (PXT) 20" steel wheels, Certified speedometer, SEO (5J3) Surveillance Mode interior lighting calibration, SEO (UT7) blunt cut cargo area and blunt cut console area ground wires,(V53) delete luggage rack side rails, (ATD) third row seat delete, (NP0) active single-speed transfer case (4WD only) *CREDIT*
9G8	Headlamps, Daytime Running Lamps and automatic headlamp control delete deletes standard Daytime Running Lamps and automatic headlamp control features (Requires (9C1) Police Vehicle or (5W4) Special Service Vehicle.)
AMF	Remote Keyless Entry Package includes 4 additional transmitters, NOTE: programming of remotes is at customer's expense. Programming remotes is not a warranty expense (Requires (9C1) Police Vehicle or (5W4) Special Service Vehicle.)
ATD	Seat delete, third row passenger *CREDIT*

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Birmingham 2022 Chevrolet Tahoe (CK10706) 4WD 4dr Commercial 7X3 (✔ Complete)

**OPTIONS**

( † Denotes a Custom Equipment Option )

CODE	DESCRIPTION
AU7	Key common, fleet (Included and only available with SEO (6E2) Fleet Calibration or SEO (6E8) Fleet Calibration and (9C1) Police Vehicle or (5W4) Special Service Vehicle.)
AZ3	Seats, front 40/20/40 split-bench (STD)
BCV	Lock control, driver side auto door lock disable (Requires (9C1) Police Vehicle or (5W4) Special Service Vehicle.)
C6C	GVWR, 7400 lbs. (3357 kg) (4WD models only. Included and only available with (9C1) Police Vehicle.)
FE9	Emissions, Federal requirements
GBA	Black
GU5	Rear axle, 3.23 ratio
H1T	Jet Black, Cloth seat trim (Requires (9C1) Police Vehicle or (5W4) Special Service Vehicle.)
IOR	Audio system, Chevrolet Infotainment 3 system, 8" diagonal color touchscreen AM/FM stereo. Additional features for compatible phones include: Bluetooth audio streaming for 2 active devices, voice command pass-through to phone, Apple CarPlay and Android Auto capable. (STD)
J55	Brake system, heavy duty with front Brembo calipers and 16" front rotors (Included and only available with (9C1) Police Vehicle.)
K3W	Battery, 850 cold-cranking amps with 95 amp hour rating (Included and only available with (9C1) Police Vehicle or (5W4) Special Service Vehicle.)
K6K	Battery, auxiliary, 760 cold-cranking amps with 70 amp hour rating (packaged behind left rear cargo area panel) (Included and only available with (9C1) Police Vehicle or (5W4) Special Service Vehicle.)
KX4	Alternator, 250 amps (Included and only available with (9C1) Police Vehicle or (5W4) Special Service Vehicle.)
L84	Engine, 5.3L EcoTec3 V8 with Dynamic Fuel Management, Direct Injection and Variable Valve Timing, includes aluminum block construction (355 hp [265 kW] @ 5600 rpm, 383 lb-ft of torque [518 Nm] @ 4100 rpm) (STD)
MHS	Transmission, 10-speed automatic electronically controlled with overdrive, includes Traction Select System including tow/haul (STD)
PXT	Wheels, 20" x 9" (50.8 cm x 22.9 cm) steel (Included and only available with (9C1) Police Vehicle.)
R7N	Not Equipped with Steering Column Lock see dealer for details (Beginning with start of regular production, October 2021, all vehicles will be forced to include (R7N) Not Equipped with Steering Column Lock, which removes Steering Column Lock.) *CREDIT*
R9Y	Fleet Free Maintenance Credit. This option code provides a credit in lieu of the free oil changes, tire rotations and inspections for one maintenance service during 1st year of ownership. The invoice will detail the applicable credit. The customer will be responsible for all oil change, tire rotations and inspections costs for this vehicle. (Requires one of the following Fleet or Government order types: FBC, FBN, FCA, FCN, FEF, FLS, FNR or FRC. Not available with FDR or FGO order types.) *CREDIT*
RAV	Tire, spare 275/55R20 all-season, blackwall, Firestone Firehawk Pursuit (Included and only available with (9C1) Police Vehicle.)
RC1	Skid plate, front (Included and only available with (9C1) Police Vehicle or (5W4) Special Service Vehicle.)

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Birmingham 2022 Chevrolet Tahoe (CK10706) 4WD 4dr Commercial 7X3 (✔ Complete)

OPTIONS

( † Denotes a Custom Equipment Option )

CODE	DESCRIPTION
RNQ	Wheel, full-size spare, matching 20" (50.8 cm) steel wheel without center cap (Included and only available with (9C1) Police Vehicle.)
T66	Wiring provision, for outside mirrors and cargo side mirrors (Included and only available with (9C1) Police Vehicle or (5W4) Special Service Vehicle.)
UT7	Ground wires, blunt cut cargo area and blunt cut console area (Included and only available with (9C1) Police Vehicle or (5W4) Special Service Vehicle.)
UTQ	Theft-deterrent system content, disable, the alarm and horn become non-functional in an attempt of theft to the vehicle (Requires (9C1) Police Vehicle or (5W4) Special Service Vehicle.)
V03	Cooling system, extra capacity (Included and only available with (9C1) Police Vehicle or (NHT) Max Trailering Package. Not included when (LM2) Duramax 3.0L Turbo-Diesel I6 engine is ordered.)
V53	Luggage rack side rails, delete (Included and only available with (9C1) Police Vehicle or (5W4) Special Service Vehicle.)
V76	Recovery hooks, 2 front, frame-mounted, Black (Requires (9C1) Police Vehicle or (5W4) Special Service Vehicle. Required on all models going to Alaska, Guam, Hawaii, Puerto Rico and Virgin Islands. All Tahoe (9C1) and (5W4) vehicles include front fascia with recovery hook openings.)
VPV	Ship Thru, Produced in Arlington Assembly and shipped to Kerr Industries and onto Arlington Assembly (Requires a Fleet or Government order type.) (Included with SEO (6C7) red and white front auxiliary dome lighting, SEO (6N6) door locks and handles, SEO (7X2) left- and right-hand spotlamps, SEO (7X3) left-hand spotlight, SEO (T53) alternate flashing Red & Blue rear compartment lid warning lamps, SEO (UN9) Radio Suppression Package, SEO (6J3) grille lamps and siren speakers wiring, SEO (6J4) horn and siren circuit wiring and SEO (WX7) auxiliary speaker wiring.)
VXT	Incomplete vehicle (Included and only available with (9C1) Police Vehicle or (5W4) Special Service Vehicle. Included and only available with (ATZ) rear seat delete.)
VZ2	Speedometer calibration (Included and only available with (9C1) Police Vehicle or (5W4) Special Service Vehicle.)
WUA	Fascia, front high-approach angle (Included and only available with (9C1) Police Vehicle or (5W4) Special Service Vehicle.)
XCS	Tires, 275/55R20SL all-season, blackwall, Firestone Firehawk Pursuit (Included and only available with (9C1) Police Vehicle.)
Z56	Suspension Package, heavy-duty, police-rated. Full independent suspension with monotube dampers, linear coil springs, 35mm solid front stabilizer bar and 32mm hollow rear stabilizer bar (Included and only available with (9C1) Police Vehicle.)

Options Total

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Birmingham 2022 Chevrolet Tahoe (CK10706) 4WD 4dr Commercial 7X3 (✔ Complete)

## Standard Equipment

### Mechanical

Engine, 5.3L EcoTec3 V8 with Dynamic Fuel Management, Direct Injection and Variable Valve Timing, includes aluminum block construction (355 hp [265 kW] @ 5600 rpm, 383 lb-ft of torque [518 Nm] @ 4100 rpm) (STD)

Transmission, 10-speed automatic electronically controlled with overdrive, includes Traction Select System including tow/haul (STD)

Rear axle, 3.23 ratio

Suspension Package, Premium Smooth Ride (STD)

GVWR, 7500 lbs. (3402 kg) (4WD models only.) (STD)

Automatic Stop/Start (Vehicles built between October, 2021 and December 12, 2021 with a V8 engine, will be forced to have (NSS) Not Equipped with Automatic Stop/Start, which removes Automatic Stop/Start, Engine control stop/start disable button and its content. Beginning with production starting December 13, 2021, (KL9) Automatic Stop/Start will be forced on as standard content. See dealer for details.)

Engine control, stop/start system disable button, non-latching (Vehicles built between October, 2021 and December 12, 2021 with a V8 engine, will be forced to have (NSS) Not Equipped with Automatic Stop/Start, which removes Automatic Stop/Start, Engine control stop/start disable button and its content. Beginning with production starting December 13, 2021, (ENL) Engine control stop/start disable button will be forced on as standard content. See dealer for details.)

Engine air filtration monitor

Fuel, gasoline, E15

Transfer case, active, single-speed, electronic Autotrac does not include neutral. Cannot be dinghy towed (4WD models only. Deleted when (NHT) Max Trailering Package is ordered.)

Differential, mechanical limited-slip

4-wheel drive

Air filter, heavy-duty

Cooling, external engine oil cooler, heavy-duty air-to-oil integral to driver side of radiator

Cooling, auxiliary transmission oil cooler, heavy-duty air-to-oil

Battery, 730 cold-cranking amps with 80 amp hour rating

Alternator, 220 amps

Trailering equipment includes trailering hitch platform, 7-wire harness with independent fused trailering circuits mated to a 7-way connector and 2" trailering receiver

Trailer sway control

Hitch Guidance

Suspension, front coil-over-shock with stabilizer bar

Suspension, rear multi-link with coil springs

Steering, power

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Birmingham 2022 Chevrolet Tahoe (CK10706) 4WD 4dr Commercial 7X3 (✔ Complete)

**Mechanical**

Brakes, 4-wheel antilock, 4-wheel disc with DURALIFE rotors  
Exhaust, single system, single-outlet  
Mechanical Jack with tools

**Exterior**

Wheels, 18" x 8.5" (45.7 cm x 21.6 cm) Bright Silver painted aluminum (STD)  
Tires, 265/65R18SL all-season, blackwall (Standard with (PZX) 18" Bright Silver painted aluminum wheels only.) (STD)  
Wheel, full-size spare, 17" (43.2 cm)  
Tire, spare P265/70R17 all-season, blackwall  
Tire carrier, lockable outside spare, winch-type mounted under frame at rear  
Active aero shutters, upper  
Fascia, front  
Luggage rack side rails, roof-mounted, Black  
Assist steps, Black with chrome accent strip  
Headlamps, LED  
Lamps, stop and tail, LED  
Mirrors, outside heated power-adjustable, manual-folding, body-color  
Mirror caps, body-color  
Glass, deep-tinted (all windows, except light-tinted glass on windshield and driver- and front passenger-side glass)  
Glass, acoustic, laminated  
Glass, windshield shade band  
Windshield, solar absorbing  
Wipers, front intermittent, Rainsense  
Wiper, rear intermittent with washer  
Door handles, body-color  
Liftgate, rear manual

**Entertainment**

Audio system, Chevrolet Infotainment 3 system, 8" diagonal color touchscreen AM/FM stereo. Additional features for compatible phones include: Bluetooth audio streaming for 2 active devices, voice command pass-through to phone, Apple CarPlay and Android Auto capable. (STD)  
Audio system feature, 6-speaker system

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## Birmingham 2022 Chevrolet Tahoe (CK10706) 4WD 4dr Commercial 7X3 (✔ Complete)

### Entertainment

SiriusXM Radio delete

Infotainment display, 8" diagonal touchscreen

Bluetooth for phone personal cell phone connectivity to vehicle audio system

Wireless Apple CarPlay/Wireless Android Auto

Wi-Fi Hotspot capable (Standard with (UE1) OnStar only. Terms and limitations apply. See onstar.com or dealer for details.)

### Interior

Seats, front 40/20/40 split-bench (Not available with (D07) center floor console and (USR) USB data ports.) (STD)

Keyless start, push button

Seat adjusters, 8-way power includes 6-way power front passenger seat with 2-way power lumbar

Seat adjusters, 10-way power includes 8-way power driver seat with 2-way power lumbar

Seats, second row 60/40 split-folding bench, manual

Seats, third row 60/40 split-folding bench, manual (Not available with (9C1) Police Vehicle or (5W4) Special Service Vehicle.)

Floor covering, Black rubberized vinyl (Deleted when (B30) floor covering is ordered.)

Electronic Precision Shift

Steering column, manual tilt and telescopic

Steering wheel, urethane

Steering wheel controls, mounted audio, Driver Information Center, cruise control and Forward Collision Alert following gap button (if equipped) (left backside Seek/Scan steering wheel radio buttons are inoperable; these 2 buttons can be repurposed for aftermarket emergency equipment)

Driver Information Center, 4.2" diagonal color display includes driver personalization

Rear Seat Reminder

Door locks, power programmable with lockout protection and delayed locking (When ordered with (9C1) Police Vehicle or (5W4) Special Service Vehicle, Auto Lockout is disabled on driver door.)

Keyless Open includes extended range Remote Keyless Entry

Cruise control, electronic with set and resume speed

Theft-deterrent system, content, electrical, unauthorized entry

USB data ports, 2, one type-A and one type-C, located within center console

USB charging-only ports, 4, (2) located on rear of center console and (2) in 3rd row (1 left and 1 right side below quarter glass side window) (When ordered with (9C1) Police Vehicle or (5W4) Special Service Vehicle, (2) type-C ports are moved to the rear of center seat base and (2) type-C are moved to the cargo area. Deleted when (A50) front bucket seats are ordered.)

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## Birmingham 2022 Chevrolet Tahoe (CK10706) 4WD 4dr Commercial 7X3 (✔ Complete)

### Interior

Window, power with driver Express-Up/Down

Window, power with front passenger Express-Up/Down

Windows, power with rear Express-Down

Air conditioning, tri-zone automatic climate control with individual climate settings for driver, right front passenger and rear seat occupants

Air conditioning, rear

Defogger, rear-window electric

Power outlets, 2, 120-volt, located on the rear of the center seat and rear cargo area

Power outlet, front auxiliary, 12-volt, located in the center stack of instrument panel

Mirror, inside rearview manual day/night

Visors, driver and front passenger illuminated vanity mirrors, sliding

Assist handles, overhead, driver and front passenger, located in headliner

Assist handles, front passenger A-pillar and second row outboard B-pillar (Deleted when SEO (7X2) left- and right-hand spotlamps or SEO (7X3) left-hand spotlamp are ordered.)

Lighting, interior with dome light, driver- and passenger-side door switch with delayed entry feature, cargo lights, door handle or Remote Keyless Entry-activated illuminated entry and map lights in front and second seat positions. On Police/Special Service vehicles, the control switch is located in the roof console in lieu of the driver - and passenger-side door switch with delayed entry feature.

Cargo management system

Chevrolet Connected Access capable (Subject to terms. See onstar.com or dealer for details.)

### Safety-Mechanical

Automatic Emergency Braking

Hill Start Assist

StabiliTrak, stability control system with brake assist, includes traction control

### Safety-Exterior

Daytime Running Lamps, reduced intensity low beam

### Safety-Interior

Teen Driver a configurable feature that lets you activate customizable vehicle settings associated with a key fob, to help encourage safe driving behavior. It can limit certain available vehicle features, and it prevents certain safety systems from being turned off. An invehicle report card gives you information on driving habits and helps you to continue to coach your new driver

Airbags, Frontal airbags for driver and front outboard passenger; Seat-mounted side-impact airbags for driver and front outboard passenger; Head-curtain airbags for all rows in outboard seating positions (Deleted when (A50) front bucket seats are ordered. Always use seat belts and child restraints. Children are safer when properly secured in a rear seat in the appropriate child restraint. See the Owner's Manual for more information.)

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Birmingham 2022 Chevrolet Tahoe (CK10706) 4WD 4dr Commercial 7X3 (✔ Complete)

### Safety-Interior

Front outboard Passenger Sensing System for frontal outboard passenger airbag (Always use seat belts and child restraints. Children are safer when properly secured in a rear seat in the appropriate child restraint. See the Owner's Manual for more information.)

OnStar and Chevrolet connected services capable (Terms and limitations apply. See onstar.com or dealer for details.)

Front and Rear Park Assist (Vehicles built prior to January 24, 2022, include Front and Rear Park Assist. Certain vehicles built on or after January 24, 2022, will be forced to include (00Z) Not Equipped with Front and Rear Park Assist, which removes Front and Rear Park Assist. See dealer for details or the window label for the features on a specific vehicle.)

Following Distance Indicator

HD Rear Vision Camera

Front Pedestrian Braking

Lane Keep Assist with Lane Departure Warning

Forward Collision Alert

Buckle to Drive prevents vehicle from being shifted out of Park until driver seat belt is fastened; times out after 20 seconds and encourages seat belt use, can be turned on and off in Settings or Teen Driver menu (When ordered with (9C1) Police Vehicle or (5W4) Special Service Vehicle, defaulted off. Feature can be turned on in the Infotainment menu.)

Door locks, rear child security, manual

LATCH system (Lower Anchors and Tethers for CHildren), for child restraint seats lower anchors and top tethers located in all second-row seating positions (Deleted when (ATZ) second row seat delete is ordered.)

Tire Pressure Monitoring System auto learn, includes Tire Fill Alert (does not apply to spare tire)

Warning tones headlamp on, driver and right-front passenger seat belt unfasten and turn signal on

### WARRANTY

Warranty Note: <<< Preliminary 2022 Warranty >>>

Basic Years: 3

Basic Miles/km: 36,000

Drivetrain Years: 5

Drivetrain Miles/km: 60,000

Drivetrain Note: Qualified Fleet Purchases: 5 Years/100,000 Miles

Corrosion Years (Rust-Through): 6

Corrosion Years: 3

Corrosion Miles/km (Rust-Through): 100,000

Corrosion Miles/km: 36,000

Roadside Assistance Years: 5

Roadside Assistance Miles/km: 60,000

Roadside Assistance Note: Qualified Fleet Purchases: 5 Years/100,000 Miles

Maintenance Note: 1 Year/1 Visit

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## MEMORANDUM

Planning Division

**DATE:** August 18<sup>th</sup>, 2022

**TO:** Thomas M. Markus, City Manager

**FROM:** Brooks Cowan, Senior Planner

**SUBJECT:** Sculpture Donation – Untitled #1 & Untitled #2 by Hank Marx

---

### INTRODUCTION:

Birmingham resident Sue Marx has applied to donate two sculptures titled “Untitled #1” and “Untitled #2” to the City. The sculptures were created by her late husband Stanley “Hank” Marx and are currently located in her front yard. The two sculptures are triangular in shape and are 5 -8 feet in height. The Public Arts Board has recommended the location of Martha Baldwin Park for both of the sculptures.

### BACKGROUND:

Untitled #1 was built in 1982 and consists of an angular hollow core steel structure with elegant angles that are welded. The angularity and spacious quality allows for an interactive experience with the form. The sculpture is 8 feet in height with a base that is approximately 8 feet by 6 feet. The sculpture is meant to be placed directly on the ground, it is not meant to be bolted down.

Untitled #2 was also built in 1982 and consists of powder coated & fabricated steel that is angular in nature and golden in hue. The angularity is meant to create an interactive experience with the viewer and late day and early dawn light add to its illumination. The sculpture stands 5 feet in height with a base approximately 6 feet by 6 feet.

The Public Arts Board reviewed various park locations and discussed keeping the sculptures together versus separating them to different locations. In discussions with the sculpture owner, the Public Arts Board felt it would be best to keep the sculptures together. The Board also wanted to select a location where the sculptures could be placed in an area where the sculpture could be surrounded by plantings such as vine and flowers, similar to the conditions of the sculptures’ current conditions. The Board felt that the sculptures have the proper scale for Martha Baldwin Park and that the sculptures could be placed near one another in a visible area. Martha Baldwin Park also has 2 garden beds without trees the the Board felt would be optimal locations.

On [May 18<sup>th</sup>, 2022](#), The Public Arts Board approved a motion to recommend that the City approve the sculpture donations of Untitled #1 and Untitled #2 by Hank Marx and place them in Martha Baldwin Park.

On [June 16<sup>th</sup>, 2022](#), the Martha Baldwin Park Board reviewed the sculpture donations and recommendation of the Public Arts Board. The Board discussed how the sculptures could draw more attention to Martha Baldwin Park and provide a nice accent to the space. It was discussed how a previous sculpture by Mark DiSuvero was located in a central flower bed of Martha Baldwin Park for over 10 years. The Board approved a motion to recommend the City approve the sculpture donations of Untitled #1 and Untitled #2 by Hank Marx and place them in Martha Baldwin Park.

**LEGAL REVIEW:**

The City Attorney has reviewed the application and has no concerns related to the form and content of the application.

**FISCAL IMPACT:**

As a donation, the City will be responsible for costs incurred related to installation and maintenance of the sculpture. The donor has requested the City update the paint coat for untitled #2. The Public Arts Board has a budget for sculpture installation and maintenance.

**PUBLIC NOTIFICATION:**

Although not required, a public notice sign was placed beside the proposed locations.

**SUMMARY:**

The Planning Division requests that the City Commission consider the sculpture donations of "Untitled #1" and "Untitled #2" by Hank Marx to be installed at Martha Baldwin Park.

**ATTACHMENTS:**

Please find attached the following documents for your review:

- Proposed sculpture location
- Application & images

**SUGGESTED RESOLUTION:**

Make a motion adopting a resolution to APPROVE the sculpture donations of "Untitled #1" and "Untitled #2" by Hank Marx to be installed at Martha Baldwin Park.



Proposed Sculpture Locations for Martha Baldwin Park

Untitled #1



Untitled #2



## APPLICATION FOR ART IN PUBLIC SPACES

APPLICANT NAME \_\_\_\_\_

*Sue Marx*

DAYTIME PHONE \_\_\_\_\_ EMAIL \_\_\_\_\_

*248.701.7743*

*SUE.MARX@SUEMARXFILMS.COM*

DONOR, OWNER, OR AGENT (DEALER) \_\_\_\_\_

*Sue Marx Family*

ARTIST (first and last) or PROJECT NAME \_\_\_\_\_

*Stanley "Hank" Marx*

TITLE \_\_\_\_\_

*untitled 1*

DATE OF ARTWORK \_\_\_\_\_ MEDIUM/TECHNIQUE \_\_\_\_\_

*1982*

*Steel: fabricated, brushed surface*

PROPOSED  DONATION  LOAN

DESCRIPTION OF ARTWORK \_\_\_\_\_

*An angular hollow core steel structure with elegant angles that are welded. Its angularity and spacious quality allows for an interactive experience with the form.*

HEIGHT x WIDTH x LENGTH/DEPTH WEIGHT

*8 feet x 8 feet x 6 feet*

*unknown*

OBJECT TYPE(S)/MATERIAL (i.e., metal, glass, stone, etc.)

*Metal*

DESIGN LOADS (i.e., wind, and dead loads)

*currently sits directly on ground*

INSCRIPTION/FOUNDRY MARKS (if multiple, please include edition number)

PRESENT LOCATION OF ARTWORK (where is the work of art?)

*970 Oak Birmingham Mich. 48009*

CONDITION

*may need minor re-surfacing in select areas*

MAINTENANCE REQUIRED (long term care/annual)

*∅*

VALUE \$ *10,000*  APPRAISED  OWNER'S STATED VALUE

FOOTING/FOUNDATION REQUIREMENTS

Currently sits directly on the ground.

NARRATIVE/RATIONALE FOR GIFT/LOAN/TEMPORARY INSTALLATION

These sculptures were created by my late husband, Hank Marx in the early 1980's when we lived adjacent to the Detroit Golf Club. We moved to Birmingham in 2000 and brought these with us to our new home.

I am a strong supporter of art in public places and it is my pleasure to share these sculptures with the city of Birmingham for all to enjoy for years to come

Sue Marx

10-4-2021

SIGNATURE

DATE

\*\*\*Submit application together with prints or digital images of artwork, foundation plans, completed Outdoor Sculpture Agreement (if temporary sculpture), and a vitae or resume of the artist to:

City of Birmingham
Attn: City Clerk - c/o Public Arts Board
151 Martin St.
P.O. Box 3001
Birmingham, MI 48012

PAB Action (Office use only)

Date Received: \_\_\_\_\_

Presented for Public Arts Board discussion: \_\_\_\_\_

Board Action: [ ] Recommended for approval [ ] Not recommended for approval

Insurance: [ ] Provided by CCBB [ ] Provided by City [ ] Other \_\_\_\_\_

Recommendation(s)/Action Taken \_\_\_\_\_

Routing and dates approved (Office use only):

Y N

[ ] [ ] Planning \_\_\_\_\_

[ ] [ ] Engineering \_\_\_\_\_

[ ] [ ] Public Safety (Police/Fire) \_\_\_\_\_

[ ] [ ] Parks and Recreation \_\_\_\_\_

[ ] [ ] Approved by CCBB \_\_\_\_\_

[ ] [ ] Approved by City Commission \_\_\_\_\_

Y N

[ ] [ ] Building \_\_\_\_\_

[ ] [ ] Other \_\_\_\_\_

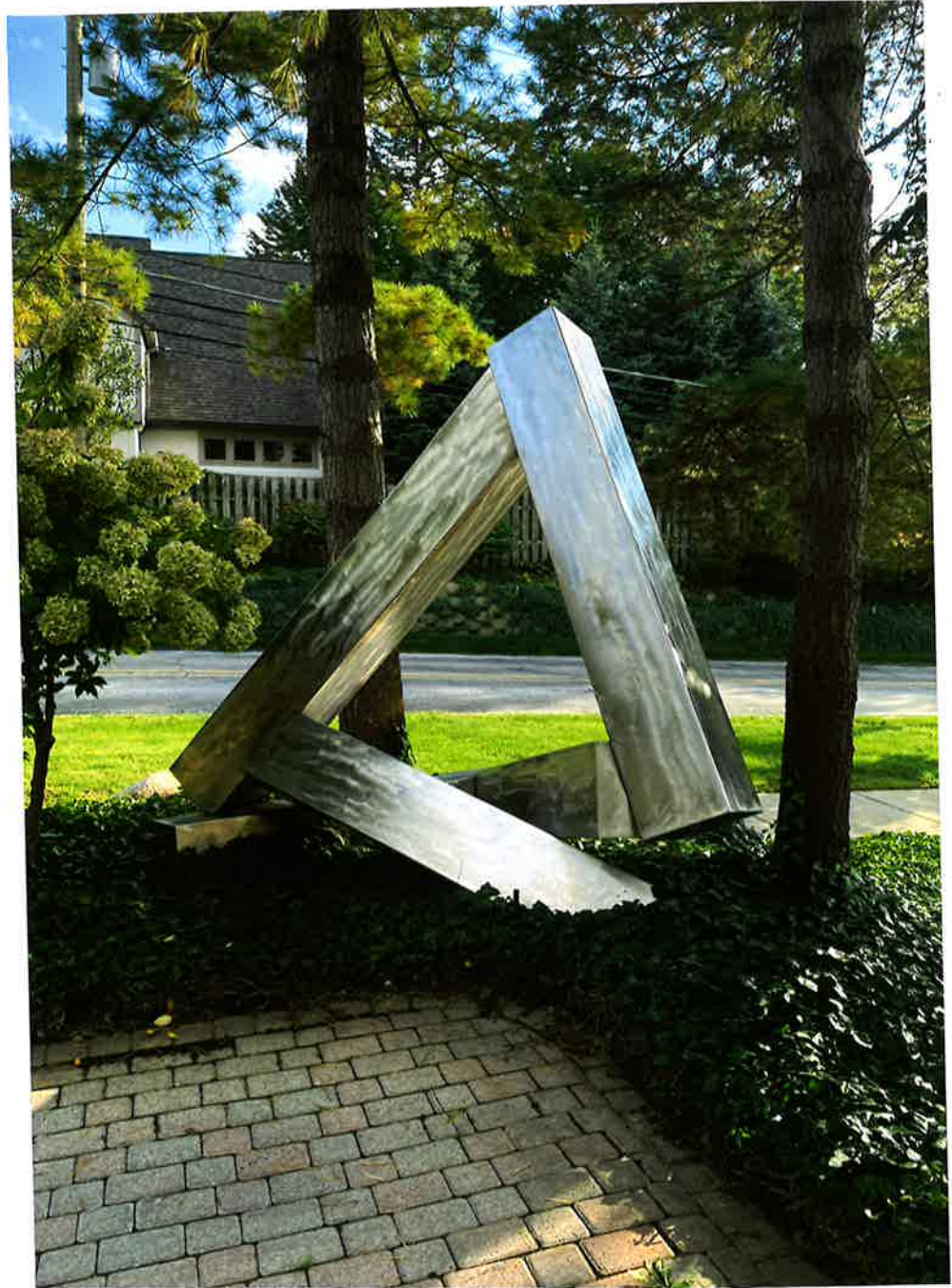
[ ] [ ] Other \_\_\_\_\_

Site Location \_\_\_\_\_

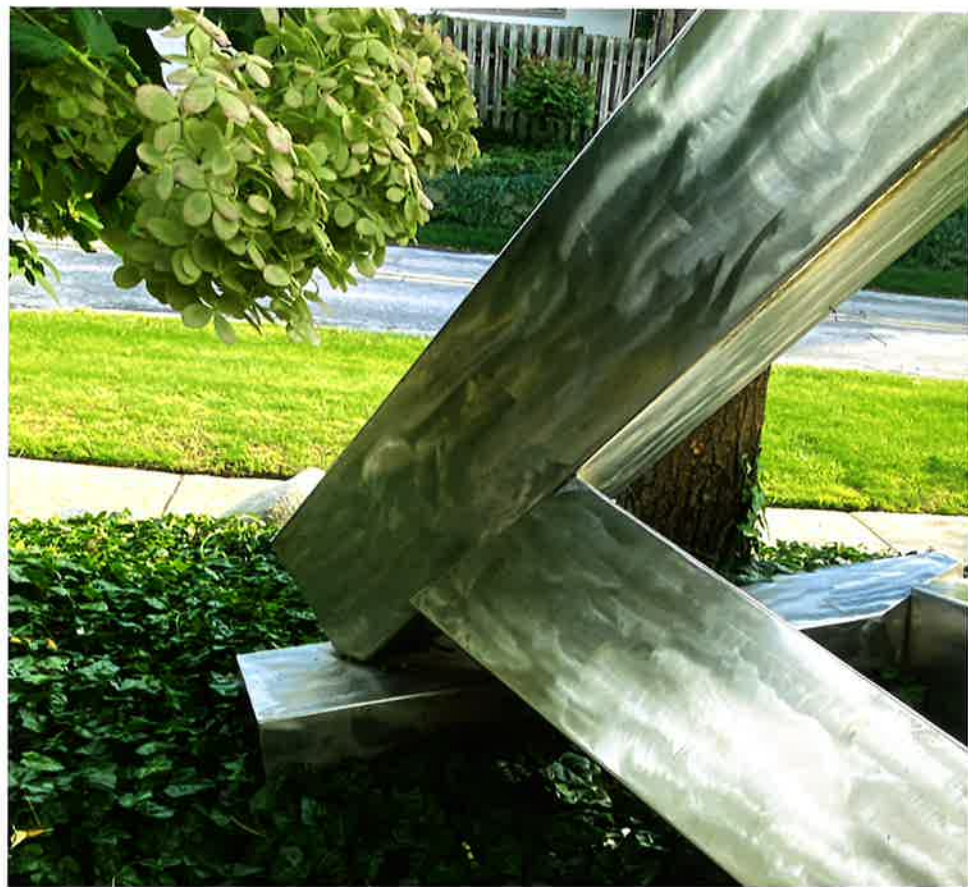
(If artwork is to be permanently donated, the City of Birmingham may provide required insurance. If artwork is to be on temporary loan, the CCBB may provide required insurance.)







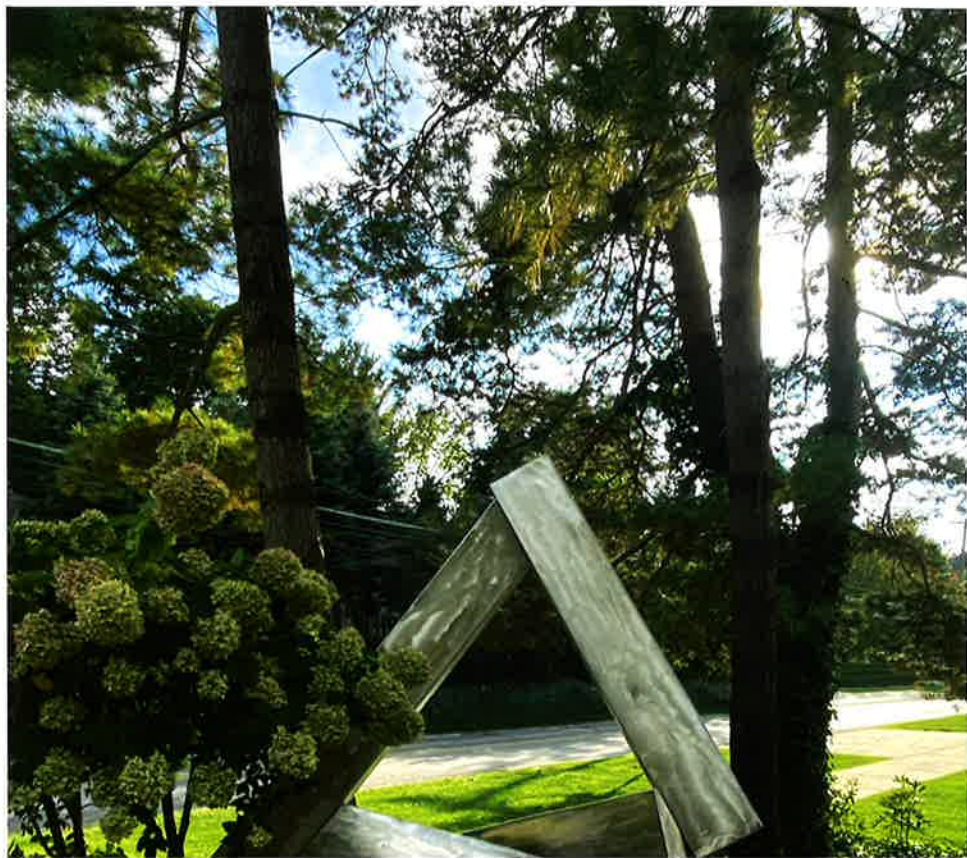














Cultural Council of Birmingham Bloomfield  
P.O. Box 465 Birmingham, MI. 48012

## APPLICATION FOR ART IN PUBLIC SPACES

APPLICANT NAME

Sue Marx

DAYTIME PHONE

248.701.7743

EMAIL

suemarx@suemarxfilms.com

DONOR, OWNER, OR AGENT (DEALER)

Sue Marx Family

ARTIST (first and last) or PROJECT NAME

Stanley "Hank" Marx

TITLE

Untitled 2

DATE OF ARTWORK

1982

MEDIUM/TECHNIQUE

Steel: Powder Coated + Fabricated

PROPOSED

DONATION

LOAN

DESCRIPTION OF ARTWORK

Angular in nature and golden in hue. This sculpture with its angularity allows for an interactive experience with the viewer. Late day and early dawn light adds illumination.

HEIGHT

x

WIDTH

x

LENGTH/DEPTH

WEIGHT

5 feet x 6 feet x 6 feet

unknown

OBJECT TYPE(S)/MATERIAL

(i.e., metal, glass, stone, etc.)

Metal

DESIGN LOADS

(i.e., wind, and dead loads)

Sit ~~direct~~ direct on ground / no base platform

INSCRIPTION/FOUNDRY MARKS

(if multiple, please include edition number)

PRESENT LOCATION OF ARTWORK (where is the work of art?)

970 Oak Birmingham, Michigan 48009

CONDITION

May need a re-powder coating

MAINTENANCE REQUIRED

(long term care/annual)

Ø

VALUE \$

8500.00

APPRAISED

OWNER'S STATED VALUE



FOOTING/FOUNDATION REQUIREMENTS

Site location request: Quarton Lake area or Downtown area or other

NARRATIVE/RATIONALE FOR GIFT/LOAN/TEMPORARY INSTALLATION

These sculptures were created by my late husband, Hank Marx  
in the early 1980's when we lived adjacent to the Detroit Golf Club.  
We moved to Birmingham in 2000 and brought these with us to our new home.  
I am a strong supporter of art in public places and it is my pleasure to share  
these sculptures with the city of Birmingham for all to enjoy for years to come.

Sue Marx  
SIGNATURE

10-4-21  
DATE

**\*\*\*Submit application together with prints or digital images of artwork, foundation plans, completed Outdoor Sculpture Agreement (if temporary sculpture), and a vitae or resume of the artist to:**

City of Birmingham  
Attn: City Clerk – c/o Public Arts Board  
151 Martin St.  
P.O. Box 3001  
Birmingham, MI 48012

PAB Action (Office use only)

Date Received: \_\_\_\_\_  
Presented for Public Arts Board discussion: \_\_\_\_\_  
Board Action:  Recommended for approval  Not recommended for approval  
Insurance:  Provided by CCBB  Provided by City  Other \_\_\_\_\_  
Recommendation(s)/Action Taken \_\_\_\_\_

Routing and dates approved (Office use only):

Y N  
  Planning \_\_\_\_\_   Building \_\_\_\_\_  
  Engineering \_\_\_\_\_   Other \_\_\_\_\_  
  Public Safety (Police/Fire) \_\_\_\_\_   Other \_\_\_\_\_  
  Parks and Recreation \_\_\_\_\_  
  Approved by CCBB \_\_\_\_\_  
  Approved by City Commission \_\_\_\_\_ Site Location \_\_\_\_\_

(If artwork is to be permanently donated, the City of Birmingham may provide required insurance.  
If artwork is to be on temporary loan, the CCBB may provide required insurance.)













## MEMORANDUM

Planning Division

**DATE:** August 18<sup>th</sup>, 2022

**TO:** Thomas M. Markus, City Manager

**FROM:** Brooks Cowan, Senior Planner

**SUBJECT:** Sculpture Donation – “Khyber” by Tom Fitzgerald

---

### INTRODUCTION:

The City of Birmingham has received a sculpture donation application for “Khyber” by artist Tom Fitzgerald. The artist has passed away and the owner, Carrolle Baskin, has applied to donate the sculpture to the City. The sculpture was built in 1979 and consists of black painted steel that is 120” high with a base that is 54” x 50”. The Public Arts Board has recommended that the sculpture be installed in Fairway Park near the intersection of Fairway Trail and Fairway Road.

### BACKGROUND:

On [June 15<sup>th</sup>, 2022](#), the Public Arts Board (PAB) considered the top three suggested locations of Fairway Park, Linn Smith Park, and the Chesterfield Fire Station. The PAB and felt that the greenspace south of Fairway Trail was the best suitable location for the sculpture. The Board felt that the scenery of Fairway Trail would be an interesting sight to see through the opening of the sculpture and that the scale of the park would accommodate the perspective of the sculpture.

In regards to an exact location, staff agreed to meet with Board members at the park at a later date to narrow down a specific location to be presented to the Parks & Recreation Board and then City Commission. The Public Arts Board approved a motion to recommend accepting the sculpture donation and for the sculpture to be placed in Fairway Park near Fairway Trail.

On July 7<sup>th</sup>, staff walked the park with Annie VanGelderren of the Public Arts Board and BBAC and selected the location for the sculpture. Mrs. VanGelderren thought it would be best to have the sculpture closer to the trail where it bends north and gets closer to the stream.

On [August 2<sup>nd</sup>, 2022](#), the Parks & Recreation Board reviewed the proposed location and concurred with the recommendations of the Public Arts Board to have the sculpture along a trail passage. The Parks & Recreation Board approved a motion to recommend the location of Fairway Park for the sculpture “Khyber” to City Commission.

**LEGAL REVIEW:**

The City Attorney has reviewed the application and has no concerns related to the form and content of the application.

**FISCAL IMPACT:**

As a donation, the City will be responsible for costs incurred for pouring a sculpture pad and installation expenses. The Public Arts Board coordinates with the City's concrete sidewalk program for sculpture pads and has a budget for sculpture installation expenses. DPS will be able to assist the City in moving the sculpture from its current location at the BBAC to the proposed park location.

**PUBLIC NOTIFICATION:**

Although not required, a public notice sign was placed beside the proposed location.

**SUMMARY:**

The Planning Division requests that the City Commission consider the sculpture donation of "Khyber" by artist Tom Fitzgerald, donated by Carolle Baskin to be installed at Fairway Park.

**ATTACHMENTS:**

Please find attached the following documents for your review.

- Proposed sculpture location
- Application & images

**SUGGESTED RESOLUTION:**

Make a motion adopting a resolution to APPROVE the sculpture donation of "Khyber" by Tom Fitzgerald, donated by Carolle Baskin to be installed at Fairway Park.



Fairway Park Proposed Location









Cultural Council of Birmingham Bloomfield  
P.O. Box 465 Birmingham, MI. 48012

## APPLICATION FOR ART IN PUBLIC SPACES

Carolle Baskin

APPLICANT NAME

248.860.002

Carollebaskin@yahoo.com

DAYTIME PHONE

EMAIL

Carolle Baskin

DONOR, OWNER, OR AGENT (DEALER)

Tom Paul Fitzgerald

ARTIST (first and last) or PROJECT NAME

"Khyber"

TITLE

Steel Sculpture

DATE OF ARTWORK

1979

MEDIUM/TECHNIQUE

PROPOSED

DONATION

LOAN

DESCRIPTION OF ARTWORK

A steel sculpture titled "Khyber" named after the Khmer Pass on the border of Afghanistan. A

historically important pass which bridges Central and Southern Asia. Considered to be the most important trade route and military strategic locations in the world.

120" x 54" x 50" approx 450lbs

HEIGHT

x

WIDTH

x

LENGTH/DEPTH

WEIGHT

Steel

OBJECT TYPE(S)/MATERIAL

(i.e., metal, glass, stone, etc.)

open areas to allow wind to pass

DESIGN LOADS

Signed by artist on base with date

(i.e., wind, and dead loads)

INSCRIPTION/FOUNDRY MARKS

(if multiple, please include edition number)

Birmingham Bloomfield Art Center ( storage only )

PRESENT LOCATION OF ARTWORK (where is the work of art?)

Good - no rust noted

CONDITION

Occasionally touched up with high gloss black paint .

MAINTENANCE REQUIRED

(long term care/annual)

\$15,000

VALUE

APPRAISED

OWNER'S STATED VALUE

Original installation had 2 bolts and 2 pins in concrete at base

FOOTING/FOUNDATION REQUIREMENTS

NARRATIVE/RATIONALE FOR GIFT/LOAN/TEMPORARY INSTALLATION

Carolle Baskin reached out to Annie VanGelderren, President & CEO Birmingham Bloomfield Art Center and a Public Arts Board Member to sell said sculpture. She advised Carolle of the opportunity to place sculpture in the City of Birmingham as a lasting legacy of her brother - Henry Baskin.

*Carolle Baskin*

*5-12-2022*

SIGNATURE

DATE

\*\*\*Submit application together with **prints or digital images of artwork, foundation plans, completed Outdoor Sculpture Agreement (if temporary sculpture), and a vitae or resume of the artist** to:

City of Birmingham  
Attn: City Clerk – c/o Public Arts Board  
151 Martin St.  
P.O. Box 3001  
Birmingham, MI 48012

PAB Action (Office use only)

Date Received: \_\_\_\_\_

Presented for Public Arts Board discussion: \_\_\_\_\_

Board Action:  Recommended for approval  Not recommended for approval

Insurance:  Provided by CCBB  Provided by City  Other \_\_\_\_\_

Recommendation(s)/Action Taken \_\_\_\_\_

Routing and dates approved (Office use only):

Y N

Y N

Planning \_\_\_\_\_

Building \_\_\_\_\_

Engineering \_\_\_\_\_

Other \_\_\_\_\_

Public Safety (Police/Fire) \_\_\_\_\_

Other \_\_\_\_\_

Parks and Recreation \_\_\_\_\_

Approved by CCBB \_\_\_\_\_

Approved by City Commission \_\_\_\_\_

Site Location \_\_\_\_\_

(If artwork is to be permanently donated, the City of Birmingham has the right to relocate and /or remove the artwork from public display. If permanently donated, the City of Birmingham may provide the required insurance. If artwork is to be on temporary loan, the CCBB may provide required insurance.)

















## **MEMORANDUM**

City Manager's Office

**DATE:** August 23, 2022

**TO:** Thomas M. Markus, City Manager

**FROM:** Melissa Fairbairn, Assistant to the City Manager

**SUBJECT:** Third Strategic Planning Meeting Reschedule

---

### **INTRODUCTION:**

The City has a series of three (3) strategic planning workshops scheduled with Dr. Lew Bender on the following dates:

- Wednesday, August 24, 2022
- Wednesday, September 14, 2022
- Tuesday, September 27, 2022

### **BACKGROUND:**

Due to a scheduling error, the third and final strategic planning session was scheduled for September 27, 2022 which coincides with the final day of Rosh Hashanah. Rosh Hashanah is one of the City of Birmingham's designated legal holidays pursuant to Section 2-26 of the Birmingham City Code and therefore, the City Commission should not hold the strategic planning workshop on that date.

The Manager's Office requests that the September 27, 2022 strategic planning workshop meeting be rescheduled to Tuesday, October 11, 2022 at 7 p.m. The rescheduled meeting would take place in the Rotary Room of the Baldwin Public Library.

### **LEGAL REVIEW:**

None required.

### **FISCAL IMPACT:**

There will be no fiscal impact due to rescheduling the meeting.

### **PUBLIC COMMUNICATIONS:**

The rescheduled date of the third strategic planning meeting will be updated on public notices, the City's social media channels, and by e-blast to the citywide email list.

### **SUMMARY:**



The third strategic planning workshop meeting was scheduled for 6 p.m. on Tuesday, September 27, 2022 which coincides the last day of Rosh Hashanah, a designated legal holiday. It is recommended to reschedule the third strategic planning workshop meeting to Tuesday, October 11, 2022 at 7 p.m.

ATTACHMENTS:

- City of Birmingham List of Designated Legal Holidays

SUGGESTED COMMISSION ACTION:

Make a motion adopting a resolution to move the third strategic planning workshop from September 27, 2022 to October 11, 2022 at 7 p.m.

**CITY OF BIRMINGHAM  
RESOLUTION TO ESTABLISH LEGAL HOLIDAYS**

Moved by Commission Member \_\_\_\_\_, seconded by Commission Member \_\_\_\_\_

**BE IT RESOLVED**, by the City Commission of the City of Birmingham, Michigan, as follows:

The City Commission does hereby designate the following as legal holidays pursuant to Section 2-26 of the Birmingham City Code:

<i>New Year's Day</i>	<i>Juneteenth</i>	<i>Eid al-Adha</i>
<i>Martin Luther King, Jr. Day</i>	<i>Independence Day</i>	<i>Thanksgiving</i>
<i>Ash Wednesday</i>	<i>Labor Day</i>	<i>Day after Thanksgiving</i>
<i>Passover</i>	<i>Eid al-Fitr</i>	<i>Hanukkah</i>
<i>Good Friday</i>	<i>Rosh Hashanah</i>	<i>Ashura</i>
<i>Easter Sunday</i>	<i>Yom Kippur</i>	<i>Christmas Eve</i>
<i>Shavuot</i>	<i>Sukkot</i>	<i>Christmas</i>
<i>Memorial Day</i>	<i>Shemini Atzeret</i>	<i>Kwanzaa</i>
	<i>Simchat Torah</i>	<i>New Year's Eve</i>

AYES: \_\_\_\_\_

NAYS: \_\_\_\_\_

ABSENT: \_\_\_\_\_

MOTION CARRIED.

I, Alexandria D. Bingham, Clerk of the City of Birmingham, certify that the foregoing is a true and compared copy of a Resolution duly made and passed by the Birmingham City Commission at a meeting held on \_\_\_\_\_, 2022.

\_\_\_\_\_  
Alexandria D. Bingham, City Clerk





## **MEMORANDUM**

City Clerk's Office

**DATE:** August 22, 2022  
**TO:** Thomas M. Markus, City Manager  
**FROM:** Alexandria Bingham, City Clerk  
**SUBJECT:** SOCWA Board of Trustees

---

### **INTRODUCTION:**

Article VII of the Articles of Incorporation of Southeastern Oakland County Water Authority (SOCWA) provides that each member municipality shall annually appoint a representative and an alternate to the Board of Trustees.

### **BACKGROUND:**

At the May 23rd, 2022 Commission meeting, Commission appointed City Contracting Engineer Jim Surhigh as Representative to the SOCWAS Board of Trustees. The city has now hired a full time City Engineer and would recommend to replace Mr. Surhigh with City Engineer Melissa Coatta.

### **LEGAL REVIEW:**

n/a

### **FISCAL IMPACT:**

n/a

### **PUBLIC COMMUNICATIONS:**

Information regarding this appointment will be provided along with the agenda packet on the city website and public communication is permissible in accordance with standard commission procedure.

### **SUMMARY:**

The City Commission is being asked to approve the appointment of City Engineer Melissa Coatta to the SOCWA Board of Trustees as the Representative for the remainder of the 2022/2023 fiscal year.

**ATTACHMENTS:** May 2, 2022 letter from SOCWA.

**SUGGESTED COMMISSION ACTION:**

Make a motion adopting a resolution to appoint City Engineer Melissa Coatta as Representative of the City of Birmingham on the SOCWA Board of Trustees for the remainder of the 2022/2023 fiscal year.





\* Berkley \* Beverly Hills \* Bingham Farms \* Birmingham  
\* Clawson \* Huntington Woods \* Lathrup Village \* Pleasant Ridge  
\* Royal Oak \* Southfield \* Southfield Township

May 2, 2022

Alexandria Bingham  
City Clerk  
City of Birmingham  
P.O. Box 3001  
Birmingham, MI 48012

Subject: Appointment of Representative & Alternate

Dear Ms. Bingham:

Article VII of the Articles of Incorporation of the Southeastern Oakland County Water Authority provides that each municipality shall annually appoint a representative and an alternate to the Board of Trustees. This representative shall serve during the next fiscal year following his appointment and/or until his successor is appointed.

The present representative and alternate representative for the City of Birmingham are as follows:

Representative

Alternate

J. Surhigh

T. Markus

It is requested that the City Commission, by resolution, appoint a representative and alternate representative to represent the City of Birmingham on the Board of Trustees of the Southeastern Oakland County Water Authority for the fiscal year beginning July 1, 2022.

Please forward a certified copy of this resolution to the Southeastern Oakland County Water Authority, 3910 W. Webster Road, Royal Oak, MI 48073-6764.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Jeffrey A. McKeen".

Jeffrey A. McKeen, P.E.  
General Manager

JAM/cf



## **MEMORANDUM**

Clerk's Office

**DATE:** August 23 2022

**TO:** Thomas M. Markus, City Manager

**FROM:** Alexandria Bingham, City Clerk

**SUBJECT:** Museum Board Member Resignation

---

### **INTRODUCTION/BACKGROUND:**

The Museum Board member Caitlin Rosso submitted her resignation from the board effective August 17, 2022. This creates a vacancy for the remainder of her three-year term to expire July 5, 2023.

### **LEGAL REVIEW:**

None

### **FISCAL IMPACT:**

None

### **PUBLIC COMMUNICATIONS:**

The City Clerk's office will publish a notice of intention to appoint to this position, post the vacancy on the "board and commission opportunities" portion of the city's website and include it in the city's digital news vehicles as publication schedules permit.

### **SUMMARY:**

The City Commission is being asked to accept the resignation of Caitlin Rosso from the Museum Board, thank her for her service, and to direct the City Clerk to begin the process of filling the vacancy.

### **ATTACHMENTS:**

1. Resignation Email

### **SUGGESTED COMMISSION ACTION:**

To make a motion adopting a resolution to accept the resignation of Caitlin Rosso from the Museum Board, to thank her for her service and to direct the City Clerk to begin the process of filling the vacancy.



---

## Fwd: Museum Board Member Resignation

---

Leslie Pielack <LPielack@bhamgov.org>

Tue, Aug 23, 2022 at 11:18 AM

To: Christina Woods <cwoods@bhamgov.org>, Alex Bingham <abingham@bhamgov.org>

----- Forwarded message -----

From: **Caitlin Rosso** <caitlinrosso@hotmail.com>

Date: Wed, Aug 17, 2022 at 6:33 PM

Subject: Re: Museum Board Member Resignation

To: [clerksoffice@bham.gov](mailto:clerksoffice@bham.gov) <[clerksoffice@bham.gov](mailto:clerksoffice@bham.gov)>

Hello,

I was asked by Leslie to send you an email submitting my resignation from the Museum Board.

Please let me know if there is any further information you need from me.

Thanks,

Caitlin Rosso

Caitlin Rosso

**Keep Calm and Call Caitlin**

Associate Broker

Max Brook, Realtors

275 South Old Woodward

Birmingham, MI 48009

[caitlinrosso@maxbroock.com](mailto:caitlinrosso@maxbroock.com)

(248)229-4227

[www.caitlinrosso.com](http://www.caitlinrosso.com)

--

Leslie Pielack

*Director*

*Birmingham Museum*

248-530-1682





# MEMORANDUM

Treasurer's Office

**DATE:** August 19, 2022  
**TO:** Thomas M. Markus, City Manager  
**FROM:** Mark Gerber, Finance Director/Treasurer  
**SUBJECT:** Resolution for Confirming S.A.D. #898  
Westwood Cape Seal

---

## INTRODUCTION:

A public hearing on the confirmation of the special assessment roll for cape seal improvements on Westwood is being held on August 29, 2022. The special assessment will reimburse the city for improvements made to road on Westwood. If the City Commission approves the roll, the property owners who benefit from these improvements will be billed for the cost of the improvements. The improvements are scheduled to be completed in the spring of 2023.

Comments during the hearing of confirmation are limited to those questions specifically addressing the assessment roll pursuant to Section 94-9 of the City Code.

## BACKGROUND:

At the City Commission meeting on August 15, 2022, the City Commission determined the necessity of the Westwood Cape Seal project and a Hearing of Confirmation of the Special Assessment Roll was set for August 29, 2022.

## LEGAL REVIEW:

The purpose of this hearing is to review and hear any objections to the special assessment roll. The special assessment roll is a listing of all of the properties to be assessed for the improvements to the property. Pursuant to the City Code, section 94-9, whenever a special assessment roll shall be confirmed by the commission, it should be final and conclusive.

## FISCAL IMPACT:

If confirmed, the city would collect \$68,321.14 from the special assessment district. Property owners will have 10 years to pay the special assessment. Since the construction will not occur until spring, this roll may be adjusted as provided by City Code for actual costs.

## PUBLIC COMMUNICATIONS:

Property owners were notified by mail of the public hearing dates. If the City Commission confirms the special assessment rolls, the Treasurer's office will notify the property owners in the special assessment district of the confirmation and the lien on their property.



SUMMARY:

The Treasurer's office recommends that the City Commission conduct the public hearing of confirmation of special assessment district 898 and further to confirm the rolls as attached to this report.

ATTACHMENTS:

- Proposed Special Assessment Roll
- Memorandum: Hearing of Necessity for Westwood Cape Seal

SUGGESTED COMMISSION ACTION:

Make a motion adopting a resolution confirming special assessment roll 898 as follows:

WHEREAS, Special Assessment Roll, designated Roll No. 898, has been heretofore prepared for collection, and

WHEREAS, notice was given pursuant to Section 94-7 of the City Code, to each owner or party-in-interest of property to be assessed, and

WHEREAS, the Commission has deemed it practicable to cause payment of the cost thereof to be made after the time of construction and

Commission Resolution 07-183-22 provided it would meet this 29th day of August, 2022 for the sole purpose of reviewing the assessment roll, and

WHEREAS, at said hearing held this August 29th, 2022, all those property owners or their representatives present have been given an opportunity to be heard specifically concerning costs appearing in said special assessment roll,

NOW, THEREFORE, BE IT RESOLVED, that Special Assessment Roll No. 898 be in all things ratified and confirmed, and that the City Clerk be and is hereby instructed to endorse said roll, showing the date of confirmation thereof, and to certify said assessment roll to the City Treasurer for collection at or near the time of construction of the improvement.

BE IT FURTHER RESOLVED, that special assessment shall be payable in ten (10) payments as provided in Section 94-10 of the Code of the City of Birmingham, with an annual interest rate of six and one half percent (6.5%) on all unpaid installments.

## SAD 898 Westwood Cape Seal

<u>Parcel</u>	<u>Address</u>	<u>Amount</u>
08-19-26-177-004	1000 Westwood	\$ 3,808.00
08-19-26-176-004	1011 Westwood	3,808.00
08-19-26-177-003	1036 Westwood	2,856.00
08-19-26-176-003	1043 Westwood	2,856.00
08-19-26-177-002	1064 Westwood	2,856.00
08-19-26-176-002	1065 Westwood	2,584.00
08-19-26-176-001	1087 Westwood	4,829.55
08-19-26-177-001	1090 Westwood	4,586.95
08-19-26-177-007	938 Westwood	3,400.00
08-19-26-176-006	947 Westwood	2,856.00
08-19-26-177-006	956 Westwood	2,856.00
08-19-26-176-005	979 Westwood	2,856.00
08-19-26-177-005	980 Westwood	1,904.00
08-19-26-177-008	912 Westwood	4,920.00
08-19-26-176-007	915 Westwood	6,178.65
08-19-26-177-009	1099 N Glenhurst	1,589.07
08-19-26-128-016	1100 Westwood	1,581.72
08-19-26-127-006	1133 Westwood	1,567.02
08-19-26-128-013	1135 N Glenhurst	1,581.72
08-19-26-327-012	871 N Glenhurst	2,010.13
08-19-26-326-001	885 Westwood	2,785.39
08-19-26-327-001	888 Westwood	2,059.69
08-19-26-177-018	917 N Glenhurst	<u>1,991.25</u>
	Total	<u>\$ 68,321.14</u>





## **MEMORANDUM**

ENGINEERING DEPARTMENT

**DATE:** August 9, 2022

**TO:** Thomas M. Markus, City Manager

**FROM:** Scott D. Zielinski, Assistant City Engineer  
Melissa A. Coatta, City Engineer

**SUBJECT:** Westwood, Raynale & Oak Street Project  
Hearing of Necessity for Cape Seal Special Assessment District (SAD)

---

### INTRODUCTION:

Design has started for the sewer and water main improvements on Westwood between Raynale and Oak, Raynale between N. Glenhurst and the west City limits, and Oak between N. Glenhurst and the west City Limits, all of which are considered to be unimproved streets. Upon completion of the sewer and water main work, the existing unimproved road surface will be restored with a new cape-seal treatment, as directed by the City Commission on June 27, 2022.

### BACKGROUND:

The streets in the project area are part of the "Harrowgate" subdivision, platted in 1929, where the streets were originally constructed as gravel streets with concrete curbs. Since the 1940's, cape-seal treatments have been applied to these streets to improve their stability and eliminate dust associated with the original gravel roads. Cape-seal treatments were last applied to these streets in 2010, and the expected life of this treatment is 7-10 years. This proposed project is planned to be constructed starting in the spring of 2023.

The project was presented in more detail to the City Commission at the regular meeting on June 27, 2022. At that meeting, the City Commission adopted a resolution for the Engineering Department to proceed with final design of the Westwood, Raynale & Oak Street Project to include the planned improvements to the sewer and water systems, and the replacement of existing road surface disturbed by the utility construction with a full cape-seal treatment to be completed upon the conclusion of the other construction. The City policy has been to defray the costs of cape-seal treatments on unimproved streets by creating a Special Assessment District (SAD) consisting of the properties that are benefitting from this treatment.

The parcels within the project zone that are subject to the Cape Seal Assessment are highlighted on the attached map. Appended to this report is a list of properties that the department plans to include in the assessment district, along with estimated assessment construction costs.

#### LEGAL REVIEW:

Chapter 94 – Special Assessments of the Birmingham City Code outlines the process by which a special assessment is conducted in the City of Birmingham. This project will follow the prescribed City Code procedures.

#### FISCAL IMPACT:

Revenue generated from the Cape Seal Special Assessment District for the Westwood, Raynale & Oak Street Project will defray the costs incurred by the City for construction of these improvements. Assessable frontage length for a parcel is 85% of the record property dimension along the short length of the property and the remaining 15% is covered by the City at-large. Assessable side street frontage length for a parcel is 25% of the record property dimension along the long length of the property and the remaining 75% is covered by the City at-large.

#### PUBLIC COMMUNICATIONS:

Notice for the Confirmation of Roll is to be distributed by the Clerk's Office. The Engineering Department has sent all property owners a letter explaining the associated work. For additional communications made related to this project, please refer to the project report presented at the City Commission meeting of June 27, 2022.

#### SUMMARY:

The Engineering Department recommends that the Commission declare necessity and approve a Special Assessment District for Cape Seal as part of Westwood, Raynale & Oak Street Project. Should the Commission approve the Special Assessment District, a Public Hearing for Confirmation of the Roll should be set at the City Commission meeting on August 29, 2022.

#### ATTACHMENTS:

- Map of proposed Cape Seal Special Assessment District
- Spreadsheet with Estimated Costs of Services
- Clerk's Confirmation of Public Hearing Notice

#### SUGGESTED COMMISSION ACTION:

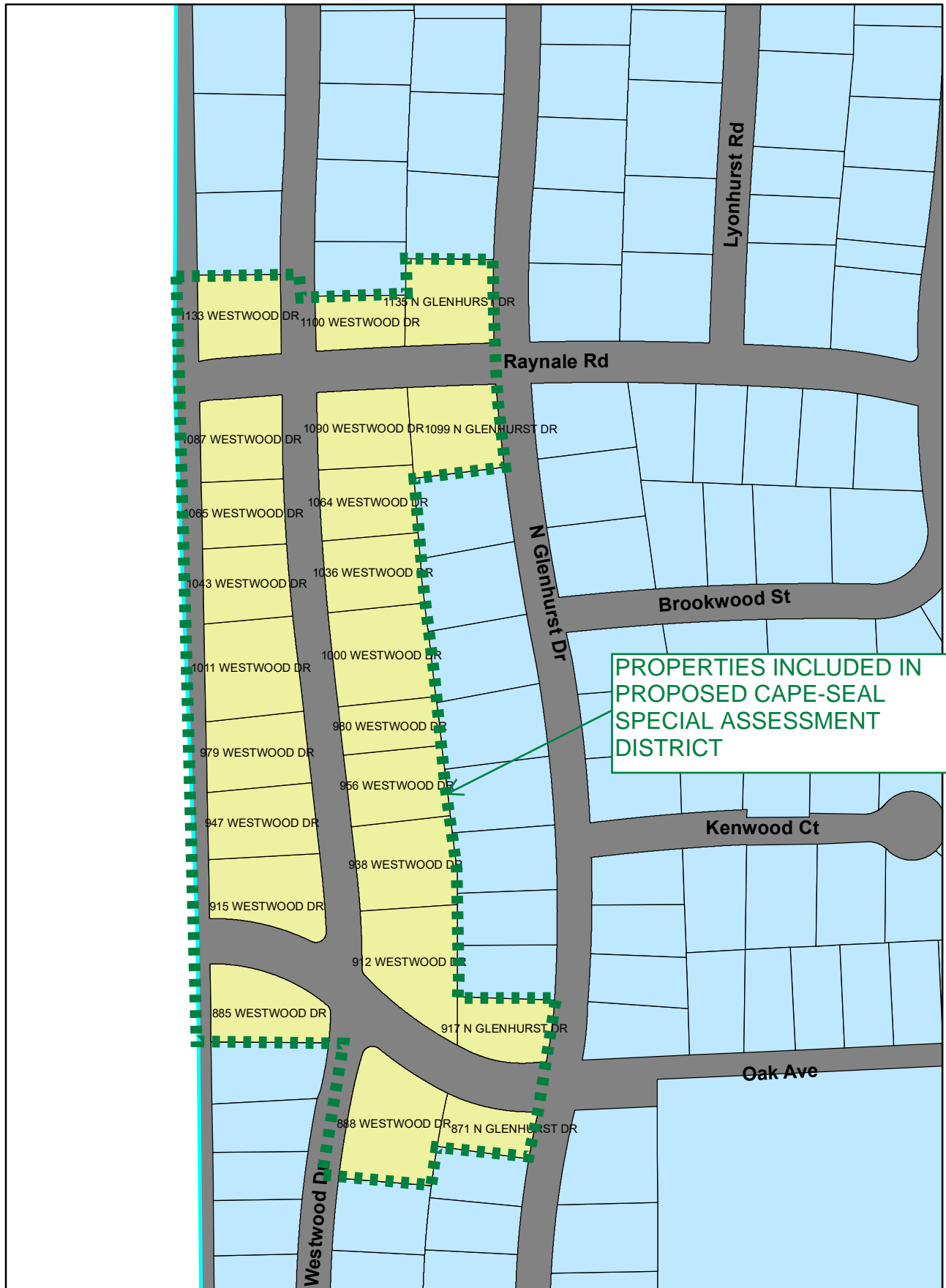
Make a motion adopting a resolution declaring necessity and approving a Special Assessment District with special assessments levied in accordance with benefits against the properties within such assessment district. The Special Assessment District shall include all properties within the following district of 23 parcels (listed below), and the City Commission will meet on Monday, August 29, 2022 at 7:30 P.M. for the purpose of conducting the Confirmation of the Assessment Roll for cape-seal for properties within the project area on Westwood between Raynale & Oak,



Raynale between N. Glenhurst and the west City limits, and Oak between N. Glenhurst & the west City Limits.


<b>Parcel ID</b>	<b>Street Address</b>
1926177004	1000 Westwood
1926176004	1011 Westwood
1926177003	1036 Westwood
1926176003	1043 Westwood
1926177002	1064 Westwood
1926176002	1065 Westwood
1926176001	1087 Westwood
1926177001	1090 Westwood
1926177009	1099 N Glenhurst
1926128016	1100 Westwood
1926127006	1133 Westwood
1926128013	1135 N Glenhurst
1926327012	871 N Glenhurst
1926326001	885 Westwood
1926327001	888 Westwood
1926177008	912 Westwood
1926176007	915 Westwood
1926177018	917 N Glenhurst
1926177007	938 Westwood
1926146006	947 Westwood
1926177006	956 Westwood
1926176005	979 Westwood
1926177005	980 Westwood

# WESTWOOD, RAYNALE & OAK ST PROJECT AREA



PROPERTIES INCLUDED IN PROPOSED CAPE-SEAL SPECIAL ASSESSMENT DISTRICT

**Legend**

 Affected Addresses in Work Area



Sidwell	Street Address	Frontage Length (LFT)	Street with Frontage	Assessable Frontage Length (LFT)	Unit Cost for Assessment	Cape-Seal Assessment for Street with Frontage	Sidestreet Frontage Length (LFT)	Sidestreet with Frontage	Assessable Sidestreet Frontage Length (LFT)	Unit Cost for Assessment	Cape-Seal Assessment for Sidestreet with Frontage	Total Estimated Cape-Seal Assessment Amount
1926177004	1000 Westwood	140.00	Westwood	119.00	\$ 32.00	\$ 3,808.00	0.00	-	0.00	\$ -	\$ -	\$ 3,808.00
1926176004	1011 Westwood	140.00	Westwood	119.00	\$ 32.00	\$ 3,808.00	0.00	-	0.00	\$ -	\$ -	\$ 3,808.00
1926177003	1036 Westwood	105.00	Westwood	89.25	\$ 32.00	\$ 2,856.00	0.00	-	0.00	\$ -	\$ -	\$ 2,856.00
1926176003	1043 Westwood	105.00	Westwood	89.25	\$ 32.00	\$ 2,856.00	0.00	-	0.00	\$ -	\$ -	\$ 2,856.00
1926177002	1064 Westwood	105.00	Westwood	89.25	\$ 32.00	\$ 2,856.00	0.00	-	0.00	\$ -	\$ -	\$ 2,856.00
1926176002	1065 Westwood	95.00	Westwood	80.75	\$ 32.00	\$ 2,584.00	0.00	-	0.00	\$ -	\$ -	\$ 2,584.00
1926176001	1087 Westwood	120.00	Westwood	102.00	\$ 32.00	\$ 3,264.00	127.78	Raynale	31.95	\$ 49.00	\$ 1,885.05	\$ 4,829.55
1926177001	1090 Westwood	110.00	Westwood	93.50	\$ 32.00	\$ 2,992.00	130.19	Raynale	32.55	\$ 49.00	\$ 1,920.45	\$ 4,586.95
1926177007	938 Westwood	125.00	Westwood	106.25	\$ 32.00	\$ 3,400.00	0.00	-	0.00	\$ -	\$ -	\$ 3,400.00
1926176006	947 Westwood	105.00	Westwood	89.25	\$ 32.00	\$ 2,856.00	0.00	-	0.00	\$ -	\$ -	\$ 2,856.00
1926177006	956 Westwood	105.00	Westwood	89.25	\$ 32.00	\$ 2,856.00	0.00	-	0.00	\$ -	\$ -	\$ 2,856.00
1926176005	979 Westwood	105.00	Westwood	89.25	\$ 32.00	\$ 2,856.00	0.00	-	0.00	\$ -	\$ -	\$ 2,856.00
1926177005	980 Westwood	70.00	Westwood	59.50	\$ 32.00	\$ 1,904.00	0.00	-	0.00	\$ -	\$ -	\$ 1,904.00
1926177008	912 Westwood	87.87	Westwood	74.69	\$ 32.00	\$ 2,390.08	171.53	Oak	42.88	\$ 59.00	\$ 2,101.12	\$ 4,920.00
1926176007	915 Westwood	130.30	Westwood	110.76	\$ 32.00	\$ 3,544.32	178.59	Oak	44.65	\$ 59.00	\$ 2,187.85	\$ 6,178.65
1926177009	1099 N Glenhurst	121.61	N Glenhurst	0.00	\$ -	\$ -	129.73	Raynale	32.43	\$ 49.00	\$ 1,589.07	\$ 1,589.07
1926128016	1100 Westwood	80.00	Westwood	0.00	\$ -	\$ -	129.12	Raynale	32.28	\$ 49.00	\$ 1,581.72	\$ 1,581.72
1926127006	1133 Westwood	115.00	Westwood	0.00	\$ -	\$ -	127.93	Raynale	31.98	\$ 49.00	\$ 1,567.02	\$ 1,567.02
1926128013	1135 N Glenhurst	121.40	N Glenhurst	0.00	\$ -	\$ -	129.11	Raynale	32.28	\$ 49.00	\$ 1,581.72	\$ 1,581.72
1926327012	871 N Glenhurst	70.00	N Glenhurst	0.00	\$ -	\$ -	136.26	Oak	34.07	\$ 59.00	\$ 2,010.13	\$ 2,010.13
1926326001	885 Westwood	55.49	Westwood	0.00	\$ -	\$ -	188.84	Oak	47.21	\$ 59.00	\$ 2,785.39	\$ 2,785.39
1926327001	888 Westwood	197.68	Westwood	0.00	\$ -	\$ -	139.65	Oak	34.91	\$ 59.00	\$ 2,059.69	\$ 2,059.69
1926177018	917 N Glenhurst	90.00	N Glenhurst	0.00	\$ -	\$ -	135.00	Oak	33.75	\$ 59.00	\$ 1,991.25	\$ 1,991.25

Notes:

Assessable Frontage Length for a parcel is 85% of the record property dimension along the short length of the property (remaining 15% covered by City at-large)

Assessable Sidestreet Frontage Length for a parcel is 25% of the record property dimension along the long length of the property (remaining 75% covered by the City at-large)

Unit costs per front-foot for streets within the project area are preliminary estimates; will be adjusted when project bids are received at future date



## **MEMORANDUM**

Clerk's Office

**DATE:** August 15, 2022

**TO:** Scott Zielinski, Assistant City Engineer

**FROM:** Christina Woods, Deputy Clerk

**SUBJECT:** Clerk's Confirmation of Public Hearing Notice: Special Assessment Districts within the Westwood, Raynale & Oak Street Project Area

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The noticing process has been completed for:

- Public Hearing of Necessity and Public Hearing of Confirmation for the cape seal maintenance treatment within the Westwood, Raynale & Oak Street project area
- Public Hearing of Necessity and Public Hearing of Confirmation for the replacement of sewer and water services within the Westwood, Raynale & Oak Street project area

Please see attachments for further confirmation.

Mailing Date: 7/29/22

Test Mail Return Date: 8/1/22

Publishing Dates in the Birmingham Eccentric: 7/31/22 and 8/7/22

Posted on [www.bhamgov.org/publicnotices](http://www.bhamgov.org/publicnotices): 7/27/22

Attachments:

1. Public Hearing Notice
2. Owner and Occupant Addresses in project area
3. Letter sent to owners and occupants; Testing mail received in Clerk's Office; Mail Machine Counter Report
4. Affidavit of publishing



<b>NOTICE OF PUBLIC HEARINGS</b>		
<b>BIRMINGHAM CITY COMMISSION</b>		
<b>PUBLIC HEARING OF NECESSITY</b>		
<b>PUBLIC HEARING OF CONFIRMATION</b>		
<b>FOR THE REPLACEMENT OF SEWER &amp; WATER SERVICES WITHIN THE WESTWOOD, RAYNALE &amp; OAK STREET PROJECT AREA</b>		
Meeting Location:	Date, Time,	<b>HEARING OF NECESSITY FOR SPECIAL ASSESSMENT DISTRICT</b> Monday, August 15, 2022, 7:30 PM Municipal Building, 151 Martin, Birmingham, MI
Meeting Location:	Date, Time,	<b>HEARING OF CONFIRMATION FOR SPECIAL ASSESSMENT DISTRICT</b> Monday, August 29, 2022, 7:30 PM Municipal Building, 151 Martin, Birmingham, MI
Location:		Westwood, Raynale & Oak Street Project Area – specifically Westwood between Raynale & Oak, Raynale between N Glenhurst & west City limits, and Oak between N Glenhurst & west City limits.
Nature of Improvement:		Replacement of sewer and water services within the Westwood, Raynale & Oak Street Project area
City Staff Contact:		Scott Zielinski, Assistant City Engineer, 248.530.1838 <a href="mailto:szielinski@bhamgov.org">szielinski@bhamgov.org</a>
Notice Requirements:		Mail to affected property owners Publish July 31 2022, August 7 2022
Approved minutes may be reviewed at:		City Clerk's Office or <a href="http://www.bhamgov.org/commissionagendas">www.bhamgov.org/commissionagendas</a>
Should you have any statement regarding the above, you are invited to attend the meeting in person or virtually through ZOOM: <b><a href="https://zoom.us/j/655079760">https://zoom.us/j/655079760</a></b> Meeting ID: <b>655 079 760</b>		
You or your agent may appear at the hearings to express your views; however, if you fail to protest either in person or by letter received on or before the date of the hearing, you cannot appeal the amount of the special assessment to the Michigan Tax Tribunal. Mail any correspondence to: City Clerk, P.O. Box 3001, Birmingham, MI 48012. The property owner may file a written appeal of the special assessment with the State Tax Tribunal within 30 days after the confirmation of the special assessment roll if that special assessment was protested at the hearing held for the purpose of confirming the roll. All special assessments, including installment payments, shall, from the date of the confirmation thereof, constitute a lien on the respective lots or parcels assessed, and until paid shall be charged against the respective owners of the lots or parcels assessed.		
Persons with disabilities needing accommodations for effective participation in this meeting should contact the City Clerk's Office at 248.530.1880 (voice) or 248.644.5115 (TDD) at least one day in advance to request mobility, visual, hearing or other assistance.		
<i>Las personas que requieren alojamiento, tales como servicios de interpretación, la participación efectiva en esta reunión deben ponerse en contacto con la Oficina del Secretario Municipal al (248) 530-1880 por lo menos el día antes de la reunión pública. (Title VI of the Civil Rights Act of 1964).</i>		

<b>NOTICE OF PUBLIC HEARINGS</b>		
<b>BIRMINGHAM CITY COMMISSION</b>		
<b>PUBLIC HEARING OF NECESSITY</b>		
<b>PUBLIC HEARING OF CONFIRMATION</b>		
<b>FOR THE CAPE-SEAL MAINTENANCE TREATMENT WITHIN THE WESTWOOD, RAYNALE &amp; OAK STREET PROJECT AREA</b>		
Meeting Location:	Date, Time,	<b>HEARING OF NECESSITY FOR SPECIAL ASSESSMENT DISTRICT</b> Monday, August 15, 2022, 7:30 PM Municipal Building, 151 Martin, Birmingham, MI
Meeting Location:	Date, Time,	<b>HEARING OF CONFIRMATION FOR SPECIAL ASSESSMENT DISTRICT</b> Monday, August 29, 2022, 7:30 PM Municipal Building, 151 Martin, Birmingham, MI
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Nature of Improvement:		Nature of Improvement: Install cape-seal maintenance treatment on road surfaces, and construction of ADA compliant sidewalk ramps if needed, within the Westwood, Raynale & Oak Street Project area
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## Attachment 2: Addresses of owners and occupants in project area

Parcel	Name 1	Name 2	Address	City	Stat	Zip
1	1926127006 JOSEPH HOEGLER	BETH HOEGLER	1133 WESTWOOD DR	BIRMINGHAM	MI	48009
2	1926128013 GREGORY OBLOY	BETHANY OBLOY	1135 N GLENHURST DR	BIRMINGHAM	MI	48009
3	1926128016 W F FULLER TRUST		1100 WESTWOOD DR	BIRMINGHAM	MI	48009
4	1926176001 COREY K HOLTER	JULIE M HOLTER	1087 WESTWOOD DR	BIRMINGHAM	MI	48009
5	1926176002 BEVERLY B PRIOR TRUSTEE	BEVERLY B PRIOR TRUST	1065 WESTWOOD DR	BIRMINGHAM	MI	48009
6	1926176003 JERRY A MATLEN	TERRY L MATLEN	1043 WESTWOOD DR	BIRMINGHAM	MI	48009
7	1926176004 STEVEN A TOROK	JANET M TOROK	1011 WESTWOOD DR	BIRMINGHAM	MI	48009
8	1926176005 GARY KAZANJIAN	MELISSA MILLER FARR	979 WESTWOOD DR	BIRMINGHAM	MI	48009
9	1926176006 DOUGLAS JAMES HELLYAR	JILL MICHELLE HELLYAR	947 WESTWOOD DR	BIRMINGHAM	MI	48009
10	1926176007 CHARLES BROCK ROONEY		915 WESTWOOD DR	BIRMINGHAM	MI	48009
11	1926177001 GEORGE L STERN	FRANCES E STERN	1090 WESTWOOD DR	BIRMINGHAM	MI	48009
12	1926177002 DAVID E GLASS		1064 WESTWOOD DR	BIRMINGHAM	MI	48009
13	1926177003 SCOTT EVERLY	KATHRINE EVERLY	1036 WESTWOOD DR	BIRMINGHAM	MI	48009
14	1926177004 BRADLEY J HALLETT	KIM VANCLEEF	1000 WESTWOOD DR	BIRMINGHAM	MI	48009
15	1926177005 ANDREW ROMANOSKY	KIMBERLY ROMANOSKY	980 WESTWOOD DR	BIRMINGHAM	MI	48009
16	1926177006 LYNN M WIAND REVOC LVNG TRUST	LYNN M WIAND TRUSTEE	956 WESTWOOD DR	BIRMINGHAM	MI	48009
17	1926177007 TOD W WINKLER	KELLY WINKLER	938 WESTWOOD DR	BIRMINGHAM	MI	48009
18	1926177008 FRANK A FAGA	CAPRI A FAGA	912 WESTWOOD DR	BIRMINGHAM	MI	48009
19	1926177009 ANTHONY M PIPIA	REGINA P PIPIA	1099 N GLENHURST DR	BIRMINGHAM	MI	48009
20	1926177018 SCOTT G BENNETT	THERESA H BENNETT	917 N GLENHURST DR	BIRMINGHAM	MI	48009
21	1926326001 JOHN CORNISH	KAREN RICHER-CORNISH	885 WESTWOOD DR	BIRMINGHAM	MI	48009
22	1926327001 LAURENCE G WOLF		888 WESTWOOD DR	BIRMINGHAM	MI	48009
23	1926327012 BRETT D ALTMAN		871 N GLENHURST DR	BIRMINGHAM	MI	48009
24	Test City of Birmingham	City Clerk's Office	151 Martin	BIRMINGHAM	MI	48009

Attachment 2: Addresses of owners and occupants in project area



**7A**



Clerk's Office  
City of Birmingham, MI

AUG - 1 2022

CW

RECEIVED

Friday, July 29, 2022

To: 0  
City of Birmingham  
City Clerk's Office  
151 Martin  
BIRMINGHAM, MI 4

Funds Report	Available:	\$5,854.38	PBP Account Number:	35884980
	Used:	\$346,741.62	Indicia Number:	0001382903
	Total Pieces:	656651	Meter Number:	1382903
	Control Sum:	\$352,596.00	Meter Name:	
	Resettable Piece Count:	24	Printed:	JUL 29 2022 11:41 AM
	Piece Count Value:	\$13.68		

RE: Westwood, Raynale & Oak Street Project  
Cape-Seal Maintenance Treatment Special Assessment  
Water & Sewer Lateral Replacement Special Assessment

The final design of the Westwood, Raynale & Oak Street Project is underway. With the direction received from the City Commission on June 27, 2022, the City will be completing the improvements to the sewer and water systems, and after patching excavations and trenches associated with the underground utility work, a cape-seal maintenance treatment will be applied to the road surfaces within the project area. Construction on this project is anticipated to start in Spring 2023.

With this letter you are receiving **two (2)** notifications for two, separate public hearings, with the Public Hearing of Necessity for each being scheduled to occur on **Monday, August 15, 2022** at the regularly scheduled City Commission meeting at 7:30 p.m. The first is to consider a Special Assessment District (SAD) for cape-seal maintenance treatment on unimproved road surfaces within the project area. The second is to consider a Special Assessment District for replacement of private sewer and water service laterals within the public road right-of-way within the project area. The following information will help clarify what is being assessed for each SAD.

The **first** SAD is for cape-seal maintenance treatment on unimproved road surfaces within the project areas. Consistent with previous projects of this nature, it has been the City's policy to assess 85% of the costs associated with this work to the properties that share frontage with the streets receiving the cape-seal treatment. For properties that have a side yard along the streets receiving the cape-seal treatment, 25% of the costs associated with this work will be assessed. Work items typically included in these projects include the following:

- Pulverizing existing road surface and re-grading as necessary to shape an appropriate crown.
- Applying the cape-seal treatment that is a double layer of chip seal and a slurry coat.
- Reconstructing sidewalk ramps in the project area to meet ADA requirements, where needed.

The cost per property will be assessed based on an average cost associated with the proposed work on each street in the cape-seal program, multiplied by the linear foot measurement of the property line fronting the street, and/or the side property line for corner lots, and then reduced by multiplying again by 85% for the front footage measurement, and/or 25% for the side footage

measurement. Upon completion of the project, the City will bill each property for the full amount of the assessment. Payment will be expected within 30 days of receipt. The City plans to provide an estimate of costs associated with this SAD at the Hearing of Necessity to be held on August 15, 2022.

The **second** SAD is for replacement of certain private sewer and water service laterals within the public road right-of-way. Not all property owners in the project area will need replacement of their sewer and water laterals and be subject to this special assessment. The City's policy outlined in section 114-30 of the city code is to replace any water service that is less than 1 inch in diameter, and outlined in section 114-171 of the city code is to replace any sewer service that is 50 or more years old, in poor condition, or is made of materials that do not meet city standards (e.g. "Orangeburg" pipe). Replacement during other infrastructure projects protects the City's investment in the sewer and water system by reducing the chance of failure by a lateral within the right-of-way area.

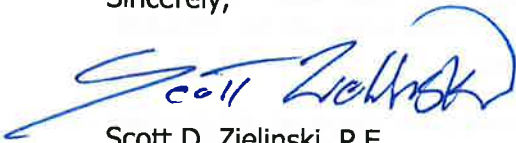
City Ordinance establishes that because private water and sewer service laterals only benefit one property, they are not considered a part of the City's public system. Therefore, the maintenance and repair of the services from the building to the connection at the public main is the responsibility of each individual property owner. City policy dictates that these replacements are completed at the property owner's expense. Only those who qualify as outlined above will have their sewer and/or water service replaced and receive an assessment.

The actual cost of replacing the section of the water and/or sewer lateral charged to you will vary depending on the actual location of the City mains, and any other obstacles, such as trees, that are in the way. Property owners are only charged for the actual length of service replaced if their service qualifies for assessment as described above.

After the work is completed, an invoice will be generated and sent to the property owner of record for the length of service(s) replaced. Payment in full will be expected within 30 days of receipt. If you are not in a position to pay off the charge in one payment, it can be broken into as many as 10 annual payments. An annual interest charge on the remaining balance, currently about 5%, will apply. Official estimates will be provided at the Hearing of Necessity.

If you have any questions or concerns, please contact the Engineering Office at (248) 530-1850. You have the opportunity to speak directly to the City Commission at the Public Hearing of Necessity that will be held on August 15, 2022.

Sincerely,



Scott D. Zielinski, P.E.  
Assistant City Engineer



<b>NOTICE OF PUBLIC HEARINGS</b>		
<b>BIRMINGHAM CITY COMMISSION</b>		
<b>PUBLIC HEARING OF NECESSITY</b>		
<b>PUBLIC HEARING OF CONFIRMATION</b>		
<b>FOR THE CAPE-SEAL MAINTENANCE TREATMENT WITHIN THE WESTWOOD, RAYNALE &amp; OAK STREET PROJECT AREA</b>		
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<b>NOTICE OF PUBLIC HEARINGS</b>		
<b>BIRMINGHAM CITY COMMISSION</b>		
<b>PUBLIC HEARING OF NECESSITY</b>		
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# **Affidavit of Publication**

The Affidavit of Publication from the Eccentric newspaper was not received at the time of agenda packet preparation due to staffing delays. Affidavit will be kept on file at the Clerk's office once received.



## **MEMORANDUM**

ENGINEERING DEPARTMENT

**DATE:** August 9, 2022

**TO:** Thomas M. Markus, City Manager

**FROM:** Scott D. Zielinski, Assistant City Engineer  
Melissa A. Coatta, City Engineer

**SUBJECT:** Westwood, Raynale & Oak Street Project  
Hearing of Necessity for Water and Sewer Lateral Special Assessment District (SAD)

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### INTRODUCTION:

A number of the water and sewer leads will be replaced as part of the Engineering Department's planned project for the sewer and water main improvements on Westwood between Raynale and Oak, Raynale between N. Glenhurst and the west City limits, and Oak between N. Glenhurst and the west City Limits. The City proposes to replace private water and sewer laterals that met "useful life" criteria with the right-of-way (ROW) in an effort to protect the public investments.

### BACKGROUND:

In accordance with current City policy established to protect the public investment being made with capital improvement projects in public roadways, as part of the project, we intend to replace all sewer laterals that are 50 years of age or older or of material that are not acceptable for City standards, as well as all water services less than 1 inch diameter. All unsuitable sewer services will be replaced with 6" schedule 40 PVC, and water services less than 1 inch in diameter will be replaced with a new 1 inch diameter service, for service lengths located within the public road right-of-way.

The parcels within the project zone that are subject to the Sewer & Water Lateral Special Assessment are highlighted on the attached map. Appended to this report is a list of properties that the department plans to include in the assessment district, along with estimated construction costs to be assessed at the Hearing of Necessity.



#### LEGAL REVIEW:

Chapter 94 – Special Assessments of the Birmingham City Code outlines the process by which a special assessment is conducted in the City of Birmingham. This project will follow the prescribed City Code procedures.

#### FISCAL IMPACT:

Revenue generated from the Water and Sewer Lateral Special Assessment District (SAD) for the Westwood, Raynale & Oak Street Project will defray the costs incurred by the City for construction of these improvements. One hundred percent of the costs for laterals within the right of way will be paid by the property owner. The cost can be paid back in either lump sum or over up to a 10-year period with interest. The interest rate will be confirmed at the Confirmation of Roll.

#### PUBLIC COMMUNICATIONS:

Notice for the Confirmation of Roll is to be distributed by the Clerk's Office. The Engineering Department has sent all property owners a letter explaining the associated work. For additional communications made related to this project, please refer to the project report presented at the City Commission meeting of June 27, 2022.

#### SUMMARY:

The Engineering Department recommends that the Commission declare necessity and approve a Special Assessment District for Water and Sewer Lateral as part of Westwood, Raynale & Oak Street Project. Should the Commission approve the Special Assessment District, a Public Hearing for Confirmation of the Roll should be set at the City Commission meeting on August 29, 2022.

#### ATTACHMENTS:

- Map of proposed Water and Sewer Special Assessment District
- Spreadsheet with Estimated Costs of Services
- Clerk's Confirmation of Public Hearing Notice

#### SUGGESTED COMMISSION ACTION:

Make a motion adopting a resolution declaring necessity and approving a Special Assessment District with special assessments levied in accordance with benefits against the properties within such assessment district. The special assessment district shall include all properties within the following district of 13 parcels (listed below), and the City Commission will meet on Monday, August 29, 2022 at 7:30 P.M. for the purpose of conducting the Public Hearing to Confirm the Assessment Roll for the water and sewer lateral replacements for properties within the project area on Westwood between Raynale & Oak, Raynale between N. Glenhurst and the west City limits, and Oak between N. Glenhurst & the west City Limits.



# MEMORANDUM

Treasurer's Office

**DATE:** August 22, 2022

**TO:** Thomas M. Markus, City Manager

**FROM:** Mark Gerber, Finance Director/Treasurer

**SUBJECT:** Resolution for Confirming S.A.D. #898S and #898W  
Westwood Sewer and Water Lateral Replacements

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## INTRODUCTION:

A public hearing on the confirmation of the special assessment roll for sewer and water lateral improvements on Westwood is being held on August 29, 2022. The special assessment will reimburse the city for improvements made to sewer and water laterals on Westwood. If the City Commission approves the roll, the property owners who benefit from these improvements will be billed for the cost of the improvements. The improvements are scheduled to be completed in the spring of 2023.

Comments during the hearing of confirmation are limited to those questions specifically addressing the assessment roll pursuant to Section 94-9 of the City Code.

## BACKGROUND:

At the City Commission meeting on August 15, 2022, the City Commission determined the necessity of the Westwood Water and Sewer lateral project and a Hearing of Confirmation of the Special Assessment Roll was set for August 29, 2022.

## LEGAL REVIEW:

The purpose of this hearing is to review and hear any objections to the special assessment roll. The special assessment roll is a listing of all of the properties to be assessed for the improvements to the property. Pursuant to the City Code, section 94-9, whenever a special assessment roll shall be confirmed by the commission, it should be final and conclusive.

## FISCAL IMPACT:

If confirmed, the city would collect \$44,375 from the sewer lateral and \$2,000 from the water lateral special assessment districts. Property owners will have 10 years to pay the special assessment. Since the construction will not occur until spring, this roll may be adjusted as provided by City Code for actual costs.

## PUBLIC COMMUNICATIONS:



Property owners were notified by mail of the public hearing dates. If the City Commission confirms the special assessment rolls, the Treasurer's office will notify the property owners in the special assessment districts of the confirmation and the lien on their property.

**SUMMARY:**

The Treasurer's office recommends that the City Commission conduct the public hearing of confirmation of special assessment district 898S and 898W and further to confirm the rolls as attached to this report.

**ATTACHMENTS:**

- Proposed Special Assessment Rolls
- Memorandum: Hearing of Necessity for Westwood Sewer and Water Laterals

**SUGGESTED COMMISSION ACTION:**

Make a motion adopting a resolution confirming special assessment rolls 898S and 898W as follows:

WHEREAS, Special Assessment Rolls, designated Roll No. 898S and 898W, have been heretofore prepared for collection, and

WHEREAS, notice was given pursuant to Section 94-7 of the City Code, to each owner or party-in-interest of property to be assessed, and

WHEREAS, the Commission has deemed it practicable to cause payment of the cost thereof to be made after the time of construction and

Commission Resolution 07-183-22 provided it would meet this 29th day of August, 2022 for the sole purpose of reviewing the assessment rolls, and

WHEREAS, at said hearing held this August 29th, 2022, all those property owners or their representatives present have been given an opportunity to be heard specifically concerning costs appearing in said special assessment rolls,

NOW, THEREFORE, BE IT RESOLVED, that Special Assessment Rolls No. 898S and 898W be in all things ratified and confirmed, and that the City Clerk be and is hereby instructed to endorse said rolls, showing the date of confirmation thereof, and to certify said assessment rolls to the City Treasurer for collection at or near the time of construction of the improvement.

BE IT FURTHER RESOLVED, that special assessment shall be payable in ten (10) payments as provided in Section 94-10 of the Code of the City of Birmingham, with an annual interest rate of six and one half percent (6.5%) on all unpaid installments.



## **MEMORANDUM**

ENGINEERING DEPARTMENT

**DATE:** August 9, 2022

**TO:** Thomas M. Markus, City Manager

**FROM:** Scott D. Zielinski, Assistant City Engineer  
Melissa A. Coatta, City Engineer

**SUBJECT:** Westwood, Raynale & Oak Street Project  
Hearing of Necessity for Water and Sewer Lateral Special Assessment District (SAD)

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### INTRODUCTION:

A number of the water and sewer leads will be replaced as part of the Engineering Department's planned project for the sewer and water main improvements on Westwood between Raynale and Oak, Raynale between N. Glenhurst and the west City limits, and Oak between N. Glenhurst and the west City Limits. The City proposes to replace private water and sewer laterals that met "useful life" criteria with the right-of-way (ROW) in an effort to protect the public investments.

### BACKGROUND:

In accordance with current City policy established to protect the public investment being made with capital improvement projects in public roadways, as part of the project, we intend to replace all sewer laterals that are 50 years of age or older or of material that are not acceptable for City standards, as well as all water services less than 1 inch diameter. All unsuitable sewer services will be replaced with 6" schedule 40 PVC, and water services less than 1 inch in diameter will be replaced with a new 1 inch diameter service, for service lengths located within the public road right-of-way.

The parcels within the project zone that are subject to the Sewer & Water Lateral Special Assessment are highlighted on the attached map. Appended to this report is a list of properties that the department plans to include in the assessment district, along with estimated construction costs to be assessed at the Hearing of Necessity.



#### LEGAL REVIEW:

Chapter 94 – Special Assessments of the Birmingham City Code outlines the process by which a special assessment is conducted in the City of Birmingham. This project will follow the prescribed City Code procedures.

#### FISCAL IMPACT:

Revenue generated from the Water and Sewer Lateral Special Assessment District (SAD) for the Westwood, Raynale & Oak Street Project will defray the costs incurred by the City for construction of these improvements. One hundred percent of the costs for laterals within the right of way will be paid by the property owner. The cost can be paid back in either lump sum or over up to a 10-year period with interest. The interest rate will be confirmed at the Confirmation of Roll.

#### PUBLIC COMMUNICATIONS:

Notice for the Confirmation of Roll is to be distributed by the Clerk's Office. The Engineering Department has sent all property owners a letter explaining the associated work. For additional communications made related to this project, please refer to the project report presented at the City Commission meeting of June 27, 2022.

#### SUMMARY:

The Engineering Department recommends that the Commission declare necessity and approve a Special Assessment District for Water and Sewer Lateral as part of Westwood, Raynale & Oak Street Project. Should the Commission approve the Special Assessment District, a Public Hearing for Confirmation of the Roll should be set at the City Commission meeting on August 29, 2022.

#### ATTACHMENTS:

- Map of proposed Water and Sewer Special Assessment District
- Spreadsheet with Estimated Costs of Services
- Clerk's Confirmation of Public Hearing Notice

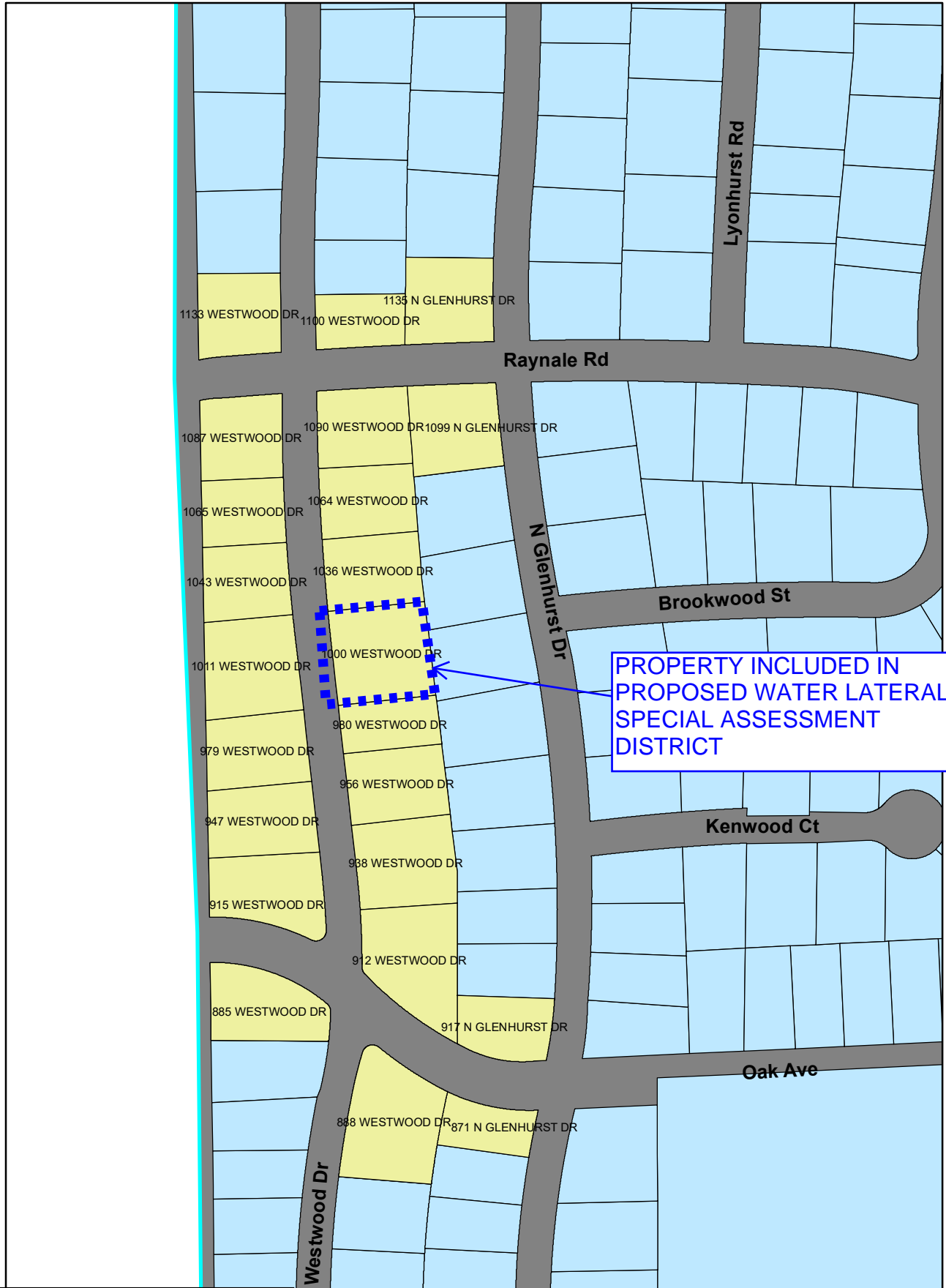
#### SUGGESTED COMMISSION ACTION:

Make a motion adopting a resolution declaring necessity and approving a Special Assessment District with special assessments levied in accordance with benefits against the properties within such assessment district. The special assessment district shall include all properties within the following district of 13 parcels (listed below), and the City Commission will meet on Monday, August 29, 2022 at 7:30 P.M. for the purpose of conducting the Public Hearing to Confirm the Assessment Roll for the water and sewer lateral replacements for properties within the project area on Westwood between Raynale & Oak, Raynale between N. Glenhurst and the west City limits, and Oak between N. Glenhurst & the west City Limits.


<b>Parcel ID</b>	<b>Street Address</b>
1926177004	1000 Westwood
1926176004	1011 Westwood
1926177003	1036 Westwood
1926176003	1043 Westwood
1926177002	1064 Westwood
1926176002	1065 Westwood
1926176001	1087 Westwood
1926177001	1090 Westwood
1926177007	938 Westwood
1926176006	947 Westwood
1926177005	980 Westwood
1926177008	912 Westwood
1926176007	915 Westwood



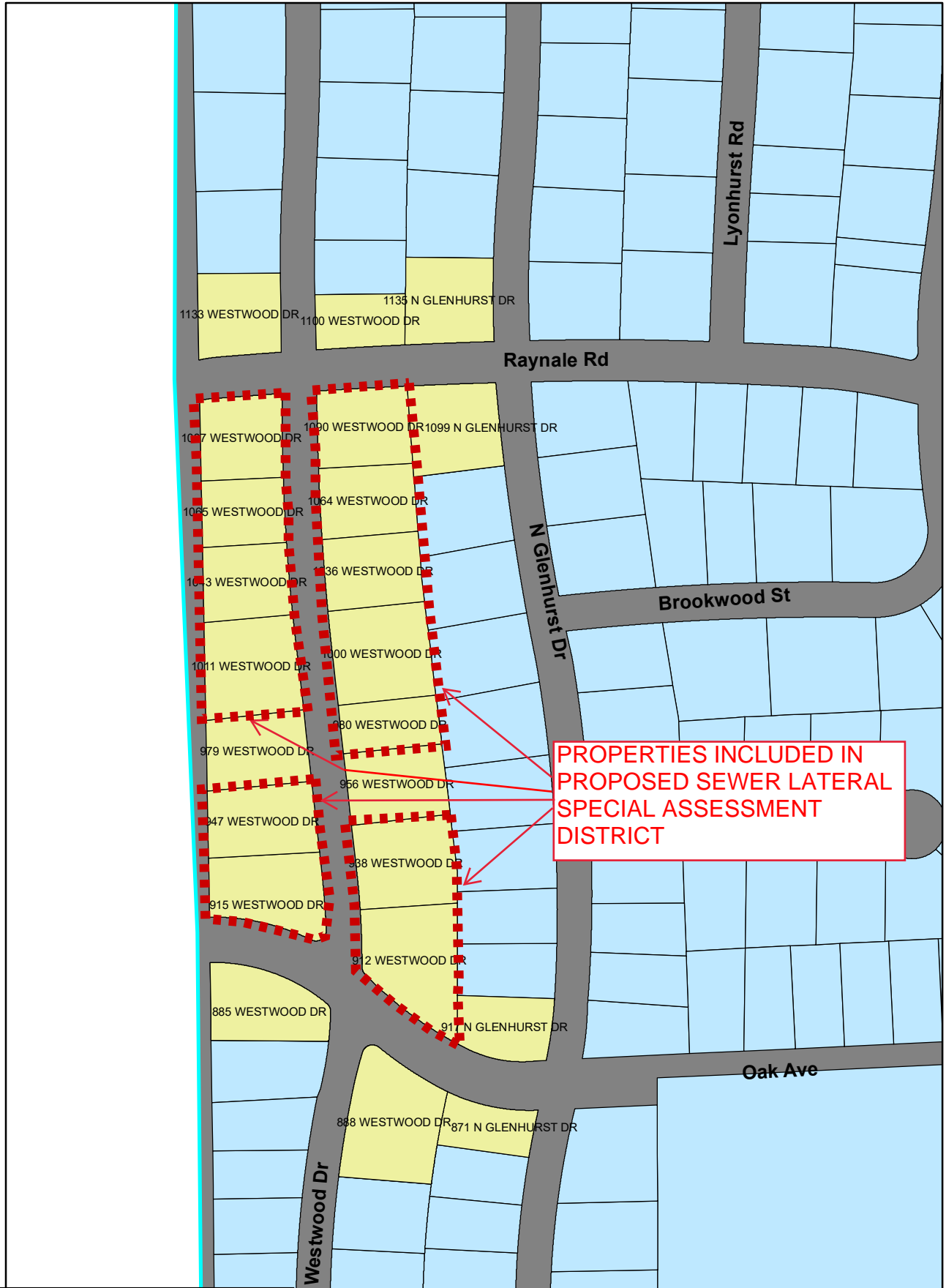
# WESTWOOD, RAYNALE & OAK ST PROJECT AREA




**Legend**

 Affected Addresses in Work Area

# WESTWOOD, RAYNALE & OAK ST PROJECT AREA



**Legend**

 Affected Addresses in Work Area



Sidwell	Street Address	Water	Sewer	Total Estimated Water and Sewer Lateral Amount
1926177004	1000 Westwood	\$ 2,000.00	\$ 4,375.00	\$ 6,375.00
1926176004	1011 Westwood	\$ -	\$ 2,500.00	\$ 2,500.00
1926177003	1036 Westwood	\$ -	\$ 4,375.00	\$ 4,375.00
1926176003	1043 Westwood	\$ -	\$ 2,500.00	\$ 2,500.00
1926177002	1064 Westwood	\$ -	\$ 4,375.00	\$ 4,375.00
1926176002	1065 Westwood	\$ -	\$ 2,500.00	\$ 2,500.00
1926176001	1087 Westwood	\$ -	\$ 2,500.00	\$ 2,500.00
1926177001	1090 Westwood	\$ -	\$ 3,125.00	\$ 3,125.00
1926177007	938 Westwood	\$ -	\$ 4,375.00	\$ 4,375.00
1926176006	947 Westwood	\$ -	\$ 2,500.00	\$ 2,500.00
1926177006	956 Westwood	\$ -	\$ -	\$ -
1926176005	979 Westwood	\$ -	\$ -	\$ -
1926177005	980 Westwood	\$ -	\$ 4,375.00	\$ 4,375.00
1926177008	912 Westwood	\$ -	\$ 4,375.00	\$ 4,375.00
1926176007	915 Westwood	\$ -	\$ 2,500.00	\$ 2,500.00
1926177009	1099 N Glenhurst	\$ -	\$ -	\$ -
1926128016	1100 Westwood	\$ -	\$ -	\$ -
1926127006	1133 Westwood	\$ -	\$ -	\$ -
1926128013	1135 N Glenhurst	\$ -	\$ -	\$ -
1926327012	871 N Glenhurst	\$ -	\$ -	\$ -
1926326001	885 Westwood	\$ -	\$ -	\$ -
1926327001	888 Westwood	\$ -	\$ -	\$ -
1926177018	917 N Glenhurst	\$ -	\$ -	\$ -

Notes:

Unit costs per lineal footage within the project area are preliminary estimates; will be adjusted when project bids are received at future date  
Final costs is based on actual construction lineal footage



## **MEMORANDUM**

Clerk's Office

**DATE:** August 15, 2022

**TO:** Scott Zielinski, Assistant City Engineer

**FROM:** Christina Woods, Deputy Clerk

**SUBJECT:** Clerk's Confirmation of Public Hearing Notice: Special Assessment Districts within the Westwood, Raynale & Oak Street Project Area

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The noticing process has been completed for:

- Public Hearing of Necessity and Public Hearing of Confirmation for the cape seal maintenance treatment within the Westwood, Raynale & Oak Street project area
- Public Hearing of Necessity and Public Hearing of Confirmation for the replacement of sewer and water services within the Westwood, Raynale & Oak Street project area

Please see attachments for further confirmation.

Mailing Date: 7/29/22

Test Mail Return Date: 8/1/22

Publishing Dates in the Birmingham Eccentric: 7/31/22 and 8/7/22

Posted on [www.bhamgov.org/publicnotices](http://www.bhamgov.org/publicnotices): 7/27/22

Attachments:

1. Public Hearing Notice
2. Owner and Occupant Addresses in project area
3. Letter sent to owners and occupants; Testing mail received in Clerk's Office; Mail Machine Counter Report
4. Affidavit of publishing



<b>NOTICE OF PUBLIC HEARINGS</b>		
<b>BIRMINGHAM CITY COMMISSION</b>		
<b>PUBLIC HEARING OF NECESSITY</b>		
<b>PUBLIC HEARING OF CONFIRMATION</b>		
<b>FOR THE REPLACEMENT OF SEWER &amp; WATER SERVICES WITHIN THE WESTWOOD, RAYNALE &amp; OAK STREET PROJECT AREA</b>		
Meeting Location:	Date, Time,	<b>HEARING OF NECESSITY FOR SPECIAL ASSESSMENT DISTRICT</b> Monday, August 15, 2022, 7:30 PM Municipal Building, 151 Martin, Birmingham, MI
Meeting Location:	Date, Time,	<b>HEARING OF CONFIRMATION FOR SPECIAL ASSESSMENT DISTRICT</b> Monday, August 29, 2022, 7:30 PM Municipal Building, 151 Martin, Birmingham, MI
Location:		Westwood, Raynale & Oak Street Project Area – specifically Westwood between Raynale & Oak, Raynale between N Glenhurst & west City limits, and Oak between N Glenhurst & west City limits.
Nature of Improvement:		Replacement of sewer and water services within the Westwood, Raynale & Oak Street Project area
City Staff Contact:		Scott Zielinski, Assistant City Engineer, 248.530.1838 <a href="mailto:szielinski@bhamgov.org">szielinski@bhamgov.org</a>
Notice Requirements:		Mail to affected property owners Publish July 31 2022, August 7 2022
Approved minutes may be reviewed at:		City Clerk's Office or <a href="http://www.bhamgov.org/commissionagendas">www.bhamgov.org/commissionagendas</a>
Should you have any statement regarding the above, you are invited to attend the meeting in person or virtually through ZOOM: <b><a href="https://zoom.us/j/655079760">https://zoom.us/j/655079760</a></b> Meeting ID: <b>655 079 760</b>		
You or your agent may appear at the hearings to express your views; however, if you fail to protest either in person or by letter received on or before the date of the hearing, you cannot appeal the amount of the special assessment to the Michigan Tax Tribunal. Mail any correspondence to: City Clerk, P.O. Box 3001, Birmingham, MI 48012. The property owner may file a written appeal of the special assessment with the State Tax Tribunal within 30 days after the confirmation of the special assessment roll if that special assessment was protested at the hearing held for the purpose of confirming the roll. All special assessments, including installment payments, shall, from the date of the confirmation thereof, constitute a lien on the respective lots or parcels assessed, and until paid shall be charged against the respective owners of the lots or parcels assessed.		
Persons with disabilities needing accommodations for effective participation in this meeting should contact the City Clerk's Office at 248.530.1880 (voice) or 248.644.5115 (TDD) at least one day in advance to request mobility, visual, hearing or other assistance.		
<i>Las personas que requieren alojamiento, tales como servicios de interpretación, la participación efectiva en esta reunión deben ponerse en contacto con la Oficina del Secretario Municipal al (248) 530-1880 por lo menos el día antes de la reunión pública. (Title VI of the Civil Rights Act of 1964).</i>		

<b>NOTICE OF PUBLIC HEARINGS</b>			
<b>BIRMINGHAM CITY COMMISSION</b>			
<b>PUBLIC HEARING OF NECESSITY</b>			
<b>PUBLIC HEARING OF CONFIRMATION</b>			
<b>FOR THE CAPE-SEAL MAINTENANCE TREATMENT WITHIN THE WESTWOOD, RAYNALE &amp; OAK STREET PROJECT AREA</b>			
Meeting Location:	Date,	Time,	<b>HEARING OF NECESSITY FOR SPECIAL ASSESSMENT DISTRICT</b> Monday, August 15, 2022, 7:30 PM Municipal Building, 151 Martin, Birmingham, MI
Meeting Location:	Date,	Time,	<b>HEARING OF CONFIRMATION FOR SPECIAL ASSESSMENT DISTRICT</b> Monday, August 29, 2022, 7:30 PM Municipal Building, 151 Martin, Birmingham, MI
Location:	Westwood, Raynale & Oak Street Project Area – specifically Westwood between Raynale & Oak, Raynale between N Glenhurst & west City limits, and Oak between N Glenhurst & west City limits.		
Nature of Improvement:	Nature of Improvement: Install cape-seal maintenance treatment on road surfaces, and construction of ADA compliant sidewalk ramps if needed, within the Westwood, Raynale & Oak Street Project area		
City Staff Contact:	Scott Zielinski, Assistant City Engineer, 248.530.1838, <a href="mailto:szielinski@bhamgov.org">szielinski@bhamgov.org</a>		
Notice Requirements:	Mail to affected property owners Publish July 31 2022, August 7 2022		
Approved minutes may be reviewed at:	City Clerk's Office or <a href="http://www.bhamgov.org/commissionagendas">www.bhamgov.org/commissionagendas</a>		
Should you have any statement regarding the above, you are invited to attend the meeting in person or virtually through ZOOM: <b><a href="https://zoom.us/j/655079760">https://zoom.us/j/655079760</a> Meeting ID: 655 079 760</b>			
You or your agent may appear at the hearings to express your views; however, if you fail to protest either in person or by letter received on or before the date of the hearing, you cannot appeal the amount of the special assessment to the Michigan Tax Tribunal. Mail any correspondence to: City Clerk, P.O. Box 3001, Birmingham, MI 48012.			
The property owner may file a written appeal of the special assessment with the State Tax Tribunal within 30 days after the confirmation of the special assessment roll if that special assessment was protested at the hearing held for the purpose of confirming the roll.			
All special assessments, including installment payments, shall, from the date of the confirmation thereof, constitute a lien on the respective lots or parcels assessed, and until paid shall be charged against the respective owners of the lots or parcels assessed.			
Persons with disabilities needing accommodations for effective participation in this meeting should contact the City Clerk's Office at 248.530.1880 (voice) or 248.644.5115 (TDD) at least one day in advance to request mobility, visual, hearing or other assistance.			
<i>Las personas que requieren alojamiento, tales como servicios de interpretación, la participación efectiva en esta reunión deben ponerse en contacto con la Oficina del Secretario Municipal al (248) 530-1880 por lo menos el día antes de la reunión pública. (Title VI of the Civil Rights Act of 1964).</i>			



## Attachment 2: Addresses of owners and occupants in project area

Parcel	Name 1	Name 2	Address	City	Stat	Zip
1	1926127006 JOSEPH HOEGLER	BETH HOEGLER	1133 WESTWOOD DR	BIRMINGHAM	MI	48009
2	1926128013 GREGORY OBLOY	BETHANY OBLOY	1135 N GLENHURST DR	BIRMINGHAM	MI	48009
3	1926128016 W F FULLER TRUST		1100 WESTWOOD DR	BIRMINGHAM	MI	48009
4	1926176001 COREY K HOLTER	JULIE M HOLTER	1087 WESTWOOD DR	BIRMINGHAM	MI	48009
5	1926176002 BEVERLY B PRIOR TRUSTEE	BEVERLY B PRIOR TRUST	1065 WESTWOOD DR	BIRMINGHAM	MI	48009
6	1926176003 JERRY A MATLEN	TERRY L MATLEN	1043 WESTWOOD DR	BIRMINGHAM	MI	48009
7	1926176004 STEVEN A TOROK	JANET M TOROK	1011 WESTWOOD DR	BIRMINGHAM	MI	48009
8	1926176005 GARY KAZANJIAN	MELISSA MILLER FARR	979 WESTWOOD DR	BIRMINGHAM	MI	48009
9	1926176006 DOUGLAS JAMES HELLYAR	JILL MICHELLE HELLYAR	947 WESTWOOD DR	BIRMINGHAM	MI	48009
10	1926176007 CHARLES BROCK ROONEY		915 WESTWOOD DR	BIRMINGHAM	MI	48009
11	1926177001 GEORGE L STERN	FRANCES E STERN	1090 WESTWOOD DR	BIRMINGHAM	MI	48009
12	1926177002 DAVID E GLASS		1064 WESTWOOD DR	BIRMINGHAM	MI	48009
13	1926177003 SCOTT EVERLY	KATHRINE EVERLY	1036 WESTWOOD DR	BIRMINGHAM	MI	48009
14	1926177004 BRADLEY J HALLETT	KIM VANCLEEF	1000 WESTWOOD DR	BIRMINGHAM	MI	48009
15	1926177005 ANDREW ROMANOSKY	KIMBERLY ROMANOSKY	980 WESTWOOD DR	BIRMINGHAM	MI	48009
16	1926177006 LYNN M WIAND REVOC LVNG TRUST	LYNN M WIAND TRUSTEE	956 WESTWOOD DR	BIRMINGHAM	MI	48009
17	1926177007 TOD W WINKLER	KELLY WINKLER	938 WESTWOOD DR	BIRMINGHAM	MI	48009
18	1926177008 FRANK A FAGA	CAPRI A FAGA	912 WESTWOOD DR	BIRMINGHAM	MI	48009
19	1926177009 ANTHONY M PIPIA	REGINA P PIPIA	1099 N GLENHURST DR	BIRMINGHAM	MI	48009
20	1926177018 SCOTT G BENNETT	THERESA H BENNETT	917 N GLENHURST DR	BIRMINGHAM	MI	48009
21	1926326001 JOHN CORNISH	KAREN RICHER-CORNISH	885 WESTWOOD DR	BIRMINGHAM	MI	48009
22	1926327001 LAURENCE G WOLF		888 WESTWOOD DR	BIRMINGHAM	MI	48009
23	1926327012 BRETT D ALTMAN		871 N GLENHURST DR	BIRMINGHAM	MI	48009
24	Test City of Birmingham	City Clerk's Office	151 Martin	BIRMINGHAM	MI	48009

Attachment 2: Addresses of owners and occupants in project area



**7B**



Clerk's Office  
City of Birmingham, MI

AUG - 1 2022

CW

RECEIVED

Friday, July 29, 2022

To: 0  
City of Birmingham  
City Clerk's Office  
151 Martin  
BIRMINGHAM, MI 4

Funds Report	Available:	\$5,854.38	PBP Account Number:	35884980
	Used:	\$346,741.62	Indicia Number:	0001382903
	Total Pieces:	656651	Meter Number:	1382903
	Control Sum:	\$352,596.00	Meter Name:	
	Resettable Piece Count:	24	Printed:	JUL 29 2022 11:41 AM
	Piece Count Value:	\$13.68		

RE: Westwood, Raynale & Oak Street Project  
Cape-Seal Maintenance Treatment Special Assessment  
Water & Sewer Lateral Replacement Special Assessment

The final design of the Westwood, Raynale & Oak Street Project is underway. With the direction received from the City Commission on June 27, 2022, the City will be completing the improvements to the sewer and water systems, and after patching excavations and trenches associated with the underground utility work, a cape-seal maintenance treatment will be applied to the road surfaces within the project area. Construction on this project is anticipated to start in Spring 2023.

With this letter you are receiving **two (2)** notifications for two, separate public hearings, with the Public Hearing of Necessity for each being scheduled to occur on **Monday, August 15, 2022** at the regularly scheduled City Commission meeting at 7:30 p.m. The first is to consider a Special Assessment District (SAD) for cape-seal maintenance treatment on unimproved road surfaces within the project area. The second is to consider a Special Assessment District for replacement of private sewer and water service laterals within the public road right-of-way within the project area. The following information will help clarify what is being assessed for each SAD.

The **first** SAD is for cape-seal maintenance treatment on unimproved road surfaces within the project areas. Consistent with previous projects of this nature, it has been the City's policy to assess 85% of the costs associated with this work to the properties that share frontage with the streets receiving the cape-seal treatment. For properties that have a side yard along the streets receiving the cape-seal treatment, 25% of the costs associated with this work will be assessed. Work items typically included in these projects include the following:

- Pulverizing existing road surface and re-grading as necessary to shape an appropriate crown.
- Applying the cape-seal treatment that is a double layer of chip seal and a slurry coat.
- Reconstructing sidewalk ramps in the project area to meet ADA requirements, where needed.

The cost per property will be assessed based on an average cost associated with the proposed work on each street in the cape-seal program, multiplied by the linear foot measurement of the property line fronting the street, and/or the side property line for corner lots, and then reduced by multiplying again by 85% for the front footage measurement, and/or 25% for the side footage

measurement. Upon completion of the project, the City will bill each property for the full amount of the assessment. Payment will be expected within 30 days of receipt. The City plans to provide an estimate of costs associated with this SAD at the Hearing of Necessity to be held on August 15, 2022.

The **second** SAD is for replacement of certain private sewer and water service laterals within the public road right-of-way. Not all property owners in the project area will need replacement of their sewer and water laterals and be subject to this special assessment. The City's policy outlined in section 114-30 of the city code is to replace any water service that is less than 1 inch in diameter, and outlined in section 114-171 of the city code is to replace any sewer service that is 50 or more years old, in poor condition, or is made of materials that do not meet city standards (e.g. "Orangeburg" pipe). Replacement during other infrastructure projects protects the City's investment in the sewer and water system by reducing the chance of failure by a lateral within the right-of-way area.

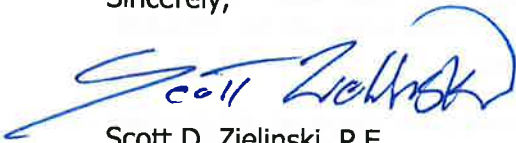
City Ordinance establishes that because private water and sewer service laterals only benefit one property, they are not considered a part of the City's public system. Therefore, the maintenance and repair of the services from the building to the connection at the public main is the responsibility of each individual property owner. City policy dictates that these replacements are completed at the property owner's expense. Only those who qualify as outlined above will have their sewer and/or water service replaced and receive an assessment.

The actual cost of replacing the section of the water and/or sewer lateral charged to you will vary depending on the actual location of the City mains, and any other obstacles, such as trees, that are in the way. Property owners are only charged for the actual length of service replaced if their service qualifies for assessment as described above.

After the work is completed, an invoice will be generated and sent to the property owner of record for the length of service(s) replaced. Payment in full will be expected within 30 days of receipt. If you are not in a position to pay off the charge in one payment, it can be broken into as many as 10 annual payments. An annual interest charge on the remaining balance, currently about 5%, will apply. Official estimates will be provided at the Hearing of Necessity.

If you have any questions or concerns, please contact the Engineering Office at (248) 530-1850. You have the opportunity to speak directly to the City Commission at the Public Hearing of Necessity that will be held on August 15, 2022.

Sincerely,



Scott D. Zielinski, P.E.  
Assistant City Engineer



<b>NOTICE OF PUBLIC HEARINGS</b>		
<b>BIRMINGHAM CITY COMMISSION</b>		
<b>PUBLIC HEARING OF NECESSITY</b>		
<b>PUBLIC HEARING OF CONFIRMATION</b>		
<b>FOR THE CAPE-SEAL MAINTENANCE TREATMENT WITHIN THE WESTWOOD, RAYNALE &amp; OAK STREET PROJECT AREA</b>		
Meeting Date, Time, Location:		<b>HEARING OF NECESSITY FOR SPECIAL ASSESSMENT DISTRICT</b> Monday, August 15, 2022, 7:30 PM Municipal Building, 151 Martin, Birmingham, MI
Meeting Date, Time, Location:		<b>HEARING OF CONFIRMATION FOR SPECIAL ASSESSMENT DISTRICT</b> Monday, August 29, 2022, 7:30 PM Municipal Building, 151 Martin, Birmingham, MI
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Nature of Improvement:		Nature of Improvement: Install cape-seal maintenance treatment on road surfaces, and construction of ADA compliant sidewalk ramps if needed, within the Westwood, Raynale & Oak Street Project area
City Staff Contact:		Scott Zielinski, Assistant City Engineer, 248.530.1838, <a href="mailto:szielinski@bhamgov.org">szielinski@bhamgov.org</a>
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<b>PUBLIC HEARING OF NECESSITY</b>		
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<b>FOR THE REPLACEMENT OF SEWER &amp; WATER SERVICES WITHIN THE WESTWOOD, RAYNALE &amp; OAK STREET PROJECT AREA</b>		
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## Affidavit of Publication

The Affidavit of Publication from the Eccentric newspaper was not received at the time of agenda packet preparation due to staffing delays. Affidavit will be kept on file at the Clerk's office once received.



MICHIGAN.COM – Serving the  
OBSERVER & ECCENTRIC and HOMETOWN WEEKLY NEWSPAPERS  
6200 Metropolitan Pkwy, Sterling Heights, MI 48312

**BE IT MADE KNOWN THAT THE FOLLOWING ADVERTISEMENT APPEARED IN:**

**Publication: Birmingham Eccentric  
Placed By: City of Birmingham  
Subject: Public Hearing SAD Water & Sewer  
Publication: July 31 & August 7, 2022**

*Susan Totoraitis*

**(Susan Totoraitis), being duly sworn, deposes and says that the advertising illustrated above/attached was published in the Birmingham Eccentric on the following date/s/: July 31 & August 7, 2022, INVOICE # 0008789427, and as an authorized employee of the Observer and Eccentric Media, she knows well the facts stated/herein. Cost: \$304.08.**

**STATE OF MICHIGAN**

**NOTARIZED BY:** *Gina Anne Huff*

**DATED:** August 10, 2022

**Acting in County of Macomb**

GINA ANNE HUFF  
NOTARY PUBLIC - STATE OF MICHIGAN  
COUNTY OF LIVINGSTON  
My Commission Expires March 09, 2023

**7Bb**

Included in agenda packet  
8/15/2022 4:30 pm



# Change

Continued from Page 3B

“They’re very clear about being OK with whatever happens and are just very supportive.”

Also repeating as a national champion in Fargo was Sabrina Nauss, who is entering her junior year at Brighton. This time, however, Nauss was a double champion, winning the 16-and-under and junior titles at 180.

Nauss cruised to the championship match in both divisions before facing strong competition for the titles. She won her first four 16-and-under matches with three pins and a first-period technical fall and her first five junior bouts with three first-period pins and two technical falls.

In the 16-and-under final, she trailed 8-7 to Kali Hayden of Oklahoma before getting the pin in 2:28.

Nauss was down 8-5 against Alivia White of Washington before rallying to

get the pin in 3:25. A year ago, Nauss lost 14-13 to White in the junior quarterfinals before taking third place.

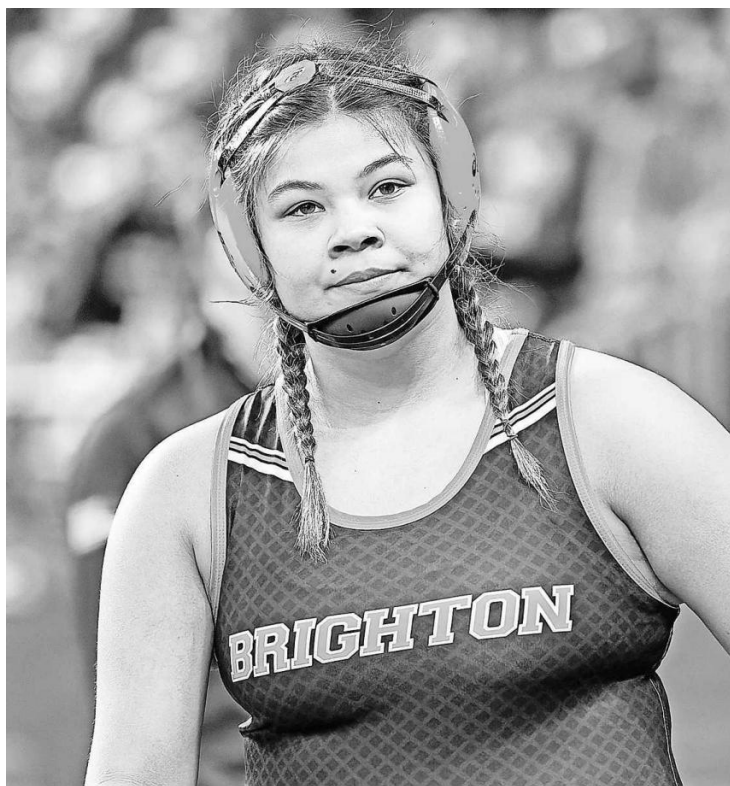
“It was great, especially since last year I fell short of my goal,” Nauss said. “To get both feels really good.

“For my 16U, I’d never seen the girl before. I didn’t know how to wrestle against her style. That was one of the challenges with her.

“In juniors, I wrestled that girl quite a few times. It was a matter of not letting her defend me.”

Bommarito and Nauss were two of the three Michigan girls to win national championships, the other being Romeo junior-to-be Mishell Rebesch at 152. Rebesch also won both divisions. All three train together at Michigan Revolution Training Center.

“You can share the victory with someone else on your team,” Bommarito said. “It’s just another experience to be able to see your team grow with you and succeeding alongside you. It’s a family kind of creation. You’re happy to see everyone grow around you.”



Sabrina Nauss, who will be a junior at Brighton in the fall, won the 16-and-under and junior national wrestling championships in Fargo, N.D. TIMOTHY ARRICK/ FOR THE LIVINGSTON DAILY

**CHARTER TOWNSHIP OF BLOOMFIELD  
SUMMARY OF BOARD OF TRUSTEES MEETINGS**

In the month of July 2022, the Bloomfield Township Board of Trustees held the following regularly scheduled meetings on **July 11 & July 25, 2022.**

A full synopsis of the above meetings is posted and available on the Township website at <https://www.bloomfieldtwp.org/Government/Legal-Notices.aspx>, and in the Clerk’s Office for public viewing. Please call the Clerk’s Office at 248-433-7702 if you have any difficulty locating the synopsis.

**MARTIN C. BROOK  
BLOOMFIELD TOWNSHIP CLERK**

Publish: August 7, 2022 LO-0008789455 3x2.5

**CITY OF BIRMINGHAM  
ORDINANCE NO. 2364**

AN ORDINANCE TO AMEND CHAPTER 126, ZONING, OF THE CODE OF THE CITY OF BIRMINGHAM:

TO AMEND ARTICLE 4, SECTION 4.30, OPEN SPACE STANDARDS, TO ADD LANGUAGE TO PERMIT ACCESSIBILITY RAMPS IN THE REQUIRED OPEN SPACE.

Effective seven days after publication.

Therese Longe, Mayor  
Alexandria D. Bingham, City Clerk

Publish: August 7, 2022 LO-0008789460 3x2

**INVITATION TO BID  
BID NO T2303/T4  
DISTRICT WIDE AV  
BLOOMFIELD HILLS SCHOOLS**

The Bloomfield Hills Board of Education (“Owner”) will receive firm, sealed Bid Proposals for all labor, materials, equipment, and all other services to complete the T4 District Wide AV project.

Bid documents will be available for examination and distribution on or after August 2, 2022. To obtain documents go to: <https://app.buildingconnected.com/public/55a1292ff1a96708004a19dc>

All bids can be submitted through the online bidding platform Building Connected by no later than 1:00pm, September 8, 2022 via Building Connected. All Bid Proposals received on or before the Due Date will be publicly opened and read aloud immediately in order of category number. Bid Proposals received after the due date will not be considered or accepted.

Alternatively, bidders may submit proposals via hard copy with bidders name on the outside of the envelope and as designated as follows: Project Name, Bid Package Number, Bid Category, Vendor Name/Address. To obtain hard copy of bid form, please reach out to [bradley.kolcz@bartonmalow.com](mailto:bradley.kolcz@bartonmalow.com)

The public bid opening may be attended virtually at 1:00p local time on September 8, 2022 by clicking on the following Microsoft Teams Live Event: [https://teams.microsoft.com/l/meetup-join/19%3ameeting\\_YTAZTbHmMnNjZS00ZGRmLTgwYzEtMDcxZTdlMGI0MTM1%40thread.v2%20?context=%7b%22Tid%22%3a%223229604e-859b-4594-853b-c66d15b8dd80%22%2c%22Oid%22%3a%225cd834d-62e2-4daa-8ee4-be7de76201f9%22%2c%22IsBroadcastMeeting%22%3atru%7d&btype=a&role=a](https://teams.microsoft.com/l/meetup-join/19%3ameeting_YTAZTbHmMnNjZS00ZGRmLTgwYzEtMDcxZTdlMGI0MTM1%40thread.v2%20?context=%7b%22Tid%22%3a%223229604e-859b-4594-853b-c66d15b8dd80%22%2c%22Oid%22%3a%225cd834d-62e2-4daa-8ee4-be7de76201f9%22%2c%22IsBroadcastMeeting%22%3atru%7d&btype=a&role=a)

If you experience any issues attending this live event, please email [bradley.kolcz@bartonmalow.com](mailto:bradley.kolcz@bartonmalow.com)

A Pre-Bid Meeting has been scheduled for 1:00p, August 16, 2022, please reach out to [bradley.kolcz@bartonmalow.com](mailto:bradley.kolcz@bartonmalow.com) to be sent the virtual pre bid meeting link.

All Bidders must provide a Familial Disclosure Form, Iran Sanctions Form, and also a Bid Bond, upload this information to the Bid Proposal on Building Connected. The District will not accept a bid proposal that does not include this information.

The Board of Education reserves the right to accept or reject any or all Bid Proposals, either in whole or in part; to award the Contract to other than the low Bidder; to waive any irregularities and/or informalities; and in general to make awards in any manner deemed to be in the best interests of the Owner.

Publish: August 7, 2022 LO-0008789459 3x5.5

**INVITATION TO BID  
BID NO T2302/T3  
ERRC WIRELESS  
BLOOMFIELD HILLS SCHOOLS**

The Bloomfield Hills Board of Education (“Owner”) will receive firm, sealed Bid Proposals for all labor, materials, equipment, and all other services to complete the T3 ERRC Wireless.

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Publish: August 7, 2022 LO-0008789469 3x5.5

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Publish: July 31 & August 7, 2022 LO-0008789427 3x7

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Publish: July 31 & August 7, 2022 LO-0008789426 3x7



## MEMORANDUM

Planning Division

**DATE:** August 17<sup>th</sup>, 2022

**TO:** Thomas M. Markus, City Manager

**FROM:** Brooks Cowan, Senior Planner

**APPROVED:** Nicholas Dupuis, Planning Director

**SUBJECT:** Public Hearing for 695 W. Brown - Request to rezone parcel # 08-19-36-151-027 from R8 Attached Single-Family Residential to R2 Single-Family Residential on Watkins Street

---

### INTRODUCTION:

The owner of the Westbrown Condominiums located at 695 W. Brown, LB Land, LLC, is applying to rezone a portion of the subject property, parcel # 08-19-36-151-027, from R8 Attached Single-Family to R2 Single-Family Residential. Doing so will match the surrounding R2 Single-Family zone on Watkins Street to the south. The proposed zone of R2 Single-Family would permit a single family dwelling on site only – **a duplex, multi-family units, or attached single-family development would not be permitted.**

**The applicant is applying to rezone the subject area from R8 Attached Single-Family Residential to the R2 Single-Family Residential zone in order to satisfy the City's lot division requirements. The lot division is a separate application from this rezoning request.**

### BACKGROUND:

The Westbrown Condominium Development lot is 36,127 square feet total. The subject area for the rezoning request includes the vacant area south of the 695 W. Brown development (Westbrown Condominiums) which has a total land area of 10,478 square feet (0.25 acres). The subject area is situated between the R8 Attached Single-Family Residential zone to the north and the R2 Single Family Residential zone to the south.

On February 28<sup>th</sup>, 2018, the applicant obtained final site plan approval for eight single family attached residential units from the Planning Board. Condition #7 of the approval was that the open land to south be used for staging, then be restored to landscaping per the ordinance until, at a date yet to be determined, the owner brings a proposed development for that site.



Once the applicant obtained final site plan approval from the Planning Board, the Westbrowm Condominium Association (695 W. Brown) submitted their Master Deed documentation to Oakland County in the fall of 2018 for the creation of new taxable IDs for each condominium.

Upon receipt of the Master Deed documentation, Oakland County created 10 parcel IDs; one for each of the eight residential units, one for the general common element area encompassing the main development area, and one for what the County calls a "balance parcel".

The "balance parcel" consists of the remaining open lot not included in the common element area of the Westbrowm Condominium development area. **Because the "balance parcel" of the vacant space was not included in the general common element area, the County made it a new lot, separate from the Westbrowm Condominium – which in this case created a lot division at the County level.**

Upon the creation of 10 new parcel IDs for the Westbrowm Condominium Master Deed, one of which being an entirely new lot, Oakland County sent the appropriate documentation to the Birmingham City Treasurer for final approval of the new parcel IDs. **On November 20<sup>th</sup>, 2018, The City Treasurer approved the new parcel IDs submitted by Oakland County, unknowingly approving the creation of a new lot with a parcel ID# 19-36-151-027 without City Commission approval.**

This approval of a new lot by the City Treasurer did not follow proper City protocol, as Chapter 102, Article III – Division of Platted Lots of the Birmingham Code of Ordinances requires lot divisions to be considered in a public hearing with City Commission and to satisfy the standards for approval in Chapter 102, Section 102-53 of the Birmingham Code of Ordinances.

When the City discovered that the subject lot had been split, the property owner was notified that they can either follow through with the City's lot division process which requires approval from City Commission, or the City would go to Oakland County and require that the subject lot be unsplit and reappended to the Westbrowm Condominium Development as one lot.

Given the two options, the applicant indicated they would like to complete the City's lot division process. **The applicant was notified that the only way to satisfy the City's lot division standards for approval is if the subject lot is rezoned to R2 - Single Family. The applicant acquiesced to follow through with the rezoning to R2 – Single Family in order to satisfy the City's lot division standards for approval.** The rezoning from R8 to R2 is what is being reviewed by the City Commission at this time.

The initial staff interpretation of the R8 Attached Single Family zone was that an R8 zoned lot could not have more than eight units total. **This interpretation was discussed during the April 27<sup>th</sup>, 2022 Planning Board meeting during the request for rezoning.** Staff indicated the applicant had maxed out the number of units on the lot, and was required to obtain a lot division in order to construct more residential units or unit. The Planning Board then recommended denial of the rezoning, believing that the applicant had maxed out the number of residential units on site.

Upon further review of the definition for Attached Single Family, it has been determined that lots zoned R8 - Attached Single Family can have more than eight residential units total on a lot. The R8 zone specifies that BUILDINGS within the R8 zone cannot have more than eight attached

units, however a lot zoned R8 may have multiple buildings with up to eight attached units each. Attached Single Family Residence for the R8 Zone is defined in Article 9, Section 9.02 as follows:

Attached Single Family Residence: A **building** that has not more than 8 one-family dwelling units erected side-by-side as a single building, each being separated from the adjoining units by walls extending from the basement floor to the roof, which meet or exceed the sound transmission class (STC) rating of 45 for residential buildings as established by the most current addition of the International Code Council's (ICC) Building Code as promulgated and published by the Building Officials and Code Administrators International, Inc. No two single-family dwelling units may be served by the same stairway or by the same exterior door of the dwelling.

The interpretation during the April 27<sup>th</sup>, 2022 Planning Board meeting that the applicant had maxed out the number of residential units on site was incorrect – the site may permit up to three additional single family attached units per the R8 zone's lot area per unit standards of the Zoning Ordinance. The corrected interpretation of the definition for Attached Single Family is deemed "new information", which led the Planning Board to hold a rehearing for the rezoning request on June 22<sup>nd</sup>, 2022.

On June 22<sup>nd</sup>, 2022, the Planning Board found that based on a review of the rezoning request and supporting documentation submitted by the applicant, a review of the applicable master plan documents and the development trends in the area, the Planning Board adopted the findings of fact contained in the staff report dated June 17<sup>th</sup>, 2022 and recommended **APPROVAL** to the City Commission for the rezoning of parcel #19-36-151-027 from R8 Attached Single Family to R2 Single Family Residential.

The June 22<sup>nd</sup>, 2022 Planning Board memo is attached for review of the items required by the Zoning Ordinance to be considered in a rezoning request.

**It is of note that if the subject open lot does not obtain a rezoning to R2 to satisfy the City's standards for a lot division, the City must go to Oakland County and request the lot division be undone due to the fact that it has not received proper approval from the City Commission. If this occurs, the subject open lot would remain within the R8 Attached Single Family zone and be reappended to the Westbrowm Condominium development lot. The applicant would then have the opportunity to construct up to three additional attached single family homes on the subject open lot.**

**The applicant has indicated that they would like to build one single family home on the subject property that is contextual to the surrounding neighborhood. Therefore, the applicant would like to continue to pursue the City's requirement for a lot division which involves rezoning the subject open lot from R8 to R2-Single Family.**

LEGAL REVIEW:

The City Attorney has reviewed the rezoning request and has no objections as to form and content.

FISCAL IMPACT:

The rezoning impacts the number of residential units which may be built on-site, therefore impacting the taxable value of the property.



**PUBLIC COMMUNICATIONS:**

As required for rezoning applications, a legal ad was placed in a newspaper of local circulation to advertise the nature of the request in advance of the June 22<sup>nd</sup>, 2022 Planning Board meeting, and notices were sent out to all property owners and tenants within 300 ft. of the property. In addition, a second round of notices were sent out to advertise the public hearing at the City Commission on August 29<sup>th</sup>, 2022.

**SUMMARY:**

The Planning Division requests that the City Commission consider amending the Zoning Ordinance to rezone a portion of 695 W. Brown, parcel #19-36-151-027, from R8 Attached Single Family to R2 Single Family Residential.

**ATTACHMENTS:**

Please find attached the following documents for your review:

- Rezoning application and letter
- Property survey
- June 22<sup>nd</sup>, 2022 Planning Board Memo
- February 28<sup>th</sup>, 2018 approved site plan for 695 W. Brown
- Relevant Final Site Plan and rezoning minutes
- Communications with residents

**SUGGESTED COMMISSION ACTION:**

Make a motion adopting an ordinance amendment to rezone a portion of 695 W. Brown, parcel #19-36-151-027, from R8 Attached Single Family to R2 Single Family Residential.





**APPLICATION FOR ZONING MAP OR ORDINANCE CHANGE  
Birmingham, Michigan**

A letter of authority, or power of attorney, shall be attached in case the appeal is made by a person other than the actual owner of the property.

Date Received: \_\_\_\_\_ Received By: \_\_\_\_\_

Resolution No. \_\_\_\_\_ Approved/Denied \_\_\_\_\_

Application Fee: \$1,500.00      Receipt Number \_\_\_\_\_

The petitioner shall be responsible for any costs incurred by consultant, including but not limited to traffic and environmental, contracted by the city to review the proposed site plan and/or community impact study as determined by the city planner.

**ZONING MAP OR ORDINANCE AMENDMENT PROCEDURE**

Procedure to be followed on all applications for Zoning Map or Ordinance amendments.

1. Preliminary discussion with the Community Development Director or City Planner.
2. Formal application to City Commission with the following information:
  - a) Change requested
  - b) Signature and name of persons requesting change
  - c) Reasons for requested change
3. City Commission will refer request to the Planning Board for recommendation and final report.
4. Planning Board will hold a public hearing prior to which a notice will be published in an official paper or a paper of general circulation not less than fifteen (15) days prior to the hearing.
5. At the conclusion of a public hearing, the Planning Board will forward a recommendation of the Zoning Map or Ordinance amendment request. The City Commission may, by ordinance, change the Zoning Map or Ordinance only after the Planning Board had held at least one (1) public hearing regarding the proposed amendment and has reported to the City Commission thereon. The City Commission may hold additional public hearings as it deems necessary.
6. Upon the presentation of protest petition meeting the requirements listed below, an amendment to the Zoning Map or Ordinance which is the object of the petition shall be passed only by a three-fourths (3/4) vote of the City Commission. The protest petition shall be presented to the City Commission before final action on the amendment, and shall be signed by one (1) of the following:
  - a) The owners of at least twenty percent (20%) of the area of land included in the proposed change.
  - b) The owners of at least twenty percent (20%) of the area of the land included within an area extending outward one hundred (100) feet from any point on the boundary of the land included in the proposed change.

For the purpose of calculating the twenty percent (20%) requirement, publicly-owned land shall be excluded.
7. The City Commission will then take action on the application upon review of the Planning Board’s recommendation and approved minutes of the Public Hearing.
8. Following adoption of a Zoning Map or Ordinance change by the City Commission, one (1) notice of adoption shall be published in the newspaper of general circulation in the City within fifteen (15) days after adoption.



## LB Land LLC

5000 E GRAND RIVER AVE, HOWELL, MI 48843

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February 14, 2022

I, Anthony Palleschi, on behalf of LB Land LLC, request the rezoning of the parcel in question (Tax ID No. 19-36-151-027) from R8 to R2 as to fulfill the requirements for a lot split, per conversations with City Planner Brooks Cowan. LB Land LLC intends to build a single-family home of approximately 4,500 sqft (consistent with neighborhood; see attached zoning map). A rezone to R2 is consistent with existing adjacent single-family homes (see attached zoning map). The property has been zoned for multifamily since 1937, but the 1980 Master Plan recommends it be single-family residential.

The existing zoning classification of R8 is no longer appropriate given intention is to build a single-family home separate from the recently constructed townhouses (Westbrown Condominiums). The property in question is currently vacant and maintained by LB Land LLC.

LB Land LLC has performed extensive due diligence to ensure that the requested rezone will be of no detriment to the surrounding properties and is consistent in aesthetic and scale with adjacent single-family homes. LB Land LLC has contracted the services of local Birmingham architecture firm, Brian Neeper Architecture P.C. to design a home that is appropriate for the lot and surrounding areas. LB Land LLC is working with a landscape architect to maximize green space and privacy for all neighboring properties.



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Lawrence J. Burr



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Leonard Nadolski



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Anthony P. Palleschi



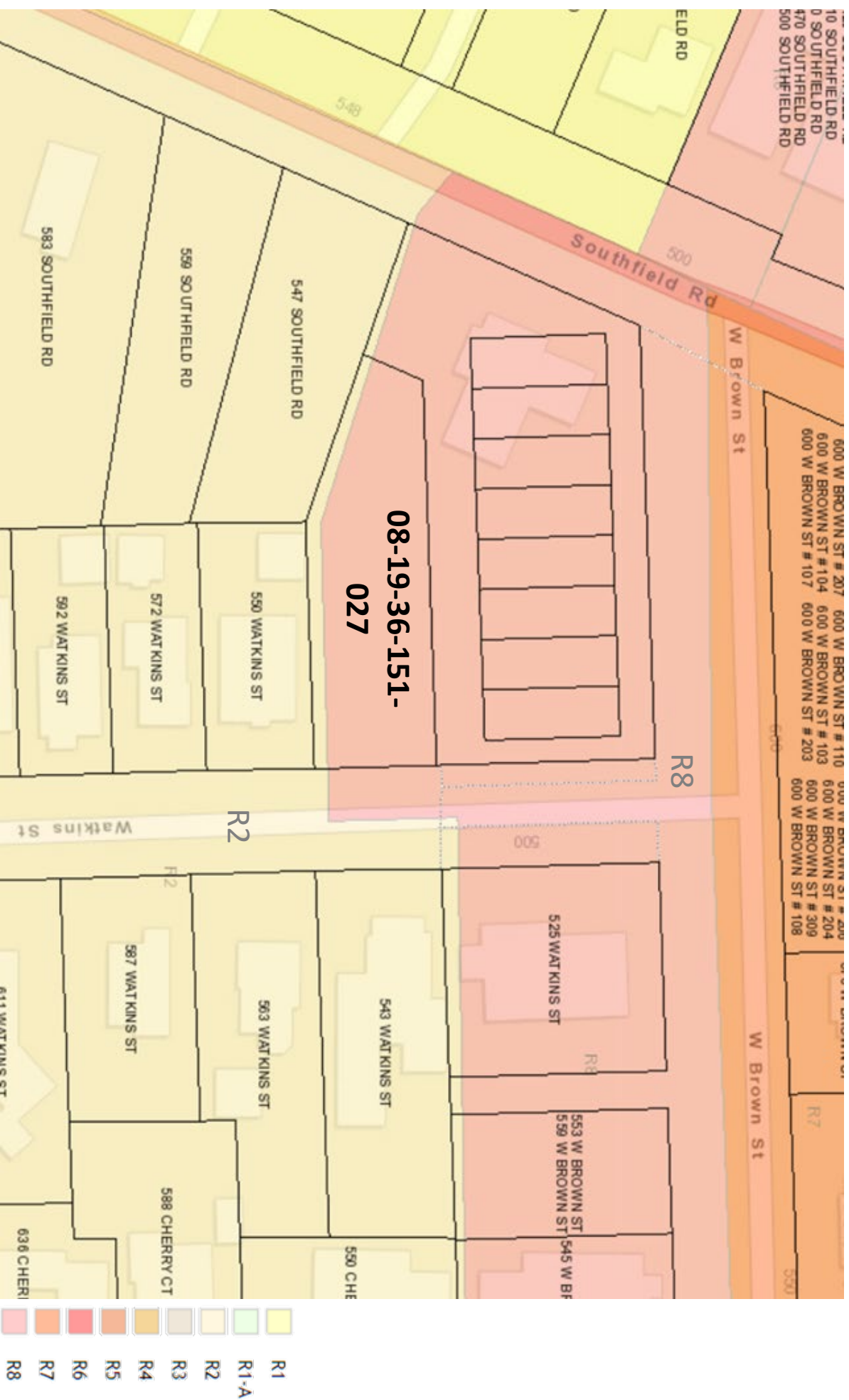




**Proposed Build**  
Lot: 10,507 sqft.  
Home: 4,500 sqft.

**550 Watkins**  
Lot: 6,098 sqft.  
Home: 3,900 sqft.

**587 Watkins**  
Lot: 7,449 sqft.  
Home: 3,905 sqft.



LB Land LLC

5000 E GRAND RIVER AVE, HOWELL, MI 48843

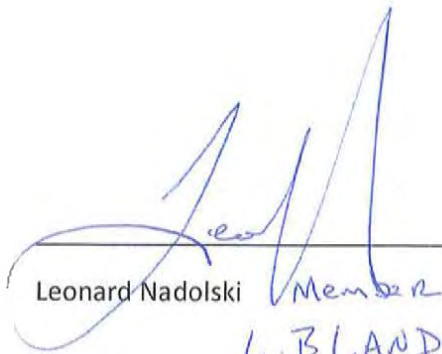
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To whom it may concern:

I, Leonard Nadolski, hereby authorize Anthony P. Palleschi to represent publicly and make decisions on behalf of LB Land LLC in matters regarding land ownership, development, zoning, etc. in Birmingham, MI. Please extend him the same courtesies as if I were handling the matters myself. I ensure you my full consent with regards to this authorization.

This authorization is effective January 24, 2022 until further notice.

If you have questions regarding this matter, please contact me at (810) 577-7156, or [lnadolski@champion-chev.com](mailto:lnadolski@champion-chev.com).

  
Leonard Nadolski      Member      Date  
L.B.LAND.



June 17, 2022

To: Birmingham Planning Board

From: Anthony Palleschi, LB Land LLC

Subject: Rezoning Application for Remaining Parcel on Watkins

I'd like to make a case for why a rezone to R2 for the Watkins lot is the best solution for all interested parties. Before I do so, I'll provide a brief history of the property in question.

### [9.27.2017 Preliminary Site Review](#)

- Architect Chris Longe, on behalf of LB Land LLC, shares the redevelopment plan for future site of the Westbrow. At the time, the property contained a surface parking lot and wellness center zoned R8. The 8-unit townhouse development is confirmed to be a permitted use of the land as it is zoned. The vacant parcel is addressed at length and the architect of the project clarifies that the proposed 8-unit development meets all open space requirements and setbacks [without the southern parcel in question](#).
- The original lot is 36,137 ft<sup>2</sup>. The minimum lot area per unit is 3,000 ft<sup>2</sup>, so the lot could accommodate up to 12 units in total. A single-family house is permitted in R8 provided it follows R3 zoning standards, but the remaining parcel does not meet the R8 width requirements. The remaining parcel is 10,478 ft<sup>2</sup> with a width at the street of 59 ft. The average width of R2 lots on Watkins is 56 ft.

### [2.28.2018 Westbrow Townhouses Planning Board Final Site Plan & Design Review](#)

- Architect Chris Longe explained the intention for the parcel was a single-family home to serve as a buffer between the Westbrow condominiums and the single-family homes to the south. The site in question is identified as a staging area for the construction of the Westbrow as to limit congestion and disturbances. LB Land LLC has [maintained the vacant land which is grass](#). LB Land spent several thousand dollars on arborvitae for the east of the parcel at the request of a neighbor on Southfield Road. [Final Site plan analysis](#).
- LB Land LLC receives Planning Board approval for the Westbrow development. A condition of the approval relevant to the vacant lot in question reads:
  - 7. Regarding the open land to the south of the site, the land to be used for staging, that the land be restored per ordinance (until such time as the other development comes forward) with a landscape plan to be administratively approved. This condition would be maintained until, at a date yet to be determined, the owner brings a proposed development for that site.

### [1.27.21 Pre-Application Discussion for Additional Development \(note: Not LB Land LLC\)](#)

- Individuals under contract to purchase the property from LB Land LLC present a preliminary idea for two additional residences to the Planning Board. Proposed duplex ~3,000-4,000 ft<sup>2</sup> each unit with separate driveways on north and south of property. Almost no greenspace is visible on the presented plan.
- Jana Ecker confirms that the parcel in question [was not part of the final site plan approval for the original 8 units \(1:44:00\)](#). Several members of the Board recollect that LB Land LLC

had previously intended for the vacant land to be developed as a single-family home. Buyers back out of agreement with LB Land LLC upon expiration of due diligence period.

Sometime during the creation of individual property identification codes for the Westbrownd condo units, the vacant lot was split by the county and subsequently approved—albeit accidentally—by the City of Birmingham. Parcel Code: 08-19-36-151-027.

#### **5.4.21 Memorandum from Birmingham Planning Department**

- Brooks Cowan and Jana Ecker author a memorandum to Chris Brocavich, a representative of LB Land LLC. The subject is the unintentional lot split that did not receive approval of the City Commission. The memorandum outlines four scenarios for how to rectify the administrative issues, one of which carries the recommendation of the Planning Division.
- Scenario 1: The applicant rezones the subject parcel to R2 prior to finalizing the lot split. Doing so would satisfy the requirements for a lot split. The property has been zoned for multi-family since 1937, however the 1980 Master Plan recommends it be single-family residential. **This is the process the Planning Division recommends and the applicant has been provided with the rezoning application.**

A rezone to R2 is the most appropriate route for meeting the needs of the neighbors and the City of Birmingham. We hear the concerns of the neighbors and we want to limit traffic and maximize green space in the area. If the parcel retains its current R8 zoning, then we would be limited to building two additional units and exercising our right per the Westbrownd Condominium Master Deed to have the new building/buildings added to the association. This would entail at least one new driveway, if not two, and would imply more vehicles utilizing Watkins. We have been told on multiple occasions that no one wants to see more condos built. Construction of a single-family home could provide ample parking, more greenspace, and greater privacy for all. We have prepared a sketch for the home that we intend to build, which as promised, draws on characteristics of both the R2 single-family homes to the south and the Westbrownd.



**PRELIMINARY SITE STUDY A**  
Watkins

Birmingham, Michigan

BRIAN NEPPER  
ARCHITECTURE P.C.  
BRIANNEPPER.COM  
248.259.1784





**WATKINS ELEVATION CONCEPT**  
Watkins Development

**Birmingham, Michigan**

**BRIAN NEEPER**  
**ARCHITECTURE P.C.**  
BRIANNEEPER.COM  
248. 259. 1784







## MEMORANDUM

Planning Division

**DATE:** June 17<sup>th</sup>, 2022

**TO:** Planning Board

**FROM:** Brooks Cowan, Senior Planner

**APPROVED:** Nick Dupuis, Planning Director

**SUBJECT:** Request to Rezone Parcel # 08-19-36-151-027 from R8 Attached Single-Family Residential to R2 Single-Family Residential Zone on Watkins Street (Updates to Prior Memo in Blue)

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The subject site includes the vacant lot on the west side of Watkins Street, south of the 695 W. Brown townhome development (Westbrown Condominiums). The subject property has a total land area of 10,507 square feet (0.25 acres). The property is situated between the R8 Attached Single-Family Residential development at 695 W Brown to the north and the R2 Single Family Residential home at 550 Watkins to the south.

The applicant, LB Land, LLC, is applying to rezone the subject property from R8 Attached Single-Family to R2 Single-Family Residential to match the surrounding R2 Single-Family zone on Watkins Street to the south. The proposed zone of R2 Single-Family would permit a single family dwelling on site only – **a duplex, multi-family units, or attached single-family development would not be permitted.**

The Westbrown Condominium Association (695 W. Brown) submitted their Master Deed documentation to Oakland County in the fall of 2018 after obtaining site plan approval for eight single family attached residential units from Birmingham’s Planning Board on February 21<sup>st</sup>, 2018. Upon receipt of the documentation, Oakland County created 10 parcel IDs; one for each of the eight residential units, one for the general common element area encompassing the main development area, and one for what the County calls a “balance parcel”.

The “balance parcel” consists of the remaining open lot not included in the common element area of the Westbrown Condominium. Because the “balance parcel” of the remaining open lot was not

included in the general common element area, the County made it a new lot separate from the Westbrown Condominium – which in this case created a lot division at the County level.

Upon the creation of 10 new parcel IDs for the Westbrown Condominium Master Deed, one of which being an entirely new lot, Oakland County sent the appropriate documentation to the Birmingham City Treasurer for final approval of the new parcel IDs. On November 20<sup>th</sup>, 2018, The City Treasurer approved the new parcel IDs submitted by Oakland County, unknowingly approving the creation of a new lot with a parcel ID# 19-36-151-027 without City Commission approval. This approval of a new lot did not follow proper City protocol, as Chapter 102, Article III – Division of Platted Lots of the Birmingham Code of Ordinances requires lot divisions to be considered in a public hearing with City Commission and to satisfy the standards for approval in Chapter 102, Section 102-53 of the Birmingham Code of Ordinances.

When the City discovered that the subject lot had been split, the property owner was notified that they can either follow through with the City's lot division process which requires approval from City Commission, or the City would go to Oakland County and request that the subject lot be unsplit and reappended to the Westbrown Condominium Development as one lot.

Given the two options, the applicant indicated they would like to complete the City's lot division process. **The applicant was notified that the only way to satisfy the City's lot division standards for approval is if the subject lot is rezoned to R2 - Single Family. The applicant acquiesced to follow through with the rezoning to R2 – Single Family in order to satisfy the City's lot division standards for approval.** The rezoning from R8 to R2 is what is being reviewed by the Planning Board and City Commission at this time.

The initial staff interpretation of the R8 Attached Single Family zone was that an R8 zoned lot could not have more than eight units total. **This interpretation was discussed during the April 27<sup>th</sup>, 2022 Planning Board meeting during the request for rezoning.** Staff indicated the applicant had maxed out the number of units on the lot, and was required to obtain a lot division in order to construct more residential units or unit. The Planning Board then recommended denial of the rezoning, believing that the applicant had maxed out the number of residential units on site.

Upon further review of the definition for Attached Single Family, it has been determined that lots zoned R8 - Attached Single Family can have more than eight residential units total on a lot. The R8 zone specifies that BUILDINGS within the R8 zone cannot have more than eight attached units, however a lot zoned R8 may have multiple buildings with up to eight attached units each. Attached Single Family Residence for the R8 Zone is defined in Article 9, Section 9.02 as follows:

A building that has not more than 8 one-family dwelling units erected side-by-side as a single building, each being separated from the adjoining units by walls extending from the basement floor to the roof, which meet or exceed the sound transmission class (STC) rating of 45 for residential buildings as established by the most current addition of the International Code Council's (ICC) Building Code as promulgated and published by the Building Officials



and Code Administrators International, Inc. No two single-family dwelling units may be served by the same stairway or by the same exterior door of the dwelling.

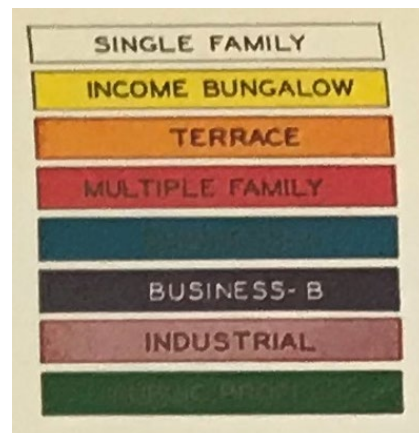
The interpretation during the April 27<sup>th</sup>, 2022 Planning Board meeting that the applicant had maxed out the number of residential units on site was incorrect – the site may permit up to three additional single family attached units, given the R8 zone’s lot area per unit standards of the Zoning Ordinance. The corrected interpretation of the definition for Attached Single Family is deemed “new information” which is why the City Commission has sent the rezoning application back to the Planning Board for a public hearing scheduled for June 22<sup>nd</sup>, 2022.

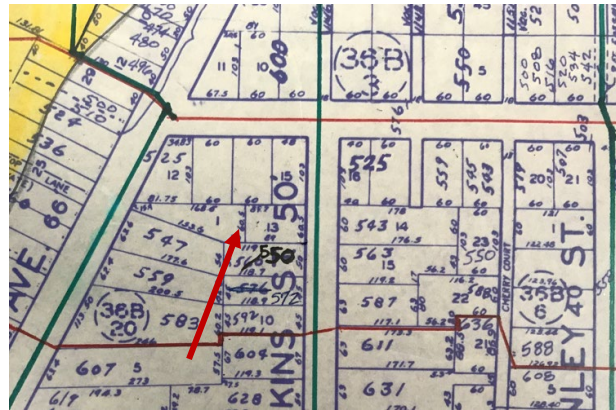
**It is of note that if the subject open lot does not obtain a rezoning to R2 to satisfy the City’s standards for a lot division, The City will go to Oakland County and request the lot division be undone due to the fact that it has not received proper approval from City Commission. If this occurs, the subject open lot would remain within the R8 Attached Single Family zone and be reappended to the Westbrowm Condominium development lot. The applicant would then have the opportunity to construct up to three additional attached single family homes on the subject open lot.**

**The applicant has indicated that they would like to build one single family home on the subject property that is contextual to the surrounding neighborhood. Therefore, the applicant would like to continue to pursue the City’s requirement for a lot division which involves rezoning the subject open lot from R8 to R2-Single Family.**

### **History of Property**

The subject property has been zoned multi-family since Birmingham’s first Zoning Ordinance as indicated in the 1937 Zoning Map. The original plat map from 1932 shows that the subject area spanned from Watkins Street to Southfield Road and was included in the Multiple Family zone with the adjacent properties facing Brown Street. **The subject area was the only non-Brown Street facing lot that was included in the Multiple Family zone on the south side of Brown street between Southfield and Henrietta.**





Prior to the Westbrowm Development, there was a medical office with a large parking lot and greenspace in the area.

2017 aerial (Google Maps)



2012 Streetview (Google Maps)





On February 21<sup>st</sup>, 2018, the property now know as 695 W. Brown (formerly 525 Southfield) was approved for 8 attached single-family units facing Brown Street between Southfield Road and Watkins Street. **According to the Planning Board minutes from February 21<sup>st</sup>, 2018, the applicant explained how the intended use for the space under consideration for rezoning would be a single-family home that will be contextual with the townhomes and the neighborhood.** Condition of site plan approval item #7 for the Westbrowm Condominium development stated the following (Minutes are attached):

Regarding the open land to the south of the site, the land to be used for staging, that the land be restored per ordinance (until such time as the other development comes forward) with a landscape plan to be administratively approved. This condition would be maintained until, at a date yet to be determined, the owner brings a proposed development for that site.

On May 24<sup>th</sup>, 2021, the property owner appeared before City Commission to request a lot split for the subject property under the current zone of R8. Birmingham's lot split ordinance standards for approval states that the proposed lot may not be less than the average lot width of properties on the same street in the same zone. The only other R8 property on Watkins Street (525 Watkins) has a lot width of 106 feet, therefore the proposed lot width of 58 feet would not satisfy the lot split requirements because the proposal would be less than the 106 feet standard from 525 Watkins.

**City staff's recommended action was to cancel the public hearing for the lot split and direct the applicant to seek a rezoning of the property to R2 Single-Family in order to satisfy the lot split requirements. City Commission concurred with staff's recommendation and motioned to direct the applicant to pursue a rezoning of the subject property to R2-Single Family Zone in order to meet the lot split requirements of the municipal code (minutes attached).**

### **Requirements for Rezoning**

The requirements for a request for the rezoning of a property are set forth in Article 07, section 7.02 of the Zoning Ordinance as follows:

Each application for an amendment to change the zoning classification of a particular property shall include statements addressing the following:

- 1. An explanation of why the rezoning is necessary for the preservation and enjoyment of the rights of usage commonly associated with property ownership.**

*Applicant response:*

- A rezone to R2 is consistent with adjacent single-family homes (see attached zoning map). The property has been zoned for multi-family since 1937, but the 1980 Master Plan recommends it be single-family residential.

- 2. An explanation of why the existing zoning classification is no longer appropriate**

*Applicant response:*

- The existing zoning classification of R8 is no longer appropriate given intention is to build a single family home separate from the recently constructed townhouses (Westbrown Condominiums). The property in question is currently vacant and maintained by LB Land LLC.

**3. An explanation of why the proposed rezoning will not be detrimental to the surrounding properties.**

*Applicant response:*

- LB Land LLC has performed extensive due diligence to ensure that the requested rezone will be of no detriment to the surrounding properties and is consistent in aesthetic and scale with adjacent single-family homes. LB Land LLC has contracted the services of local Birmingham architecture firm, Brian Neepner Architecture P.C. to design a home that is appropriate for the lot and surrounding areas. LB Land LLC is working with a landscape architect to maximize green space and privacy for all neighboring properties.

Article 7, section 7.02 of the Zoning Ordinance further states:

Applications for amendments that are intended to change the zoning classification of a particular property shall be accompanied by a plot plan. Information required on plot plans shall be as follows:

1. Applicant's name, address and telephone number.
2. Scale, north point, and dates of submission and revisions.
3. Zoning classification of petitioner's parcel and all abutting parcels.
4. Existing lot lines, building lines, structures, parking areas, driveways, and other improvements on the site and within 100 feet of the site.
5. Existing use of the property.
6. Dimensions, centerlines and right-of-way widths of all abutting streets and alleys.
7. Location of existing drainage courses, floodplains, lakes, streams, and wood lots.
8. All existing easements.
9. Location of existing sanitary systems and or septic systems.
10. Location and size of existing water mains, well sites and building service.
11. Identification and seal of architect, engineer, land surveyor, or landscape architect who prepared the plans. If any of the items listed above are not applicable to a particular plot plan, the applicant must specify in the plot plan which items do not apply and, furthermore, why the items are not applicable.

A land survey was provided by the applicant with the required details and is attached to this report.



## **Planning Division Analysis & Findings**

In accordance with Article 7 of the Zoning Ordinance, the Planning Board is required to conduct a public hearing on an application for rezoning, and to make a recommendation on the rezoning to the City Commission. Article 7, section 7.02(B)(5) of the Zoning Ordinance states:

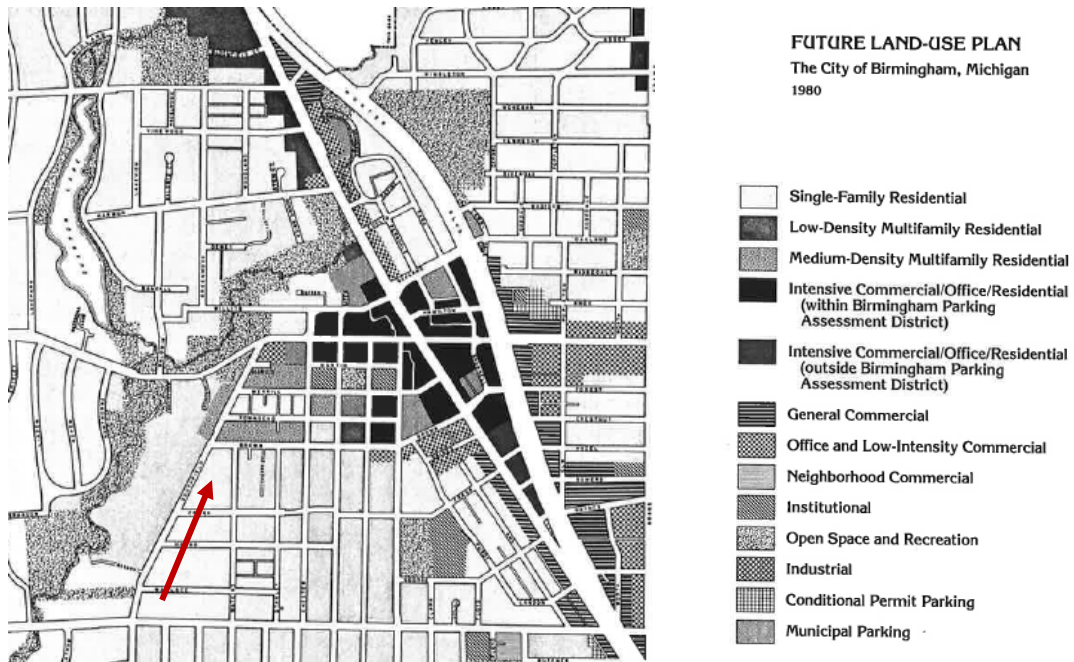
The Planning Board shall make written findings of fact and transmit same, together with its recommendation, to the City Commission. The City Commission may hold additional hearings if the City Commission considers it necessary. The Planning Board shall make findings based on the evidence presented to it with respect to the following matters:

- a. The objectives of the City's then current master plan and the City's 2016 Plan.
- b. Existing uses of property within the general area of the property in question.
- c. Zoning classification of property within the general area of the property in question.
- d. The suitability of the property in question to the uses permitted under the existing zoning classification.
- e. The trend of development in the general area of the property in question, including any changes which have taken place in the zoning classification.

Accordingly, the Planning Division has reviewed the evidence presented with respect to the matters listed in Article 7, section 7.02(B)(5) of the Zoning Ordinance as noted below.

### **A. The objectives of the City's then current master plan and the City's 2016 Plan**

The Birmingham Plan (1980) is the master plan currently in effect for the entire city. The 1980 Future Land Use Plan recommends the subject property to be a single-family residential use. The 1980 Plan also recommends single family use on the south side of Brown Street from Southfield Road to Henrietta Street.



The 1980 Birmingham Plan has a chapter titled "Sensitive Residential Areas" which identifies the subject property within the "Merrill-Townsend-Brown Residential Area" and states:

The City of Birmingham contains no declining neighborhoods. In fact, many of the older residential areas of the city have experienced dramatic reinvigoration due to the substantial improvements made by private homeowners. However, there are certain residential areas of the city which merit special attention from the Planning Board and the city administration in to ensure continued preservation and enhancement of residential quality (pg. 47).

The section titled "Single-Family Residential Development" states:

Most areas indicated for single family-residential development are already built-up. New residential development can occur on the few remaining vacant lots located within these areas.

...

Single-family residential development is indicated in the Future Land-Use Plan for some areas in which two-family and multiple-family residential development has occurred in the past. These areas are indicated as single-family residential areas because it is the intention of the plan to prevent further proliferation of two-family and multiple-family residential development within them (pg. 94).

The objective of the City's current Master Plan for the subject area appears to support the applicant's request to rezone the property to R2 Single-Family Residential given the recommendations of the Future Land Use Map and the Single Family Residential Development chapter.

## **B. Existing uses of property within the general area of the property in question**

The building to the north of the subject site is the Westbrowm Condominium development with 8 townhomes. Further to the north across Brown Street is a five story multi-family apartment complex next to a single family house at 576 Brown Street. Brown Street appears to have a mix of townhomes, multi-family, and single family homes.

The property directly to the east of the site include a single family home at 543 Watkins Steet. Northeast of the property is an apartment complex at 525 Watkins. The properties to the west of the subject site includes a parking a lot for the Westbrowm Condominium development and a single-family residential house facing Southfield. Further across Southfield Road to the west are a mix of townhomes, single family homes, and single family cluster developments.

The properties to the south are single family residential homes facing Watkins Street or Southfield Road. There is a Single Family Cluster Development half a block south along



Southfield Road. Single family clusters are only permitted on lots 36,000 square feet or more.

	<b>North</b>	<b>South</b>	<b>East</b>	<b>West</b>
<b>Existing Land Use</b>	Attached Single-Family	Single Family Residential	Single Family Residential	Attached Single-Family
<b>Existing Zoning</b>	R8, Attached Single Family	R2, Single Family Residential	R2, Single Family Residential	R8, Attached Single Family
<b>Overlay Zoning</b>	N/A	N/A	N/A	N/A

**C. Zoning classification of property within the general area of the property in question.**

The building immediately north of the subject site is zoned R-8 Attached Single Family. The north side of Brown Street from Southfield Road to S. Chester Street is zoned R7 Multiple-Family Residential.

Properties directly to the east are zoned R2 Single Family and transition to R3 Single Family one block east at Stanley Drive. West of the property is R8 Attached Single Family and R2 Single Family Residential. Across Southfield road to the west is R1 Single Family with single family cluster developments.

The properties to the south on Watkins Street are all zoned R2 Single Family.

**D. The suitability of the property in question to the uses permitted under the existing zoning classification.**

Under the current zoning of R8 Attached Single Family, the applicant could build up to three attached single family residential units in the subject space. The area under review is 10,507 square feet, and the minimum lot area per unit for the R8 zone is 3,000 square feet, thereby enabling up three additional units. The R8 zone does not have an open space requirement.

The suitability of the property in question for development under the existing R8 standards is dependent on their ability to obtain a lot split. If the applicant does not obtain a rezoning to R2 – Single Family in order to satisfy the City’s lot division standards, the City will require Oakland County to re-append the subject area to the Westbrowm Condominium as one lot, thereby enabling the applicant to construct up to three additional single family attached units.

**E. The trend of development in the general area of the property in question, including any changes which have taken place in the zoning classification.**

Recent development in the general area has consisted of the Westbrowm Condominium development. The development trend in the surrounding area has been townhome updates along Brown Street and Southfield Road. Properties to the south have mostly experienced single family home construction and remodeling. Single family cluster developments have also occurred along Southfield Road.

**Based on a review of the rezoning application and supporting documentation submitted by the applicant, a review of the applicable master plan documents, current zoning and recent development trends in the area, the Planning Division finds that the applicant meets the established Zoning Ordinance requirements in Article 7, section 7.02(B)(5) to qualify for a rezoning of the property from R8 Attached Single Family to R2 Single Family.**

### **Departmental Reports**

1. Engineering Division – The Engineering Department has no concerns with the rezoning at this time.
2. Department of Public Services – The Department of Public Services has no concerns with the rezoning at this time.
3. Fire Department – The Fire Department has no concerns with the rezoning at this time.
4. Police Department – The Police Department has no concerns with the rezoning application.
5. Building Department – The Building Department has no concerns with the rezoning application at this time.
6. Parking Management – Parking Management has no concerns with the rezoning application at this time.

Sample motions with attached conditions have been provided in the event that the Planning Board deems it appropriate to send a recommendation of approval forward to the City Commission.

### **Suggested Action:**

Based on a review of the rezoning request and supporting documentation submitted by the applicant, a review of the applicable master plan documents and the development trends in the area, the Planning Board adopts the findings of fact contained in the staff report dated April 22nd, 2022 and recommends **APPROVAL** to the City Commission for the rezoning of parcel #19-36-151-027 from R8 Attached Single Family to R2 Single Family Residential.

**OR**

Based on a review of the rezoning request and supporting documentation submitted by the applicant, a review of the applicable master plan documents and the development trends in the area, the Planning Board recommends **DENIAL** to the City Commission of the applicant's request



for the rezoning of parcel #19-36-151-027 from R8 Attached Single Family to R2 Single Family Residential.

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_

**OR**

Motion to recommend **POSTPONEMENT** of the applicant's request for the rezoning for the rezoning of parcel #19-36-151-027 from R8 Attached Single Family to R2 Single Family Residential, pending receipt and review of the following information:

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_



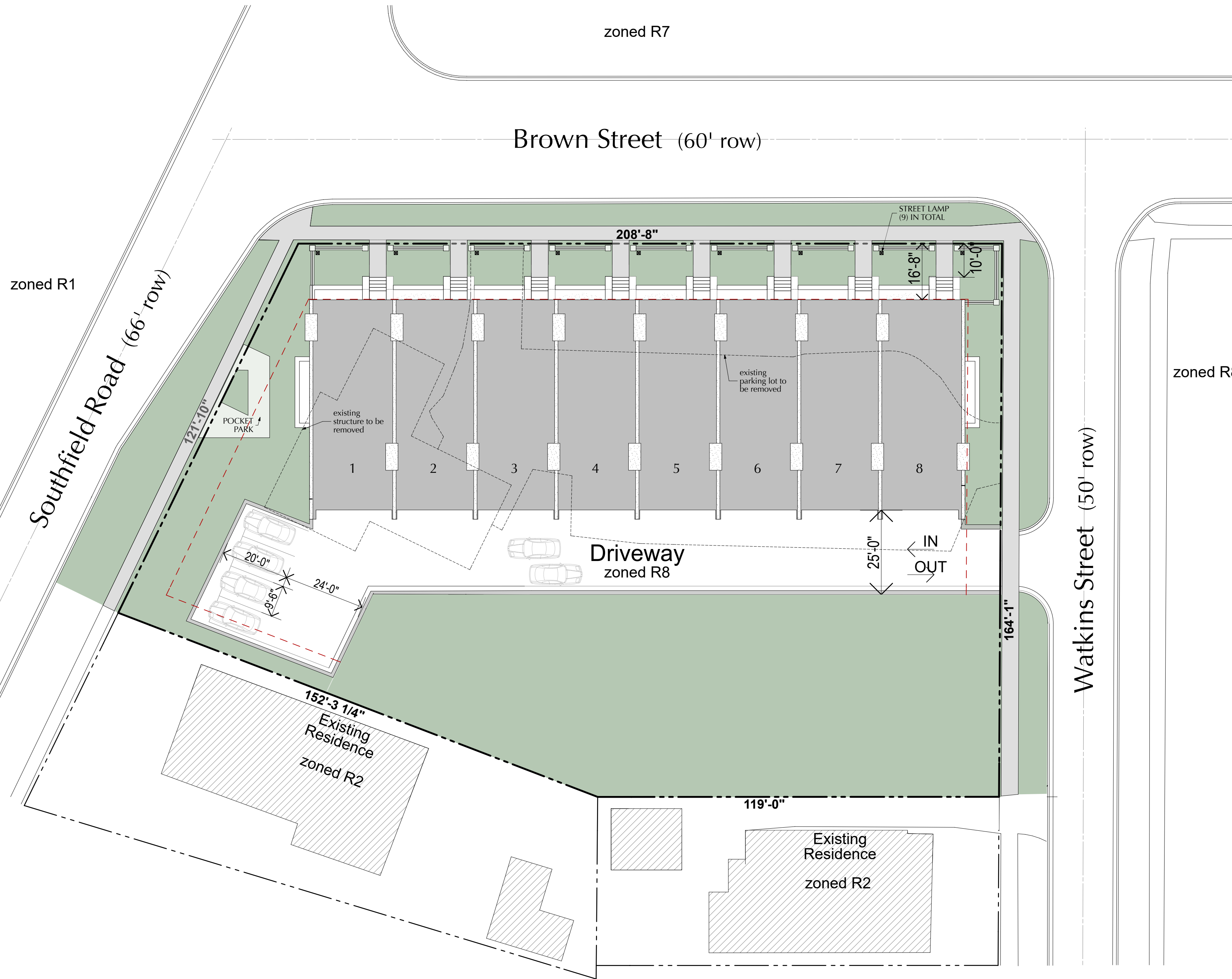
Site Data	required	proposed
1. Site Area (existing)	36,127.02 sf	
2. Lot Area/unit (minimum)	3,000sf/unit	
36,127.02sf / 3,000sf =	12 units	8 units
3. Front Yard Setback (average within 200')	16.50'	16.67'
4. Rear Yard Setback	20'	20'
5. Side Yard Setback (R8 corner)	10'-0"	10'-0"
6. Building Height	30'-0"	30'-0"
7. Stories	2.5	2.5
8. Parking	2cars/unit	2cars/unit
9. Screenwall (retaining)	6' masonry	6' masonry
10. Private open space (Terrace)	180 sf	180 sf



Southfield looking East



Southfield looking North



Site Plan

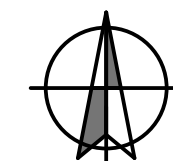
SCALE: 1" = 20'



Brown looking West



Watkins looking South





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**CITY OF BIRMINGHAM  
REGULAR MEETING OF THE PLANNING BOARD  
WEDNESDAY, FEBRUARY 28, 2018  
City Commission Room  
151 Martin Street, Birmingham, Michigan**

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Minutes of the regular meeting of the City of Birmingham Planning Board held on February 28, 2018. Chairman Scott Clein convened the meeting at 7:30 p.m.

**Present:** Chairman Scott Clein; Board Members Robin Boyle, Stuart Jeffares, Bert Koseck, Vice-Chairperson Gillian Lazar, Janelle Whipple-Boyce, Bryan Williams; Student Representatives Madison Dominato, Sam Fogel, Ellie McElroy

**Also Present:** Alternate Board Member Nasseem Ramin

**Absent:** Alternate Board Member Daniel Share

**Administration:** Matthew Baka, Sr. Planner  
Jana Ecker, Planning Director  
Carole Salutes, Recording Secretary

02-25-18

## FINAL SITE PLAN AND DESIGN REVIEW

### 1. 525 Southfield Rd. (former Wellness Center)

#### **Final Site Plan and Design Review of request to demolish existing building and replace with eight-unit attached single-family residences**

Mr. Baka reported that the subject site is a 0.829 acre parcel confined by Southfield Rd. to the west, Brown St. to the north, and Watkins St. to the east in the R-8 Zoning District. The existing parcel currently contains a wellness center and parking lot. The applicant is proposing to demolish the existing building and parking lot to construct eight new attached single-family residential units that are proposed to be erected side by side in a single building facing Brown St. Each residential unit has its own stairway and individual front door that leads directly into each unit. The applicant appeared before the Planning Board on September 27, 2017 for Preliminary Site Plan Review and was approved with five conditions.

The applicant has updated the plans to reflect the request for a landscaping and photometric plan, and added four additional parking spaces, but has failed to include specification sheets for all of the screenwalls. A rooftop plan is not needed, as all mechanicals are proposed to be located within the attic of each unit. The applicant has also revised the east and west sides of the building to show more interest, adding numerous windows, some decorative features, and a base constructed of a different material.

***The applicant must add one street tree to the Southfield Rd. or Watkins St. frontage, bringing the total number of street trees to twelve, or obtain a waiver from the Staff Arborist.***

The Building Official has determined that the enclosed outdoor terraces on the back of each unit comply with the open space requirement of 180 sq. ft./unit mandated in Article 4, section 4.34 OS-05 of the Zoning Ordinance.

#### *Design Review*

The applicant is proposing to create eight units, each with a different façade facing Brown St. The units are comprised of varied high quality building materials with different and tasteful colors. The materials used include brick, limestone, painted wood trim, stucco, copper flashing, and painted metal features. The applicant has not submitted specifications on where the material will be sourced from, or what the exact colors will be. The applicant must submit



specifications on the materials used for the construction of the building to complete the Design Review.

The applicant is proposing a total of 52 new light fixtures at various locations on the property.

Mr. Williams received confirmation from Mr. Baka that the entire site is zoned R-8, including the parcel to the south. Permitted uses on that vacant land to the south are R-8 and R-3 single-family. Anything that happens on that portion of the property would have to return for site plan review.

Mr. Chris Longe, Architect, came forward to represent the applicant. He stated they will meet all of the ordinance requirements. As a result of discussion last time, they have added four guest parking spaces on the west/southwest side of the driveway. A brick wall with limestone cap traces the whole perimeter of the townhome development.

Mr. Boyle asked what the land to the south would look like in four years. Mr. Longe replied that what has been left vacant is a 10,000 sq. ft. site. The intent is to propose a single-family home that will be contextual with the townhomes and with the neighborhood. He explained for Mr. Boyle that it will be a staging area during construction for the townhomes. He will be back before the board in the next couple of weeks with a house design for that parcel. Until the house is constructed the site will be stabilized with grass.

Chairman Clein opened discussion from the audience at 8 p.m.

Mr. Alan Kaplan, 600 W. Brown St., was concerned the construction workers would park in their lot in Piety Hill Place. His other concern was there are only four extra spaces for this project. Therefore, visitors will also park in their lot and he feels that more excess parking is needed.

Ms. Colleen LeGoff, 543 Watkins St., wanted the green space returned after staging is completed until a house is built.

Mr. Paul Gozolo, 550 Watkins St., received confirmation there will not be accessible parking along his street because Watkins St. has residential permit parking. He questioned why the development needs to open up onto Watkins St. rather than onto Southfield Rd. Regarding the lot to the south, he asked that "single-family" be written into the agreement if it is approved. Lastly, he noted there are large, hundred year-old trees on the lot and it will not remain the same as it is now.

Mr. Baka explained the parking provided exceeds ordinance requirements by four spaces.

Mr. Longe stated that it is not feasible to enter the development off of Southfield Rd. that close to the corner. Also, entering off of Brown St. destroys the composition.

It was discussed that cars could be parallel parked along the wall that surrounds the complex when there is a need. There is 25 ft. between the garages and the wall.

Chairman Clein noted for Mr. Gozolo that the Planning Board does not have legal authority to put contract zoning in place to mandate single-family residential use for the southern lot.

Mr. Jeffares remembered that the former use on this site was a pediatric office. They probably had more people in and out in one day than this complex will have in a month.

Mr. Williams announced he would look askance at any attached single-family development going in on the south parcel.

**Motion by Ms. Whipple-Boyce**

**Seconded by Mr. Jeffares to recommend APROVAL of the Final Site Plan and Design Review for 525 Southfield Rd. subject to the following conditions:**

- 1. The applicant submit a specification sheet for the parking area screening wall for administrative approval to ensure that the screening is complementary to the building, uses proper materials, and meets the required dimensions;**
- 2. The applicant add one street tree to the Southfield Rd. or Watkins St. frontage, bringing the total number of street trees to 12, or obtain a waiver from the Staff Arborist;**
- 3. The applicant submit a revised photometric plan showing luminance levels no greater than 1.5 maintained foot candles at the northern property line;**
- 4. The applicant must submit specifications on the materials used in the construction of the building facade to complete the design review;**
- 5. The applicant must address the concerns of City Departments; and**
- 6. The Planning Board approves the use of cut-off fixtures as proposed.**

**Amended by Mr. Boyle and accepted:**

**7. Regarding the open land to the south of the site, the land to be used for staging, that the land be restored per ordinance (until such time as the other development comes forward) with a landscape plan to be administratively approved. This condition would be maintained until, at a date yet to be determined, the owner brings a proposed development for that site.**

**Motion carried, 7-0.**

The Chairman called for public comments on the motion at 8:12 p.m.

Mr. Gozolo showed the board a picture of one of the mature trees on the property.

Mr. Koseck thought this is a great project. It has quality design, it has variety, it anchors the corner, and he feels that it fits that street.

ROLLCALL VOTE

Yeas: Whipple-Boyce, Jeffares, Boyle, Clein, Koseck, Lazar, Williams

Nays: None

Absent: None



**Birmingham City Commission Minutes**

**May 24, 2021**

**7:30 P.M.**

**Virtual Meeting**

**Meeting ID: 655 079 760**

**Vimeo Link: <https://vimeo.com/event/3470/videos/547775342/>**

**I. CALL TO ORDER AND PLEDGE OF ALLEGIANCE**

Pierre Boutros, Mayor, opened the meeting with the Pledge of Allegiance.

**II. ROLL CALL**

Alexandria Bingham, City Clerk, called the roll.

Present: Mayor Boutros (location: Birmingham, MI)  
Mayor Pro Tem Longe (location: Birmingham, MI)  
Commissioner Baller (location: Birmingham, MI)  
Commissioner Hoff (location: Birmingham, MI)  
Commissioner Host (location: Birmingham, MI)  
Commissioner Nickita (location: Birmingham, MI)  
Commissioner Sherman (location: Birmingham, MI)

Absent: None

## 05-147-21 Public Hearing - 695 W. Brown Street – Lot Split

The Mayor opened the public hearing at 8:12 p.m.

Mayor Pro Tem Longe notified the Commission she would be recusing herself from the item because her spouse was involved in the original project from which this property was asking to be split.

City Planner Cowan presented the item.

In reply to Commissioner Sherman, Planning Director Ecker said she could provide the Commission with information about the previous development proposals regarding this lot.

Commissioner Sherman said he would rather have that information before making a decision on this item. He said he recalled there being previous disagreements between the neighbors and the developer regarding this parcel.

Christopher Brokovich, applicant, said that when he had previously proposed a development adjacent to 685 W. Brown the proposal left 685 W. Brown itself undesignated. Subsequently, he proposed to build two more townhouses on 685 W. Brown, which the neighbors were not in favor of. As a result, Mr. Brokovich chose to put 685 W. Brown on the market.

### Public Comment

Guy Simons reviewed the contents of his letter to the Commission.

In reply to Mr. Simons, PD Ecker said she could provide the interpretation of the side setback that was used to build the eight units adjacent to 685 W. Brown.

Thomas Saracino indicated he was interested in purchasing the lot if it was split within R-8 and advocated for the split.

Michael Talansky, neighbor of 695 W. Brown Street, expressed concern about the lot split proposal.

Andrew Haig expressed skepticism that adequate parking could be provided on the lots in question given the City's lot coverage ordinances and the average turning radiuses of vehicles.

In reply to Mr. Haig, CP Cowan stated that even with the lot split the eight adjacent units would still meet the minimum area-per-unit required for all units in R-8.

Mr. Reagan said the Central Birmingham Residents' Association has historically not been in favor of new multi-family residences being built on Watkins.

Maria Van Hees, neighbor of 685 W. Brown, said she and her family had purchased a nearby home with an understanding that there would be a single family home built on 685 W. Brown.

Wendy Zebrowski concurred with Commissioner Sherman's recollection and agreed that previous minutes regarding this parcel should be reviewed for clarity. She stated that in general the neighbors want this parcel to be zoned for a single family home.



Mr. Bloom said that if plans could be developed that were amenable to the neighbors, he was supportive of Mr. Saracino doing the work. He attested to Mr. Saracino's integrity and other building work in Birmingham.

Commissioner Host concurred with Commissioner Sherman's request for previous records regarding this parcel. He said the neighbors' preferences should take precedence since they live there. He also said it was an issue that the final site plan approved by the Planning Board for this parcel was subsequently changed.

The Mayor closed the public hearing at 9:06 p.m.

**MOTION:** Motion by Commissioner Hoff, seconded by Commissioner Baller:  
To direct the applicant to pursue a rezoning of the subject property to R2-Single Family Zone in order to meet the lot split requirements of the municipal code.

Commissioner Sherman commented the Commission took a similar stance regarding a proposal for the former Franklin Bank and Mountain King properties.

Commissioner Host said he concurred with the comments of Mr. Simons and Mr. Reagan.

ROLL CALL VOTE: Ayes, Commissioner Hoff  
Commissioner Baller  
Commissioner Host  
Commissioner Sherman  
Commissioner Nickita  
Mayor Boutros

**City Of Birmingham**  
**Regular Meeting Of The Planning Board**  
**Wednesday, April 27, 2022**  
City Commission Room  
151 Martin Street, Birmingham, Michigan

Minutes of the regular meeting of the City of Birmingham Planning Board held on April 27, 2022. Chair Scott Clein convened the meeting at 7:30 p.m.

**A. Roll Call**

**Present:** Chair Scott Clein (left at 9:40 p.m.); Board Members Robin Boyle, Bert Koseck, Daniel Share, Janelle Whipple-Boyce, Bryan Williams; Student Representatives MacKinzie Clein, Andrew Fuller

**Absent:** Board Member Stuart Jeffares; Alternate Board Members Jason Emerine, Nasseem Ramin

**Administration:**

Nick Dupuis, Planning Director  
Leah Blizinski, City Planner  
Brooks Cowan, Senior Planner  
Laura Eichenhorn, City Transcriptionist

**B. Minutes**

Mr. Share asked that more information be included about the concerns prompting the side yard a/c unit ordinance revision. He said he recalled the aim was to permit homeowners with existing side yard a/c units to repair broken units without having to go through a months-long process to do so.

Chair Clein said that CP Blizinski had provided an explanation of what the proposed ordinance changes would address that should be minuted.

The Chair recommended that the minutes be tabled until more detail could be added to those two aspects of the side yard a/c unit discussion.

**C. Chair's Comments**

Chair Clein welcomed everyone to the meeting and reviewed the meeting's procedures.

**D. Review Of The Agenda**

**E. Unfinished Business**

None.

**F. Rezoning Applications**



**1. Watkins/Brown Property (No address, Parcel Identification Number: 1936151027) – Request to rezone property from R8 to R2**

SP Cowan presented the item.

In reply to Mr. Share, SP Cowan said that R8 allows for the construction of a single-family residence. This particular lot cannot be split, however, so the only way to build on it would be a rezoning to R2.

The Chair emphasized for the public that the Board was constrained to making its recommendation based solely on the five criteria set forth in Article 7, section 7.02(B)(5). He said that while the public may have a number of other valid concerns, those concerns were not part of the Board's present purview.

Mr. Williams noted this project was previously before the Board. He said to his recollection, there was at least one previous proposal for multi-family residences on this site which was not approved. He stated that the neighbors on Watkins had objected to this parcel being developed as R8 at the time, and that the objection by the neighbors was extensive. He said that when the site plan was first brought before the Board, development of this parcel was to be limited to single-family residential development.

At the direction of the Chair, SP Cowan twice read aloud the five criteria set forth in Article 7, section 7.02(B)(5) for both the Board's and public's clarification.

The Chair then invited public comment.

Public Comment

Brian Gordon, resident of W. Brown, said the appropriate time to consider a lot split for this parcel was before the development commenced. He said that the developer has since maxed out the lot and was seeking a lot split and rezoning to develop further, which Mr. Gordon said he found disingenuous.

Michael Tyranski, resident of Watkins, said he concurred with Mr. Gordon. He continued that adding another residence would exacerbate already-difficult traffic conditions on Watkins, would deflate the values of the nearby brownstones, and would hurt the character and integrity of the neighborhood. Mr. Tyranski said the neighbors were willing to work with the developer and the City to offer market price to purchase the parcel in question.

The Chair noted the Board's receipt of a letter from Mr. Tyranski and an email from Maria VanHees both in opposition to the rezoning. He asked for a motion to receive and file the communications.

**04-99-22**

**Motion by Mr. Williams**

**Seconded by Ms. Whipple-Boyce to receive and file the letter from Mr. Tyranski and the email from Maria VanHees.**

**Motion carried, 6-0.**

VOICE VOTE

Yeas: Share, Boyle, Koseck, Whipple-Boyce, Williams, Clein

Nays: None

A resident of Watkins reiterated that neighbors in the area were offering to buy the lot, which he said would be the most mutually agreeable outcome for the developer, the neighborhood, and the City.

The Chair clarified that the City could not participate in any discussions about a potential private purchase agreement between the neighbors and the developer.

The resident said he believed that the neighbors' potential purchase of the parcel would benefit the City as well. He said the City should consider the perspective of its residents, that the homeowners' association should be able to veto the rezoning, and that there is an issue with traffic congestion on Watkins.

Seeing no further public comment, the Chair invited comment from the applicant.

Anthony Palleschi was present on behalf of LB Land.

In reply to Mr. Palleschi, SP Cowan confirmed that when applicant previously applied for a lot split, Staff's recommendation had been for the applicant to postpone the lot split and to pursue a rezoning to R2 first.

The Chair then returned discussion to the Board.

Ms. Whipple-Boyce noted that when this parcel was before the Commission on May 24, 2021, the applicant was advised that a lot split would be required in order to add further multi-family residences. She said she wanted to clarify that information was just a factual statement of what would be required for further multi-family residences, not a recommendation to do so.

Chair Clein said it was a useful clarification.

Mr. Share asked whether the Board should consider the three questions set forth in Article 07, section 7.02 of the Zoning Ordinance in addition to the five criteria set forth in Article 7, section 7.02(B)(5) in making its recommendations on this matter.

Chair Clein said the Board has always taken the three questions to inform its discussion of a rezoning request. He said that while the three questions and five criteria are not identical, they are related and do inform his vote on a recommendation.

Mr. Share said:

- It was true that the applicant had a piece of property that could not be developed as currently zoned;



- It was also true that in considering the map, the neighborhood, the existing uses of the property, the suitability of the property and the trend of development in the area, this parcel is more suited for single-family residential than multi-family residential;
- The difficulty was whether to look at this land as part of the existing condominiums or on its own;
- Whether the land should be separated from the condominium was not before the Board, and was not within the Board's control;
- The Board had always been led to believe that single-family residential would be developed on this parcel, except for one proposal for a duplex;
- From a land use perspective, R2 is a more appropriate zoning than R8;
- He was inclined to believe that the neighbors' concerns about traffic, usage, and intensity would be more appropriately addressed as part of a discussion on a lot split; and,
- He was struggling with how to proceed for these reasons.

Mr. Williams said:

- While the developer had initially proposed single-family residential for this parcel, the developer proceeded to develop it according to the allowances of R8;
- Before the original development started, the developer could have requested a rezoning of this parcel to R2 from the Board but did not;
- Attempting to do so now was 'backwards';
- He raises the issue of the original development because from the inception of the project this parcel was envisioned as an R2 development;
- He was troubled by question three, since the proposed rezoning would be detrimental to many of the surrounding properties; and,
- The developer's failure to reserve this parcel for future development was a mistake.

Mr. Boyle said:

- The developer previously told the Board that a landscape architect would redesign this parcel, which has not been done;
- Every residential, suburban scheme in the country has odd-shaped lots, which often become valuable open space;
- This parcel is no different, and could become a public space to serve the neighborhood. While this is not a comment on R2 versus R8, in terms of long-term use it should be considered for active development in the public interest to enliven the area; and,
- He did not think the parcel was appropriate for a single-family residence.

In reply to Ms. Whipple-Boyce, SP Cowan explained why this lot could not be split into two R8 lots.

Chair Clein said:

- The matter presently before the Board was one of land use, and not one of a potential lot split;
- The map view indicates that the property should be rezoned to R2, while the more practical view indicates that the lot was developed as one site and now the developer wants to try and squeeze more development in because the lot was not developed properly the first time; and,
- He did not know that it was the Board's responsibility to help fix mistakes.

Mr. Koseck said the Board reviewed this lot as a total piece, and that the review likely considered the design based on the context of the entire lot.

Mr. Palleschi said the original survey provided for 525 W. Brown had single-family residential sketched on the lot in question. He said the developer had made its intent to build single-family residential on this plot from day one.

In response, Mr. Boyle said the Board pressed the applicant's architect and the developer to describe how they would intend to built the single-family residential. He said the applicant's team declined.

Chair Clein and Mr. Williams concurred with Mr. Boyle's recollection.

Chair Clein said:

- He believed, ever so slightly, that it was more appropriate for the property to retain its R8 designation;
- Rezoning would be detrimental to a portion of the neighborhood;
- Retaining the current designation does not prevent the owner from enjoying the rights of usage. The applicant retains the rights of usage, and in fact determined on their own how they would develop the lot;
- While the City's Master Plan and the existing zoning in the area is a compelling argument, the suitability of the current zoning of the property was not proven to be inappropriate;
- Consequently, he would recommend denial of the rezoning.

#### **04-100-22**

##### **Motion by Mr. Williams**

**Seconded by Mr. Boyle that based on a review of the rezoning request and supporting documentation submitted by the applicant, a review of the applicable master plan documents and the development trends in the area, the Planning Board recommends denial to the City Commission of the applicant's request for the rezoning of parcel #19-36-151-027 from R8 Attached Single Family to R2 Single Family Residential.**

**Mr. Share said he leaned just slightly in favor of the proposed rezoning to R2. He said that a rezoning would be appropriate when solely considering this as a matter of land use. Consequently, in sticking to the parameters set forth in the zoning ordinance, he would vote no on the motion. Mr. Share continued, however, that his vote did not mean that he necessarily thought a single-family residence on the lot would be appropriate. He said he would not want the Commission thinking this was anything but an exceedingly close case. He said he would not want anyone, including the Commission, thinking that he would necessarily recommend a lot split to enable construction on the site. Mr. Share stated that a number of compelling reasons were given for why developing this property into a single-family residence would not be the right thing to do.**

**Mr. Boyle said that two members of the Board referred to this matter as an issue of land use. He specified that it was not just a matter of land use, but of future land use**



**of the area. He said this is a planning matter, and not just a zoning matter. Mr. Boyle continued that the case was made by a number of residents and by the Board in the past that the section of the parcel in question should have considered the parcel as a whole. He contended that an appropriate land use for this section of the parcel now would be some form of organized open space.**

**Motion carried, 5-1.**

ROLL CALL VOTE

Yeas: Boyle, Koseck, Whipple-Boyce, Williams, Clein

Nays: Share



Nick Dupuis  
Planning Director



Laura Eichenhorn  
City Transcriptionist

**City Of Birmingham**  
**Regular Meeting Of The Planning Board**  
**Wednesday, June 22, 2022**  
City Commission Room  
151 Martin Street, Birmingham, Michigan

Minutes of the regular meeting of the City of Birmingham Planning Board held on June 22, 2022. Chair Scott Clein convened the meeting at 7:30 p.m.

**A. Roll Call**

**Present:** Chair Scott Clein; Board Members Robin Boyle, Stuart Jeffares, Bert Koseck, Daniel Share, Janelle Whipple-Boyce, Bryan Williams; Alternate Board Members Jason Emerine, Nasseem Ramin; Student Representatives MacKinzie Clein, Andrew Fuller

**Absent:** None

**Administration:**

Nick Dupuis, Planning Director  
Leah Blizinski, City Planner  
Rebekah Craft, Baldwin Library Director  
Brooks Cowan, Senior Planner  
Laura Eichenhorn, City Transcriptionist

**F. Rezoning Applications**

**1. Watkins/Brown Property (No address, Parcel Identification Number: 1936151027) – Request to rezone property from R8 to R2.**

The Chair opened the public hearing at 8:08 p.m.

SP Cowan presented the item and answered informational questions from the Board.

**06-130-22**

**Motion by Mr. Williams**

**Seconded by Mr. Share to receive and file a letter dated June 14, 2022 from Martin F. McGough M.D. and Colleen McGough and an email dated June 20, 2022 from Gerald Seizert and Maragaret Overton. Both correspondences requested that the Board deny the request for rezoning.**

**Motion carried, 7-0**

VOICE VOTE

Yeas: Share, Clein, Jeffares, Boyle, Whipple-Boyce, Williams, Koseck

Nays: None

Rick Rattner, attorney, spoke on behalf of the request.



Public Comment

Brian Gordon, resident of W. Brown, said he believed the applicant was facing a self-created issue and that it was not the responsibility of the City to resolve that for the applicant. He said there were other options for development available to the applicant without the need for rezoning, including joining the parcel to the W. Brown condominium association. He asked the Board to vote no on the rezoning request.

Gerald Seizert, resident of W. Brown, asked the Board to vote no on the rezoning request. He said that some language in the master deed conflicted with the planned developments. He noted that he and other nearby residents have offered to compensate the developer to turn the area into a greenspace instead.

Guy Simons, resident of Watkins, said that the wall did not comply with the zoning ordinance's requirements for the side setback of a corner lot. He noted the developer was encouraged at past Board meetings to work with the neighbors. Mr. Simons said those engagements were unproductive. If the Board approves the lot split, Mr. Simons asked that strict conditions regarding safety be attached, including issues of traffic and parking.

Anita Regalato, resident of Watkins, concurred with Messrs. Seizert and Simons.

Mr. Seizert and Ms. Regalato also commented that the wall on the property was tall enough to dangerously obscure drivers' views of pedestrians.

Seeing no further public comment, the Chair closed the public hearing at 8:50 p.m. and returned the conversation to the Board for deliberation.

Mr. Share clarified the task before the Board, noting that the master deed, comments about perceived integrity of the property owner, or comments about setbacks were not pertinent to the present considerations. Mr. Share continued:

- This piece was likely zoned R8 because when it was first zoned it was done so as a 35,000 sq. ft. parcel that fronted on Southfield and Brown, and not as a series of smaller parcels;
- This property should be zoned R2, not R8. He said it fits the criteria of the zoning and lines up with the housing on Watkins whereas R8 does not;
- While a greenspace may be better from his perspective, that was not presently before the Board;
- This is not a recommendation for the Commission to grant the lot split and also gives no indication as to whether the Board would approve a single family residence on the site if the lot were split;
- The Board almost always attaches conditions to site plans; and,
- He was mindful and sympathetic to the residents' concerns about the wall and the fabric of the neighborhood but saw conformity with the rezoning criteria.

The Chair concurred with Mr. Share's comments about the matter before the Board. He also clarified that only the Commission could decide on a rezoning; the Board just makes a

recommendation on the matter. The Commission is also the only body that can add conditions to a rezoning in Birmingham.

The Chair then reiterated that a recommendation on the rezoning was presently before the Board, and not a question of the lot split.

Mr. Williams concurred.

Mr. Williams said:

- The developer expressed plans to build a single family residence on this site from the first time the item was before the Board;
- The neighbors expressed support of that proposal in 2018, and cited a letter from the McGoughs in November 2018 to that effect as an example;
- The neighbors' original stance was not relevant to the question of rezoning but was relevant to the tone of some of the neighbors' comments; and,
- The neighbors' opinions may have changed in part due to their perception of the developer's actions.

Mr. Boyle said:

- Item E from the findings of fact list allows the Board to determine whether the proposed rezoning would be the proper use of the land;
- The developer brought proposals for the whole site, the Board asked to see what would happen to the site at the rear, and the present proposal was not what was proposed;
- Instead, the developer chose to build what now stands, with a piece of property left at the rear;
- This is not unusual, and those undeveloped pieces often become very important for the neighborhood; and,
- He would like to see a way forward that does not necessarily result in a property being built on this lot.

The Chair said:

- Rezoning requests are one of the most difficult tasks that appears before the Board;
- Given the new information provided, the developer would be able to put in two to three more units on the site by right depending on whether one goes by the master deed or the zoning ordinance;
- If the present developer does not add the additional units, whichever developer purchases the parcel from the present developer will;
- This rezoning, consequently, seems like the least detrimental option for the neighborhood; and,
- He therefore would support a rezoning to R2 since he believes that the situation satisfies all five of the criteria for rezoning.

**06-131-22**

**Motion by Mr. Share**

**Seconded by Mr. Williams based on a review of the rezoning request and supporting documentation submitted by the applicant, a review of the applicable master plan**



**documents and the development trends in the area, to adopt the findings of fact contained in the staff report dated June 17, 2022 and to recommend approval to the City Commission for the rezoning of parcel #19-36- 151-027 from R8 Attached Single Family to R2 Single Family Residential.**

**Mr. Share noted that he updated the date in the motion to June 17, 2022 from April 22, 2022 to reference the most recent Staff report.**

**Public Comment**

**Ken Barrett, resident of Watkins, said residents' perspectives on this proposed rezoning changed based on interactions with the developer. He reiterated that there were offers from residents on W. Brown to compensate the developer for the parcel in order to maintain the greenspace. He asked the developer to work with the neighbors in good faith.**

**Motion carried, 6-1**

ROLL CALL VOTE

Yeas: Share, Clein, Jeffares, Whipple-Boyce, Williams, Koseck

Nays: Boyle

Nick Dupuis  
Planning Director



Laura Eichenhorn  
City Transcriptionist

Mike Tyranski  
550 Watkins St.  
Birmingham MI  
48009

To the Birmingham Planning Board:

I live at the residence directly next door to the vacant lot #19361511027. I have lived here for two years and like many of the new residents at the Westbrowwn Condo's, along with long time residents of Watkins, it has now become very apparent to us that there is too much congestion where Watkins meets Brown.

Watkins is a narrow street and two way traffic is an impossibility when cars are parked on the end of our street. This is a constant problem for residence of the street as well as the apartments on the NE corner that lack sufficient parking space. Added into the daily congestion are the larger but usually temporarily parked trucks of USPS, UPS, DWS, Amazon, Etc. The new residents of the Brownstones attempting to simultaneously come and go because their driveway is on Watkins has additionally added to the chaos. On more occasions than I can count I have had to reverse course onto Brown in order for the opposing car to pass or just re-route because there are multiple vehicles backed up and it is untenable. This is an unacceptable situation and please excuse the slang but it's a shit show. I just don't know how to describe it better. The street is too narrow to accommodate a situation bursting at the seams at this corner. It is apparent there is too much packed into one area. Between the brownstones and the apartments there are 16 households on the corner, that's 32 vehicles. I do not believe I can find another corner like this in town on such a narrow residential street.

It would be greatly appreciated any action to split or re-zone said lot in order to add another residence into this crowded area be carefully re-evaluated by this board before any action is taken or denied.

With that said the Brownstone residents and myself are sympathetic to the developer and are attempting to come up with a win-win and extremely popular idea amongst the residents of the neighborhood. Above parties are willing to give the developer a fair market offer for the lot and make it a greenspace.

We were hopeful the developer would accommodate this idea given he has developed this project and would be interested in keeping the residents that purchased their Brownstones happy along with their significant investments protected.

This has been challenging and we have been frustrated with their callous disregard to the greenspace concept which obviously protects the integrity of the resident's investments in the Brownstones as well as the city's tax base on these homes. We are acting in good faith to preserve and protect the character of our neighborhood, the investment in our homes along with give them a fair market value for the lot. **Their behavior has categorically been the opposite in regard to this lot**, which has had deceptive complications from the very beginning by their own doing. They aren't residents and aren't at all sensitive to the long term effects we will have to live with on a daily basis once they are gone.

This development has been going on for so long so I think it's important to add some historical content to their behavior. Years ago, the residents of Watkins had amazing foresight into this situation. They



successfully thwarted several deceitful attempts to build a few more townhomes on the lot with their grass roots Bait and Switch campaign. I also believe many of you witnessed firsthand the developer's consistent and duplicitous behavior regarding this lot on our last ZOOM call with the city and our commissioners at a hearing in the fall of 2019. They once again foolishly and arrogantly attempted to sell the lot as R8 to an unsuspecting buyer on the call! Needless to say the commissioners shot it down immediately. The unsuspecting buyer, having been misled, was demonstrably annoyed at the developers but was consequently gracious and apologetic to the residence and stated he had no intention to deceive anyone or damage his reputation as a builder. It was a really poor reflection on the developer but certainly gave us more insight on the type of people we are dealing with.

The pattern is clear and the developer is attempting to do something on the margin with this lot that simply does not work and should have never been supported in any way by the city given the congestion it was going to cause on such a narrow street.

In summary your residents both in the new Brownstones and on Watkins have displayed tremendous foresight and patience given the extraordinary circumstances of the last few years and thus length of time this development has consumed. We are and continue to be the best analyst and advocates regarding this project and the neighborhoods integrity which protects and strengthens your tax base.

The city has maximized the space and added 8 new premium homes with the commensurate tax proceeds in perpetuity. Adding one more residence given the above will deflate the Brownstones values, increase an already over populated corner, and hurt the integrity and character of the street.

That result will be: Nobody wins who lives here or governs here.

Respectfully submitted,

Mike Tyranski



Nicholas Dupuis &lt;ndupuis@bhamgov.org&gt;

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**Greenspace by Townhomes on Brown**

2 messages

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**Maria VanHees** <mariav1607@gmail.com>  
To: ndupuis@bhamgov.org

Wed, Apr 27, 2022 at 1:29 PM

Nicholas,

We are homeowners who border the greenspace behind the townhomes. We live at 547 Southfield and lived through dust, noise and a little rudeness during the building process of the maximum number of townhomes that could be built and as high as they could go. We are now hopeful that little space in between our home and the townhomes can be better developed as greenspace. We were sold on trees and a "parklike setting" behind the townhomes that never materialized. As we cannot attend the hearing, please note our vote to keep this area as greenspace. The town needs more of these spaces especially where so many townhomes border a single home community.

Thank you,

Robert and Maria VanHees

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**Nicholas Dupuis** <ndupuis@bhamgov.org>  
To: Maria VanHees <mariav1607@gmail.com>  
Cc: Brooks Cowan <bcowan@bhamgov.org>

Wed, Apr 27, 2022 at 1:47 PM

Thank you for your comments.

This email will be entered into the record and shared with the Planning Board this evening.

[Quoted text hidden]

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**Nicholas J. Dupuis**

Planning Director

Email: [ndupuis@bhamgov.org](mailto:ndupuis@bhamgov.org)

Office: 248-530-1856

Social: [Linkedin](#)**\*Important Note to Residents\***Let's connect! Join the Citywide Email System to receive important City updates and critical information specific to your neighborhood at [www.bhamgov.org/citywideemail](http://www.bhamgov.org/citywideemail).





June 17, 2022

Re: 695 W. Brown Street and Watkins Lot Split and Rezoning

Mrs. Colleen McGough,

The following information is in regards to your inquiry about the lot division for the open lot at 695 W. Brown Street and Watkins Avenue.

The Westbrowm Condominium Association submitted their Master Deed documentation to Oakland County in the fall of 2018 after obtaining site plan approval for eight single family attached residential units from Birmingham's Planning Board on February 21<sup>st</sup>, 2018. Upon receipt of the documentation, Oakland County created 10 parcel IDs; one for each of the eight residential units, one for the general common element area encompassing the main development area, and one for what the County calls a "balance parcel".

The "balance parcel" consists of the remaining open lot not included in the common element area of the Westbrowm Condominium. Because the "balance parcel" of the remaining open lot was not included in the general common element area, the County made it a new lot separate from the Westbrowm Condominium – which in this case created a lot division at the County level.

Upon the creation of 10 new parcel IDs for the Westbrowm Condominium Master Deed, one of which being an entirely new lot, Oakland County sent the appropriate documentation to the Birmingham City Treasurer for final approval of the new parcel IDs. On November 20<sup>th</sup>, 2018, The City Treasurer approved the new parcel IDs submitted by Oakland County, unknowingly approving the creation of a new lot with a parcel ID# 19-36-151-027 without City Commission approval. This approval of a new lot did not follow proper City protocol, as Chapter 102, Article III – Division of Platted Lots of the Birmingham Code of Ordinances requires lot divisions to be considered in a public hearing with City Commission and to satisfy the standards for approval in Chapter 102, Section 102-53 of the Birmingham Code of Ordinances.

When the City discovered that the subject lot had been split, the property owner was notified that they can either follow through with the City's lot division process which requires approval from City Commission, or the City would go to Oakland County and request that the subject lot be unsplit and reappended to the Westbrowm Condominium Development as one lot.

Given the two options, the applicant indicated they would like to complete the City's lot division process. **The applicant was notified that the only way to satisfy the City's lot division standards for approval is if the subject lot is rezoned to R2 - Single Family. The applicant acquiesced to follow through with the rezoning to R2 – Single Family in order to satisfy the City's lot division standards for approval.** The rezoning from R8 to R2 is what is being reviewed by the Planning Board and City Commission at this time.

The initial staff interpretation of the R8 Attached Single Family zone was that an R8 zoned lot could not have more than eight units total. This interpretation was discussed during the April 27<sup>th</sup>, 2022 Planning Board meeting during the request for rezoning. Staff indicated the applicant had maxed out the number of units on the lot, and was required to obtain a lot division in order to construct more residential units or unit. The Planning Board then recommended denial of the rezoning, believing that the applicant had maxed out the number of residential units on site.

Upon further review of the definition for Attached Single Family (Chapter 9 of the Zoning Ordinance), it has been determined that lots zoned R8 - Attached Single Family can have more than eight residential units total on a lot. The R8 zone specifies that BUILDINGS within the R8 zone cannot have more than eight attached units, however a lot zoned R8 may have multiple buildings with up to eight attached units each.

The interpretation during the April 27<sup>th</sup>, 2022 Planning Board meeting that the applicant had maxed out the number of residential units on site was incorrect – the site may permit up to three additional single family attached units, given the R8 zone's lot area per unit standards of the Zoning Ordinance. The corrected interpretation of the definition for Attached Single Family is deemed "new information" which is why the City Commission has sent the rezoning application back to the Planning Board for a public hearing scheduled for June 22<sup>nd</sup>, 2022.

**It is of note that if the subject open lot does not obtain a rezoning to R2 to satisfy the City's standards for a lot division, The City will go to Oakland County and request the lot division be undone due to the fact that it has not received proper approval from City Commission. If this occurs, the subject open lot would remain within the R8 Attached Single Family zone and be reappended to the Westbrowm Condominium development lot. The applicant would then have the opportunity to construct up to three additional attached single family homes on the subject open lot.**

The applicant has indicated that they would like to build one single family home on the subject property that is contextual to the surrounding neighborhood. Therefore, the applicant would like to continue to pursue the City's requirement for a lot division which involves rezoning the subject open lot to R2-Single Family.



If you have any further questions, feel free to contact Brooks Cowan or Nick Dupuis in the City Planning Department.

Brooks Cowan  
Senior Planner  
[BCowan@bhamgov.org](mailto:BCowan@bhamgov.org)  
(248) 530-1846

Nick Dupuis  
Planning Director  
[Ndupuis@Bhamgov.org](mailto:Ndupuis@Bhamgov.org)  
(248) 530-1856

Aug 21, 2022

Dear commission members

I am writing to once again oppose the zoning change for the West Brown site. Unfortunately, a miss statemen and an error by Oakland County, has given the developer another opportunity to try and compel the commission to grant his wishes over the objections of the neighbors, including those who live in the West brown development. He made choices about the size and location of units, holding off presenting a plan for the lot next to the units until they were completed. The neighbors and neighborhood have changed over the years. More development would increase traffic congestion and parking problems thus lowering the enjoyment and value of the neighborhood.

More than 4 years of experience with the developer has led myself and many of the neighbors to change their minds about further development.

The developer had free use of the land, now he is trying to force you to change the codes allowing more building thus opening the door for future developers to demand the ability to build more than allowed under Birmingham code allows.

Martin F McGough MD FACE FASE

Colleen L McGough

543 Watkins St.

Birmingham MI, 48009





## MEMORANDUM

Planning Division

**DATE:** August 17<sup>th</sup>, 2022

**TO:** Thomas M. Markus, City Manager

**FROM:** Brooks Cowan, Senior Planner

**APPROVED:** Nicholas Dupuis, Planning Director

**SUBJECT:** Public Hearing for City Commission review of a lot division for 695 W. Brown Street, parcel # 19-36-159-009 & parcel # 19-36-151-027, lot T2N, R10E, SEC 36 OAKLAND COUNTY CONDOMINIUM PLAN NO 2257 WESTBROWN CONDOMINIUM GEN COM ELE TO BE ASSESSED WITH ALL UNITS IN CONDO L 52369 P 396 11-20-18 FR 151-001 and lot T2N, R10E, SEC 36 OAKLAND COUNTY CONDOMINIUM PLAN NO 2257 WESTBROWN CONDOMINIUM GEN COM ELE TO BE ASSESSED WITH ALL UNITS IN CONDO L 52369 P 396 11-20-18 FR 151-001  
**(Summary of Oakland County & Birmingham lot split history for the subject area that was also included in the rezoning application is highlighted in blue)**

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### INTRODUCTION:

The owner of the Westbrowns Condominiums located at 695 W. Brown, LB Land, LLC, is seeking an official lot division approval from City Commission for the southern portion of their property, parcel # 19-36-151-027, to officially create a new residential lot facing Watkins Street.

The applicant has also applied to rezone the subject area, parcel # 19-36-151-027, from R8 Attached Single Family Residential zone to R2 Single Family Residential. Rezoning parcel # 19-36-151-027 from R8 to R2 enables the subject area to satisfy the City's lot division requirements and limits the proposed lot to only be developed as a single family home, similar to the properties to the south on Watkins Street. The public hearing regarding the rezoning is scheduled to occur before the lot split hearing at the same City Commission meeting.

The following memo is structured in a manner that considers the City's lot division requirements of the subject area with its current R8 Attached Single Family zone, and the potential rezoning to R2 Single Family zone for the southern portion of the property, parcel # 19-36-151-027, subject to City Commission approval.

## BACKGROUND:

The Westbrowm Condominium Development lot at 695 W. Brown Street is 36,127 square feet total (both subject parcels). The proposed lot division will finalize a new lot with a total land area of 10,478 square feet (0.25 acres), reducing the Westbrowm Condominium site to 25,649 square feet.

The applicant obtained site plan approval for eight single family attached residential units from Birmingham's Planning Board on February 28<sup>th</sup>, 2018. The Westbrowm Condominium Association (695 W. Brown) then submitted their Master Deed documentation to Oakland County in the fall of 2018 for the creation of new taxable IDs for each condominium.

Upon receipt of the Master Deed documentation, Oakland County created 10 parcel IDs; one for each of the eight residential units, one for the general common element area encompassing the main development area, and one for what the County calls a "balance parcel".

The "balance parcel" consists of the remaining open lot not included in the common element area of the Westbrowm Condominium development area. **Because the "balance parcel" of the vacant space was not included in the general common element area, the County made it a new lot, separate from the Westbrowm Condominium – which in this case created a lot division at the County level.**

Upon the creation of 10 new parcel IDs for the Westbrowm Condominium Master Deed, one of which being an entirely new lot, Oakland County sent the appropriate documentation to the Birmingham City Treasurer for final approval of the new parcel IDs. **On November 20<sup>th</sup>, 2018, The City Treasurer approved the new parcel IDs submitted by Oakland County, unknowingly approving the creation of a new lot with a parcel ID# 19-36-151-027 without City Commission approval.**

This approval of a new lot by the City Treasurer did not follow proper City protocol, as Chapter 102, Article III – Division of Platted Lots of the Birmingham Code of Ordinances requires lot divisions to be considered in a public hearing with City Commission and to satisfy the standards for approval in Chapter 102, Section 102-53 of the Birmingham Code of Ordinances.

When the City discovered that the subject lot had been split, the property owner was notified that they can either follow through with the City's lot division process which requires approval from City Commission, or the City would go to Oakland County and require that the subject lot be unsplit and reappended to the Westbrowm Condominium Development as one lot.

Given the two options, the applicant indicated they would like to complete the City's lot division process. The applicant was notified that the only way to satisfy the City's lot division standards for approval is if the subject lot is rezoned to R2 - Single Family. The applicant acquiesced to follow through with the rezoning to R2 – Single Family in order to satisfy the City's lot division standards for approval.

On May 24<sup>th</sup>, 2022, a potential buyer not associated with the property owner applied to obtain a lot division while maintaining the existing R8 Attached Single Family designation. The applicant requested to obtain a conditional approval given that the new proposed lot did not satisfy the lot split requirements as an R8 zone. City staff recommended that the applicant first pursue a



rezoning to R2 Single Family to satisfy the City's lot division requirements. City Commission echoed this recommendation.

On June 22<sup>nd</sup>, 2022, the Planning Board reviewed the applicant's request to rezone the subject area from R8 Attached Single Family to R2 Single Family and recommended to City Commission that the request be approved. Rezoning the subject area to R2 Single Family enables the property to satisfy the City's lot division standards.

**If the Watkins lot, parcel # 19-36-151-027, does not obtain approval for the lot division under consideration, the subject area may be developed under current R8 Attached Single Family zone standards which would allow multiple attached single family residential units to face Watkins Street by right.**

**The applicant has indicated they wish to complete the City's lot split process by satisfying all requirements and construct a single family residential home.**

The Subdivision Regulation Ordinance (Chapter 102, Section 102-53) requires that the following standards be met for approval of a lot division.

- (1) *All lots formed or changed shall conform to minimum Zoning Ordinance Standards for the zone district in which the property is located.*

If the two proposed lots remain zoned R8 Attached Single Family, each lot that results from the lot division would conform to the minimum Zoning Ordinance standards.

If the Watkins lot, parcel # 19-36-151-027 obtains approval to be rezoned to R2 Single Residential, the two resulting lots would also conform to the minimum Zoning Ordinance standards for their respective R8 Attached Single Family Residential and R2 Single Family Residential zones.

In regards to lot area, the proposed lot division would reduce the size of 695 W. Brown (Westbrown Condominiums) from 36,127 square feet to 25,649 square feet. The resulting size of the Watkins Street lot is proposed to be 10,478 square feet.

The resulting 695 W. Brown lot (Westbrown Condominiums) would continue to satisfy the minimum lot size standard. The R8 zone requires a minimum lot area of 3,000 square feet per residential unit. 695 W. Brown has 8 dwelling units, therefore requiring a minimum lot area of 24,000 square feet. As previously mentioned, the resulting lot size for 695 W. Brown is proposed to be 25,649 square feet, therefore satisfying the minimum lot area requirement for the R8 zone. It is also of note that there are no lot coverage or minimum open space requirements for the R8 Zone.

If the Watkins lot, parcel # 19-36-151-027, remains zoned R8, the lot area standards would enable up to 3 attached single family residential units, given the proposed size of 10,478 square feet and a requirements of 3,000 square feet per unit.

If the Watkins lot, parcel # 19-36-151-027, is rezoned to R2 Single Family, the property would satisfy the minimum lot area of 6,000 square feet and be limited to one single family residential home on site.

In regards to setbacks, the resulting 695 W. Brown lot (Westbrowm Condominium) will continue to satisfy all front, side, and rear setback requirements. The only setback proposed to be changed for the Westbrowm Condominium site as a result of the lot division is the rear setback. The R8 zone requires a minimum rear setback of 20 feet while the proposed lot division indicates a 22.51 foot rear setback which satisfies the requirement.

If the proposed Watkins lot remains zoned R8, the front setback would be a minimum of 22.67 feet because the R8 requires all residential buildings within 200 feet to be factored in. The rear setback would be 20 feet, and the side setbacks would be a minimum of 7 feet on each side.

If the proposed Watkins lot is rezoned to R2 Single Family, the minimum front setback would be 25.26 feet. The front setback requirement is the average setback of homes within 200 feet on the same side of Watkins Street. The minimum rear setback would be 30 feet, and the side setbacks would be 5 feet and 9 feet.

In regards to setbacks, it is of note that rezoning the property from R8 to R2 increases the front setback requirements from 22.67 feet to 25.26 feet and increases the rear setback from 20 feet to 30 feet, reducing the buildable envelope for the lot by pushing the setback envelope further away from the front and rear lot lines.

Both the R8 zone and the R2 zone require 14 feet or 25% of total lot width whichever is larger, between principal residential buildings on adjacent lots. The lot width for the proposed Watkins property is 59.84 feet, therefore the building envelope on the proposed Watkins lot must be setback 14.96 feet from the buildings to the north and south. The building envelopes submitted with the R8 zone and R2 zone requirements both indicate this requirement has been met, **Thus, the proposed lots satisfy all setback requirements for the existing R8 zone and the proposed R2 zone.**

If the proposed Watkins lot remains zoned R8, the allowable building height is up to 30 feet and 2.5 stories. The 695 W. Brown development is 30 feet in height as was approved by the Planning Board in 2018. The City has yet to receive a site plan for a development on the proposed Watkins lot, however any attached single-family development proposed for this lot will be required to obtain approval from the Planning Board and will be allowed a maximum height of 30 feet.

If the proposed Watkins lot is rezoned to R2 Single Family Residential, the proposed single family residence will be allowed a maximum height of 30 feet as permitted by the R2 zone for lots greater than 9,000 square feet. Single family residential developments in the R2 zone do not require review and approval from the Planning Board.

**Accordingly, no non-conformities would be created on either of the resulting parcels as a result of the proposed lot division.**

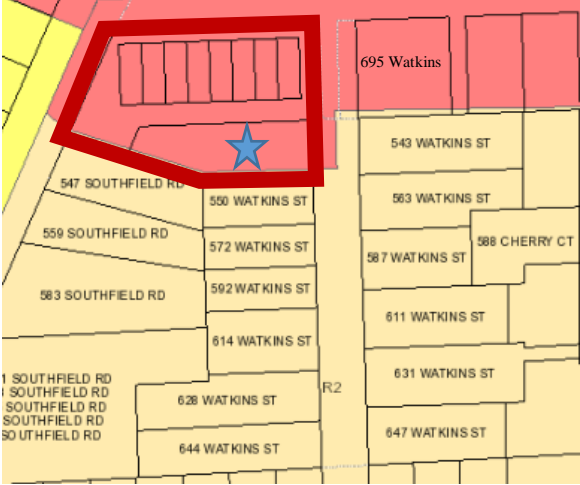


(2) *All residential lots formed or changed by the division shall have a lot width, as defined in chapter 126, of not less than the average lot width of all lots on the same street within 300 feet of the lots formed or changed **and within the same zone district.***

If the proposed Watkins lot remains zoned R8, there is one R8 zoned property with frontage on Watkins Street to include in the average lot width calculation. Such property is across the street to the east at 695 Watkins and has a lot width of 103 feet, therefore the average lot width of R8 zoned properties within 300 feet on Watkins Street is 103 feet. Given the criteria of Section 102-53(2), resulting lots in the R8 zone along Watkins cannot be less than 103 feet. **The applicant is proposing a lot width of 59.84 feet and therefore does not satisfy the lot division criteria of this section if the Watkins lot remains zoned R8.**

If the Watkins lot is rezoned to R2, the average lot width of R2 zoned properties on Watkins Street within 300 feet would be factored into the average lot width calculation which results in a value of 56.81 feet. The applicant is proposing a new lot width of 59.84, exceeding the average by 3 feet. **If the Watkins lot is rezoned to R2 Single Family, the proposed lot width of 59.84 feet satisfies the lot division criteria of this section.**

(Transition from the R8 Zone in pink to the R2 Zone along Watkins Street)



(3) *The division will not adversely affect the interest of the public and of the abutting property owners. In making this determination, the City Commission shall consider, but not be limited to the following:*

a. *The location of proposed buildings or structures, the location and nature of vehicular ingress or egress so that the use of appropriate development of adjacent land or buildings will not be hindered, nor the value thereof impaired.*

- b. *The effect of the proposed division upon any flood plain areas, wetlands or other natural features and the ability of the applicant to develop buildable sites on each resultant parcel without unreasonable disturbance of such natural features.*
- c. *The location, size, density and site layout of any proposed structures or buildings as they may impact an adequate supply of light and air to adjacent properties and the capacity of essential public facilities such as police and fire protection, drainage structures, municipal sanitary sewer and water, and refuse disposal.*

The proposed Watkins lot has a similar width and area as the surrounding R2 single family lots and is zoned for a maximum height that is the same as the neighboring properties. For comparison, there are seven single family homes on the subject block of Watkins Street with a lot width of 60 feet or greater which is larger than the proposed lot width of 59.84 feet. The building setback envelope permits a 46 foot wide development which is less than what is allowed on the seven properties on the block with a lot width greater than 60 feet.

If the lot remains zoned R8, the property owner would be allowed to develop multiple single family attached homes facing Watkins Street by right within the permitted setback envelope. Multiple residential units would have a higher parking requirement and have the potential for up to two curb cuts to handle vehicular ingress and egress of residents. Such a development would be reviewed by the Planning Board for final approval.

If the lot is rezoned R2, only a single family home would be permitted for development. Single family homes in Birmingham typically have one curb-cut for driveway vehicular ingress and egress.

The single family homes on the subject block of Watkins Street and surrounding area consist of large lots with large homes. **New attached single family homes in an R8 zone, or a new single family home in an R2 zone on the proposed Watkins lot do not appear to hinder development of adjacent land or buildings, nor hinder their value, given that the buildable envelope for the proposed Watkins lot is similar in size to the large homes on large lots on Watkins Street and the surrounding area which have already been developed.**

The subject property is not located within the floodplain or soil erosion limit of a recognized stream, river, lake or other water body. The site does not appear to exhibit evidence of regulated wetlands or endangered species of flora and fauna. **The proposed lot division will not affect any floodplains, wetlands, or endangered species of flora and fauna on the site.**

The proposed Watkins lot will have a maximum building height of 30 feet if it remains within the R8 zone or is rezoned to R2. This will match the permissible height for all surrounding properties on Watkins Street. The lot split would also match the residential pattern of Watkins Street and most Birmingham single family neighborhoods. **Thus, the proposed lot split will not negatively affect the supply of light and air to adjacent properties, nor will it negatively affect the capacity of essential public facilities.**

City departments have no objections to the proposed lot split.



Aerial view of Watkins Street and surrounding area of subject property



**LEGAL REVIEW:**

The City Attorney has no concerns related to the form and content of the application.

**FISCAL IMPACT:**

There are no fiscal impacts for this agenda item.

**PUBLIC COMMUNICATIONS:**

As required for lot divisions, a legal ad was placed in a newspaper of local circulation to advertise the nature of the request in advance of the August 29<sup>th</sup>, 2022 public hearing at the City Commission meeting, and notices were sent out to all property owners and tenants within 300 ft. of the property.

**SUMMARY:**

The Planning Division requests that the City Commission consider the lot division of 695 W. Brown, parcel # 19-36-159-009 & parcel # 19-36-151-027.

**ATTACHMENTS:**

Please find attached the following documents for your review.

- Surveys
- Application & attachments
- May 21<sup>st</sup>, 2022 City Commission minutes directing applicant to pursue a rezoning to R2 Single Family

**SUGGESTED ACTION:**

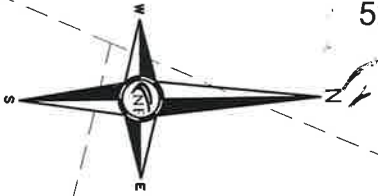
Make a motion adopting a resolution to APPROVE the lot division of 695 W. Brown, parcel # 19-36-159-009 & parcel # 19-36-151-027.



# Parcel Split Survey

525 SOUTHFIELD ROAD, BIRMINGHAM, MI

P.I.N.: 19-36-151-001



SOUTHFIELD ROAD (66' WIDE-PUBLIC)  
 N24°05'00"E 121.83' (M)

LOT 2

P.I.N.: 19-36-151-002

N70°53'41"W 152.28' (M) 153.60'(R)

LOT 12

LOT 1

LOT 13

BIRD & STANLEY'S ADDITION  
 (LIBER 3, PAGE 7)

ASSESSOR'S PLAT NO. 1  
 (LIBER 45, PAGE 42)

P.I.N.: 19-36-151-001

LOT 14

LOT 12

P.I.N.: 19-36-151-006

S88°04'32"W(M) 119.00'(R&M)

LOT 13

N88°05'27"E 208.67'(M) 202.10'(R)

BROWN ROAD (60' WIDE)

W. 48' OF LOT 15

S01°35'27"E 164.08' (M)

WATKINS STREET (50' WIDE)



**NF ENGINEERS**  
 NOWAK & FRAUS ENGINEERS  
 46777 WOODWARD AVE.  
 PONTIAC, MI 48342-5032  
 TEL. (248) 332-7931  
 FAX. (248) 332-8257

PREPARED FOR:  
 TOWN BUILDING  
 COMPANY

SCALE	DATE	DRAWN	JOB NO.	SHEET
1" = 30'	02-26-2021	K.N.	J636	1 of 4

REVISED: 03-19-2021



# Parcel Split Survey

525 SOUTHFIELD ROAD, BIRMINGHAM, MI

P.I.N.: 19-36-151-001

## LEGAL DESCRIPTION - (PARENT PARCEL)

LAND SITUATED IN THE COUNTY OF OAKLAND, CITY OF BIRMINGHAM, STATE OF MICHIGAN, IS DESCRIBED AS FOLLOWS:

LOTS 12, 13, 14, AND WEST 48 FEET OF LOT 15; BIRD AND STANLEY'S ADDITION, AS RECORDED IN LIBER 3, PAGE 7 OF PLATS, OAKLAND COUNTY RECORDS; AND LOTS 1 AND 13, ASSESSOR'S PLAT NO. 1, AS RECORDED IN LIBER 45, PAGE 42 OF PLATS, OAKLAND COUNTY RECORDS.

TAX ID NO. 19-36-151-001

ADDRESS: 525 SOUTHFIELD ROAD, BIRMINGHAM, MI 48009-1620

CONTAINING: 36,127 SQUARE FEET OR 0.83 ACRES OF LAND

## LEGAL DESCRIPTION - (PARCEL A)

LAND SITUATED IN THE COUNTY OF OAKLAND, CITY OF BIRMINGHAM, STATE OF MICHIGAN, IS DESCRIBED AS FOLLOWS:

PART OF LOTS 1 AND 13 OF ASSESSOR'S PLAT NO. 1 AS RECORDED IN LIBER 45 OF PLATS, ON PAGE 42, OAKLAND COUNTY RECORDS AND ALL OF LOTS 12 THROUGH 14 AND THE WEST 48 FEET OF LOT 15 OF BIRD AND STANLEY'S ADDITION, AS RECORDED IN LIBER 3 OF PLATS, ON PAGE 7, OAKLAND COUNTY RECORDS ALL BEING PART OF THE NORTHWEST 1/4 OF SECTION 36, TOWN 2 NORTH, RANGE 10 EAST, CITY OF BIRMINGHAM, OAKLAND COUNTY, MICHIGAN DESCRIBED AS FOLLOWS: BEGINNING AT THE NORTHWEST CORNER OF SAID LOT 12; THENCE NORTH 88 DEGREES 05 MINUTES 27 SECONDS EAST ALONG THE SOUTH LINE OF BROWN ROAD (60 FEET WIDE), 208.67 FEET (RECORDED AS: 202.10 FEET) TO A POINT ON THE WEST LINE OF WATKINS STREET (50 FEET WIDE); THENCE SOUTH 01 DEGREES 35 MINUTES 27 SECONDS EAST ALONG SAID WEST LINE OF WATKINS STREET, 104.24 FEET; THENCE SOUTH 88 DEGREES 05 MINUTES 27 SECONDS WEST, 184.94 FEET; THENCE SOUTH 23 DEGREES 45 MINUTES 36 SECONDS WEST, 32.47 FEET TO A POINT ON THE SOUTHERLY LINE OF SAID LOT 1; THENCE NORTH 70 DEGREES 53 MINUTES 41 SECONDS WEST ALONG SAID SOUTHERLY LINE OF LOT 1, 66.93 FEET TO A POINT ON THE EASTERLY LINE OF SOUTHFIELD ROAD (66 FEET WIDE); THENCE NORTH 24 DEGREES 05 MINUTES 00 SECONDS EAST ALONG SAID EASTERLY LINE OF SOUTHFIELD ROAD, 121.83 FEET TO THE POINT OF BEGINNING.

CONTAINING 25,649 SQUARE FEET OR 0.59 ACRES OF LAND.

## LEGAL DESCRIPTION - (PARCEL B)

LAND SITUATED IN THE COUNTY OF OAKLAND, CITY OF BIRMINGHAM, STATE OF MICHIGAN, IS DESCRIBED AS FOLLOWS:

PART OF LOTS 1 AND 13 OF ASSESSOR'S PLAT NO. 1 AS RECORDED IN LIBER 45 OF PLATS, ON PAGE 42, OAKLAND COUNTY RECORDS, BEING A PART OF THE NORTHWEST 1/4 OF SECTION 36, TOWN 2 NORTH, RANGE 10 EAST, CITY OF BIRMINGHAM, OAKLAND COUNTY, MICHIGAN DESCRIBED AS FOLLOWS: BEGINNING AT THE SOUTHEAST CORNER OF SAID LOT 13; THENCE SOUTH 88 DEGREES 04 MINUTES 32 SECONDS WEST, 119.00 FEET; THENCE NORTH 70 DEGREES 53 MINUTES 41 SECONDS WEST, 85.35 FEET; THENCE NORTH 23 DEGREES 45 MINUTES 36 SECONDS EAST, 32.47 FEET; THENCE NORTH 88 DEGREES 05 MINUTES 27 SECONDS EAST, 184.94 FEET; THENCE SOUTH 01 DEGREES 35 MINUTES 27 SECONDS EAST, 59.84 FEET TO THE POINT OF BEGINNING.

CONTAINING 10,478 SQUARE FEET OR 0.24 ACRES OF LAND.



NOWAK & FRAUS ENGINEERS  
46777 WOODWARD AVE.  
PONTIAC, MI 48342-5032  
TEL. (248) 332-7931  
FAX. (248) 332-8257

PREPARED FOR:

TOWN BUILDING  
COMPANY

SCALE  
N.T.S.

DATE  
02-26-2021

DRAWN  
K.N.

REVISED: 03-19-2021  
JOB NO. J636  
SHEET 2 of 4

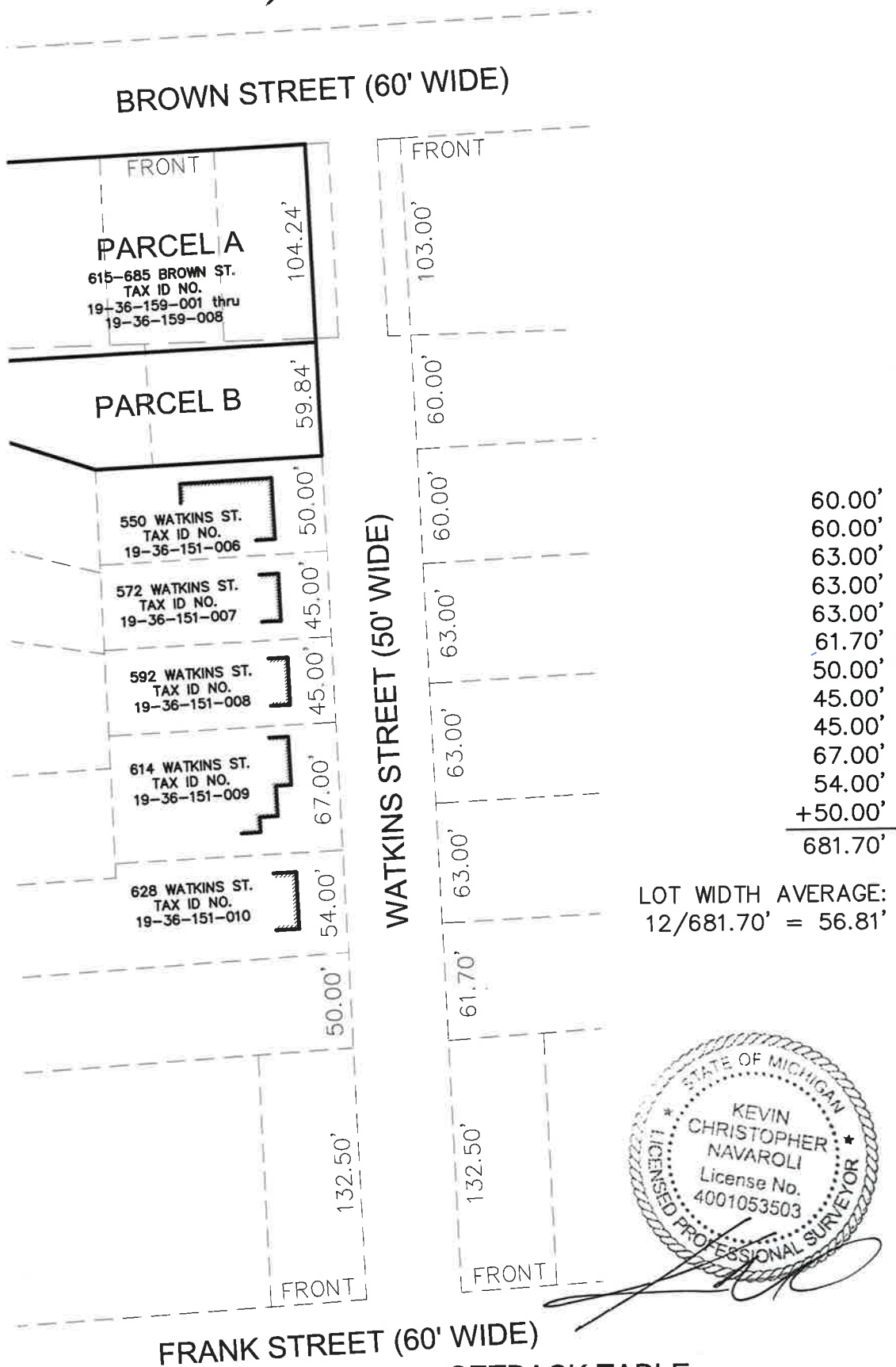




# Parcel Split Survey

525 SOUTHFIELD ROAD, BIRMINGHAM, MI

P.I.N.: 19-36-151-001



## SETBACK TABLE

615-685 Brown St.	10.00' Front Setback
550 Watkins St.	25.93' Front Setback
572 Watkins St.	26.13' Front Setback
592 Watkins St.	23.54' Front Setback
614 Watkins St.	25.43' Front Setback
628 Watkins St.	25.02' Front Setback

Total of Setbacks= 136.05'  
Average 136.05' / 6 = 22.67'

REVISED: 03-19-2021



**NOWAK & FRAUS ENGINEERS**  
46777 WOODWARD AVE.  
PONTIAC, MI 48342-5032  
TEL. (248) 332-7931  
FAX. (248) 332-8257

PREPARED FOR:

TOWN BUILDING  
COMPANY

SCALE  
1" = 80'

DATE  
02-26-2021

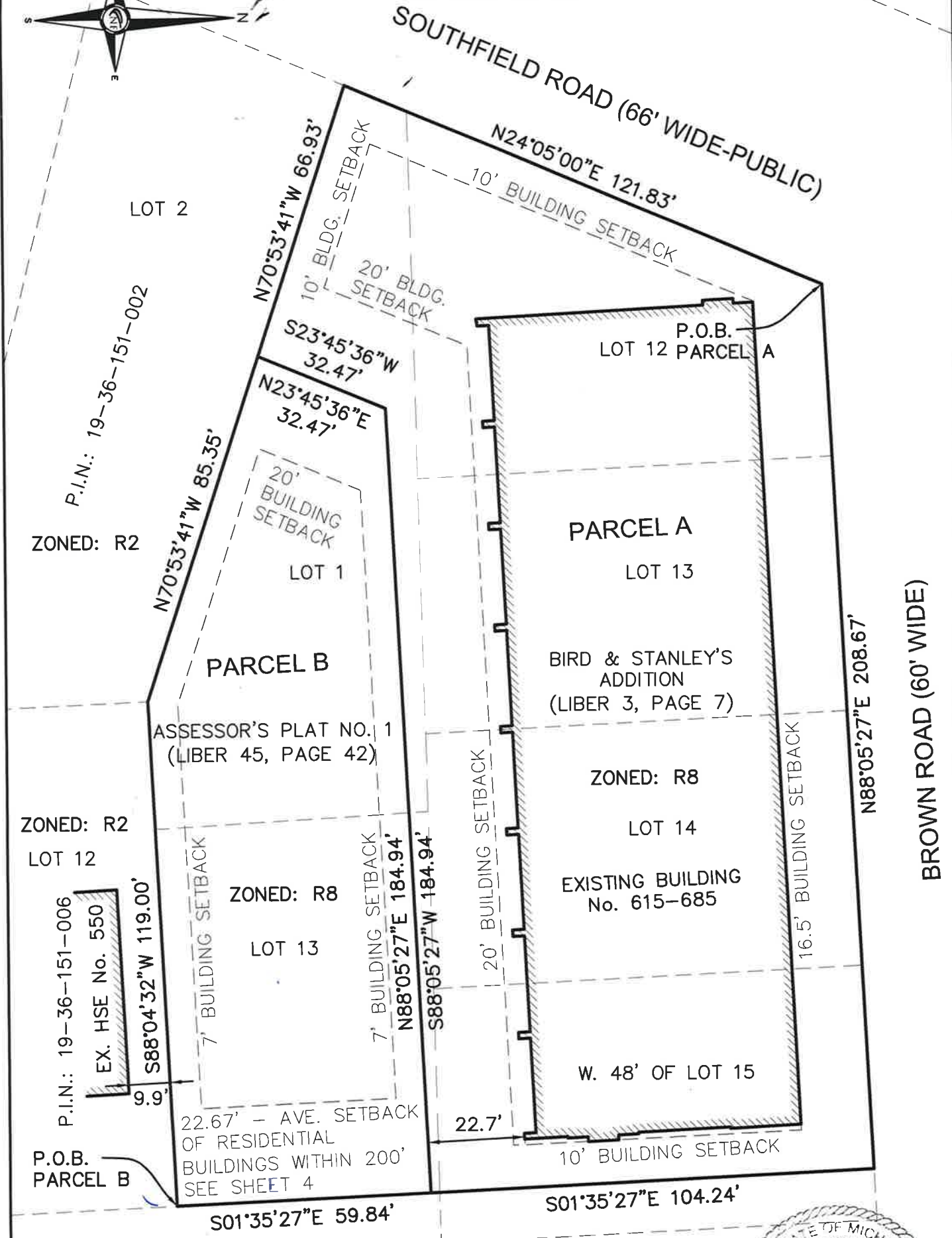
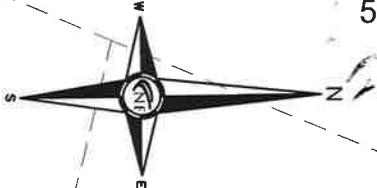
DRAWN  
K.N.

JOB NO.  
J636

SHEET  
4 of 4

# Parcel Split Survey if R8 Zone Remains

525 SOUTHFIELD ROAD, BIRMINGHAM, MI  
P.I.N.: 19-36-151-001



ZONED: R2

ZONED: R2

ZONED: R8

ZONED: R8

EXISTING BUILDING  
No. 615-685

W. 48' OF LOT 15

22.67' - AVE. SETBACK  
OF RESIDENTIAL  
BUILDINGS WITHIN 200'  
SEE SHEET 4

WATKINS STREET (50' WIDE)



**NF ENGINEERS**  
NOWAK & FRAUS ENGINEERS  
46777 WOODWARD AVE.  
PONTIAC, MI 48342-5032  
TEL. (248) 332-7931  
FAX. (248) 332-8257

PREPARED FOR:  
TOWN BUILDING  
COMPANY

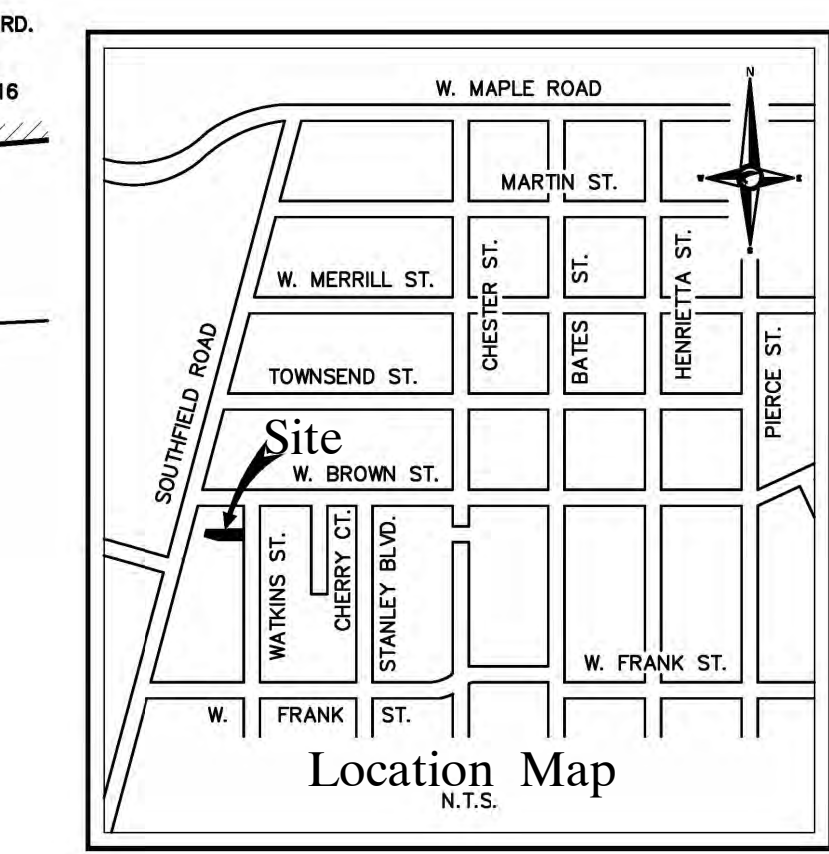
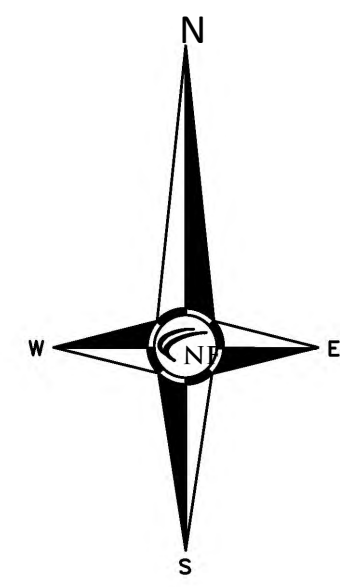
SCALE	DATE	DRAWN	JOB NO.	SHEET
1" = 30'	02-26-2021	K.N.	J636	3 of 4

REVISED: 03-19-2021



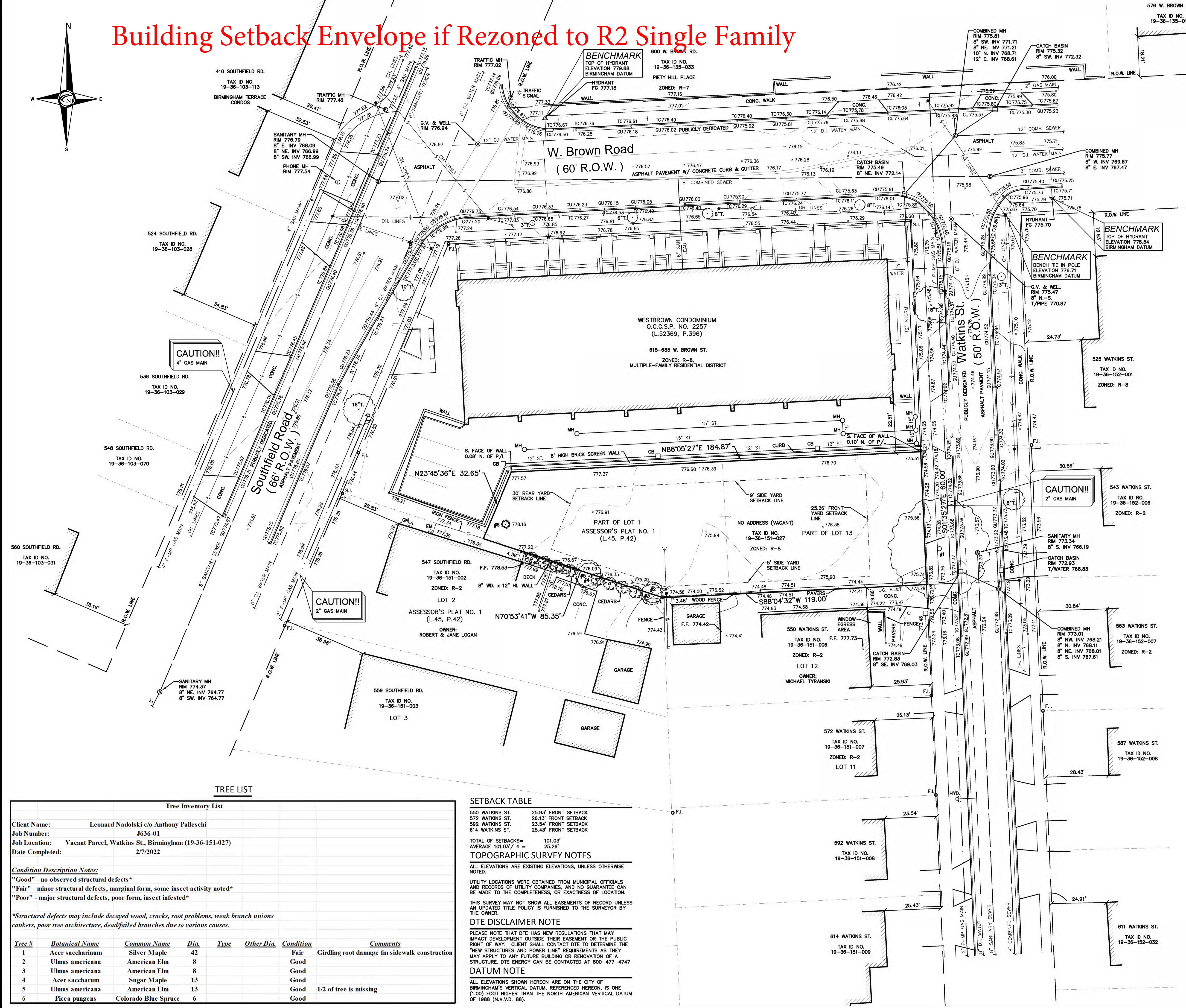


# Building Setback Envelope if Rezoned to R2 Single Family



**NF ENGINEERS**  
 CIVIL ENGINEERS  
 LAND SURVEYORS  
 LAND PLANNERS

NOWAK & FRAUS ENGINEERS  
 46777 WOODWARD AVE.  
 PONTIAC, MI 48342-5032  
 TEL. (248) 332-7931  
 FAX. (248) 332-8257  
 WWW.NOWAKFRAUS.COM



**CERTIFICATE OF SURVEY**  
 WE HEREBY CERTIFY THAT WE HAVE SURVEYED THE PROPERTY HEREIN DESCRIBED.

*Kevin Navaroli*  
 KEVIN NAVAROLI, P.S. NO. 4001053503 DATE: 2-14-2022

**LEGAL DESCRIPTION - PART PER TAX RECORD**

PART OF LOTS 1 AND 13 OF ASSessor'S PLAT NO. 1 AS RECORDED IN LIBER 45 OF PLATS, ON PAGE 42, OAKLAND COUNTY RECORDS, BEING A PART OF THE NORTHWEST 1/4 OF SECTION 36, TOWN 2 NORTH, RANGE 10 EAST, CITY OF BIRMINGHAM, OAKLAND COUNTY, MICHIGAN DESCRIBED AS FOLLOWS: BEGINNING AT THE SOUTHEAST CORNER OF SAID LOT 13; THENCE SOUTH 89 DEGREES 04 MINUTES 32 SECONDS WEST, 119.00 FEET; THENCE NORTH 70 DEGREES 53 MINUTES 41 SECONDS WEST, 85.35 FEET; THENCE NORTH 23 DEGREES 45 MINUTES 36 SECONDS EAST, 32.65 FEET; THENCE NORTH 88 DEGREES 05 MINUTES 27 SECONDS EAST, 184.87 FEET; THENCE SOUTH 01 DEGREES 35 MINUTES 27 SECONDS EAST, 60.00 FEET TO THE POINT OF BEGINNING.

CONTAINING 10,507 SQUARE FEET OR 0.24 ACRES OF LAND.

**BASIS OF BEARING NOTE**

ALL BEARINGS ARE IN RELATION TO THE PREVIOUSLY ESTABLISHED EASTERLY LINE OF SOUTHFIELD AVENUE (NOW ROAD) OF ASSessor'S PLAT NO. 1, A SUBDIVISION OF PART OF THE NORTHWEST 1/4 OF SECTION 36, TOWN 2 NORTH, RANGE 10 EAST, VILLAGE OF BIRMINGHAM (NOW CITY), OAKLAND COUNTY, MICHIGAN AS RECORDED IN LIBER 45 OF PLATS, PAGE 42, OAKLAND COUNTY RECORDS. (N.24°05'00"E.)

**FLOOD HAZARD NOTE**

THE PROPERTY DESCRIBED ON THIS SURVEY DOES NOT LIE WITHIN A SPECIAL FLOOD HAZARD AREA AS DEFINED BY THE FEDERAL EMERGENCY MANAGEMENT AGENCY. THE PROPERTY LIES WITHIN ZONE X OF THE FLOOD INSURANCE RATE MAP IDENTIFIED AS MAP NO. 26125C0536F BEARING AN EFFECTIVE DATE OF 09-29-2006.

**MISS DIG / UTILITY DISCLAIMER NOTE**

A MISS DIG TICKET NUMBER 2022013100454, PURSUANT TO MICHIGAN PUBLIC ACT 174 WAS ENTERED FOR THE SURVEYED PROPERTY DUE TO THE EXTENDED REPORTING PERIOD FOR UNDERGROUND FACILITY OWNERS TO PROVIDE THEIR RECORDS. SURVEY MAY NOT REFLECT ALL THE UTILITIES AT THE TIME THE SURVEY WAS ISSUED ON FEBRUARY 8, 2022. THE SURVEY ONLY REFLECTS THOSE UTILITIES WHICH COULD BE OBSERVED BY THE SURVEYOR IN THE FIELD OR AS DEPICTED BY THE UTILITY COMPANY RECORDS FURNISH PRIOR TO THE DATE THIS SURVEY WAS ISSUED. THE CLIENT AND/OR THEIR AUTHORIZED AGENT SHALL VERIFY WITH THE FACILITY OWNERS AND/OR THEIR AUTHORIZED AGENTS, THE COMPLETENESS AND EXACTNESS OF THE UTILITIES LOCATION.

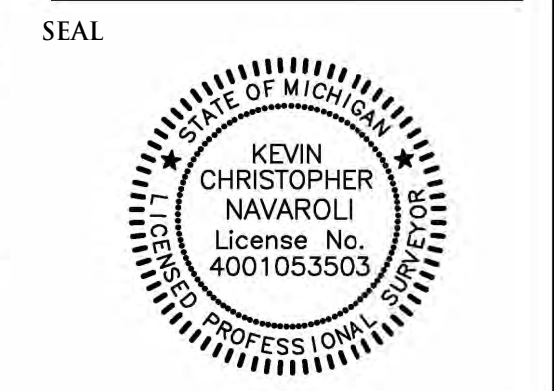
**SITE DATA**

SITE AREA: 10,507 SFT. OR 0.24 ACRES  
 GROSS/NET: 10,507 SFT. OR 0.24 ACRES  
 ZONING: EXISTING: R-8 (ATTACHED SINGLE FAMILY RESIDENTIAL)  
 PROPOSED: R-2 (SINGLE FAMILY RESIDENTIAL)

PROPOSED SETBACK REQUIREMENTS:  
 REQUIRED: FRONT: 25.26 FEET, SIDE: 5.00 FEET, REAR: 30.00 FEET

**LEGEND**

MANHOLE(MH)	EXISTING SANITARY SEWER
HYDRANT(HYD)	EXISTING SAN. CLEAN OUT
MANHOLE(MH)	EXISTING WATER MAIN
MANHOLE(MH)	EXISTING STORM SEWER
CBB	EX. BEEHIVE CATCH BASIN
UTILITY POLE	EX. UNDERGROUND (UG.) CABLE
GUY WIRE	OVERHEAD (OH.) LINES
LP	LIGHT POLE
SIGN	EXISTING GAS MAIN
ASPH.	ASPHALT
CONC.	CONCRETE
FD. / FND.	FOUND
RET. WALL	RETAINING WALL
R.O.W.	RIGHT-OF-WAY
SPK	SET PK NAIL
(TYP)	TYPICAL
(R)	RECORD
(M)	MEASURED
C/L	CENTERLINE
P/L	PROPERTY LINE
GM	GAS METER
EM	ELECTRIC METER
L/S	LANDSCAPE
DS	DOWNSPOUT
GP	GUARD POST
MB	MAIL BOX



PROJECT  
 Vacant Parcel  
 Watkins Street  
 Birmingham, MI 48009  
 (Tax ID No. 19-36-151-027)

CLIENT  
 Leonard Nadolski c/o  
 Anthony Palleschi

Contact: Anthony Palleschi  
 Phone: 586.822.0851  
 Email: apalleschi@championautoinc.com

PROJECT LOCATION  
 Part of the NW 1/4  
 of Section 36  
 T.2N., R.10E.,  
 City of Birmingham,  
 Oakland County, Michigan

SHEET  
 Boundary / Topographic /  
 Tree Survey / Rezoning  
 Plan



DATE ISSUED/REVISED  
 02-08-22 SURVEY ISSUED  
 02-14-22 ISSUED FOR REZONING

DRAWN BY:  
 M. Carnaghi  
 DESIGNED BY:

APPROVED BY:  
 K. Navaroli  
 DATE:  
 February 8, 2022

SCALE: 1" = 20'  
 20 10 0 10 20 30  
 NFE JOB NO. SHEET NO.  
**J636-01 1 of 1**

**TREE LIST**

Tree Inventory List

Tree #	Botanical Name	Common Name	Dia.	Type	Other Dia.	Condition	Comments
1	Acer saccharinum	Silver Maple	42	Fair		Good	Girdling root damage fm sidewalk construction
2	Ulmus americana	American Elm	8	Fair		Good	
3	Ulmus americana	American Elm	8	Fair		Good	
4	Acer saccharum	Sugar Maple	13	Fair		Good	
5	Ulmus americana	American Elm	13	Fair		Good	1/2 of tree is missing
6	Picea pungens	Colorado Blue Spruce	6	Fair		Good	

**SETBACK TABLE**

550 WATKINS ST.	25.93' FRONT SETBACK
572 WATKINS ST.	26.13' FRONT SETBACK
592 WATKINS ST.	23.54' FRONT SETBACK
614 WATKINS ST.	25.43' FRONT SETBACK

TOTAL OF SETBACKS= 101.03'  
 AVERAGE 101.03' / 4 = 25.26'

**TOPOGRAPHIC SURVEY NOTES**

ALL ELEVATIONS ARE EXISTING ELEVATIONS, UNLESS OTHERWISE NOTED.

UTILITY LOCATIONS WERE OBTAINED FROM MUNICIPAL OFFICIALS AND RECORDS OF UTILITY COMPANIES, AND NO GUARANTEE CAN BE MADE TO THE COMPLETENESS OR EXACTNESS OF LOCATION.

THIS SURVEY MAY NOT SHOW ALL EASEMENTS OF RECORD UNLESS AN UPDATED TITLE POLICY IS FURNISHED TO THE SURVEYOR BY THE OWNER.

**DTE DISCLAIMER NOTE**

PLEASE NOTE THAT DTE HAS NEW REGULATIONS THAT MAY IMPACT DEVELOPMENT OUTSIDE THEIR EASEMENT OR THE PUBLIC RIGHT OF WAY. CLIENT SHALL CONTACT DTE TO DETERMINE THE "NEW STRUCTURES AND POWER LINE" REQUIREMENTS AS THEY MAY APPLY TO ANY FUTURE BUILDING OR RENOVATION OF A STRUCTURE. DTE ENERGY CAN BE CONTACTED AT 800-477-4747

**DATUM NOTE**

ALL ELEVATIONS SHOWN HEREON ARE ON THE CITY OF BIRMINGHAM'S VERTICAL DATUM, REFERENCED HEREON, IS ONE (1.00) FOOT HIGHER THAN THE NORTH AMERICAN VERTICAL DATUM OF 1988 (N.A.V.D. 88).

Client Name: Leonard Nadolski c/o Anthony Palleschi  
 Job Number: J636-01  
 Job Location: Vacant Parcel, Watkins St., Birmingham (19-36-151-027)  
 Date Completed: 2/7/2022

**Condition Description Notes:**  
 "Good" - no observed structural defects  
 "Fair" - minor structural defects, marginal form, some insect activity noted  
 "Poor" - major structural defects, poor form, insect infested

\*Structural defects may include decayed wood, cracks, root problems, weak branch unions, cankers, poor tree architecture, dead/failed branches due to various causes.



# Brown and Watkins Proposed Lot Division




- 2 Foot Contours
- 5 Foot Contours
- FEMA Base Flood Elevations
- FEMA Cross Sections
- 100 yr - FEMA Floodplain
- 100 yr (detailed) - FEMA Floodplain
- 500 yr - FEMA Floodplain
- FLOODWAY - FEMA Floodplain

Disclaimer: The information provided herewith has been compiled from recorded deeds, plats, tax maps, surveys and other public records. It is not a legally recorded map or survey and is not intended to be used as one. Users should consult the information sources mentioned above when questions arise. FEMA Floodplain data may not always be present on the map.

  
**David Coulter**  
 Oakland County Executive

Date Created: 7/18/2022

  
**NORTH**  
 1 inch = 200 feet



OAKLAND COUNTY TREASURERS CERTIFICATE  
I HEREBY CERTIFY that there are no TAX LIENS or TITLES held by the state or any individual against the within description and all TAXES on same are paid for five years previous to the date of this instrument as appears by the records in the office except as stated.  
Reviewed By: PO

Mar 24, 2017

5.00 E-FILE

Sec. 135, Act 206, 1893 as amended  
ANDREW E. MEISNER, County Treasurer

2016 Not Examined

LIBER 50497 PAGE 330  
\$21.00 DEED - COMBINED  
\$4.00 REMONUMENTATION  
\$5.00 AUTOMATION  
\$26,875.00 TRANSFER TX COMBINED  
03/24/2017 04:46:45 PM RECEIPT# 34100  
PAID RECORDED - Oakland County, MI  
Lisa Brown, Clerk/Register of Deeds

STATE OF MICHIGAN REAL ESTATE TRANSFER TAX



OAKLAND 03/24/2017 34100 \$3,437.50 CO \$23,437.50 ST 001100618

WARRANTY DEED

Corporate(Platted/Condominium)

**Drafted By:**  
Wayne S. Segal  
Dawda Mann, PLC  
39533 Woodward Avenue, Suite 200  
Bloomfield Hills, MI 48304

**Return To:**  
LB Land LLC  
5000 E Grand River Ave.  
Howell, MI 48843

**Send Tax Bills To:**  
LB Land LLC  
5000 E Grand River Ave.  
Howell, MI 48843

Recording Fee: \$ 30. <sup>00</sup>	State Transfer Tax: \$23,437.50	Tax Parcel No.: 19-36-151-001
File Number: 769138 -BH	County Transfer Tax: \$3,437.50	

Know All Persons by These Presents: That **Vasileff Holdings LLC, a Michigan limited liability company** whose address is 1992 Redding, Birmingham, MI 48009

Convey(s) and Warrant(s) to **LB Land LLC, a Michigan limited liability company** whose address is 5000 E Grand River Ave., Howell, MI 48843

the following described premises situated in the City of **Birmingham**, County of **Oakland**, State of Michigan, to wit:

(SEE ATTACHED EXHIBIT A)

More commonly known as: **525 Southfield Road, Birmingham, MI 48009**

For the full consideration of: **three million one hundred twenty five thousand Dollars (\$3,125,000.00)**

**Subject To:**

Existing building and use restrictions, and easements and rights of way of record



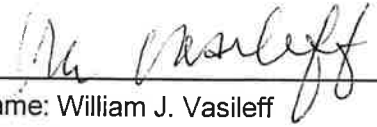
First American Title 3

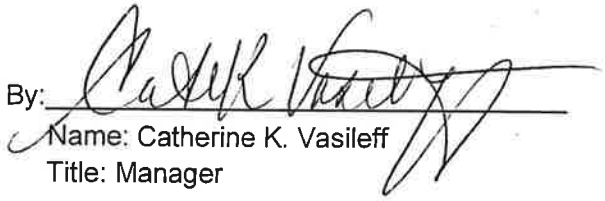
**(Attached to and becoming a part of Warranty Deed dated: March 13, 2017 between Vasileff Holdings LLC, a Michigan limited liability company, as Seller(s) and LB Land LLC, a Michigan limited liability company, as Purchaser(s).)**

Dated this March 13, 2017.

**Seller(s):**

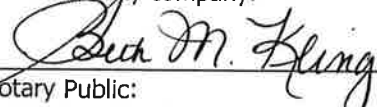
Vasileff Holdings LLC, a Michigan limited liability company

By:   
Name: William J. Vasileff  
Title: Manager

By:   
Name: Catherine K. Vasileff  
Title: Manager

State of Michigan  
County of Oakland

The foregoing instrument was acknowledged before me this March 13, 2017 by William J. Vasileff and Catherine K. Vasileff, Managers of Vasileff Holdings LLC, a Michigan limited liability company.

  
Notary Public: **BETH M. KLING**  
Notary County/State: / **NOTARY PUBLIC, STATE OF MI**  
County Acting In: **COUNTY OF MACOMB**  
Commission Expires: **MY COMMISSION EXPIRES Jun 14, 2022**  
**ACTING IN COUNTY OF Oakland**



---

*(Attached to and becoming a part of Warranty Deed dated: March 13, 2017 between Vasileff Holdings LLC, a Michigan limited liability company, as Seller(s) and LB Land LLC, a Michigan limited liability company, as Purchaser(s).)*

## **EXHIBIT A**

Land situated in the City of Birmingham, County of Oakland, State of Michigan, described as follows:

Lots 12, 13, 14 and West 48 feet of Lot 15, BIRD AND STANLEY'S ADDITION, according to the plat thereof as recorded in Liber 3 of Plats, page 7, Oakland County Records AND Lots 1 and 13, ASSESSOR'S PLAT NO 1, according to the plat thereof as recorded in Liber 45 of Plats, page 42, Oakland County Records.

Tax Parcel Number: 19-36-151-001

## LB Land LLC

5000 E GRAND RIVER AVE, HOWELL, MI 48843

---

July 18, 2022

Dear City Commission,

LB Land LLC requests the split of parcel ID# 19-36-151-027.

### **Background**

- The balance parcel, currently zoned R8, was created when the Westbrowm Condominium Association submitted its Master Deed in late 2018. Oakland County created 10 parcel IDs for the Westbrowm Condominium Master Deed, one of which being an entirely new lot.
- This creation of a new lot did not follow proper City protocol, as the Birmingham Code of Ordinances requires lot divisions to be considered in a public hearing with City Commission.

### **Reason for Split Request**

- LB Land LLC intends to build a single-family home under R2 specifications. Both the width and area of the parcel meet the minimum requirements for R2 lots. The proposed home is consistent with existing adjacent R2 single-family homes (see attached zoning map)
- The 1980 Master Plan recommends single-family residential zoning for this lot.
- The existing zoning classification of R8 is no longer appropriate given the intention to build a single-family home separate from the Westbrowm Condominiums. The property in question is currently vacant and maintained by LB Land LLC.



Anthony P. Palleschi

Representative, LB Land LLC



**Birmingham City Commission Minutes**

**May 24, 2021**

**7:30 P.M.**

**Virtual Meeting**

**Meeting ID: 655 079 760**

**Vimeo Link: <https://vimeo.com/event/3470/videos/547775342/>**

**I. CALL TO ORDER AND PLEDGE OF ALLEGIANCE**

Pierre Boutros, Mayor, opened the meeting with the Pledge of Allegiance.

**II. ROLL CALL**

Alexandria Bingham, City Clerk, called the roll.

Present: Mayor Boutros (location: Birmingham, MI)  
Mayor Pro Tem Longe (location: Birmingham, MI)  
Commissioner Baller (location: Birmingham, MI)  
Commissioner Hoff (location: Birmingham, MI)  
Commissioner Host (location: Birmingham, MI)  
Commissioner Nickita (location: Birmingham, MI)  
Commissioner Sherman (location: Birmingham, MI)

Absent: None

## 05-147-21 Public Hearing - 695 W. Brown Street – Lot Split

The Mayor opened the public hearing at 8:12 p.m.

Mayor Pro Tem Longe notified the Commission she would be recusing herself from the item because her spouse was involved in the original project from which this property was asking to be split.

City Planner Cowan presented the item.

In reply to Commissioner Sherman, Planning Director Ecker said she could provide the Commission with information about the previous development proposals regarding this lot.

Commissioner Sherman said he would rather have that information before making a decision on this item. He said he recalled there being previous disagreements between the neighbors and the developer regarding this parcel.

Christopher Brokovich, applicant, said that when he had previously proposed a development adjacent to 685 W. Brown the proposal left 685 W. Brown itself undesignated. Subsequently, he proposed to build two more townhouses on 685 W. Brown, which the neighbors were not in favor of. As a result, Mr. Brokovich chose to put 685 W. Brown on the market.

### Public Comment

Guy Simons reviewed the contents of his letter to the Commission.

In reply to Mr. Simons, PD Ecker said she could provide the interpretation of the side setback that was used to build the eight units adjacent to 685 W. Brown.

Thomas Saracino indicated he was interested in purchasing the lot if it was split within R-8 and advocated for the split.

Michael Talansky, neighbor of 695 W. Brown Street, expressed concern about the lot split proposal.

Andrew Haig expressed skepticism that adequate parking could be provided on the lots in question given the City's lot coverage ordinances and the average turning radiuses of vehicles.

In reply to Mr. Haig, CP Cowan stated that even with the lot split the eight adjacent units would still meet the minimum area-per-unit required for all units in R-8.

Mr. Reagan said the Central Birmingham Residents' Association has historically not been in favor of new multi-family residences being built on Watkins.

Maria Van Hees, neighbor of 685 W. Brown, said she and her family had purchased a nearby home with an understanding that there would be a single family home built on 685 W. Brown.

Wendy Zebrowski concurred with Commissioner Sherman's recollection and agreed that previous minutes regarding this parcel should be reviewed for clarity. She stated that in general the neighbors want this parcel to be zoned for a single family home.



Mr. Bloom said that if plans could be developed that were amenable to the neighbors, he was supportive of Mr. Saracino doing the work. He attested to Mr. Saracino's integrity and other building work in Birmingham.

Commissioner Host concurred with Commissioner Sherman's request for previous records regarding this parcel. He said the neighbors' preferences should take precedence since they live there. He also said it was an issue that the final site plan approved by the Planning Board for this parcel was subsequently changed.

The Mayor closed the public hearing at 9:06 p.m.

**MOTION:** Motion by Commissioner Hoff, seconded by Commissioner Baller:  
To direct the applicant to pursue a rezoning of the subject property to R2-Single Family Zone in order to meet the lot split requirements of the municipal code.

Commissioner Sherman commented the Commission took a similar stance regarding a proposal for the former Franklin Bank and Mountain King properties.

Commissioner Host said he concurred with the comments of Mr. Simons and Mr. Reagan.

ROLL CALL VOTE: Ayes, Commissioner Hoff  
Commissioner Baller  
Commissioner Host  
Commissioner Sherman  
Commissioner Nickita  
Mayor Boutros



## **MEMORANDUM**

City Clerk's Office

**DATE:** August 23, 2022

**TO:** Thomas M. Markus, City Manager

**FROM:** Alexandria Bingham, City Clerk

**SUBJECT:** Designation of Voting Delegate(s) for the Michigan Municipal League Annual Meeting

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### **INTRODUCTION:**

The City of Birmingham is a member of the Michigan Municipal League (MML). The MML is holding its annual meeting in Muskegon, MI on October 19, 2022. On the agenda for the meeting is the election of six members to the MML Board of Trustees and a vote on the Core Legislative Principles document.

### **BACKGROUND:**

A resolution by the City Commission is required to designate a voting delegate and alternate voting delegate to vote on behalf of the City. The deadline to submit delegate information to the MML is September 18<sup>th</sup>, 2022. City Manager Thomas Markus will attend the October 19<sup>th</sup>, 2022 Michigan Municipal League meeting in Muskegon, MI.

### **LEGAL REVIEW:**

n/a

### **FISCAL IMPACT:**

n/a

### **PUBLIC COMMUNICATIONS:**

Information regarding this appointment will be provided along with the agenda packet on the city website and public communication is permissible in accordance with standard commission procedure.

### **SUMMARY:**

The City Commission is being asked to appoint a City Commission member as official voting delegate and appoint a City Commission member as the alternate voting delegate, for the MML Annual Meeting to be held October 19, 2022 in Muskegon, MI.



**ATTACHMENTS:**

1. Letter from MML dated July 18, 2022

**SUGGESTED COMMISSION ACTION:**

Make a motion adopting a resolution to appoint \_\_\_\_\_ as the City of Birmingham's official voting delegate and \_\_\_\_\_ as the alternate delegate, for the Michigan Municipal League Annual Meeting to be held in Muskegon, Michigan on October 19, 2022.

July 18, 2022

Michigan Municipal League Annual Meeting Notice

(Please present at the next Council, Commission or Board Meeting)

Dear Official:

The Michigan Municipal League Annual Convention will be held in Muskegon, October 19-21, 2022. The League's "Annual Meeting" is scheduled for 4:30 pm on Wednesday, October 19 in Section D meeting room at the VanDyk Mortgage Convention Center. The meeting will be held for the following purposes:

1. Policy. A) To vote on the Core Legislative Principles document.

In regard to the proposed League Core Legislative Principles, the document is available on the League website at <http://www.mml.org/delegate>. If you would like to receive a copy of the proposed principles by fax or email, please call Monica Drukis at the League at 800-653-2483.

B) If the League Board of Trustees has presented any resolutions to the membership, they also will be voted on. (See #1 on page 2.)

In regard to resolutions, member municipalities planning on submitting resolutions for consideration by the League Trustees are reminded that under the Bylaws, they must be submitted to the Trustees for their review by September 18, 2022.

2. Other Business. To transact such other business as may properly come before the meeting.

Designation of Voting Delegates

Pursuant to the provisions of the League Bylaws, you are requested to designate by action of your governing body one of your officials who will be in attendance at the Convention as your official representative to cast the vote of the municipality at the Annual Meeting, and, if possible, to designate one other official to serve as alternate. Please submit this information through the League website by visiting <http://www.mml.org/delegate> no later than September 18, 2022.

We love where you live





Regarding the designation of an official representative of the member to the annual meeting, please note the following section of the League Bylaws:

“Section 4.4 - Votes of Members. Each member shall be equally privileged with all other members in its voice and vote in the election of officers and upon any proposition presented for discussion or decision at any meeting of the members. Honorary members shall be entitled to participate in the discussion of any question, but such members shall not be entitled to vote. The vote of each member shall be cast by its official representative attending the meeting at which an election of officers or a decision on any proposition shall take place. Each member shall, by action of its governing body prior to the annual meeting or any special meeting, appoint one official of such member as its principal official representative to cast the vote of the member at such meeting, and may appoint one official as its alternate official representative to serve in the absence or inability to act of the principal representative.”

1. Statements of Policy and Resolutions

Regarding consideration of resolutions and statements of policy, under Section 4.5 of the League Bylaws, the Board of Trustees acts as the Resolutions Committee, and “no resolution or motion, except procedural and incidental matters having to do with business properly before the annual meeting or pertaining to the conduct of the meeting, shall be considered at the annual meeting unless it is either (1) submitted to the meeting by the Board of Trustees, or (2) submitted in writing to the Board of Trustees by resolution of the governing body of a member at least thirty (30) days preceding the date of the annual meeting.” Thus, the deadline this year for the League to receive resolutions is September 18, 2022. Please submit resolutions to the attention of Daniel P. Gilmartin, Executive Director/CEO at 1675 Green Rd., Ann Arbor, MI 48105. Any resolution submitted by a member municipality will go to the League Board of Trustees, serving as the resolutions committee under the Bylaws, which may present it to the membership at the Annual Meeting or refer it to the appropriate policy committee for additional action.

Further, “Every proposed resolution submitted by a member shall be stated in clear and concise language and shall be accompanied by a statement setting forth the reasons for recommending the proposed resolution. The Board shall consider the proposal at a Board meeting prior to the next annual meeting and, after consideration, shall make a recommendation as to the advisability of adopting each such resolution or modification thereof.”

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2. Posting of Proposed Resolutions and Core Legislative Principles

The proposed Michigan Municipal League Core Legislative Principles and any new proposed Resolutions recommended by the Board of Trustees for adoption by the membership will be available on the League website, or at the League registration desk to permit governing bodies of member communities to have an opportunity to review such proposals and delegate to their voting representative the responsibility for expressing the official point of view of the member at the Annual Meeting.

The Board of Trustees will meet on Wednesday, October 19 at 4:30 pm in the Delta Hotel for the purpose of considering such other matters as may be requested by the membership, in addition to other agenda items.

Sincerely,

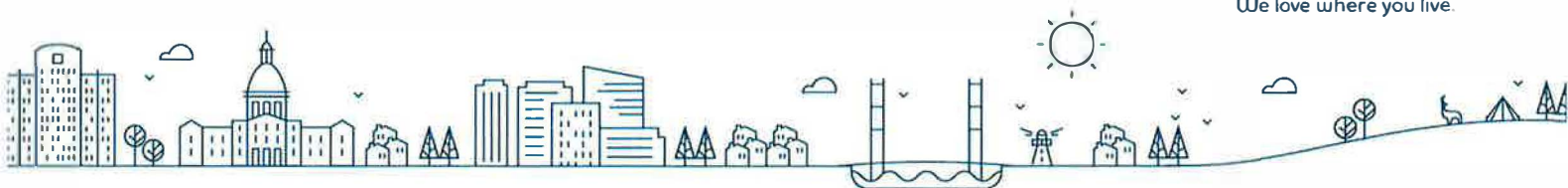


Barbara Ziarko  
President  
City Council, Sterling Heights



Daniel P. Gilmartin Executive  
Director & CEO

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## **MEMORANDUM**

City Manager's Office

**DATE:** August 24, 2022

**TO:** Thomas M. Markus, City Manager

**FROM:** Melissa Fairbairn, Assistant to the City Manager

**SUBJECT:** Birmingham Country Club Pickleball Expansion

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### **INTRODUCTION:**

At the August 15, 2022 City Commission meeting, residents of Birmingham and Beverly Hills in the vicinity of the Birmingham Country Club requested that the City Commission formally oppose the Birmingham Country Club's sports court expansion proposal at Bloomfield Township.

### **BACKGROUND:**

The Birmingham Country Club is located in Bloomfield Township on Saxon Drive and part of Norfolk adjacent to the City of Birmingham. The Birmingham Country Club has submitted a proposal to Bloomfield Township to build four (4) additional sports courts to be used for pickleball on the Birmingham Country Club's property near Saxon Drive and Norfolk.

At the August 15, 2022 City Commission meeting, Birmingham and Beverly Hills residents who live near the proposed site spoke during public comment to request that the City Commission express opposition to Bloomfield Township for the Birmingham Country Club's sports court expansion. Residents cited noise, traffic, and non-compliance to existing Special Land Use permits (SLUPs) for their opposition to the Birmingham Country Club's plan.

Planning Director Nicholas Dupuis contacted Bloomfield Township Planning Director Patricia Voelker for additional information about the sports court expansion and to address concerns raised by residents at the August 15, 2022 meeting. Planning Director Dupuis learned that the proposal is at the Planning Commission stage and awaiting amendments. Bloomfield Township Planning Director Voelker also explained that there were no special conditions assigned to the Special Land Use permit as were described by the neighbors.

Staff also contacted General Manager Taras Strychar to invite a representative from the Birmingham Country Club to the August 29, 2022 City Commission meeting.

### **LEGAL REVIEW:**

No legal review is required.

**FISCAL IMPACT:**

There is no fiscal impact associated with this item.

**PUBLIC COMMUNICATIONS:**

None

**SUMMARY:**

At the August 15, 2022 City Commission meeting, Birmingham and Beverly Hills residents who live in the vicinity of the Birmingham Country Club spoke during public comment requesting that the City Commission express opposition to Bloomfield Township for the Birmingham Country Club's sports court expansion.

**ATTACHMENTS:**

- August 15, 2022 City Commission Public Comment Transcript
- Email from Sheila Brice – Birmingham Country Club's Requests
- August 24, 2022 Memo – Birmingham Country Club – History of Recent Tennis Complex Additions
- Letter to General Manager Taras Strychar





**MEMORANDUM**

City Clerk's Office

**DATE:** August 16, 2022

**TO:** Thomas M. Markus, City Manager

**PREPARED BY:** Isabella Mikhail Clerk's Office Intern

**REVIEWED BY:** Alexandria Bingham, City Clerk

**SUBJECT:** August 15, 2022 - City Commission – Public Comment Transcript

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At the August 15, 2022 City Commission meeting the following public comment was heard regarding the proposed recent expansion of pickleball courts at the Birmingham Country Club.

The video recording of this meeting can be viewed at: <https://vimeo.com/event/3470>

**Susan Randall - City of Birmingham resident** stated, "Hi, I'm Susan Randall from 1220 Saxon in Birmingham and I'm here to make comments about the Birmingham Country Club pickleball expansion. And I would greatly appreciate the uh City of Birmingham uh support in this endeavor to maintain uh the tranquility and uh integrity of our neighborhood. Um moving in many many years ago I expected living next to a golf course to listen to noise from occasional weddings and golf outings. And that was fine and then there was swim meets. It got a little louder but that was okay, and then they installed tennis courts so you'd hear the dull thud, occasionally, which was tolerable and there was tennis competitions which added a little bit more noise. Um and then unfortunately in 2016, the the country club uh wanted to expand to pedal board, pa- paddle ball courts and a so-called warming hut and that was to be a winter sport and um shame on me for not doing any research as to the noise that would um add to the mix. And shame on the golf course for not um living up to their word and their promises that was to be a winter sport and warming hut was to be used during the winter only, it is now years used year round as a party hut. Um the people that use it are hauling in coolers full of liquor and it's not monitored and the use of the courts and the warming hut isn't monitored by the staff as far as we've been told um by some of the members. So the noise is increasing, the paddle ball noises increasing to the load uh of the le- level of noise in the area. Um and, and again they were only supposed to use it for the winter, they're using it year round, so that's bringing more and more cars, more speeding down our street, um more parking on easements, tearing up people's lawns, blocking driveways, impeding traffic on some of the roads. Um, we

have a little speed indicator on our road and in walking occasionally i've seen it go up to 55 miles an hour and it's a 25 mile an hour zone. So it's pretty bad, obviously with a lot of drinking and who knows what else goes on there there's a lot of weaving and bobbing down our street. And we have a lot of children in the area. So it really doesn't, it's not conducive to a family-friendly neighborhood anymore. And now they're asking for um a paddle ba- uh pickleball ex- expansion in that same um south uh east corner of the golf course. And um there's a group of us from Beverly hills and and Birmingham that have done studies and researched the noise from a pickleball court is very, very loud. And the golf courses already turned some of the tennis courts into pickleball courts. So now we're hearing that loud annoying whack all day long, everyday, late into the night, screaming and yelling. Um loud music, there's um I-If you know anything about pickleball, and we're not against that we're against where they're putting it, uh if you know anything about pickleball it's a fast moving sport, lots of people in and off the court so again, even more cars impeding traffic, parking on neighbors lawns, so we're really um objecting to where they want to put that. They have over 100 acres. You would think that they could put it somewhere where it's not going to be affecting neighbors in the area. I've collected, with a couple other neighbors, we've collected over 50 signatures uh for the petition and um we have an online petition. I don't recall the last time I looked there was 40 or 50 residents between Beverly hills and Birmingham on that. Um and uh and the the Birmingham or the Bloomfield Township Board suggested that, even though they had enough for a quorum, they didn't vote on it a couple months ago they suggested that the country club meet with us residents. I wasn't able to go to the meeting last week but I've seen the minutes and I've heard from some of the other residents that they were not very welcoming, they were rather um uh disconnected, uh they were supposed to do presentation on their on their um plan and all they did was throw up a plan, from what I hear, and say this is what we're going to do. So, um, we had as a group put together a number of questions for them around traffic studies, noise studies, um, I'm not sure what all they committed to, but even with all that this just cannot go on for for the tranquility and integrity of our neighborhood. Um, I'm not close enough to hear what said, but some of the ne- neighbors closer are hearing a lot of foul language. Like I said, it's just not conducive to family- friendly neighborhood anymore. So I'm hoping that we can get your support in some way. I know they're not probably violating any city code, um but it is very disturbing what's going on in in their lack of care. Thank you." 03:15 → 08:15

**Maureen Field, City of Birmingham resident** stated, "Good evening, I'm Maureen Field at 1732 Norfolk street in Birmingham, and, as you know, the Birmingham Country Club is not aptly named, because it is not in Birmingham it's in Bloomfield Township. Because of this, and all of the houses and the homes that are affected by this pickleball expansion plan are in the city of Birmingham and in Beverly hills. Because we don't have a lot of leverage with the Bloomfield Township, we're asking for your support and the village of Beverly Hills support in order to uh help us uh have more leverage with the township in order to place the pickleball courts in another location. They uh are within 10 feet, right? Yes, or five feet? Ten or five feet of the of the fence line right across the street from a home in at the corner of Norfolk and Saxo-Saxon and we feel that this is very close and and going to be cause great annoyance for the many of the homes in the area, so we're asking for your support and thank you very much." 08:32 → 9:48



**Tom Schneider, City of Birmingham resident** stated, "Hello, my name is Tom Schneider. I live at 1288 Saxon Drive. Um don't want to beat a dead horse, have the same complaint as everyone else um just requesting that you guys support us. Um, Birmingham Country Club is looking to place these pickleball courts within 75 feet of our house. Um, the current statute is 200 feet from any residents or lot line um which, I mean, existing facilities have already required variances to be placed within that distance and now they're asking to even further encroach on that setback so uh I-I don't know obviously it's a Bloomfield Township issue but anything you guys can do to support us we'd greatly appreciate. Um, you know we love living in the area and just don't want to see, you know, our outdoor time captured with a constant banging of pickleball paddles and and swearing of the players so um really appreciate anything you guys can do. Um, thank you for the consideration." 10:01 → 10:57

**Pete Webster, resident of Beverly Hills** stated, "Good evening. I'm uh Pete Webster, I live on Balmoral street, I'm on the Beverly Hills side, I'm here in support of my neighbors on the Birmingham side. So similar to this process where the folks in your city are coming to you to ask for help and support in opposing the expansion of a non-conforming use uh and the nuisance that is going on now, and the desire of the Birmingham Country Club to expand that uh the same effort is going on at the village of Beverly Hills, and because we don't live in the township when we don't have that representation of those folks there, that we're asking our elected officials that represent us to also uh support our opposition to this request. The Country Club is currently operating um not in compliance with the approvals of the special use permit that they have had since 2016. They promised and made a commitment that the paddleball courts would only be used during the winter, they're using it year round. They had a promise and a commitment that the lights that were be used in the winter time would only be used in the wintertime, and they're using them year round. They had a promise and commitment and they actually moved the paddle courts away from uh the original location and they are now trying to put the pickleball courts in the exact same spot where they promised not to put them in the past. And that is, neighbors have said um the existing use of the courts for pickleball is not permitted, but yet they're still doing it, and that the noise itself is a nuisance and in violation of the township ordinances. It's important to the city, because of the concerns expressed by the folks that live in the city. It's also important to the city because uh the country club uh apparently, in some fashion, is going to tie into your stormwater system so it's a it's a concern here as well. So I just wanted to show my support for the folks across the street and to outline, just touching on a few of the things um that are of grave concern of folks who have um made their lives and made their commitment uh to their communities and invested in their homes and in their families and need your support. Thank you." 11:07 → 13:21

**Susan Randall** again stated, "Just again Susan Randall at 1220 Saxon um and what wasn't brought up to in the 2016 effort um they pretty much ripped up the corner of um Norfolk and Saxon um where uh Tom and Mackenzie live and they never really repaired that it looks horrible it's all chopped up. When it rains it floods. In the winter, when there's a snow melt or it's wet it floods and then it turns to ice. So as people are approaching that corner to turn out onto Saxon, they're sliding right onto Saxon, um, if they don't see that that puddle that's frozen over so it's become a safety hazard as well at that corner and looks quite the mess." 13:55 → 14:37



Melissa Fairbairn &lt;mfairbairn@bhamgov.org&gt;

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**Fwd: Birmingham Country Club's requests**

1 message

**Tom Markus** <tmarkus@bhamgov.org>

Sun, Aug 21, 2022 at 7:06 PM

To: Alex Bingham &lt;abingham@bhamgov.org&gt;, Melissa Fairbairn &lt;mfairbairn@bhamgov.org&gt;

Cc: City Commission &lt;city-commission@bhamgov.org&gt;, Department Heads &lt;departmentheads@bhamgov.org&gt;

Please attach this correspondence to the agenda item on 8-21.

----- Forwarded message -----

From: **Therese Longe** <tlonge@bhamgov.org>

Date: Sun, Aug 21, 2022 at 5:48 PM

Subject: Fwd: Birmingham Country Club's requests

To: Tom Markus &lt;tmarkus@bhamgov.org&gt;

----- Forwarded message -----

From: **Sheila Brice** <sheilabrice3@gmail.com>

Date: Sun, Aug 21, 2022, 5:01 PM

Subject: Birmingham Country Club's requests

To: &lt;publiccomment@bloomfieldwp.org&gt;

Cc: &lt;tlonge@bhamgov.org&gt;, &lt;jcampbell@villagebeverlyhills.com&gt;

August 22, 2022

Bloomfield Township

Recently via Zoom I attended the August 16th Village of Beverly Hills Council Meeting and via cable the Birmingham City Commission's August 15th meeting.

I carefully listened to what concerned citizens shared regarding ongoing issues with Birmingham Country Club's pickle ball courts and negative residuals emanating from BCC's disregard for the 2016 agreements with Bloomfield Township on the agreed variants.

After more research I have signed the petition to Bloomfield Township to object to any expansions for pickle ball courts at Birmingham Country Club. For 6 years the existing variances have been violated. Also, 4 more proposed courts goes against BCC's earlier special land use agreement where not to establish courts.

I have resided near the club for 46 years and can attest with the neighbors on both sides of Saxon, that the increased noise, additional traffic and expanded hours of lighting, day and evening have definitely affected the quality of life and tranquility in the near and surrounding area. Certainly pickle ball is a terrific sport. However, the constant "rat a tat tat", similar to roofers working, should not be assaulting the neighborhoods, going on beyond considerate hours of the day.



Respect for all neighbors as well as cooperation, collaboration and partnering with municipalities is vital to dialogue and problem solving for issues affecting our communities.

I so appreciate that the Village of Beverly Hills has attended meetings with residents and BCC, as well placed the issue on their Village agendas to seek alternatives to this growing issue. I appreciate that public comment on this issue was heard at the last Birmingham City Commission meeting and that it has been placed on the August 29th next meeting.

I sincerely hope that Bloomfield Township will deny the newly proposed variance, work with both municipalities, BCC and residents to review operations affecting lighting, noise, parking, safety and traffic.

Thank you for your consideration and study,  
Sheila Brice  
1587 Fairway  
Birmingham, MI 48009



## MEMORANDUM

Planning Department

**DATE:** August 24, 2022

**TO:** Thomas M. Markus, City Manager

**FROM:** Nicholas Dupuis, Planning Director

**SUBJECT:** Birmingham Country Club – History of Recent Tennis Complex Additions

---

**February 1, 2016** – Bloomfield Township Planning Commission recommended approval to the Township Board subject to compliance with the following:

1. The recommendations of Township Departments;
2. The recommendations of the Township's landscape architect;
3. Light poles to be put on timers to be turned off at 10 pm;
4. Obtaining variances from the Zoning Board of Appeals;
5. The petitioner adding 35 parking spaces to duplicate what they have currently or as close as possible.

**April 12, 2016** – The Bloomfield Township Zoning Board of Appeals granted approval of the following:

1. Five (5) 2 ft. by 2 ft. by 4 ft. 2 in. high illuminated piers associated with a 4 ft. fence located in the Saxon Rd. frontage;
2. Four (4) heated platform tennis courts, enclosed by a 12 ft. high fence, located in a front yard and set back more than 75 ft. from the Saxon Rd. frontage;
3. A 28 ft. by 34 ft. warming hut structure with an overall height of 28 ft. located in the Saxon Rd. frontage, and set back 50 feet from the front lot line;
4. A 6 ft. diameter gas fire pit on a raised deck, located behind the proposed warming hut and setback more than 60 ft. from the property line;
5. Relocation of two (2) existing 9 ft. by 9 ft. by 10 ft. storage sheds behind the existing pro shop building; and
6. To extend a nonconforming use, on a site with a deficient right-of-way width less than 120 ft. and a site that is located closer than two hundred (200) feet from the lot line of any adjacent residential land, by occupying a greater area of land.

The majority of the variances were seeking approval of the various accessory structures proposed in the Saxon Road frontage and/or within the 200 ft. setback from residential property. The last variance was to extend/expand the nonconformity that is a recreational use with a thoroughfare having less than 120 ft. of right-of-way.



Notably, the plan was revised in between Planning Commission and Zoning Board of Appeals. The topic was originally scheduled on the February 9, 2016 ZBA agenda, but the item was tabled to allow the applicant time to discuss the requests with the surrounding neighbors, which resulted in a revised plan.

**August 8, 2016** – The Bloomfield Township Board of Trustees approved the Special Land Use and Final Site Plan for the tennis complex expansion:

1. Final Site Plan was approved subject to the following conditions:
  - a. Compliance with the requirements of the Township Departments.
  - b. Compliance with the requirements of the Township's Landscape Architect.
  - c. Compliance with the requirements of the Township's Traffic Engineer
2. Special Land Use Permit was approved with the following condition:
  - a. The light poles for the platform tennis courts being turned off at 10:00 p.m. daily

**June 20, 2022** – The Bloomfield Township Planning Commission reviewed a proposal for four additional sport courts. The BCC will need variances for the same issues from 2016, which is the proximity to residential, as well as the existing Saxon right-of-way width. The item is not currently scheduled on any upcoming agendas of the Planning Commission, nor the ZBA.

On August 18, 2022, Planning Director Nicholas Dupuis spoke with Bloomfield Township's Planning Director, Patricia Voelker and discussed the new sport court expansion, as well as the 2016 expansion and the compliance with their Special Land Use Permit. Planning Director Voelker noted the following:

- Their team has been passing comments/letters etc. received about the project onto the applicant (BCC) to consider.
- The Township Planning team asked them to contact their neighbors to discuss the project and provided them with a mailing list, but is unsure if that ever materialized, and does not have a copy of any of those notices/letters if they did go out.
- The project is still at Planning Commission stage, waiting for amendments.
- The only complaints that they have fielded regarding the current tennis complex were light and noise complaints. They had not heard anything about liquor or large gatherings. She mentioned that the heated patio area was not intended or approved for parties or gatherings, rather it was to be for members and people utilizing the courts at the time.
- The only special condition assigned to the SLUP was that lights for the tennis courts had to be off by 10:00 PM.

Furthermore, direct accusations were made at the Birmingham City Commission meeting of August 15, 2022 that the Birmingham Country Club was not in compliance with their Special Land Use Permit, the comments raised are summarized below:

- The BCC is only supposed to be using the paddleball [tennis] courts in the winter, and they are being used year-round.
- The sport court lighting was only to be used in the winter, and lights are being used year-round.
- The BCC moved the courts from their original proposed location, and now they are trying to put new courts in the area that they promised not to put them in 2016.

In speaking with her again on August 24, 2022, Planning Director Voelker confirmed that there was no special conditions or seasonality assigned to the Special Land Use, and that she understood the intent of the expansion to be to bring more year-round activity to the BCC, which is why heated courts and a warming hut was included in the plans. She also confirmed that the Township Planning team stressed outreach to their neighbors, understanding that the new sport courts are closer to the lot line and residential zones and citing their experiences from the 2016 expansion. In addition to the lighting and noise complaints that she has fielded, she also mentioned that there were some recent complaints about parking on side streets, which was addressed and shown not to be BCC activity, and that there was some shrubbery that was dead or dying, and that she was told that the evergreens are ordered to replace the dead/deteriorated plant material.

Finally, there are no separate resolutions or contract documents related to special land uses in Bloomfield Township. The Board of Trustees minutes are what they use to assign conditions and enforce SLUP's.













## **Birmingham Country Club – Dimensional Details**

After reviewing the site plans for the proposed sport court (pickleball) expansion, the Planning Division has provided some key dimensions of the Birmingham Country Club proposal below, and has provided dimensions for Birmingham's own sport court (pickleball) at Crestview Park for reference:

### **Bloomfield Country Club Sport Court Expansion:**

- Proposed sport court to east property line (@ Norfolk) - 171 ft. 2 in.
  - Norfolk ROW width varies, roughly 39 ft. to 44 ft. in the area of the expansion.
- Proposed sport court to south property line (@ Saxon) - 5 ft. 1 in.
  - Saxon ROW is 93 ft.
- Existing sport court to east property line (@ Norfolk) - 286 ft. 9 in.
- Existing warming hut sidewalk to south property line (@ Saxon) - 38 ft. 9 in.

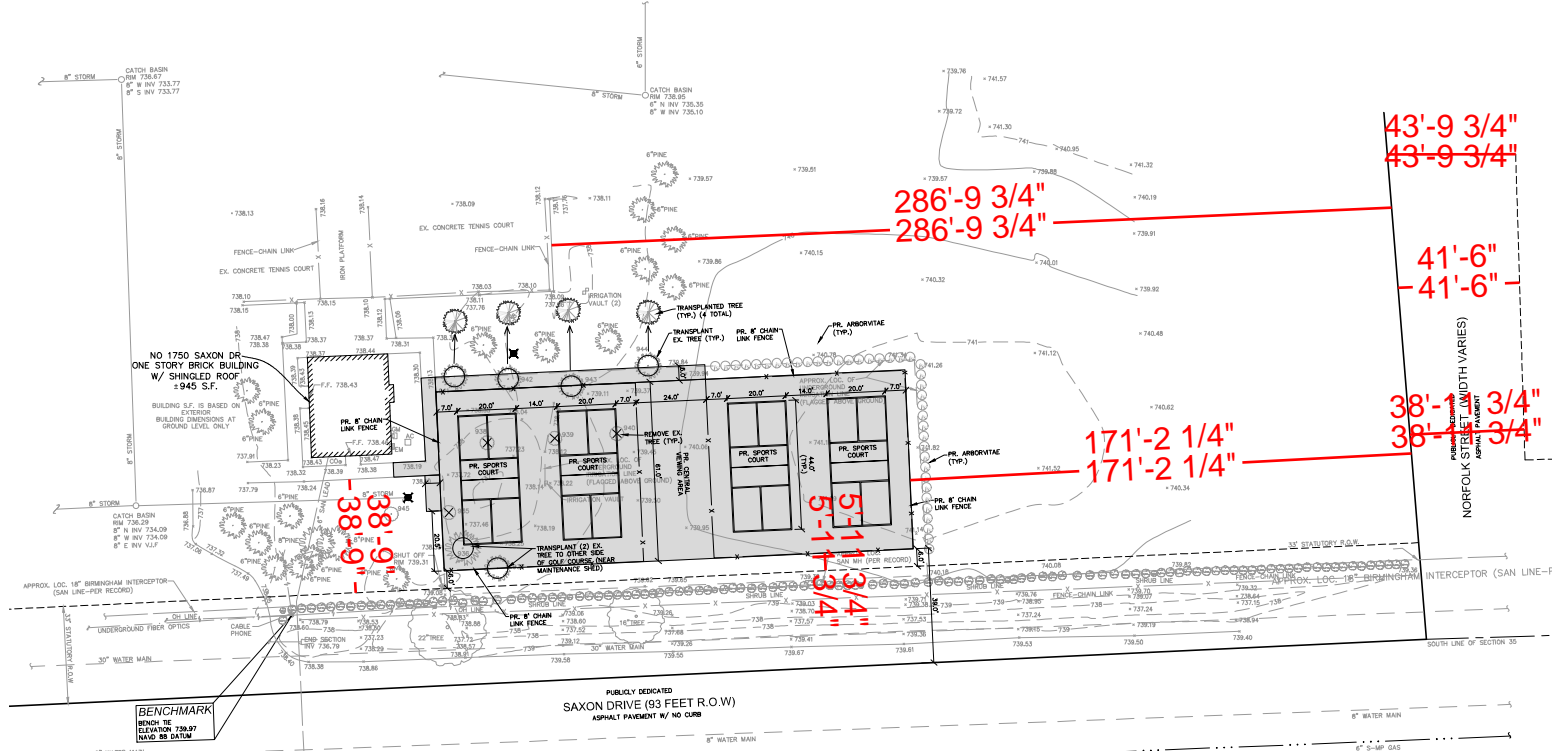
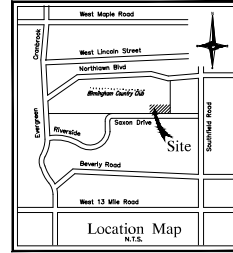
### **Crestview Park Sport Court:**

- Sport court to east property line (@ Shipman) - 36 ft.
- Sport court to south property line (@ Southlawn) - 9 ft.
- Sport court to west property line (@ Southfield) - 122 ft.

### **Measurements from sport courts to residential building envelopes:**

- Crestview court to 1691 Shipman (east) - 141 ft.
- Crestview court to 1700 Shipman (south) - 89 ft.
- BCC expansion to 1288 Saxon (east, Birmingham) - 252 ft.
- BCC expansion to 18439 Saxon (south, Beverly Hills) - 144 ft.





**COVID-19 PANDEMIC CONDITION**  
 DUE TO THE UNPRECEDENTED COVID-19 PANDEMIC CONDITION AND RESTRICTIONS THE STANDARD DATA WHICH IS OBTAINED FROM MISS DIG / CALL 811 HAS BEEN RESTRICTED TO CRITICAL INFRASTRUCTURE ONLY. WE WILL MAKE EVERY EFFORT TO OBTAIN CURRENT REFERENCE DATA FROM THE GOVERNING AGENCIES HOWEVER, THIS DATA MAY BE PARTIAL OR INCOMPLETE. WE WILL MAKE THE SURVEY WITH THE BEST AVAILABLE INFORMATION FROM OUR FIELD SURVEY AND OTHER AVAILABLE REFERENCE DATA. WE WILL NOT BE RESPONSIBLE FOR INCOMPLETE OR PARTIAL DATA PROVIDED BY THIRD PARTY FACILITY OWNERS. NEE IS NOT RESPONSIBLE FOR BURIED UTILITIES FOR WHICH PLANS WERE NOT FURNISHED OR CANNOT BE OBSERVED IN THE FIELD.

ALL CONSTRUCTION DOCUMENTS WILL BE UPDATED WHEN THE UTILITY INFORMATION IS PROVIDED BY THE FACILITY OWNER UP UNTIL THE TIME OF SUBMITTAL. ONCE THE PLANS HAVE BEEN SUBMITTED AND APPROVED IT IS THE CONTRACTOR'S RESPONSIBILITY TO OBTAIN A MISS DIG TICKET PRIOR TO COMMENCING ANY CONSTRUCTION INCLUDING EXCAVATION. CONTRACTOR SHALL IMMEDIATELY NOTIFY NEE OF ANY UTILITIES FLAGGED BY MISS DIG THAT WERE NOT SHOWN ON THE PLANS OR UTILITIES UNCOVERED DURING THEIR WORK.

**PAVING LEGEND**

	PROPOSED CONCRETE PAVEMENT
	PROPOSED ASPHALT PAVEMENT

**LEGEND**

	EXISTING SANITARY SEWER
	SAN. CLEAN OUT
	EXISTING WATERMAIN
	EXISTING STORM SEWER
	EXISTING BURIED CABLES
	OVERHEAD LINES
	EXISTING GAS MAIN
	PR. SANITARY SEWER
	PR. WATER MAIN
	PR. STORM SEWER
	PR. R. Y. CATCH BASIN
	PROPOSED LIGHT POLE

SEAL

PROJECT  
 Birmingham Country Club

CLIENT  
 Birmingham Country Club

Contact: Taras Streychar  
 Ph: (248) 644-1111

PROJECT LOCATION  
 Part of the Southwest 1/4 of Section 35 T. 2 North, R. 10 East Bloomfield Township, Oakland County, Michigan

SHEET  
 Dimensional Site Plan



DATE ISSUED/REVISED  
 02-15-22: SPA & P&A  
 02-24-22: TRS SURVEY  
 02-29-22: FIN. TRS COMMENTS

DRAWN BY:  
 A. Eizember

DESIGNED BY:  
 A. Eizember

APPROVED BY:  
 P. Williams

DATE:  
 February 15, 2022

SCALE: 1" = 20'

30 10 0 10 20 30

NEE JOB NO. SHEET NO.  
 1942-05 SP-2



# City of Birmingham

*A Walkable Community*

August 18, 2022

Taras Strychar  
General Manager  
Birmingham Country Club  
1750 Saxon Drive  
Birmingham, MI 48009

Dear Mr. Strychar,

At the Monday, August 15, 2022 City Commission meeting, several Birmingham residents who live near the Birmingham Country Club spoke during public comment about the club's proposed pickleball expansion. The City Commission will discuss the residents' comments at the August 29, 2022 City Commission meeting. The meeting will be at 7:30 p.m. at City Hall located at 151 Martin Street. The Birmingham Country Club is invited to send a representative for the City Commission's discussion regarding the club's pickleball court expansion.

Sincerely,

Melissa Fairbairn  
Assistant to the City Manager  
City of Birmingham





## **MEMORANDUM**

Police Department

**DATE:** August 24, 2022

**TO:** Thomas M. Markus, City Manager

**FROM:** Mark H. Clemence, Chief of Police

**SUBJECT:** Traffic Calming Measures – Speed Tables/Speed Humps

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### INTRODUCTION:

The issue of speed bumps (humps) was brought up at the City Commission meeting on Monday, August 15, 2022. Reducing vehicular speed throughout the City is a common discussion point to enhance pedestrian safety, non-motorized transportation safety and vehicle safety. The Multi-Modal Transportation Board (MMTB) has previously examined the issue of speed tables and speed bumps as a method to encourage vehicles to slow down in residential neighborhoods. On March 3, 2022, the primary focus of the MMTB meeting was a presentation by staff and the City's traffic engineering consultants about traffic calming measures that included speed tables and speed bumps.

### BACKGROUND:

The MMTB members have commented that most of the negative comments they hear from residents are about traffic speeds in their neighborhoods. City commissioners would most likely agree that they too receive complaints from residents about speeding vehicles. The police department receives many complaints about speeding vehicles and has a policy in place to address those complaints with increased speed traffic enforcement, radar trailers, radar speed boards and in person/telephone discussions with residents. On March 3, 2022, staff made a presentation to the MMTB about how speed studies are requested and completed in the City and what measures can be used to lower speeds.

Commander Scott Grewe from the police department reviewed how speed studies are conducted by the police department. Other City departments, like the engineering department, also conduct traffic surveys. This information is shared between all City departments who request it. Speed studies are usually conducted for three reasons:

1. At the request of a citizen.
2. In conjunction with a proposed City project or traffic change.
3. As part of the police department's on-going speed survey project to obtain speed and traffic volume measurements on the majority of the City's residential streets.

When conducting speed and volume surveys, the police department uses a small black box (clandestine radar) that is virtually invisible to motorists to record speeds for each vehicle (not a police cruiser with a radar gun) and record the number of vehicles traveling on the street (volume of vehicles). Speeds are measured and recorded using the 85th Percentile, which is a national standard. This 85th Percentile describes the speed in miles per hour for the 85th car out of 100, with the idea that 85% of the traffic drives at or below a safe speed, and 15% drive above that speed, including some outliers who drive much too fast and are the biggest concerns in terms of safety.

Police department speed survey data shows that for most streets, the actual traffic speeds are at or below 25 miles per hour. In the State of Michigan, all public residential streets have a 25 mph speed limit. The police department also uses some permanent electronic speed boards, where the motorists are alerted about their actual speed compared to the posted speed (such as along Southfield Road north of 14 Mile by Crestview Park) to assist drivers in monitoring their speed.

In the recent past, the City Commission spent a considerable amount of time developing a City policy on residential street width. The MMTB, in consideration of bicycling and the need for on-street parking, did not support reducing street width except for in cases where streets were more than 30 feet wide. This was based on studies reviewed by the City's traffic engineering consultants (MKSK and Fleiss and Vanderbrink), at the request of the City Commission, that showed that reducing the street width by a few feet had a negligible impact on speeds (speeds are affected more by landscaping, the presence of sidewalks, crosswalks, setbacks and the general character of the neighborhood).

According to the City's contracted traffic engineers, when implemented for speed control, speed humps are constructed as raised areas approximately 12 to 20 feet long and about 3 to 4 inches high. A series of speed humps (two or more) is necessary to be effective for speed control and need to be placed in a series at 300 to 600 foot spacing. The driveway density and on street parking throughout Birmingham makes it difficult to implement throughout the City. Additionally, many streets do not have curbs and additional steps must be taken to prevent circumnavigation around the humps.

Additional items to consider when installing speed humps on a corridor include:

1. They have a jarring "rideability" for all drivers and can cause severe pain for elderly drivers and those with certain disabilities.
2. They force large vehicles, such as emergency vehicles and those with rigid suspensions, to travel at slower speeds, adding approximately 3-10 seconds of response time for each location.
3. They may increase noise and air pollution.
4. The aesthetics of installing 10-20 speed humps and associated signing and striping on a corridor may not be desirable.



5. Some damage from snowplows may be experienced; however, in most cases there was no damage since snowplow operators do not plow down to the pavement on local streets where speed humps are located.

The MMTB also wanted to know what other measures are being used by other cities to lower speeds and how their programs work. Again, the City's traffic engineering consultants (MKSK and Fleiss and Vanderbrink) surveyed some of the leading communities in traffic calming including Farmington Hills (a 20 plus year history), Rochester Hills, Ann Arbor, Grand Rapids and Detroit. The general findings were:

1. Several cities use speed tables (a longer version of speed humps in terms of length).
2. Speed humps are usually used where the 85th percentile is 32-35 MPH or more. When speeds are at or below 25 MPH, as is the case on the studied streets in Birmingham, speeds are not impacted. Some cities indicated that speeds actually went up between the speed humps.
3. One problematic issue arose where speed humps were added to a particular street, motorists began to use the parallel streets instead, pushing the original problem to other streets. In Birmingham, with much of the City laid out in a grid pattern, this could be very difficult to overcome. The City has seen this type of behavior in the past with residential permit parking. Once one street received permit parking, the vehicles began parking on the next street over.
4. Most cities start with a process to involve the residents in the study (to see who are the speeders) to determine if the problem is perceived or real, based on 85th percentile speeds.
5. If there is a speeding problem, most cities require the residents to agree to the system with the residents paying a percentage of the cost of installation. (Cost varies depending upon if the speed humps are more temporary looking or have pavers, landscaping and other enhancements. The cost varies from \$2,000 to \$5,000 per location).
6. Some cities, like Rochester Hills, require that all the homeowners adjacent to the proposed speed humps must sign off or approve of the installation.

LEGAL REVIEW:

None at this time.

FISCAL IMPACT:

None at this time.

## PUBLIC COMMUNICATIONS:

The MMTB is a public meeting with published agendas and minutes. The police department, planning department and the engineering department are all participatory staff liaisons to the MMTB. The police department encourages residents to bring their issues before the MMTB for discussion and assistance. In addition to the March 3, 2022 meeting on traffic calming and speed tables/humps, the MMTB held informational meetings on traffic calming on the following dates:

1. November 5, 2020: the City's contract traffic engineers presented a best practice training session on traffic calming. The training covered the Federal Highway Administration's Guide for improving pedestrian safety at uncontrolled crossing locations and the six phases that go into selecting the proper countermeasures.
2. December 3, 2020: Speed tables were discussed during conversations about traffic calming best practices and how speed tables are less detrimental for snowplows than speed humps. The conversation also included that while speed tables are more expensive, they are better for fire engines, more effective at slowing traffic and provide a useful space for pedestrians to cross the street.

## SUMMARY:

Reducing vehicular speed throughout the City is a common discussion point to enhance pedestrian safety, non-motorized transportation safety and vehicle safety. The MMTB has previously examined the issue of speed tables and speed humps as a method to encourage vehicles to slow down in residential neighborhoods as part of a larger discussion on traffic calming as a whole.

Based on past information and previous examinations of speed tables and speed humps as part of a larger traffic calming measure, the MMTB, City staff and the City's contracted traffic engineers agreed that City did not need speed tables or humps at the time. The MMTB indicated that the police department should continue to monitor speeds and determine if there was a street or area where a pilot program could be considered for a speed table or hump (The police department has identified Ruffner Street as a potential pilot project location and a new speed/volume study has been ordered). Based upon the City Commission's renewed interest in speed tables and/or speed humps, the City Manager could direct staff to have the topic of speed tables and/or speed humps specifically added as an agenda item for the MMTB for examination and consideration. Staff would then complete a staff report with the recommendations of the MMTB on the topic.





## MEMORANDUM

Legal Department

**DATE:** August 29, 2022

**TO:** Thomas M. Markus, City Manager and City Commission

**FROM:** Mary M. Kucharek

**SUBJECT:** Request for Closed Session Under MCL § 15.268 Sec. 8(e) and MCL § 15.268 Sec. 8(h) of the Open Meetings Act

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### INTRODUCTION:

- This matter concerns two (2) issues: 1) pending litigation entitled *John Reinhart, et al v City of Birmingham; U.S. District Court Case No.: 2:22-cv-11074-MAG-DRG*; and 2) a written attorney/client privilege communication.

### BACKGROUND:

- As the City Commission is aware, John Reinhart, Managing Partner of the 555 Building, has complained of the parking situation and changes to the SMART Bus route in connection with the Phase 3 Old Woodward Project. As a result, he is now claiming to be one (1) of three (3) plaintiffs alleging they are “handicapped,” and as a result has filed suit in the U.S. District Court. I am requesting closed session on August 15, 2022, pursuant to MCL § 15.268 Sec. 8(e) to discuss pending litigation.
- The City Attorney will discuss and answer questions regarding a written attorney/client privilege communication.

### LEGAL REVIEW:

- I am requesting closed session on August 29, 2022, pursuant to MCL § 15.268 Sec. 8(e) to discuss one (1) pending litigation.
- I am also requesting closed session on August 29, 2022 pursuant to MCL § 15.268 Sec. 8(h) to discuss a written attorney/client privilege communication.

FISCAL IMPACT:

- To be discussed in closed session.

ATTACHMENTS:

- Open Meetings Act (Excerpt) Act 267 of 1976, MCL § 15.268 Closed sessions; permissible purposes, Sec. 8(e).
- Open Meetings Act (Excerpt) Act 267 of 1976, MCL § 15.268 Closed sessions; permissible purposes, Sec. 8(h).

SUGGESTED COMMISSION ACTION:

- Make a motion to meet in closed session to discuss pending litigation pursuant to MCL § 15.268 Sec. 8(e) of the Open Meetings Act regarding *John Reinhart, et al the v City of Birmingham; U.S. District Court Case No.: 2:22-cv-11074-MAG-DRG*.
- Make a motion to meet in closed session to discuss a written attorney/client privilege communication pursuant to MCL § 15.268 Sec. 8(h) of the Open Meetings Act.



and the purpose or purposes for calling the closed session shall be entered into the minutes of the meeting at which the vote is taken.

(2) A separate set of minutes shall be taken by the clerk or the designated secretary of the public body at the closed session. These minutes shall be retained by the clerk of the public body, are not available to the public, and shall only be disclosed if required by a civil action filed under section 10, 11, or 13. These minutes may be destroyed 1 year and 1 day after approval of the minutes of the regular meeting at which the closed session was approved.

**History:** 1976, Act 267, Eff. Mar. 31, 1977;—Am. 1993, Act 81, Eff. Apr. 1, 1994;—Am. 1996, Act 464, Imd. Eff. Dec. 26, 1996.

### **15.268 Closed sessions; permissible purposes; applicability to independent citizens redistricting commission.**

Sec. 8. (1) Except as otherwise provided in subsection (2), a public body may meet in a closed session only for the following purposes:

(a) To consider the dismissal, suspension, or disciplining of, or to hear complaints or charges brought against, or to consider a periodic personnel evaluation of, a public officer, employee, staff member, or individual agent, if the named individual requests a closed hearing. An individual requesting a closed hearing may rescind the request at any time, in which case the matter at issue must be considered after the rescission only in open sessions.

(b) To consider the dismissal, suspension, or disciplining of a student if the public body is part of the school district, intermediate school district, or institution of higher education that the student is attending, and if the student or the student's parent or guardian requests a closed hearing.

(c) For strategy and negotiation sessions connected with the negotiation of a collective bargaining agreement if either negotiating party requests a closed hearing.

(d) To consider the purchase or lease of real property up to the time an option to purchase or lease that real property is obtained.

(e) To consult with its attorney regarding trial or settlement strategy in connection with specific pending litigation, but only if an open meeting would have a detrimental financial effect on the litigating or settlement position of the public body.

(f) To review and consider the contents of an application for employment or appointment to a public office if the candidate requests that the application remain confidential. However, except as otherwise provided in this subdivision, all interviews by a public body for employment or appointment to a public office must be held in an open meeting pursuant to this act. This subdivision does not apply to a public office described in subdivision (j).

(g) Partisan caucuses of members of the state legislature.

(h) To consider material exempt from discussion or disclosure by state or federal statute.

(i) For a compliance conference conducted under section 16231 of the public health code, 1978 PA 368, MCL 333.16231, before a complaint is issued.

(j) In the process of searching for and selecting a president of an institution of higher education established under section 4, 5, or 6 of article VIII of the state constitution of 1963, to review the specific contents of an application, to conduct an interview with a candidate, or to discuss the specific qualifications of a candidate if the particular process of searching for and selecting a president of an institution of higher education meets all of the following requirements:

(i) The search committee in the process, appointed by the governing board, consists of at least 1 student of the institution, 1 faculty member of the institution, 1 administrator of the institution, 1 alumnus of the institution, and 1 representative of the general public. The search committee also may include 1 or more members of the governing board of the institution, but the number does not constitute a quorum of the governing board. However, the search committee must not be constituted in such a way that any 1 of the groups described in this subparagraph constitutes a majority of the search committee.

(ii) After the search committee recommends the 5 final candidates, the governing board does not take a vote on a final selection for the president until at least 30 days after the 5 final candidates have been publicly identified by the search committee.

(iii) The deliberations and vote of the governing board of the institution on selecting the president take place in an open session of the governing board.

(k) For a school board to consider security planning to address existing threats or prevent potential threats to the safety of the students and staff. As used in this subdivision, "school board" means any of the following:

(i) That term as defined in section 3 of the revised school code, 1976 PA 451, MCL 380.3.

(ii) An intermediate school board as that term is defined in section 4 of the revised school code, 1976 PA 451, MCL 380.4.



**NOTICE OF INTENTION TO APPOINT TO THE  
MUSEUM BOARD**

At the regular meeting of September 19 2022, the Birmingham City Commission intends to appoint regular member to the Museum Board to serve the remainder of a three-year term to expire July 5, 2023.

Interested parties may submit an application available at the City Clerk's office on or before noon on Wednesday, September 14, 2022. These applications will appear in the public agenda for the regular meeting at which time the commission will discuss recommendations, and may make nominations and vote on appointments.

Board Duties

The Museum Board is charged with collecting, arranging, cataloguing and preserving historical material. The Board may locate and erect plaques or markers at historic sites, buildings or properties in the City of Birmingham with the consent of the owner or owners of any such property and subject to the approval of the City Commission with respect to properties that, in the opinion of the Board, have historic significance. Further, the Board shall have the power to develop, operate and maintain the Allen House as a museum and to exercise authority, control and management over the Hunter House and John West Hunter Memorial Park.

<b>Criteria/Qualifications of Open Position</b>	<b>Date Applications Due (by noon)</b>	<b>Date of Interview</b>
Shall be qualified electors of the City.	9/14/2022	9/19/2022

*NOTE: All members of boards and commissions are subject to the provisions of City of Birmingham City Code Chapter 2, Article IX, Ethics and the filing of the Affidavit and Disclosure Statement.*





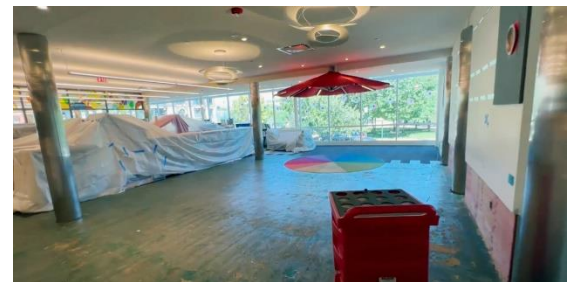
## CITY MANAGER'S REPORT

August 2022

### Baldwin Public Library

#### **Water Damage**

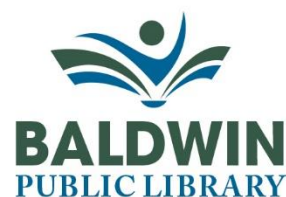
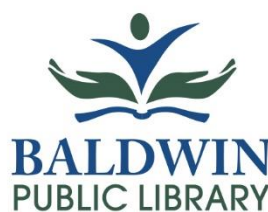
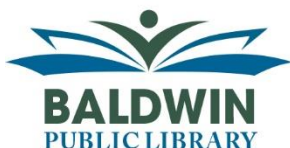
3,500 square feet of the Library's youth room and staff offices were damaged by water the evening of August 4. The water damage was caused by a combination of issues related to the heavy, 25-year rain that poured that evening and a faulty sink drain. Due to extensive damage, we will need to carpet and replace drywall in the Youth Room over the next several weeks. Fortunately no books or materials were damaged. The Library was closed from August 5 through 11 and reopened on August 12 for curbside pickup only. The Library reopened to the public on August 22. We will not be able to reopen the youth room until the carpet is replaced. The carpet is on backorder with the manufacturer, but as soon as it is in stock, it will take about 7 business days to complete the installation process. Librarians have set up a temporary youth room in the Legacy Room and we will be relying on interlibrary loan for materials because the shelving is inaccessible.



#### **Library Board**

The Library Board met on August 15 for a regular meeting. The Board voted unanimously to issue RFPs for a new janitorial services contract and to forward an RFP to the City Commission for Construction Management Services for the Front Entrance and Circulation Area Expansion and Renovation.

The Library Board reviewed seven proposed logo designs and narrowed the designs down to their top three favorites (shown below). Over the next month, Library staff will collect feedback from patrons and staff on the favored design. The logos were designed to pair well with the new City logo and use the same Birmingham green and fonts as are used in the City logo.



## **Quarterly Fall Newsletter**

The library's quarterly fall newsletter will be reaching homes this week. Take a look to read more about upcoming programs and events at the library this fall.

## **Behind the Scenes Tour**

If you'd like to learn even more about the library, join Library Director Rebekah Craft for a Behind the Scenes Tour. You'll visit staff areas, learn how items are added to the collection, and hear about new programs and services. The next tour will meet in the Library's vestibule on Tuesday, September 20 at 4:00 p.m.

## **Birmingham Shopping District (BSD)**

### **Staffing Updates**

Congratulations to Claire Galli on her recent appointment as Athletic Director at a local school. Claire previously coached at Oakland University, and was a college athlete herself. During her time with the BSD, Claire has been a pleasure to work with and has provided assistance on a broad range of projects including special events, promotions, wayfinding and downtown gateways, the business anniversary program, and completed a complex analysis of the mix of tenants within the BSD. While we are sad to see Claire leave the BSD, we wish her the best of luck in her new job!

The first round of interviews for Executive Director have been completed, and two finalists have emerged. Both finalists will complete the second round of interviews with the selection committee on August 31, 2022. On September 1, 2022, the BSD board will consider the recommendations of the selection committee and may make an offer to their preferred candidate.

### **Cruise Event**

This year's Cruise Event was held on Saturday, August 20, 2022, on the east side of Woodward due to the construction on S. Old Woodward. A big thank you to all City and BSD staff that participated, and to the many citizen volunteers that help make this event possible. Special thanks to our Police and Fire Departments for ensuring a safe and smooth event for everyone. Next year's Cruise Event will return to its usual location on S. Old Woodward.

### **New BSD Logo**

Over the past several months, the Marketing & Advertising Committee has been discussing new colors for use on BSD print materials, and considering new BSD logo options. Committee members wished to incorporate the City's new logo, and thus on August 15, 2022, the City's Wayfinding and Branding Committee reviewed the options presented and approved the use of a modified City logo by the BSD.

On August 18, 2022, the Marketing and Advertising Committee met and passed a motion to recommend approval of the following:





**BIRMINGHAM**  
**SHOPPING DISTRICT**



On September 1, 2022, the BSD board will consider approval of the recommended logo options and colors.

## **Building Department**

### **Monthly Report**

The [Building Department's monthly report](#) provides an update on the following construction activity: building permits issued, building inspections conducted, trades permits issued and trades inspections conducted. In July, we processed 439 online permit applications, totaling 2,848 applications so far in 2022.

### **Thank you and farewell, Mike Labriola**

The Building Department is sad to announce the retirement of our plumbing and mechanical inspector, Mike Labriola, at the end of this month. He has worked for the City since August of 1999 and over the past 23 years he has completed more than 68,269 inspections and performed nearly as many project plan reviews. His encyclopedic knowledge, kindness, work ethic, integrity, and character are the foundation of his professional reputation. It is his character, smile, and infectious laugh that all of his friends and family here at the City will miss.

Please join us in celebrating him this month and let him know how much we appreciate his hard work and dedication! Our department will have a scrapbook that we encourage everyone to stop by and sign.

Mike Labriola is a man of many accomplishments and notable achievements, a few of which are listed below.

- Licensed Act 407 Code Official since 1999
- Licensed Master Plumber since 1981
- International Code Council Certified Plumbing Inspector
- Tri-County Plumbing Inspection Association Member and Past Director (2015)

- Mechanical Inspector Association of Michigan Member
- Metropolitan Mechanical Inspector Association Member
- American Association of Sanitary Engineering, Michigan Chapter, Honorary Person of the Year (2017)



## **City Clerk's Office**

The Clerk's Office would like to thank all of the Election Inspectors and City Staff that helped with conducting a successful August 2nd State Primary Election. We appreciate all of the voters who participated safely. Turnout for this election was 35.33%, which was above the 30.04% average for Oakland County. Unofficial results are available at [oakgov.com/elections](http://oakgov.com/elections) under the August election tab. Official results will be available after the completion of the canvass of the Oakland County Board of Canvassers.

### **Recognition of Staff**

Birmingham resident and Marian High School Graduate Isabella Mikhail assisted the Clerk's Office as intern starting in June 2022 and was a valuable asset leading up to and including the August 2022 State Primary Election. During her time here, she steadily assumed increased responsibility for complex duties in our busy clerk's office. She made hundreds of telephone calls to voters to resolve questions about absentee ballot requests, impressing us all with her problem solving and communication skills. While we are sad to see her leave, we wish her continued success as a University of Michigan freshman studying public policy.

### **2022 November General Election**

#### **Voter Registration**

Residents can register to vote online at [mi.gov/vote](http://mi.gov/vote) or [www.expressSOS.com](http://www.expressSOS.com), by mail or at any Secretary of State Branch Office until the end of the day on October 24 (15 days before the November 8 General Election). Voter registration applications are available online at [bhamgov.org/voting](http://bhamgov.org/voting) or in the clerk's office.

#### **Absentee Voting**

Voters who previously submitted an absentee ballot application for voting for the November election will receive an absentee ballot after September 24th. If something has changed since you submitted your absentee ballot application, please let the City Clerk's office know so we can be sure to send your ballot to the correct place.



Registered voters who have not applied for an absentee ballot can still request one for November. You can do this online at [mi.gov/vote](https://mi.gov/vote), or with a signed application returned to the City Clerk's office in person, by post mail, in the City Hall dropbox or to [elections@bhamgov.org](mailto:elections@bhamgov.org). After 5:00 pm on November 4th, you can only obtain an absentee ballot in-person at the Clerk's Office.

Did you know you can pick up your absentee ballot at the Clerk's office? You can come to the City Clerk's office during business hours after September 24th to apply and receive your absentee ballot in person. The process does not take long and there is even a voting booth that you may use to fill out your absentee ballot and then put it in the drop box. You must bring a photo ID or Driver's License, and you cannot pick up any absentee ballots other than your own.

### Voting while out of the Country

Voters who will be out of the United States for the 2022 elections can submit a Federal Post Card Application (FPCA) to obtain an absent voter ballot by email, fax or regular mail. This application must be completed every year for which a voter will be out of the United States for an election. To obtain this application, go to [www.fvap.gov](https://www.fvap.gov).

### Voter Information

You can check your voter information, register for an absentee ballot, identify your precinct, district and more at [mi.gov/vote](https://mi.gov/vote). If you have not registered for an absentee ballot and you are not on the permanent absentee list, make sure to register soon. The deadline to register for an absentee ballot is 5pm the Friday before the election.

### Sample Ballots

Clerks across Oakland County have observed a trend of voters surrendering or spoiling their absentee ballot on Election Day to vote in person. Voters intending to vote in person should not request an official absentee ballot from the clerk's office. Voters wishing to view a sample ballot before Election day can do so in a number of ways:

- [Mi.gov/vote](https://mi.gov/vote) allows voters to look up and view a sample ballot and track the status of your absentee ballot if one was requested.
- The clerk's office will have sample ballots available for viewing in late September. Call 248-530-1880, email [elections@bhamgov.org](mailto:elections@bhamgov.org), or stop by our office and we will be happy to help you!
- Voters can use the district numbers on their voter ID card along with the official candidate and proposal lists on [oakgov.com/elections](https://oakgov.com/elections) to determine what will be on their ballot

## **Cemetery Board**

At the July 1, 2022 meeting of the Greenwood Cemetery Advisory Board, the board discussed items to be included into the 2021-2022 Annual Report. The board had a summer break in August. Their next meeting will be September 2, 2022 8:30 am at City Hall.

## **Board and Commission Appointments**

The following City of Birmingham boards and commissions have vacant positions or members with terms expiring soon. Applications are due before noon the Wednesday prior to the commission interview/appointment date:

Board	Openings	Application Due by Noon	Interview/ Appointment at City Commission meeting 7:30 pm
Advisory Parking Committee	3 Regular Members	8/24/2022	8/29/2022
Design Review Board	2 Regular, 2 Alternate Members	9/14/2022	9/19/2022
Historic District Commission	2 Regular, 2 Alternate Members	9/14/2022	9/19/2022
Museum Board	1 Regular Member	9/14/2022	9/19/2022
Birmingham Area Cable Board	1 Alternate Member	Until Filled	
Board of Building Trades Appeals	3 Regular Members	Until Filled	
Board of Zoning Appeals	1 Alternate Member	Until Filled	
Brownfield Redevelopment Authority	2 Regular Members	Until Filled	
Public Arts Board	1 Alternate Member	Until Filled	
Storm Water Utility Appeals Board	1 Regular, 2 Alternate Members	Until Filled	
Triangle District Corridor Improvement Authority	2 Regular Members	Until Filled	
Hearing Officer	1 Regular Member	Until Filled	

## **City Manager's Office**

### **Communications**

#### **Around Town e-Newsletter**

The communications team is working on the September edition of the Around Town e-Newsletter, which will include a video about Parking Systems Manager Aaron Ford, fall golf events, election news, the final draft of the Citywide Master Plan for 2040 and more. [Follow this link](#) to view the August edition of the Around Town e-Newsletter.





## Engage Birmingham

### Share Your Feedback about Birmingham's Strategic Plan

The Birmingham community is encouraged to share feedback online and attend a series of workshops as part of the city's strategic planning process. Following a comprehensive evaluation of the city and community, the resulting plan, expected to be complete this fall, will include strategic goals to direct the city's efforts and resources toward a clearly defined vision for its future. View upcoming workshop dates and submit feedback online at <https://engage.bhamgov.org/strategic-plan>.



### 2023 City Calendar Photo Contest

Photographers of all ages and skill levels are invited to submit a photo (or a photo collage) for the cover of the 2023 City of Birmingham calendar. Submissions will be accepted through Friday, September 30, 2022, at which time the community will be invited to vote for their favorite image. Submit images at <https://engage.bhamgov.org/2023-calendar-cover-contest>.

## Human Resources

The Human Resources department has completed the first round of interviews for the BSD Director position, and is now down to two finalists. A second round will be conducted at the end of the month, with a selected candidate anticipated for the first day of September. Plumbing Inspector and part-time Dispatcher remain open for applications, and a recruitment has been opened to backfill a vacancy created by the departure of our Deputy Treasurer. Savannah Simancek has been selected to fill the role of Senior Clerk Cashier in our Treasury Office, with an anticipated start date of August 29th. A recent interview for Streets/Sewer/Water Assistant Foreman yielded one potential new hire, but our second Assistant Foreman in this role has also just resigned. An external posting remains open. Parks & Forestry Operator has completed recent interviews, and is in multiple stages of the hiring process for qualified candidates. Isabella Mikhail has completed a successful internship with the Clerks' Office, and has left to pursue her college education at the University of Michigan. Special thanks to Commissioner Boutros for his recommendation of Isabella.

## Staff & Vacancy Update

Department	FT & PT Staff Count	Current Vacancies/Hiring	Department Vacancies Filled Since 2020	Notes
Birmingham Shopping District	5	BSD Director	7	Second round 8/31 Selection expected 9/1
Clerk's Office	5	-	6	
Building	17	Plumbing Inspector	1	Hiring Plumbing Inspector.
Engineering	8	-	7	
Finance / Treasury	14	Sr. Clerk Cashier	6	S. Simancek starts 8/29 Deputy Treasurer interviews upcoming
Fire	35	-	10	
Information Technology	4	-	3	
Maintenance	2	-	1	
Manager's Office / Communications / HR	6	-	6	
Museum	3	-	2	
Parking System	9	-	2	Hiring plan in FY 22-23
Planning	7	-	4	
Police	71		13	Recruitment for PT Dispatcher ongoing
Public Services	56	SSW Operator SSW Assistant Foreman	10	SSW Assistant Foreman and P&F Operator hires pending
Golf Seasonal	N/A	Golf Seasonal Labor	48	Hiring ongoing

## Commission Items for Future Discussion

Meeting	Topic	Commissioner	Staff Follow Up	Dates Addressed	Status (resolved/ongoing)
<b>In Progress</b>					
8/15/22	Birmingham Country Club	M: Host S: Haig	Fairbairn, Dupuis, Clerk's Office	8/29 - CC Discussion Possibly plan to write a letter, invite bham cc and twp to meeting to collaborate	In progress
8/15/22	Speed Bumps	M: Haig S: Host	Clemence/Brooks	8/29 - Staff report	
6/13/22	Sustainability Board	Schafer	Nick Dupuis	6/27/22 - direction for staff to draft requirements to establish board, coming back at next available meeting	In progress
4/25/22	Improvements in Information Provision and Methodology	M: Haig, S: Baller	TBD	TBD	
3/28/22	City Manager Selection Process	M: Host S: Boutros	Managers Office & HR	4/25/22 - direct to formal agenda item 5/9/22 - New Business Item 5/23/22 CM report	Process approved and timetable established.
1/10/22	Food Trucks	M: Host S: Schafer	Nick Dupuis/Jana Ecker	1/24/22 - CC req. more info 3/9/22 - Workshop 3/14/22 - Informally brought up by host 6/20/22 Commission Plan Board Discussed 6/27/22 - City Manager Directed to encourage food trucks at all city sponsored events, BSD events, and direct the BSD to organize a rotation of food truck events	6/27/22 In progress/ being monitored



1/10/22	Leaf Blowers	M:Baller S:Host	Nick Dupuis	1/24/22 - make formal item	In progress
1/10/22	Commissioner Conduct	No vote	Mary Kucharek	2/14/22 - Workshop 2/28/22 Directed CM to prepare Code of Conduct for future agenda 7/11/22 - Initial presentation to commission by CA	Will be revised and presented again at an upcoming CC meeting
<b>Resolved</b>					
4/11/22	BBCC - Mental Health Workshop - More time to talk	M: Baller S: Haig	Marianne Gamboa	4/25/22 - clarify commissioners intent 5/9/22 - added time on the agenda to discuss  Tom directed staff to add mental health info in city publications	Resolved
5/9/22	-Pickleball	Baller, no voter	Lauren Wood	Agenda item 5/23/22	Installed on 6-3-22
1/24/22	Social Districts	M: Schafer S: Boutros	Nick Dupuis/Jana Ecker	2/14/22 - make formal item 3/9/22 - Workshop 3/14/22 - Informally brought up by host 6/20/22 Commission Plan Board Discussed	No formal action taken by the Commission
5/23/22	Commission Meeting Start Time	Baller	Mary Kucharek	On agenda for 6/27/22 - Mary to draft generic ordinance language and discuss in july On agenda for 7/11/22 - Commission decided not to proceed	No changes for now

### Topics Failed

4/25/22	On Street Parking Study	M:Haig S: Host
4/11/22	Downtown Parking	M: Host S: Haig
3/28/22	Parking Matters	M: Host S: Haig
6/13/22	479 SOW (Doraid) PAD	M: Boutros

### Topics With No Vote - Resolved

1/10/22	Unimproved Streets	Discussed during the Long Range Planning meeting.
2/28/22	Solidarity with Ukraine	City Manager arranged for exterior lighting at City Hall.

### Topics With No Vote - Unresolved

5/9/22	-PAD ordinance/cleanup	Baller, no vote	No vote
5/9/22	-Policy for granting public space ODD/Valet	Baller, no vote	No vote

### Next Survey Results

Next released an infographic (shown below) with the summarized results from their recent community survey. The goal of the survey was to help Next understand how they can better serve their current members, and to gain a better understanding of how to reach residents who may not be familiar with Next and what it has to offer. Learn more about the opportunities and challenges Next faces by downloading the [entire survey and results here](#).



## 2022 Next Community Survey Summary

Number of respondents: 549  
439 current members  
110 non-members

#### Points of Pride:

- The quality and variety of the programs offered, particularly the speakers, presentations and entertainment - received a 95% favorable rating!
- Next has a relaxed, warm and friendly atmosphere, a good place to gather and meet new friends.
- The staff is caring and capable.
- Next does well with the resources available.



#### Needs Improvement:

- A vast majority of current members and many non-members responded that the Midvale building is very outdated, too small for today's needs, and offers little room for growth, especially when compared to other communities.
- There is a need to increase awareness of the supportive services Next offers to all residents, regardless of membership status.



Next - 2121 Midvale, Birmingham MI 48009 (248)203-5270 | [www.BirminghamNext.org](http://www.BirminghamNext.org)

### Department of Public Services

#### Ice Curling – Birmingham Ice Sports Arena (BIA)

During the Long Range Planning Session on January 23, 2021 a public comment under the Ice Arena Financial Forecast segment suggested looking at offering curling to increase revenue at the ice arena in the studio rink. At this time, the Ice Arena project had not started and upgrading the Studio Arena with the new refrigeration system to offer year-round ice was an alternate to the base bid. Ultimately, due to the significant cost for this item, over \$380,000, it was not include as part of the bid award.



The renovated Ice Arena opened on November 1, 2021 upon completion of the construction project. We are still operating in our first year since the facility upgrade. When the curling idea was suggested, we anticipated reviewing this as part of the planning efforts to explore future revenue opportunities at the Birmingham Ice Arena after we had some experience the first year as a baseline operating with the new Ice Arena.

When the ice is in the Studio Arena, the City offers its Learn to Skate program during those nine months. In addition, after reviewing the specifics needed for curling we note the following.

- The Studio Rink is 80' x 50'. Curling dimensions are 146' - 150' x 14' to 16'.
- Curling requires the use of ice space
- This portion of the refrigeration system was not updated to the sub-floor heating system as was done in the main arena.
- Ice is used in the studio rink during the season and removed in the summer, as required for the flooring system.
- We offer our Learn to Skate Classes during this period in the Studio rink. In addition, while the ice is in the studio rink there are private lessons and birthday parties that rent the ice.
- There is no down time, in essence, during the peak season September - May.
- We remove the ice in May and put it back in mid-late August.

Based on the current rentals, activities and events at the BIA, curling is not viable. We continue to actively evaluate the existing operations and explore other revenue generating opportunities. The three-month period the ice is out of the Studio and the concrete floor is available, we offer rentals for this space that are often coordinated with the new party room rental.

### **Adams Park Development Project**

This project is substantially complete as we approach the end of the month. Many park features are now complete including the playground, the gathering area pavilion, the basketball court and track and field items, rain garden, and trees and landscaping. Some park elements including site furnishings had longer lead times but are expected to ship out in early September.

As final items are wrapping up, one of the last tasks is the sod installation, which was scheduled for last week (August 24-weather permitting). Upon installation, it is extremely important that the sod be managed properly with a regular irrigation regimen and it be protected from any foot traffic. During this time the lawn bonds to the soil, and it's standard practice to keep foot traffic off of a newly installed lawn for, at minimum, two (2) weeks after installation. Ideally, three (3) to four (4) weeks before walking on, or mowing.

The following is a recommendation from our landscape architect:

In order to ensure the health of the lawn, in both the near- and long-term, Michael J Dul & Associates recommends the following measures be taken:

WEEK 1 & 2: Keep protective fencing and green screen around park perimeter for minimum of two weeks after date of sod installation. Park to remain closed to public during this period (at least through September 7th).

WEEK 3: City / landscape architect / park contractor / landscape contractor to assess lawn two weeks after date of sod installation. Safe date to open the park to foot traffic will be determined.

WEEK 4: City / landscape architect / park contractor / landscape contractor to assess lawn four weeks after date of installation. Safe date to begin lawn maintenance will be determined. Once allowed, park

maintenance team to hand mow at the highest blade-height and follow best practices for mowing a newly established lawn.

We will communicate appropriately with Roeper School, the surrounding neighborhood groups and general public about the park opening date. We appreciate everyone's patience! Please visit <https://engage.bhamgov.org/adams-park> for park progress photos and updates!

## **Engineering**

### **2022 Sidewalk Repair Program**

The City will be starting the 2022 Sidewalk Repair Program in September. This year's program is focused on Residential Area 5 of the City's Sidewalk Repair Program and Downtown 1B. Area 5 extends in general from Southfield Road to Cranbrook Road, and Maple Road to 14 Mile Road. Area 1B of the downtown generally extends from Old Woodward to Woodward, and from Maple Road to Ravine. This program also includes Oak Avenue Sidewalk at Greenwood Cemetery, Ann Street Sidewalk, and miscellaneous repairs throughout the City.

### **2022 Sidewalk Trip Elimination Services**

The contractor for the 2022 Sidewalk Trip Eliminations Service will start work in September. They will be focusing on Residential Area, 6 which is located between Quarton Road and Maple Road, and the west City's limits to Quarton Lake and the main branch of the Rouge River.

### **Water Service Verification Program**

As part of the Lead and Copper Rule (amended to the Michigan Safe Water Drinking Act), the City has randomly selected 364 water service lines to be physically verified. The contractor is anticipated to start in the beginning of September and complete the program by the end October. In locations where the water services will be verified, flags have been installed to indicate where exiting utilities are located. Please do not touch or remove these flags as they help the contractor.

## **Fire Department**

The Fire Department is conducting its annual vehicle extrication training this month. Each year, through the generosity of Ford Motor Company, the department receives three new Ford test vehicles to examine and perform extrication training. For three weeks, the training vehicles are on site at Station 1. Each shift will train using various extrication tools and techniques. For the last training day, the vehicles are flipped onto each other, simulating various accident scenarios. The crews will then perform an exercise simulating having one or two victims trapped in the wreck who are in need of Advanced Life Support care and extrication. This realistic, hands-on training is vital to the preparedness of the Fire Department personnel.

## **Planning Department**

### **Master Plan 2040**

The City of Birmingham is expecting the third and final draft of the Birmingham Plan 2040 in August of 2022. The schedule of review will consist of reviews at the Planning Board, the required 63-day public noticing period, and review by the City Commission. Depending on the exact date of delivery of Draft #3, the remaining schedule of review should closely resemble the following:

<b>Date</b>	<b>Meeting Type</b>	<b>Action Needed</b>
September 14, 2022	Planning Board	<ul style="list-style-type: none"><li>• Present final draft.</li></ul>



		<ul style="list-style-type: none"> <li>Board recommends to the City Commission that the Plan be distributed for public comment (minimum of a 63-day period).</li> </ul>
October 3, 2022	City Commission	<ul style="list-style-type: none"> <li>Vote to authorize the 63-day distribution period for the final, draft Master Plan.</li> </ul>
<i>Required 63-Day Public Notice Period</i>		
December 14, 2022	Planning Board	<ul style="list-style-type: none"> <li>Review final draft and present / discuss comments received during the distribution period.</li> <li>Set public hearing date.</li> </ul>
January 11, 2023	Planning Board	<ul style="list-style-type: none"> <li>Present the final Plan and hold a public hearing. Further discuss comments received during the distribution period as needed.</li> <li>Adopt by resolution; recommend to the City Commission for adoption.</li> </ul>
February 2023 (Exact Date TBD)	City Commission	<ul style="list-style-type: none"> <li>Present the final Plan and hold a public hearing.</li> <li>If prepared to do so, the City Commission may adopt the Plan by resolution.</li> </ul>

All of the documents related to the 2040 Plan remain available on [www.thebirminghamplan.com](http://www.thebirminghamplan.com). You can also watch a recording of past meetings on the City of Birmingham website. As a reminder, you can still submit comments directly to the consultant team through the aforementioned 2040 Plan website, and submit comments directly to the Planning Division to be placed in the next available agenda of the Planning Board.

**Planning Board**

The Planning Board has reviewed 27 development applications this year so far, with no signs of slowing down. This averages out to be six applications per meeting, which is more than a full slate each and every month. In addition to these development reviews, the Planning Board started the year rounding out the review of the Birmingham 2040 Plan Draft #2, and has mixed in several study session items to fill out their schedule. A tentative Planning Board schedule is provided below:

1. 35106 Woodward – Whole Dental Wellness – FINAL SITE PLAN & DESIGN REVIEW (8/24/22)
2. D4 Parking Waiver Ordinance Request (8/24/22)
3. 183 N. Old Woodward – Paris Baguette – DESIGN REVIEW (8/24/22)
4. 295 Elm St. – Forest Townhouses – PRELIMINARY SITE PLAN (8/24/22)
5. Outdoor Dining Study (9/14/22)
6. 2040 Master Plan – Draft #3 Review (9/14/22)

The following items have recently been through Planning Board review, and are either in the City Commission review process, or are upcoming:

1. Watkins/Brown – REZONING (Public Hearing 8/29/22)

2. Watkins/Brown – LOT DIVISION (Public Hearing 8/29/22)
3. 460 N. Old Woodward – Wilders – SPECIAL LAND USE PERMIT (Public Hearing 9/19/22)
4. Window Standards Study (Set Public Hearing 9/19/22)
5. Side Yard A/C Units Study (Set Public Hearing 9/19/22)

## **Historic Preservation**

The Historic District Commission (HDC) has been busy with design review applications for non-designated properties located within the Central Business Historic District, as well as renovations proposed on several designated historic resources. The HDC continues to pursue appropriate renovations within the context of the Secretary of the Interior Standards for Rehabilitation, and has been very thorough in their reviews. The upcoming Historic Design Guidelines project aims to build another level of clarity and expectations within these reviews. The consultant team and City Staff gained some feedback at the Day on the Town event, and plan to follow up with a detailed survey on the Engage Birmingham platform. Keep an eye out for the survey on <https://engage.bhamgov.org/>.

## **Public Art**

The Public Arts Board has received an application for two new sculpture donations by famed artists John Henry and USA Today's 2022 Woman of the Year Jane Dedecker. The Board is currently in the process of determining locations for each sculpture. The Board has also discussed selecting locations for potential public murals, particularly in the Rail District.

## **Multi-Modal Transportation Board**

The Multi-Modal Transportation Board is reviewing necessary updates to the Multi-Modal Transportation Plan to reflect current conditions and trends. Traffic and speed studies for various parts of town have been continuously reviewed, and the Board will begin considering permanent recommendations for S. Eton this upcoming fall.

## **Police Department**

### **Police Department/City Hall Assessment**

The Police Department/City Hall safety and security upgrade/expansion project kicked into full gear with the Telluris Team (the architectural firm chosen by the City to conduct the Police Department/City Hall assessment). The following was completed:

- a. A site visit to the Police Department/City Hall on Thursday, August 4, 2022 with their outside specialty consultants (plumbing/electrical/fire/structural/HVAC). City staff related to these areas guided the group throughout the building.
- b. On August 10, 2022, Police Chief Clemence arranged for and accompanied the Telluris Team on a tour of the City of Royal Oak's new police station. The three and one half hour tour covered all aspects of the design features and construction of the facility.
- c. On August 11 and August 12, 2022, the Telluris Team interviewed staff from the Police Department and staff from City Hall to gain further insights into each individual department's building needs and concerns.
- d. On August 22 2022, the Telluris Team returned to the building for a day, tying up loose ends with staff members and conducting measurements throughout the building.

### **CoRe Program**

The police department's CoRe Team program has been replicated by the Oakland County Sheriff's Office (one mental health co-responder) and the City of Troy (one mental health co-responder). Both departments attended our monthly CoRe program meeting and will be welcome additions to improving law enforcement's response to individuals suffering from a mental health crisis.



Wayne State University School of Social Work's Center for Behavioral Health and Justice has agreed to conduct data analysis of the CoRe program - "Retrospective Outcomes of Crisis Response Services." The City Attorney is working with Wayne State University officials to iron out some minor legal issues before the project begins.

## **Parking Systems Update**

### **Equipment**

City staff have been meeting with companies that bid on the RFP and have been reviewing demonstrations of the various types of parking equipment available. Once demonstrations are complete, a recommendation will be made to the Advisory Parking Committee on 9/14/22 and then to the Commissioners for their final approval. The goal will be to replace the existing equipment before the end of the calendar year.

### **Construction**

The emergency shoring and column repair work at the Peabody Parking Structure has been completed.

Construction on the North Old Woodward Parking Structure continues with underside concrete repairs. The traffic coating on the roof of the garage should be complete by the end of the month. Levels 4 and 5 will be reopened once this is complete.

Ongoing work at Park St. being performed by Pullman has been completed. The brick wall at the entrance of Park St. was struck by a vehicle causing damage to the brick. The repair of this wall is being presented to the City Manager as an emergency repair due to the possibility of falling over and its proximity to the vehicle entrance and sidewalk.

### **Occupancy**

JULY	
Chester Garage (880)	33.62%
Old Woodward (745)	49.80%
Park Garage (811)	54.66%
Peabody Garage (437)	82.66%
Pierce Garage (706)	67.60%

### **Future Agenda Items**

Download a summary of [future agenda items](#).

### **Future Workshop Items**

Download a summary of [future workshop items](#).



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**STATE OF MICHIGAN**

**BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION**

**NOTICE OF HEARING**

**FOR THE GAS CUSTOMERS OF CONSUMERS ENERGY COMPANY**

**CASE NO. U-21062**

- Consumers Energy Company requests Michigan Public Service Commission's approval of a gas cost recovery plan and authorization of gas cost recovery factors for the 12-month period April 2022-March 2023.
- The information below describes how a person may participate in this case.
- You may call or write Consumers Energy Company, One Energy Plaza, Jackson, MI 49201, 517-788-0550 for a free copy of its application. Any person may review the documents at the offices of Consumers Energy Company or on the Commission's website at: [michigan.gov/mpscdockets](http://michigan.gov/mpscdockets).
- A pre-hearing will be held:

**DATE/TIME: Wednesday, August 24, 2022 at 9:00 AM**

**BEFORE: Administrative Law Judge Sharon Feldman**

**LOCATION: Video/Teleconferencing**

**PARTICIPATION:** Any interested person may participate. Persons needing any assistance to participate should contact the Commission's Executive Secretary at (517) 284-8090, or by email at [mpscdockets@michigan.gov](mailto:mpscdockets@michigan.gov) in advance of the hearing.

\*\*\*\*\*AUTO\*\*ALL FOR AADC 480  
 Clerk, City of BIRMINGHAM  
 PO Box 3001  
 Birmingham MI 48012-3001



**INFORMATION ONLY**



The Michigan Public Service Commission (Commission) will hold a pre-hearing to consider Consumers Energy Company's (Consumers Energy) December 23, 2021, application, as revised on June 30, 2022, requesting the Commission to: 1) approve its Gas Cost Recovery (GCR) plan and monthly Gas Cost Recovery factors for the period April 2022 through March 2023 consisting of the sum of two parts: a) a base factor of \$7.5851 per Mcf, plus, b) additional amounts contingent upon future events, determined using the GCR Factor Ceiling Price Adjustment (Contingency) Mechanism, as proposed by Consumers Energy, or such higher factors as may be lawful and reasonable; 2) review Consumers Energy's plans and projections through March 2027, and determine that the five-year plan is reasonable and that there are no cost items which the Commission would be unlikely to permit Consumers Energy to recover from its customers in the future; and 3) grant Consumers Energy such other and further relief as is lawful and appropriate, including approval of higher GCR factors than requested in Consumers Energy's initial filing if circumstances warrant.

All documents filed in this case shall be submitted electronically through the Commission's E-Dockets website at: [michigan.gov/mpscedockets](http://michigan.gov/mpscedockets). Requirements and instructions for filing can be found in the User Manual on the E-Dockets help page. Documents may also be submitted, in Word or PDF format, as an attachment to an email sent to: [mpscedockets@michigan.gov](mailto:mpscedockets@michigan.gov). If you require assistance prior to e-filing, contact Commission staff at (517) 284-8090 or by email at: [mpscedockets@michigan.gov](mailto:mpscedockets@michigan.gov).

Any person wishing to intervene and become a party to the case shall electronically file a petition to intervene with this Commission by May 19, 2022. (Interested persons may elect to file using the traditional paper format.) The proof of service shall indicate service upon Consumers Energy Company's Legal Department – Regulatory Group, One Energy Plaza, Jackson, MI 49201.

The prehearing is scheduled to be held remotely by video conference or teleconference. Persons filing a petition to intervene will be advised of the process to participate in the hearing.

Any person wishing to participate without intervention under Mich Admin Code, R 792.10413 (Rule 413), or file a public comment, may do so by filing a written statement in this docket. The written statement may be mailed or emailed and should reference Case No. U-21062. Statements may be emailed to: [mpscedockets@michigan.gov](mailto:mpscedockets@michigan.gov). Statements may be mailed to: Executive Secretary, Michigan Public Service Commission, 7109 West Saginaw Hwy., Lansing, MI 48917. All information submitted to the Commission in this matter becomes public information, thus available on the Michigan Public Service Commission's website, and subject to disclosure. Please do not include information you wish to remain private. For more information on how to participate

in a case, you may contact the Commission at the above address or by telephone at (517) 284-8090.

Requests for adjournment must be made pursuant to Michigan Office of Administrative Hearings and Rules R 792.10422 and R 792.10432. Requests for further information on adjournment should be directed to (517) 284-8130.

For more information on how to participate in a case, you may contact the Commission at the above address or by telephone at (517) 284-8090.

The Utility Consumer Representation Fund has been created for the purpose of aiding in the representation of residential utility customers in various Commission proceedings. Contact the Chairperson, Utility Consumer Participation Board, Department of Licensing and Regulatory Affairs, P.O. Box 30004, Lansing, Michigan 48909, for more information.

Jurisdiction is pursuant to 1909 PA 300, as amended, MCL 462.2 et seq.; 1919 PA 419, as amended, MCL 460.54 et seq.; 1939 PA 3, as amended, MCL 460.1 et seq.; 1969 PA 306, as amended, MCL 24.201 et seq.; 1982 PA 304, as amended, MCL 460.6h et seq.; and Parts 1 & 4 of the Michigan Office of Administrative Hearings and Rules, Mich. Admin Code, R 792.10106 and R 792.10401 through R 792.10448.

**CONSUMERS ENERGY COMPANY HAS REQUESTED THE GAS COST RECOVERY FACTORS DESCRIBED IN THIS NOTICE. THE MICHIGAN PUBLIC SERVICE COMMISSION MAY APPROVE, REJECT OR AMEND THE FACTORS AND OTHER PROPOSALS.**

2208-G

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## Fwd: Detroit seeks to rein in scooter chaos - BridgeDetroit

1 message

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**Tom Markus** <tmarkus@bhamgov.org>  
To: Alex Bingham <abingham@bhamgov.org>

Wed, Aug 24, 2022 at 8:41 AM

Please add to info only

----- Forwarded message -----

From: **Clinton Baller** <clinton@baller4bham.com>

Date: Wed, Aug 24, 2022 at 8:25 AM

Subject: Detroit seeks to rein in scooter chaos - BridgeDetroit

To: Therese <tmquattro@gmail.com>, Tom Markus <tmarkus@bhamgov.org>, Jana Ecker <Jecker@bhamgov.org>, Mark Clemence <mclmence@bhamgov.org>

<https://www.bridgedetroit.com/detroit-seeks-to-rein-in-scooter-chaos/>

This paragraph answered a few of my questions...

*Scooters are considered "electric skateboards with handlebars" under the [Michigan Vehicle Code](#), which was updated in 2018. State law requires that scooters yield to pedestrians. It prevents riders under 12 from using scooters on public streets, requires people under 19 to wear a helmet while riding and prohibits multiple people from riding one scooter at the same time. The law also allows local governments to set their own rules.*

I'm guessing we have all seen violations, and wonder if it might make sense to publicize these laws. I also wonder if and when it might be appropriate to set our own rules.

**INFORMATION ONLY**



TRANSPORTATION

## Detroit seeks to rein in scooter chaos

by **Malachi Barrett**

August 23, 2022

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A trio of electric scooters sit on the sidewalk along Griswold Street in downtown Detroit on Friday, Aug. 19, 2022. (BridgeDetroit Photo by Malachi Barrett)

The era of **unregulated** electric scooters could be coming to an end in Detroit.

The proliferation of dockless scooters – available to rent through smartphones for a small fee based on time used – allows for easy, speedy cruising between short distances, but city officials say new regulations are needed to prevent them from [cluttering sidewalks and inconveniencing pedestrians](#). One council member is working on a plan to license scooter companies while city officials consider changes to regulatory guidance and launch initiatives to rein in scooters, including an evening curfew and technology that deters riders from using the sidewalk.

“There’s a concern that e-scooters are littering the sidewalks, and let’s face it, if you’re handicapped, disabled, using a walker or wheelchair, sometimes the e-scooter just blocks the sidewalk and it’s hard for senior citizens in a wheelchair to move them,” said Peter Rhodes, a policy analyst for Detroit City Council Member Angela Whitfield-Calloway, who is drafting an ordinance.

#### **Related:**

- [MDOT, Detroit get \\$25M toward revamped Michigan Avenue corridor in Corktown](#)
- [High gas costs exacerbate transit challenges in Detroit](#)
- [Ban cars on Belle Isle? DNR says it’s not going to happen.](#)

Electric scooters are [largely unregulated](#) in Detroit. Companies do not need a license to drop off a fleet in the city, and city officials have few tools to enforce ordinances that prohibit risky driving and obstruction of public spaces. [Guidelines](#) issued by the Department of Public Works in 2018 outline some basic rules, but Detroit’s Chief Operating Officer Hakim Berry said additional regulation is being considered as scooter companies keep expanding.

“Their popularity has exceeded our expectations, and just like any other business operating in the city, these businesses need structure,” Berry said in an email. “Key components of this structure will be working towards safety regulations that would ensure pedestrians, vehicles, bikes



and scooters can coexist well within the right of way and ensure these mobility options are fair and equitably distributed around the City of Detroit, to be accessible to all our residents.”

Mayor Mike Duggan invited scooter companies to Detroit in 2018 after seeing them launch in other major cities. There were only two active companies when the city’s guidelines were released, but even then, memorandums from the City Council’s Legislative Policy Division declared



The number of private mobility companies in Detroit grew to six since the city’s guidelines were created – Bird, Lime, Link, Boaz, Spin and CMax. Each is asked to deploy no more than 400 scooters, but the city does not keep an official count. City officials estimate 2,000 scooters are in Detroit during the summer based on numbers voluntarily provided by scooter companies.

“I believe there’s a proliferation of these e-scooters and I don’t even know how we’re regulating them,” Whitfield-Calloway said. “I would like to see them licensed and some fines issued if they are violating our ordinances, not to be punitive, but to make sure they are compliant with the ordinances. I don’t want to shut them down at all, but we have to put some kind of controls in place.”

One thing is clear: The vast majority of electric scooters are concentrated in the city’s **Central Business District**, which contains popular entertainment and nightlife destinations bounded by the Lodge Freeway, Interstate 75 and Interstate 375.

Most scooters never cross Mack Avenue and remain south of Midtown. Some companies use geofencing technology to prevent riders from going into Detroit neighborhoods. Link’s mobile app shows scooters can’t be used north of Grand Boulevard and Spin scooters are only available in a

vertical slice of Detroit, extending from downtown to the Davison Freeway.

Tim Slusser, chief of mobility innovation for Detroit, said the city should employ better regulations to cap the number of scooters downtown and it should encourage their use in neighborhoods. Slusser said some cities have charged a fee for rides in heavy traffic areas to incentivize companies to put more scooters in less developed areas.

“From my perspective, I think we do need some sort of formal process,” Slusser said. “There’s a lot of operators in the downtown areas and not a whole lot of activity outside of downtown. Our personal preference is to try and create more opportunities for more Detroiters, and that means trying to move these scooters further out into the neighborhoods to create more options. It’d be great if somebody who lives deep in the neighborhoods had an option to take a scooter from a local community center to a nearby bus stop – that could take maybe a five minute ride versus a 25-minute walk.”

### **‘Thoughtful management’**

Scooters are considered “electric skateboards with handlebars” under the [Michigan Vehicle Code](#), which was updated in 2018. State law requires that scooters yield to pedestrians. It prevents riders under 12 from using scooters on public streets, requires people under 19 to wear a helmet while riding and prohibits multiple people from riding one scooter at the same time. The law also allows local governments to set their own rules.

Detroit riders can face misdemeanor charges – a \$500 fine or 90 days in jail – for parking scooters in prohibited areas like bike lanes, narrow sidewalks and at building entrances. Scooter companies can also face penalties if the city identifies “large numbers or particular patterns of such violations” associated with their scooters, according to the DPW guidance policy.



David Whitaker, director of the council's Legislative Policy Division, said enforcement of existing ordinances related to public nuisances is challenging. Scooters are grab and go by design, and users often abandon them in high-traffic areas at the end of their ride. Unless they're caught in the act, riders often evade penalties.

"(Electric scooters) can go anywhere, they can occupy a lot of different spaces that a four-wheel vehicle can't," Whitaker said. "Trying to regulate that, and making sure the operator is complying with the regulation, is very difficult."

A [memorandum released last week](#) by LPD notes scooter guidelines are being modified by the city and that Detroit's Law Department is working on an ordinance to regulate electric scooters at the request of Council President Mary Sheffield, who initially requested a review of the city's policy in 2018.

Whitfield-Calloway, who represents District 2 on the city's north side, told BridgeDetroit she plans to meet with Sheffield, who could not be reached for comment, to see how their plans align.

Whitfield-Calloway said under her proposal, companies would be required to obtain a license through the Buildings, Safety, Engineering, and Environmental Department (BSEED) and could have their license pulled based on complaints from residents. Language for the ordinance is still being worked on, but the proposal could come before the City Council by the end of the year.

LeAaron Foley, a director of government and community relations for Lime in the midwest, said more regulation isn't frowned upon. Lime embraces a clear set of rules for all companies to follow, Foley said, especially if it gives Detroit more authority to hold other companies accountable.

“We are thrilled about the city taking the steps necessary to create a permanent long-term micro mobility program for Detroit,” Foley said. “That’s the goal that we’re looking for. We hope that when the City Council returns after their August recess, they’ll take action on the (proposed) ordinance and we’ll have a program that has some good rules to increase safety and increase the competitiveness of the city.”

Zach Williams, director of policy for Link in the U.S. and Canada, said scooter companies have been consulted by city officials who are working on new regulations. Link welcomes “thoughtful management,” he said, to support their goals of providing options to get folks out of cars.

“The open permit system is more rare at this point,” Williams said. “I’m sure when Detroit started its program in 2018 that was much more common, but cities that have been open for a long time are now moving toward more confined regulatory landscapes. That’s pretty typical.

“The reality is that the vast majority of Detroit’s residents may get on a scooter once, may never get on a scooter, and so it’s really important that we don’t run afoul of those folks,” he added. “When programs start to impede the non-users, that’s when you see a lot of friction with the community and then these programs get shackles put on them, which, in turn, limits the ability to do things to do carbon offsets and that kind of stuff.”

Foley described Lime as a “legacy provider” that’s worked with Detroit since 2018. He said Lime wants all companies held to the same standard.

“There are a lot of operators in Detroit,” Foley said. “Some have high quality and some have not so high quality. The city should have the right to be able to choose which operators have done the best and have demonstrated a strong safety record and a strong record of respect for the city over the last few years.”



An ambulance responds to the scene of a woman who was seen collapsed near a Lime scooter Friday, Aug. 19, 2022 on Atwater Street in Detroit, Mich. (BridgeDetroit Photo by Malachi Barrett)

Lime entered into an agreement with Grand Rapids this year to be the only provider of electric scooters in the West Michigan city. The partnership prompted Lime to offer a 30% discount for trips in neighborhoods outside the city's downtown.

Chicago started licensing scooter companies this year and **expects to earn \$4.4 million** through permitting fees. **The city is also requiring** scooter operators to use **technology** that prevents use on sidewalks meant for pedestrians. Denver **banned scooters** on city sidewalks and secured licensing agreements with Bird and Lime which help the city **track data** that Detroit does not have access to.

"We don't have any data and that's my request," Whitfield-Calloway said. "I want to know how we're monitoring, if we are issuing any fines, how many and which companies."

Rhodes said the proposed ordinance would offer licenses for free but charge a small fee for each scooter in Detroit.

Licenses would expire each year on March 31 and be subject to review by BSEED, which would be responsible for holding hearings to determine whether the business licenses should be renewed. Rhodes said BSEED could also decide to cut the number of scooters each company can deploy in Detroit.

“That would probably prompt every scooter company to do what they’re supposed to do,” Rhodes said. “Go retrieve the scooters, make sure they’re not blocking the sidewalk, educate their customers not to block the sidewalks, and we might even get some scooter parking areas that would eliminate this problem.”

#### **‘It’s not ideal’**

The expansion of scooters is also driving efforts to improve non-motorized transportation routes through Detroit. The city is using millions of dollars in federal COVID relief funds to [build greenways](#) and improve access for people who don’t wish to drive.

Ramses Dukes, chief of staff for Whitfield-Calloway, said revenue from regulatory fines could help the city invest in better bike lanes, designated scooter parking areas and other infrastructure to make scooters safer to use. However, Dukes said “the infrastructure should come before the expansion.”

Foley said Lime is encouraging Detroit to build out its bike lane network, as it’s the best way to keep scooters off the sidewalk, but Foley believes fees collected from scooter companies won’t create enough funding on its own.

“People tend to ride on sidewalks when they don’t feel safe in the street,” Foley said. “The city must be fully committed to funding its public works

programs and capital improvements that include bike lanes. (Scooter companies) are all comfortable with paying our fair share in paying for access to the right of way, but it won't be sufficient enough to build out a city's infrastructure network."

Keeping scooters off the sidewalk could become easier with new technology. Slusser said his office is working with scooter operators to pilot [sensors](#) that can determine when a scooter is on the street. Bird and Lime are [reportedly](#) developing cameras and machine learning to detect when users are riding on the sidewalk, which triggers an alarm or remotely slows down the scooter.

Foley said Lime will deploy scooters in Detroit next spring that alert riders every five seconds to get off the sidewalk or risk being fined by the company.

Williams said Link is launching similar "pedestrian defense" technology on its scooters in Chicago. But he said it's important for city planners to acknowledge that road conditions could force riders off the streets in places where it's unsafe for scooters to drive alongside cars.

"A one-size-fits-all approach is probably not appropriate, and aggressive sidewalk riding deterrence is best when used thoughtfully," he said.

Scooter use is already restricted or subject to reduced speeds in several locations around the city – including the RiverWalk, Greektown and downtown parks – using geofencing technology that draws digital boundaries around no-go areas.

Foley said geofencing technology has prevented Lime scooters from ending up in the Detroit River, which has been a concern for city officials. A [viral video in 2019](#) depicting people throwing Spin scooters into the river launched a Detroit Police Department investigation.



Geofencing has also restricted the use of some scooters in neighborhoods on Detroit's eastside and westside. Williams said Link's restrictions are generally due to labor constraints.

"Typically when we do shrink a service area, it's almost always just because we need to make sure that we're able to service the fleet effectively," Williams said. "Detroit is a pretty huge city. You wind up running into problems when you see scooters that hit a parking spot and then sit there for three or four days; that tends to be the scooter that generates complaints."

Foley said Lime supports designating parking areas to prevent scooting from littering city streets. Discarding scooters wherever the rider gets off will soon become "a thing of the past when it comes to downtowns," he said.

Collisions between scooter riders and pedestrians is another problem Detroit officials have struggled to address. A summer curfew rolled out this year to prevent nighttime crashes in crowded areas.

The Detroit Police Department's evening curfew renders electric scooters unusable between 9 p.m. and 6 a.m. on Friday and Saturday nights in Detroit's Central Business District. Slusser said it hasn't been decided whether the summer curfew will continue next year, or when it will end in 2022.

"I would say it's everyone's preference not to have it, but if it's helping, certainly (continuing the curfew) is something that we would consider here in the city," Slusser said.

Slusser said the city doesn't have a way to track scooter crashes but believes the temporary summer curfew has been successful in reducing them. The Consumer Product Safety Commission estimated injuries for standup scooters nationwide increased from 32,708 in 2017 to 54,409 in 2019. Data isn't available for more recent years.

“We had some anecdotal evidence from the community complaining about riders in areas that were difficult to see and we had some issues with crowd control in downtown areas,” Slusser said. “Those were some of the factors that led to making the decision to implement the curfew. As far as I know, we certainly have less complaints now.”

Scooter operators cooperated with the temporary curfew, remotely shutting down their fleets during the restricted hours. But the curfew is unpopular among the companies who spoke with BridgeDetroit.

“To put it bluntly, it’s not ideal,” Williams said.

Foley said the curfew has had a negative impact on riders who want to get around downtown without a car. He said Lime would like to see the curfew lifted.

“Scooters are part of the transportation network and as we enhance the transportation system you can’t just cut off parts of it because there have been incidents,” Foley said. “There are incidents on public buses, and that’s not a good reason to (shut down) a bus, because people rely on it.”

### **‘Accessible to all’**

City officials who spoke with BridgeDetroit said a major goal is to ensure residents have multiple options to get around.

The Office of Mobility Innovation hosted an event this summer for Detroiters to test e-scooters in a safe environment. The city **advertises discounts** for low-income residents who qualify for state or federal assistance. Detroit also partnered with Henry Ford Health and other sponsors to launch MoGo, a nonprofit bikeshare group, in 2017.

“Mayor Duggan has been a proponent of scooters since the beginning,” Slusser said. “He’s always wanted to be very scooter-friendly, as long as it

meant the public is safe. That's going to continue to be our guiding principle, not just with scooters, but all of these new mobility options."

The number of American cities with at least one bikeshare or electric scooter program rose 30% between 2020 and 2021, according to the [North American Bikeshare and Scootershare Association](#). A [new report](#) released in August found riders who are white and riders making more than \$100,000 are over-represented compared to the demographics of those cities.

Williams, the Link policy director, said internal data shows scooter users are becoming more diverse. Industry surveys from 2018 and 2019 found the majority of riders were white men in their 20s and 30s, but this is changing.

Most electric scooters travel an average distance of 1.3 miles and use them twice per day, according to the NABSA report.

Dukes said alternative modes of transportation must be accessible to all Detroiters, not just those who live and play downtown.

"This could be used for students, this could be used for folks who are wanting to navigate Palmer Park and Rouge Park, but I think (scooter companies) are focusing merely on downtown because of the demand," Dukes said. "That doesn't mean there isn't demand in other parts of the city as well."

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Michigan Health Watch

# Pedestrian deaths are rising on Michigan roads, the reason is up for debate

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Pedestrian fatalities have been going up in Michigan since 2018. After the pandemic, they're at the highest level in at least 24 years. (Shutterstock)

 August 18, 2022

 [Roni Kane](#)

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- ***Pedestrian fatalities in Michigan last year totaled 183, the most since records have been kept***
  - ***Overall pedestrian crashes fell about 20 percent during the pandemic***
  - ***Experts are baffled as to why Michigan roads seem to be more dangerous for pedestrians***
- 

In August 2021, in the parking lot of a Shop-N-Save in northern Michigan's Benzie County, a [77-year-old woman](#) was struck and killed by a large pick-up truck.

In October, [a high school senior](#) walking home from school in Rochester was hit by another student driving through an intersection right next to their high school. She died the next day.

In December, a [46-year-old](#) mother of two was crossing 60th Street and Division Avenue when she was hit in Byron Township. She was pronounced dead at the scene.

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Crossing the street is getting more dangerous in Michigan, with a pedestrian dying every two days in 2021. Pedestrian fatalities have been rising annually since 2018, hitting what was at least a [24-year high](#) in 2021, with 183 individuals killed in encounters with vehicles. State data indicates that even while the overall number of pedestrian-vehicle accidents has dropped, those accidents have become more deadly.





A 5 percent increase in pedestrian fatalities from 2020 to 2021 contributed to an overall 10 percent increase in traffic fatalities across the state. Last year had the [most traffic-related deaths](#) in Michigan for 16 years, according to data released by the Michigan State Police earlier this summer, with 1,311 fatalities, or an average of over three deaths per day.

Jim Valenta, a highway safety expert in Dexter who has previously conducted research for the Federal Highway Administration, said Michigan is not the only state that has witnessed climbing pedestrian fatality numbers. From 2010 to 2020, pedestrian deaths increased by [54 percent](#) across the U.S., rising faster than any other type of traffic fatality, according to [a report](#) put out by the Governors Highway Safety Association.

“It’s not unique to Michigan,” Valenta said.

What’s curious is that the rise in fatalities over the past three years has been accompanied by a plummeting number of total pedestrian-involved crashes. From 2019 to 2021, pedestrian crashes in Michigan fell by 20 percent while fatalities rose by about the same margin.

Experts have a couple of hypotheses as to why vehicle-pedestrian accidents have become more deadly, but no one can say for certain.

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“That’s the million dollar question,” according to Nancy Feldbush, a member of the communications department for the Michigan [Office of Highway Safety Planning](#).

The office knows the answer could save dozens of lives, so they’re trying to figure it out. Feldbush noted that the recent uptick in pedestrian deaths coincided with the COVID-19 pandemic. It’s possible people altered their driving or transportation habits during that time, she said.

For instance, the New York Times reported that speeding and other forms of [reckless driving](#) also increased during the pandemic. Todd Scott, the executive director of the [Detroit Greenways Coalition](#) which advocates for safe pedestrian and bike paths in the Motor City, cited speeding as one of the main reasons he thinks pedestrian fatalities are on the rise.

During the pandemic, Michigan saw an uptick in speed-related traffic fatalities — an [8 percent increase](#) from 2019 to 2020.

“Speed is the major determinant and whether a pedestrian lives or dies when they’re hit by a car,” Scott said. “Even going 5 mph miles per hour faster can lead to more

serious injuries or death.”

But road rage is probably not the sole reason Michigan roads are becoming more dangerous for pedestrians, Feldbush said.

“It’s probably a multitude of things, a perfect storm coming together,” Feldbush said.

She also cited distracted driving, specifically texting or using a cell phone while behind the wheel, as another plausible culprit. Distracted driving has jumped [27 percent](#) in Michigan over the past five years.

Traffic experts in the [New York Times article](#) mentioned that bigger and heavier car models can pose a greater danger to pedestrians. From 1989 to 2019, the average vehicle weight in the U.S. increased by [24 percent](#) and [nearly half](#) of Michigan cars were SUVs in 2021.

Valenta said it might be tempting to assume that pedestrian fatality rates are correlated with vehicle size, but he’s not buying it.

“When you have a 180-pound pedestrian that is struck by a 3,300 pound vehicle, it really doesn’t matter if that particular vehicle is heavier or lighter,” Valenta said. “The odds are so far in favor of the vehicle than the pedestrian.”

Even if weight is less important, Scott emphasized that cars with larger front ends — SUVs and trucks — are often [more dangerous](#) for pedestrians. He said a smaller sedan typically hits a pedestrian in the legs, an injury they are likely to survive. On the other hand, vehicles with taller front ends strike a pedestrian’s upper body or head, an accident that has a higher chance of being fatal.

It’s also possible that pedestrians and drivers alike are unaware, or ignorant, of pedestrian laws, Feldbush said. In about a third of pedestrian fatalities [last year](#), the pedestrian was jaywalking.

That’s why the Office of Highway Safety Planning offers grants annually to cities with high pedestrian fatality rates for increased law enforcement. The office is also developing educational materials for the public that will explain Michigan’s pedestrian laws in layman’s terms.

“It’s not only about giving tickets, it’s about education, so that both pedestrians and motorists can learn the pedestrian laws,” Feldbush told Bridge Michigan.



Valenta said in some cases the laws and an increased police presence are not enough to protect walkers, though. Adding infrastructure that supports safe pedestrian practices — crosswalks, wider sidewalks and crossing lights — is crucial to preventing crashes, Valenta said.

“A lot of the communities that I've worked with place the responsibility for pedestrian safety in the hands of the police department or enforcement,” Valenta said. “The involvement of the engineering community is critical to improving pedestrian safety.”

According to the [Detroit Free Press](#), between 2010 and 2016, Detroit had the highest per-capita pedestrian fatality rate of any large city in the U.S. Scott said Detroit has been working on transforming a couple roads every year into “[streetscapes](#).” That process includes the implementation of sidewalks, bike paths, street lighting and other safety features.

“You design a road so that it's safer to use for everybody, not just those in motor vehicles,” Scott said.

Since 2019, the city has completed 15 streetscape projects, which Scott said looks like a step in the right direction. According to a [recent analysis](#) of data from the National Highway Traffic Safety Administration, as of 2020, Detroit ranked as the 16th most dangerous city for pedestrians based on the per-capita fatality rate.

Pedestrian fatalities in the Motor City are [still on the rise](#) though, up nearly 10 percent in 2021 from the year before.

In other areas, even after a crash, infrastructure can take a while to update. Rochester Hills resident Julia Wasiluk’s daughter was friends with the Stoney Creek High School senior, Elisa Volcic, who was fatally hit in October 2021.

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Even though the intersection — Tienken Road and Clear Creek Drive — is close to the school property and frequently used by students, Wasiluk said a pedestrian crossing signal has not yet been installed.

“It was just heartbreaking,” Wasiluk said. “It’s right in front of the high school. Now, it’s like 10 months after the accident and there’s still no light there. When a student is hit, you’d think that would be a priority.”

Through the end of July, State Police had reported 60 pedestrian deaths so far in 2022 — though that number could change slightly as July accident reports continue to be investigated. As of now, that’s down 31 percent from the 87 pedestrian fatalities that had been reported by the same time last year.

“But does that mean this number is going to end up being lower than last year’s? I can’t guarantee that,” Feldbush said.

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