

**BIRMINGHAM CITY COMMISSION AGENDA**  
**AUGUST 27, 2018**  
**MUNICIPAL BUILDING, 151 MARTIN**  
**7:30 P.M.**

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

Andrew M. Harris, Mayor

**II. ROLL CALL**

J. Cherilynn Mynsberge, City Clerk

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

***Announcements:***

- Friday, August 31<sup>st</sup> is the last day to pay July 2018 Property Taxes without penalty.
- City Offices will be closed on Monday, September 3<sup>rd</sup> in observance of Labor Day.

**IV. 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.

- A. Resolution approving the City Commission meeting minutes of August 13, 2018.
- B. Resolution approving the warrant list, including Automated Clearing House payments, dated August 15, 2018 in the amount of \$8,708,005.82.
- C. Resolution approving the warrant list, including Automated Clearing House payments, dated August 22, 2018 in the amount of \$1,084,471.13.
- D. Resolution approving the purchase of one (1) Talon leaf claw from Henke Manufacturing Corporation in the amount of \$12,160.00 from account 641-441.006-971.0100.
- E. Resolution approving the purchase of holiday lights from Wintergreen Corporation for a total cost not to exceed \$23,250.00. Funds are available from the General Fund-Community Activities Operating Supplies account #101-441.004-729.0000 for this purchase.
- F. Resolution approving the purchase of a new 2019 Ford Escape from Gorno Ford through the State of Michigan extendable purchasing contract #2WDU-0040A in the amount of \$20,539.00 from account #101-371.000-971.0100.
- G. Resolution approving the purchase of one (1) new 2019 Ford Taurus Police Interceptor from Gorno Ford through the State of Michigan Mi-Deal extendable purchasing contract #071B7700181 in the amount of \$30,196.00 from account #641-441.006.971.0100.
- H. Resolution confirming the City Manager's authorization for the emergency expenditure regarding the repair to city vehicle #91 by Ed Rinke Chevrolet in the amount of

\$7,231.18 from the Auto Equipment Fund account #641-441.006-933.0200, pursuant to Sec. 2-286 of the City Code.

- I. Resolution approving the contract for 2018-19 pavement marking handwork with Hart Pavement Striping Corporation in the amount of \$87,690.00 for combined fall 2018 and spring 2019 paintings; further authorizing and directing the mayor and city clerk to sign the contract on behalf of the city; further authorizing this budgeted expenditure from account number 202-303-001-937.0200.
- J. Resolution accepting the resignation of Thomas Trapnell from the Design Review Board and the Historic District Commission as a Regular Member, thanking him for his service, and directing the City Clerk to begin the process of filling the vacancy.
- K. Resolution authorizing the City's compliance with the provisions of State of Michigan Public Act 152 of 2011, by exercising the City's option to exempt itself from the requirements of the Act; and further, directing the City Engineer and Finance Director to sign and submit the required form to the Michigan Department of Transportation.
- L. Resolution setting Monday, September 17, 2018 for a public hearing to consider approval of the following ordinance amendments to Chapter 126, Zoning of the Birmingham City Code:
  - 1. Section 3.04, Specific Standards, Building Use, to amend the regulations of the bistro Special Land Use Permit;
  - 2. Section 5.06, O1 – Office District, Specific Standards, Building Use, to amend the regulations of the bistro Special Land Use Permit;
  - 3. Section 5.07, O2 – Office District, Specific Standards, Building Use, to amend the regulations of the bistro Special Land Use Permit;
  - 4. Section 5.08, P – Parking District, Specific Standards, Building Use, to amend the regulations of the bistro Special Land Use Permit;
  - 5. Section 5.10, B2 – General Business District, B2B – General Business District, B2C –General Business District, Specific Standards, Building Use, to amend the regulations of the bistro Special Land Use Permit;
  - 6. Section 5.11, B3 – Office-Residential District, Specific Standards, Building Use, to amend the regulations of the bistro Special Land Use Permit;
  - 7. Section 5.12, B4 – Business-Residential District, Specific Standards, Building Use, to amend the regulations of the bistro Special Land Use Permit;
  - 8. Section 5.13, MX – Mixed Use District, Specific Standards, Building Use, to amend the regulations of the bistro Special Land Use Permit; and
  - 9. Section 9.02, Definitions: Bistro.
- M. Resolution approving the Program Year 2018 High Intensity Drug Trafficking Area (HIDTA) Sub recipient agreement between the County of Oakland and the City of Birmingham. Further, authorizing the Mayor and the City Manager to sign the agreement on behalf of the City.
- N. Resolution authorizing the expenditure to replace the elevator door in the Chester parking garage to Kone Inc. in the amount of \$27,583.00 to be paid from the Parking Fund account #585-538.008-930.0200.

## **V. UNFINISHED BUSINESS**

- A. Resolution approving the Downtown Retail Review RFP, and directing staff to issue the RFP.

## **VI. NEW BUSINESS**

- A. Resolution approving the expenditure of \$40,000 to conduct an environmental study, surveys, title search and appraisals of the North Old Woodward parking deck and Parking Lot 5, with said authority to be limited for one (1) year only from the date of the resolution and expiring one (1) year from the date thereof, and further charging the automobile parking fund #585-538.001-811.0000 for these services. (complete resolution in agenda packet)

## **VII. REMOVED FROM CONSENT AGENDA**

## **VIII. COMMUNICATIONS**

## **IX. OPEN TO THE PUBLIC FOR MATTERS NOT ON THE AGENDA**

## **X. REPORTS**

- A. Commissioner Reports
- B. Commissioner Comments
- C. Advisory Boards, Committees, Commissions' Reports and Agendas
- D. Legislation
- E. City Staff

## **XI. ADJOURN**

### **INFORMATION ONLY**

*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:248-530-1880) por lo menos el día antes de la reunión pública. (Title VI of the Civil Rights Act of 1964).*

**BIRMINGHAM CITY COMMISSION MINUTES**  
**AUGUST 13, 2018**  
**MUNICIPAL BUILDING, 151 MARTIN**  
**7:30 P.M.**

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

Andrew M. Harris, Mayor

**II. ROLL CALL**

ROLL CALL:	Present,	Mayor Harris Mayor Pro Tem Bordman Commissioner Boutros Commissioner DeWeese Commissioner Hoff Commissioner Nickita (arrived at 7:40 p.m.) Commissioner Sherman
	Absent,	none

Administration: City Manager Valentine, City Attorney Currier, Planning Director Ecker, City Engineer O'Meara, Birmingham Museum Director Pielack, Department of Public Services Director Wood

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

**08-215-18 ANNOUNCEMENTS**

- The Baldwin Public Library is excited to introduce Kanopy, an on-demand movie streaming service featuring over 30,000 titles. Kanopy specializes in award-winning, foreign language, documentary, and hard-to-find films. Patrons can watch Kanopy on all of their devices. Visit [baldwinlib.kanopy.com](http://baldwinlib.kanopy.com) to get started.
- The Birmingham Museum will hold a family-friendly open house entitled "A Walk in the Park," on the museum grounds on Sunday, September 9, from 1:30 to 3:30 pm to share plans for the historic landscape and receive public feedback.

County Commissioner Shelley Goodman Taub:

- Apologized to the City for the ballot shortages during the August 7, 2018 Michigan primary.
- Said that had Oakland County officials requested more funding for ballots, the County Board of Commissioners would have provided it.
- Said it was the worst election situation she had ever seen in her tenure as a County Commissioner.
- Specifically thanked City Clerk Mynsberge for her work in procuring additional ballots for Birmingham's citizens during the shortage.



Commissioner Sherman thanked County Commissioner Goodman Taub. Commissioner Sherman was troubled that County Clerk Lisa M. Brown went to the media to blame other parties before investigating the situation. He further said:

- The County Clerk owes all Oakland County municipal clerks, as well as the public, an apology.
- The County Clerk's public relations campaign regarding the issue was a disaster.
- County Clerk Brown should attend a Birmingham City Commission in order to apologize to City Clerk Mynsberge and the public for the untrue statements made to the media regarding the ballot shortages.

Mayor Harris thanked County Commissioner Goodman Taub for appearing before the Commission and for clarifying that neither Birmingham nor City Clerk Mynsberge were responsible for the ballot shortages.

County Commissioner Goodman Taub reiterated that the Oakland municipal clerks were blameless in the ballot shortages, and stated they work very hard for their respective communities.

**08-216-18 RESOLUTION REQUESTING OAKLAND COUNTY BOARD OF COMMISSIONERS CONDUCT INVESTIGATION REGARDING SHORTAGE OF BALLOTS IN THE AUGUST 7, 2018 PRIMARY ELECTION**

City Manager Valentine explained the countywide ballot shortage during the August 7, 2018 primary election. He continued that:

- Birmingham acknowledges its frustration regarding the ballot shortage through this resolution.
- Birmingham calls on the County Commissioners to do a thorough investigation into how the ballot shortage occurred, and how to prevent it from occurring again.
- Protecting citizens' right to vote is paramount.

**MOTION:** Motion by Commissioner DeWeese, seconded by Mayor Pro Tem Bordman: To adopt the resolution requesting the Oakland County Board of Commissioners conduct a thorough investigation into the Oakland County Clerk's Office actions resulting in a shortage of ballots in the August 7, 2018 Primary Election.

**MOTION:** Motion by Mayor Pro Tem Bordman, seconded by Commissioner Boutros: To amend the motion by adding "to appoint an independent investigator".

Mayor Pro Tem Bordman noted that this amendment could help prevent the investigation from becoming politically motivated.

VOTE:	Yeas,	7
	Nays,	0
	Absent,	0

County Commissioner Goodman Taub stated:

- The County Board of Commissioners has already appointed a bipartisan committee to investigate the ballot shortage.

- The issue is not a partisan one and the Board of Commissioners will not allow it to be treated as one. This is about guaranteeing every citizen the right to vote.

**VOTE ON MOTION AS AMENDED:**

Now, therefore, be it resolved the Birmingham City Commission formally requests the Oakland County Board of Commissioners to appoint an independent investigator to conduct a thorough investigation into the actions, causes, and impacts of the role of the Oakland County Clerk's office in administering the 2018 primary election, and be it further resolved the Birmingham City Commission requests a copy of the findings of this investigation be provided to the City of Birmingham as well as all affected communities in Oakland County once completed, and finally be it further resolved that a copy of this resolution be sent to all communities within Oakland County. *(Formal resolution appended to these minutes as Attachment A)*

VOTE:	Yeas,	7
	Nays,	0
	Absent,	0

**08-217-18 APPOINTMENTS TO THE ADVISORY PARKING COMMITTEE**

The City Commission interviewed new applicant Jennifer S. Yert. Current members Al Vaitas and Anne Honhart were unable to attend.

**MOTION:** Motion by Mayor Pro Tem Bordman:

To appoint Al Vaitas to the Advisory Parking Committee as a regular member who is a representative of a small retail operation within the parking assessment district to serve a three-year term to expire September 4, 2021.

VOTE:	Yeas,	7
	Nays,	0
	Absent,	0

**MOTION:** Motion by Commissioner Hoff:

To appoint Anne Honhart to the Advisory Parking Committee as a regular member who is a resident who does not qualify under the following categories: downtown commercial representative of large retail, small retail, a professional firm, a building owner, a restaurant owner, or a downtown employee to serve a three-year term to expire September 4, 2021.

VOTE:	Yeas,	7
	Nays,	0
	Absent,	0

**MOTION:** Motion by Commissioner Boutros:

To appoint Jennifer Yert to the Advisory Parking Committee as an alternate member who is a downtown employee representative to serve the remainder of a three-year term to expire September 4, 2020.

VOTE:	Yeas,	7
	Nays,	0
	Absent,	0

**08-218-18 APPOINTMENTS TO THE AD HOC SENIOR SERVICES COMMITTEE**

The City Commission interviewed residents Gordon Rinschler and Jack Burns. Mr. Rinschler offered to resign his position on the Board of NEXT should it be construed as a conflict of interest. City Attorney Currier will look into recent Ethics Board opinions.

**MOTION:** Motion by Mayor Pro Tem Bordman:

To appoint Gordon Rinschler as a Birmingham resident representative to the Joint Senior Services Committee.

VOTE:           Yeas,           7  
                  Nays,           0  
                  Absent,       0

**MOTION:** Motion by Commissioner Boutros:

To appoint Mayor Pro Tem Bordman as a Birmingham resident representative to the Joint Senior Services Committee.

VOTE:           Yeas,           7  
                  Nays,           0  
                  Absent,       0

Mayor Harris stated Gordon Rinschler would serve as the resident representative to the Joint Senior Services Committee.

**MOTION:** Motion by Commissioner Boutros:

To appoint Mayor Pro Tem Bordman as an elected official to the Ad Hoc Senior Services Committee.

VOTE:           Yeas,           7  
                  Nays,           0  
                  Absent,       0

**MOTION:** Motion by Commissioner Sherman:

To appoint City Manager Valentine as an ex-officio administration official to the Ad Hoc Senior Services Committee.

VOTE:           Yeas,           7  
                  Nays,           0  
                  Absent,       0

City Clerk Mynsberge administered the Oath of Office to the appointees.

**IV. 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.

**08-219-18 APPROVAL OF CONSENT AGENDA**

The following items were removed from the Consent Agenda:

- Commissioner Sherman: Item I, Resolution awarding the S. Eton Rd. Signing and Pavement Marking Improvements, Contract #11-18(P) to PK Contracting, Inc.
- Mayor Pro Tem Bordman: Item E, Resolution accepting the resignation of Ryan Ross from the Parks and Recreation Board as a Regular Member and directing the City Clerk to begin the process of filling the vacancy.  
Item J, Resolution awarding the new lockers for Birmingham Police Department contract to Steel Equipment Company.
- City Manager Valentine: Item K, Rail District Linear Park – Professional Services Agreement, to be removed from the agenda entirely.

**MOTION:** Motion by Commissioner Boutros, seconded by Commissioner Nickita:  
To approve the Consent Agenda with items E, I, and J removed, and Item K removed from the agenda without further consideration.

ROLL CALL:	Present,	Mayor Harris Mayor Pro Tem Bordman Commissioner Boutros Commissioner DeWeese Commissioner Hoff Commissioner Nickita Commissioner Sherman
	Absent,	none

- A. Resolution approving the City Commission meeting minutes of July 23, 2018.
- B. Resolution approving the warrant list, including Automated Clearing House payments, dated July 25, 2018 in the amount of \$1,513,374.31.
- C. Resolution approving the warrant list, including Automated Clearing House payments, dated August 1, 2018 in the amount of \$400,750.84.
- D. Resolution accepting the resignation of Jason Canvasser from the Board of Zoning Appeals as an Alternate Member and directing the City Clerk to begin the process of filling the vacancy.
- E. Resolution accepting the resignation of Ryan Ross from the Parks and Recreation Board as a Regular Member and directing the City Clerk to begin the process of filling the vacancy.
- F. Resolution approving a request submitted by the Birmingham Bloomfield Chamber and Junior League of Birmingham requesting permission to hold the annual Halloween Parade and Pumpkin Patch on Sunday, October 28, 2018 in downtown Birmingham, contingent upon compliance with all permit and insurance requirements and payment of all fees, and further, pursuant to any minor modifications that may be deemed necessary by administrative staff at the time of the event.
- G. Resolution approving the tree removal agreement with adjacent property owner Linda Bloch for shared cost of \$ 800.00 for removal of three invasive fence line trees, to be

expended from Hunter House Account 101-804.001-811.0000, Other Contractual Services; \$400.00 of which will be reimbursed by Ms. Bloch.

- H. Resolution approving the chemical/fertilizer purchases for Lincoln Hills and Springdale golf courses from Harrell's for \$22,000, Target Specialty Products for \$22,000 and Great Lakes Turf for \$8,000. The total purchase from all vendors will not exceed a total of \$52,000. Funds will be charged to account #s 584/597-753.001-729.0000.
- L. Resolution setting Monday, September 17, 2018 at 7:30 PM for a public hearing to consider the request by the property owner to eliminate the historic designation on 361 E. Maple.

Commissioner Boutros thanked Jason Canvasser and Ryan Ross for their service to Birmingham.

Mayor Pro Tem Bordman thanked Ryan Ross for his six years of service to the City's parks and Little League. Mayor Pro Tem Bordman noted that Jason Canvasser is now serving as a regular member of the Board of Zoning Appeals.

**MOTION:** Motion by Mayor Pro Tem Bordman, seconded by Commissioner Nickita:  
To accept the resignation of Ryan Ross from the Parks and Recreation Board as a Regular Member and directing the City Clerk to begin the process of filling the vacancy.

VOTE:	Yeas,	7
	Nays,	0
	Absent,	0

## **V. UNFINISHED BUSINESS**

None.

## **VI. NEW BUSINESS**

### **08-220-18 CANCEL PUBLIC HEARING - 225 E. MAPLE, SOCIAL KITCHEN – SPECIAL LAND USE PERMIT AMENDMENT AND FINAL SITE PLAN & DESIGN REVIEW**

City Manager Valentine said Social Kitchen is working with a new architect, and he anticipates this appearing before the Commission again within the next few months.

**MOTION:** Motion by Commissioner DeWeese, seconded by Commissioner Nickita:  
To cancel the public hearing to consider approval of the Final Site Plan and Special Land Use Permit for 223 - 225 E. Maple, Social Kitchen and Bar, pursuant to Article 7, section 7.34, Zoning, of the Birmingham City Code.

VOTE:	Yeas,	7
	Nays,	0
	Absent,	0

### **08-221-18 CANCEL PUBLIC HEARING – 469–479 S. OLD WOODWARD – REZONING**

City Manager Valentine reported the applicant wishes to go back to Planning Board.

**MOTION:** Motion by Commissioner Sherman, seconded by Commissioner DeWeese:

To cancel the public hearing to consider approval of the rezoning of 469–479 S. Old Woodward from B3/D4 to B3/D5 and to refer the matter back to the Planning Board.

VOTE:            Yeas,            7  
                     Nays,            0  
                     Absent,          0

The Commission decided to further discuss during Commissioner Comments:

- How much information needs to be provided to the Commission upon the cancellation of a public hearing; and,
- How to supply Commissioners with previously submitted background information for agenda items.

#### **08-222-18    BIRMINGHAM MUSEUM GROUNDS GROUP USE RULES, APPLICATION, AND FEES**

Birmingham Museum Director Pielack reviewed her August 3, 2018 memo to City Manager Valentine and stated:

- There are no facilities for food preparation in the museum any longer.
- The back porch of the Allen House is considered part of the grounds but the interior is not.

Mayor Pro Tem Bordman suggested some changes in the policy:

- Under “Conditions of Permitted Use,” Mayor Pro Tem Bordman recommended removing the reference to political rallies, or specifying that ‘sports activities, political rallies, and/or outdoor concerts’ are more appropriate in other Birmingham parks, and that parties interested in hosting those types of activities should contact the Director of Public Services.
- Fundraisers should be allowed because technically a wedding shower could be a fundraiser, and the City should allow Birmingham-based non-profits to have small fundraisers on the grounds as well.
- Any references to ‘Porta-john’ must be changed to something like ‘portable toilet facility’ because ‘Porta-john’ is a registered trademark.
- The language on signage in number 10 is currently a bit more restrictive than necessary.
- In number 12, it could be changed to ‘minor children must be in direct supervision from a parent or guardian,’ or something to similar effect.

Mayor Pro Tem Bordman commended Museum Director Pielack on this work.

Commissioner Sherman objected to prohibiting balloons and said the ground use rules as proposed are overly restrictive.

**MOTION:**    Motion by Mayor Pro Tem Bordman, seconded by Commissioner Boutros:  
To approve the Birmingham Museum Grounds Group Use Rules and associated application and Fees as amended.

VOTE:            Yeas,            6  
                     Nays,            1 (Sherman)  
                     Absent,          0

## **08-223-18 REQUEST FOR PROPOSALS – PLANNING, ZONING & PARKING CONSULTING SERVICES**

Planning Director Ecker reviewed her August 1, 2018 memo to City Manager Valentine and confirmed that any relevant information gleaned from Birmingham's previous parking studies would be taken into account as part of this project.

Mayor Pro Tem Bordman noted:

- Nothing in the RFP addresses the issue of office workers occupying spaces all day within Birmingham parking structures.
- Any references to the size of more affordable units should be excised because the objective is simply more affordable units, not necessarily smaller ones.
- That the seventh line, which begins "Urban communities...", should continue "that lack viable mass transit".
- Within the next sentence, three lines down, "smaller-sized" should be deleted, and the sentence should continue at "units in these areas," with "to evaluate the impact that the increase in office worker per square foot has on parking demand."
- Page eight, number two, the second-to-the-last line should be changed to "and cost of residential units in the mixed-use areas noted, the changes in parking demand caused by the increased number of office workers per square foot."
- Page eight, number three, the fourth line down should read "its comparable size and character to Birmingham, with vibrant, mixed-use areas and no effective mass transit."
- "Smaller" should be deleted from the top of page nine.
- Page nine, paragraph four, third-line-from-the-bottom should have "smaller sized" removed.
- Paragraph five on page nine, which calls for one town hall meeting, is inconsistent with paragraph seven on the same page which requires "two public engagement activities".

Planning Director Ecker clarified that the goal of paragraphs five and seven on page nine were to allow for some flexibility in the Contractor's public engagement activities while requiring one town hall as well.

Mayor Pro Tem Bordman said that intention was not clear.

Commissioner Nickita said the RFP must focus on the urgency of understanding the interaction of all demands on city parking, including office demands on parking, rather than emphasizing residential demands on parking.

Planning Director Ecker agreed to update the RFP to emphasize the interaction of all demands on city parking, encourage the development of more affordable residential uses, study how parking demands have changed, and related issues.

Commissioner DeWeese said he would like stronger language regarding recommended changes and directions for the consultant.

Planning Director Ecker said paragraph four on page nine aimed to address that.

Commissioner DeWeese confirmed he would like the language to be stronger and suggested that this be returned to the Planning Board since so many changes were recommended in the discussion.

Commissioners Hoff and Boutros asked whether this study is necessary since parking will also be studied as part of the Master Planning process.

Mayor Pro Tem Bordman said this study:

- May be particularly valuable because parking continues to be an urgent issue.
- Could yield recommended ordinance changes that move Birmingham in the direction of its stated objectives.
- Could sufficiently explore parking issues so as to allow for lighter parking study during the Master Planning process.
- Should not be voted on tonight due to too many recommended changes.

Commissioner Hoff recommended that it might be most beneficial in terms of cost, familiarity with Birmingham's circumstances, and efficiency to approach Nelson-Nygaard to see if they are interested in expanding their scope of work to include this study.

Commissioner Nickita said parking discussions in the Master Plan are going to be more global than the intent of this study, and agreed with Mayor Pro Tem Bordman that the issue is too urgent to delay.

There was consensus that the RFP be amended and subsequently be returned to the Commission.

#### **08-224-18 RFP FOR DOWNTOWN RETAIL REVIEW**

Planning Director Ecker reviewed her August 2, 2018 memo to City Manager Valentine.

Commissioner Nickita said this RFP must be refined in order to better align with the Commission's directives to the Planning Board on the issue. He clarified that the issue comes down to retail front particulars, and whether they should be expanded, whether the locations should be altered, whether there should be zoning tiers, and a couple of other considerations.

Commissioner Sherman:

- Concurred with Commissioner Nickita;
- Noted that there was mission creep on this RFP as soon as the Planning Board's July 11, 2018 meeting; and,
- Recommended the Planning Board review the Joint Commission-Planning Board meeting minutes from June 18, 2018 for the specific Commission directives.

Planning Director Ecker:

- Confirmed there are no plans to get rid of the redline retail district, and that the RFP language can be updated to reflect that.
- Stated the Planning Board would like to change the name of the redline retail district.
- Stated that the goal is to have a consultant explore how to strengthen retail within the redline retail boundaries, instead of removing any areas from the boundaries.



Commissioner Nickita said the sole objective of this RFP is to determine how best to organize the redline retail district in order to continue developing a pedestrian-oriented experience in downtown Birmingham.

City Manager Valentine stated that the RFP would be updated by City staff to reflect the Commission's comments and would be brought back before the Commission at the next meeting. If the Commission would also like the Planning Board to review the amended RFP, that could be arranged as well.

Mayor Pro Tem Bordman said the boundaries of the redline retail district should remain the same, that a tiered zoning system might be acceptable, and that the goal is to determine what other kinds of retail uses would suit the 2016 Plan.

**08-225-18 AMENDMENTS TO AMEND PART II OF THE CITY CODE, CHAPTER 74, OFFENSES, ARTICLE IV - OFFENSES AGAINST PROPERTY, TO ADD SECTION 74-81 THEFT; PROSECUTION; JURISDICTION AND SECTION 74-109 INTENT TO DEFRAUD FOR SERVICES OR TO USE VICTIM'S INFORMATION TO COMMIT AN ILLEGAL ACT**

City Attorney Currier explained that this amendment brings City Code into accordance with Michigan law by allowing Birmingham to have jurisdiction on matters that are currently under state law which the city attorney's office can handle.

City Manager Valentine explained that a draft version of this ordinance was included in the agenda packet, and the final version was supplied to the Commissioners this evening.

**MOTION:** Motion by Commissioner Sherman, seconded by Mayor Pro Tem Bordman: To amend Part II of the City Code, Chapter 74, Offenses, Article IV, Offenses Against Property to include the following two new ordinances:

Section 74-81: Theft; Prosecution; Jurisdiction

AND

Section 74-109: Intent to Defraud for Services and Section 74-109 (A) – Penalty for Violation of Section 74-109.

Furthermore, to authorize the Mayor and the City Clerk to sign the ordinance amendments on behalf of the City.

VOTE:	Yeas,	7
	Nays,	0
	Absent,	0

**08-226-18 DESIGNATION OF VOTING DELEGATE(S) FOR THE MICHIGAN MUNICIPAL LEAGUE ANNUAL MEETING**

City Manager Valentine reviewed City Clerk Mynsberge's August 3, 2018 memo.

**MOTION:** Motion by Mayor Pro Tem Bordman, seconded by Commissioner Boutros: To appoint City Manager Valentine as the Birmingham City Commission's official voting delegate, and Mayor Pro Tem Bordman as the alternate voting delegate, at the Michigan Municipal League Annual Meeting to be held in Grand Rapids, Michigan on September 21, 2018.

VOTE:	Yeas,	7
	Nays,	0
	Absent,	0

## 08-227-18 CLOSED SESSION

**MOTION:** Motion by Commissioner Nickita, seconded by Commissioner Hoff:  
To meet in closed session pursuant to Section 8(h) of the Open Meetings Act, MCL 15.261 – 15.275.

**(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.)**

ROLL CALL:	Yeas,	Mayor Harris Mayor Pro Tem Bordman Commissioner Boutros Commissioner DeWeese Commissioner Hoff Commissioner Nickita Commissioner Sherman
	Nays,	none
	Absent,	none

City Manager Valentine said no action was expected.

<b>VII. REMOVED FROM CONSENT AGENDA</b>
---

### 08-228-18 S. ETON RD. SIGNING & PAVEMENT MARKING IMPROVEMENTS CONTRACT 11-18(P) (ITEM I)

Commissioner Sherman suggested re-bidding this project in January or February 2019.

City Engineer O'Meara confirmed that re-bidding at that time may yield more bids and that it would also be possible to re-bid in December 2018 for the project to begin in Spring 2019.

The Commission took no action.

### 08-229-18 RFP -- NEW LOCKERS FOR THE BIRMINGHAM POLICE DEPARTMENT (ITEM J)

Mayor Pro Tem Bordman clarified that the resolution refers only to new lockers, but the dollar amount also includes money for work on the bathroom facility.

**MOTION:** Motion moved by Mayor Pro Tem Bordman, seconded by Commissioner DeWeese:

To award the New Lockers for Birmingham Police Department contract to Steel Equipment Company, in an amount not to exceed \$ 55,100.00 to be charged to account 401-265.003-977.0000 and authorizing the Mayor and City Clerk to sign the agreement for these services,

further, approving the appropriation and amendment to the 2018-2019 Capital Project Fund budget as follows:

Capital Projects Fund

Revenues:

Draw from Fund Balance	401-000.000-400.0000	\$55,100
------------------------	----------------------	----------

Expenditures:

Buildings – City Hall and Grounds	401-265.001-977.0000	\$55,100
--------------------------------------	----------------------	----------

VOTE:	Yeas,	7
	Nays,	0
	Absent,	0

<b>VIII. COMMUNICATIONS</b>
-----------------------------

<b>IX. OPEN TO THE PUBLIC FOR MATTERS NOT ON THE AGENDA</b>
---

<b>X. REPORTS</b>
-------------------

**08-230-18 COMMISSIONER REPORTS**

1. Notice of Intention to appoint three regular members to the Design Review Board on September 6, 2018.
2. Notice of Intention to appoint three regular members to the Historic District Commission on September 6, 2018.
3. Notice of Intention to appoint one alternate member to the Board of Zoning Appeals on September 6, 2018.
4. Notice of Intention to appoint one regular member to the Parks and Recreation Board on September 6, 2018.

**08-231-18 COMMISSIONER COMMENTS**

Mayor Pro Tem Bordman recounted an email from a Birmingham resident golfing at Springdale Golf Course who complained that loud music and commentary from the pavilion could be heard at all nine holes of the course. The Commission may have to do some work on rules of use of the pavilion.

Mayor Pro Tem Bordman recommended that the Commissioners be advised to save certain agenda materials if an issue is anticipated to re-appear before the Commission. She suggested a cover sheet listing the agenda items that will be re-visited with a request that the materials be saved.

City Clerk Mynsberge confirmed that this would work well. In cases where there are updates, the City Clerk will prepare new materials, but in cases where it is the same information, those should be conserved by the Commissioners.

City Manager Valentine said that the Commission could begin with this approach and could adjust as needed.

Commissioner DeWeese said:

- The digital copies uploaded to the website should have all the information every time since it is a matter of public record.
- Saving some hardcopy versions of items will make things more challenging for him.
- City staff should brainstorm a few different ways of reducing paper consumption for the Commission to consider.

City Manager Valentine and City Clerk Mynsberge agreed the electronic version would continue to be complete.

Commissioner Boutros said getting familiar with the digital version would likely be most useful in the long run, instead of Commissioners trying to store the paper versions of the relevant agenda sections.

Mayor Pro Tem Bordman said 4L will not be changing for the next meeting, so all Commissioners should pull that section to save.

Commissioner Hoff commended everyone involved in the S. Old Woodward project.

The Commission concurred with Commissioner Hoff.

Mayor Harris commended:

- City Clerk Mynsberge for her cool-headedness and management of the 2018 primary;
- Museum Director Pielack on the profile of her book, "The Saginaw Trail: From Native American Path to Woodward Avenue", in the Birmingham-Bloomfield Eagle; and,
- All the staff who worked on the S. Old Woodward construction.

The Mayor adjourned the meeting to closed session at 10:10 p.m.

<b>XI. ADJOURN</b>
--------------------

Mayor Harris reconvened the meeting into open session and adjourned the meeting at 10:28 p.m.

---

J. Cherilynn Mynsberge, City Clerk

**Resolution 08-216-18**

**CITY OF BIRMINGHAM**

**RESOLUTION REQUESTING THE OAKLAND COUNTY BOARD OF COMMISSIONERS CONDUCT A THOROUGH INVESTIGATION INTO THE OAKLAND COUNTY CLERK'S OFFICE ACTIONS RESULTING IN A SHORTAGE OF BALLOTS IN THE AUGUST 7, 2018 PRIMARY ELECTION.**

- WHEREAS,** the 2018 Michigan primary election was held on August 7, 2018, and
- WHEREAS,** the Oakland County Clerk's Office was responsible for the ordering, issuance and distribution of the ballots for the August 7, 2018 primary election to the local governmental units within the County, and
- WHEREAS,** Birmingham and other Oakland County communities relied on the Oakland County Clerk's Office to provide sufficient ballots for this election, and
- WHEREAS,** during the August 7<sup>th</sup> primary election several precincts within the City of Birmingham and throughout the County experienced both ballot shortages and an inability to provide a timely resupply of ballots as needed, and
- WHEREAS,** these shortages resulted in residents waiting excessive periods to vote and some possibly not voting at all, and
- WHEREAS,** the assurances and commitments provided by the Oakland County Clerk's Office to the municipal clerks within the County in regard to obtaining additional ballots was not followed, and
- WHEREAS,** the Birmingham City Commission wishes to ensure all of its eligible residents that wish to vote in the November general election will not be impeded by the same errors that occurred in the August 7<sup>th</sup> primary election.

**NOW THEREFORE BE IT RESOLVED,** the Birmingham City Commission formally requests the Oakland County Board of Commissioners appoint an independent investigator to conduct a thorough investigation into the actions, causes, and impacts of the role of the Oakland County Clerk's Office in administering the 2018 primary election, and

**BE IT FURTHER RESOLVED,** the Birmingham City Commission requests a copy of the findings of this investigation be provided to the City of Birmingham, as well as, all affected communities within Oakland County once completed, and

**BE IT FURTHER RESOLVED,** that a copy of this resolution be sent to all communities within Oakland County.

I, J. Cherilynn Mynsberge, Birmingham City Clerk, do hereby certify that the foregoing is a complete and true copy of a resolution adopted by the City Commission of the City of Birmingham at a regular Birmingham City Commission meeting held on August 13, 2018.

**City of Birmingham**  
**Warrant List Dated 08/15/2018**

Meeting of 08/27/2018

Check Number	Early Release	Vendor #	Vendor	Amount
<u>PAPER CHECK</u>				
260315	*	000855	48TH DISTRICT COURT	100.00
260316	*	000855	48TH DISTRICT COURT	100.00
260317	*	000855	48TH DISTRICT COURT	100.00
260318	*	000855	48TH DISTRICT COURT	100.00
260319	*	000855	48TH DISTRICT COURT	100.00
260320	*	008096	52-1 DISTRICT COURT	300.00
260321	*	006965	7UP DETROIT	215.60
260322		008106	ACUSHNET COMPANY	714.10
260323		003858	ADVANCED LIGHTING & SOUND	174.17
260324	*	007266	AETNA BEHAVIORAL HEALTH LLC	463.45
260325		007071	AIRE SERV	1,174.88
260326		003708	AIRGAS USA, LLC	210.74
260327		MISC	ALLIED SIGNS, INC	200.00
260328	*	000161	ALPHA PSYCHOLOGICAL SERVICES PC	3,200.00
260329		003272	AMERICAN PLANNING ASSOC	1,326.00
260331		MISC	ANTO GLASS BLOCK INC	100.00
260332		000500	ARTECH PRINTING INC	41.00
260333		007479	ASB DISTRIBUTORS	109.95
260334	*	006759	AT&T	163.50
260335	*	006759	AT&T	189.66
260336	*	004027	AUTOMATED BENEFIT SVCS INC	17,070.38
260337		MISC	B-DRY SYSTEM OF MICHIGAN INC	100.00
260338	*	005214	THE BANK OF NEW YORK MELLON	203,600.00
260339	*	MISC	BCBS OF MICHIGAN	478.62
260340		001282	BEAR PACKAGING & SUPPLY INC	515.80
260341		006683	BIRMINGHAM LAWN MAINTENANCE	3,725.00
260342	*	001086	CITY OF BIRMINGHAM	541.81
260343	*	001086	CITY OF BIRMINGHAM	619.55
260344		MISC	BJ CONSTRUCTION SERVICES	100.00
260345		000542	BLUE WATER INDUSTRIAL	88.75
260346		004098	BROWNELLS INC	137.89
260347		008179	BUCCILLI GROUP, LLC	2,337.50
260348	*	008658	BWMS-BLUE WATER MGMT SOLUTIONS	750.00
260349		006380	C & S ICE RESURFACING SERVICES, INC	1,886.21
260350		007732	CAPITAL TIRE, INC.	551.92
260351		005238	CBTS	20,724.50
260352	*	008044	CLUB PROPHET	590.00
260353	*	004026	COFINITY	1,431.00
260354	*	007625	COMCAST	128.14
260355		002668	CONTRACTORS CLOTHING CO	921.38
260355	*	002668	CONTRACTORS CLOTHING CO	256.50
260356		001367	CONTRACTORS CONNECTION INC	161.10

**City of Birmingham**  
**Warrant List Dated 08/15/2018**

Meeting of 08/27/2018

Check Number	Early Release	Vendor #	Vendor	Amount
260357		008512	COOL THREADS EMBROIDERY	524.94
260358		001793	CORNELL ENG CO INC	225.00
260359		MISC	COUNTRYSIDE CONSTRUCTION COMPANY, I	3,950.00
260360		004386	CYNERGY PRODUCTS	1,672.00
260361		003825	DEERE ELECTRIC INC	1,113.00
260362		000956	DELTA TEMP INC	381.50
260363	*	006907	DENTEMAX, LLC	138.60
260364		008776	DERO	4,202.20
260365		001035	DOUGLASS SAFETY SYSTEMS LLC	220.44
260366		001077	DUNCAN PARKING TECH INC	6,296.40
260367	*	007538	EGANIX, INC.	720.00
260368		004671	ELDER FORD	1,347.07
260369		008848	ELEVATORKEYS.COM	239.98
260370		001495	ETNA SUPPLY	27,084.00
260371	*	000936	FEDEX	837.69
260372		007212	FOSTER BLUE WATER OIL	136.34
260373		007172	GARY KNUREK INC	99.00
260374		000592	GAYLORD BROS., INC	93.47
260375	*	004604	GORDON FOOD	989.56
260376		008818	GREAT DANE HEATING & COOLING	728.90
260377		MISC	GREEN BUILDING SERVICES PLLC	200.00
260378		005959	H2O COMPLIANCE SERVICE INC	548.50
260379		MISC	HANSONS ADMINISTRATIVE GROUP LLC	500.00
260380		006346	HARRELL'S LLC	240.00
260381		MISC	HEATHER DEVOS	250.00
260382		007339	HIGHEST HONOR, INC	84.00
260383		001846	HIGHWAY MAINTENANCE AND	331,249.73
260384		MISC	HOME DEPOT USA INC	500.00
260385		000948	HYDROCORP	1,315.00
260386		004837	IDEACORE, LLC	75.00
260387	*	MISC	IGOR EPSHTEYN	119.66
260388		002407	J & B MEDICAL SUPPLY	812.12
260389		007870	J.C. EHRLICH CO. INC.	108.00
260390		000344	J.T. EXPRESS, LTD.	4,046.07
260391	*	002576	JAX KAR WASH	313.00
260392		003823	JAY'S SEPTIC TANK SERVICE	985.00
260393		MISC	JET STEEL, INC	500.00
260394		MISC	JOES QUALITY CONSTRUCTION	100.00
260395	*	007002	SHON JONES	127.20
260396		MISC	KAKU BIRMIINGHAM LLC	200.00
260397		MISC	KEARNS BROTHERS INC	100.00
260398	*	000891	KELLER THOMA	858.75
260399		004088	KGM DISTRIBUTORS INC	322.00

**City of Birmingham**  
**Warrant List Dated 08/15/2018**

Meeting of 08/27/2018

Check Number	Early Release	Vendor #	Vendor	Amount
260400	*	000352	JILL KOLAITIS	1,423.50
260401	*	000362	KROGER COMPANY	18.95
260402		006127	LANDSCAPE FORMS, INC	3,470.00
260403		006817	LEXISNEXIS RISK DATA MANAGEMENT INC	201.25
260404		MISC	LITTLE PRINCE PROPERTIES INC	100.00
260405	*	008158	LOGICALIS INC	9,700.00
260406	*	001106	MAPERS	300.00
260407		008000	MARXMODA	1,228.46
260408		MISC	MARY LETSCHER	236.00
260409		MISC	MATTHEW W ROSS CONST LLC	100.00
260410		MISC	MAUER CONSTRUCTION	600.00
260411	*	005252	MIAM	335.00
260412		MISC	MILLER, JAMES E	100.00
260413		007163	MOBILE HEALTH RESOURCES	3,011.58
260415		001194	NELSON BROTHERS SEWER	485.00
260416		001864	NOWAK & FRAUS ENGINEERS	7,047.80
260417		004110	OAKLAND COMMUNITY COLLEGE	1,700.00
260418	*	000477	OAKLAND COUNTY	26,228.08
260419	*	004370	OCCUPATIONAL HEALTH CENTERS	108.00
260420		MISC	PAWEL SLIWOWSKI	100.00
260421		MISC	PELLA WINDOWS & DOORS, INC.	500.00
260422	*	001753	PEPSI COLA	366.27
260423		001341	PIFER GOLF CARS INC	5,850.00
260424	*	005501	POISON IVY CONTROL OF MI	3,000.00
260425		000897	PRINTING SYSTEMS INC	20.40
260426		008822	QUAD COMMUNICATIONS	4,800.00
260427		001062	QUALITY COACH COLLISION LLC	4,685.00
260428		MISC	RENEWAL BY ANDERSEN	1,500.00
260429		MISC	RENEWAL BY ANDERSEN LLC	1,000.00
260430		000218	ROYAL OAK P.D.Q. LLC	78.00
260431	*	002806	SAM'S CLUB/SYNCHRONY BANK	442.56
260432		007142	SHERWIN-WILLIAMS COMPANY	237.36
260433		003785	SIGNS-N-DESIGNS INC	900.00
260434		002871	SIR SPEEDY PRINTING INC	2,278.83
260435		000260	SPARTAN DISTRIBUTORS INC	727.53
260435	*	000260	SPARTAN DISTRIBUTORS INC	63,364.59
260436		MISC	STACEY ROLF	100.00
260437		MISC	STRICTLAND HOMES INC	500.00
260438		008833	SUPER SEER CORPORATION	4,999.80
260439		007503	SYDNEY SOLUTIONS	239.00
260440	*	004355	SYMETRA LIFE INSURANCE COMPANY	34,506.50
260441		000275	TIRE WHOLESALERS CO INC	78.00
260442		008632	TURNOUT RENTAL	375.00



**City of Birmingham**  
**Warrant List Dated 08/15/2018**

Meeting of 08/27/2018

Check Number	Early Release	Vendor #	Vendor	Amount
260443		MISC	UNITED HOME SERVICES	300.00
260444		007226	VALLEY CITY LINEN	74.45
260445		000931	VARSITY SHOP	221.92
260446		000158	VERIZON WIRELESS	1,192.33
260447	*	000158	VERIZON WIRELESS	838.36
260448	*	000158	VERIZON WIRELESS	866.48
260449		MISC	VIOREL PINTICAN	100.00
260450	*	MISC	VLADIMIR SOTIROVSKI	9.00
260451		MISC	VMC TECHNOLOGIES INC	248.00
260452		001014	WALKER CONSULTANTS	855.19
260453		MISC	WALLSIDE INC	1,500.00
260454		000299	WEINGARTZ SUPPLY	390.65
260455	*	MISC	WESLEY FORBES	27.04
260456		MISC	WINDOW PRO HOLDINGS LLC	500.00
260458		MISC	WINNICK HOMES LLC	1,900.00
260459		005112	WOLVERINE	241.93
260460		008391	XEROX CORPORATION	1,082.18
SUBTOTAL PAPER CHECK				\$857,743.21

ACH TRANSACTION

*	008847	ABS- AUTOMATED BENEFIT SVCS, INC	19,142.15
*	008840	BIRMINGHAM PUBLIC SCHOOLS-TAXES	2,459,576.80
*	008840	BIRMINGHAM PUBLIC SCHOOLS-TAXES	4,417.12
*	008843	OAKLAND COUNTY TREASURER- TAX PYMNT	3,845,254.84
*	008843	OAKLAND COUNTY TREASURER- TAX PYMNT	12,361.62
*	002284	ABEL ELECTRONICS INC	390.00
*	008655	ANGELO IAFRATE CONSTRUCTION	1,486,842.99
*	007345	BEVERLY HILLS ACE	52.88
*	000157	BOB ADAMS TOWING INC	965.00
*	006181	FIRST CHOICE COFFEE SERV	143.45
*	007807	G2 CONSULTING GROUP LLC	7,265.50
*	003458	JOE'S AUTO PARTS, INC.	126.17
*	003845	JOHNSON HILL LAND ETHICS STUDIO INC	1,876.20
*	006359	NYE UNIFORM COMPANY	309.50
*	003554	RKA PETROLEUM	1,589.13
*	006497	RNA OF ANN ARBOR INC	4,970.00
*	001181	ROSE PEST SOLUTIONS	71.00
*	005380	SALZBURG LANDSCAPE SUPPLY	2,495.00
*	000969	VIGILANTE SECURITY INC	252.50
*	008711	VOLVIK USA	566.16
*	000306	WOLVERINE CONTRACTORS INC	1,594.60
SUBTOTAL ACH TRANSACTION			\$7,850,262.61

**City of Birmingham**  
**Warrant List Dated 08/15/2018**

Meeting of 08/27/2018

Check Number	Early Release	Vendor #	Vendor	Amount
GRAND TOTAL				\$8,708,005.82

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 08/22/2018**

Meeting of 08/27/2018

Check Number	Early Release	Vendor #	Vendor	Amount
<u>PAPER CHECK</u>				
260461		008829	JENNIFER ANN ROUSH	50.00
260462	*	001623	16TH DISTRICT COURT	345.00
260463		MISC	33633 WOODWARD LLC	300.00
260464	*	000855	48TH DISTRICT COURT	100.00
260465	*	000855	48TH DISTRICT COURT	100.00
260467		003329	ADORAMA CAMERA INC	700.86
260468		MISC	ALESANDRO DIMAMBRO JR	100.00
260469		007745	ALL COVERED	1,192.00
260470		MISC	ALLEN INDUSTRIES INC	100.00
260471		MISC	ALLIED SIGNS INC	400.00
260472		000167	ANDERSON ECKSTEIN WESTRICK INC	2,750.00
260473		002484	APPLIED CONCEPTS INC	19,950.00
260474		000500	ARTECH PRINTING INC	261.00
260475	*	006759	AT&T	89.46
260476	*	006759	AT&T	1,301.74
260477	*	006759	AT&T	65.43
260478	*	006759	AT&T	242.43
260479		MISC	BABI CONSTRUCTION INC	2,500.00
260480		MISC	BACKERS CONSTRUCTION INC	100.00
260484		007727	JEAN BARNES	210.00
260485		004301	WEBB BARNES	300.00
260486		004426	PAUL BARRETT	45.00
260487		003012	BATTERIES PLUS	29.90
260488		MISC	BERGSMAN WIAND BOUCHARD & CO	2,000.00
260489		008598	DOREEN BERNHARDT	127.50
260490		MISC	BESHOURI RESIDENTIAL DEVELOPMENT	829.56
260491		002231	BILLINGS LAWN EQUIPMENT INC.	30.00
260492		006683	BIRMINGHAM LAWN MAINTENANCE	20,995.00
260493	*	001086	CITY OF BIRMINGHAM	202.70
260494	*	001086	CITY OF BIRMINGHAM	796.20
260496		MISC	BLOOMFIELD CONSTRUCTION CO	200.00
260497		MISC	BLOOMINGDALE CONSTRUCTION COMPANY I	500.00
260498		MISC	BLOOMINGDALE CONSTRUCTION COMPANY I	2,000.00
260499	*	MISC	BLOOMINGDALE CUSTOM HOMES	2,000.00
260500		MISC	BLUE STAR	2,000.00
260501	*	007993	MARGARET BRUNHOFER	165.00
260502		008179	BUCCILLI GROUP, LLC	946.00
260503	*	006177	BULLSEYE TELECOM INC	109.81
260504		008109	JOHN W. BURNS	165.00
260505	*	001664	CHRIS BUSEN	221.91
260506	*	005289	BUSINESS CARD	1,500.40
260507		MISC	BVT PROPERTIES LLC	2,500.00

**City of Birmingham**  
**Warrant List Dated 08/22/2018**

Meeting of 08/27/2018

Check Number	Early Release	Vendor #	Vendor	Amount
260508		003907	CADILLAC ASPHALT, LLC	1,842.25
260509		MISC	CAPALDI BUILDING CO	200.00
260511		000571	CAR TRUCKING INC	112.50
260512		007933	CARDNO, INC.	4,964.22
260513		MISC	CARTER, DAVID J	764.78
260516	*	000444	CDW GOVERNMENT INC	1,345.11
260518		008111	PAMELA CIN	170.00
260519		007284	CINCINNATI TIME SYSTEMS, INC.	140.00
260520		000605	CINTAS CORPORATION	224.94
260522		MISC	Cityscape Architects	500.00
260523	*	004188	COFFEE BREAK SERVICE, INC.	91.25
260524	*	007625	COMCAST	264.85
260525		004425	THOMAS CONNERY	152.50
260526	*	000627	CONSUMERS ENERGY	1,072.40
260527		004011	HELEN COOK	165.00
260528		008151	GAIL CORCORAN	165.00
260529		MISC	COUNTRYSIDE CONSTRUCTION COMPANY, I	600.00
260530		007124	CRIMEDAR INC.	300.00
260531		003802	CROSWELL GREENHOUSE	480.00
260532		007996	ANNIE CWIKIEL-GLAVIN	172.50
260533		004386	CYNERGY PRODUCTS	127.50
260534		006913	MARY ANN DAVISON	170.00
260535		008005	DE LAGE LANDEN FINANCIAL SVCS INC	173.75
260537		004198	DETROIT HITCH CO	55.43
260537	*	004198	DETROIT HITCH CO	11.85
260538		007196	DIVERSIFIED SPEC SALES INC.	24,214.47
260539		004302	GERALD DREER	120.00
260540		MISC	DROBOT CUSTOM BUILDING INC	200.00
260541	*	000179	DTE ENERGY	13,191.79
260542	*	000180	DTE ENERGY	6,441.77
260543		007027	DENISE DUFF	180.00
260544		001077	DUNCAN PARKING TECH INC	2,016.85
260547		000209	LELAND FEISTE	239.38
260549	*	007366	FIRST ADVANTAGE OCCUPATIONAL	15.00
260550		006654	FLEETPRIDE INC	905.34
260551	*	008838	CAMERON FLYNN	165.00
260552		004412	CAROLYN FOLIN	127.50
260553		004431	ROBERT FOLIN	127.50
260554	*	007971	JANE FRIEDMAN	165.00
260555		005896	DULCE FULLER	162.50
260557		007172	GARY KNUREK INC	310.58
260558		MISC	GEORGE ENTERPRISES LLC	200.00
260559		008284	ALLISON GOODWIN	172.50

**City of Birmingham**  
**Warrant List Dated 08/22/2018**

Meeting of 08/27/2018

Check Number	Early Release	Vendor #	Vendor	Amount
260560	*	004604	GORDON FOOD	332.50
260561		MISC	GREEN, NICHOLAS D	200.00
260564		005800	CHESTER GUILMET	142.50
260565	*	008068	GARY GUSTAFSON	160.00
260566		006900	KRISTI HANSEN	170.00
260567		MISC	HANSONS ADMINISTRATIVE GROUP LLC	100.00
260568		006346	HARRELL'S LLC	8,783.00
260569		MISC	HERNAN PORTILLO	100.00
260570		004307	MARTHA HODGE	251.88
260571	*	003436	RACKELINE J. HOFF	140.00
260572		MISC	HOFMANN BROS CUSTOM BUILDERS INC	500.00
260573		MISC	HOME DEPOT USA INC	1,000.00
260574		MISC	ICON RESTORATION & CONSTRUCTION LLC	100.00
260575		000340	INDUSTRIAL BROOM SERVICE, LLC	452.30
260577		MISC	JADENS INC	200.00
260578		MISC	JANKOWSKI, STEPHEN	100.00
260579		006872	WILLIAM DAVID JOHNSON, JR.	117.50
260581		MISC	KEARNS BROTHERS INC	600.00
260582		008048	JUDITH KEEFER	152.50
260583		008273	PRISCILLA KHOURY	170.00
260584		007119	ANDREW KILLIANY	207.50
260585	*	005350	KLM BIKE & FITNESS INC	32.28
260586		004085	KONE INC	170.94
260587	*	000362	KROGER COMPANY	41.54
260588		MISC	KYLE BUILDERS INC	100.00
260590		MISC	LEVY, HORACE G	1,000.00
260591		008804	LIEBERMAN, GIES & COHEN, PLLC	795.00
260593		004306	KAREN LINNELL	107.50
260594		MISC	LMB PROPERTIES LLC	2,700.00
260595	*	001577	KATE LONG	142.92
260596		MISC	LORI MITZ	700.00
260598		008282	RONALD MACINTOSH	127.50
260599		008861	ZACHARY MACVOY	235.00
260600		MISC	MAJIC WINDOW CO.	500.00
260601		008205	DANIELLE MALLON	222.50
260602		008000	MARXMODA	1,724.98
260603	*	008763	MARYKO HOSPITALITY, LLC	7,500.00
260604		008218	DEBRA MCELROY	180.00
260605		000888	MCKENNA ASSOCIATES INC	65,802.50
260606		006449	MARIE A. MEREDITH	242.50
260607		MISC	METRO DETROIT SIGNS	200.00
260608		MISC	METROPOLITAN CONCRETE CORP	100.00
260610		007819	MICHIGAN STATE UNIVERSITY	1,300.00

**City of Birmingham**  
**Warrant List Dated 08/22/2018**

Meeting of 08/27/2018

Check Number	Early Release	Vendor #	Vendor	Amount
260611	*	001887	STATE OF MICHIGAN	91.00
260615	*	000649	MML WORKERS' COMP FUND	44,284.00
260616		MISC	MMLH III LLC	500.00
260617		000462	MOTOR CITY INDUSTRIAL	311.52
260619		005986	MRWA	1,400.00
260620		MISC	MSA HOME IMPROVEMENTS INC	100.00
260621	*	007856	NEXT	621.00
260622		MISC	NYE, DANIEL A	889.21
260623		008219	SUSAN O'CONNOR	172.50
260624		008285	THOMAS H. O'CONNOR	190.00
260625	*	000477	OAKLAND COUNTY	417,512.49
260626		008214	OAKLAND COUNTY WATER DEPARTMENT	8,914.76
260628	*	000481	OFFICE DEPOT INC	2,732.85
260630		008197	PARKMOBILE LLC	1,188.33
260631		MISC	PELLA WINDOWS & DOORS, INC.	100.00
260633		008216	JANICE KAY PINSON	170.00
260634		002518	PITNEY BOWES INC	234.17
260635		008866	PRECISION CONCRETE CUTTING	47,999.00
260636		008269	PREMIER SAFETY	745.09
260638	*	003005	PROGRESSIVE BUSINESS PUBLICATIONS	432.00
260640		004137	R & R FIRE TRUCK REPAIR INC	818.77
260641		MISC	RANDALL J FENTON TTEE	1,000.00
260643		005870	OBERIA REESE	135.00
260644		MISC	RENEWAL BY ANDERSEN	5,000.00
260645		MISC	RENEWAL BY ANDERSEN LLC	1,000.00
260646		MISC	RICHARD ALBERT SMITH	200.00
260647		004419	LESTER RICHEY	182.50
260648		004405	JOAN NEWBERRY RITTER	145.00
260649		008807	MARILYN RODZIK	165.00
260650		008215	ANTHONY J. ROGOWSKI	180.00
260651		008230	CONSTANCE ANN ROMANELLI	172.50
260652		MISC	ROOF ONE LLC	500.00
260653		005923	CYNTHIA ROSE	245.63
260654		005797	MARTHA ROUSH-LOGUE	185.00
260655		000221	RUSSELL HARDWARE COMPANY	94.86
260658		003677	GRETA SANDERS	127.50
260659		MISC	SENN EXECUTIVE SERVICES, LLC	500.00
260660	*	004202	SHRED-IT USA	355.67
260661		MISC	SIGN EMPORIUM	200.00
260662		MISC	SIGNARAMA/TROY	200.00
260663		MISC	SIGNS BY TOMORROW INC, R.O.	200.00
260664		008820	SHELDON S. SIMON	170.00
260665		008823	SUZANNE C. SIMON	170.00

# City of Birmingham

## Warrant List Dated 08/22/2018

Meeting of 08/27/2018

Check Number	Early Release	Vendor #	Vendor	Amount
260666		008855	SANDRA J. SIMS	127.50
260667		008150	SITEIMPROVE, INC	2,488.50
260668	*	008073	SITEONE LANDSCAPE SUPPLY, INC	474.63
260669		MISC	SMOLYANOV HOME IMPROVMENT	100.00
260671		MISC	STEINBERGER, MICHAEL	850.00
260672		006819	MARTHA STENZEL	180.00
260673		MISC	STEVE WOODFIN	765.00
260674	*	007121	MARY LEE STOESSEL	100.00
260675	*	005895	ROBERT STOESSEL	242.50
260676		006749	SUPERIOR SCAPE, INC	300.00
260677		002842	MARCIA SWAIN	70.00
260678		008748	TECHSEVEN COMPANY	400.00
260679		008244	ANNEKE TELLIER	166.25
260680		000275	TIRE WHOLESALERS CO INC	516.00
260681		007994	MARYANNE TORNER	160.00
260682		008845	TOWER GROUP, LLC	3,650.00
260683		006820	SHIRLEY TRESH	150.00
260684	*	000158	VERIZON WIRELESS	120.12
260685	*	000158	VERIZON WIRELESS	50.45
260686	*	000158	VERIZON WIRELESS	454.24
260687	*	000158	VERIZON WIRELESS	151.35
260688	*	000158	VERIZON WIRELESS	76.02
260689	*	000158	VERIZON WIRELESS	194.55
260690	*	000158	VERIZON WIRELESS	543.19
260691		005628	GISELA VON STORCH	127.50
260692		MISC	VR HOLDINGS & DEVELOPMENT	829.56
260693		MISC	WALLSIDE INC	2,100.00
260694		008825	PHILLIP WEST WANDYEZ	180.00
260695		MISC	WEATHERGARD WINDOW CO INC	500.00
260696		008245	HEIDE BLAKE WHITE	130.00
260697		MISC	WINDOW PRO HOLDINGS LLC	500.00
260698	*	005794	WINDSTREAM	723.82
260699		003925	WIZBANG PRODUCTS CO	644.80
260700	*	003890	LAUREN WOOD	525.00
260701		007065	ERICA WOODWARD	187.50
260702		MISC	WRIGHT, TODD	100.00
260703		008391	XEROX CORPORATION	515.10
SUBTOTAL PAPER CHECK				\$789,576.68
<u>ACH TRANSACTION</u>				
	*	008847	ABS- AUTOMATED BENEFIT SVCS, INC	29,219.09
		002284	ABEL ELECTRONICS INC	449.97
		000518	BELL EQUIPMENT COMPANY	1,234.18
		007345	BEVERLY HILLS ACE	24.29

**City of Birmingham**  
**Warrant List Dated 08/22/2018**

Meeting of 08/27/2018

Check Number	Early Release	Vendor #	Vendor	Amount
		007624	BIRMINGHAM OIL CHANGE CENTER, LLC	39.96
		000565	DORNBOS SIGN & SAFETY INC	168.54
		000995	EQUATURE	1,024.25
		000207	EZELL SUPPLY CORPORATION	407.79
		000331	HUBBELL ROTH & CLARK INC	9,309.69
	*	000331	HUBBELL ROTH & CLARK INC	32,806.34
		007035	INNOVATIVE OFFICE TECHNOLOGY GROUP	745.34
		000261	J.H. HART URBAN FORESTRY	15,467.00
		003458	JOE'S AUTO PARTS, INC.	363.37
		005876	KROPF MECHANICAL SERVICE COMPANY	114.00
		006359	NYE UNIFORM COMPANY	2,128.72
	*	003554	RKA PETROLEUM	10,653.67
		001181	ROSE PEST SOLUTIONS	414.00
	*	002456	SALES MARKETING GROUP INC	378.86
	*	000254	SOCRRA	64,056.00
		000969	VIGILANTE SECURITY INC	404.50
	*	002974	VILLAGE OF BEVERLY HILLS	121,986.55
		002088	WM. CROOK FIRE PROTECTION CO.	1,853.34
		000306	WOLVERINE CONTRACTORS INC	1,645.00
SUBTOTAL ACH TRANSACTION				\$294,894.45
GRAND TOTAL				\$1,084,471.13

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.



**DATE:** August 15, 2018

**TO:** Joseph A. Valentine, City Manager

**FROM:** Lauren A. Wood, Director of Public Services

**SUBJECT:** Leaf Claw Replacement

---

The Department of Public Services uses two front-end-loader-mounted hydraulic claw scoops for its annual leaf collection operations. This equipment is pushed along curb lines where it directs large piles of leaves into the center of its scoop. Leaf debris can then be held securely by its pincer jaws while being deposited into trucks for hauling, reducing the time required to complete a full leaf collection cycle.

The existing equipment is over 20 years old and has undergone several overhauls. As part of a planned replacement schedule, DPS replaced one of the two claws during the 17-18 fiscal year, with the intention of replacing the remaining leaf claw during the current budget year.

A request for quotations was published on the Michigan Intergovernmental Trade Network and sought quotations for a new model Tink 520 Claw, including one additional set of wear blades, wear shoes, and related hardware. Although the posting indicated a preference for the Tink product, it allowed for submission of alternatives. The results are as follows:

Buck and Knobby Equipment Company	\$14,152	New	Tink Claw
Southeaster Equipment Co., Inc.	\$13,435	New	Tink Claw
MacAllister Machinery Co., Inc.	\$13,260	New	Tink Claw
Klochko Equipment Rental Company	\$12,925	New	Tink Claw
Klochka Equipment Rental Company	\$5,186	Used	Tink Claw
<b>Henke Manufacturing Corporation</b>	<b>\$12,160</b>	<b>New</b>	<b>Henke Talon</b>

Henke Manufacturing was the sole bidder offering an alternative product – the Talon – and was the lowest bidder overall. A review of the Talon determined it to be functionally equivalent to the Tink Claw, and featured design improvements that would likely result in decreased maintenance costs. Henke also offered a 2 year warranty; Tink’s standard warranty is 6 months.

The Department of Public Services recommends purchasing the Henke Talon from Henke Manufacturing Corporation. Funds for this purchase are available in the Automotive Equipment Fund. Delivery is expected within eight weeks of purchase approval. The replaced equipment will be sold at public auction, or recycled.

**SUGGESTED RESOLUTION:**

To approve the purchase of one (1) Talon leaf claw from Henke Manufacturing Corporation in the amount of \$12,160.00 from account 641-441.006-971.0100.



## MEMORANDUM

Department of Public Services

**DATE:** August 16, 2018

**TO:** Joseph A. Valentine, City Manager

**FROM:** Lauren A. Wood, Director of Public Services

**SUBJECT:** Holiday Lights 2018 Purchase

Sealed bids were opened on Tuesday, July 31, 2018 for the cost of 2500 sets of LED (light-emitting diode) lights to supply the City's holiday decorating program. Four bidders responded. The result of the sealed bids follows in the table below.

Company	Bid Price	Substitutions
Sassin Management Services LLC & Xpress Holiday Lighting	\$22,850.00	NO
<b>Wintergreen Corporation</b>	<b>\$23,250.00</b>	<b>NO</b>
American Lighting, Inc.	\$23,500.00	NO
Smart Solar LED, LLC	\$31,480.00	NO

The City now uses LED lights to decorate all of the street trees in Downtown Birmingham, including Maple, Old Woodward, Pierce, Hamilton, Henrietta, Martin, Merrill, Brown, Peabody, and Adams. The holiday decorating program also includes City Properties such as City Hall, the Department of Public Services, the Library, parking structures and Shain Park, using LED lights. Prior to 2010, the same locations were decorated with incandescent lights. LED holiday lights consume 75 percent less energy than their incandescent counterparts.

The Birmingham Shopping District (BSD) participates in the holiday lighting program by budgeting for a portion of the decorated trees. The BSD endorses the purchase of "warm white" LED lights based on recommendations from merchant meetings and the BSD maintenance committee. It should be noted, a percentage of this purchase will be reimbursed by the BSD for material and installation services.

While LED lights are more expensive, they last longer and we are able to decorate trees in approximately 1/3 of the town every year with new lights. Our program is typically as follows: We decorate 1 of 3 sections of town with new lights. We will leave this section trees decorated for a maximum of 3 years with LED lights, only removing the lights directly around the trunk of the tree after the holidays. We do this to save money on labor and time during the holiday season. We start this process beginning right around October 1<sup>st</sup>, adding new lights to the section of town in need of complete decoration.

After this section is complete, the crews visit the other areas of town with existing lights in the canopy, add lights from storage to the trunks (removed from the previous year) and power them up, troubleshooting problems, checking for outages or damage.

The City decorates approximately 400 trees every year for the holidays. With an average of 25 strands per tree, and 70 lights per strand, Birmingham has over 700,000 lights for the holidays!

We purchase new lights for Shain Park every year. The second year lights from Shain are typically used to make repairs to other decorated trees downtown. We will be decorating the new trees between Oakland and Brown along Old Woodward with new lights this season. Additionally, last year was the 3<sup>rd</sup> year for the following area: South Old Woodward, South of Brown. Therefore this purchase includes lights for Shain Park and the above referenced areas. See attached map for the annual light schedule.

The 2<sup>nd</sup> lowest qualified bidder, Wintergreen Corporation, provided a proposal for the specified LED commercial grade products. We have purchased lights from Wintergreen Corporation, formally Christmas Lights, Etc., for several years and have been completely satisfied with the product. There are other considerations such delivery timeline, the color variation in the "warm white" range that varies from manufacturer to manufacturer, and great customer service in providing replacement strands free of charge if found to be not working.

The low bidder, Sassin Management Services & Xpress Holiday Lighting, provided references of which were contacted to find out more about the company. Xpress Holiday Lighting typically supplies, decorates, and stores the lights for their clients, which include many commercial properties in the area. Municipal experience includes the City of Troy for one season, decorating only evergreen trees on Big Beaver Road not providing the lights. The Department of Public Services anticipates the possibility of ordering a modest amount of lights from Xpress Holiday Lighting, and also contracting their decorating services in a location for a trial period. We rather gain some working knowledge about products and services for this purchase before switching vendors for a \$400.00 cost difference.

The Department of Public Services recommends awarding the Holiday Lights 2018 purchase to Wintergreen Corporation. This is because of the experience with this vendor, the product quality and service level for a significant order of lights. Funds for this purchase have been budgeted in the General Fund-Community Activities Operating Supplies account #101-441.004.729.0000. BSD reimburses by way of journal entry for a portion of this purchase and also labor to install at the end of the season.

In 2017, the City purchased 2500 sets of the same lights for a total purchase price of \$23,350.00, which equals \$9.34 per set. In 2016, the City purchased 1700 sets at \$15,895.00 which equals \$9.36 per set. This year, the total of \$23,250.00 for 2500 sets equals \$9.30 per set.

**SUGGESTED RESOLUTION:**

To approve the purchase of holiday lights from Wintergreen Corporation for a total cost not to exceed \$23,250.00. Funds are available from the General Fund-Community Activities Operating Supplies account #101-441.004-729.0000 for this purchase.



Red=18-19 : Green=19-20 : Blue=20-21



## **MEMORANDUM**

**Department of Public Services**

**DATE:** August 15, 2018

**TO:** Joseph A. Valentine, City Manager

**FROM:** Lauren A. Wood, Director of Public Services

**SUBJECT:** Building Department – Vehicle Purchase

---

In the current budget, the Building Department allocated funds for the purchase of a new vehicle as a result of an increase in staffing. In consultation with the Department of Public Services, it was determined that a Ford Escape compact SUV, similar to those currently in use, would best meet the operational needs of the department.

This vehicle is available for purchase from Gorno Ford of Woodhaven, MI through the State of Michigan Mi-Deal Extendable Purchasing Contract #2WDU-0040A for a total cost of \$20,539.00. Funds for this purchase are available in the Building Department Equipment and Machinery account.

Delivery is expected within 14-16 weeks of purchase approval.

**SUGGESTED RESOLUTION:**

To approve the purchase of a new 2019 Ford Escape from Gorno Ford through the State of Michigan extendable purchasing contract #2WDU-0040A in the amount of \$20,539.00 from account #101-371.000-971.0100.

**DATE:** August 14, 2018

**TO:** Joseph A. Valentine, City Manager

**FROM:** Lauren A. Wood, Director of Public Services

**SUBJECT:** Vehicle #563 Replacement

City vehicle #563 is a 2013 Ford Taurus Interceptor patrol vehicle assigned to the Police Department. Due to its age and condition, the Department of Public Services recommends replacement based on the evaluation score as indicated below:

Vehicle #563 - 2013 Ford Taurus Interceptor Patrol Vehicle

FACTOR	DESCRIPTION	POINTS
Age	1 point each year of age	5
Miles/Hours	1 point each 10,000 miles of usage	10.8
Type of Service	Type 5 – Police, fire, and rescue service vehicles	5
Reliability	Level 3 – In shop more than twice within time period, no major breakdowns or road calls	3
M & R Costs	Level 4 – Maintenance costs are 61-80% of replacement costs	4
Condition	Level 3 - Noticeable imperfections in body and paint surface, some rust, minor damage from add-on equipment, worn interior, and a weak or noisy drive train	3
TOTAL POINTS 28+, <b>POOR</b> - needs priority replacement		<b>30.8</b>

This vehicle is listed in the replacement schedule as published in the 2018-19 budget.

The Department of Public Services recommends replacing this vehicle with a new 2019 Ford Taurus Interceptor through the State of Michigan Mi-Deal extendable purchasing contract #071B7700181 – awarded to Gorno Ford, located in Woodhaven, Mich. – for a total expenditure of \$30,196.00. Funds for this purchase are available in the Auto Equipment Fund, account #641-441.006-971.0100.

Upon delivery of the new vehicle – expected within 12-14 weeks – the old vehicle will be stripped of transferrable equipment and electronics and will be listed on the Michigan Governmental Trade Network for public auction.

**SUGGESTED RESOLUTION:**

To approve the purchase of one (1) new 2019 Ford Taurus Police Interceptor from Gorno Ford through the State of Michigan Mi-Deal extendable purchasing contract #071B7700181 in the amount of \$30,196.00 from account #641-441.006.971.0100.



## **MEMORANDUM**

**Department of Public Services**

**DATE:** August 17, 2018

**TO:** Joseph A. Valentine, City Manager

**FROM:** Lauren A. Wood, Director of Public Services

**SUBJECT:** Emergency Repair – City Vehicle #91

---

City vehicle #91 is a 2007 Chevy 6 cubic yard refuse compactor, used exclusively for trash removal seven days per week in city parks and within the Birmingham shopping district. Recently, the vehicle's transmission failed, and DPS mechanics determined a complete transmission replacement was necessary.

This repair required specialized equipment that is only available locally from Ed Rinke Chevrolet of Centerline, which quoted \$7,231.18 for the installation of the transmission.

In this case, waiting for standard purchase approval processes would have had a negative impact on service delivery, and would have resulted in additional expenditures. The Department of Public Services explored the option of renting a truck while the repair expenditure authorization was pending, but trucks of this size are not available for rent. The nearest size – a 25 cubic yard refuse compactor – was quoted at \$6,500/month.

**SUGGESTED RESOLUTION:**

To confirm the City Manager's authorization for the emergency expenditure regarding the repair to city vehicle #91 by Ed Rinke Chevrolet in the amount of \$7,231.18 from the Auto Equipment Fund account #641-441.006-933.0200, pursuant to Sec. 2-286 of the City Code.





## MEMORANDUM

Police Department

**DATE:** August 14, 2018

**TO:** Joseph A. Valentine, City Manager

**FROM:** Mark H. Clemence, Chief of Police

**SUBJECT:** Contract Lane Painting – Hart Pavement Striping Corporation  
Contract Extension for Handwork Pavement Markings 2018-19

---

On July 26, 2016, the police department requested sealed invitations to bid (ITBs) on MITN for the handwork portion (painting of all crosswalks, parking spaces, and symbols) of the pavement marking project for the 2016-17 fiscal year. Bids were publicly opened on August 9, 2016. Two price quotes were received for the fall of 2016 and spring of 2017 from Hart Pavement Striping in the amount of \$87,690 and PK Contracting in the amount of \$484,307.

The contract was awarded to Hart Pavement Striping Corporation in the amount of \$87,690.00 for the 2016-17 handwork pavement markings and the work was satisfactorily performed. The attached ITB from the August 9, 2016 bid opening and contract provided for the City to offer the successful vendor an option to extend at the same rate for (2) additional years through mutual consent.

The contract was extended for the 2017-18 fiscal year, and the work was satisfactorily completed by the vendor. Dann Hart, President of Hart Pavement Striping has again offered to extend pricing from the 2016 contract. This is the final year of the (2) optional extensions from the original contract. The police department recommends renewing the contract with Hart Pavement Striping Corporation for the fall 2018 and spring 2019 handwork painting duties as identified in the 2018-19 major streets budget.

Hart Pavement Striping Corporation has been providing pavement marking services for the City of Birmingham since 2003. The significant variance in the bid amounts received from PK Contracting and Hart Pavement may be explained due in part to the fact that Hart Pavement is a considerably small locally owned company specializing in handwork (no centerline equipment) with a much smaller overhead and a significantly fewer clients. Hart has served the City well and has always been responsive to City staff concerning any additions, deletions, or alterations to contracts to ensure that the City receives the highest quality products and services.

PK Contracting is an excellent vendor that has provided quality pavement markings for the City of Birmingham for decades. The substantial size of the PK Contracting business - a very large business that handles many state and local pavement marking contracts - may be a factor in the company's occasionally less than aggressive bids for pavement marking services. PK has recently provided services for centerline and ADA parking space pavement marking services.

Although the Old Woodward construction project incorporated the use of polyurea pavement markings and thereby reduced the amount of painted handwork for parking spaces, etc. in this area, a number of additions to the list of scope of work primarily including the ADA parking spaces will offset those reductions resulting in the vendor offering to extend the contract at the 2016 bid price.

Sufficient funds are allocated in the 2018-19 major streets budget contract lane painting account to provide for this expenditure.

The 2019-20 handwork pavement markings will be posted on MITN as there will be no remaining years to extend this contract.

#### SUGGESTED RESOLUTION:

To approve the contract for 2018-19 pavement marking handwork with Hart Pavement Striping Corporation in the amount of \$87,690.00 for combined fall 2018 and spring 2019 paintings; further authorizing and directing the mayor and city clerk to sign the contract on behalf of the city; further to authorize this budgeted expenditure from account number 202-303-001-937.0200.

## CONTRACT

**THIS AGREEMENT** made the \_\_\_\_ day of August, 2018, by and between the CITY OF BIRMINGHAM, Oakland County, Michigan, hereinafter called the "city", and Hart Pavement Striping Corporation of Milford, MI hereafter called the "contractor" relative to the painting of street pavement markings in the amount of \$87,690.00 total for the fall of 2018 and spring of 2019 to wit:

1. All advertisements for bids, proposals, instructions to bidders, specifications, plans, hereto attached or herein referred to, shall be and are hereby made a part of this agreement.
2. The contractor shall provide street pavement markings in the fall of 2018 and spring of 2019, as set forth in the attached proposal, and in accordance with the plans and specifications which have been made a part of this agreement in a manner, time and place, as therein set forth.
3. The city promises and agrees to pay said contractor for the painting of pavement markings under this agreement at the price provided in the attached quotation.
4. For the faithful performances of the terms of this agreement, said parties respectively bind themselves, their successors, heirs, executors, administrators, and assigns.

**IN WITNESS WHEREOF**, the parties execute this agreement as of the day and year first written above.

### CITY OF BIRMINGHAM

Attested:

\_\_\_\_\_  
Cherilynn Mynsberge  
City Clerk

By:

\_\_\_\_\_  
Andrew M. Harris  
Mayor

Witnessed: \_\_\_\_\_

### HART PAVING STRIPING CORPORATION

By:

\_\_\_\_\_  
Dann D. Hart, President

Witnessed:

\_\_\_\_\_  
Dawn A. Chase

### APPROVAL (1.135 City Code)

\_\_\_\_\_  
Timothy J. Currier  
City Attorney as to Form

\_\_\_\_\_  
Mark Gerber  
Director of Finance as to  
Financial Obligations

\_\_\_\_\_  
Joseph A. Valentine  
City Manager as to Substance

\_\_\_\_\_  
Mark H. Clemence  
Police Chief as to Substance

# Hart Pavement Striping Corporation

P.O. Box 300998, Waterford, MI 48330

3330 Warren Drive, Waterford, MI 48329

(248) 673-3503 Fax: (248) 673-3438

[www.hartpavement.com](http://www.hartpavement.com)

The City of Birmingham  
151 Martin, P.O. Box 3001  
Birmingham, MI 48012  
[edevview@bhamgov.org](mailto:edevview@bhamgov.org)

To Ellen Deview:

Hart Pavement Striping Corporation will extend the 2016 (August 9, 2016 awarded) pricing for the striping handwork for the Fall of 2018 in the amount of \$36,000 and the Spring of 2019 in the amount of \$51,690. The changes and modifications up to this date including Old Woodward, handicap changes, crosswalk changes, biking stenciling, etc. add up to pretty much even split.

Thank you.

Dann Hart      Date: August 14, 2018



HARTP-1

OP ID: KR

## CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
03/05/2018

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 rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> Oakland Insurance Agency 8031 M-15, Ste. 100 Clarkston, MI 48348 Brian Furmaniak		248-647-2500		<b>CONTACT NAME:</b>	
				<b>PHONE (A/C, No, Ext):</b> 248-647-2500	
				<b>FAX (A/C, No):</b> 248-647-4689	
				<b>E-MAIL ADDRESS:</b> certrequest@oaklandinsurance.com	
				<b>INSURER(S) AFFORDING COVERAGE</b>	
				<b>INSURER A:</b> Motorists Mutual Insurance Co	
				<b>NAIC #</b> 14621	
<b>INSURED</b> Hart Pavement Striping Corp. P.O. Box 300998 Waterford, MI 48330					
<b>INSURER B:</b>					
<b>INSURER C:</b>					
<b>INSURER D:</b>					
<b>INSURER E:</b>					
<b>INSURER F:</b>					

## COVERAGES

## CERTIFICATE NUMBER:

## REVISION NUMBER:

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.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <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 type="checkbox"/> LOC OTHER:	X		33 30138380	02/01/2018	02/01/2019	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
A	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO OWNED AUTOS ONLY <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY			33 30138380	02/01/2018	02/01/2019	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> EXCESS LIAB <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$			33 30138380	02/01/2018	02/01/2019	EACH OCCURRENCE \$ 4,000,000 AGGREGATE \$ 4,000,000
A	<input checked="" type="checkbox"/> WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		N/A	33 30138380	02/01/2018	02/01/2019	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 500,000 E.L. DISEASE - EA EMPLOYEE \$ 500,000 E.L. DISEASE - POLICY LIMIT \$ 500,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

See Page 2;

## CERTIFICATE HOLDER

BIRMIN1

City of Birmingham  
Police Department  
151 Martin Rd  
Birmingham, MI 48012

## CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

John D. Howney

**NOTEPAD:**

HOLDER CODE **BIRMIN1**  
INSURED'S NAME **Hart Pavement Striping Corp.**

**HARTP-1**  
**OP ID: KR**

PAGE **2**  
Date **03/05/2018**

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 hereof are additional insured as required by written contract with respects to the general liability. This coverage shall be primary to any coverage that may be available to the additional insureds, whether any other available coverage be primary, contributing or excess.

## Request for Taxpayer Identification Number and Certification

Give Form to the  
requester. Do not  
send to the IRS.

Print or type See Specific Instructions on page 2.	Name (as shown on your income tax return) <b>Hart Pavement Striping</b>	
	Business name/disregarded entity name, if different from above	
	Check appropriate box for federal tax classification: <input type="checkbox"/> Individual/sole proprietor <input checked="" type="checkbox"/> C Corporation <input type="checkbox"/> S Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Trust/estate  <input type="checkbox"/> Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=partnership) ▶ _____  <input type="checkbox"/> Other (see instructions) ▶ _____	Exemptions (see instructions):  Exempt payee code (if any) _____ Exemption from FATCA reporting code (if any) _____
	Address (number, street, and apt. or suite no.) <b>P. O. Box 300998</b> City, state, and ZIP code <b>Waterford, MI 48330</b>	Requester's name and address (optional)
	List account number(s) here (optional)	

### Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on the "Name" line to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

**Note.** If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.


Social security number								
			-				-	
Employer identification number								
3	8		-	2	8	0	6	5
								4
								2

### Part II Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
3. I am a U.S. citizen or other U.S. person (defined below), and
4. The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

**Certification instructions.** You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions on page 3.

Sign Here	Signature of U.S. person ▶ 	Date ▶ <b>5-10-2016</b>
-----------	--	-------------------------

### General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

**Future developments.** The IRS has created a page on IRS.gov for information about Form W-9, at [www.irs.gov/w9](http://www.irs.gov/w9). Information about any future developments affecting Form W-9 (such as legislation enacted after we release it) will be posted on that page.

### Purpose of Form

A person who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, payments made to you in settlement of payment card and third party network transactions, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
2. Certify that you are not subject to backup withholding, or
3. Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the

withholding tax on foreign partners' share of effectively connected income, and

4. Certify that FATCA code(s) entered on this form (if any) indicating that you are exempt from the FATCA reporting, is correct.

**Note.** If you are a U.S. person and a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

**Definition of a U.S. person.** For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien,
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States,
- An estate (other than a foreign estate), or
- A domestic trust (as defined in Regulations section 301.7701-7).

**Special rules for partnerships.** Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax under section 1446 on any foreign partners' share of effectively connected taxable income from such business. Further, in certain cases where a Form W-9 has not been received, the rules under section 1446 require a partnership to presume that a partner is a foreign person, and pay the section 1446 withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid section 1446 withholding on your share of partnership income.





## MEMORANDUM

Police Department

**DATE:** August 9, 2016

**TO:** Joseph A. Valentine, City Manager

**FROM:** Mark H. Clemence, Chief of Police

**SUBJECT:** Contract Lane Painting – Pavement Markings 2016-17

On June 5, 2015 the police department requested sealed proposals for the painting of street lane markings (yellow center and white long line striping) for the 2015-16 fiscal year with a bid opening on June 23, 2015. This invitation to bid was published on the Michigan Intergovernmental Trade Network (MITN). One price quote was requested for the fall of 2015 as center and long line markings are applied once per year, usually during the month of June. Three bids were received, and the city commission awarded a contract to PK Contracting, Inc. (PK) in the amount of \$10,027.00. The contract provided for the City to offer the successful vendor an option to extend at the same rate for two (2) additional years through mutual consent. Aden Shea, Vice President of PK has agreed to extend pricing from the 2015 contract for the spring 2017 job. The police department recommends renewing the contract with PK for center and long line painting in the amount of \$10,027.00 for the 2016-17 fiscal year project.

Also during the 2015-16 fiscal year, the city commission approved a pavement marking contract for handwork (painting of all crosswalks, parking spaces, and symbols) with Hart Pavement Striping Corporation (Hart) in the amount of \$66,400.00. The Hart contract for fiscal year 2015-16 was the second and final authorized bid extension from a 2013 MITN bid posting and contract award.

On July 26, 2016, the police department requested sealed proposals on MITN for the handwork portion of the pavement marking project for the 2016-17 fiscal year. Bids were publicly opened on August 9, 2016. Two price quotes were requested for the spring of 2016 and fall of 2017. Two bids were received as follows:

VENDOR NAME	FALL 2016	SPRING 2017	TOTAL
HART PAVEMENT	\$36,000.00	\$51,690.00	\$87,690.00
PK CONTRACTING	\$190,321.20	\$293,986.18	\$484,307.38

The police department recommends accepting the bid from Hart Pavement Striping Corporation for the handwork painting duties as identified in the 2016-17 major streets budget. It should be noted that the 2016-17 handwork specifications were expanded to include sharrows (bike lanes), parking lot spaces at the DPS and ice arena, new handicap spaces at parking meters,



and improvements to crosswalk markings which contributed to the increase in costs from prior fiscal years. The bid received from Hart included a \$20,000.50 discount.

Sufficient funds are allocated in the 2016-17 major streets budget contract lane painting account to provide for these expenditures.

**SUGGESTED RESOLUTION:**

To extend the 2015 agreement with PK Contracting, Inc. for painting centerline stripings in the amount of \$10,027.00 for the spring 2017 pavement marking contract; further authorizing and directing the mayor and city clerk to sign the agreement on behalf of the city. And to award the contract for 2016-17 pavement marking handwork contract to Hart Pavement Striping Corporation in the amount of \$87,690.00 for combined fall 2016 and spring 2017 paintings; further authorizing and directing the mayor and city clerk to sign the contract on behalf of the city; further to authorize these budgeted expenditures from account number 202-303-001-937.0200.

**BID FORM**  
**PAVEMENT MARKINGS FALL 2016**  
**NOTE: QUANTITIES ARE APPROXIMATE**  
**BIDDER TO COMPLETE ALL BLANKS IN THIS DOCUMENT**

The City of Birmingham, Michigan will grant to the successful bidder a purchase orders for the following:  
**PAVEMENT MARKINGS FALL 2016**

ITEM	EST QTY	DESCRIPTION OF WORK	UNIT PRICE	ITEM TOTAL
1	11,407	6" CROSS	.30	3411.10
2	11,969	12" CROSS	.40	4787.60
3	138	24" CROSS	2.50	345.00
4	13,310	YELLOW CURB	.30	3993.00
5	6	SCHOOL LEGENDS	200.00	1200.00
6	55	ONLY LEGENDS	100.00	5500.00
7	0	25 MPH LEGENDS	150.00	0
8	71	LEFT TURN ARROWS	70.00	4970.00
9	14	RIGHT TURN ARROWS	70.00	980.00
10	11	THRU ARROWS	70.00	770.00
11	19	COMBO ARROWS	100.00	1900.00
12	0	BLUE CURB	.30	0
13	7	HANDICAP SYMBOLS	10	70
14	160	6" BLUE	.10	16
15	21,547	6" PARKING	.08	1723.76
16	516	6" WHITE HATCH - CROSSWALKS	.30	154.80
17	468	12" WHITE HATCH - CROSSWALKS	.40	187.20
18	2,822	16" WHITE HATCH - CROSSWALKS	.50	1411.00
19	87	18" WHITE HATCH - CROSSWALKS	.50	43.50
20	15	12" STOP	1.00	15.00
21	384	18" STOP	1.00	384.00
22	2,306	24" STOP	1.00	2306.00
23	0	4" WHITE - PARKING LOTS	.08	0
24	2,500	6" WHITE - PARKING LOTS	.10	250.00
25	0	6" YELLOW - PARKING LOTS	.10	0
26	500	YELLOW CURB - PARKING LOTS	.30	150.00
27	2,600	4" BLUE - PARKING LOTS	.10	260.00
28	500	6" BLUE - PARKING LOTS	.10	50.00
29	100	HANDICAP SYMBOLS - PARKING LOTS and METER SPACES	10	1000.00
30	0	YELLOW LINE - SEE ATTACHED LIST	na	0
31	0	WHITE LINE - SEE ATTACHED LIST	na	0
32	0	SHARROWS (TRAVEL LANE SYMBOL FOR CYCLISTS)	150.00	0
33		MOBILIZATION / SETUP CHARGE	122.04	122.04
BID GRAND AMOUNT TOTAL (FALL 2016)				36,000.00

**PROJECT TIMELINE:** ESTIMATED DELIVERY DATE: September 19, 2016

BIDDER'S SIGNATURE



DATE July 28, 2016

It is understood and agreed that all bid prices shall remain in effect for at least sixty (60) days from the date of bid opening to allow for the award of the bid.

**BID FORM**  
**PAVEMENT MARKINGS SPRING 2017**  
**NOTE: QUANTITIES ARE APPROXIMATE**  
**BIDDER TO COMPLETE ALL BLANKS IN THIS DOCUMENT**

The City of Birmingham, Michigan will grant to the successful bidder a purchase orders for the following:  
**PAVEMENT MARKINGS SPRING 2017**

ITEM	EST QTY	DESCRIPTION OF WORK	UNIT PRICE	ITEM TOTAL
1	23,563	6" CROSS	.30	7068.90
2	20,634	12" CROSS	.40	8253.60
3	138	24" CROSS	2.50	345.00
4	28,482	YELLOW CURB	.30	8544.60
5	33	SCHOOL LEGENDS	200.00	6600.00
6	76	ONLY LEGENDS	100.00	7600.00
7	14	25 MPH LEGENDS	150.00	2100.00
8	89	LEFT TURN ARROWS	70	6230.00
9	22	RIGHT TURN ARROWS	70	1540.00
10	15	THRU ARROWS	70	1050.00
11	31	COMBO ARROWS	100	3100.00
12	20	BLUE CURB	.30	6.00
13	9	HANDICAP SYMBOLS	10	90.00
14	395	6" BLUE	.10	39.50
15	35,000	6" PARKING	.08	2800.00
16	1,800	6" WHITE HATCH – CROSSWALKS	.30	540.00
17	1,560	12" WHITE HATCH – CROSSWALKS	.40	624.00
18	2,822	16" WHITE HATCH – CROSSWALKS	.50	1411.00
19	87	18" WHITE HATCH – CROSSWALKS	.50	43.50
20	253	12" STOP	1.00	253.00
21	939	18" STOP	1.00	939.00
22	4,243	24" STOP	1.00	4243.00
23	1,000	4" WHITE - PARKING LOTS	.08	80.00
24	11,420	6" WHITE – PARKING LOTS	.10	1142.00
25	2,124	6" YELLOW – PARKING LOTS	.10	212.40
26	1,100	YELLOW CURB – PARKING LOTS	.30	330.00
27	2,450	4" BLUE – PARKING LOTS	.10	245.00
28	900	6" BLUE – PARKING LOTS	.10	90.00
29	107	HANDICAP SYMBOLS – PARKING LOTS AND METER SPACES	10	1070.00
30	0	YELLOW LINE - SEE ATTACHED LIST	na	
31	0	WHITE LINE – SEE ATTACHED LIST	na	
32	34	SHARROWS (TRAVEL LANE SYMBOL FOR CYCLISTS)	150	5100.00
33		MOBILIZATION / SETUP CHARGE/DISCOUNT	20,000.50	20,000.50
BID GRAND TOTAL AMOUNT (SPRING 2017)				\$51,690.00

**PROJECT TIMELINE:** ESTIMATED DELIVERY DATE: May 1, 2017

BIDDER'S SIGNATURE 

DATE July 28, 2016

It is understood and agreed that all bid prices shall remain in effect for at least sixty (60) days from the date of bid opening to allow for the award of the bid.

## CONTRACT

**THIS AGREEMENT** made the 26<sup>th</sup> day of September, 2016, by and between the CITY OF BIRMINGHAM, Oakland County, Michigan, hereinafter called the "city", and Hart Pavement Striping Corporation of Milford, MI hereafter called the "contractor" relative to the painting of street pavement markings in the amount of \$87,690.00 total for the fall of 2016 and spring of 2017 to wit:

1. All advertisements for bids, proposals, instructions to bidders, specifications, plans, hereto attached or herein referred to, shall be and are hereby made a part of this agreement.
2. The contractor shall provide street pavement markings in the fall of 2016 and spring of 2017, as set forth in the attached proposal, and in accordance with the plans and specifications which have been made a part of this agreement in a manner, time and place, as therein set forth.
3. The city promises and agrees to pay said contractor for the painting of pavement markings under this agreement at the price provided in the attached quotation.
4. For the faithful performances of the terms of this agreement, said parties respectively bind themselves, their successors, heirs, executors, administrators, and assigns.

**IN WITNESS WHEREOF**, the parties execute this agreement as of the day and year first written above.

### CITY OF BIRMINGHAM

Attested:

Laura M. Pierce

Laura M. Pierce  
City Clerk

By:

Rackeline J. Hoff

Rackeline J. Hoff  
Mayor

Witnessed:

Cheryl Gipe

### HART PAVING STRIPING CORPORATION

By:

Dann D. Hart

Dann D. Hart, President

Witnessed:

Darlene A. Charles

### APPROVAL (1.135 City Code)

Timothy J. Currier  
Timothy J. Currier  
City Attorney as to Form

Mark Gerber  
Mark Gerber  
Director of Finance as to  
Financial Obligations

Joseph A. Valentine  
Joseph A. Valentine  
City Manager as to Substance

Mark H. Clemence  
Mark H. Clemence  
Police Chief as to Substance



## INVITATION TO BID

Sealed bids endorsed **"PAVEMENT MARKINGS 2016-2017"** will be received by the City of Birmingham, Michigan at the Office of City Clerk, 151 Martin Street, P.O. Box 3001, Birmingham, MI, 48012 until Tuesday, August 9, 2016 at 10:00 a.m., at which time the bids will be publicly opened and read.

The descriptions for markings and quantities of items to be painted are indicated on the attached sheets. The painting will include yellow, white, and blue glass beaded paint to meet or exceed Michigan Department of State Highway and Transportation specifications (waterborne). **THE STREETS ARE TO BE PAINTED DURING THE LATE NIGHT/EARLY MORNING HOURS WHEN VEHICULAR TRAFFIC IS MINIMAL.**

Two price quotes are requested, one for the fall of 2016 and one for the spring of 2017. Note that quantities differ between spring and fall items to be painted.

Materials and bids shall be submitted in accordance with the attached specifications and bid forms prepared by the Birmingham Police Department.

Specifications are available exclusively via the Michigan Intergovernmental Trade Network (MITN).\*

Bids must be submitted in a sealed envelope marked **"PAVEMENT MARKINGS 2016-2017"**. The date and time of the bid opening must be marked on the envelope.

The City of Birmingham reserves the right to reject any or all proposals and to waive any irregularity in a bid when deemed in the best interest of the City.

The City of Birmingham may offer the successful vendor an option to extend at the same rate for two (2) additional years through mutual consent.

The acceptance of any proposal made pursuant to this invitation shall not be binding upon the City until a written purchase order has been delivered to the successful bidder.

Submitted to MITN:	July 26, 2016
Deadline for Submissions:	August 9, 2016 at 10:00 a.m.
Contact Person:	Ellen DeView, Staff & Services Coordinator Birmingham Police Department P.O. Box 3001, 151 Martin Street Birmingham, MI 48012 Phone: (248) 530-1869 Email: <a href="mailto:edeview@bhamgov.org">edeview@bhamgov.org</a>

\* The City of Birmingham is part of an organization called the Michigan Intergovernmental Trade Network (MITN), a group of agencies that joined forces to create a regional bid notification system to notify companies of new bid opportunities. Bids, quotations and proposals are posted online. All vendors are encouraged to visit [www.govbids.com](http://www.govbids.com) and click on "The Michigan MITN System" link in order to register their company and gain access to new bids and proposals. If you do not have internet access, please call 1-800-835-4603, to speak to a representative at IPT BidNet®, the technical support group that handles the MITN system.

## **INTRODUCTION**

The City of Birmingham, Michigan will grant to the successful bidder a purchase order for the following:

### **PAVEMENT MARKINGS FALL 2016 AND SPRING 2017**

For purposes of this invitation to bid the City of Birmingham will hereby be referred to as "City" and the vendor will hereby be referred to as "Contractor."

The Birmingham Police Department is accepting sealed bids from qualified vendors for the painting of street lane markings. The painting will include yellow, white, and blue glass beaded paint to meet or exceed Michigan Department of State Highway and Transportation specifications (waterborne).

### **THE STREETS ARE TO BE PAINTED DURING LATE NIGHT / EARLY MORNING HOURS WHEN VEHICULAR TRAFFIC IS MINIMAL.**

Proposals for long line / center line striping are not requested in this invitation to bid as the contract issued in 2016 will be extended at the same rate through mutual extent of the City of Birmingham and the successful bidder.

Two price quotes are requested for the handwork portion of this annual project (symbols, crosswalks, parking spaces, etc.) - one for the fall of 2016 and one for the spring of 2017. Note that quantities differ between spring and fall items to be painted.

Materials and bids shall be submitted in accordance with the attached specifications and bid forms prepared by the Birmingham Police Department.

The City reserves the right to request additional information or clarification from bidders. At the discretion of the City, vendors submitting bids may be requested to provide sample materials or equipment.

## **INVITATION TO BID SUMMARY PAVEMENT MARKINGS 2016-2017**

The Birmingham Police Department is accepting sealed bids from qualified vendors for **PAVEMENT MARKINGS 2016-2017**. The specifications are detailed on the attached sheets.

### **GENERAL CONDITIONS AND INSTRUCTIONS TO BIDDERS**

All information requested of the vendor shall be entered in the appropriate space on the attached form(s). Failure to do so may disqualify the bid.

All information shall be entered in ink or typewritten. Mistakes may be crossed out and corrections inserted before submission of the bid. The person signing the bid shall initial corrections in ink.

Corrections and/or modifications received after the closing time specified will not be accepted.

All bids shall be signed by an authorized officer or employee of the bidder.

Bids must be submitted by the date and at or prior to the time specified to be considered. No late bids, telegraphic bids, telephone bids, or facsimile bids will be accepted.

Submit bids in a sealed envelope marked "**PAVEMENT MARKINGS 2016-2017**". Also indicate the bid opening date and time on the envelope.

The City of Birmingham is exempt from State of Michigan and federal excise taxes. Do not include such taxes in the bid. The City will furnish the successful vendor with tax exemption information when requested.

All proposals shall include the following information: Vendor name, address, city, state, zip code, telephone number, and fax number. The company shall also provide the name, address, telephone number and e-mail address of an individual in their organization to whom notices and inquiries by the City should be directed as part of the bid.

The City of Birmingham reserves the right:

1. To award bids received on the basis of individual items, or group of items, or on the entire list of items.
2. To reject any and all bids, or any part thereof.
3. To waive any informality in the bids received.
4. To accept the bid that the City Commission shall deem to be in the best interest of City of Birmingham.

## SPECIFICATIONS AND REQUIREMENTS

The successful vendor will be required to comply with the following specifications and requirements:

### INSURANCE

The successful vendor is required to procure and maintain certain types of insurances.

The Contractor shall not commence work under this contract until the company has obtained the insurance required under this paragraph. All coverages shall be with insurance companies licensed and admitted to do business in the State of Michigan. All coverages shall be with insurance carriers acceptable to the City of Birmingham.

1. Workers' Compensation Insurance: The Contractor shall procure and maintain during the life of this contract, Workers' Compensation Insurance, including Employers Liability Coverage, in accordance with all applicable statutes of the State of Michigan.
2. Commercial General Liability Insurance: The Contractor shall procure and maintain during the life of this contract, 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 Contractors Coverage; (D) Broad Form General Liability Extensions or equivalent; (E) Deletion of all Explosion, Collapse and Underground (XCU) Exclusions, if applicable.
3. Motor Vehicle Liability: The Contractor shall procure and maintain during the life of this contract Motor Vehicle Liability Insurance, including all applicable no-fault coverages, with limits of liability of not less than \$ 1,000,000 per occurrence combined single limit Bodily Injury and Property Damage. Coverage shall include all owned vehicles, all non-owned vehicles, and all hired vehicles.
4. Additional Insured: Commercial General Liability and Motor Vehicle Liability Insurance, as described above, shall include an endorsement stating the following shall be *Additional Insureds*: 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. This coverage shall be primary to any coverage that may be available to the additional insured, whether any other available coverage be primary, contributing or excess.
5. Cancellation Notice: Workers' Compensation Insurance, Commercial General Liability Insurance and Motor Vehicle Liability Insurance, as described above, shall include an endorsement stating the following: "Thirty (30) days Advance Written Notice of Cancellation or Non-Renewal shall be sent to: City of Birmingham, Police Department, attention Ellen DeView, P.O. Box 3001, 151 Martin Street, Birmingham, Michigan 48012.
6. Proof of Insurance Coverage: The Contractor shall provide the City of Birmingham at the time the contracts are returned for execution, Certificates of Insurance and/or policies, acceptable to the City of Birmingham, as listed below.
  - a. Two (2) copies of Certificate of Insurance for Workers' Compensation;
  - b. Two (2) copies of Certificate of Insurance for Commercial General Liability;
  - c. Two (2) copies of Certificate of Insurance for Vehicle Liability Insurance;
  - d. If so requested, Certified Copies of all policies mentioned above will be furnished.



7. Insurance Certificate to be Submitted with Bid: The Contractor shall submit a copy of their standard insurance certificate, included with their bid, to the City of Birmingham.
8. Coverage Expiration: If any of the above coverages expire during the term of this contract, the Contractor shall deliver renewal certificates and/or policies to the City of Birmingham at least (10) days prior to the expiration date.

#### CONTINUATION OF COVERAGE

The Contractor agrees to provide all insurance coverages as specified. Upon failure of the Contractor to obtain or maintain such insurance coverage for the term of the agreement, the City 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 and may contract with any insurer for such coverage.

#### INDEMNITY

To the fullest extent permitted by law, the Contractor and any entity or person for whom the Contractor 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 behalf of the City of Birmingham 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 and the City of Birmingham, its elected and appointed officials, employees, volunteers or others working on behalf of the City of Birmingham, by reason of personal injury, including bodily injury and death and/or property damage, including loss of use thereof, which arises out of or is in any way connected or associated with this contract. 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 of Birmingham.

#### CONFLICT OF INTEREST

The City of Birmingham will not enter into a contract to furnish materials or services to the City from any City official, his or her spouse, child or parent, or from any corporation, association or partnership in which any City official, his or her spouse, child or parent, has any 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 Contractor, the City shall have the right to terminate this Agreement without further liability to the Contractor if the disqualification has not been removed within thirty (30) days after the City has given the Contractor 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.

#### FAILURE TO PERFORM / REMEDIAL ACTIONS

If Contractor fails to perform its obligations hereunder, the City may take any and all remedial actions provided by the specifications as determined in the bid or as otherwise permitted by law.

#### OBLIGATION TO EXECUTE CONTRACT

The bidder whose proposal is accepted shall be required to execute the contract and to furnish all insurance coverages as specified within ten (10) days after receiving notice of such acceptance. Any contract awarded pursuant to any bid shall not be binding upon the City until a written contract has been executed by both parties. Failure or refusal to execute the contract shall be considered as abandoned, and all rights and interest in the award and the contract may be awarded to another.

#### NON-DISCRIMINATION

The Contractor shall, when applicable, comply with the requirements of all federal, state, and local laws and ordinances and regulations relating to minimum wages, social security, unemployment compensation insurance, and Worker's Compensation, and shall not discriminate against any employee or applicant for employment because of religion, race, color, sex, marital status, age, national origin, handicap, sexual orientation or any other protected classification specified by state or federal law.

#### NON-ASSIGNABILITY

The covenants, conditions, and the Agreements herein contained are hereby declared binding on the City and Contractor. It is further agreed that there shall be no change, modification, or alteration hereof, except in writing, signed by both of the parties hereto. Neither party shall assign any of the rights under this Agreement without prior approval, in writing, of the other.

#### SETTLEMENT OF DISPUTES

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 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 arbitrated, any dispute between the parties may be resolved by the filing of a suit in the Oakland County Circuit Court or the 48th District Court.

#### 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.

#### IRAN SANCTIONS ACT VENDOR CERTIFICATION FORM

The attached Iran Sanctions Act Vendor Certification Form must be completed and included with the sealed bid.

## **BIDDER'S AGREEMENT**

In submitting this bid as herein described the bidder agrees that:

1. Bidder / Vendor has carefully examined the specifications, terms and agreement of the Invitation to Bid and all other provisions of this document and understands the meaning, intent, and requirements therein.
2. Bidder / Vendor will accept a purchase order and furnish all items in the time specified in conformance with the specifications and conditions contained therein for the price quoted by the proponent on this proposal.

COMPANY HART PAVEMENT STRIPING CORPORATION

ADDRESS 3330 WARREN DRIVE

CITY WATERFORD STATE MICHIGAN ZIP 48328

REPRESENTATIVE DANN HART TITLE PRESIDENT

EMAIL DDHART@HARTSTRIPING.COM

PHONE (248) 673-3502 FAX (248) 673-3438

SIGNATURE  DATE July 28, 2016

**IRAN SANCTIONS ACT VENDOR CERTIFICATION FORM**  
**For PAVEMENT MARKINGS 2016-2017 BID**

Pursuant to Michigan law and the Iran Economic Sanctions Act, 2012 PA 517 ("Act"), prior to the City accepting any bid or proposal, or entering into any contract for goods or services with any prospective Vendor, the Vendor must certify that it is not an "Iran Linked Business", as defined by the Act.

By completing this form, the Vendor certifies that it is not an "Iran Linked Business", as defined by the Act and is in full compliance with all provisions of the Act and is legally eligible to submit a bid for consideration by the City.

Dann Hart	July 28, 2016
<b>PREPARED BY</b> <b>(Print Name)</b>	<b>DATE</b>
President	July 28, 2016
<b>TITLE</b>	<b>DATE</b>
	ddhart@hartstriping.com
<b>AUTHORIZED SIGNATURE</b>	<b>E-MAIL ADDRESS</b>
HART PAVEMENT STRIPING CORPORATION	
<b>COMPANY</b>	
3330 WARREN DRIVE, WATERFORD, MI 48329	(248) 673-3503
<b>ADDRESS</b>	<b>PHONE</b>
HART PAVEMENT STRIPING CORPORATION	(248) 673-3503
<b>NAME OF PARENT COMPANY</b>	<b>PHONE</b>
3330 WARREN DRIVE, WATERFORD, MI 48329 (P.O. BOX 300998, WATERFORD, MI 48330)	
<b>ADDRESS</b>	
38-2806542	
<b>TAXPAYER I.D.#</b>	



Cherilynn Mynsberge <[cmynsberge@bhamgov.org](mailto:cmynsberge@bhamgov.org)>

---

## Fwd: August 15 meeting agendas

1 message

---

Mon, Aug 13, 2018 at 12:38 PM

----- Forwarded message -----

From: **Thomas Trapnell** <[thtrapnell@gmail.com](mailto:thtrapnell@gmail.com)>

Date: Mon, Aug 13, 2018 at 12:28 PM

Subject: Re: August 15 meeting agendas

To: Matthew Baka <[mbaka@bhamgov.org](mailto:mbaka@bhamgov.org)>

I am tendering my resignation from DRB/HDC for personal reasons. It's been a good few years though.

### SUGGESTED RESOLUTION

To accept the resignation of Thomas Trapnell from the Design Review Board and the Historic District Commission as an Regular Member, thanking him for his service, and directing the City Clerk to begin the process of filling the vacancies.

**DATE:** August 15, 2018

**TO:** Joseph A. Valentine, City Manager

**FROM:** Yvonne Taylor, HR Manager

**SUBJECT:** Certification of Compliance with State of Michigan Public Act 152 of 2011

---

## Background

Since 2012, Michigan public employers have annually certified compliance with Public Act 152—Publicly-funded Health Insurance Contribution Act—in order to maintain eligibility for state funding. Previously, this was a requirement for statutory revenue sharing disbursements tied to the Economic Vitality Incentive Program (EVIP) which has been discontinued. Now, MDOT uses PA 152 compliance for distribution of federal funds. Certification of compliance is required by September 30<sup>th</sup> of each year to guarantee eligibility for road funding in the current fiscal year.

## Alternatives for Compliance

A local unit of government may comply with the Act by adopting any one of the following:

1. Adopt a limitation on flat dollar amounts of employee medical costs by establishing the hard dollar caps set forth by the Michigan Department of Treasury for single coverage, 2-person coverage, and family coverage.
2. Adopt a limitation on a percentage of the total annual medical costs by establishing a maximum employer contribution of 80%.
3. Opt-out by exempting itself from the requirements of the Act by 2/3 vote of the governing body.

## Considerations

Since 2012, the City has elected to exempt itself from the requirements of the Act as its compliance alternative. This has been due to employee concessions in health care, which were initiated several years ago with increased cost sharing on the part of employees through increasing deductibles, co-insurance and co-pays. This has continued, and is continuing, with the objective of managing health care costs.

## HR Recommendation

HR recommends a continuation of the current strategy with the City certifying compliance with Public Act 152 by selecting the exemption alternative for the 2018 year, via MDOT Form 2068 (attached). A 2/3 vote by the City Commission is required.

## SUGGESTED RESOLUTION:

To authorize the City's compliance with the provisions of State of Michigan Public Act 152 of 2011, by exercising the City's option to exempt itself from the requirements of the Act; and further, directing the City Engineer and Finance Director to sign and submit the required form to the Michigan Department of Transportation.

**PUBLIC ACT 51, SECTION 18j, MCL 247.668j**  
**Annual Certification of Employee-related**  
**Conditions**

CERTIFICATION YEAR \_\_\_\_\_

CITY OR VILLAGE NAME \_\_\_\_\_

Beginning September 30, 2015, and annually each September 30 thereafter, certification must be made for compliance to Section 18j(1) of Public Act 51 of 1951, MCL 248.668j(1). A local road agency must certify that it has (a) developed an employee compensation plan for its employees as described OR (b) the local road agency must certify that medical benefits are offered to its employees or elected public officials in compliance with the publicly funded health insurance contribution act, 2011 PA 152, MCL 15.561 to 15.569, or, that it does not offer medical benefits to its employees or elected public officials.

☐ Compliance with(1)(a)  
I certify compliance with MCL 247.668j(1)(a).  
Our compensation plan for employees meets the minimum criteria of MCL 247.668j (a)(i - iv).

☐ Compliance with (1)(b)  
I certify compliance with MCL 247.668j(1)(b), and as such, offer one of the following:

☐ I certify that medical benefits are offered to employees or elected public officials in compliance with the publicly funded health insurance contribution act, 2011 PA 152; **or**

☐ I certify that the local road agency has exempted itself from the publicly funded health insurance contribution act, 2011 PA 152; **or**

☐ I certify that medical benefits are not offered to employees or elected public officials.

☐ Non-compliance with (1)(a) or (1)(b)  
I certify that we are not in compliance with MCL 247.668j(1).  
I understand that failure to comply with certification of (a) or (b) of MCL 247.668j(1) may result in the withholding of all or part of the distributions made to this local road agency from the Michigan Transportation Fund.

**This form must be signed by the Street Administrator and the Treasurer or Financial Director.**

SIGNATURE		SIGNATURE	
PRINTED NAME		PRINTED NAME	
TITLE	DATE	TITLE	DATE

**Due Each September 30**

Return the completed form to:

Michigan Department of Transportation, Financial Operations Division, P.O. Box 30050, Lansing, MI 48909, **OR**

Email to: [MDOT-Outreach@michigan.gov](mailto:MDOT-Outreach@michigan.gov), **OR**

Fax to: (517) 373-6266



## MEMORANDUM

Planning Division

**DATE:** August 17, 2018  
**TO:** Joseph A. Valentine, City manager  
**FROM:** Jana Ecker, Planning Director  
**SUBJECT:** Set Public Hearing for Bistro Ordinance Amendments

---

The Planning Division requests that the City Commission set a public hearing date for **September 17, 2018** to consider approval of the following ordinance amendments as recommended by the Planning Board on August 8, 2018:

1. Section 3.04, Specific Standards, Building Use, to amend the regulations of the bistro Special Land Use Permit;
2. Section 5.06, O1 – Office District, Specific Standards, Building Use, to amend the regulations of the bistro Special Land Use Permit;
3. Section 5.07, O2 – Office District, Specific Standards, Building Use, to amend the regulations of the bistro Special Land Use Permit;
4. Section 5.08, P – Parking District, Specific Standards, Building Use, to amend the regulations of the bistro Special Land Use Permit;
5. Section 5.10, B2 – General Business District, B2B – General Business District, B2C – General Business District, Specific Standards, Building Use, to amend the regulations of the bistro Special Land Use Permit;
6. Section 5.11, B3 – Office-Residential District, Specific Standards, Building Use, to amend the regulations of the bistro Special Land Use Permit;
7. Section 5.12, B4 – Business-Residential District, Specific Standards, Building Use, to amend the regulations of the bistro Special Land Use Permit;
8. Section 5.13, MX – Mixed Use District, Specific Standards, Building Use, to amend the regulations of the bistro Special Land Use Permit; and
9. Section 9.02, Definitions: Bistro.

Please find attached all draft ordinance language and minutes from previous discussions for your review.

**Suggested Action:**

To set a public hearing date for September 17, 2018 to consider approval of the following ordinance amendments to Chapter 126, Zoning of the Birmingham City Code:

1. Section 3.04, Specific Standards, Building Use, to amend the regulations of the bistro Special Land Use Permit;



2. Section 5.06, O1 – Office District, Specific Standards, Building Use, to amend the regulations of the bistro Special Land Use Permit;
3. Section 5.07, O2 – Office District, Specific Standards, Building Use, to amend the regulations of the bistro Special Land Use Permit;
4. Section 5.08, P – Parking District, Specific Standards, Building Use, to amend the regulations of the bistro Special Land Use Permit;
5. Section 5.10, B2 – General Business District, B2B – General Business District, B2C – General Business District, Specific Standards, Building Use, to amend the regulations of the bistro Special Land Use Permit;
6. Section 5.11, B3 – Office-Residential District, Specific Standards, Building Use, to amend the regulations of the bistro Special Land Use Permit;
7. Section 5.12, B4 – Business-Residential District, Specific Standards, Building Use, to amend the regulations of the bistro Special Land Use Permit;
8. Section 5.13, MX – Mixed Use District, Specific Standards, Building Use, to amend the regulations of the bistro Special Land Use Permit; and
9. Section 9.02, Definitions: Bistro.

**CITY OF BIRMINGHAM  
ORDINANCE NO. \_\_**

**THE CITY OF BIRMINGHAM ORDAINS:** AN ORDINANCE TO AMEND CHAPTER 126, ZONING, OF THE CODE OF THE CITY OF BIRMINGHAM:

**TO AMEND ARTICLE 3, SECTION 3.04(C)(10), SPECIFIC STANDARDS, BUILDING USE, TO AMEND THE REGULATIONS FOR A BISTRO IN THE DOWNTOWN OVERLAY DISTRICT.**

**3.04 Specific Standards**

C. Building Use

10. Bistros: Bistros are permitted with a valid Special Land Use Permit with the following conditions:
  - A. No direct connect additional bar permit is allowed and the maximum seating at a bar cannot exceed 10 seats;
  - B. Alcohol is served only to seated patrons, except those standing in a defined bar area;
  - C. No dance area is provided;
  - D. Only low key entertainment is permitted;
  - E. Bistros must have tables located in the storefront space lining any street, or pedestrian passage;
  - F. A minimum of 70% glazing must be provided along building facades facing a street or pedestrian passage between 1 foot and 8 feet in height;
  - G. All bistro owners must execute a contract with the City outlining the details of the operation of the bistro; and
  - H. Outdoor dining must be provided, weather permitting, along an adjacent street or passage during the months of May through October each year. Outdoor dining is not permitted past 12:00 a.m. If there is not sufficient space to permit such dining on the sidewalk adjacent to the bistro, an elevated, ADA compliant, ~~enclosed~~**defined** platform must be erected on the street adjacent to the bistro to create an outdoor dining area if the Engineering Department determines there is sufficient space available for this purpose given parking and traffic conditions.
  - I. **Enclosures facilitating year round dining outdoors are not permitted.**
  - J. **Railings, planters or similar barriers defining outdoor dining platforms may not exceed 42" in height.**
  - K. **Outdoor rooftop dining is permitted with the conditions that surrounding properties are not impacted in a negative manner and adequate street level dining is provided as determined by the Planning Board and City Commission. Rooftop dining seats will count towards the total number of permissible outdoor dining seats.**

ORDAINED this \_\_\_\_\_ day of \_\_\_\_\_, 2018 to become effective 7 days after publication.

---

Andrew Harris, Mayor

---

Cherilynn Mynsberge, City Clerk

CITY OF BIRMINGHAM  
**ORDINANCE NO.**

**THE CITY OF BIRMINGHAM ORDAINS:** AN ORDINANCE TO AMEND CHAPTER 126, ZONING, OF THE CODE OF THE CITY OF BIRMINGHAM:

**TO AMEND ARTICLE 5, SECTION 5.06(A), O1 – OFFICE DISTRICT, SPECIFIC STANDARDS, BUILDING USE, TO AMEND THE REGULATIONS FOR A BISTRO IN THE O1 DISTRICT.**

**5.06 O1 District**

- A. Bistros: Bistros are permitted with a valid Special Land Use Permit with the following conditions:
1. No direct connect additional bar permit is allowed and the maximum seating at a bar cannot exceed 10 seats **in the Downtown Overlay District, or 15 seats in the Triangle District and Rail District;**
  2. Alcohol is served only to seated patrons, except those standing in a defined bar area;
  3. No dance area is provided;
  4. Only low key entertainment is permitted;
  5. Bistros must have tables located in the storefront space lining any street, or pedestrian passage;
  6. A minimum of 70% glazing must be provided along building facades facing a street or pedestrian passage between 1 foot and 8 feet in height;
  7. All bistro owners must execute a contract with the City outlining the details of the operation of the bistro; and
  8. Outdoor dining must be provided, weather permitting, along an adjacent street or passage during the months of May through October each year. Outdoor dining is not permitted past 12:00 a.m. If there is not sufficient space to permit such dining on the sidewalk adjacent to the bistro, an elevated, ADA compliant, enclosed **defined** platform must be erected on the street adjacent to the bistro to create an outdoor dining area if the Engineering Department determines there is sufficient space available for this purpose given parking and traffic conditions.
  9. **Enclosures facilitating year round dining outdoors are not permitted.**
  10. **Railings, planters or similar barriers defining outdoor dining platforms may not exceed 42" in height.**
  11. **Outdoor rooftop dining is permitted with the conditions that surrounding properties are not impacted in a negative manner and adequate street level dining is provided as determined by the Planning Board and City Commission. Rooftop dining seats will count towards the total number of permissible outdoor dining seats.**

ORDAINED this \_\_\_\_\_ day of \_\_\_\_\_, 2018 to become effective 7 days after publication.

---

Andrew Harris, Mayor

---

Cherilynn Mynsberge, City Clerk

CITY OF BIRMINGHAM  
**ORDINANCE NO.**

**THE CITY OF BIRMINGHAM ORDAINS:** AN ORDINANCE TO AMEND CHAPTER 126, ZONING, OF THE CODE OF THE CITY OF BIRMINGHAM:

**TO AMEND ARTICLE 5, SECTION 5.07(A), O2 – OFFICE COMMERCIAL DISTRICT, SPECIFIC STANDARDS, BUILDING USE, TO AMEND THE REGULATIONS FOR A BISTRO IN THE O2 DISTRICT.**

**5.07 O2 District**

- A. Bistros: Bistros are permitted with a valid Special Land Use Permit with the following conditions:
1. No direct connect additional bar permit is allowed and the maximum seating at a bar cannot exceed 10 seats **in the Downtown Overlay District, or 15 seats in the Triangle District and Rail District;**
  2. Alcohol is served only to seated patrons, except those standing in a defined bar area;
  3. No dance area is provided;
  4. Only low key entertainment is permitted;
  5. Bistros must have tables located in the storefront space lining any street, or pedestrian passage;
  6. A minimum of 70% glazing must be provided along building facades facing a street or pedestrian passage between 1 foot and 8 feet in height;
  7. All bistro owners must execute a contract with the City outlining the details of the operation of the bistro; and
  8. Outdoor dining must be provided, weather permitting, along an adjacent street or passage during the months of May through October each year. Outdoor dining is not permitted past 12:00 a.m. If there is not sufficient space to permit such dining on the sidewalk adjacent to the bistro, an elevated, ADA compliant, ~~enclosed~~ **defined** platform must be erected on the street adjacent to the bistro to create an outdoor dining area if the Engineering Department determines there is sufficient space available for this purpose given parking and traffic conditions.
  9. **Enclosures facilitating year round dining outdoors are not permitted.**
  10. **Railings, planters or similar barriers defining outdoor dining platforms may not exceed 42" in height.**
  11. **Outdoor rooftop dining is permitted with the conditions that surrounding properties are not impacted in a negative manner and adequate street level dining is provided as determined by the Planning Board and City Commission. Rooftop dining seats will count towards the total number of permissible outdoor dining seats.**

ORDAINED this \_\_\_\_\_ day of \_\_\_\_\_, 2018 to become effective 7 days after publication.

---

Andrew Harris, Mayor

---

Cherilynn Mynsberge, City Clerk

CITY OF BIRMINGHAM  
**ORDINANCE NO.**

**THE CITY OF BIRMINGHAM ORDAINS:** AN ORDINANCE TO AMEND CHAPTER 126, ZONING, OF THE CODE OF THE CITY OF BIRMINGHAM:

**TO AMEND ARTICLE 5, SECTION 5.08(A), P – PARKING DISTRICT, SPECIFIC STANDARDS, BUILDING USE, TO AMEND THE REGULATIONS FOR A BISTRO IN THE P DISTRICT.**

**5.08 P District**

- A. Bistros: Bistros are permitted with a valid Special Land Use Permit with the following conditions:
1. No direct connect additional bar permit is allowed and the maximum seating at a bar cannot exceed 10 seats **in the Downtown Overlay District, or 15 seats in the Triangle District and Rail District;**
  2. Alcohol is served only to seated patrons, except those standing in a defined bar area;
  3. No dance area is provided;
  4. Only low key entertainment is permitted;
  5. Bistros must have tables located in the storefront space lining any street, or pedestrian passage;
  6. A minimum of 70% glazing must be provided along building facades facing a street or pedestrian passage between 1 foot and 8 feet in height;
  7. All bistro owners must execute a contract with the City outlining the details of the operation of the bistro; and
  8. Outdoor dining must be provided, weather permitting, along an adjacent street or passage during the months of May through October each year. Outdoor dining is not permitted past 12:00 a.m. If there is not sufficient space to permit such dining on the sidewalk adjacent to the bistro, an elevated, ADA compliant, ~~enclosed~~ **defined** platform must be erected on the street adjacent to the bistro to create an outdoor dining area if the Engineering Department determines there is sufficient space available for this purpose given parking and traffic conditions.
  9. **Enclosures facilitating year round dining outdoors are not permitted.**
  10. **Railings, planters or similar barriers defining outdoor dining platforms may not exceed 42" in height.**
  11. **Outdoor rooftop dining is permitted with the conditions that surrounding properties are not impacted in a negative manner and adequate street level dining is provided as determined by the Planning Board and City Commission. Rooftop dining seats will count towards the total number of permissible outdoor dining seats.**



ORDAINED this \_\_\_\_\_ day of \_\_\_\_\_, 2018 to become effective 7 days after publication.

---

Andrew Harris, Mayor

---

Cherilynn Mynsberge, City Clerk

CITY OF BIRMINGHAM  
**ORDINANCE NO.**

**THE CITY OF BIRMINGHAM ORDAINS:** AN ORDINANCE TO AMEND CHAPTER 126, ZONING, OF THE CODE OF THE CITY OF BIRMINGHAM:

**TO AMEND ARTICLE 5, SECTION 5.10(B), B2 – GENERAL BUSINESS DISTRICT, B2B – GENERAL BUSINESS DISTRICT, B2C – GENERAL BUSINESS DISTRICT, SPECIFIC STANDARDS, BUILDING USE, TO AMEND THE REGULATIONS FOR A BISTRO IN THE B2B DISTRICT.**

**5.10 B2 District, B2B District, B2C District**

B. Bistros: Bistros are permitted with a valid Special Land Use Permit with the following conditions:

1. No direct connect additional bar permit is allowed and the maximum seating at a bar cannot exceed 10 seats **in the Downtown Overlay District, or 15 seats in the Triangle District and Rail District;**
2. Alcohol is served only to seated patrons, except those standing in a defined bar area;
3. No dance area is provided;
4. Only low key entertainment is permitted;
5. Bistros must have tables located in the storefront space lining any street, or pedestrian passage;
6. A minimum of 70% glazing must be provided along building facades facing a street or pedestrian passage between 1 foot and 8 feet in height;
7. All bistro owners must execute a contract with the City outlining the details of the operation of the bistro; and
8. Outdoor dining must be provided, weather permitting, along an adjacent street or passage during the months of May through October each year. Outdoor dining is not permitted past 12:00 a.m. If there is not sufficient space to permit such dining on the sidewalk adjacent to the bistro, an elevated, ADA compliant, enclosed **defined** platform must be erected on the street adjacent to the bistro to create an outdoor dining area if the Engineering Department determines there is sufficient space available for this purpose given parking and traffic conditions.
9. **Enclosures facilitating year round dining outdoors are not permitted.**
10. **Railings, planters or similar barriers defining outdoor dining platforms may not exceed 42" in height.**
11. **Outdoor rooftop dining is permitted with the conditions that surrounding properties are not impacted in a negative manner and adequate street level dining is provided as determined by the Planning Board and City Commission. Rooftop dining seats will count towards the total number of permissible outdoor dining seats.**

ORDAINED this \_\_\_\_\_ day of \_\_\_\_\_, 2018 to become effective 7 days after publication.

---

Andrew Harris, Mayor

---

Cherilynn Mynsberge, City Clerk

CITY OF BIRMINGHAM  
**ORDINANCE NO.**

**THE CITY OF BIRMINGHAM ORDAINS:** AN ORDINANCE TO AMEND CHAPTER 126, ZONING, OF THE CODE OF THE CITY OF BIRMINGHAM:

**TO AMEND ARTICLE 5, SECTION 5.11(A), B3 – OFFICE-RESIDENTIAL DISTRICT, SPECIFIC STANDARDS, BUILDING USE, TO AMEND THE REGULATIONS FOR A BISTRO IN THE B3 DISTRICT.**

**5.11 B3 District**

A. Bistros: Bistros are permitted with a valid Special Land Use Permit with the following conditions:

1. No direct connect additional bar permit is allowed and the maximum seating at a bar cannot exceed 10 seats **in the Downtown Overlay District, or 15 seats in the Triangle District and Rail District;**
2. Alcohol is served only to seated patrons, except those standing in a defined bar area;
3. No dance area is provided;
4. Only low key entertainment is permitted;
5. Bistros must have tables located in the storefront space lining any street, or pedestrian passage;
6. A minimum of 70% glazing must be provided along building facades facing a street or pedestrian passage between 1 foot and 8 feet in height;
7. All bistro owners must execute a contract with the City outlining the details of the operation of the bistro; and
8. Outdoor dining must be provided, weather permitting, along an adjacent street or passage during the months of May through October each year. Outdoor dining is not permitted past 12:00 a.m. If there is not sufficient space to permit such dining on the sidewalk adjacent to the bistro, an elevated, ADA compliant, ~~enclosed~~ **defined** platform must be erected on the street adjacent to the bistro to create an outdoor dining area if the Engineering Department determines there is sufficient space available for this purpose given parking and traffic conditions.
9. **Enclosures facilitating year round dining outdoors are not permitted.**
10. **Railings, planters or similar barriers defining outdoor dining platforms may not exceed 42" in height.**
11. **Outdoor rooftop dining is permitted with the conditions that surrounding properties are not impacted in a negative manner and adequate street level dining is provided as determined by the Planning Board and City Commission. Rooftop dining seats will count towards the total number of permissible outdoor dining seats.**

ORDAINED this \_\_\_\_\_ day of \_\_\_\_\_, 2018 to become effective 7 days after publication.

---

Andrew Harris, Mayor

---

Cherilynn Mynsberge, City Clerk

CITY OF BIRMINGHAM  
**ORDINANCE NO.**

**THE CITY OF BIRMINGHAM ORDAINS:** AN ORDINANCE TO AMEND CHAPTER 126, ZONING, OF THE CODE OF THE CITY OF BIRMINGHAM:

**TO AMEND ARTICLE 5, SECTION 5.12(B), B4 – BUSINESS-RESIDENTIAL DISTRICT, SPECIFIC STANDARDS, BUILDING USE, TO AMEND THE REGULATIONS FOR A BISTRO IN THE B4 DISTRICT.**

**5.12 B4 District**

**B-** Bistros: Bistros are permitted with a valid Special Land Use Permit with the following conditions:

1. No direct connect additional bar permit is allowed and the maximum seating at a bar cannot exceed 10 seats **in the Downtown Overlay District, or 15 seats in the Triangle District and Rail District;**
2. Alcohol is served only to seated patrons, except those standing in a defined bar area;
3. No dance area is provided;
4. Only low key entertainment is permitted;
5. Bistros must have tables located in the storefront space lining any street, or pedestrian passage;
6. A minimum of 70% glazing must be provided along building facades facing a street or pedestrian passage between 1 foot and 8 feet in height;
7. All bistro owners must execute a contract with the City outlining the details of the operation of the bistro; and
8. Outdoor dining must be provided, weather permitting, along an adjacent street or passage during the months of May through October each year. Outdoor dining is not permitted past 12:00 a.m. If there is not sufficient space to permit such dining on the sidewalk adjacent to the bistro, an elevated, ADA compliant, enclosed **defined** platform must be erected on the street adjacent to the bistro to create an outdoor dining area if the Engineering Department determines there is sufficient space available for this purpose given parking and traffic conditions.
9. **Enclosures facilitating year round dining outdoors are not permitted.**
10. **Railings, planters or similar barriers defining outdoor dining platforms may not exceed 42" in height.**
11. **Outdoor rooftop dining is permitted with the conditions that surrounding properties are not impacted in a negative manner and adequate street level dining is provided as determined by the Planning Board and City Commission. Rooftop dining seats will count towards the total number of permissible outdoor dining seats.**

ORDAINED this \_\_\_\_\_ day of \_\_\_\_\_, 2018 to become effective 7 days after publication.

---

Andrew Harris, Mayor

---

Cherilynn Mynsberge, City Clerk

CITY OF BIRMINGHAM  
**ORDINANCE NO.**

**THE CITY OF BIRMINGHAM ORDAINS:** AN ORDINANCE TO AMEND CHAPTER 126, ZONING, OF THE CODE OF THE CITY OF BIRMINGHAM:

**TO AMEND ARTICLE 5, SECTION 5.13, MX(C) – (M) – MIXED USE DISTRICT, SPECIFIC STANDARDS, BUILDING USE, TO ADD REGULATIONS FOR A BISTRO IN THE MX DISTRICT AND RENUMBER REGULATIONS FOLLOWING (C).**

**5.13 MX District**

- A. Alcoholic Beverage Sales: Alcoholic beverage sales for consumption off the premises in conjunction with grocery stores, drugstores, party stores and delicatessens is permitted.
- B. Automobile Rental Establishment: An automobile rental establishment is permitted provided all vehicles are stored in a public or private parking garage
- C. **Bistros: Bistros are permitted with a valid Special Land Use Permit with the following conditions:**
  - 1. **No direct connect additional bar permit is allowed and the maximum seating at a bar cannot exceed 15 seats**
  - 2. **Alcohol is served only to seated patrons, except those standing in a defined bar area;**
  - 3. **No dance area is provided;**
  - 4. **Only low key entertainment is permitted;**
  - 5. **Bistros must have tables located in the storefront space lining any street, or pedestrian passage;**
  - 6. **A minimum of 70% glazing must be provided along building facades facing a street or pedestrian passage between 1 foot and 8 feet in height;**
  - 7. **All bistro owners must execute a contract with the City outlining the details of the operation of the bistro; and**
  - 8. **Outdoor dining must be provided, weather permitting, along an adjacent street or passage during the months of May through October each year. Outdoor dining is not permitted past 12:00 a.m. If there is not sufficient space to permit such dining on the sidewalk adjacent to the bistro, an elevated, ADA compliant, defined platform must be erected on the street adjacent to the bistro to create an outdoor dining area if the Engineering Department determines there is sufficient space available for this purpose given parking and traffic conditions.**
  - 9. **Enclosures facilitating year round dining outdoors are not permitted.**
  - 10. **Railings, planters or similar barriers defining outdoor dining platforms may not exceed 42" in height.**
  - 11. **Outdoor rooftop dining is permitted with the conditions that surrounding properties are not impacted in a negative manner and adequate street level dining is provided as determined by the Planning Board and City**



**Commission. Rooftop dining seats will count towards the total number of permissible outdoor dining seats.**

~~G.~~ **D.** Dwelling – Accessory: Residential units located in accessory structures are permitted provided that the residential units meet the minimum unit requirements identified in each two-page layout in Article 2. Where there is a conflict between this provision and the requirements of Section 4.02, this section shall take precedent.

~~D.~~ **E.**

~~E.~~ **F.**

~~F.~~ **G.**

~~G.~~ **H.**

~~H.~~ **I.**

~~I.~~ **J.**

~~J.~~ **K.**

~~K.~~ **L.**

~~L.~~ **M.**

~~M.~~ **N.**

ORDAINED this \_\_\_\_\_ day of \_\_\_\_\_, 2018 to become effective 7 days after publication.

---

Andrew Harris, Mayor

---

Cherilynn Mynsberge, City Clerk

CITY OF BIRMINGHAM  
**ORDINANCE NO.**

**THE CITY OF BIRMINGHAM ORDAINS:** AN ORDINANCE TO AMEND CHAPTER 126, ZONING, OF THE CODE OF THE CITY OF BIRMINGHAM:

**TO AMEND ARTICLE 9, SECTION 9.02, DEFINITIONS, TO AMEND THE EXISTING DEFINITION OF BISTRO.**

**9.02 Definitions**

**Bistro:** When located in the Downtown Overlay District, a restaurant with a full service kitchen with interior seating for no more than 65 people and seating for outdoor dining **of no more than 65 people. When located in the Triangle District or Rail District, a restaurant with a full service kitchen with interior seating for no more than 85 people and seating for outdoor dining of no more than 85 people.**

ORDAINED this \_\_\_\_\_ day of \_\_\_\_\_, 2018 to become effective 7 days after publication.

\_\_\_\_\_  
Andrew Harris, Mayor

\_\_\_\_\_  
Cherilynn Mynsberge, City Clerk



# MEMORANDUM

Planning Division

**DATE:** August 8<sup>th</sup>, 2018

**TO:** Planning Board

**FROM:** Jana L. Ecker, Planning Director

**SUBJECT:** Public Hearing for Bistro Regulations

As the bistro concept has evolved over the past 10 years, new applicants have sought creative ways to make the establishments distinctive from other restaurants and bistros in the City, and to increase the number of seats through the use of all season outdoor dining. The following issues have been raised:

- **Use of Eisenglass** – Doing so extends the time period outdoor dining areas are in operation which increases the number of seats for the restaurant as a whole for a majority of the year;
- **District Requirements** – The Downtown District, Triangle District, and Rail District have different opportunities which could merit different requirements for bistros locating within them;
- **On-street Dining/Rooftop Dining** – the use of on-street parking spaces and rooftops in addition to the sidewalk area allows the addition of larger outdoor dining areas;
- **Parking Needs** – the expansion of outdoor dining increases the number of people dining at the restaurant, which increases parking demand;
- **Building Code Requirements** – the enclosure of outdoor dining areas triggers Building Code regulations such as Energy Code compliance, fire suppression requirements, fire separation distances and exterior wall fire resistive ratings; and
- **Incentivizing Seating Capacity Tiers** – Allowing an increased amount of indoor seating and/or outdoor dining seating for bistros based upon conditional standards such as shared parking, landscaping, greenspace, etc.

At the joint City Commission/Planning Board meeting of June 19<sup>th</sup>, 2017 the issue of bistro regulations was discussed at length. There was a consensus that a review of the bistro requirements and how they relate to the various areas in which they are permitted was warranted. Additionally, Commission members saw good reason to potentially regulate bistros differently depending on the district in which they are located.

Accordingly, the Planning Board began studying the existing bistro regulations and discussing potential new regulations. Over several months, the Planning Board studied existing bistros and discussed the goals of the bistro program in the future.

On August 9<sup>th</sup>, 2017, the Planning Board considered ordinance language stating "Outdoor seating on public property shall not exceed 40 seats." The discussion on this topic was that some may not agree with an exorbitant amount of outdoor seating, but each bistro should be reviewed on an individual basis.

On September 13<sup>th</sup>, 2017, the Planning Board revisited the issue of limiting the number of outdoor seating, and decided that this should be reviewed on a case-by case basis. There was general consensus that the Board will see the outdoor dining plans in each application, and if they think the number of seats exceeds what is reasonable, they will ask the applicant to change the number and/or formation of outdoor seating.

Rooftop dining was also discussed on September 13<sup>th</sup>, 2017, where the Board also decided that this should be reviewed on an individual basis. It was noted that outdoor dining on the street level was preferable, and if the applicant met this requirement, then the Board would generally be in support of rooftop dining.

On April 11, 2018, the Planning Board conducted a public hearing and unanimously passed a motion recommending approval of the attached ordinance amendments for bistro regulations to the City Commission. Please find attached the draft ordinance language and meeting minutes for your consideration. Language related to limiting the number of outdoor seats or rooftop dining was not included because the Board agreed that these should be reviewed on an individual basis.

On April 23, 2018 the City Commission set a public hearing for May 14, 2018 to consider approval of the proposed amendments to the Zoning Ordinance related to bistros.

On May 14<sup>th</sup>, after reviewing the proposed changes, the general consensus from the City Commission was that they like the 42" rail standards as well as the rule banning year round outdoor dining enclosures. However, the City Commission did not vote on the proposal because they wanted the Planning Board to reconsider setting a limit on the number of outdoor seating allowed at bistros, and to address rooftop dining.

On June 13<sup>th</sup>, The Planning Board considered the request of the City Council to discuss the number of outdoor dining seats bistros are allowed and permissible rooftop dining. The Board decided to examine language stating that outdoor seating may not exceed the number of permissible seats indoors. They also decided on evaluating language that would permit rooftop dining as long as adequate street level dining is provided. Sample ordinance language reflecting these changes has been provided below.

On July 11<sup>th</sup>, language regarding the number of permissible outdoor dining seats and rooftop dining was finalized with amendments including conditions that rooftop dining may not impact surrounding properties in a negative manner and that rooftop seats count towards outdoor dining provisions.

SUGGESTED ACTION:

To recommend approval to the City Commission of the following amendments to Chapter 126, Zoning, of the Birmingham City Code:

TO AMEND SECTION 3.04, SPECIFIC STANDARDS, BUILDING USE, TO AMEND THE CONDITIONS OF THE BISTRO SPECIAL LAND USE PERMIT.

AND

TO AMEND SECTION 5.06, O1 – OFFICE DISTRICT, SPECIFIC STANDARDS, BUILDING USE, TO AMEND THE CONDITIONS OF THE BISTRO SPECIAL LAND USE PERMIT.

AND

TO AMEND SECTION 5.07, O2 – OFFICE DISTRICT, SPECIFIC STANDARDS, BUILDING USE, TO AMEND THE CONDITIONS OF THE BISTRO SPECIAL LAND USE PERMIT.

AND

TO AMEND SECTION 5.08, P – PARKING DISTRICT, SPECIFIC STANDARDS, BUILDING USE, TO AMEND THE CONDITIONS OF THE BISTRO SPECIAL LAND USE PERMIT.

AND

TO AMEND SECTION 5.10, B2 – GENERAL BUSINESS DISTRICT, B2B – GENERAL BUSINESS DISTRICT, B2C – GENERAL BUSINESS DISTRICT, SPECIFIC STANDARDS, BUILDING USE, TO AMEND THE CONDITIONS OF THE BISTRO SPECIAL LAND USE PERMIT.

AND

TO AMEND SECTION 5.11, B3 – OFFICE-RESIDENTIAL DISTRICT, SPECIFIC STANDARDS, BUILDING USE, TO AMEND THE CONDITIONS OF THE BISTRO SPECIAL LAND USE PERMIT.

AND

TO AMEND SECTION 5.12, B4 – BUSINESS-RESIDENTIAL DISTRICT, SPECIFIC STANDARDS, BUILDING USE, TO AMEND THE CONDITIONS OF THE BISTRO SPECIAL LAND USE PERMIT.

AND

TO AMEND SECTION 5.13, MX – MIXED USE DISTRICT, SPECIFIC STANDARDS, BUILDING USE, TO AMEND THE CONDITIONS OF THE BISTRO SPECIAL LAND USE PERMIT.

AND

TO AMEND SECTION 9.02, DEFINITIONS: BISTRO



# MEMORANDUM

Planning Division

**DATE:** July 11<sup>th</sup>, 2018

**TO:** Planning Board

**FROM:** Brooks Cowan, City Planner

**APPROVED:** Jana L. Ecker, Planning Director

**SUBJECT:** Bistro Regulations

As the bistro concept has evolved over the past 10 years, new applicants have sought creative ways to make the establishments distinctive from other restaurants and bistros in the City, and to increase the number of seats through the use of all season outdoor dining. The following issues have been raised:

- **Use of Eisenglass** – Doing so extends the time period outdoor dining areas are in operation which increases the number of seats for the restaurant as a whole for a majority of the year;
- **District Requirements** – The Downtown District, Triangle District, and Rail District have different opportunities which could merit different requirements for bistros locating within them;
- **On-street Dining/Rooftop Dining** – the use of on-street parking spaces and rooftops in addition to the sidewalk area allows the addition of larger outdoor dining areas;
- **Parking Needs** – the expansion of outdoor dining increases the number of people dining at the restaurant, which increases parking demand;
- **Building Code Requirements** – the enclosure of outdoor dining areas triggers Building Code regulations such as Energy Code compliance, fire suppression requirements, fire separation distances and exterior wall fire resistive ratings; and
- **Incentivizing Seating Capacity Tiers** – Allowing an increased amount of indoor seating and/or outdoor dining seating for bistros based upon conditional standards such as shared parking, landscaping, greenspace, etc.

At the joint City Commission/Planning Board meeting of June 19<sup>th</sup>, 2017 the issue of bistro regulations was discussed at length. There was a consensus that a review of the bistro requirements and how they relate to the various areas in which they are permitted was warranted. Additionally, Commission members saw good reason to potentially regulate bistros differently depending on the district in which they are located.

Accordingly, the Planning Board began studying the existing bistro regulations and discussing potential new regulations. Over several months, the Planning Board studied existing bistros and discussed the goals of the bistro program in the future.

On August 9<sup>th</sup>, 2017, the Planning Board considered ordinance language stating "Outdoor seating on public property shall not exceed 40 seats." The discussion on this topic was that some may not agree with an exorbitant amount of outdoor seating, but each bistro should be reviewed on an individual basis.

On September 13<sup>th</sup>, 2017, the Planning Board revisited the issue of limiting the number of outdoor seating, and decided that this should be reviewed on a case-by case basis. There was general consensus that the Board will see the outdoor dining plans in each application, and if they think the number of seats exceeds what is reasonable, they will ask the applicant to change the number and/or formation of outdoor seating.

Rooftop dining was also discussed on September 13<sup>th</sup>, 2017, where the Board also decided that this should be reviewed on an individual basis. It was noted that outdoor dining on the street level was preferable, and if the applicant met this requirement, then the Board would generally be in support of rooftop dining.

On April 11, 2018, the Planning Board conducted a public hearing and unanimously passed a motion recommending approval of the attached ordinance amendments for bistro regulations to the City Commission. Please find attached the draft ordinance language and meeting minutes for your consideration. Language related to limiting the number of outdoor seats or rooftop dining was not included because the Board agreed that these should be reviewed on an individual basis.

On April 23, 2018 the City Commission set a public hearing for May 14, 2018 to consider approval of the proposed amendments to the Zoning Ordinance related to bistros.

On May 14<sup>th</sup>, after reviewing the proposed changes, the general consensus from the City Commission was that they like the 42" rail standards as well as the rule banning year round outdoor dining enclosures. However, the City Commission did not vote on the proposal because they wanted the Planning Board to reconsider setting a limit on the number of outdoor seating allowed at bistros, and to address rooftop dining.

On June 13<sup>th</sup>, The Planning Board considered the request of the City Council to discuss the number of outdoor dining seats bistros are allowed and permissible rooftop dining. The Board decided to examine language stating that outdoor seating may not exceed the number of permissible seats indoors. They also decided on evaluating language that would permit rooftop dining as long as adequate street level dining is provided. Sample ordinance language reflecting these changes has been provided below.

**BIRMINGHAM CITY COMMISSION /  
PLANNING BOARD JOINT WORKSHOP SESSION MINUTES  
JUNE 19, 2017  
DPS FACILITY, 851 SOUTH ETON  
8:00 P.M.**

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

Mayor Mark Nickita called the meeting to order at 8:00 PM.

**II. ROLL CALL**

PRESENT: Mayor Nickita  
Mayor Pro  
Tem Harris  
Commissioner  
Bordman  
Commissioner  
Boutros  
Commissioner DeWeese  
Commissioner  
Hoff  
Commissioner  
Sherman  
Scott Clein, Planning Board  
Chairman  
Stuart Jeffares, Member  
Bert Koseck, Member  
Janelle Whipple-Boyce, Member  
J. Bryan Williams, Member

ABSENT: Robin Boyle,  
Member  
Gillian Lazar,  
Member Lisa  
Prasad,  
Member  
Daniel Share,  
Member

ADMINISTRATION: City Manager Valentine, City Attorney Studt, Deputy Clerk Arft,  
Planning Director, Ecker, Building Official Johnson

**III. ITEMS FOR DISCUSSION**

Mayor Nickita explained that this is a workshop session to discuss and evaluate various planning issues, with the intent to create an Action List for the Planning Board. City Manager Valentine added that more discussion will be needed on each item by the City Commission. The priorities will be determined by the Commission at a future meeting.

**E. BISTRO ALLOWANCES AND RESTRICTIONS**



Ms. Ecker said there has been concern expressed over the size of Bistros recently. She explained that a Bistro is defined as a restaurant with 65 seats or less, with no more than 10 of them at a bar, with a full service kitchen, low key entertainment, tables that must line the storefront, and outdoor dining. The biggest issue has been how much is too much outdoor dining. The intent when Bistros was started was to encourage outdoor dining, but it was not apparent at the time how far owners would look for creative opportunities to expand the outdoor dining. She suggested clarifications as to maximums, location, enclosures and the building code issues such as energy code, fire suppression might be needed. Parking needs are also a big concern.

Mayor Nickita added that the original concept for Bistros was just in the downtown area and that has changed. Once the area expanded to the Triangle area and Rail District, it changed the circumstance because of parking and available outdoor space.

Commissioner Bordman suggested considering different rules for different areas. The needs are different. Perhaps part of the study should be whether to have the exact same requirements in each of our districts.

Commissioner DeWeese suggested we need an intermediate level that applies in different situations. He considers this a high priority issue.

Mr. Koseck suggested that we should study the materials used and also the intent.

Commissioner Hoff agreed it is time to review the Bistro ordinance. It has developed differently than what was planned.

Mayor Nickita commented that it is time to review the ordinance.

**CITY OF BIRMINGHAM  
REGULAR MEETING OF THE PLANNING BOARD  
WEDNESDAY, JULY 12, 2017  
City Commission Room  
151 Martin Street, Birmingham, Michigan  
07-134-17**

**4. Bistro Regulations**

Mr. Baka recalled that In 2007 the City of Birmingham amended the Zoning Ordinance to create the bistro concept that allows small eclectic restaurants to obtain a liquor license if they have no more than 65 seats, including 10 at a bar, and low key entertainment only. Mr. Baka observed that as the bistro concept has evolved over the past 10 years, new applicants have sought creative ways to make their establishments distinctive from other restaurants and bistros in the City, and to increase the number of seats through the use of all season outdoor dining. The following issues have been raised:

- Use of Eisenglass – extends the time period outdoor dining areas are in operation which increases the number of seats for restaurant as a whole for a majority of the year;
- On-street Dining/Rooftop Dining – the use of on-street parking spaces and rooftops in addition to the sidewalk area allows the addition of larger outdoor dining areas;
- Parking Needs – the expansion of outdoor dining increases the number of people dining at the restaurant, which increases parking demand;
- Building Code Requirements – the enclosure of outdoor dining areas triggers Building Code regulations such as Energy Code compliance, fire suppression requirements, fire separation distances and exterior wall fire resistive ratings.

At the joint City Commission/Planning Board meeting of June 19, 2017 this issue was discussed at length. There seemed to be consensus that a review of the bistro requirements and how they relate to the various areas in which they are permitted is warranted. Accordingly, the Planning Division is now requesting that the Planning Board begin discussions on how these concerns should be addressed.

Mr. Williams indicated he never envisioned 10 years ago that some of the sites would be so disproportionately large based on outdoor dining. Ms. Whipple-Boyce said the bistros should be looked at from the standpoint of their locations in different districts throughout the City. Chairman Clein thought there is a need to study the general parking requirement in the MX District based on the number of outdoor dining seats. Mr. Boyle added that bistros might be incentivized there by allowing more seating outside. Further, also consider that the Triangle District is different.

Mr. Williams noted the single biggest thing the board never anticipated was the extent to which Eisenglass would provide for almost four season use.

Ms. Ecker added maybe the board doesn't mind having Eisenglass on a rainy day but they don't want to see it extend the season past November 1st through March 31st. There are two issues: the look of it, and whether it changes the character of use from seasonal to permanent.

There was consensus to look at including the opportunity for rooftop dining for bistros.

Ms. Lazar agreed the larger spaces, particularly in the MX District, might be increased. But, the neighbors may be upset if they feel there will be increased intrusion into the neighborhoods as a

result. Maybe some type of parking requirement might have to be imposed. Chairman Clein thought that Residential Permit Parking might be needed in that case.

**CITY OF BIRMINGHAM  
REGULAR MEETING OF THE PLANNING BOARD  
WEDNESDAY, AUGUST 9, 2017  
City Commission Room  
151 Martin Street, Birmingham, Michigan  
08-153-17**

**STUDY SESSIONS**

**1. Bistro Regulations**

Mr. Baka noted that in 2007 the City of Birmingham amended the Zoning Ordinance to create the bistro concept that allows small eclectic restaurants to obtain a Liquor License. Bistros are permitted in certain zone districts with a valid Special Land Use Permit ("SLUP") under several conditions. As the bistro concept has evolved over the past ten years, new applicants have sought creative ways to make their establishments distinctive from the other restaurants and bistros in the City, and to increase the number of seats through the use of all season outdoor dining.

At the joint City Commission/Planning Board meeting of June 19, 2017 the issue of clarifying bistro regulations was discussed at length. There seemed to be consensus that a review of the bistro requirements and how they relate to the various areas in which they are permitted is warranted. Additionally, Commission members saw good reason to potentially regulate bistros differently depending on the district in which they are located.

The Planning Division would like to begin to consider addressing the issues of **parking, outdoor dining** and **Eisenglass enclosures** via ordinance language changes. The following examples of potential ordinance language changes are based on two methods of regulating bistros. The thinking is that current bistros would not be impacted by what is being proposed.

The first option would be to amend Chapter 126, Zoning, to universally create development standards for bistros that would apply to all zoning districts that permit bistros. Universal regulation would ensure that the dining experience in one bistro (outside of menu, service, theme etc.) is the same as dining in any other bistro. This could mean putting a limit on outdoor seating of 40 seats for all districts, even if there is room (public property or private property) for more. Eisenglass or vinyl enclosures could be prohibited entirely as to not abuse the outdoor dining season limit set forth by the City (April-November). As for parking, requiring all bistros to include their outdoor dining square footage in parking requirements could make sure that there will be enough parking for all of those extra seats. Creating extra parking requirements, though, could also discourage outdoor seating and counteract a key intent of the Bistro Ordinance.

The second approach to clarifying bistro regulations would be to amend Chapter 126, Zoning, to create separate bistro standards depending on the bistro's location in the Downtown, Triangle or Rail Districts. In doing so separately, the City can take into account the different space and parking conditions present in different districts. Adding parking requirements, like including outdoor dining area square footage in the parking calculation, to the conditions of certain bistro location districts could help alleviate parking issues. Outdoor dining maximums are a reasonable consideration Downtown because there is less space for a large outdoor dining area. In the Rail and Triangle

Districts where street frontage is typically larger, outdoor dining maximums of 40 or 60 seats could be appropriate. Finally, Eisenglass or vinyl enclosures might be considered in some areas along the Woodward Ave. frontage of the Triangle District to alleviate the noise pollution patrons receive from the major road.

Mr. Williams thought the major focus should be that one size doesn't fit all. Mr. Jeffares commented that it would be interesting to find out how much of the lunch crowd consists of office users who are already parked in town. It was consensus that there should not be an enclosure that allows bistros to extend their outdoor dining season. The bistro concept is being pushed beyond its original boundaries.

Mr. Boyle thought they should be discussing the issue of 65 indoor seats. The board needs to review that and consider the possibility that number could go up. Then bistros could rely less on large outdoor seating and have a stronger business that doesn't tie them to 65 indoor seats.

Ms. Whipple-Boyce thought there could be implications to allowing more indoor seating. They don't want Birmingham to become an all restaurant city. She doesn't think parking is that much of a concern because when the offices clear out the restaurants become busy. Don't forget that there are many local residents who walk from their homes to the Downtown bistros. She does not want to encourage a bistro model behind the building. She likes the outdoor seating in the front of buildings to activate the sidewalk space. Look at each bistro independently and see what makes sense, rather than putting a number to it. Also, consider opportunities for rooftop dining. Maybe the districts need be viewed differently because they are different and because some of the parking situations are different.

Mr. Koseck said in his opinion the bistros are working. The intent was to attract small scale, unique establishments with a variety of different food types. Why treat the districts differently? Forty outdoor seats is fine and he doesn't want to get caught up in parking for outdoor dining. He totally thinks the outdoor dining should not be enclosed. Pick half of the number of interior seating for outdoor dining; 40 seats is fine. He would rather see three small bistros in the Rail District than one that has 150 seats.

Mr. Williams echoed that and added if seating is outdoor, it shouldn't be enclosed. The total seating ought be the combination of both indoor and outdoor. Parking generally works and the only time it doesn't is the 10 a.m. to 12 p.m. window. Lunch is problematic in the Downtown area.

Chairman Clein observed he doesn't think including parking in the count really matters. To him the issue is not so much the size of the bistros; it is that they are allowed to be wrapped in plastic and located in places the board doesn't like. Perhaps some incentives could be put forth for establishments to meet if they want to increase their outdoor dining.

Mr. Boyle hoped to find a way to make the industrial land use in the Rail District work for bistros.

Mr. Baka summarized that the board is divided on whether or not there should be a limit on the number of outside seats. Board members stated they were definitely not in favor of outdoor dining enclosures, and most of the board is leaning against adding additional parking

requirements for outdoor dining seats. Nearly everyone wants to keep the districts separate. Mr. Williams added they need to look at the parking, but not Downtown.

No one from the public wanted to comment at 10:10 p.m.

**CITY OF BIRMINGHAM  
REGULAR MEETING OF THE PLANNING BOARD  
WEDNESDAY, SEPTEMBER 13, 2017  
City Commission Room  
151 Martin Street, Birmingham, Michigan  
09-175-17**

**2. Bistro Regulations**

Mr. Baka noted that in 2007 the City of Birmingham amended the Zoning Ordinance to create the bistro concept that allows small eclectic restaurants to obtain a liquor license. Bistros are defined in Article 09 of the Zoning Ordinance as restaurants with a full service kitchen with interior seating for no more than 65 people and additional seating for outdoor dining. Bistros are permitted in certain zone districts with a valid Special Land Use Permit ("SLUP") along with several conditions. As the bistro concept has evolved over the past 10 years, new applicants have sought creative ways to make their establishments distinctive from other restaurants and bistros in the City, and to increase the number of seats through the use of all season outdoor dining.

There have been several issues raised:

- Use of Eisenglass – extends the time period outdoor dining areas are in operation which increases the number of seats for restaurant as a whole for a majority of the year;
- On-street Dining/Rooftop Dining – the use of on-street parking spaces and rooftops in addition to the sidewalk area allows the addition of larger outdoor dining areas;
- Parking Needs – the expansion of outdoor dining increases the number of people dining at the restaurant, which increases parking demand;
- Building Code Requirements – the enclosure of outdoor dining areas triggers Building Code regulations such as Energy Code compliance, fire suppression requirements, fire separation distances and exterior wall fire resistive ratings.
- 

At the joint City Commission/Planning Board meeting of June 19, 2017 the issue of clarifying bistro regulations was discussed at length. On July 24th, 2017 the City Commission moved the review of bistros up on the Planning Board's Action List.

On August 9, 2017 the Planning Board held a study session to begin to consider addressing the issues of parking, outdoor dining and Eisenglass enclosures. Discussion revealed that the Planning Board did not support regulating the number of outdoor dining seats, or requiring additional parking for such outdoor dining areas. There was unanimous support on the board for restricting the use of enclosures on outdoor dining areas to ensure that outdoor dining is truly seasonal. There was also discussion about setting different standards for the interior number of seats in different areas.

Accordingly the draft language has been revised to provide options that would eliminate the ability to utilize enclosures year round. The language is now silent on the issues of limiting the number of outdoor seats and requiring additional parking for those seating areas.

At this time four proposed options have been added to the ordinance language:

- Permanent enclosures shall not be permitted for outdoor dining areas.
- Weather proof enclosures facilitating year around dining outdoors are not permitted.

- Outdoor dining is not permitted between November 16 and March 31.
- The use of any type of enclosure system (including but not limited to fabric, Eisenglass, vinyl panels, drapes, plant materials shall not be permitted for outdoor dining areas.

Mr. Koseck indicated that in his mind outdoor dining areas should not be framed with walls whether they are temporary or permanent. These areas were never intended to be quasi interior space. Discussion considered eliminating the date restriction and eliminating walls and plastic enclosures. People can sit outdoors on a nice winter day if they choose; however outdoor furniture must be brought inside each night and platforms have to come down in the winter. Board members thought that railings on decks in the street should be limited to 42 in. in height.

To sum up the issues that were previously discussed:

- The use of Eisenglass and the Building Code requirements of such enclosures have been covered in that outdoor dining areas must truly be outdoors, not within enclosed areas;
- The board was not interested in adding extra parking requirements for outdoor dining;
- Setting a maximum number of outdoor dining seats is not a concern as they are all SLUPs and thus subject to individual review;
- Everyone was okay with rooftop dining, but the priority is that there must be outdoor dining in the front first and foremost.
- 

Mr. Jeffares was in favor of increasing the capacity of bistros for the Triangle and Rail Districts and Mr. Williams liked that concept. It was discussed that providing shared parking might be an incentive to increase inside seating from 65. However, Mr. Koseck thought that requiring shared parking complicates things. **Mr. Baka agreed to bring draft ordinance language for the next meeting.**



**CITY OF BIRMINGHAM  
REGULAR MEETING OF THE PLANNING BOARD  
WEDNESDAY, JANUARY 10, 2018  
City Commission Room  
151 Martin Street, Birmingham, Michigan**

---

Minutes of the regular meeting of the City of Birmingham Planning Board held on January 10, 2018. Chairman Scott Clein convened the meeting at 7:30 p.m.

**Present:** Chairman Scott Clein; Board Members Robin Boyle, Stuart Jeffares, Bert Koseck, Janelle Whipple-Boyce, Bryan Williams Alternate Board Members Nasseen Ramin, Daniel Share

**Absent:** Board Member Vice-Chairperson Gillian Lazar; Student Representatives Ariana Afrakhteh, Isabella Niskar

**Administration:** Matthew Baka, Sr. Planner

Jana Ecker, Planning Director

Carole Salutes, Recording Secretary

**01-05-18**

**2. Bistro Regulations**

Mr. Williams rejoined the board and Ms. Ramin left.

Mr. Baka advised that recently there has been discussion between the City Commission and the Planning Board that perhaps there should be a re-examination of the bistro requirements which already began last year with several study sessions.

As the bistro concept has evolved over the past 10 years, new applicants have sought creative ways to make the establishments distinctive from other restaurants and bistros in the City, and to increase the number of seats through the use of all season outdoor dining. The following issues have been raised:

- Use of Eisenglass – Doing so extends the time period outdoor dining areas are in operation which increases the number of seats for the restaurant as a whole for a majority of the year;
- District Requirements – The Downtown District, Triangle District, and Rail District have different opportunities which could merit different requirements for bistros locating within them;
- On-street Dining/Rooftop Dining –The use of on-street parking spaces and rooftops in addition to the sidewalk area allows the addition of larger outdoor dining areas;
- Parking Needs – The expansion of outdoor dining increases the number of people dining at the restaurant, which increases parking demand;

- Building Code Requirements – The enclosure of outdoor dining areas triggers Building Code regulations such as Energy Code compliance, fire suppression requirements, fire separation distances and exterior wall fire resistive ratings.
- Incentivizing Seating Capacity Tiers – Allowing an increased amount of indoor seating and/or outdoor dining seating for bistros based upon conditional standards such as shared parking, landscaping, green space, etc.

At the joint City Commission/Planning Board meeting of June 19th, 2017 the issue of bistro regulations was discussed at length. There was consensus that a review of the requirements and how they relate to the various areas in which they are permitted is warranted. Additionally, Commission members saw good reason to potentially regulate bistros differently depending on the district in which they are located.

The Planning Board held several study sessions on this matter and potential revisions and additions to the bistro standards were discussed. Draft language was created to provide options that would eliminate the ability to utilize enclosures year-round, and would not limit the number of outdoor dining seats or require additional parking for those seating areas. There was discussion on whether or not the 65 seat limit should be revised, or whether rooftop dining should be encouraged and what an acceptable railing height is for platform decks. It was suggested that perhaps the Triangle District and Rail District could establish different standards for maximum seating. New draft language was presented that expands interior seating for bistros in the Triangle and Rail Districts to 85 seats with 15 at the bar, while interior seating for the Downtown District remains at 65. Current rooftop dining standards were deemed acceptable, but the board wished to see railings on platform decks limited to 42 in. in height.

There was not a consensus on requiring shared parking as an incentive to get more seats at the bar.

Mr. Baka discussed Chapter 126 of the Code, sections 3.04, 5.06, 5.07, 5.08, 5.10, 5.11, 5.12, 5.13 and 9.02.

Consensus was for sections 3.04, 5.06, 5.07, 5.08, 5.10, 5.11, 5.12, change "enclosed platform" to "enclosed platform with a guard rail." Also find a way to consolidate I., J., and K in section 3.04 and other sections with the same language to a more precise limitation for enclosure systems for outdoor dining areas.

Mr. Baka clarified for Ms. Whipple-Boyce that vegetation can be planted above the 42 in. railing height.

There was general support for a larger number of indoor seating allowed by right for bistros located in the Rail and Triangle Districts.

Ms. Whipple-Boyce said it has been proven now that the Class C Liquor License holders and the bistro license holders are succeeding well side-by-side. Therefore, she is very supportive of allowing 85 indoor seats in the Rail and Triangle Districts. Losing parking spaces in the summer with more on-street dining doesn't concern her.

Mr. Williams observed that the issue of bistro locations in the Rail District has not been addressed. Ms. Ecker advised that currently they are allowed anywhere within the boundaries of the Rail District with a Special Land Use Permit ("SLUP"). Mr. Williams thought a bistro would significantly adversely impact the residential and live/work areas in the neighborhood.

Ms. Whipple-Boyce agreed with establishing some boundaries. From DPS north it is pretty well developed. She would like to see a bistro somewhere south of DPS.

Mr. Jeffares was not in favor of boundaries because he would like to see all applications. Mr. Koseck agreed with Mr. Jeffares.

Mr. Williams thought maybe it is enough to say there are sensitive areas both in the Rail District and in the Triangle District that need attention whenever a SLUP comes up. Other members agreed.

Mr. Williams stated he is in favor of expanding the number of outdoor dining seats in the Rail and Triangle Districts, but is adamantly opposed to increasing them Downtown. That is where most of the Class C Licenses are and he noted that one just closed. There is no question in his mind that bistros have had an effect on some of the Class C licenses in the Downtown area.

Further, he suggested having the new rules apply to existing bistros. Ms. Ecker explained that could happen if they came back for any changes.

Board members discussed putting a maximum formula in effect for outdoor dining in relationship to indoor dining in the Rail and Triangle Districts. Mr. Share was in favor of a 200% cap there that applies to all outdoor dining, thus outdoor dining (including rooftop dining) could be no more than twice the number of interior dining seats.

Mr. Jeffares did not want a cap. He said he would rather have the Planning Board be able to make decisions on the applications vs. having strict rules and not having any applications.

The board's consensus was to see this one more time before moving forward.

**CITY OF BIRMINGHAM**  
**REGULAR MEETING OF THE PLANNING BOARD**  
**WEDNESDAY, MARCH 14, 2018**  
**Department of Public Services**  
**851 S. Eton Street, Birmingham, Michigan**

---

Minutes of the regular meeting of the City of Birmingham Planning Board held on March 14, 2018. Chairman Scott Clein convened the meeting at 7:32 p.m.

**Present:** Chairman Scott Clein; Board Members Stuart Jeffares, Bert Koseck, Janelle Whipple-Boyce, Bryan Williams; Alternate Board Members Nasseen Ramin, Daniel Share; Student Representative Ellie McElroy (left at 9:07 p.m.)

**Absent:** Board Members Robin Boyle, Gillian Lazar; Student Representatives Madison Dominato, Sam Fogel

**Administration:** Matthew Baka, Sr. Planner  
Brooks Cowan, Planner  
Jana Ecker, Planning Director  
Carole Salutes, Recording Secretary

**03-39-18**

### **3. Bistro Regulations**

Background: Mr. Baka advised that recently there has been discussion between the City Commission and the Planning Board that perhaps there should be a re-examination of the bistro requirements which already began last year with several study sessions.

Issue: As the bistro concept has evolved over the past 10 years, new applicants have sought creative ways to make the establishments distinctive from other restaurants and bistros in the City, and to increase the number of seats through the use of all season outdoor dining. The following issues have been raised:

- Use of Eisenglass – Doing so extends the time period outdoor dining areas are in operation which increases the number of seats for the restaurant as a whole for a majority of the year;
- District Requirements – The Downtown District, Triangle District, and Rail District have different opportunities which could merit different requirements for bistros locating within them;
- On-street Dining/Rooftop Dining – the use of on-street parking spaces and rooftops in addition to the sidewalk area allows the addition of larger outdoor dining areas;
- Parking Needs – the expansion of outdoor dining increases the number of people dining at the restaurant, which increases parking demand;
- Building Code Requirements – the enclosure of outdoor dining areas triggers Building Code regulations such as Energy Code compliance, fire suppression requirements, fire separation distances and exterior wall fire resistive ratings.

- Incentivizing Seating Capacity Tiers – Allowing an increased amount of indoor seating and/or outdoor dining seating for bistros based upon conditional standards such as shared parking, landscaping, green space, etc.

At the joint City Commission/Planning Board meeting of June 19th, 2017 the issue of bistro regulations was discussed at length. There was consensus that a review of the requirements and how they relate to the various areas in which they are permitted is warranted. Additionally, Commission members saw good reason to potentially regulate bistros differently depending on the district in which they are located.

The Planning Board held several study sessions on this matter and potential revisions and additions to the bistro standards were discussed. Draft language was created to provide options that would eliminate the ability to utilize enclosures year-round, and not to limit the number of outdoor dining seats or require additional parking for those seating areas. There was discussion on whether or not the 65 seat limit should be revised, or whether rooftop dining should be encouraged and what an acceptable railing height is for platform decks. It was suggested that perhaps the Triangle District and Rail District could establish different standards for maximum seating. New draft language has been presented that expands interior seating for bistros in the Triangle and Rail Districts to 85 seats with 15 at the bar, while interior seating for the Downtown District remains at 65. Current rooftop dining standards were deemed acceptable, but the board wished to see railings on platform decks limited to 42 in. in height.

On January 10, 2018 the Planning Board reviewed the latest draft ordinance language for the proposed bistro regulation changes. The board requested that the language regarding on-street platforms be adjusted so that the reference to enclosing them is eliminated. Also, eliminate permanent enclosures facilitating year-round dining outdoors. Lastly, railings on platform decks may not exceed 42 in. in height in order to create an open atmosphere where the dining adds vitality to the streetscape. Board members wanted to see the final draft language prior to setting a public hearing.

It was agreed the word "permanent" in front of "enclosures" should be eliminated.

Discussion confirmed that rooftop dining is allowable under SLUPs on a case-by-case basis. Outdoor dining on the street is excluded from the rooftop number of seats.

**Motion by Mr. Williams**

**Seconded by Mr. Koseck to set a public hearing for April 11, 2018 to consider the proposed ordinance amendment.**

There were no comments from the public at 9:18 p.m.

**Motion carried, 7-0.**

**VOICE VOTE**

Yeas: Williams, Koseck, Klein, Jeffares, Ramin, Share, Whipple-Boyce

Nays: None

Absent: Boyle, Lazar

**CITY OF BIRMINGHAM  
REGULAR MEETING OF THE PLANNING BOARD  
WEDNESDAY, APRIL 11, 2018  
City Commission Room  
151 Martin Street, Birmingham, Michigan**

---

Minutes of the regular meeting of the City of Birmingham Planning Board held on March 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, Janelle Whipple-Boyce, Bryan Williams; Member Daniel Share; Student Representative Ellie McElroy (arrived at 8:35 p.m.)

**Absent:** Alternate Board Member Nasseen Ramin; Student Representatives Madison Dominato, Sam Fogel

**Administration:** Brooks Cowan, Planner  
Jana Ecker, Planning Director  
Carole Salutes, Recording Secretary

**04-57-18**

**PUBLIC HEARING**

**1. AN ORDINANCE TO AMEND CHAPTER 126, ZONING, OF THE CODE OF THE CITY OF BIRMINGHAM:**

TO AMEND SECTION 3.04, SPECIFIC STANDARDS, BUILDING USE, TO AMEND THE CONDITIONS OF THE BISTRO SPECIAL LAND USE PERMIT.

AND

TO AMEND SECTION 5.06, O1 – OFFICE DISTRICT, SPECIFIC STANDARDS, BUILDING USE, TO AMEND THE CONDITIONS OF THE BISTRO SPECIAL LAND USE PERMIT.

AND

TO AMEND SECTION 5.07, O2 – OFFICE DISTRICT, SPECIFIC STANDARDS, BUILDING USE, TO AMEND THE CONDITIONS OF THE BISTRO SPECIAL LAND USE PERMIT.

AND

TO AMEND SECTION 5.08, P – PARKING DISTRICT, SPECIFIC STANDARDS, BUILDING USE, TO AMEND THE CONDITIONS OF THE BISTRO SPECIAL LAND USE PERMIT.

AND

TO AMEND SECTION 5.10, B2 – GENERAL BUSINESS DISTRICT, B2B – GENERAL BUSINESS DISTRICT, B2C – GENERAL BUSINESS DISTRICT, SPECIFIC STANDARDS, BUILDING USE, TO AMEND THE CONDITIONS OF THE BISTRO SPECIAL LAND USE PERMIT.

AND

TO AMEND SECTION 5.11, B3 – OFFICE-RESIDENTIAL DISTRICT, SPECIFIC STANDARDS, BUILDING USE, TO AMEND THE CONDITIONS OF THE BISTRO SPECIAL LAND USE PERMIT.

AND

TO AMEND SECTION 5.12, B4 – BUSINESS-RESIDENTIAL DISTRICT, SPECIFIC STANDARDS, BUILDING USE, TO AMEND THE CONDITIONS OF THE BISTRO SPECIAL LAND USE PERMIT.

AND

TO AMEND SECTION 5.13, MX – MIXED USE DISTRICT, SPECIFIC STANDARDS, BUILDING USE,  
TO AMEND THE CONDITIONS OF THE BISTRO SPECIAL LAND USE PERMIT.

AND

TO AMEND SECTION 9.02, DEFINITIONS: BISTRO.

The Chairman opened the public hearing at 7:34 p.m.

Ms. Ecker recalled the board has been talking about the bistro regulations for almost a year. At a joint City Commission/Planning Board on June 19, 2017 several issues came up that the Commission asked the Planning Board to look at. So, over the past several months the board has been studying this and they have agreed upon language and brought it to a public hearing tonight.

Primarily the changes were to set up two different types of bistros, keeping the standards for the number of interior seats and number of seats at the bar the same for Downtown because they are in the Parking Assessment District and there isn't an excessive amount of parking. Also, creating another section for bistros in the Rail District and Triangle District that would allow a greater number of interior seats and a greater number of seats at the bar, given the fact that they couldn't do that unless they provided the required parking.

Several other changes were made:

- Enclosures facilitating year-around dining are not permitted;
- At the suggestion of the Building Official, railings, platforms or similar barriers should not exceed 42 in. in height;
- The Building Official also suggested that the word "enclosed" be taken out and replaced with "defined" when talking about an elevated ADA compliant enclosed platform.
- The bistro standards are proposed to be added in the MX District.
- Language was added to the existing regulations with regard to the B-3 and B-4 standards on bistros: "No direct connect additional bar permit is allowed and the maximum seating at a bar cannot exceed 10 seats in the Downtown Overlay District, or 15 seats in the Triangle District and Rail District."

Board members were in agreement with the changes.

**Motion by Mr. Williams**

**Seconded by Mr. Share to recommend approval of the proposed ordinance amendments to the City Commission with the changes outlined tonight.**

**Motion carried, 7-0.**

VOICE VOTE

Yeas: Williams, Share, Boyle, Jeffares, Koseck, Whipple-Boyce, Williams

Nays: None

Absent: None

The public hearing closed at 7:40 p.m.

**BIRMINGHAM CITY COMMISSION MINUTES**  
**MAY 14, 2018**  
**MUNICIPAL BUILDING, 151 MARTIN**  
**7:30 P.M.**

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

Mayor Harris called the meeting to order at 7:30 p.m.

**II. ROLL CALL**

ROLL CALL: Present,	Mayor Harris Mayor Pro Tem Bordman Commissioner Boutros Commissioner DeWeese Commissioner Hoff Commissioner Nickita Commissioner Sherman
Absent,	None

Administration: City Manager Valentine, City Attorney Currier, Senior Planner Baka, Communications Director Byrnes, Assistant City Planner Chapman, Planning Director Ecker, DPS Manager Filipski, Building Official Johnson, Assistant Building Official Morad, City Clerk Mynsberge, City Engineer O'Meara, Director of Public Services Wood

**05-137-18 PUBLIC HEARING TO CONSIDER ZONING ORDINANCE AMENDMENTS TO BISTRO ORDINANCE**

Mayor Harris opened the public hearing at 8:41 p.m.

Senior Planner Baka reviewed the joint Commission/Planning Board effort to consider possible amendments to the Bistro Ordinances, and the proposed Bistro Ordinance amendments as suggested by the Planning Board to the Commission.

Senior Planner Baka said the Planning Board recommended eliminating enclosed platforms for dining because another ordinance prohibits enclosures.

Mayor Pro Tem Bordman stated:

- If the desire is to require a platform with a railing, the language should read "platform with a railing".
- If Planning Board does not address rooftop dining so as not to encourage it, rooftop dining will be implicitly allowed by the lack of any language addressing the issue.

Planning Director Ecker explained that the Planning Board sought:

- To not be overbroad in the requirements for outdoor dining, rooftop dining, and parking for outdoor dining so as to encourage its development while still allowing its regulation through the SLUP application process.
- To maintain the difference between a smaller bistro license and a Class C license by prohibiting enclosed year-round outdoor dining for a Bistro.



Commissioner Nickita believed the prohibition on year-round outdoor dining insufficiently addresses the need to keep bistro-licensed restaurants smaller than Class C-licensed restaurants, especially since bistro licenses already technically preclude year-round outdoor dining.

Planning Director Ecker explained the Planning Board did not want to limit total outdoor seating by ordinance, but that the SLUP application process may allow the City to sufficiently limit the seating in a bistro-licensed restaurant on a case-by-case basis.

Planning Director Ecker confirmed that the proposals potentially allow bistro-licensed restaurants to have unlimited seating in the warmer months, and that this was the Planning Board's intent.

Commissioner Nickita stated:

- His concerns regarding seating capacity were enough for him to not move these amendments forward as currently proposed.
- A 42"-inch maximum rail would be sufficient, though he would like to see them smaller.
- Preventing the use of eisenglass around outdoor seating is a positive move to control seating capacity.
- It might be wise to codify platform standards.

Planning Director Ecker replied that when platforms were first discussed by the Planning Board in 2007, they decided to leave the requirements open so as not to inhibit creativity. She continued that the Commission could ask the Planning Board to revisit that, should the Commission see fit.

Commissioner Nickita clarified he does not seek to regulate design standards for platforms, but fundamental building standards such as size, materials, edge conditions, sleeper channels, non-skid texture and other related criteria.

City Manager Valentine stated that city staff can create a formalized platform standard for the Commission to review and potentially adopt.

Commissioner DeWeese said the intended benefits of the bistro were:

- Activation of the street;
- Focus on food and not alcohol; and,
- The creation of intimacy within a so-licensed restaurant.

Commissioner DeWeese continued that:

- Moving seating up to higher floors or rooftops fails to activate the street.
- He would like to see bistro licenses remain closer to their original intent.
- Different districts could potentially have different bistro requirements.

Mayor Harris suggested that the Commission could approve the proposed ordinance language and direct staff and the Planning Board to re-address outdoor seating issues.

Mayor Pro Tem Bordman said:

- A reconsideration of the outdoor seating issue may also affect the indoor capacity of a bistro-licensed establishment.

- There are enough other concerns that all proposed amendments should return to the Planning Board.

Commissioner Nickita said:

- The Planning Board should provide seating parameters, and not require the Commission to determine said parameters with every individual bistro SLUP application.
- He would be comfortable having the Planning Board review the amendments and send them back to the Commission.

Norman LePage, owner of Big Rock Chop House, voiced his support for the Commission's suggestions.

Senior Planner Baka told Mr. LePage that the bistro seating regulations increased from 65 indoor seats to 85 indoor seats in order to encourage more bistro applications in certain areas of the City.

Mayor Pro Tem Bordman told Mr. LePage that should any existing establishment come before the Commission seeking to change their SLUP bistro license, the Commission can require that the establishment come into alignment with the new bistro requirements.

Jeremy Sassoon appeared before the Commission and said:

- There should be a focus group to consider the difference between a bistro license and a Class C license.
- The City should clarify its standards for bistro licenses and other applications, because he feels he has been denied two licenses for subjective, not objective, reasons.

Joe Zane appeared before the Commission and said he would like to see bistro licenses granted in the Triangle District, even if it requires relaxing the standards a bit.

There being no further comment, Mayor Harris closed the public hearing at 9:24 p.m.

The Commission agreed to send the proposed ordinance amendments back to the Planning Board for reconsideration.

**CITY OF BIRMINGHAM**  
**REGULAR MEETING OF THE PLANNING BOARD**  
**WEDNESDAY, JUNE 13, 2018**  
City Commission Room

151 Martin Street, Birmingham, Michigan

---

**06-103-18**

**2. Bistro Regulations**

Mr. Cowan advised that as the bistro concept has evolved over the past 10 years, new applicants have sought creative ways to make the establishments distinctive from other restaurants and bistros in the City, and to increase the number of seats through the use of all season outdoor dining. At the joint City Commission/Planning Board meeting last year, the issue was discussed and there was consensus that a review of the bistro regulations is warranted.

Accordingly, the Planning Board began studying the existing bistro regulations and discussing potential new regulations. Over several months the Planning Board studied existing bistros and discussed the goals of the bistro program in the future.

On August 9, 2017 the Planning Board considered ordinance language suggesting outdoor seating on public property should not exceed 40 seats. The discussion on this topic was that some may not agree with an exorbitant amount of outdoor seating but each bistro should be reviewed on an individual basis. There was unanimous support for restricting the use of enclosures on outdoor dining to ensure that outdoor dining is truly seasonal.

On September 13, 2017 the Planning Board revisited the issue of limiting the number of outdoor seating and decided it should be reviewed on a case-by-case basis. There was also general consensus that if the board thinks the number of seats exceeds what is reasonable they will ask the applicant to change that number. Rooftop dining was also discussed and the board decided it should be reviewed on an individual basis. It was noted that outdoor dining on the street level was preferable, and if the applicant met this requirement, then the Board would generally be in support of rooftop dining.

On April 11, 2018, the Planning Board conducted a public hearing and unanimously passed a motion recommending approval of the attached ordinance amendments for bistro regulations to the City Commission. Language related to the maximum number of outdoor seats or rooftop dining was not included because the board had agreed that these should be reviewed on an individual basis.

On May 14, 2018, after reviewing the proposed changes, the general consensus from the City Commission was that they like the 42 in. rail standards as well as the rule banning year-round outdoor dining enclosures. However, the Commission did not vote on the proposal because they wanted the Planning Board to reconsider setting a limit on the number of outdoor seating allowed at bistros, and to address rooftop dining.

Therefore, as directed by the City Commission, issues for discussion related to bistro requirements include:

- Maximum number of outdoor dining seats bistros are allowed; and
- Permissible rooftop dining.
- 

Ms. Ecker thought the main point that the Commission was trying to get across was they feel that with the outdoor dining being so large, it makes a bistro too close to the size of what a Class C establishment could be. Some of the existing Class C holders could potentially be upset that a bistro was morphing into a standard Class C establishment.

Ms. Whipple-Boyce thought that what the Commission would really like from the Board is to put a restriction on the number of outdoor seats in the Rail and Triangle Districts.

Mr. Koseck said he likes the quaintness and smallness of a bistro. Ms. Whipple-Boyce added that she thinks it is all about fairness to the quota license holders and she believes the Commission wants a cap on the number of outdoor seats so as not to compete with the quota license holders.

Chairman Clein noticed that there are a few bistros that have more seats outside than they are allowed to have inside, doubling their size and allowing them to get quite close to the quota license capacity.

Mr. Jeffares received confirmation that what is decided will not affect any existing bistro.

Mr. Boyle said the chart that reflects the bistros should be amended to include Whole Foods. Also, the Planning Board is being asked to make a decision because it would be fair to another license holder. That is a political decision and it should be taken up by the political body and not the Planning Board.

Chairman Clein made it clear that in his opinion the motivation of this board has not been to look at this as fairness or equity or economics. However, the motivation of the elected officials may have been that, and thus their reasoning for sending it to the Planning Board to look at it from a land planning perspective.

Ms. Whipple-Boyce proposed saying that outdoor seating for bistros should not exceed their permissible maximum indoor seating. However, Mr. Share did not see that it makes sense from a planning perspective to impose an artificial number Downtown. He likes the ability to control and react to individual situations.

It was thought that this matter can be discussed at the end of the joint Planning Board/City Commission meeting.

Mr. Jeffares did not think that long-term, rooftop dining will be a big issue because of the limited number of sites where it could exist.

Mr. Boyle said that other than Griffin Claw and Big Rock they have not seen that bistros work effectively outside of Downtown. It strikes him as odd that the board is trying to weaken the incentive for bistros in the Rail and Triangle Districts rather than improving it.

The Chairman said with respect to rooftop dining they could say that it is allowed with approval of the City Commission and provided the applicant has satisfied street level outdoor dining requirements and there is no negative impact on surrounding properties. He added they will have had the joint meeting before the next regular Planning Board meeting and will be able to make a determination on the language. The hours of operation for rooftop dining can also be discussed.

**CITY OF BIRMINGHAM**  
**REGULAR MEETING OF THE PLANNING BOARD**  
**WEDNESDAY, JULY 11, 2018**  
City Commission Room

151 Martin Street, Birmingham, Michigan

**07-121-18**

**STUDY SESSION**

**1. Bistro Regulations**

Mr. Cowan recalled that over several months the Planning Board studied existing bistros and discussed the future goals of the bistro program. One of the issues has been the number of seats that are permitted for outdoor dining. The Planning Board had determined that they wanted to review outdoor dining seating on a case-by-case basis. They sent that proposal to the City Commission; however the Commission sent it back saying that with no limit on the outdoor dining seats for bistros they felt the bistros were getting too large and felt they were competing with the Class C Liquor License holders. Also, they asked the Planning Board to review rooftop dining.

Therefore, Mr. Cowan included draft language this time stating that rooftop dining is permitted as long as adequate street-level dining is provided, as determined by the Planning Board and City Commission.

Then for the definition of Bistro, Section 9.02 he added that when located in the Triangle District or Rail District, a bistro is a restaurant that has a full service kitchen with interior seating for no more than 85 people and seating for outdoor dining of no more than 85 people. So, outdoor seating is kept equal to indoor seating.

Ms. Whipple-Boyce did not know how this proposal would be received but she thought it is a good starting place. Mr. Jeffares did not think it would hurt anything and agreed it could be tried for a bit to see how it works.

Chairman Clein agreed and noted it is abundantly clear to him that the City Commission wants a number. With respect to rooftop dining, he suggested language in paragraph 11 read that rooftop dining is permitted as long as adequate street level dining is provided and the rooftop dining will not pose any negative impact on surrounding properties as determined by the Planning Board and the City Commission.

Board members agreed to also include in paragraph 11 that rooftop dining is permitted as a portion of allowable outdoor dining.

**Motion by Mr. Williams**

**Seconded by Mr. Share to schedule a public hearing for August 8, knowing that if staff cannot get proper notice out it will be postponed to September.**

**Motion carried, 7-0.**

There was no audience present.

**DRAFT Planning Board Minutes  
August 8, 2018**

**PUBLIC HEARING**

The Chairman opened the public hearing at 7:33 p.m.

**1. AN ORDINANCE TO AMEND CHAPTER 126, ZONING, OF THE CODE OF THE  
CITY OF BIRMINGHAM:**

TO AMEND SECTION 3.04, SPECIFIC STANDARDS, BUILDING USE, TO AMEND THE CONDITIONS OF THE BISTRO SPECIAL LAND USE PERMIT.

AND

TO AMEND SECTION 5.06, O1 – OFFICE DISTRICT, SPECIFIC STANDARDS, BUILDING USE, TO AMEND THE CONDITIONS OF THE BISTRO SPECIAL LAND USE PERMIT.

AND

TO AMEND SECTION 5.07, O2 – OFFICE DISTRICT, SPECIFIC STANDARDS, BUILDING USE, TO AMEND THE CONDITIONS OF THE BISTRO SPECIAL LAND USE PERMIT.

AND

TO AMEND SECTION 5.08, P – PARKING DISTRICT, SPECIFIC STANDARDS, BUILDING USE, TO AMEND THE CONDITIONS OF THE BISTRO SPECIAL LAND USE PERMIT.

AND

TO AMEND SECTION 5.10, B2 – GENERAL BUSINESS DISTRICT, B2B – GENERAL BUSINESS DISTRICT, B2C – GENERAL BUSINESS DISTRICT, SPECIFIC STANDARDS, BUILDING USE, TO AMEND THE CONDITIONS OF THE BISTRO SPECIAL LAND USE PERMIT.

AND

TO AMEND SECTION 5.11, B3 – OFFICE-RESIDENTIAL DISTRICT, SPECIFIC STANDARDS, BUILDING USE, TO AMEND THE CONDITIONS OF THE BISTRO SPECIAL LAND USE PERMIT.

AND

TO AMEND SECTION 5.12, B4 – BUSINESS-RESIDENTIAL DISTRICT, SPECIFIC STANDARDS, BUILDING USE, TO AMEND THE CONDITIONS OF THE BISTRO SPECIAL LAND USE PERMIT.

AND

TO AMEND SECTION 5.13, MX – MIXED USE DISTRICT, SPECIFIC STANDARDS, BUILDING USE, TO AMEND THE CONDITIONS OF THE BISTRO SPECIAL LAND USE PERMIT.

AND

TO AMEND SECTION 9.02, DEFINITIONS: BISTRO.

Ms. Ecker recalled this topic was initiated at the joint City Commission/Planning Board in June of 2017. There was discussion about putting additional regulations in place for bistros. So, over several months the Planning Board has studied existing bistros and discussed the future goals of the bistro program. One of the issues has been the number of seats that are permitted for outdoor dining. The Planning Board had determined that they wanted to review outdoor dining seating on a case-by-case basis. They sent that proposal to the City Commission; however the Commission sent it back saying they felt it was competing with the Class C Liquor License holders. Also they asked the Planning Board to review rooftop dining. The general consensus from the City Commission has been that they like the 42 in. rail standards as well as the rule banning year-round outdoor dining enclosures.



On June 13, 2018, the Planning Board considered the City Commission's request to discuss the number of outdoor dining seats bistros are allowed as well as permissible rooftop dining. The Board decided to examine language stating that outdoor seating may not exceed the number of permissible seats indoors. Also, they decided to evaluate language that would permit rooftop dining as long as adequate street level dining is provided.

On July 11, 2018 language regarding the number of permissible outdoor dining seats and rooftop dining was finalized with amendments including conditions that rooftop dining may not impact surrounding properties in a negative manner and that rooftop dining is only permitted if adequate street level dining is provided as determined by the Planning Board and City Commission. Also added was that rooftop dining seats count towards the total number of permissible outdoor dining seats.

The other change was to the definition of bistro. That limited the number of outdoor seats and also created two different size requirements depending on the district where the bistro is located. For bistros in the Downtown Overlay, no more than 65 indoor dining seats are permitted. When located in the Triangle or Rail District, a bistro is a restaurant with interior seating for no more than 85 people. Outdoor seating in all of the districts is limited to match what is allowed inside.

The Planning Board passed a motion to hold a public hearing on August 8, 2018. No public was present.

Board members reviewed the ordinance amendments and concluded that paragraph 11 in all zone districts should be changed to read "Outdoor rooftop dining is permitted . . . "

**Motion by Mr. Williams**

**Seconded by Mr. Koseck that subject to the additional language discussed, to recommend approval to the City Commission of the amendments to Chapter 126, Zoning, of the Birmingham City Code, sections 3.04, 5.06, 5.07, 5.08, 5.10, 5.11, 5.12, 5.13 and Definitions: Bistro in section 9.02, all as set forth in the materials.**

**Motion carried, 7-0.**

VOICE VOTE

Yeas: Williams, Koseck, Klein, Boyle, Emerine, Jeffares, Ramine

Nays: None

Absent: Share, Whipple-Boyce

The Chairman closed the public hearing at 7:45 p.m.



## MEMORANDUM

Police Department

**DATE:** August 8, 2018

**TO:** Joseph A. Valentine, City Manager

**FROM:** Christopher Busen, Investigative Commander

**APPROVED:** Mark H Clemence, Chief of Police

**REFERENCE:** Program Year 2018 High Intensity Drug Trafficking Area (HIDTA) Sub recipient agreement between the County of Oakland and the City of Birmingham (Data Universal Numbering System ((DUNS)) #: 074239450)

---

The police department is a member of the Oakland County Sheriff's Office Narcotic Enforcement Team (NET) by an approved inter-local agreement between the City and Oakland County. In addition to Birmingham, there are fourteen other communities that are also members of NET by the inter-local agreement.

In 2018, with the permission and cooperation of all fifteen member agencies, the Oakland County Sheriff's Office applied for a grant through the Executive Board for Michigan High Intensity Drug Trafficking Area (HIDTA) requesting the United States Office of Drug Control Policy (ONDCP) grant NET an award of \$105,000 for the program year 2018 (January 1, 2018 to December 31, 2018). The grant award will allow partial funding for overtime reimbursement of NET investigators for drug investigations. Oakland County will reimburse the City up to \$4,200.00 for qualifying NET related overtime.

In order to receive funds from the grant, the City of Birmingham is required to enter into a sub recipient agreement with Oakland County (see attached agreement). The purpose of the agreement is to delineate the relationship and responsibilities regarding the County's use of grant funds to reimburse municipalities for overtime incurred as it relates to participation in the Oakland County Narcotic Enforcement Team (NET).

### SUGGESTED RESOLUTION:

To approve the Program Year 2018 High Intensity Drug Trafficking Area (HIDTA) Sub recipient agreement between the County of Oakland and the City of Birmingham. Further, to authorize the Mayor and the City Manager to sign the agreement on behalf of the City.

**PROGRAM YEAR 2018  
HIGH INTENSITY DRUG TRAFFICKING AREA (HIDTA)  
SUBRECIPIENT AGREEMENT BETWEEN  
THE COUNTY OF OAKLAND AND CITY OF BIRMINGHAM  
Data Universal Numbering System (DUNS) #: 074239450**

---

This Agreement is made between Oakland County, a Constitutional Corporation, 1200 North Telegraph, Pontiac, Michigan 48341 ("County") and City of Birmingham, 1551 Martin St, Birmingham, MI 48009, a Michigan Municipal Corporation ("Municipality"). The County and Municipality shall be collectively referred to as the "Parties."

**PURPOSE OF AGREEMENT.**

The Parties enter into this Agreement for the purpose of delineating their relationship and responsibilities regarding the County's use of Grant funds to reimburse the Municipality for overtime expenses that it incurred related to its participation in the Oakland County Narcotic Enforcement Team ("N.E.T."), a multijurisdictional drug enforcement task force under the direction and supervision of the Oakland County Sheriff's Office ("O.C.S.O.").

Under the Parties' separate N.E.T. agreement, the Municipality is responsible for providing a full-time employee for participation in N.E.T. and for all costs associated with that employment, including overtime.

The County, as the legal entity that administers N.E.T., submitted an Initiative Description and Budget Proposal (Exhibit A) to the Executive Board for Michigan HIDTA requesting the United States Office of National Drug Control Policy ("ONDCP") to grant N.E.T. an award of \$105,000.00 for program year (PY) 2018 to reimburse N.E.T. participating agencies for eligible law enforcement officer overtime costs. PY 2018 begins January 1, 2018 and ends December 31, 2018.

If ONDCP grants N.E.T. an award for PY 2018, the ONDCP disburses the HIDTA grant funds ("Grant funds") to the Michigan State Police ("MSP"). To receive the Grant funds, N.E.T. must submit requests for reimbursement with the required supporting documentation to Michigan HIDTA. If Michigan HIDTA approves the N.E.T. overtime reimbursement requests, the MSP should distribute the Grant funds to County on behalf of N.E.T. The County has the authority to allocate a portion of the Grant funds to reimburse the Municipality for qualifying overtime costs subject to the terms and conditions of this Agreement.

In consideration of the mutual promises, obligations, representations, and assurances in this Agreement, the Parties agree to the following:

- 1. DEFINITIONS.** The following terms, whether used in the singular or plural, within or without quotation marks, or possessive or nonpossessive, shall be defined, read, and interpreted as follows.

- 1.1. **Claim** means any alleged loss, claim, complaint, demand for relief or damages, cause of action, proceeding, judgment, deficiency, liability, penalty, fine, litigation, costs, and/or expenses, including, but not limited to, reimbursement for attorney fees, witness fees, court costs, investigation expenses, litigation expenses, and amounts paid in settlement, which are imposed on, incurred by, or asserted against the County or Municipality, or the County's or Municipality's agents or employees, whether such claim is brought in law or equity, tort, contract, or otherwise.
- 1.2. **Grant funds** mean the funds that may be awarded to the County and the other participating agencies in N.E.T. pursuant to Michigan HIDTA Initiative Description and Budget Proposal Version 2018 (Exhibit A) submitted to Michigan HIDTA by County on behalf of itself and the other participating agencies in N.E.T.

**2. EXHIBITS.** The Exhibits listed below are incorporated and are part of this Agreement.

- 2.1. **Exhibit A** – Michigan HIDTA Initiative Description and Budget Proposal Version 2018.
- 2.2. **Exhibit B** - Template Request for HIDTA Overtime Reimbursement (Locals to County).
- 2.3. **Exhibit C** – Sample letter regarding notification of current overtime pay rate.
- 2.4. **Exhibit D** – Sample overtime slip, signed by the officer's supervisor that supports each Request for HIDTA Overtime Reimbursement.
- 2.5. **Exhibit E** – Sample paystub or payroll report that supports each Request for HIDTA Overtime Reimbursement.
- 2.6. **Exhibit F** – HIDTA Grant Agreement between ONDCP and MSP.

**3. FEDERAL AWARD PROJECT DESCRIPTION.**

- 3.1. Catalog of Federal Domestic Assistance ("CFDA") #: 95.001
- 3.2. Federal Awarding Agency: United States Office of National Drug Control Policy ("ONDCP")
- 3.3. Program: High Intensity Drug Trafficking Areas (HIDTA)
  - 3.3.1. HIDTA Objective: To reduce drug trafficking and drug production in the United States by: (A) facilitating cooperation among Federal, State, local, and tribal law enforcement agencies to share information and implement coordinated enforcement activities; (B) enhancing law enforcement intelligence sharing among Federal, State, local, and tribal law enforcement agencies; (C) providing reliable law enforcement intelligence to law enforcement agencies needed to design effective enforcement strategies and operations; and (D) supporting coordinated law enforcement strategies which maximize use of available

resources to reduce the supply of illegal drugs in designated areas and in the United States as a whole.

3.4. Period of Performance: January 1, 2018 through December 31, 2018.

3.5. Federal Award Identification Number (FAIN) provided in the Grant Agreement between ONDCP and MSP (Exhibit F): [G18SM0002A]

#### **4. USE OF HIDTA FUNDS.**

4.1. The total amount of the federal award committed to the Municipality and obligated by this action by the County to the Municipality is not to exceed **\$4,200.00** for each participating law enforcement officer. That amount is based on the number of N.E.T participating agencies and eligible law enforcement officers at the time this Agreement was executed by both Parties. If the number of N.E.T participating agencies and/or eligible law enforcement officers changes during the term of this Agreement, the total amount of the federal award committed to the Municipality and obligated by this action by the County to the Municipality amount may change as funds are available on a pro rata basis. Such commitment and obligation is contingent upon the ONDCP awarding the grant funds to N.E.T and the MSP reimbursing the County.

4.2. The County will reimburse the Municipality up to **\$4,200.00** for each participating law enforcement officer for qualifying N.E.T.-related overtime. That amount is based on the number of N.E.T participating agencies and eligible law enforcement officers at the time this Agreement was executed by both Parties. If the number of N.E.T participating agencies and/or eligible law enforcement officers changes during the term of this Agreement, the maximum reimbursement amount may change as funds are available on a pro rata basis. Such reimbursement shall only be made after the supporting documentation is submitted by the Municipality and approved by the County, as described in Paragraph 5.1. Such reimbursement is contingent upon the ONDCP awarding the grant funds to N.E.T and the MSP reimbursing the County.

4.2.1. HIDTA funds shall be used to pay overtime only if the overtime was performed in support of a HIDTA-designated Enforcement initiative or Intelligence and information Sharing Initiative. HIDTA funds shall not be used to pay overtime related to training attendance, financial management, drug treatment, drug demand reduction or prevention, or non-investigative related administrative work.

4.2.2. No HIDTA funds shall be used to supplant the Municipality's funds that would otherwise be made available for the same purposes.

4.3. There is no research and development performed pursuant to this Agreement.

4.4. No indirect costs shall be charged or reimbursed under performance of this Agreement.

#### **5. REIMBURSEMENT OF ELIGIBLE NET OVERTIME.**

2018 HIGH INTENSITY DRUG TRAFFICKING AREA (HIDTA) GRANT  
SUBRECIPIENT AGREEMENT BETWEEN  
OAKLAND COUNTY  
AND  
CITY OF BIRMINGHAM

- 5.1. To request reimbursement, the Municipality shall submit to the County the documentation described in the following subparagraphs no later than thirty (30) days after PY 2018 has expired. If the County, in its sole discretion, determines that the documentation submitted by the Municipality does not reconcile, then the Municipality shall provide any additional documentation requested by the County in order to process payment.
  - 5.1.1. A fully completed and signed Request for HIDTA Overtime Reimbursement attached as Exhibit B.
  - 5.1.2. A letter substantively similar to the sample letter regarding notification of current overtime pay rate attached as Exhibit C.
  - 5.1.3. Overtime slips, signed by the officer's supervisor, that support each Request for HIDTA Overtime Reimbursement. The overtime slips shall be substantively similar to the sample overtime slip attached as Exhibit D.
  - 5.1.4. The paystub or payroll report that supports each Request for HIDTA Overtime Reimbursement. The paystub or payroll report shall be substantively similar to the sample paystub attached as Exhibit E.
- 5.2. County will only reimburse Municipality for approved overtime costs after County has received the Grant funds from MSP for that particular reimbursement request.

## **6. GENERAL COMPLIANCE.**

- 6.1. The Municipality shall comply with to 28 C.F.R. Part 69 (New Restrictions on Lobbying) and 2 C.F.R. Part 25 (Universal Identifier and System of Award Management).
- 6.2. The Municipality shall comply with the Government-wide Suspension and Debarment provision set forth at 2 CFR Part 180.
- 6.3. The Municipality shall perform all activities in accordance with The Uniform Administrative Requirements, Cost Principles, and Audit Requirements in 2 C.F.R. Part 200 (the "Part 200 Uniform Requirements"), as adopted and implemented by the Office of National Drug Control Policy (ONDCP) in 2 C.F.R. Part 3603. For this award, the Part 200 Uniform Requirements supersede, among other things, the provisions of 28 C.F.R. Parts 66 and 70, as well as those of 2 C.F.R. Parts 215, 220, 225, and 230.
- 6.4. The Municipality shall comply with ONDCP's HIDTA Program Policy and Budget Guidance, all other applicable Federal, state, and local laws and regulations, and the terms and conditions contained in this Agreement.
- 6.5. The Municipality shall comply with all applicable requirements for subrecipients that are provided in the HIDTA Grant Agreement between ONDCP and MSP (Exhibit F).

6.6. As specified in the HIDTA Program Policy and Budget Guidance, the Municipality must:

- 6.6.1. Establish and maintain effective internal controls over the Federal award that provides reasonable assurance that Federal award funds are managed in compliance with Federal statutes, regulations and award terms and conditions. These internal controls should be in compliance with the guidance in “Standards for Internal Control in the Federal Government,” issued by the Comptroller General of the United States and the “Internal Control Integrated Framework,” issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).
- 6.6.2. Comply with Federal statutes, regulations, and the terms and conditions of the Federal awards.
- 6.6.3. Evaluate and monitor compliance with applicable statute and regulations, and the terms and conditions of the Federal award.
- 6.6.4. Take prompt action when instances of noncompliance are identified, including noncompliance identified in audit findings.
- 6.6.5. Take reasonable measures to safeguard protected personally identified information (PII) and other information ONDCP or the Municipality designates consistent with applicable Federal, state, and local laws regarding privacy and obligations of confidentiality.

## **7. FINANCIAL ACCOUNTABILITY AND AUDIT REQUIREMENTS.**

- 7.1. The Municipality shall maintain standards of financial accountability that conform to 2 C.F.R. §200.302 (Financial Management) and 2 C.F.R. §200.303 (Internal Controls).
- 7.2. The Municipality shall comply with audit requirements contained in 2 C.F.R. Part 200, Subpart F, which requires the Municipality to have an annual audit conducted within nine (9) months of the end of their fiscal year, if the Municipality has an aggregate expenditure of more than \$750,000 in federal funds in a fiscal year. Any deficiencies noted in audit reports must be fully cleared by the Municipality within thirty (30) days after receipt of same. The County shall have the right to review and audit all records of the Municipality pertaining to any payment by the County.

## **8. CONFLICT OF INTEREST.**

8.1. The Municipality shall comply with the following ONDCP conflict of interest policies:

- 8.1.1. As a non-Federal entity, you must maintain written standards of conduct covering conflicts of interest and governing the performance of your employees engaged in the selection, award, and administration of subawards and contracts.
- 8.1.2. None of your employees may participate in the selection, award, or administration of a subaward or contract supported by a Federal award if he or she has a real or apparent



conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from an organization considered for a sub-award or contract. The officers, employees, and agents of the non-Federal entity must neither solicit nor accept gratuities, favors, or anything of monetary value from subrecipients or contractors or parties to subawards or contracts.

- 8.1.3. If you have a parent, affiliate, or subsidiary organization that is not a State, local government, or Indian tribe, you must also maintain written standards of conduct covering organizational conflicts of interest. Organizational conflicts of interest means that because of relationships with a parent company, affiliate, or subsidiary organization, you are unable or appear to be unable to be impartial in conducting a sub-award or procurement action involving a related organization.

## **9. MANDATORY DISCLOSURE.**

- 9.1. As a non-Federal entity, the Municipality must disclose, in a timely manner, in writing to ONDCP all violations of Federal criminal law involving fraud, bribery or gratuity violations potentially affecting the Federal award. Non-Federal entities that have received a Federal award that includes the term and condition outlined in 200 CFR Part 200, Appendix XII “Award Term and Condition for Recipient Integrity and Performance Matters,” are required to report certain civil, criminal, or administrative proceedings to System for Award Management (SAM). Failure to make required disclosures can result in remedies such as: temporary withholding of payments pending correction of the deficiency, disallowance of all or part of the costs associated with noncompliance, suspension, termination of award, debarment, or other legally available remedies outlined in 2 CFR 200.338 “Remedies for Noncompliance”.

## **10. RECORD RETENTION.**

- 10.1. The Municipality shall comply with the record retention provisions of 2 C.F.R. 200.333 (Retention requirements for records).
- 10.2. The Municipality should, whenever practicable, collect, transmit, and store Federal award-related information in open and machine readable formats rather than in closed formats or on paper in accordance with 2 C.F.R. 200.335 (Methods for collection, transmission and storage of information).

## **11. ACCESS TO RECORDS.**

- 11.1. The Federal awarding agency, Inspectors General, the Comptroller General of the United States, and the County, or any of their authorized representatives, have the right of access to any documents, papers, or other records of the Municipal entity which are pertinent to the Federal award, in order to make audits, examinations, excerpts, and transcripts. The right also

2018 HIGH INTENSITY DRUG TRAFFICKING AREA (HIDTA) GRANT  
SUBRECIPIENT AGREEMENT BETWEEN  
OAKLAND COUNTY  
AND  
CITY OF BIRMINGHAM



includes timely and reasonable access to the Municipality's personnel for the purpose of interview and discussion related to such documents. The right of access to the Municipality's records is not limited to the required retention period but last as long as the records are retained.

- 11.2. The Municipality shall permit the County and auditors to have access to the Municipality's records and financial statements as necessary for the County to meet the requirements of 2 C.F.R. Part 200.

## **12. TERM.**

- 12.1. This Agreement and any amendments hereto shall be effective when executed by both Parties with concurrent resolutions passed by the governing bodies of each Party, and when the Agreement is filed according to MCL 124.510. The approval and terms of this Agreement and any amendments hereto shall be entered in the official minutes of the governing bodies of each Party. This Agreement shall end on December 31, 2018.

## **13. ASSURANCES.**

- 13.1. Each Party shall be responsible for its own acts and the acts of its employees and agents, the costs associated with those acts, and the defense of those acts.
- 13.2. The Parties have taken all actions and secured all approvals necessary to authorize and complete this Agreement. The persons signing this Agreement on behalf of each Party have legal authority to sign this Agreement and bind the Parties to the terms and conditions contained herein.
- 13.3. Each Party shall comply with all federal, state, and local ordinances, regulations, administrative rules, laws, and requirements applicable to its activities performed under this Agreement.

## **14. TERMINATION OF AGREEMENT.**

- 14.1. This Agreement may be terminated in whole or in part as follows:
  - 14.1.1. by the County, if the Municipality fails to comply with the terms and conditions of this Agreement;
  - 14.1.2. by the County for cause;
  - 14.1.3. by the County with the consent of the Municipality, in which case the two parties must agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated;
  - 14.1.4. by the Municipality upon sending to the County written notification setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the

portion to be terminated. However, if the County determines in the case of partial termination that the reduced or modified portion of the subaward will not accomplish the purpose for which this Agreement was made, the County may terminate the Agreement in its entirety.

- 14.2. The County must provide to the Municipality a notice of termination. Written suspension or notice of termination will be sent to the Municipality's business address. If this Agreement is terminated or partially terminated, both the County and the Municipality remain responsible for compliance with the requirements at 2 CFR 200.343 Closeout and 2 CFR 200.344 Post-closeout Adjustments and Continuing Responsibilities.

## **15. CLOSEOUT.**

- 15.1. The County shall close-out this Agreement when it determines that all applicable administrative actions and all required work under this Agreement have been completed by Municipality.
- 15.2. The Municipality shall comply with the closeout provisions of 2 C.F.R. 200.343 (Closeout).

## **16. POST-CLOSEOUT ADJUSTMENTS AND CONTINUING RESPONSIBILITIES.**

- 16.1. The closeout of this Agreement does not affect any of the following:
  - 16.1.1. The right of County to disallow costs and recover funds on the basis of a later audit or other review. The County must make any cost disallowance determination and notify the Municipality within the record retention period;
  - 16.1.2. The obligation of the Municipality to return any funds due as a result of later refunds, corrections, or other transactions including final indirect cost rate adjustments;
  - 16.1.3. Audit requirements in Subpart F—Audit Requirements of 2 C.F.R. Part 200.
  - 16.1.4. Records retention as required in Subpart D—Post Federal Award Requirements of this part, §200.333 Retention requirements for records through §200.337 Restrictions on public access to records.

## **17. REMEDIES FOR NONCOMPLIANCE.**

- 17.1. If the Municipality fails to comply with federal statutes, regulations, or the terms and conditions of this Agreement, the County may impose additional conditions, as described in 2 CFR §200.207 Specific Conditions. If the County determines that noncompliance cannot be remedied by imposing additional conditions, the County may take one or more of the following actions, as appropriate in the circumstances:
  - 17.1.1. temporarily withhold cash payments pending correction of the deficiency by the Municipality or more severe enforcement action by the County;

- 17.1.2. disallow (that is, deny both use of funds and any applicable matching credit for) all or part of the cost of the activity or action not in compliance;
- 17.1.3. wholly or partly suspend or terminate the Agreement;
- 17.1.4. recommend that the Federal awarding agency initiate suspension or debarment proceedings as authorized under 2 CFR Part 180 and Federal awarding agency regulations;
- 17.1.5. withhold further funds for the project or program;
- 17.1.6. take other remedies that may be legally available.

**18. NO THIRD PARTY BENEFICIARIES.** Except as provided for the benefit of the Parties, this Agreement does not and is not intended to create any obligation, duty, promise, contractual right or benefit, right to indemnification, right to subrogation, and/or any other right, in favor of any other person or entity.

**19. DISCRIMINATION.** The Parties shall not discriminate against their employees, agents, applicants for employment, or another persons or entities with respect to hire, tenure, terms, conditions, and privileges of employment, or any matter directly or indirectly related to employment in violation of any federal, state or local law.

**20. PERMITS AND LICENSES.** Each Party shall be responsible for obtaining and maintaining, throughout the term of this Agreement, all licenses, permits, certificates, and governmental authorizations necessary to carry out its obligations and duties pursuant to this Agreement.

**21. RESERVATION OF RIGHTS.** This Agreement does not, and is not intended to waive, impair, divest, delegate, or contravene any constitutional, statutory, and/or other legal right, privilege, power, obligation, duty, or immunity of the Parties.

**22. DELEGATION/SUBCONTRACT/ASSIGNMENT.** Neither Party shall delegate, subcontract, and/or assign any obligations or rights under this Agreement without the prior written consent of the other Party.

**23. NO IMPLIED WAIVER.** Absent a written waiver, no act, failure, or delay by a Party to pursue or enforce any rights or remedies under this Agreement shall constitute a waiver of those rights with regard to any existing or subsequent breach of this Agreement. No waiver of any term, condition, or provision of this Agreement, whether by conduct or otherwise, in one or more instances, shall be deemed or construed as a continuing waiver of any term, condition, or provision of this Agreement. No waiver by either Party shall subsequently affect its right to require strict performance of this Agreement.

**24. SEVERABILITY.** If a court of competent jurisdiction finds a term, or condition, of this Agreement to be illegal or invalid, then the term, or condition, shall be deemed severed from this Agreement. All other terms, conditions, and provisions of this Agreement shall remain in full force.

**25. CAPTIONS.** The section and subsection numbers and captions in this Agreement are intended for the convenience of the reader and are not intended to have any substantive meaning. The numbers and captions shall not be interpreted or be considered as part of this Agreement. Any use of the singular or plural number, any reference to the male, female, or neuter genders, and any possessive or nonpossessive use in this Agreement shall be deemed the appropriate plurality, gender or possession as the context requires.

**26. NOTICES.** Notices given under this Agreement shall be in writing and shall be personally delivered, sent by express delivery service, certified mail, or first class U.S. mail postage prepaid, and addressed to the person listed below. Notice will be deemed given on the date when one of the following first occur: (1) the date of actual receipt; (2) the next business day when notice is sent express delivery service or personal delivery; or (3) three days after mailing first class or certified U.S. mail.

26.1. If Notice is sent to the County, it shall be addressed and sent to: Oakland County Board of Commissioners Chairperson, 1200 North Telegraph, Pontiac, Michigan 48341, with a copy to Oakland County Sheriff's Office, Business Manager, 1200 N. Telegraph, Bldg. 38E, Pontiac, Michigan 48341.

26.2. If Notice is sent to the Political Subdivision, it shall be addressed to: City of Birmingham

26.3. Either Party may change the address and/or individual to which Notice is sent by notifying the other Party in writing of the change.

**27. CONTACT INFORMATION.**

<b><u>County of Oakland</u></b>	<b><u>City of Birmingham</u></b>
Lieutenant Brent Miles Investigative & Forensic Services Division Narcotics Enforcement Team Office: 248-858-1722 Fax: 248-858-1754 Email: <a href="mailto:milesbr@oakgov.com">milesbr@oakgov.com</a>	

**28. GOVERNING LAW.** This Agreement shall be governed, interpreted, and enforced by the laws of the State of Michigan, without regard to Michigan's conflict of laws provisions.

**29. AGREEMENT MODIFICATIONS OR AMENDMENTS.** Any modifications, amendments, rescissions, waivers, or releases to this Agreement must be in writing and executed by both Parties.

**30. ENTIRE AGREEMENT.** This Agreement represents the entire agreement and understanding between the Parties. This Agreement supersedes all other oral or written agreements between the

Parties. The language of this Agreement shall be construed as a whole according to its fair meaning, and not construed strictly for or against any Party.

**IN WITNESS WHEREOF**, Michael Gingell, Chairperson, Oakland County Board of Commissioners, acknowledges that he has been authorized by a resolution of the Oakland County Board of Commissioners, a certified copy of which is attached, to execute this Agreement, and hereby accepts and binds the County to the terms and conditions of this Agreement.

EXECUTED: \_\_\_\_\_ DATE: \_\_\_\_\_  
Michael Gingell, Chairperson  
Oakland County Board of Commissioners

WITNESSED: \_\_\_\_\_ DATE: \_\_\_\_\_  
Printed Name:  
Title:

**IN WITNESS WHEREOF**, \_\_\_\_\_, acknowledges that he/she has been authorized by a resolution of the Municipality's governing body, a certified copy of which is attached, to execute this Agreement, and hereby accepts and binds the Municipality to the terms and conditions of this Agreement.

EXECUTED: \_\_\_\_\_ DATE: \_\_\_\_\_  
Printed Name:  
Title:

WITNESSED: \_\_\_\_\_ DATE: \_\_\_\_\_  
Printed Name:  
Title:

Executive Office of the President Office of National Drug Control Policy		Grant Agreement	
1. Recipient Name and Address Douglas J. Spitzley Michigan State Police 333 S. Grand Avenue PO Box 30634 Lansing, MI 48909-0634		4. Award Number (FAIN): G18SM0002A	
		5. Period of Performance: From 01/01/2018 to 12/31/2019	
2. Total Amount of the Federal Funds Obligated: \$619,104	6. Federal Award Date: February 26, 2018	7. Action: Initial	
2A. Budget Approved by the Federal Awarding Agency \$619,104	8. Supplement Number		
3. CFDA Name and Number: <i>High Intensity Drug Trafficking Areas Program - 95.001</i>	9. Previous Award Amount:		
3A. Project Description  <i>High Intensity Drug Trafficking Areas (HIDTA) Program</i>	10. Amount of Federal Funds Obligated by this Action: \$619,104		
	11. Total Amount of Federal Award: \$619,104		
12. Consistent with P.L. 115-120, the Extension of Continuing Appropriations Act, 2018, this document provides a total budget and spending ceiling as reflected in Block 10 of the Grant Award document, which represents funding at a rate of 35% of the fiscal year 2017 funding level. Accordingly, the sum of all budgets cannot exceed the award amount reflected in Block 10 of the Grant Award document. The Office of National Drug Control Policy acknowledges that the aforementioned funding level is below the stated budget requirements; however, additional funding cannot be made available until enacted through public law.			
13. Statutory Authority for Grant: <i>Public Law 115-120</i>			
AGENCY APPROVAL		RECIPIENT ACCEPTANCE	
14. Typed Name and Title of Approving Official Michael K. Gottlieb Associate Director Office of National Drug Control Policy		15. Typed Name and Title of Authorized Official Chief Accountant Douglas J. Spitzley  Michigan State Police	
16. Signature of Approving ONDCP Official  <i>Michael K. Gottlieb</i>		17. Signature of Authorized Recipient/Date	
AGENCY USE ONLY			
18. Accounting Classification Code DUNS: 805340247 EIN: 1386000134K1		19. HIDTA AWARD <i>OND1070DB1819XX OND6113</i> <i>OND2000000000 OC 410001</i>	





**FILE COPY**

February 26, 2018

Mr. Douglas J. Spitzley  
Michigan State Police  
333 S. Grand Avenue, PO Box 30634  
Lansing, MI 48909-0634

Dear Mr. Spitzley:

We are pleased to inform you that your request for funding from the High Intensity Drug Trafficking Areas (HIDTA) Program has been approved, and a grant (Grant Number G18SM0002A) has been awarded in the amount of \$619,104. This grant will support initiatives designed to implement the Strategy proposed by the Executive Board of the Michigan HIDTA and approved by the Office of National Drug Control Policy (ONDCP).

The original Grant Agreement, including certain Special Conditions, is enclosed. By accepting this grant, you assume the administrative and financial responsibilities outlined in the enclosed Grant Conditions, including the timely submission of all financial and programmatic reports, the resolution of audit findings, and the maintenance of a minimum level of cash-on-hand. Should your organization not adhere to these terms and conditions, ONDCP may terminate the grant for cause or take other administrative action.

If you accept this award, please sign both the Grant Agreement and the Grant Conditions and return a copy to:

Finance Unit  
National HIDTA Assistance Center  
11200 NW 20th Street, Suite 100  
Miami, FL 33172  
(305) 715-7600  
Or via email to your respective NHAC accountant.

Please keep the original copy of the Grant Agreement and Grant Conditions for your file. If you have any questions pertaining to this grant award, please contact Shannon Kelly at (202) 395-5872.

Sincerely,

*Michael K. Gottlieb*

Michael K. Gottlieb  
Associate Director

## GRANT CONDITIONS

### A. General Terms and Conditions

1. This award is subject to The Uniform Administrative Requirements, Cost Principles, and Audit Requirements in 2 C.F.R. Part 200 (the “Part 200 Uniform Requirements”), as adopted and implemented by the Office of National Drug Control Policy (ONDCP) in 2 C.F.R. Part 3603. For this award, the Part 200 Uniform Requirements supersede, among other things, the provisions of 28 C.F.R. Parts 66 and 70, as well as those of 2 C.F.R. Parts 215, 220, 225, and 230.

For more information on the Part 200 Uniform Requirements, see <https://cfo.gov/cofar/>. For specific, award-related questions, recipients should contact ONDCP promptly for clarification.

2. This award is subject to the following additional regulations and requirements:
  - 28 CFR Part 69 – “New Restrictions on Lobbying”
  - Conflict of Interest and Mandatory Disclosure Requirements, set out in paragraph 7 of these terms and conditions
  - Non-profit Certifications (when applicable)
3. Audits conducted pursuant to 2 CFR Part 200, Subpart F, “Audit Requirements” must be submitted no later than nine months after the close of the grantee’s audited fiscal year to the Federal Audit Clearinghouse at <https://harvester.census.gov/facweb/>.
4. Grantees are required to submit Federal Financial Reports (FFR) to the Department of Health and Human Services, Division of Payment Management (HHS/DPM). Federal Financial Report is required to be submitted quarterly and within 90 days after the grant is closed out.
5. The recipient gives the awarding agency or the Government Accountability Office, through any authorized representative, access to, and the right to examine, all paper or electronic records related to the grant.
6. Recipients of HIDTA funds are not agents of ONDCP. Accordingly, the grantee, its fiscal agent (s), employees, contractors, as well as state, local, and Federal participants, either on a collective basis or on a personal level, shall not hold themselves out as being part of, or representing, the Executive Office of the President or ONDCP.

These general terms and conditions, as well as archives of previous versions of the general terms and conditions, are available online at [www.whitehouse.gov/ondcp/grants](http://www.whitehouse.gov/ondcp/grants).

7. Conflict of Interest and Mandatory Disclosures

#### A. Conflict of Interest Requirements



As a non-Federal entity, you must follow ONDCP's conflict of interest policies for Federal awards. Recipients must disclose in writing any potential conflict of interest to an ONDCP Program Officer; recipients that are pass-through entities must require disclosure from subrecipients or contractors. This disclosure must take place immediately whether you are an applicant or have an active ONDCP award.

The ONDCP conflict of interest policies apply to sub-awards as well as contracts, and are as follows:

- i. As a non-Federal entity, you must maintain written standards of conduct covering conflicts of interest and governing the performance of your employees engaged in the selection, award, and administration of subawards and contracts.
- ii. None of your employees may participate in the selection, award, or administration of a subaward or contract supported by a Federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from an organization considered for a sub-award or contract. The officers, employees, and agents of the non-Federal entity must neither solicit nor accept gratuities, favors, or anything of monetary value from subrecipients or contractors or parties to subawards or contracts.
- iii. If you have a parent, affiliate, or subsidiary organization that is not a state, local government, or Native American tribe, you must also maintain written standards of conduct covering organizational conflicts of interest. Organizational conflicts of interest means that because of relationships with a parent company, affiliate, or subsidiary organization, you are unable or appear to be unable to be impartial in conducting a sub-award or procurement action involving a related organization.

#### B. Mandatory Disclosure Requirement

As a non-Federal entity, you must disclose, in a timely manner, in writing to ONDCP all violations of Federal criminal law involving fraud, bribery or gratuity violations potentially affecting the Federal award. Non-Federal entities that have received a Federal award that includes the term and condition outlined in 200 CFR Part 200, Appendix XII "Award Term and Condition for Recipient Integrity and Performance Matters," are required to report certain civil, criminal, or administrative proceedings to System for Award Management (SAM). Failure to make required disclosures can result in remedies such as: temporary withholding of payments pending correction of the deficiency, disallowance of all or part of the costs associated with noncompliance, suspension, termination of award, debarment, or other legally available remedies outlined in 2 CFR 200.338 "Remedies for Noncompliance".

8. Federal Funding Accountability and Transparency (FFATA) / Digital Accountability and Transparency Act (DATA Act). Each applicant is required to (i) Be registered in SAM before submitting its application; (ii) provide a valid DUNS number in its application; (iii) continue to maintain an active System for Award Management registration with current information at all times during which it has an active Federal award; and (iv) provide all relevant grantee information required for ONDCP to collect for reporting related to FFATA and DATA Act requirements.
9. Subawards are authorized under this grant award. Subawards must be monitored by the award recipient as outlined in 2 CFR 200.331.

10. Recipients must comply with the Government-wide Suspension and Debarment provision set forth at 2 CFR Part 180, dealing with all sub-awards and contracts issued under the grant.
11. As specified in the HIDTA Program Policy and Budget Guidance, recipient must:
  - a) Establish and maintain effective internal controls over the Federal award that provides reasonable assurance that Federal award funds are managed in compliance with Federal statutes, regulations and award terms and conditions. These internal controls should be in compliance with the guidance in "Standards for Internal Control in the Federal Government," issued by the Comptroller General of the United States and the "Internal Control Integrated Framework," issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).
  - b) Comply with Federal statutes, regulations, and the terms and conditions of the Federal awards.
  - c) Evaluate and monitor compliance with applicable statute and regulations, and the terms and conditions of the Federal award.
  - d) Take prompt action when instances of noncompliance are identified, including noncompliance identified in audit findings.
  - e) Take reasonable measures to safeguard protected PII and other information ONDCP or the recipient designates consistent with applicable Federal, state, and local laws regarding privacy and obligations of confidentiality.

## B. Recipient Integrity and Performance Matters

### Reporting of Matters Related to Recipient Integrity and Performance

#### 1. General Reporting Requirement

If the total value of your currently active grants, cooperative agreements, and procurement contracts from all Federal awarding agencies exceeds \$10,000,000 for any period of time during the period of performance of this Federal award, then you as the recipient during that period of time must maintain and report current information to the SAM that is made available in the designated integrity and performance system (currently the Federal Awardee Performance and Integrity Information System (FAPIIS)) about civil, criminal, or administrative proceedings described in paragraph 2 of this award term and condition (below). This is a statutory requirement under section 872 of Public Law 110-417, as amended (41 U.S.C. 2313). As required by section 3010 of Public Law 111-212, all information posted in the designated integrity and performance system on or after April 15, 2011, except past performance reviews required for Federal procurement contracts, will be publicly available.

#### 2. Proceedings About Which You Must Report

Submit the information required about each proceeding that:

- a. Is in connection with the award or performance of a grant, cooperative agreement, or procurement contract from the Federal Government;
- b. Reached its final disposition during the most recent 5 year period; and
- c. Is one of the following:

- (1) A criminal proceeding that resulted in a conviction, as defined in paragraph 5 of this award term and condition (below);
- (2) A civil proceeding that resulted in a finding of fault and liability and payment of a monetary fine, penalty, reimbursement, restitution, or damages of \$5,000 or more;
- (3) An administrative proceeding, as defined in paragraph 5 of this award term and condition, that resulted in a finding of fault and liability and your payment of either a monetary fine or penalty of \$5,000 or more or reimbursement, restitution, or damages in excess of \$100,000; or
- (4) Any other criminal, civil, or administrative proceeding if:
  - (i) It could have led to an outcome described in paragraph 2.c.(1), (2), or (3) of this award term and condition;
  - (ii) It had a different disposition arrived at by consent or compromise with an acknowledgment of fault on your part; and
  - (iii) The requirement in this award term and condition to disclose information about the proceeding does not conflict with applicable laws and regulations.

### 3. Reporting Procedures

Enter in the SAM Entity Management area the information that SAM requires about each proceeding described in paragraph 2 of this award term and condition. You do not need to submit the information a second time under assistance awards that you received if you already provided the information through SAM because you were required to do so under Federal procurement contracts that you were awarded.

### 4. Reporting Frequency

During any period of time when you are subject to the requirement in paragraph 1 of this award term and condition, you must report proceedings information through SAM for the most recent 5 year period, either to report new information about any proceeding(s) that you have not reported previously or affirm that there is no new information to report. Recipients that have Federal contract, grant, and cooperative agreement awards with a cumulative total value greater than \$10,000,000 must disclose semiannually any information about the criminal, civil, and administrative proceedings.

### 5. Definitions

For purposes of this award term and condition:

- a. Administrative proceeding means a non-judicial process that is adjudicatory in nature in order to make a determination of fault or liability (e.g., Securities and Exchange Commission Administrative proceedings, Civilian Board of Contract Appeals proceedings, and Armed Services Board of Contract Appeals proceedings). This includes proceedings at the Federal and state level, but only in connection with performance of a Federal contract or grant. It does not include audits, site visits, corrective plans, or inspection of deliverables.
- b. Conviction, for purposes of this award term and condition, means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere.
- c. Total value of currently active grants, cooperative agreements, and procurement contracts includes—
  - (1) Only the Federal share of the funding under any Federal award with a recipient cost share or match; and

- (2) The value of all expected funding increments under a Federal award and options, even if not yet exercised.

### C. Program Specific Terms and Conditions

The following special conditions are incorporated into each award document.

1. This grant is awarded for above program. Variation from the description of activities approved by ONDCP and/or from the budget attached to this letter must comply with the reprogramming requirements as set forth in ONDCP's HIDTA Program Policy and Budget Guidance (PPBG).
2. This award is subject to the requirements in ONDCP's HIDTA PPBG.
3. No HIDTA funds shall be used to supplant state or local funds that would otherwise be made available for the same purposes.
4. The requirements of 28 CFR Part 23, which pertain to information collection and management of criminal intelligence systems, shall apply to any such systems supported by this award.
5. Special accounting and control procedures must govern the use and handling of HIDTA Program funds for confidential expenditures; i.e., the purchase of information, evidence, and services for undercover operations. Those procedures are described in Section 6 of the HIDTA Program Policy and Budget Guidance.
6. Property acquired with these HIDTA grant funds is to be used for activities of the Michigan HIDTA. If your agency acquires property with these funds and then ceases to participate in the HIDTA, this equipment must be made available to the HIDTA's Executive Board for use by other HIDTA participants.
7. All law enforcement entities that receive funds from this grant must report all methamphetamine laboratory seizure data to the National Clandestine Laboratory Database/National Seizure System at the El Paso Intelligence Center.

### D. Federal Award Performance Goals

1. All entities that receive funds from this award are responsible for achieving performance goals established in the HIDTA Performance Management Process (PMP) and approved by the HIDTA's Executive Board and ONDCP.
2. All entities that receive funds from this award must report progress in achieving performance goals at least quarterly using the PMP.

See also Section A. 4 regarding Federal Financial Reports.

### E. Payment Basis

1. A request for Advance or Reimbursement shall be made using the HHS/DPM system ([www.dpm.psc.gov](http://www.dpm.psc.gov)).
2. The grantee, must utilize the object classes specified within the initial grant application each time they submit a disbursement request to ONDCP. Requests for payment in the DPM system will not be approved unless the required disbursements have been entered using the corresponding object class designations. Payments will be made via Electronic Fund Transfer to the award recipient's bank account. The bank must be Federal Deposit Insurance Corporation (FDIC) insured. The account must be interest bearing.

3. Except for interest earned on advances of funds exempt under the Intergovernmental Cooperation Act (31 U.S.C. 6501 et seq.) and the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450), awardees and sub-awardees shall promptly, but at least annually, remit interest earned on advances to HHS/DPM using the remittance instructions provided below.

*Remittance Instructions* - Remittances must include pertinent information of the payee and nature of payment in the memo area (often referred to as "addenda records" by Financial Institutions) as that will assist in the timely posting of interest earned on Federal funds. Pertinent details include the Payee Account Number (PAN), reason for check (remittance of interest earned on advance payments), check number (if applicable), awardee name, award number, interest period covered, and contact name and number. The remittance must be submitted as follows:

Through an electronic medium using either Automated Clearing House (ACH) network or a Fedwire Funds Service payment.

- (i) For ACH Returns:

Routing Number: 051036706

Account number: 303000

Bank Name and Location: Credit Gateway—ACH Receiver St. Paul, MN

- (ii) For Fedwire Returns\*:

Routing Number: 021030004

Account number: 75010501

Bank Name and Location: Federal Reserve Bank Treas NYC/Funds Transfer  
Division New York, NY

(\* Please note organization initiating payment is likely to incur a charge from  
your Financial Institution for this type of payment)

For recipients that do not have electronic remittance capability, please make check\*\* payable to: "The Department of Health and Human Services."

Mail Check to Treasury approved lockbox:

HHS Program Support Center, P.O. Box 530231, Atlanta, GA 30353-0231

(\*\* Please allow 4-6 weeks for processing of a payment by check to be  
applied to the appropriate PMS account)

Any additional information/instructions may be found on the PMS Web site at  
<http://www.dpm.psc.gov/>.

4. The grantee or subgrantee may keep interest amounts up to \$500 per year for administrative purposes.

**RECIPIENT ACCEPTANCE OF GRANT CONDITIONS**

Date: \_\_\_\_\_

\_\_\_\_\_  
Douglas J. Spitzley  
Michigan State Police

# Budget Detail

2018 - Michigan

Initiative - Oakland County Narcotics Enforcement Team (NET)

Investigation

Award Recipient - Michigan State Police (G18SM0002A)

Resource Recipient - Michigan State Police

*Indirect Cost: 0.0%*

**Awarded Budget (as approved by ONDCP)**

**\$1,768,868.00**

Overtime	Quantity	Amount
Investigative - Law Enforcement Officer	24	\$105,000.00
<b>Total Overtime</b>		<b>\$105,000.00</b>
Services	Quantity	Amount
Communications - mobile phones & pagers		\$25,000.00
<b>Total Services</b>		<b>\$25,000.00</b>
<b>Total Budget</b>		<b>\$130,000.00</b>

2

<b>Executive Office of the President Office of National Drug Control Policy</b>		<b>AWARD Grant</b>	Page 1 of 1
1. Recipient Name and Address Chief Accountant Douglas J. Spitzley Michigan State Police <del>333 S. Grand Avenue</del> PO Box 30634 Lansing, MI 48909-0634		4. Award Number: G18SM0002A	
		5. Grant Period: From 01/01/2018 to 12/31/2019	
2. Total Amount of the Federal Funds Obligated: \$1,768,868	6. Federal Award Date: 5/29/2018	7. Action  Initial  <input checked="" type="checkbox"/> Supplemental	
2A. Budget Approved by the Federal Awarding Agency \$1,768,868	8. Supplement Number 1		
3. CFDA Name and Number: <i>High Intensity Drug Trafficking Areas Program - 95.001</i>	9. Previous Award Amount: \$619,104.00		
3A. Project Description  <i>High Intensity Drug Trafficking Areas (HIDTA) Program</i>	10. Amount of Federal Funds Obligated by this Action: \$1,149,764.00		
	11. Total Amount of Federal Award: \$1,768,868.00		
12. The above grant is approved subject to such conditions or limitation as are set forth in the original Grant.  Consistent with P.L. 115-141 / H.R. 1625, Consolidated Appropriations Act, 2018, this Grant Award document provides additional funding in the amount indicated in Block 10. This amount, together with the amount equivalent to 35% of the fiscal year 2017 funding level previously made available, as indicated in Block 9, represent the total FY 2018 budget and spending ceiling for this grant, as indicated in Block 11.			
13. Statutory Authority for Grant: Public Law:115-141			
<b>AGENCY APPROVAL</b>		<b>RECIPIENT ACCEPTANCE</b>	
14. Typed Name and Title of Approving Official Michael K. Gottlieb Associate Director Office of National Drug Control Policy	15. Typed Name and Title of Authorized Official Douglas J. Spitzley  Michigan State Police		
16. Signature of Approving ONDCP Official  Michael K. Gottlieb	17. Signature of Authorized Recipient/Date  Douglas J. Spitzley 6/5/18		
<b>AGENCY USE ONLY</b>			
18. Accounting Classification Code DUNS: 805340247 EIN: 1386000134K1	19. HIDTA AWARD OND1070DB1819XX      OND6113 OND2000000000      OC 410001		





May 29, 2018

Chief Accountant Douglas J. Spitzley  
Michigan State Police  
333 S. Grand Avenue, PO Box 30634  
Lansing, MI 48909-0634

Dear Mr. Spitzley:

Grant number G18SM0002A has been increased and now totals \$1,768,868.00.

The original of Modification 1 is enclosed. If you accept this Modification, sign the Modification and return a copy to the Assistance Center in Miami. Keep the original Modification for your file.

All terms and conditions of the original award apply to the Modification. If you have any questions pertaining to this grant award, please contact Shannon Kelly at (202) 395-5872.

Sincerely,

A handwritten signature in cursive script that reads "Michael K. Gottlieb".

Michael K. Gottlieb  
Associate Director

Enclosures

## Budget Detail

**2018 - Michigan**

**Initiative - Oakland County Narcotics Enforcement Team (NET)**

**Investigation**

**Award Recipient - Michigan State Police (G18SM0002A)**

**Resource Recipient - Michigan State Police**

**Indirect Cost: 0.0%**

<b>Current Budget (net of reprogrammed funds)</b>		<b>\$1,768,868.00</b>
<b>Overtime</b>	<b>Quantity</b>	<b>Amount</b>
Investigative - Law Enforcement Officer	24	\$105,000.00
<b>Total Overtime</b>		<b>\$105,000.00</b>
<b>Services</b>	<b>Quantity</b>	<b>Amount</b>
Communications - mobile phones & pagers		\$25,000.00
<b>Total Services</b>		<b>\$25,000.00</b>
<b>Total Budget</b>		<b>\$130,000.00</b>



Michigan HIDTA  
Request for HIDTA Overtime Reimbursement

ONE FORM PER OFFICER

## REGULAR OVERTIME

**Exhibit B**

Michigan HIDTA  
Mary Szymanski - Financial Manager  
313.967.4523  
FAX: 313.965.8183  
mszymanski@mi.hidta.net

OFFICER'S NAME AND RANK

HOME DEPARTMENT NAME

PHONE NUMBER

MAILING ADDRESS

FEDERAL TAX ID OR MSP INDEX/PCA

**REQUESTING OFFICER IS REQUIRED TO TYPE HIS/HER NAME IN THE BLUE BORDERED BOX BELOW.** By typing my name in the box below, I certify that this overtime was incurred pursuant to HIDTA-related investigations on the dates and in the amounts listed.

**APPROVING TASK FORCE COMANDER IS REQUIRED TO TYPE HIS/HER NAME IN THE RED-BORDERED BELOW BOX:** By typing my name in the box below, I certify that I received this overtime request from the Requesting Officer, and have reviewed and approved it after determining it to be in compliance with ONDCP Program Policy as previously provided to me.

ITEM #	COMPLAINT #	DATE OT WORKED	# OT HOURS WORKED	OT HOURLY RATE	TOTAL ENTRY COST	LOCATION: Address, City/Township/County
1					\$0.0000	
2					\$0.0000	
3					\$0.0000	
4					\$0.0000	
5					\$0.0000	
					<b>\$0.0000</b>	

ITEM #	PROVIDE A BRIEF DETAIL OF THE CORRESPONDING ITEM # FROM THE TABLE ABOVE.
1	
2	
3	
4	
5	

THIS INFORMATION IS CONFIDENTIAL. DISCLOSURE OF CONFIDENTIAL INFORMATION IS PROTECTED BY THE FEDERAL PRIVACY ACT.

Revised January 2017

YOUR AGENCY LETTERHEAD

January 17, 2018

Director Craig Summers  
Michigan HIDTA  
28 W. Adams  
Suite 400  
Detroit, MI 48226

Dear Director Summers:

Please accept this correspondence as notification of the current pay rate for the listed **ADD YOUR AGENCY NAME** police officer assigned to the Oakland County Narcotic Enforcement Team (NET). The rate became effective **July 1, 2017**.

Parent Agency:	ADD YOUR AGENCY NAME
Employee Name/Rank:	ADD OFFICER'S NAME AND RANK
Regular Pay Rate:	OFFICER'S REGULAR HOURLY RATE
Overtime Pay Rate:	OFFICER'S OVERTIME HOURLY RATE

As requested, the overtime rate listed does not include any fringe benefits, such as retirement, FICA, etc. Please contact my office if additional information is required.

Sincerely,

Please Note: This document is used for illustrative purposes only and the required documentation does not have to be the same, but must contain the same elements.

Required: Overtime slip signed by officer's supervisor. This item should include name, date, and overtime hours associated with HIDTA. The overtime rate should also be included unless provided in the paystub or payroll report.



[REDACTED]



[REDACTED]

[REDACTED]

[REDACTED]

## TIME SHEET

DATE	HOURS	OVERTIME	NET#
------	-------	----------	------

07/11/2016	08:30-16:30		
07/12/2016	08:30-16:30		
07/13/2016	08:30-16:30		
07/14/2016	08:30-16:30		
07/15/2016	08:30-16:30		

**APPROVED**

8/16/16

[REDACTED]

08/01/2016	15:00-23:00		
08/02/2016	15:00-23:00		
08/03/2016	14:00-00:00	2hour	16-net-419
08/04/2016	14:00-23:00	1hour	IR-16-263
08/05/2016	03:00-07:00	4hour	IR-16-264
08/05/2016	15:00-23:00		

APPROVING SIGNATURE: \_\_\_\_\_

[REDACTED]

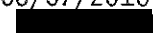
[REDACTED]

OVERTIME IN RED HAS BEEN TAKEN AS NET TIME (COMP)  
OVERTIME IN GREEN HAS BEEN SUBMITTED FOR MJ OT GRAMP

Please sign and return.

Please Note: This document is used for illustrative purposes only and the required documentation does not have to be the same, but must contain the same elements. **Exhibit E**

Required: Pay stub or payroll report containing the same information as pay stub. If the paystub does not indicate the overtime rate of pay, then please include with the overtime slip.

Pay Period Ending On: 08/07/2016  
Check #:   
Check Date: 08/12/2016  
Primary Rate: 31.2962  
Withholding Rate: 00  
Federal Allowances: 0

PAYCODE ID	HOURS	OT HOURS	GROSS	YTD	DEDUCTION ID	AMOUNT	YTD
LONGEVITY_PS	0.00	0.00	0.00	350.00	FIW	475.02	8,268.40
SALARY	80.00	7.00	2,832.31	41,498.79	SITW	112.08	1,906.87
TRAINING_PS	0.00	0.00	0.00	876.28	SOCSEC_EE	176.08	2,991.56
SICK PS 07/01	0.00	0.00	0.00	625.92	MEDICARE_EE	41.18	699.64
F/Y SICK PAYOUT	0.00	0.00	0.00	594.63	DUES_PSO	29.63	444.38
PS SCK GAP	0.00	0.00	0.00	2,879.25	PS_HBL VISION	9.13	104.73
IN_LIEU_MED_P_S	0.00	0.00	115.38	1,846.08	RETIRE_PS_OFF	84.97	1,424.49
LIFE INS	0.00	0.00	0.00	8.96	ICMA_PCNT	117.91	1,959.14
HOLIDAY	0.00	0.00	0.00	1,251.85	FLEX_PLAN	98.50	1,576.00
					SAVINGS_PSO	5.60	84.00
					PNC	647.59	11,474.94
					PNC	1,000.00	16,588.65
					ALLY	150.00	2,400.00
TOTALS:	80.00	7.00	2,947.69	49,931.76	TOTALS:	2,947.69	49,922.80

Net Pay This Period: 1,797.59

LEAVE BANK	PRIOR BALANCE	HOURS ACCRUED	HOURS LOST	HOURS TAKEN	NEW BALANCE
COMP_PS	7.50	0.00	0.00	0.00	7.50
F/Y SICK PAYOUT	0.00	0.00	0.00	0.00	0.00
PS KELLY BANK	0.00	0.00	0.00	0.00	0.00
SICK PS 07/01	96.00	0.00	0.00	0.00	96.00
SICK PS GAP	41.00	0.00	0.00	0.00	41.00
VAC_PS	124.00	0.00	0.00	0.00	124.00

08/12/2016

1,797.59

\*\*\*VOID\*\*\*\*\*VOID\*\*\*\*\*VOID\*\*\*\*\*CHECK STUB REPRINT\*\*\*\*\*



## Initiative Description and Budget Proposal

All Initiatives which seek HIDTA funding must complete this proposal and return to Michigan HIDTA via e-mail by the announced deadline. Completion of all sections of this proposal is required. The Office of National Drug Control Policy examines these submissions very closely. Your proposal must be clear, concise and complete. **A complete proposal consists of this form AND the Michigan HIDTA FMS Budget Sheet.**

Program Year:  Initiative Title:

Submitter's Rank/Name:  Submitter's Telephone #:

Submitter's E-mail Address:

### SECTION 1: INITIATIVES

Level of Activity - Check all that apply

☒ Local DTO Focus ☐ Multi-State DTO Focus ☐ International DTO Focus ☐ Interdiction Focus

Does this Initiative Routinely Provide Information to the HIDTA Investigative Support Center (ISDC)?

☒ YES ☐ NO

### SECTION 2: PROFILE

Initiative Description

Enter Lead Agency:

Enter Location of Initiative (City):

Check All That Apply

- ☐ Initiative is Collocated with other HIDTA Initiatives
- ☒ Initiative is Staffed with Full-Time Federal and Full-Time State/Local Personnel
- ☐ Full-Time Members of Initiative are Collocated and Commingled with Federal and State/Local Personnel



## Initiative Description and Budget Proposal Instructions

Enter your initiative description and budget detail in the text box on the following page. The text box is not character limited, nor is it limited to the visible field on the page. It works best to compose the narrative in Word and copy into the text field on the following page. Please use narrative only to complete this section. The PMP software will not accept graphs, tables, charts, images, etc.

The narrative section is intended to describe the mission and proposed activities for your initiative (dismantling DTOs, meth labs, interdicting drugs/money, apprehending fugitives, etc.) and detail your initiative's funding request. This description should indicate when the initiative was first funded by HIDTA.

Your narrative must be clear, concise and complete. Do not include a long narrative detailing the history or accomplishments of your initiative. Please **limit** your initiative description to several short paragraphs.

The first paragraph should clearly **identify the threat** (drug problem, violent crime, money laundering) in your area. ONDCP expects detailed information regarding the threat in the **HIDTA county/counties which your initiative serves**. Describe the types of drugs being trafficked, the presence/activities of gangs and drug-related violent crime. Include information on DTOs and MLOs operating in your area. DO NOT use specific names/addresses for any organizations or provide any information which is law enforcement sensitive or classified. Referring to the Michigan HIDTA Annual Threat Assessment/Drug Market Analysis is essential when describing the threat in your region.

In the next paragraph **discuss your plan to attack the threat** in your region. Describe your initiative and detail your plan to address the specific threats/problems in your area and achieve your performance targets. If your initiative consists of multiple teams, explain how each team's activities attack the drug threat in your HIDTA county. Detail how you will work more efficiently and effectively by conducting intelligence-driven investigations and sharing information (leads).

The next paragraph(s) should **present your budget request**. Remember that HIDTA funding is added-value funding and cannot be used to supplant normal operating budget items. Each budget line item (overtime, equipment, supplies, vehicles, phones, services, etc.) must be detailed in narrative form, specifying the amount requested and how each line item amount will be utilized. It is important to relate why each line item is needed and how it fits into your plan to attack the threat in your region and attain your performance targets. Provide a clear, concise and complete explanation of all items in your budget request. The budget narrative will be reviewed by the Michigan HIDTA Steering Committee and Executive Board before being sent to ONDCP for review and approval.

ONDCP closely examines **vehicle expenditures**. Lease costs and other vehicle-related expenses must be detailed. Ensure the number of vehicles and expenses match the number of eligible officers in your initiative. Examples: "6 vehicles @ \$500/month x 12 months = \$36,000; Gasoline Expense, 6 officers @ \$200/month x 12 months = \$14,400 .

ONDCP also scrutinizes **overtime expenses**. Ensure these expenses line-up with eligible officers in your initiative. ONDCP caps overtime for individual officers at \$9,500 annually. The Michigan HIDTA limits the cap to \$6,500 per officer annually. Each initiative is required to maintain documentation/spreadsheet to ensure these limits are not exceeded. Example: 10 task force officers x \$3,000/annually = \$30,000 annual overtime.

**PLEASE NOTE: Equipment vs. Supplies** - There has been a change in how these items are categorized. All items purchased for **\$5,000 or more per item** are categorized as **Equipment**. All items purchased for **\$4,999 or less per item** are categorized as **Supplies**.

**Equipment expenses** must be detailed. Provide specifics for what will be purchased, the cost, and how it relates to your plan to address the threat. Example: 10 ballistic shields @ \$6,000 each = \$60,000.

**Supplies expenses** must be detailed. Provide specifics for what will be purchased, the cost, and how it relates to your plan to address the threat. Example: 12 laptop computers @ \$1,000 each = \$12,000.

**Service expenses** must also be detailed. Example: Monthly cell phone service for 12 officers @ \$100/monthly x 12 months = \$14,400.

The total of all items must match the total entered in the **"Total Dollar Amount Requested"** field at the top of the next page.

**A complete proposal consists of this form AND the Michigan HIDTA FMS Budget Sheet.**



## Enter Initiative Description and Budget Proposal Detail Below

**Total Dollar Amount Requested:** **\$130,000.00**

The Oakland County Narcotic Enforcement Team (NET) is a multi-jurisdictional task force which is designed to integrate federal law enforcement agencies for the purpose of identifying, investigating, and prosecuting violators of state and federal narcotic laws. The task force NET was formed in 1971 and is currently directed by the Oakland County Sheriff's Office.

NET is now comprised of fifteen local police departments, and is partnered with the DEA, Oakland County Prosecutors Office and IRS. NET drives its mission by dividing its resources into four investigative teams. Three of the teams are considered street level crews that make undercover cases against street level dealers. These crews are loosely divided up by four quadrants of Oakland County. These teams make the majority of arrests and seizures of street level dealers throughout Oakland County. The fourth team is dedicated to interdiction style cases and street level prescription pill cases. NET also commits full time officers to the DEA, Group 19 and Group 9. It is NET's belief that the interchanging of task force officers results in a highly efficient exchange of intelligence and maximum efforts applied to DTO prosecutions.

Oakland County is a highly diversified county in that it has urban areas like the city of Pontiac and several cities that border the 8 Mile corridor. The city of Pontiac has a population of 59,515 and it has a crime index of seven, 100 being the safest. If you lived in Michigan you would have a 1 in 203 chance of becoming a victim of crime and if you lived in Pontiac, Michigan you would have a 1 in 53 chance of becoming a victim of violent crimes. For every one thousand residents there are 53 that will be a victim of crime. Pontiac has one of the highest crime rates in America when you compare it with other communities of similar size. Oakland County also consists of a high concentration of suburbs and rural northern areas. The population of Oakland County is about 1,200,000 with a very wide range of medium family incomes. Oakland County's drug threat appears to be a mirror image of the Michigan HIDTA's drug threat assessment. Illegal prescription drugs are hitting the street at a very alarming rate and heroin / fentanyl usage is on the rise at an alarming rate. Heroin and fentanyl are the leading cause of over dose related deaths. Cocaine and crack are still readily available anywhere throughout the County, although the street level price appears to be increasing. Marijuana appears to be the number one available drug throughout the County.

Oakland County borders the city of Detroit and is directly south of the city of Flint with I-75 being the major freeway connecting the three cities. Detroit and Flint once again led the state in violent crime in 2014, with Flint topping the list and Detroit at No. 2, according to preliminary annual FBI statistics released this week for cities of over 100,000 people. With 2,337 violent crimes per 100,000 people, Flint residents by far reported the most incidents per capita. Detroit had 2,137 violent crimes for every 100,000 residents.

Large scale DTO's commute between these three cities on a regular basis not being restricted by borders or geographic locations. It is a common practice for drug traffickers to distribute narcotics using I-75, I-96 and I-94 as gateways to our communities. Oakland County appears to be made up of several local DTO's and criminal groups that distribute illegal drugs to users. These criminal groups are supplied by interstate and international DTO's.

The Oakland County NET task force is responding to these evolving drug trends by committing resources to a specialized street crew for prescription pill violations. These include doctors and pain clinics selling directly to users. This crew works very closely with Blue Cross/Blue Shield in identifying targets and fraudulent prescriptions. The Oakland County NET task force also has street crews that initiate investigations into low level and mid level Criminal Groups and DTOs. The investigators utilize informants to make hand to hand purchases from these organizations. This type of case is highly successful in prosecution. The investigators also use informants to conduct drug buys and to provide intelligence information that results in the identification.

## Agency Positions

Summarize the staffing levels you confidently expect to be part of your initiative for the Program Year selected. The *HIDTA Funded* box should be marked Yes **ONLY** when HIDTA funding covers the salary/wages for the listed position.

[illegible]



**Predicting Expected Outputs:** When developing your expected outputs for the Program Year, please ensure you take into consideration your past 2-3 year performance averages. ONDCP frequently refers to these averages when evaluating future performance target numbers.

### SECTION 3: DTOs

DTO Expected Outputs:

Predict the number of DTOs and MLOs you expect to disrupt and/or dismantle during the Program Year. Your performance targets should be aggressive but reasonably attainable, considering expected staffing and funding. Remember that your initiative's performance is compared to how successfully it attained its predicted totals. Please note Initiative's performance is not compared to the performance of other initiatives. Include pertinent notes in the Notes/Additional Information box.



**DISRUPTED** Defined



**DISMANTLED** Defined

Enter Number of **DTOs** Expected to be Disrupted or Dismantled This Program Year:



Notes/Additional Information:

Enter Number of **MLOs** Expected to be Disrupted or Dismantled This Program Year:



Notes/Additional Information:

### SECTION 4: CLANDESTINE LABS

Predict the number of each of the following items which you expect to seize during the Program Year. Include pertinent notes in the Notes/Additional Information box.

Enter the Number of Lab Dump Sites Expected to be Seized



Enter the Number of Chemical/Glassware/Equipment Expected to be Seized



Enter the Number of Children Expected to be Affected



Enter the Number of **Meth Labs** Expected to be Dismantled



Enter the Number of **Other Clan Labs** (Production/Conversion) Expected to be Dismantled



Notes/Additional Information:

## SECTION 5: ACTIVITIES

Predict the number of each of the following items for the Program Year. Include pertinent notes in the Notes/Additional Information box.

### New HIDTA Cases:

Enter the Number of New HIDTA Initiative Cases Expected to be Opened This Program Year:



Notes/Additional Information:

### Case Support:

Enter the Number of Cases Expected to be Provided Analytical Support This Program Year:



Refer to definition of Analytical Support (AS). Project only number of cases which will receive AS from an analyst embedded with your TF or the DSEMIIC/MIOC. Do not include cases which will receive AS from an analyst seated at the HIDTA. A case can be reported receiving AS only ***ONCE IN A CALENDAR YEAR*** but can be counted each calendar year it receives AS. Project the number of separate cases to receive AS in the year, not the number of times AS is received on all cases. ***Important: Remember to submit a completed survey with your quarterly report for each case receiving AS.***

Enter the Number of Event Deconflictions Expected to be Submitted This Program Year:



Enter the Number of Case Matching Requests Expected to be Submitted This Program Year:



Notes/Additional Information:

## SECTION 6: FUGITIVES

Predict the number of fugitives you expect to apprehend for the Program Year. A *Fugitive* is defined as an apprehension made pursuant to some type of court-issued pick-up order, such as an arrest warrant, a writ, etc. An *Arrest* is defined as any apprehension made absent any type of court-issued pick-up order, primarily arrests made on probable cause. Initiative plans to make *Arrests* during the year are indicated by selecting *Arrests* from the *Other Outputs* pick list in Section 7.

Enter the Number of Fugitives Expected to be Arrested This Program Year:



Notes/Additional Information:

## SECTION 7: OTHER OUTPUTS

### ENTRY OF MANDATORY OUTPUTS

#### **FORENSIC ENHANCEMENT - MSP TECHNICAL SUPPORT UNIT - REDRUM**

Continue to report Other Outputs contained in the pick list boxes below. Other Output information provided will be maintained internally at the HIDTA but will not be reported in PMP.

#### **ALL OTHER HIDTA INITIATIVES**

Report **ONLY** the four Other Outputs **ARRESTS, CRIMINAL GROUPS, FIREARMS SEIZED** and **T-III WIRETAPS**. This information will be reported in PMP.

#### **FUGITIVES VS. ARRESTS**

Fugitives: Provide a projection of how many fugitives your task force will arrest for the year in *Section 6: Fugitives*.

**A fugitive is defined as an apprehension made pursuant to some type of court-issued pick-up order, such as an arrest warrant, a writ, etc.**

Arrests: No projection of how many arrests your task force will make for the year is required. **An arrest is defined as any apprehension made absent any type of court-issued pick-up order; primarily arrests made on probable cause.** Indicate your task force's intentions to make arrests during the year by selecting/loading ARRESTS into one of the Other Output boxes below.

#### **Definition of Wiretap**

A wiretap is a form of electronic monitoring where a Federal or state court order authorizes law enforcement to surreptitiously listen to phone calls or intercept wireless electronic text messages or video communications. Indicate your plan to utilize wiretaps by selecting T-III WIRETAPS in one Other Output box to the right.

#### **Reporting Wiretaps**

No projection regarding the number of wiretaps to be utilized is required. The actual number of wiretaps is reported each quarter on the Task Force Quarterly Report. Report only the number of lines (telephone numbers) for which a court order authorized eavesdropping. Do not report an extension of a court order for the same telephone line (number) unless the extension is spanning the calendar year being reported. Note: Dialed number recorders (Pen Registers) are not considered a wiretap for PMP reporting purposes.

Select the Other Outputs your initiative plans to utilize in the pick list boxes below.

Other Output:

ARRESTS

Other Output:

CRIMINAL GROUPS

Other Output:

FIREARMS SEIZED

Other Output:

T-III WIRETAPS

Other Output:

Other Output:

Other Output:

Other Output:

Other Output:

Other Output:

Other Output:

Other Output:



## MEMORANDUM

Office of the City Manager

**DATE:** August 27, 2018

**TO:** Joseph A. Valentine, City Manager

**FROM:** Tiffany J. Gunter, Assistant City Manager

**SUBJECT:** Emergency Repair – Chester Garage Elevator Door

---

The elevator in the Chester parking garage has experienced intermittent shutdowns over the past 45 days due to inoperable doors. While the service technicians are being called to repair the issue, the fix has only been temporary lasting no longer than three to five days. The door equipment that opens/closes the doors are rusted and need to be replaced to ensure a longer term fix.

Staff received quotes from two service companies to complete the work. Kone Inc. submitted a quote for \$27,583 that includes applicable labor to install the door, material, permit fees, and warranties parts and labor for three years.

Thyssen Krupp submitted a quote for \$22,904 that includes applicable labor to install the door, material, permit fees, and warranties only the parts for three years (their quote does not include the labor for the three-year warranty because they do not currently have a service agreement with the City).

### SUGGESTED RESOLUTION:

To authorize the expenditure to replace the elevator door in the Chester parking garage to Kone Inc. in the amount of \$27,583.00 to be paid from the Parking Fund account #585-538.008-930.0200.



Elevators Escalators

August 23, 2018

Carlos Jorge  
City of Birmingham  
151 Martin St  
Birmingham, MI 48009

KONE Inc.  
11864 Belden Court  
Livonia, MI 48150  
Tel (734) 513-6944  
Fax (734) 513-6948  
www.kone.com  
kevin.strasser@kone.com

Re: Chester Street Parking Deck Elevator #20223073  
180 S Chester  
Birmingham MI 48012

Description of Work

We propose to furnish and install the necessary labor, materials, tools and supervision to perform the following work on the one glass back passenger elevator in the parking deck.

We have had several calls on the elevator door system recently. With this type of garage elevator we have weather factors that contribute to the calls. The door equipment that opens/closes the doors are rusted and should be replaced. The checks in the operator are worn out. We can attempt to rebuild this but it would be more expensive than to just install a new door operator. We propose to install a new AT 400 door operator and retro fit it to the existing car top and elevator. We will install a new operator, new door locks, hanger rollers, tracks, spirators and closers for hall and car side. We will obtain the necessary State of Michigan permit and conduct the inspection.

This is a four day upgrade project. **WE will warranty parts and labor for three (3) years**

Price

Our total price to perform the above-mentioned work amounts to: \$27,583.00 . (Twenty Seven Thousand Five Hundred Eighty Three Dollars)

Our price includes applicable labor, material and permit fees. This proposal is not binding on KONE until approved by an authorized KONE representative. Pricing is subject to KONE's attached Terms and Conditions for tendered repairs and, by signing below, Purchaser hereby agrees to these Terms and Conditions. Price is valid for 30 days from date of this proposal.

During the course of our work, should deficiencies, code violations, or other issues be discovered, we will promptly notify Purchaser and provide a separate quotation to correct these issues.

ACCEPTANCE: The foregoing Agreement is hereby signed and accepted in duplicate on behalf of City of Birmingham

Respectfully submitted by,  
KONE Inc.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
Kevin Strasser, Service Sales

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Approved By) Authorized Representative

\_\_\_\_\_  
(Print Title)

\_\_\_\_\_  
Title

Date: \_\_\_\_/\_\_\_\_/\_\_\_\_

Date: \_\_\_\_/\_\_\_\_/\_\_\_\_



1<sup>ST</sup> PAYMENT RECEIPT

<u>Remit To:</u>  KONE Inc. 11864 Belden Court Livonia, MI 48150	<b>AMOUNT:</b>
--	----------------

## TERMS AND CONDITIONS

This proposal is subject to the following terms and conditions, all of which are hereby agreed to:

Purchaser agrees to pay the amount of any tax imposed by any existing law, or by any law enacted after the date of this Agreement, based upon the transfer, use, ownership or possession of the equipment involved in the services rendered herein. KONE reserves the right to discontinue our work at anytime until we have assurance, satisfactory to us, that payments will be made as agreed. Final payment shall become due and payable upon completion of the work described in this Agreement. Failure to pay any sum due to KONE within thirty (30) days of the invoice will be a material breach. A delinquent payment charge calculated at the rate of 1½ % per month, or if such rate is usurious then at the maximum rate under applicable law, shall be applied to the delinquent payments. In the event of default on the payment provisions herein, Purchaser agrees to pay, in addition to any defaulted amount, all attorney fees, collection cost or court costs in connection therewith. The machinery, implements and apparatus furnished hereunder remain KONE's personal property and KONE retains title thereto until final payment is made, with right to retake possession of the same at the cost of the Purchaser if default is made in any of the payments, irrespective of the manner of attachment to the realty, the acceptance of notes, or the sale, mortgage or lease of the premises.

The states requiring notice prior to filing a lien, this notice requirement is hereby complied with.

KONE shall not be liable for damage or delay caused directly or indirectly by accidents, embargoes, strikes, lockouts, work interruption or other labor dispute, fire, theft, floods, or any cause beyond KONE's control. Regardless of the type of delay, KONE shall not be liable for any indirect, consequential, or special damages including but not limited to fines, penalties, loss of profits, goodwill, business or loss of use of equipment or property.

Purchaser agrees to provide safe access to the equipment and machine room areas. Should conditions develop beyond KONE's control, making the building or premises in which KONE's personnel are working unsafe, KONE reserves the right to discontinue work until such unsafe conditions are corrected. Should damage occur to KONE's material or work on the premises, by fire, theft or otherwise, Purchaser shall compensate us therefore.

KONE undertakes to perform this work in conformity with the usual applied codes and standards, however, no guarantee can be made that all code violations or defects have been found. This work is not intended as a guarantee against failure or malfunction of equipment at any future time.

It is agreed and understood that KONE is not responsible for damages, either to the vertical transportation equipment or to the building, or for any personal injury or death, arising from or resulting from any code required safety tests performed on this equipment.

Nothing in this agreement shall be construed to mean that KONE assumes any liability of any nature whatsoever arising out of, relating to or in any way connected with the use or operation of the equipment described above. Purchaser shall be solely responsible for the use, repair and maintenance of the equipment and for taking such steps including but not limited to providing attendant personnel, warning signs and other controls necessary to ensure the safety of the user or safe operation of the equipment.

Neither KONE nor its affiliates, subsidiaries or divisions shall be responsible or liable for any damages, claims, suits, expenses and payments on account of or resulting from any injury, death or damage to property arising or resulting from the misuse, abuse or neglect of the equipment herein named or any other device covered by this contract.

Purchaser shall at all times and at Purchaser's own cost, maintain a commercial general liability policy covering bodily injury and property damage with the limits of liability Purchasers customarily carry (naming KONE as additional insured) arising out of the services provided under this Authorization and/or the ownership, maintenance, use or operation of the equipment described herein.

It is agreed and understood that Purchaser is solely responsible for ongoing maintenance and care of the equipment described above. IT IS EXPRESSLY UNDERSTOOD, IN CONSIDERATION OF OUR PERFORMANCE OF THIS WORK THAT PURCHASER ASSUMES ALL LIABILITY FOR THE USE, MAINTENANCE OR OPERATION OF THE EQUIPMENT DESCRIBED ABOVE AND FOR ANY INJURY, INCLUDING DEATH, TO ANY PERSON OR PERSONS AND FOR DAMAGE TO PROPERTY OR LOSS OF USE THEREOF, ON ACCOUNT OF OR RESULTING FROM THE PERFORMANCE OF THE WORK TO BE DONE HEREIN, AND AGREES TO THE EXTENT PERMITTED BY LAW TO DEFEND, INDEMNIFY AND HOLD HARMLESS KONE, ITS OFFICERS, DIRECTORS AND EMPLOYEES FROM ALL DAMAGES, CLAIMS, SUITS, EXPENSES AND PAYMENTS ON ACCOUNT OF OR RESULTING FROM ANY SUCH INJURY, DEATH OR DAMAGE TO PROPERTY, EXCEPT THAT RESULTING FROM THE SOLE NEGLIGENCE OF KONE INC. Purchaser hereby waives any and all rights of recovery, arising as a matter of law or otherwise, which Purchaser might now or hereafter have against KONE Inc.

KONE warrants the materials and workmanship of the equipment for 90 days after completion. Purchaser's remedy is limited to repair or replacement of a defective part, in KONE's sole discretion. The warranty is limited to the replacement or repair of the part itself, and excludes labor. In no event shall KONE be responsible for damage due to normal wear and tear, vandalism, abuse, misuse, neglect, work or repairs or modifications by others, or any other cause beyond the control of KONE. KONE disclaims any other warranty of any kind; either expressed or implied, including without limitation the implied warranties of merchantability or fitness for a particular purpose, or noninfringement.

Unless otherwise agreed, it is understood that the work shall be performed during regular working hours of regular working days of the elevator trade. If overtime work is mutually agreed upon and performed, the additional price, at KONE's usual rates for such work, shall be added to the contract price herein named.

It is expressly understood and agreed all prior agreements written or verbal regarding the subject matter herein are void and the acceptance of this Agreement shall constitute the contract for the material and work specified in this Agreement. Any changes to this Agreement must be made in writing and signed by both parties.

The terms and conditions set forth herein shall constitute the complete agreement for any work performed, AND shall prevail over and supersede any terms and conditions contained in any documents provided by the Purchaser.

The Purchaser does hereby agree the exclusive venue for any dispute between the parties shall be in the county of Rock Island, IL.



## MEMORANDUM

Planning Division

**DATE:** August 20, 2018  
**TO:** Joseph A. Valentine, City Manager  
**FROM:** Jana L. Ecker, Planning Director  
**SUBJECT:** RFP for Downtown Retail Review

---

After the City Commission adopted a new definition for personal services in relation to retail use on November 13, 2017, the City Manager directed the Planning Board to continue studying the larger issue of retail use in Downtown Birmingham, specifically but not limited to the following:

1. To evaluate the current geographic boundary of the Retail District for modification and also consider a priority level hierarchy consisting of the downtown core and other areas within the current Redline Retail Boundary.
2. To evaluate current properties in the Redline Retail Boundary that were not built to support first floor retail uses and provide recommendations to address this issue. Such properties may, for example, have not been built with first floor frontage at grade or the building was not previously designed to support retail use.
3. To evaluate a prohibition of desks, workstations and office related amenities placed within the first 20 feet of depth of window frontage within the Retail District and recommend ordinance language to address the issue.

The Planning Board has reviewed multiple data sets, including walking radius, distribution of uses, asking prices, proximity to metered parking, and new developments in downtown. They have also considered a tiered system of permissible first floor uses and evaluated potential tiers for these boundaries.

On June 18, 2018, The Planning Board and City Commission held a joint meeting where the Board expressed a desire to have a private consultant review Birmingham's Retail Frontage Line and make a recommendation related to the directives of the City Manager. That was a general consensus from City Commission that a consultant would be beneficial to the process.

On July 11, 2018 the Planning Department presented the first draft of a Request for Proposals "RFP" for a retail consultant. The Planning Board expressed that they would like to see more public engagement activities from the consultant. New public engagement requirements were added to the scope of work, as well as additional meetings with the City Commission.

On July 25, 2018, the Planning Board reviewed a revised draft of an RFP for retail review. Board members were pleased with the changes made to the prior version. The Planning Board requested that the title of the RFP be changed to "Downtown Retail Review", and requested minor wording changes to the public engagement section to encourage different types of public engagement activities. The Planning Board voted unanimously to recommend approval of the draft RFP to the City Commission.

On August 13, 2018, the City Commission reviewed the draft RFP for retail consulting services. The City Commission was concerned that the RFP as drafted needed to be refined to state the desire to strengthen retail within the redline retail boundaries, instead of considering the modification of the boundaries of the district as previously directed. The City Commission stated that the RFP should be very clear the goal of the study is to determine how best to organize the existing redline retail district in order to continue developing a pedestrian-oriented experience in Downtown Birmingham.

Accordingly, please find attached a revised draft RFP for a Downtown Retail Review, incorporating the City Commission's most recent comments.

Suggested Action:

To APPROVE the Downtown Retail Review RFP, and to direct staff to issue the RFP.



## **REQUEST FOR PROPOSALS FOR RETAIL FRONTAGE LINE REVIEW**

---

Sealed proposals endorsed **"DOWNTOWN RETAIL REVIEW"**, will be received at the Office of the City Clerk, 151 Martin Street, PO Box 3001, Birmingham, Michigan, 48012; until **(Date), 2018 at 3:00pm** after which time bids will be publicly opened and read.

The City of Birmingham, Michigan is accepting sealed bid proposals from qualified professional firms to conduct a review of retail trends and policy in relation to its downtown. This work must be performed as specified in accordance with the specifications contained in the Request For Proposals (RFP).

The RFP, including the Specifications, may be obtained online from the Michigan Inter-governmental Trade Network at <http://www.mitn.info> or at the City of Birmingham, 151 Martin St., Birmingham, Michigan, ATTENTION: Jana L. Ecker, Planning Director.

The acceptance of any proposal made pursuant to this invitation shall not be binding upon the City until an agreement has been executed.

**Submitted to MITN:**  
**Deadline for Submissions:**  
**Contact Person:**

**(Date), 2018**  
**(Date), 2018** at 3:00pm  
Jana L. Ecker, Planning Director  
P.O. Box 3001, 151 Martin Street  
Birmingham, MI 48012-3001  
Phone: 248-530-1841  
Email: [jecker@bhamgov.org](mailto:jecker@bhamgov.org)



**REQUEST FOR PROPOSALS  
FOR RETAIL FRONTAGE LINE REVIEW**

**Contents**

<a href="#"><u>INTRODUCTION</u></a> .....	3
<a href="#"><u>SCOPE OF WORK</u></a> .....	5
<a href="#"><u>INVITATION TO SUBMIT A PROPOSAL</u></a> .....	7
<a href="#"><u>INSTRUCTIONS TO BIDDERS</u></a> .....	8
<a href="#"><u>EVALUATION PROCEDURE AND CRITERIA</u></a> .....	9
<a href="#"><u>TERMS AND CONDITIONS</u></a> .....	9
<a href="#"><u>CONTRACTOR'S RESPONSIBILITIES</u></a> .....	10
<a href="#"><u>CITY RESPONSIBILITY</u></a> .....	11
<a href="#"><u>SETTLEMENT OF DISPUTES</u></a> .....	11
<a href="#"><u>INSURANCE</u></a> .....	11
<a href="#"><u>CONTINUATION OF COVERAGE</u></a> .....	11
<a href="#"><u>EXECUTION OF CONTRACT</u></a> .....	11
<a href="#"><u>INDEMNIFICATION</u></a> .....	11
<a href="#"><u>CONFLICT OF INTEREST</u></a> .....	11
<a href="#"><u>EXAMINATION OF PROPOSAL MATERIALS</u></a> .....	11
<a href="#"><u>PROJECT TIMELINE</u></a> .....	12
<a href="#"><u>ATTACHMENTS</u></a> .....	13

## **INTRODUCTION**

For purposes of this request for proposals, the City of Birmingham will hereby be referred to as "City" and the private consulting firm or firms will hereby be referred to as "Contractor."

At this time, the City of Birmingham, Michigan is seeking a comprehensive review of its Retail Frontage Line policy. It is accepting sealed bid proposals from qualified professionals who have experience in creating zoning policies that strengthen retail corridors in traditional walkable downtowns, projecting retail trends, and conducting retail market analysis. The purpose of this RFP is to request sealed bid proposals from qualified candidates. The bid shall include presentation of qualifications, capabilities, and costs for providing a comprehensive review of Birmingham's Retail Frontage Line policy and providing recommendations for modifications to existing policy to continue to enhance Birmingham's thriving downtown retail district in accordance with the following objectives:

1. Build on existing policies to strengthen the downtown retail environment in order to continue developing a pedestrian oriented experience as outlined in the City's Downtown Master Plan;
2. Review what first floor retail means for a successful downtown and provide recommendations to comply;
3. Identify ways enhance and strengthen core retail areas; and
4. Evaluate unique circumstances in the retail area, including non-conforming building forms, and provide recommendations to address these circumstances.

The Red Line Retail Frontage in Downtown Birmingham consists of 3.25 linear miles with approximately 280 first floor businesses. Its purpose is to require street level uses that will create a downtown environment that activates the street and contributes to a walkable pedestrian experience. This zoning policy was first proposed in the Downtown Birmingham 2016 Plan which was adopted in 1996. The Redline Retail Frontage policy and permissible uses are defined as follows:

**Retail Frontage Line** is defined as:

*All lot lines abutting a public street that are required to be retail, as designated on the Downtown Birmingham 2016 Regulating Plan.*

**Retail Use** is defined as:

*Any of the following uses, Artisan, community, commercial, entertainment (including all establishments operating with a liquor license obtained under Chapter 10 , etc) bistro or restaurant uses.*

**Commercial Use** is defined as:

*Premises used generally in connection with purchase, sale, barter, display, or exchange of goods, wares, merchandise, or personal services.*

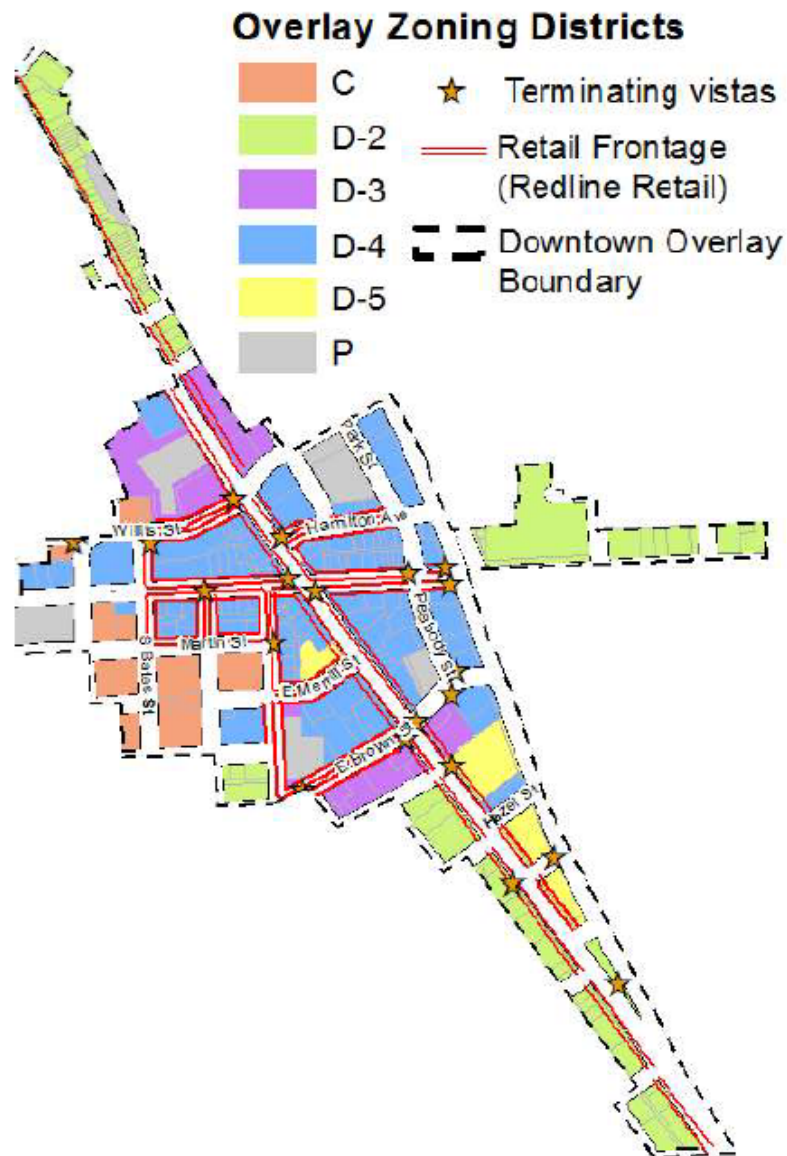
**Personal Services** is defined as (Adopted November 13, 2017):

*Establishment Open to general public and engaged primarily in providing services directly to individual consumers, including, but not limited to, personal care services, services for care of apparel and other personal items, but not including business to business services, medical, dental, and/or mental health services.*

Section 3.04(C)(6) in the Downtown Birmingham Overlay District states:

*Buildings that have frontage along the required retail frontages, as specified on the Regulating Plan, shall consist of retail with minimum depth of 20 feet from the frontage line within the first story.*

The boundary of the current Retail Frontage Line is illustrated in the Overlay Zoning Map provided below:



Since the inception of the 2016 Plan and the resulting creation of the Redline Retail District/Retail Frontage Line, the City has maintained a strong commitment to requiring and strengthening first



floor retail uses and promoting Birmingham as a premier urban shopping destination within the region.

It is anticipated that the selection of a firm will be completed by (Date). An agreement for services will be required with the selected Contractor. A copy of the Agreement is contained herein as Attachment A. Contract services will commence upon execution of the service agreement by the City.

This work must be performed as specified in accordance with the specifications outlined by the Scope of Work contained in this Request for Proposals (RFP).

### **SCOPE OF WORK**

The selected Contractor will work with the City to review and provide recommendations for Birmingham's Redline Retail Frontage Line based on the objectives listed above. The scope of services is as follows:

- 1. Review the Downtown Overlay District's Retail Frontage Line Boundary Requirements and the City Manager's Research Directives for the Planning Board.** The definition of Retail was recently addressed by City Commission to provide more clarity about personal services in relation to commercial uses in the Retail Frontage Line boundary. After the new definition for personal services was adopted, the City Manager directed the Planning Board to continue studying the larger issue of retail use in Downtown Birmingham, specifically but not limited to the following:
  - a. To evaluate the current geographic boundary of the Retail District for modification and also consider a priority level hierarchy consisting of the downtown core and other areas within the current Redline Retail Boundary.
  - b. To evaluate current properties in the Redline Retail Boundary that were not built to support first floor retail uses and provide recommendations to address this issue. Such properties may, for example, have not been built with first floor frontage at grade or the building was not previously designed to support retail use.
  - c. To evaluate a prohibition of desks, workstations and office related amenities placed within the first 20 feet of depth of window frontage within the Retail District and recommend ordinance language to address the issue.
- 2. Review Current Research Done by City Staff & Consultants.** The City has conducted an inventory of all businesses in the Redline Retail District and organized them by zoning categories in order to help determine where there are strong clusters of retail use. The City has also gathered available asking rent data and occupancy rate data to help determine the various levels of demand. Data such as quarter mile and half mile walking radius, proximity to metered parking, and how retail has expanded into new buildings since 1996 when the Redline Retail District was adopted was also considered. The City reviewed a three-tiered system of allowable first floor uses and various boundaries for these tiers as well. An inventory of existing buildings not suitable for retail use with the Redline Retail District was also completed. The Contractor selected will review this current research, in addition to reviewing prior market studies completed for the Birmingham Shopping District in 2012, 2013 and 2016.

- 3. Provide an Existing Conditions Report.** The City wishes to evaluate the distribution of first floor uses, asking rents, and vacancies in order to determine demand for retail in downtown. A comparison of second and third floor office rents versus first floor retail rents is also desirable in determining demand and the premium for first floor space. The Contractor will update the existing conditions report for the entire Redline Retail District to establish the state of retail in Downtown Birmingham. The existing conditions report should be used to determine Birmingham's retail strengths and weaknesses in the Redline Retail District compared to similar cities with walkable downtowns and to identify possible policy options to enhance the retail experience in Downtown Birmingham.
- 4. Provide Future Trends in Retail and Projections for Retail Demand in Similar Walkable, Urban Communities.** The City's retail district has a mixture of national retailers, restaurants, and independent boutique shops. The City would like to see projections of shopper and retailer preferences for main street shopping districts such as Birmingham's. The City would also like to see projections of how demand for main street retail will change as online retailing continues to grow, as well as anticipated market changes over the next 5 to 10 years to assist in crafting retail policy that allows Birmingham to maintain its current status as a premier urban shopping destination.
- 5. Evaluate Current Retail Frontage Line.** The current Retail Frontage Line is 3.25 linear miles of first floor storefronts along Downtown's main streets, with consistent retail requirements and regulations throughout the district. The Contractor should consider the creation of a priority level hierarchy that permits different uses and or varying retail requirements and regulations within the current Redline Retail Boundary.
- 6. Coordinate Public Engagement.** Public participation will be an important aspect of the Retail Frontage Line boundary review. The Contractor shall conduct public engagement to get feedback from building owners, retailers, and citizens. The Contractor will be expected to conduct a minimum of two public engagement activities to receive input and engage the public on the Retail Frontage Line policy and the suggested tiered system reviewed by the Planning Board. The Contractor will be expected to coordinate their public notifications with the Birmingham Shopping District.
- 7. Provide Final Analysis with Recommendations for Retail Tiers and Uses Within Each Tier.** The final analysis should include recommendations to strengthen and enhance Downtown Birmingham's retail environment based on the existing Downtown Master Plan strategies as well as findings from the existing conditions analysis, retail trends and projections, and comparative analysis with similar communities. Recommendations should consider whether or not there should be a priority level hierarchy with multiple tiers of permissible 1<sup>st</sup> floor uses. If multiple tiers are recommended, final analysis should include where the boundaries of these tiers should be. An evaluation of current properties in the Reline Retail Boundary that were not built to support first floor retail uses should also be conducted, and the final report should include recommendations to address this issue. The final report should also evaluate a prohibition of desks and other office furniture within the first 20 feet of depth of window frontage on the first floor and provide recommendations and/or ordinance language to address this issue.

- 8. Attendance at Meetings.** The contractor shall expect to attend a minimum of five meetings with the City Commission and other boards, as well as organize and conduct a minimum of two public engagement activities with business owners, retailers and citizens. This outline is not necessarily all-inclusive and the Contractor shall include in the proposal any other tasks and services deemed necessary to satisfactorily complete the project. Additional meetings with both the Planning Board and City Commission may be requested as needed.

### **DELIVERABLES**

The Contractor shall provide a detailed report of their findings and conduct a final presentation to the Planning Board and City Commission.

1. One (1) reproducible PDF digital file and sixteen (16) hard color copies of the completed Report; and
2. One web-friendly, reduced size PDF digital file of the final Report for publication on the web and social media.

All data, illustrations and projections created or compiled throughout the project shall become the sole property of the City of Birmingham.

### **TIME SCHEDULE AND COST PROPOSAL**

All proposals must include a proposed time schedule for completion of the report and a fixed price agreement with an associated fee schedule for extra meeting costs, should they be required. Reimbursable expenses will be billed at direct cost plus a 10% administrative charge. Normal reimbursable expenses including... associated with the project are to be included in the estimated fees as outlined in the proposal.

The Contractor shall perform all services outlined in this RFP in accordance with the requirements as defined and noted herein.

### **INVITATION TO SUBMIT A PROPOSAL**

Proposals shall be submitted no later than **Friday (Date) at 3:00pm** to:

City of Birmingham  
Attn: City Clerk  
151 Martin Street  
Birmingham, Michigan 48009

One (1) electronic copy and one (1) hard copy of the proposal must be submitted. The proposal should be firmly sealed in an envelope, which shall be clearly marked on the outside, **"Downtown Retail Review"**. Any proposal received after the due date cannot be accepted and will be rejected and returned, unopened, to the proposer. Respondents may submit more than one proposal provided each proposal meets the functional requirements.

## **SUBMISSION REQUIREMENTS**

All proposals that wish to be considered must contain the following:

- (i) Cover Letter;
- (ii) Outline of qualifications of the Contractor and of the key employees that will be involved in the project. The project team should include each of the following skill sets:
  - Retail market analysis;
  - Retail trends and projections;
  - Zoning policy related to downtown retail corridors; and
  - Experience working with cities that have a mixed-use, form based code.
- (iii) Outline of Contractor(s) experience with the preparation of retail analyses, public engagement activities, and zoning policy recommendations, including references from at least two relevant communities where such plans have been completed. (Portions of sample plans prepared by the Contractor should be submitted with the proposal, up to a maximum of twenty-five (25) pages);
- (iv) Outline presenting a description of the scope of work to be completed, broken down into the following separate components:
  - (i) Review the Downtown Overlay District's Retail Frontage Line;
  - (ii) Review current research done by City staff;
  - (iii) Provide an updated existing conditions report;
  - (iv) Provide details of how the public engagement strategy will be implemented;
  - (v) Provide trends in retail and projections for retail demand in Birmingham;
  - (vi) Evaluate current boundary of Retail Frontage Line, as well as proposed boundaries for a tiered system of first floor uses;
  - (vii) Provide final analysis with recommendations for retail boundaries and uses within each boundary;
- (i) Proposed time frame for completion of each component of the scope of work;
- (ii) A statement of any additional services that you recommend, if any. Define hourly rates for additional services by discipline.
- (iii) Bidders Agreement (Attachment B);
- (iv) Cost Proposal (Attachment C); and
- (v) Iran Sanctions Act Vendor Certification (Attachment D).

## **INSTRUCTIONS TO BIDDERS**

1. Any and all forms requesting information from the bidder must be completed on the attached forms contained herein (see Contractor's Responsibilities). If more than one bid is submitted, a separate bid proposal form must be used for each.
2. Any request for clarification of this RFP shall be made in writing and delivered to: Jana L. Ecker, Planning Director, 151 Martin Street, Birmingham, MI, or via email to [jecker@bhamgov.org](mailto:jecker@bhamgov.org). Such request for clarification shall be delivered, in writing, no later than 5 days prior to the deadline for submissions. Email requests must contain in their subject line "Request for Clarification". All inquiries received will be answered and posted on MITN at least 3 days prior to the RFP submission due date.
3. All proposals must be submitted following the RFP format as stated in this document and shall be subject to all requirements of this document including the instruction to respondents and general information sections. All proposals must be regular in every

respect and no interlineations, excisions, or special conditions shall be made or included in the RFP format by the respondent.

4. The contract will be awarded by the City of Birmingham to the most responsive and responsible bidder and the contract will require the completion of the work pursuant to these documents.
5. Each respondent shall include in their proposal, in the format requested, the cost of performing the work. Municipalities are exempt from Michigan State Sales and Federal Excise taxes. Do not include such taxes in the proposal figure. The City will furnish the successful company with tax exemption information when requested.
6. Each respondent shall include in their proposal the following information: Firm name, address, city, state, zip code, telephone number, and fax number. The company shall also provide the name, address, telephone number and e-mail address of an individual in their organization to whom notices and inquiries by the City should be directed as part of their proposal.

#### EVALUATION PROCEDURE AND CRITERIA

The City will utilize a qualifications-based selection process in choosing a Contractor for the completion of this work. The evaluation panel will consist of City staff, board members, and/or any other person(s) designated by the City who will evaluate the proposals based on, but not limited to, the following criteria:

- Ability to provide services as outlined.
- Experience of the Contractor with similar projects.
- Content of Proposal.
- Cost of Services.
- Timeline and Schedule for Completion.
- References.

#### TERMS AND CONDITIONS

1. The City reserves the right to reject any or all proposals received, waive informalities, or accept any proposal, in whole or in part, it deems best. The City reserves the right to award the contract to the next most qualified Contractor if the successful Contractor does not execute a contract within ten (10) days after the award of the proposal.
2. The City reserves the right to request clarification of information submitted and to request additional information of one or more Contractors.
3. The City reserves the right to terminate the contract at its discretion should it be determined that the services provided do not meet the specifications contained herein. The City may terminate this Agreement at any point in the process upon notice to Contractor sufficient to indicate the City's desire to do so. In the case of such a stoppage, the City agrees to pay Contractor for services rendered to the time of notice, subject to the contract maximum amount.

4. Any proposal may be withdrawn up until the date and time set above for the opening of the proposals. Any proposals not so withdrawn shall constitute an irrevocable offer, for a period of ninety (90) days, to provide the services set forth in the proposal.
5. The cost of preparing and submitting a proposal is the responsibility of the Contractor and shall not be chargeable in any manner to the City.
6. Payment will be made within thirty (30) days after invoice. Acceptance by the City is defined as authorization by the designated City representative to this project that all the criteria requested under the Scope of Work contained herein have been provided. Invoices are to be rendered each month following the date of execution of an Agreement with the City.
7. The Contractor will not exceed the timelines established for the completion of this project.
8. The successful bidder shall enter into and will execute the contract as set forth and attached as Attachment A.

#### CONTRACTOR'S RESPONSIBILITIES

Each bidder shall provide the following as part of their proposal:

1. Complete and sign all forms requested for completion within this RFP.
  - a. Bidder's Agreement (Attachment B)
  - b. Cost Proposal (Attachment C)
  - c. Iran Sanctions Act Vendor Certification Form (Attachment D)
  - d. Agreement (Attachment A – **only if selected by the City**).
2. Provide a description of completed projects that demonstrate the firm's ability to complete projects of similar scope, size, and purpose, and in a timely manner, and within budget.
3. Provide a written plan detailing the anticipated timeline for completion of the tasks set forth in the Scope of Work.
4. The Contractor will be responsible for any changes necessary for the plans to be approved by the City of Birmingham.
5. Provide a description of the firm, including resumes and professional qualifications of the principals involved in administering the project.
6. Provide a list of sub-contractors and their qualifications, if applicable.
7. Provide three (3) client references from past projects, include current phone numbers. At least two (2) of the client references should be for similar projects.
8. Provide a project timeline addressing each section within the Scope of Work and a description of the overall project approach. Include a statement that the Contractor will be available according to the proposed timeline.

#### CITY RESPONSIBILITY

The City will provide a designated representative to work with the Contractor to coordinate both the City's and Contractor's efforts and to review and approve any work performed by the Contractor.

#### SETTLEMENT OF DISPUTES

The successful bidder agrees to certain dispute resolution avenues/limitations. Please refer to paragraph 17 of the Agreement attached as Attachment A for the details and what is required of the successful bidder.

#### INSURANCE

The successful bidder is required to procure and maintain certain types of insurances. Please refer to paragraph 12 of the Agreement attached as Attachment A for the details and what is required of the successful bidder.

#### CONTINUATION OF COVERAGE

The Contractor also agrees to provide all insurance coverages as specified. Upon failure of the Contractor to obtain or maintain such insurance coverage for the term of the agreement, the City may, at its option, purchase such coverage and subtract the cost of obtaining such coverage from the contract amount. In obtaining such coverage, Birmingham shall have no obligation to procure the most cost effective coverage but may contract with any insurer for such coverage.

#### EXECUTION OF CONTRACT

The bidder whose proposal is accepted shall be required to execute the contract and to furnish all insurance coverages as specified within ten (10) days after receiving notice of such acceptance. Any contract awarded pursuant to any bid shall not be binding upon the City until a written contract has been executed by both parties. Failure or refusal to execute the contract shall be considered an abandonment of all rights and interest in the award and the contract may be awarded to another. The successful bidder agrees to enter into and will execute the contract as set forth and attached as Attachment A.

#### INDEMNIFICATION

The successful bidder agrees to indemnify the City and various associated persons. Please refer to paragraph 13 of the Agreement attached as Attachment A for the details and what is required of the successful bidder.

#### CONFLICT OF INTEREST

The successful bidder is subject to certain conflict of interest requirements/restrictions. Please refer to paragraph 14 of the Agreement attached as Attachment A for the details and what is required of the successful bidder.

#### EXAMINATION OF PROPOSAL MATERIALS

The submission of a proposal shall be deemed a representation and warranty by the Contractor that it has investigated all aspects of the RFP, that it is aware of the applicable facts pertaining to the RFP process and its procedures and requirements, and that it has read and understands

the RFP. Statistical information which may be contained in the RFP or any addendum thereto is for informational purposes only.

**ANTICIPATED PROJECT TIMELINE**

Evaluate Respondents	September 2018
Interview Contractors	October 2018
Award Contract	October 2018
Project Kick-Off Meeting	November 2018
Project Update	January 2019
Final Draft of Plan Completed	March 2019

The Contractor will not exceed the timelines established for the completion of this project. A shorter timeline is encouraged and preferred.



## ATTACHMENT A - AGREEMENT FOR DOWNTOWN RETAIL REVIEW

---

This AGREEMENT, made this \_\_\_\_\_ day of \_\_\_\_\_, 2018, by and between CITY OF BIRMINGHAM, having its principal municipal office at 151 Martin Street, Birmingham, MI (hereinafter sometimes called "City"), and \_\_\_\_\_, Inc., having its principal office at \_\_\_\_\_ (hereinafter called "Contractor"), provides as follows:

### WITNESSETH:

**WHEREAS**, the City of Birmingham has heretofore advertised for bids for the procurement and performance of services required to perform retail consulting services to provide a comprehensive review and analysis of existing retail conditions and policy in the City's Central Business District and to provide recommendations for improvement, including future retail strategy, policy and implementation, and in connection therewith has prepared a request for sealed proposals ("RFP"), which includes certain instructions to bidders, specifications, terms and conditions.

**WHEREAS**, the Contractor has professional qualifications that meet the project requirements and has made a bid in accordance with such request for cost proposals to perform retail consulting services to evaluate current and future retail strategies and practices in the City's Central Business District and provide recommendations for improvement.

**NOW, THEREFORE**, for and in consideration of the respective agreements and undertakings herein contained, the parties agree as follows:

1. It is mutually agreed by and between the parties that the documents consisting of the Request for Proposal to perform retail consulting services to evaluate current and future retail strategies and practices in the City's Central Business District and provide recommendations for improvement and the Contractor's cost proposal dated \_\_\_\_\_, 2018 shall be incorporated herein by reference and shall become a part of this Agreement, and shall be binding upon both parties hereto. If any of the documents are in conflict with one another, this Agreement shall take precedence, then the RFP.
2. The City shall pay the Contractor for the performance of this Agreement in an amount not to exceed \_\_\_\_\_, as set forth in the Contractor's \_\_\_\_\_, 2018 cost proposal.
3. This Agreement shall commence upon execution by both parties, unless the City exercises its option to terminate the Agreement in accordance with the Request for Proposals.
4. The Contractor shall employ personnel of good moral character and fitness in performing all services under this Agreement.
5. The Contractor and the City agree that the Contractor is acting as an independent Contractor with respect to the Contractor's role in providing services to the City pursuant to this Agreement, and as such, shall be liable for its own actions and neither the Contractor 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 Contractor 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 Contractor shall not be 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.

6. The Contractor 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 Contractor recognizes that unauthorized exposure of such confidential or proprietary information could irreparably damage the City. Therefore, the Contractor agrees to use reasonable care to safeguard the confidential and proprietary information and to prevent the unauthorized use or disclosure thereof. The Contractor 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 Contractor further agrees to use such confidential or proprietary information only for the purpose of performing services pursuant to this Agreement.

7. This Agreement shall be governed by and performed, interpreted and enforced in accordance with the laws of the State of Michigan. The Contractor agrees to perform all services provided for in this Agreement in accordance with and in full compliance with all local, state and federal laws and regulations.

8. If any provision of this Agreement is declared invalid, illegal or unenforceable, such provision shall be severed from this Agreement and all other provisions shall remain in full force and effect.

9. This Agreement shall be binding upon the successors and assigns of the parties hereto, but no such assignment shall be made by the Contractor without the prior written consent of the City. Any attempt at assignment without prior written consent shall be void and of no effect.

10. The Contractor agrees that neither it nor its subcontractors will discriminate against any 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 or marital status. The Contractor shall inform the City of all claims or suits asserted against it by the Contractor's employees who work pursuant to this Agreement. The Contractor shall provide the City with periodic status reports concerning all such claims or suits, at intervals established by the City.

11. The Contractor shall not commence work under this Agreement until it has, at its sole expense, obtained the insurance required under this paragraph. All coverages shall be with insurance companies licensed and admitted to do business in the State of Michigan. All coverages shall be with carriers acceptable to the City of Birmingham.

12. The Contractor shall maintain during the life of this Agreement the types of insurance coverage and minimum limits as set forth below:

- A. Workers' Compensation Insurance: Contractor 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.
- B. Commercial General Liability Insurance: Contractor 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 Contractors Coverage; (D) Broad Form General Liability Extensions or equivalent; (E) Deletion of all Explosion, Collapse and Underground (XCU) Exclusions, if applicable.
- C. Motor Vehicle Liability: Contractor shall procure and maintain during the life of this Agreement Motor Vehicle Liability Insurance, including all applicable no-fault coverages, with limits of liability of not less than \$1,000,000 per occurrence combined single limit Bodily Injury and Property Damage. Coverage shall include all owned vehicles, all non-owned vehicles, and all hired vehicles.
- D. Additional Insured: Commercial General Liability and Motor Vehicle Liability Insurance, as described above, shall include an endorsement stating the following shall be *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.
- E. Professional Liability: Professional liability insurance with limits of not less than \$1,000,000 per claim if Contractor will provide service that are customarily subject to this type of coverage.
- F. Cancellation Notice: Workers' Compensation Insurance, Commercial General Liability Insurance and Motor Vehicle Liability Insurance (and Professional Liability Insurance, if applicable), as described above, shall include an endorsement stating the following: "Thirty (30) days Advance Written Notice of Cancellation or Non-Renewal, shall be sent to: Finance Director, City of Birmingham, PO Box 3001, 151 Martin Street, Birmingham, MI 48012-3001.
- G. Proof of Insurance Coverage: Contractor 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;
  - 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;

- 5) If so requested, Certified Copies of all policies mentioned above will be furnished.

H. Coverage Expiration: If any of the above coverages expire during the term of this Agreement, Contractor shall deliver renewal certificates and/or policies to the City of Birmingham at least (10) days prior to the expiration date.

I. Maintaining Insurance: Upon failure of the Contractor 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.

13. To the fullest extent permitted by law, the Contractor and any entity or person for whom the Contractor 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 behalf of the City of Birmingham 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 and the City of Birmingham, its elected and appointed officials, employees, volunteers or others working on behalf of the City of Birmingham, by reason of personal injury, including bodily injury and death and/or property damage, including loss of use thereof, which arises out of or is in any way connected or associated with 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 of Birmingham.

14. 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 Contractor, the City shall have the right to terminate this Agreement without further liability to the Contractor if the disqualification has not been removed within thirty (30) days after the City has given the Contractor 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. If Contractor 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. All notices required to be sent pursuant to this Agreement shall be mailed to the following addresses:

City of Birmingham  
Attn: Jana L. Ecker  
151 Martin Street  
Birmingham, MI 48009  
248.530.1841

CONTRACTOR  
(Insert Contractor Information)

17. 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 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 arbitrated, any dispute between the parties may be resolved by the filing of a suit in the Oakland County Circuit Court or the 48th District Court.

18. 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.

**IN WITNESS WHEREOF, the said parties have caused this Agreement to be executed as of the date and year above written.**

WITNESSES:

**CONTRACTOR**

\_\_\_\_\_

By: \_\_\_\_\_

Its:

**CITY OF BIRMINGHAM**

\_\_\_\_\_

By: \_\_\_\_\_

Andrew Harris

Its: Mayor

\_\_\_\_\_

By: \_\_\_\_\_

Cherilynn Mynsberge

Its: City Clerk

Approved:

\_\_\_\_\_  
Jana L. Ecker, Planning Director  
(Approved as to substance)

\_\_\_\_\_  
Mark Gerber, Director of Finance  
(Approved as to financial obligation)

\_\_\_\_\_  
Timothy J. Currier, City Attorney  
(Approved as to form)

\_\_\_\_\_  
Joseph A. Valentine., City Manager  
(Approved as to substance)

## **ATTACHMENT B - BIDDER'S AGREEMENT FOR DOWNTOWN RETAIL REVIEW**

---

In submitting this proposal, as herein described, the Contractor agrees that:

1. They have carefully examined the specifications, terms and Agreement of the Request for Proposal and all other provisions of this document and understand the meaning, intent, and requirement of it.
2. They will enter into a written contract and furnish the item or items in the time specified in conformance with the specifications and conditions contained therein for the price quoted by the proponent on this proposal.

---

**PREPARED BY (Print Name)**

**DATE**

---

**AUTHORIZED SIGNATURE**

---

**Title**

**E-MAIL ADDRESS**

---

**COMPANY**

---

**ADDRESS**

**PHONE**

---

**NAME OF PARENT COMPANY**

**PHONE**

---

**ADDRESS**

**ATTACHMENT C - COST PROPOSAL  
FOR DOWNTOWN RETAL REVIEW**

---

**In order for the bid to be considered valid, this form must be completed in its entirety.** The cost for the Scope of Work as stated in the Request for Proposal documents shall be a lump sum, as follows:

***Attach technical specifications for all proposed materials as outlined in the Contractor's Responsibilities section of the RFP (p. 6)***

COST PROPOSAL	
ITEM	BID AMOUNT
<b>TOTAL BID AMOUNT</b>	\$
<b>ADDITIONAL BID ITEMS</b>	
Additional meetings with City staff and boards	\$
Other -	\$
Other -	\$
<b>GRANDTOTAL AMOUNT</b>	\$

---

Firm Name \_\_\_\_\_

Authorized signature \_\_\_\_\_ Date \_\_\_\_\_

## **ATTACHMENT D - IRAN SANCTIONS ACT VENDOR CERTIFICATION FORM FOR DOWNTOWN RETAIL REVIEW**

---

Pursuant to Michigan Law and the Iran Economic Sanction Act, 2012 PA 517 ("Act"), prior to the City accepting any bid or proposal, or entering into any contract for goods or services with any prospective Vendor, the Vendor must certify that it is not an "Iran Linked Business", as defined by the Act.

By completing this form, the Vendor certifies that it is not an "Iran Linked Business", as defined by the Act and is in full compliance with all provisions of the Act and is legally eligible to submit a bid for consideration by the City.

---

<b>PREPARED BY (Print Name)</b>	<b>DATE</b>
<b>AUTHORIZED SIGNATURE</b>	<b>E-MAIL ADDRESS</b>
<b>TITLE</b>	
<b>COMPANY</b>	
<b>ADDRESS</b>	<b>PHONE</b>
<b>NAME OF PARENT COMPANY</b>	<b>PHONE</b>
<b>ADDRESS</b>	
<b>TAXPAYER I.D.#</b>	



**City Commission & Planning Board Joint Meeting**  
**June 18, 2018**

**B. RETAIL ORDINANCE REVIEW**

Assistant Planner Cowan reviewed the direction to the Planning Board (PB) to:

- Evaluate the boundary of the redline retail district ('Redline');
- Identify buildings less-suited to retail; and
- Discuss what is permitted in retail spaces within the first twenty feet from the door.

Assistant Planner Cowan discussed the maps provided to the meeting which delineated:

- The distribution of uses in the Redline;
- Market-rent data for various areas of the Redline; and,
- How the retail distribution in the Redline reflected the stated development goals of the 2016 Plan.

Assistant Planner Cowan then explained that the PB considered:

- Dividing the Redline into multiple tiers with more or less strict retail zoning requirements: D4 and D5 would have the strictest retail zoning requirements, and D2 and D3 would have slightly looser retail zoning requirements.
- Maintaining a strict retail core and then decreasing stringency in tiers as the zoning moves out from the City center.
- Maintaining a strict retail core, and relaxing the retail zoning requirements along the edges.

Assistant Planner Cowan said the PB recommends hiring a consultant because they feel they lack sufficient information regarding retail market and trends in Birmingham.

PB Chairman Clein reiterated that none of the above possibilities was moved as a recommendation to the Commission by the PB at this time, and that if the Commission is interested in exploring the possibilities, hiring a consultant would be the next step. PB Chairman Clein emphasized that the issue of where to draw zoning lines would be an important issue for a consultant to address.

Commissioner Nickita suggested Buxton may be able to provide some of the necessary information since the company is already working with the Birmingham Shopping District (BSD) in a consultant role. He also said the goals of the delineation need to be made more clearly.

Planning Director Ecker specified:

- The Commission this evening was only provided with five pages of highlights out of the PB's review materials, which comprise about 500 pages per PB agenda item.

- The PB has reviewed all information available from Buxton and the BSD from the last three years.
- Each property has been reviewed methodically for demand on the space, what kind of business is currently located in the property, what kind of businesses are suitable for the property, and other factors.
- Her understanding is that Buxton is only doing research on niche retailers in Birmingham, not a more systemic study.
- The PB is sure the retail core should remain and should be zoned strictly. All other possibilities remain open for consideration.

Commissioner Nickita explained that he was not questioning whether there has been sufficient research into this issue by the PB. Rather, his main concern was that the Commission was provided a map of Birmingham retail areas with green, red and blue sections, with no indication as to what those colors signify.

Commissioner DeWeese delineated the relevant issues as what is happening now in the Redline area, and what the City would like to be happening in 20 years in the Redline area, citing changes to Bates Street as a future anchor for retail. He continued that:

- Buxton could clarify why retailers are not moving to Birmingham. With that information, the City can then explore options for remedying the perceived issues.
- If a business in the Redline area is over a certain percentage of replacement, the business must be brought up to code.
  - If a business in the Redline area is under a certain percentage of replacement, said business should retain grandfathered status.
- There may be use in providing incentive to businesses that elect to come up to code.
- In terms of street-friendliness, differentiation should be made between services like banks, which have windows open and engaging to the street, and doctors' offices, which have windows closed and not-engaging to the street and no after-hours use.
- Retail businesses that do not have street-centric windows should be encouraged to shift that practice through zoning and code enforcement.
- Birmingham's goal is to make the pedestrian experience friendly, open, interactive, and street-centric.
- The development of outdoor dining in Birmingham has enhanced the liveliness of the streetscape, for one example.

Ms. Whipple-Boyce explained that the PB had hypotheses as to what the green, red and blue sections on the provided map could signify, but had not narrowed it down enough to provide it as a legend. She added that:

- The PB will explore Commissioner DeWeese's concerns after the zones are clarified.
- In order to clarify the zones and the conditions leading to the delineation of the zones a consultant would be helpful.

Mr. Share said the PB undertook the process to explore reasons for vacant retail spaces, which turned into a need to consider the City's future retail goals. In order to do that, however, the PB needs to:

- Understand what broader retail trends are in order to best suggest a policy for the City.
- Know what kind of incentives would actually be desirable for retail businesses. A consultant specializing in retail is the most prudent way to obtain such information.

Commissioner Boutros suggested asking Buxton if they are able to provide the information the PB needs, and if not, agreed the City should hire an outside consultant to explore these questions. The City must also be very clear on its goals for a consultant if that route is pursued.

Commissioner Hoff commended the PB on its work and said it returned what the Commission requested. She said the red zone on the map was clearly strict retail, the blue zone seemed to allow for more services, and the green zone is to be clarified. She continued Buxton should be able to provide retail trends and information, even if that is not currently part of its contract with Birmingham. Once that information is available a more informed exploration of these issues can continue.

Mayor Harris said:

- Procedurally staff can draw of a Request for Proposals (RFP) for a consultant, and at that point Buxton could determine whether they are an appropriate fit for the role. Until the City determines the criteria for an RFP, however, a consultant cannot be hired.
- He agrees with Commissioner Hoff that the PB has done thorough research and due diligence, and based on the information concurs that a retail consultant should be hired.

Commissioner Sherman concurred with Mayor Harris and Commissioner Hoff.

## **Planning Board Minutes**

### **July 11, 2018**

#### **2. Retail Discussion**

Mr. Cowan recalled the Planning Board has been studying Redline Retail Districts since January. They brought their findings to the City Commission and asked to bring in a retail consultant. Therefore, the Planning Dept. has created a retail consultant RFP for the Planning Board to review. The scope of work includes a review of the City's current Retail Frontage Line policy, data the Planning Board has gone over, an existing conditions analysis, retail trends and projections, and a final analysis with policy recommendations. Included are a few specific issues that the City wishes to address:

- Is there enough demand for retail in Birmingham to justify 3.25 linear miles of a Retail Frontage Line?
- What are the future trends and projections for retail that are suitable for Birmingham?
- What mix of uses contributes to a viable, walkable retail corridor?
- Would a tiered system that expands permissible uses on the first floor in certain areas contribute or detract from a walkable downtown?

The RFP lists the Scope of Work:

1. Review the Downtown Overlay District's Retail Frontage Line Boundary. Requirements and the City Manager's Research Directives for the Planning Board.
  - Evaluate the current geographic boundary of the Retail District for modification;
  - Evaluate current properties in the Redline Retail Boundary that were not built to support first-floor retail uses;
  - Evaluate a prohibition of desks, workstations and office related amenities placed within the first 20 ft. depth of window frontage within the Retail District and recommend ordinance language to address the issue.
2. Review current research done by City staff.
3. Provide an Existing Conditions Report.
4. Provide Trends in Retail and Projections for Retail Demand in Downtown Birmingham.
5. Evaluate the Current Boundary of Retail Frontage Line, as well as Proposed Boundaries for a Tiered System of First Floor Uses.
6. Provide Final Analysis with Recommendations for Retail Boundaries and Uses Within Each Boundary.
7. Attendance at Meetings.
  - One (1) initial meeting with the Planning Board to discuss the process and finalize a schedule.
  - One (1) meeting with the Planning Board to provide a preliminary update of findings.
  - One (1) final meeting with the Planning Board to provide a final presentation of findings and recommendations.

Mr. Williams wanted to see the RFP's scope of work expanded to include a meeting where the public would be invited. Also, acknowledge that the bidder will have to work with the Birmingham Shopping District ("BSD").

Mr. Jeffares suggested finding out from retailers in Birmingham who have stores in other communities what is going on in those communities and their approach to zoning.

- Ask if Birmingham should even have a Redline District or just buildings dedicated to retail.
- What businesses would be affected by eliminating desks that are placed in the window?
- Add to number 4: Evaluate Birmingham in a peer group that has a similar lack of public transportation.
- For number 6, question the need for Retail Boundaries.

Mr. Williams thought that participation from retail owners and building owners is important for a successful outcome. Mr. Share added it is incumbent upon City administration to reach out and tell the public this is an excellent time for them to provide their input.

Chairman Clein suggested that Public Participation is listed as an integral part of the Scope of Work. He thought that Public Engagement should be a separate line item and bid separately. He wants to hear what the consultant suggests for Public Engagement.

Mr. Williams hoped to have the BSD show up so that they are part of the solution.

Chairman Clein said if the City Manager wants this board to further review the RFP, it can be brought back at the next meeting. If not, they can take the comments and move forward.

## **Planning Board Minutes July 25, 2018**

### **1. Retail Discussion**

Chairman Clein rejoined the meeting.

Mr. Cowan recalled the Planning Board has been studying the Redline Retail District since January. They brought their findings to the City Commission and asked to bring in a retail consultant. The Planning Dept. has now prepared an RFP for a retail consultant for the Planning Board to review.

On July 11, 2018, the Planning Dept. presented the first draft of the RFP to the Planning Board. The Board's suggestions from that meeting have been incorporated into tonight's draft.

Mr. Boyle did not understand why the word "Line" is included in the title, "Retail Frontage Line Review." Mr. Cowan replied that he went by the definitions from the Zoning Ordinance. Board members concluded that the title should be changed to omit "Line" and reworded to "Downtown Retail Review".

Mr. Williams concluded with regard to SCOPE OF WORK (5) Trends in Retail and Projections, that the scope of retail is changing rapidly and the projection should be for up to 10 years.

Chairman Clein said his only concern with SCOPE OF WORK (7) Coordinate Public Engagement, is they are specifically prescribing how many meetings will be held. Perhaps say that it is a minimum of two public engagement meetings to receive feedback. The suggestion was to substitute "meetings" with "activities." That would give the consultant the opportunity to do different things. Everyone liked that idea.

Mr. Williams pointed out that getting the public to engage is critical to getting public buy-in.

Ms. Ecker provided language for SCOPE OF WORK (7) Coordinate Public Engagement: "The Contractor will be expected to host two (2) public engagement activities to receive input and engage the public related to the Retail Frontage Line policy . . ." Further, for SCOPE OF WORK (7) Attendance at Meetings (c), change "meetings" to "activities."

### **Motion by Mr. Williams**

**Seconded by Mr. Emerine to forward this proposed RFP along to the City Commission for their consideration.**

**Motion carried, 7-0.**

VOICE VOTE

Yeas: Williams, Emerine, Boyle, Clein, Koseck, Ramin, Whipple-Boyce

Nays: None

Absent: Jeffares, Share

**DRAFT City Commission Minutes**  
**August 13, 2018**

**08-224-18 RFP FOR DOWNTOWN RETAIL REVIEW**

Planning Director Ecker reviewed her August 2, 2018 memo to City Manager Valentine.

Commissioner Nickita said this RFP must be refined in order to better align with the Commission's directives to the Planning Board on the issue. He clarified that the issue comes down to retail front particulars, and whether they should be expanded, whether the locations should be altered, whether there should be zoning tiers, and a couple of other considerations.

Commissioner Sherman:

- Concurred with Commissioner Nickita;
- Noted that there was mission creep on this RFP as soon as the Planning Board's July 11, 2018 meeting; and,
- Recommended the Planning Board review the Joint Commission-Planning Board meeting minutes from June 18, 2018 for the specific Commission directives.

Planning Director Ecker:

- Confirmed there are no plans to get rid of the redline retail district, and that the RFP language can be updated to reflect that.
- Stated the Planning Board would like to change the name of the redline retail district.
- Stated that the goal is to have a consultant explore how to strengthen retail within the redline retail boundaries, instead of removing any areas from the boundaries.

Commissioner Nickita said the sole objective of this RFP is to determine how best to organize the redline retail district in order to continue developing a pedestrian-oriented experience in downtown Birmingham.

City Manager Valentine stated that the RFP would be updated by City staff to reflect the Commission's comments and would be brought back before the Commission at the next meeting. If the Commission would also like the Planning Board to review the amended RFP, that could be arranged as well.

Mayor Pro Tem Bordman said the boundaries of the redline retail district should remain the same, that a tiered zoning system might be acceptable, and that the goal is to determine what other kinds of retail uses would suit the 2016 Plan.

August 24, 2018

Mr. Joseph A. Valentine, City Manger  
*City of Birmingham*  
151 Martin Street, P.O. Box 3001  
Birmingham, MI 48012-3001

***Re: Bates Street Extension and North Old Woodward Garage Project***

Dear Mr. Valentine:

At your request, we have made inquiries for estimates to perform the due diligence research necessary to start the analysis with our consultants regarding the above referenced project. In this regard, we have done the following:

1. Environmental. We have been in contact with ASTI Environmental and AKTPeerless whose proposals are attached. The City has had extensive experience working with both of these entities, and we are seeking to commence an environmental study as soon as possible. At the present time, Jeff Haynes is evaluating which of the two proposals is most effective for our purposes. The range of estimates for Phase I and Phase II, though they are slightly different proposals, they range between \$11,500 - \$18,000.

2. Site Survey. We have been in contact with Nowak & Fraus who is currently a consultant to the City and has previously done work on the surveys for the City of Birmingham, including a recent survey for Brookside, which included parts of the proposed project area. They believe they can update their current survey and not exceed \$4,000.

3. Title Search. We have been in touch with Philip Seaver Title Company, who has done title searches for the City in the past. We believe his estimate will be in line with other estimates we have had. We do not have an estimate at the present time, but we believe it will be in the neighborhood of \$3,000 for a title search for the entire area.

4. Appraisal. We have been in contact with Mike Ellis at Value Trends, who the City has used for appraisal work in the past. He has indicated that the appraisal for the entire area, the parking garage and surface lot, would be \$10,000.

At the present time, we are requesting permission of the City Commission to engage the four (4) professionals necessary to perform the due diligence work with respect to this project. We believe that the total cost will not exceed \$40,000. We are seeking the authority of the Commission to expend up to, but not exceed \$40,000 in conducting the four (4) above referenced due diligence examinations.



# Beier Howlett

Mr. Joseph A. Valentine, City Manger  
August 24, 2018  
Page 2

---

In this regard, we plan to delay the appraisal until such time there is a firm "go ahead" date with respect to the project. Therefore, we will not be seeking the appraisal immediately because the appraisal numbers will become stale within six (6) months, and, therefore, we do not believe it is worthwhile to expend the money for it at this time. We are asking for permission and authority to expend it when the opportunity presents itself. The authority granted herein shall not exceed a one (1) year basis from the date the Commission authorizes the expenditure, at which time this authorization will expire and further Commission approval will have to be sought.

If you have any questions, please do not hesitate to contact me.

Very truly yours,

BEIER HOWLETT, P.C.



Timothy J. Currier  
Birmingham City Attorney

TJC/jc

## PROPOSED SUGGESTED RESOLUTION

**APPROVE THE EXPENDITURE OF \$40,000 TO CONDUCT AN ENVIRONMENTAL STUDY, SURVEYS, TITLE SEARCH AND APPRAISALS OF THE NORTH OLD WOODWARD PARKING DECK AND PARKING LOT 5. WITH SAID AUTHORITY TO BE LIMITED FOR ONE (1) YEAR ONLY FROM THE DATE OF THE RESOLUTION AND EXPIRING ONE (1) YEAR FROM THE DATE THEREOF, AND FURTHER TO CHARGE THE AUTOMOBILE PARKING FUND #585-538.001-811.0000 FOR THESE SERVICES.**



# **PROPOSAL FOR A PHASE I ENVIRONMENTAL SITE ASSESSMENT & PHASE II ENVIRONMENTAL SITE ASSESSMENT**

## **SUBJECT PROPERTY**

333 North Old Woodward  
Birmingham, MI 48009

PREPARED FOR City of Birmingham  
151 Martin Street  
Birmingham, MI 48009

PROPOSAL # PF-23095

PROJECT #

DATE August 16, 2018

# PROPOSAL FOR A PHASE I ESA & PHASE II ESA

333 North Old Woodward, Birmingham, MI 48009

AKT Peerless Proposal No. PF-23095

## Introduction

AKT Peerless appreciates the opportunity to present its proposal to conduct environmental services at 333 North Old Woodward, Birmingham, MI.

AKT Peerless will conduct a Phase I ESA to identify recognized environmental conditions that may exist at the property. The results of the Phase I ESA will be used to determine, if necessary, the scope of work for conducting the limited Phase II Site Investigation introduced in this proposal. The specific scope of work for a Phase II ESA is unknown at this time.

However based on conversations with the city, AKT Peerless understands that RECs may be present at the property. Therefore, AKT Peerless proposes to conduct a limited Phase II Site Investigation, and has presented an anticipated cost range for an investigation. These costs are presented for planning purposes; the actual cost will depend on the results of the Phase I ESA.

## Scope of Work

In accordance with accepted industry practice, AKT Peerless' proposed scope of work includes completing:

- Phase I Environmental Site Assessment
- Phase II Environmental Site Assessment

## Phase I ESA

AKT Peerless' Phase I ESA will be based on (1) the scope and limitations of the American Society for Testing and Materials (ASTM) *Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process / Designation E 1527-13* (ASTM Practice E 1527) which outlines good commercial and customary practice for conducting a Phase I ESA, and (2) the United States Environmental Protection Agency (USEPA) Standards and Practices for All Appropriate Inquiries (40 CFR Part 312).

Certain users of the proposed Phase I ESA may be able to satisfy one of the environmental due diligence requirements to qualify for the bona fide prospective purchaser, contiguous landowner, or innocent landowner liability protections available under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, the Superfund Amendments and Reauthorization Act (SARA) of 1986, and the Small Business Liability and Brownfield Revitalization Act (Brownfield Amendments) of 2002.

For the purpose of the proposed Phase I ESA, the Client will be the party that retains AKT Peerless to complete this Phase I ESA. AKT Peerless will not make an independent determination whether its Client is a *User* and intends to use this Phase I ESA to qualify for Landowner Liability Protection (LLP) under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980.

In accordance with ASTM Practice E 1527, a *User* is the party seeking to use ASTM Practice E 1527 to complete an environmental site assessment of the subject property. A *User* may include, without limitation, a potential purchaser of property, a potential tenant of property, an owner of property, a lender, or a property manager. Furthermore, a *User* seeking to qualify for an LLP under CERCLA has specific obligations for completing a successful application of this practice, including the Client and User Requirements described below. AKT Peerless' scope of work does not include an evaluation or completion of these specific user obligations under the ASTM Practice E 1527, unless otherwise noted in this proposal.

The purpose of AKT Peerless' proposed ESA will be to provide an independent, professional opinion of the *recognized environmental conditions* (RECs)<sup>1</sup>, *historical recognized environmental conditions* (HRECs)<sup>2</sup>, and *controlled recognized environmental conditions* (CRECs)<sup>3</sup>, in connection with the subject property, if any. AKT Peerless' Phase I ESA is designed to identify adverse environmental conditions and the possible need for a more definitive study addressing specific areas of concern, if any. The proposed Phase I ESA will be intended to reduce, but not eliminate, uncertainty regarding the potential for RECs, HRECs, and CRECs in connection with the subject property.

#### **Client Requirements**

AKT Peerless requests that the Client provide the following information to facilitate developing a history of the previous uses of the subject property and surrounding area, and to aid the identification of conditions of potential environmental concern in connection with the subject property:

- Environmental records or reports regarding potential or known environmental liabilities associated with the subject property.
- The precise geographic location of the subject property, either by address, legal description, land survey, site map, or assessor's parcel number (APN, a.k.a. parcel identification number, ward/item number, etc.) and its relation to neighboring sites and/or cross streets in close proximity to the subject property.
- Completed and signed "Client Environmental Questionnaire"
- Completed Document Request Form
- Best time to schedule interview
- User Obligations for LLP, if any, in accordance with E 1527 and AAI

In addition, if underground storage tanks (USTs) are known to be present at the subject property, AKT Peerless requests that the client provide (or obtain from the current UST operator) copies of documentation (e.g., permits, registration records, insurance certificates, etc.) regarding the compliance

---

<sup>1</sup> ASTM Standard Practice E 1527-13 defines the term REC as the presence or likely presence of any hazardous substance or petroleum product in, on, or at a property: (1) due to any release to the environment; (2) under conditions indicative of a release to the environment; or (3) under conditions that pose a material threat of a future release to the environment.

<sup>2</sup> ASTM Standard Practice E 1527-13 defines the term HREC as a past release of any hazardous substance or petroleum products that has occurred in connection with the property and has been addressed to the satisfaction of the applicable regulatory authority or meeting unrestricted residential use criteria established by a regulatory authority, without subjecting the property to any required controls.

<sup>3</sup> ASTM Standard Practice E 1527-13 defines the term CREC as a REC resulting from a past release of hazardous substances or petroleum products that has been addressed to the satisfaction of the applicable regulatory authority, with hazardous substances or petroleum products allowed to remain in place subject to the implementation of required controls.

status of on-site USTs relative to currently applicable engineering upgrade requirements for leak detection, corrosion protection, and overspill protection.<sup>4</sup>

### **User Requirements**

In order to qualify for one of the LLPs offered by the Small Business Liability Relief and Brownfields Revitalization Act of 2002 (the “Brownfields Amendments”), a *User* must conduct certain inquiries as described in 40 CFR 312. If the Client intends to use ASTM Practice E 1527 to qualify for a LLP to CERCLA liability, then AAI requires that certain tasks be performed by - or on behalf of – that party. As appropriate, these inquiries must also be conducted by EPA Brownfield Assessment and Characterization grantees. While such information is not required to be provided to the Environmental Professional, AKT Peerless requests that the Client provide such information via a Questionnaire, Document Request Form, and Interviews as such information can assist the AKT Peerless in identifying environmental conditions.

### **Phase I ESA Scope of Work**

In accordance with ASTM Standard Practice E 1527-13, AKT Peerless’ ESA will include the following tasks:

- A reconnaissance of the subject property, as well as observation of the adjoining properties as feasible from the subject property and public right-of-ways, to identify uses or activities that may pose an environmental concern to the subject property, including a review of: (1) general activities occurring at the subject property, (2) existing subject property conditions, and (3) the uses of adjoining properties.
- A review of current environmental database information compiled by a variety of regulatory agencies to evaluate potential environmental risks associated with the subject property, adjoining properties, and other sites that are (1) identified on target lists, and (2) within varying distances of up to one mile from the subject property<sup>5</sup>.
- A review of reasonably ascertainable agency file information associated with known or suspected sites of environmental concern maintained by federal, state and local regulatory agencies, including records of compliance, as appropriate. Files will be reviewed for the subject property. Files for adjoining properties, and nearby sites that may present a concern to the subject property, will be reviewed, but additional fees may apply. If such records are not reviewed, AKT Peerless will provide written justification as to why a review was not completed.
- A review of reasonably ascertainable standard historical sources to develop a history of the previous uses of the subject property and surrounding area back to their obvious first developed uses, or 1940, whichever is earlier; such sources may include aerial photographs, maps (e.g., topographic, fire insurance, plat, etc.), city directories/address indexes, previous environmental assessments, and municipal records, as appropriate.
- A review of reasonably ascertainable records pertaining to regulated waste generation, registered USTs, leaking UST (LUST) incidents, or other environmental events occurring on the subject property or nearby sites that AKT Peerless judges to have a potential to pose an environmental concern to the subject property.
- The consideration of adjoining property use and activity.
- A review of readily available environmental information and reports maintained for the subject property.

---

<sup>4</sup> If a UST system is present, the client should also be prepared to disclose to AKT Peerless the mechanism by which the current or new tank owner/operator will meet financial assurance obligations.

<sup>5</sup> AKT Peerless will use search radii that meet or exceed ASTM’s recommended minimum search distances.

- Interviews with persons, including regulatory agency representatives, who are familiar with past and present uses, activities, and/or environmental concerns at the subject property and adjoining properties.
- Discussion regarding compliance with Activity and Use Limitations (AULs), if any.
- An evaluation of information obtained from the aforementioned sources to determine if RECs, CRECs, or HRECs exist in connection with the subject property.

During the assessment, AKT Peerless will evaluate or consider: (1) the potential for contamination of soil, soil vapor, and groundwater at the subject property, (2) the possible presence of underground or aboveground storage tank systems at the subject property, (3) the possible presence of hazardous substances or petroleum products at the subject property, (4) the proximity of the subject property to known and/or suspected sites of environmental concern, and (5) the historical use of the subject property.

#### **Phase I ESA Report**

AKT Peerless will prepare a written report documenting the data and information gathered during the Phase I ESA. AKT Peerless' report will summarize the known environmental conditions associated with the subject property, if any. Unless advised otherwise by the Client, AKT Peerless will include recommendations for further investigation of the noted environmental concerns.

The conclusions and recommendations will reflect AKT Peerless' best professional judgment, and will be based upon the conditions observed and information made available at the time of the assessment.

Unless requested otherwise, AKT Peerless will provide an electronic version of the final report. Additional reports, if any, will be provided at a rate of \$75 per copy.

#### **Phase II ESA**

Based on conversations with the city, AKT Peerless understands that RECs may be present at the property. Therefore, AKT Peerless proposes to conduct a limited Phase II Site Investigation to evaluate any RECs, and has presented an anticipated cost range for an investigation. The anticipated cost range is \$8,000 to \$15,000. These costs are presented for planning purposes; the actual cost will depend on the results of the Phase I ESA.

#### **Schedule**

AKT Peerless will implement work immediately and will provide its Phase I ESA within three to four weeks of your authorization to proceed. AKT Peerless will provide its Phase II ESA within four to five weeks after completion of the Phase I ESA.

#### **Fees**

AKT Peerless estimates the fees and expenses for this project will be \$10,800-\$17,800. All subcontracted services and outside project costs will be billed at a cost plus 15 percent. The estimated costs to provide the services described in this proposal are shown in the tables below.

**Phase I ESA Estimated Costs**

ACTIVITY	COST
Phase I ESA	\$2,800
<b>TOTAL</b>	<b>\$ 2,800</b>

**Anticipated Phase II ESA Estimated Costs**

ACTIVITY	COST
Projected Range	\$8,000-\$15,000
<b>TOTAL</b>	<b>\$ 8,000-\$15,000</b>

The referenced fees include only those activities described herein. Additional fees will be incurred and invoiced if additional sample analysis is requested by the client, deemed necessary to completely evaluate the site conditions or if other regulatory reporting activities are necessary. AKT Peerless will notify the client immediately with knowledge of any proposed scope of service modifications but no additional activities will be conducted without prior written client authorization.

Costs associated with investigating any additional recognized environmental conditions that may be identified upon completion of the Phase I ESA, but not specifically addressed by the proposed scope of work, are not included in this proposal.

**Limitations**

If the Client chooses to alter the proposed scope of work, the Client shall advise AKT Peerless, and AKT Peerless shall propose alterations to the scope of work and related fees. The Client will authorize AKT Peerless in writing to conduct more or less work than defined in this proposal.

AKT Peerless will provide these services using its commercially reasonable best efforts consistent with the level and skill ordinarily exercised by members of the profession currently practicing under similar conditions.

AKT Peerless will make reasonable efforts to determine if USTs or related equipment (collectively referred to as UST systems) are or have been present at the subject property. AKT Peerless defines reasonable efforts as obtaining and evaluating information from visual observations of unobstructed areas and from the historical sources described above in this proposal. AKT Peerless recognizes, and urges users of the proposed assessment to acknowledge, that the accuracy of our conclusions relative to the on-site presence or use UST systems directly corresponds to the presence of obstructions (e.g. snow, densely growing vegetation, standing water, pavement, equipment, structures, storage, debris, etc.) at the time of the reconnaissance, or to our receipt and evaluation of incorrect or incomplete information.

Unless specifically noted in the proposed scope of work, AKT Peerless will not evaluate any potential environmental conditions (i.e., further areas of possible business/environmental concern and/or liability) that are outside the scope of ASTM Practice E 1527. Examples of such non-ASTM potential environmental conditions that are beyond the scope of this Phase I ESA include cultural and historic resources, ecological resources, endangered species, health and safety, high-voltage power lines, indoor air quality, industrial hygiene, lead-based paint, lead in drinking water, moisture intrusion, mold, noise

pollution, radon, asbestos, and/or regulatory compliance. If the Client requires any of these services, please contact AKT Peerless to provide a proposal to conduct these services under a separate scope of work.

AKT Peerless' scope of work is limited to investigating the past uses of the subject property, though some historical information is also reviewed for adjoining properties, but does not include investigating past uses of surrounding or nearby properties.

Drilling costs presented in this proposal assume that there will be no significant obstructions and delays (e.g., encountering cement rubble or boulders, sandy soil heaving into the augers, and inclement weather). If delays occur, AKT Peerless will notify the Client immediately, and AKT Peerless will revise the scope of work and fees appropriately.

Costs associated with investigating any additional recognized environmental conditions that may be identified upon completion of the Phase I ESA, but not specifically addressed by the proposed scope of work, are not included in this proposal.

This proposal and the associated cost estimate are valid for 30 days. After 30 days have elapsed, AKT Peerless reserves the right to alter the scope of work and estimated cost. Changes in the scope of work and the estimated price would be dependent on potential changes in the amount of available site information, regulatory requirements, seasons, economic conditions, etc. If necessary, AKT Peerless will provide an altered scope of work and the associated price estimate for approval prior to initiating project activities.

This proposal, including: descriptive material, pricing, discussion of proposed methods to be used or implemented by AKT Peerless, and related information set forth herein are confidential; these items constitute trade secrets of and are proprietary to AKT Peerless. AKT Peerless is submitting this information for informational purposes only, based on the express understanding that it will be held in strict confidence; will not be disclosed, duplicated, or used, in whole or in part, for any purpose other than the evaluation of this information; and will not, in any event, be disclosed to third parties, without prior written consent of AKT Peerless.

## **Terms and Conditions**

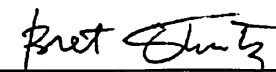
By signing this proposal, the Client agrees to the terms and conditions presented in Appendix A. AKT Peerless will prepare and render invoices for work performed to date on a monthly basis. All invoices shall be payable within thirty (30) days of invoice date.



## PROPOSAL ACCEPTANCE FOR PHASE I ESA & PHASE II ESA

333 North Old Woodward, Birmingham, MI 48009

This proposal submitted by:



Bret Stuntz

Vice President, Economic Development

Proposal submitted on:

August 16, 2018

Please authorize the proposal by executing below:

Proposal amount:

\$10,800-\$17,800

Retainer amount:

(waived)

Client contact:

Mr. Joe Valentine

City of Birmingham

151 Martin Street

Birmingham, MI 48009

AKT Peerless Proposal No.

PF-23095

AKT Peerless Project No.

Appendix A:

Terms and Conditions

Acceptance:

(Signature)

City of Birmingham

Print Name:

Title

Date

## **Appendix A**

### **Terms and Conditions**



## AKT PEERLESS TERMS AND CONDITIONS

The following Terms and Conditions govern the services (referred to herein as “work” or “services”) to be performed by AKT Peerless (“we”, “us”, “our”, “AKT Peerless” or “Consultant”) for you (“you”, “your” or “Client”). By accepting the proposal or authorizing all, or any portion, of the work to be performed by Consultant, Client shall be deemed to accept these terms and conditions, as if set forth in full, in the proposal to which these terms and conditions apply (when accepted, the proposal and these Terms and Conditions constitute the “Agreement” (hereinafter, this “Agreement”).

1. **Performance:** Consultant will provide advice, consultation and other environmental services to Client in a manner consistent with the level of care and skill ordinarily exercised by members of Consultant’s profession currently practicing under similar conditions and in the same locality. Consultant shall use commercially reasonable best efforts to comply with all federal, state, and local statutes, codes, laws and administrative regulations relating specifically to the services to be performed by Consultant, including, but not limited those related to environmental, fire, safety and health matters. Finally, it is Consultant’s obligation to have marked by appropriate utility companies the location of all underground utilities or improvements.

AKT Peerless prides itself in rapid responses to client inquiries. Therefore, we make extensive use of e-mail and facsimile machines to communicate with our clients. We will communicate with you via the e-mail address and/or facsimile number on file for you. In the case of facsimiles, please let us know if you would like us to call first before faxing. At present, AKT Peerless does not use any encryption programs for our outgoing e-mail. All written, telephone, facsimile or email communication between the Client and AKT Peerless shall not be considered unwanted commercial speech (e.g. “spam”) unless written notification is provided.

2. **Client Cooperation:** Client shall use commercially reasonable best efforts to cooperate fully with Consultant in meeting Consultant’s responsibilities herein. Such cooperation shall include but shall not be limited to providing: 1) access to the real estate, buildings or other property, 2) such surveys and other records concerning the subject matter of the project, and 3) all communications with regulatory agencies and other parties that may have an interest related to the project as may be in Client’s possession or under its control. Client shall provide Consultant with a written description of all information required to enable Consultant to perform its services, including documents, data and other information concerning the presence of any hazardous, radioactive, toxic, irritant, pollutant or otherwise dangerous substances or conditions that Client knows or has reason to believe may be located at, on or under the property. Consultant shall not be liable for any incorrect advice, judgment, recommendation, finding, decision or conduct based upon any inaccurate or incomplete information supplied, or withheld, by Client, or errors or incorrect statements of governmental agencies or third parties relied on by Consultant. Client agrees to provide an on-site contact to identify utilities and improvements. Client acknowledges that, in the event any subsurface investigation is required, it is inevitable that some damage or destruction to the current property conditions shall occur. Repair of concrete and/or surface structures is not included as part of this proposal and Consultant shall have no liability to repair same, except as may be specifically set forth in the proposal.

3. **Payment:** The Client agrees to pay Consultant for all services and expenses, according to this agreement, through the termination or completion date, plus all interest, and expenses or costs incurred for early termination as set forth below and all costs of collections, including reasonable attorney fees. Any work requested hereunder, either in the proposal or subsequent change orders will be performed at the prices agreed to in the proposal and/or according to the provisions of the Consultant’s standard rate schedule. If requested, prior to performing any services AKT Peerless may require a retainer (“Retainer”). AKT Peerless shall hold the Retainer and apply it to the final invoice from AKT Peerless to the Client (with any excess left over, immediately returned to the Client). Consultant reserves the right to amend the rate schedule in advance of any future work. Client understands that outside services contracted and paid for by Consultant which are included in the proposal will be billed to the

Client at cost plus fifteen percent (15%). All invoices submitted to Client shall be payable within thirty (30) days of issuance by Consultant. Any payment not received within that period will bear interest at the rate of one and one half percent (1.5%) per month thereafter. Client agrees that it shall pay Consultant at Consultant's then prevailing rate for all time spent on behalf of Client in preparation for any court, administrative, or other legal proceedings arising out of the services provided under this Agreement, whether or not Consultant is subpoenaed to appear at such proceeding by Client or any third party. In the event that payment is not received by Consultant on any invoice within thirty (30) days of the issuance of the invoice, Consultant may then, by written termination notice to Client, terminate this Agreement (and any other existing contracts between Client and Consultant) and apply any existing Retainer to outstanding invoices without incurring any liability to Client; such termination by Consultant shall be effective immediately upon Consultant's issuance of the termination notice. Any objection to any invoice must be made by the Client, in writing, within ten (10) business days after the invoice is issued by Consultant, or the objection shall be deemed waived.

4. **Termination:** In addition to any other rights of Consultant to terminate this Agreement, Consultant may terminate this agreement if, in its sole discretion, it believes that any request from Client may violate applicable professional standards, law, or regulations and the parties are unable to reach a satisfactory resolution of the issue. Additionally, this agreement may be terminated by either party upon thirty (30) days written notice, unless such termination shall irreparably harm either party. In the event that Client terminates this agreement prior to the completion of Consultant's work, Client agrees to pay Consultant for the work that has been performed through the date of termination and for efforts that are expended by Consultant to wrap up its work in a professional, businesslike manner (including, without limitation, costs and fees for demobilizing from a site, for proper handling and disposal of samples, for organization of files and reports and the like) and in addition, Client shall pay Consultant an additional amount equaling ten percent (10%) of the agreed initial estimated price, as a reimbursement for loss of opportunity. In no event shall any payment pursuant to this section 4 exceed the original agreement amount by ten percent (10%).

5. **Indemnification:** Client shall defend, indemnify, and hold harmless Consultant, its subcontractors, and their respective officers, directors, shareholders, members, attorneys, agents and employees from and against any and all liability, claims, demands, lawsuits, losses, damages, penalties, expenses and costs, including reasonable attorney fees ("Damages"), whether direct, indirect or consequential: that arise as a result of Client's negligence, gross negligence, or willful misconduct. All claims brought against Consultant, relating to the services provided by Consultant or otherwise, whether based upon contract, tort, statute or otherwise, must be brought within one (1) year from completion of the contracted services or they shall be forever barred. The Client acknowledges that Consultant has neither created nor contributed to the creation or existence of any hazardous, radioactive, toxic, irritant, pollutant or otherwise dangerous substance or condition at the real estate as to which Client has requested Consultant's services.

Consultant agrees to defend, indemnify, and hold harmless Client, its subcontractors, and their respective officers, directors, shareholders, members, attorneys, agents and employees from and against any and all Damages, whether direct, indirect, or consequential arising out of, or in any way connected with Consultant's negligence, gross negligence or willful misconduct in the performance of services under this Agreement.

In addition to the other limitations contained in this section 5 and elsewhere in these Terms and Conditions, a party's obligation to the other hereunder shall be limited to the party's relative fault among all persons or entities that may have contributed to or caused the Damages at issue, as determined by a court of competent jurisdiction or as the allocation of fault may otherwise be agreed by the parties.

The Client understands that its incentive services involve incentive programs, not entitlement programs, and, as such, approval of any incentive benefit is not guaranteed. Strict compliance with the applicable incentive legislation is needed in order to even qualify for consideration by the applicable government agency. This compliance is the responsibility of the Client. Tax increment finance tables involve projected revenue that is highly dependent on post-development taxable values determined through the normal assessment process. The Client



agrees to indemnify and hold harmless AKT Peerless from all claims, losses, expenses, fees including reasonable attorney fees, costs, and judgments that may be asserted against the Client arising out of this Agreement, or the Client's application and/or qualification for incentive programs (provided, however, this indemnity shall not apply to claims arising out of the gross negligence of AKT Peerless or its employees or agents). The Client is strongly encouraged to seek legal advice, at the Client's own expense, on all legal matters or questions that may arise regarding these incentives and to have any documents prepared by AKT Peerless for submission to any federal, state or municipal government or agency reviewed by competent legal counsel before submission. The Client is strongly encouraged to seek accounting services, at the Client's own expense, on all tax matters or questions that may arise regarding these incentives and to consult with the Client's accountant prior to submission of any tax forms. In no event shall the liability of AKT Peerless under this Agreement for any claim whatsoever exceed amounts paid by Client to AKT Peerless for the particular task giving rise to such claim. Further, in the event AKT Peerless is successful in obtaining governmental incentives for Client, they require strict compliance after approval of same to obtain their benefits. Certain failures to comply on an ongoing basis can terminate or limit the availability of the full benefits received, require repayment or have negative tax consequences. AKT Peerless assumes no liability for post award actions of Client.

6. **Insurance and Limitations of Liability:** Consultant and its subcontractors shall procure and maintain at its own expense, during the term of this Agreement, the following insurance, with limits of liability at least as set forth below, and upon such terms and conditions as are customary in the industry:

- (a) Comprehensive general liability insurance in the amount of \$1,000,000 combined per occurrence and \$2,000,000 combined per aggregate;
- (b) Professional liability (errors and omissions) insurance in the amount of \$1,000,000 combined per occurrence and \$2,000,000 combined aggregate limit;
- (c) Pollution liability insurance in the amount of \$1,000,000 per occurrence and \$2,000,000 aggregate;
- (d) Automobile liability insurance in the amount of \$1,000,000 combined single limit for bodily injury for property damage; and
- (e) Workers' Compensation insurance complying with the laws of the state(s) in which Consultant's services are performed hereunder.

Notwithstanding anything contained herein to the contrary, Consultant's liability to Client for any claimed Damages arising out of or in any way related to this Agreement or the services provided by Consultant shall be limited to the amounts available under the above insurance policies. However, in no event shall the liability of AKT Peerless for any redevelopment incentive or tax credit service under this Agreement for any claim whatsoever exceed amounts paid by Client to AKT Peerless for the particular task giving rise to such claim. Consultant will not be responsible for any claims arising out of the negligence, gross negligence, or willful misconduct by Client or by any person or entity not under the direct control of Consultant. In no event shall Consultant have any liability for any claims (whether based upon contract or tort) for any loss of business opportunity, profits or any special, incidental, consequential or punitive damages. In the event Client perceives that it has suffered any Damages as a result of the services provided by Consultant or in any way arising out of or related to this Agreement, Client agrees to provide Consultant with reasonable notice of and an opportunity to cure the claimed Damages, prior to or within ten (10) days of discovery of same. Failure to so provide said notice and opportunity to cure shall act as an absolute bar to any recovery for any Damages. Unless an emergency otherwise dictates, Consultant shall have no more than thirty (30) days after receiving notice as provided herein to cure any defect for which Client provides notice hereunder, unless such cure requires additional time to implement or complete, in which case Consultant shall be provided a commercially reasonable amount of time to complete the cure. Failure by Consultant to cure any defect as provided herein shall in no event bar or preclude any defense to which Consultant may otherwise be entitled. Finally, Consultant shall have no liability or obligation to Client for Damages greater than the minimum requirements as set forth under the applicable state law and the most cost effective and reasonable remedy provided thereunder in consideration of all relevant facts.

Consultant shall not be liable to Client for failure to comply with the terms of Section 1 unless such non-compliance is due to the negligence, gross negligence, or intentional misconduct of Consultant. Client acknowledges that Consultant has made no representations, express or implied, and no warranty or guarantee is included or intended in any report, opinion, or document regarding the results to be achieved upon completion of the services except as set forth herein. In the case of incentives work, Client understands that the decision to grant any incentives is wholly that of the applicable governmental agencies.

7. **Confidentiality:** Consultant shall retain as confidential all information, samples and data furnished to it by Client or collected by it during the course of the work performed under the Agreement or any amendment thereto. Such information shall not be disclosed to any third party except as directed by Client or as required by law, regulation or court order. Prior to making any disclosure required by law, regulation or court order, Consultant shall notify client of the obligation to make such disclosure and provide Client with a reasonable opportunity to lawfully challenge the need to make such disclosure. Any such challenge shall be performed at Client's sole cost and expense, including but not limited to any payments to Consultant for its time spent assisting in such challenge. Consultant shall retain all reports generated for a period of three (3) years after completion of any project. Client authorizes Consultant to destroy any file or retain portions thereof, in the discretion of Consultant after said time. Any samples obtained by a Consultant under this Agreement will be discarded within thirty (30) days after laboratory analyses unless another time period is mutually agreed to in writing.

8. **Final Product:** Client acknowledges that any environmental report is merely a "snapshot" of the subject property at the time the investigation was performed and any material change in the use or condition of the property shall directly terminate any further obligation of Consultant for the accuracy of the report. In no event shall this report be relied on for more than one-hundred eighty (180) days after the date of issuance. If at any time after the issuance of the final report, Client becomes aware of any information previously unknown that would materially alter the findings or conclusions contained therein, Client agrees to immediately provide Consultant with same and allow Consultant to revise the report accordingly, except that Consultant shall not be required to make such revisions if such information was withheld by Client in violation of this Agreement. Client further understands that the failure to discover hazardous, radioactive, toxic, irritant, pollutant, petroleum or otherwise dangerous substances, products, or conditions does not guarantee that these materials do not exist at the property, and that hazardous materials may later be found on such a site. Client agrees that Consultant is not responsible for any failure to detect or clean up the presence of hazardous materials unless: (1) the failure to detect same is caused by Consultant's negligence, gross negligence or willful misconduct; and (2) Client suffers Damages as a result. Client agrees that any Damages related to said failure shall be further limited by the provisions of this Agreement.

All tax increment finance projections and other incentive related documents shall be supplied in paper or printable document file (PDF) format. The source documents are considered work product and will only be released at the sole discretion of AKT Peerless. If source documents are released, it is under a one (1) month license only to the Client who shall not modify, alter, copy or distribute the source documents without the expressed written permission of AKT Peerless and shall destroy or return the source documents and all copies to AKT Peerless upon expiration of the license.

AKT Peerless ordinarily retains client files for a reasonable period of time after the conclusion of a matter. If requested, AKT Peerless will provide these files to you (excluding our notes and other work products) at the conclusion of the matter upon your request. If you do not request the files, after a reasonable period of time, unless you advise us in writing to the contrary, we shall be free to dispose of them. If you request that we turn our files over to you or to another firm and you have not fully satisfied all of your obligations to us under this agreement, including the payment of all fees and costs, we shall be entitled to hold the files as security for performance of those obligations.

9. **Lien:** In order to secure repayment of the amounts required hereunder, Consultant hereby notifies client that it intends to utilize any rights it may have under Michigan's Construction Lien Act (MCLA 570.1101 *et seq*) or

such similar provision which may be in force in the jurisdiction where the work under the Agreement is performed. Client further agrees to execute and deliver to Consultant any and all documents necessary and/or grants Consultant power of attorney to execute and record on their behalf all documents in order to comply with the requirements of the Act.

10. **Changes:** The parties acknowledge that neither this Agreement nor any proposal may be modified except upon written agreement by both parties. If changes occur in the project, or events are discovered during Consultant's work, these events may require alterations to the scope of work. If such changes are required by changes in the statutes, regulations, governmental authorities or the interpretations thereof, this agreement and proposal shall therefore be amended to incorporate those changes and the compensation to Consultant shall be adjusted accordingly. If the Client alters the scope of work proposed by Consultant, Consultant shall have no liability whatsoever for any Damages based upon the final product, if in the performance of the Consultant's original proposal; the claimed defect could have been discovered. Client further acknowledges that the costs in the proposal are merely estimates. These estimates are made by Consultant on the basis of its experience, qualifications, and professional judgment, but are estimates and not guaranteed.

11. **Delays:** Consultant shall use commercially reasonable best efforts in performing the services under this agreement. However, Consultant shall not be responsible for any delay or failure to perform its services if there is any failure to provide or delay in providing Consultant with necessary access to the properties, documentation, information, materials or contractors retained by Client or its representatives, or due to any act of God, labor trouble, fire, inclement weather, act of governmental authority or the failure to gain cooperation of any necessary third party or any other act beyond the control of Consultant. In the event said events do occur, then the time for Consultant's for completion of this Agreement shall be extended by a commercially reasonable period under the circumstances. If any delay is caused by either the acts or omissions of Client or by any third party (including Governmental agencies) Consultant shall be entitled to additional compensation, based upon standard rates, for the additional efforts required in obtaining said approvals, documentation or access.

12. **Reliance and Reliance Letters:** The services performed and issuance of any report which is to be generated is for the sole benefit of Client and no other individual or entity may therefore rely on same without the express written permission of Consultant. Consultant acknowledges that, from time to time, Client may require that Consultant issue to Client's financial institution or other third party a Reliance Letter. Consultant agrees, at no additional cost, to provide same, so long as it is subject to these Terms and Conditions and that said request is made within one hundred eighty (180) days of the final report. Client agrees that it shall provide a copy of these Terms and Conditions to its financial institution or other third party and that the financial institution shall accept same and shall acknowledge that any such reliance shall be effective only as to the condition of the property on the date the final report was written. Consultant shall not be required to provide reliance on any report older than 180 days. In the event that Consultant does agree to provide a Reliance Letter, the party seeking reliance must agree in writing to be bound by these Terms and Conditions. Any reliance shall only be as of the date the report was published. For reliance requests based upon these reports, Consultant's liability for any and all Damages in any way related to the services provided by Consultant, either directly or indirectly, whether by agreement or otherwise, shall be limited to the cost of the services provided by Consultant hereunder. In accepting this limitation, Client and any other relying party shall acknowledge that ASTM E-1527, Section 4.6, states that any Phase I Environmental Site Assessment older than one hundred eighty (180) days is no longer valid and therefore acknowledges that this reduced limitation of liability is reasonable.

Mailing Address:  
P.O. Box 2160  
Brighton, MI 48116-2160

800 395-ASTI  
Fax: 810.225.3800

[www.asti-env.com](http://www.asti-env.com)

**Sent Via Email Only**

August 23, 2018

Mr. Joe Valentine  
**City of Birmingham**  
151 Martin Street  
Birmingham, MI 48009

*RE: Phase I and Phase II Environmental Site Assessment, 333 N. Old  
Woodward, Birmingham, Michigan (ASTI File TJW082318-1a)*

Dear Mr. Valentine:

Thank you for your interest in the environmental services offered by ASTI Environmental (ASTI). Per my conversation with Mr. Jeffrey Haynes, this letter is a cost quotation to conduct a Phase I Environmental Site Assessment (ESA) and limited Phase II Investigation for the above referenced property. It is our understanding that the site is currently used for a parking deck and surface parking lot and will be used in the future for mixed use development. It is our understanding that the Phase I ESA is to be used by you to qualify for the innocent landowner defense to the Comprehensive Environmental Response, Compensation, and Liability Act liability.

Please note that various lenders have specific requirements affecting the scope of a Phase I investigation and the format of the final report. Since you have not indicated a lender for this project, this proposal is not intended to comply with the requirements of any specific lender. If a lender for this project has specific requirements, the scope of this investigation can be changed prior to our site visit. Changes in scope required by a lender may result in additional costs.

**Phase I Environmental Site Assessment**

ASTI will complete a site assessment at the above site according to the *Standard Practice for Environmental Site Assessments: Phase I Environmental Site*



*Assessment Process* issued by the American Society for Testing and Materials - E1527-13, which includes a Tier I Non-Invasive Screening Assessment for potential vapor encroachment conditions (pVECs).

#### *Report*

At the completion of the assessment, one electronic copy of the final report will be provided. The report will include an outline of the work completed during the investigation, a discussion of the items identified during the investigation, the results of the investigation, and appended copies of all supporting materials.

If you require a paper copy of the report, this must be identified before delivery of the report. After that time, additional paper copies of the report can be provided at a cost of \$80 per copy. Meetings or additional copies of the report are not included in the project costs below, but can be provided on request.

#### **Phase II Investigation**

Based on the results of the Phase I ESA data review, ASTI will collect samples from the subject property. The objective of this investigation is to identify if impacts have occurred from historic site activities that have been identified as recognized environmental conditions. This report is intended to describe the existing soil and groundwater conditions at a site.

The number and location of sample borings will depend on the results of the Phase I ESA and cannot be accurately determined at this time. However, based on similar properties, this proposal assumes that ASTI will complete 4 to 6 soil borings around the subject property. Borings will be completed to determine site lithology and to collect samples for analysis. This proposal assumes that all borings will be advanced to 12 feet below grade, however, actual depth will depend on historical site usage and site lithology. This proposal assumes that all borings will be completed in the existing parking structure and does not include repair to floors or other surfacing materials.

Samples will be selected from each boring for analysis. This proposal assumes 4 to 6 samples will be analyzed for the following compounds. Soil sampling and analysis will be conducted according to USEPA and MDNRE guidelines. All samples collected from each of the borings will be visually inspected and scanned with a photoionization detector (e.g. PID and/or OVA).

#### Sample Analysis - Soils

- Volatile Organic Compounds (VOC);
- Polynuclear aromatic hydrocarbons (PNA);
- Cadmium, chromium and lead

If groundwater is encountered in any boring, ASTI may substitute a groundwater

sample for a soil sample based on historical site usage and site conditions, and will conduct the same analysis.

### *Report*

At the completion of the assessment, one electronic copy of the final report will be provided. The report will include an outline of the work completed during the investigation, a discussion of the items identified during the investigation, the results of the investigation, and appended copies of all supporting materials.

If you require a paper copy of the report, this must be identified before delivery of the report. After that time, additional paper copies of the report can be provided at a cost of \$80 per copy. Meetings or additional copies of the report are not included in the project costs below, but can be provided on request.

### **Schedule**

The Phase I ESA final report will be provided 3-4 weeks after project award, assuming that the materials requested below are available. The Phase II report will be provided 6-7 weeks after project award (based on conducting site investigation services before completion of the Phase I report). Total project duration is assumed to be 7 weeks.

The results of this assessment and any material provided by you will be kept confidential and will not be provided to third parties without your prior written authorization.

### **Required Materials**

In order to initiate the project, we require authorization in the spaces provided at the end of this proposal. We will schedule this project upon receipt of a signed copy of this proposal or a purchase order referencing this proposal.

In order to begin site review activities for this project we request a site plan or mortgage survey, a legal description, the applicable Sidwell No., and a contact for site access. In addition, ASTI will provide an ASTM E1527 User Questionnaire and a Seller's Questionnaire. Additional information may be requested from the User, Site Manager, and/or Seller representative during the Phase I investigation.

### **Fee**

Our fees for conducting the services discussed in this proposal are provided below. The Phase I services will be provided on a fixed-fee basis. The Phase II cost is an estimate and will be provided on a time and materials basis for actual work performed. Any additional work outside the above scope of services will be performed at our standard fees, however, any additional work will not be performed without your prior authorization. This proposal is subject to the terms and conditions contained in Attachment A, which is made part of this agreement.



Service

Phase I Site ESA

Phase II Investigation

Fee

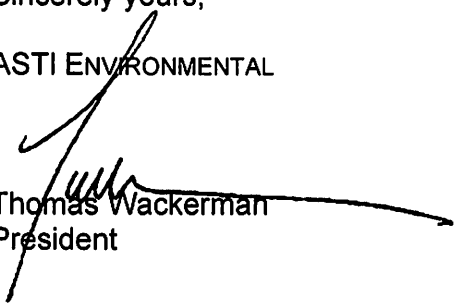
\$ 2,000

\$5,000 to \$9,500

Thank you again for your interest in ASTi. If you have any questions or comments, please do not hesitate to call me at **800.395.ASTi**. We greatly appreciate the opportunity to work with you on this project.

Sincerely yours,

ASTi ENVIRONMENTAL

  
Thomas Wackerman  
President

Client Authorization

ASTi File TJW082318-1a

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Title

Date\_\_\_\_\_

For: **City of Birmingham**

☐ C Corporation

☐ S Corporation

☐ LDHA

☐ Other:

☐ PLLC

☐ LLC

☐ LP

Federal ID Number\_\_\_\_\_

Phone Number\_\_\_\_\_

Email\_\_\_\_\_

## **Attachment A**

### **Terms and Conditions**

ASTI Environmental (CONSULTANT) shall perform for City of Birmingham (CLIENT) the services described in the proposal titled *Phase I and Phase II Environmental Site Assessment, 333 N. Old Woodward, Birmingham, Michigan*, and dated August 23, 2018 by CONSULTANT (PROPOSAL) which is made a part of this agreement (ASTI File No. TJW082318-1a). Such services shall be performed during the period mutually agreed upon by CLIENT and the CONSULTANT, and as described in the PROPOSAL.

The services will be performed on behalf of and solely for CLIENT'S exclusive use and not for others. The services performed by CONSULTANT shall be conducted in a manner consistent with the level of care and skill ordinarily exercised by members of the consulting profession in the same locale and acting under similar circumstances and conditions. Except as set forth herein, CONSULTANT makes no other representation, guarantee, or warranty, expressed or implied, in fact or by law, whether of merchantability, fitness for any particular purpose or otherwise, concerning any of the services which may be furnished by CONSULTANT to CLIENT.

Reports, maps, data, or any pertinent information or documents prepared or assembled by CONSULTANT under this Agreement are confidential, and CONSULTANT agrees that they shall not be made available to any individual or organization without prior written approval of CLIENT. CONSULTANT retains the right to destroy all historic project materials according to the time frames established by CONSULTANT in its document destruction policy.

The CLIENT shall grant or obtain a right of entry for CONSULTANT, its agents, staff, consultants, and contractors or subcontractors, for the purpose of performing and with the right to perform all acts, studies, evaluations, pursuant to the agreed services. CONSULTANT personnel will not access those portions of the subject property or adjacent properties where prearranged access has not been granted, or where personnel health and safety issues preclude entry.

CLIENT will provide CONSULTANT all information regarding the subject property that is known to or reasonably ascertainable by CLIENT, which may be necessary for completion of the services to be performed by CONSULTANT. Such information includes all records of any environmental assessment activities undertaken previously at the subject property. If, during the performance of these services, information within the description of the requested information referenced in the attached PROPOSAL becomes available to the CLIENT, the CLIENT shall provide prompt, full and complete disclosure to CONSULTANT of such new information if it could affect CONSULTANT's performance of its services or could pose potential hazardous conditions or risk to the health or safety of CONSULTANT's employees, agents, and subcontractors.

#### **CONSULTANT COMPENSATION**

Unless otherwise indicated the PROPOSAL, billings will be based on actual accrued time, reimbursable, and expenses incurred and will include additional costs for all applicable sales and use taxes. Unless otherwise indicated in the PROPOSAL, progress billings will be provided to the CLIENT at least monthly. For performance of the services described in the PROPOSAL, CLIENT shall pay to CONSULTANT according to the fees provided for in the PROPOSAL, payable upon receipt of invoice. CONSULTANT reserves the right to increase the unit rates included in this Agreement on the anniversary(s) of the effective date of this agreement.

Unless otherwise indicated in the PROPOSAL, the following credit terms will apply to the CLIENT: all invoices are net 30 days. An additional 1.5% monthly service charge will be applied to all delinquent accounts. In the event CONSULTANT is required to pursue collection of any amount due from CLIENT in connection with the scope of services contained in this letter, then CLIENT agrees to payment of all reasonable costs and attorney fees incurred in such collection efforts. CLIENT agrees Washtenaw County, Michigan will be proper venue for collection action.

Unless otherwise stated in the PROPOSAL, notice of cancellation of these services must be provided to CONSULTANT within 5 business days, and upon cancellation CLIENT will be charged 10 percent of PROPOSAL amount or at our standard fees for actual time, reimbursables and expenses incurred, whichever is greater. The PROPOSAL will remain in effect for a period of 30 days.

#### ***SITE ACTIVITIES***

CONSULTANT will take reasonable precautions to minimize damage to the site due to the performance of its operations, but it shall be understood by CLIENT that in the normal course of performing these operations some damage may occur. CLIENT accepts the fact this is inherent to our work and will not hold CONSULTANT liable or responsible for any such effect, damage or alteration. Except as provided in the PROPOSAL, the costs of restoration for any damage resulting from CONSULTANT's operations are not included in the fees for the attached proposal. Upon request, and at CLIENT's sole cost and expense, CONSULTANT will provide additional services to restore the site to conditions reasonably similar to those existing prior to CONSULTANT's operations.

Unless otherwise indicated in the PROPOSAL, all site work is expected to be performed under Level D health and safety conditions. If the work is upgraded to Level C or higher, all pricing will be re-negotiated.

#### ***DISCOVERY OF UNANTICIPATED HAZARDOUS MATERIALS OR CONDITIONS***

CONSULTANT and the CLIENT agree that the discovery of unanticipated hazardous materials or conditions may make it necessary for CONSULTANT to take immediate measures to protect the health and safety of its employees, agents or subcontractors. CLIENT agrees to pay the reasonable costs of such protective measures as well as any equipment decontamination or other costs incident to the discovery of unanticipated hazardous materials or conditions. CONSULTANT will notify CLIENT of such discovery as soon as practically possible.

#### ***LIMITATION OF LIABILITY***

Except for circumstances caused by the willful misconduct of CONSULTANT, any and all liability or claim for damages asserted against CONSULTANT by CLIENT, whether based upon contract, tort, breach of warranty, professional negligence, or otherwise, including claims against CONSULTANT's directors, officers, shareholders, employees, and agents, is limited to 50% of CONSULTANT's available insurance coverage, not to exceed \$1,000,000. CONSULTANT is not responsible for any special, incidental, indirect, or consequential damages (including lost profits) incurred by CLIENT as a result of CONSULTANT's performance or nonperformance of services. Any claim shall be deemed waived unless made by CLIENT in writing and received by CONSULTANT within one (1) year after completion of the services with respect to which the claim is made.

CLIENT shall indemnify CONSULTANT from and against claims associated with or arising out of hazardous substances or other environmental conditions at the subject property, except to the extent of any release of a hazardous substance caused by CONSULTANT at the subject property.

#### ***COMPLIANCE WITH LAWS***

CONSULTANT shall observe and abide by all applicable laws, ordinances, and regulations of federal, state and local governments, and any subdivision thereof, and the rules and regulations of any lawful regulatory body acting thereunder in connection with the service performed hereunder.

CLIENT represents that CLIENT possesses all necessary permits and licenses required for the continuation of CONSULTANT's activities at the site.



22725 Orchard Lake Road  
Farmington, MI 48336  
T (248) 615-1333  
[www.aktpeerless.com](http://www.aktpeerless.com)

August 16, 2018

Mr. Joe Valentine  
City of Birmingham  
151 Martin Street  
Birmingham, MI 48009

Subject: Proposal to Conduct a Phase I Environmental Site Assessment and Phase II Environmental Site Assessment  
333 North Old Woodward  
Birmingham, MI 48009  
Proposal No. PF-23095

Mr. Valentine:

AKT Peerless appreciates the opportunity to present the attached proposal to conduct a Phase I Environmental Site Assessment (ESA) and Phase II ESA at the redevelopment project located at 333 North Old Woodward, Birmingham, MI.

AKT Peerless will implement work immediately and will provide its Phase I ESA within three to four weeks of your authorization to proceed. AKT Peerless will provide its Phase II ESA within four to five weeks after completion of the Phase I ESA. AKT Peerless' estimated cost to complete the proposed Phase I ESA scope of work is \$2,800. Since the Phase I ESA has not been completed yet, a specific scope for the Phase II ESA cannot be determined at this time. However, based on past experience with similar projects, AKT Peerless anticipates a Phase II ESA cost of \$8,000 to \$15,000.

Any necessary changes that become apparent during the project may require a revision in the scope of work and cost and could delay the project. AKT Peerless will notify you of any necessary changes in the proposed scope of work.

For your convenience, this proposal is presented in a form that can be accepted as an agreement. To accept this proposal, please sign the signature page and return a copy to me.

If you have any questions or need additional information please contact me Jessica Cory at (248) 615-1333, or via email at [stuntzb@aktpeerless.com](mailto:stuntzb@aktpeerless.com) and [coryj@aktpeerless.com](mailto:coryj@aktpeerless.com).

Sincerely,

AKT Peerless

A handwritten signature in black ink, appearing to read 'Bret Stuntz'.

Bret Stuntz  
Vice President, Economic Development

Enclosure

a better environment for your business.

## Currier, Tim

---

**From:** Currier, Tim  
**Sent:** Thursday, August 16, 2018 4:49 PM  
**To:** jvalentine@bhamgov.org  
**Subject:** FW: FW: Survey for

fyi

**From:** Brett Buchholz [mailto:bbuchholz@nfe-engr.com]  
**Sent:** Thursday, August 16, 2018 4:25 PM  
**To:** Currier, Tim <TCurrier@bhlaw.us.com>  
**Subject:** RE: FW: Survey for

Hi Tim,  
Per our discussion, for us to provide an update to the survey previously prepared (changes along northerly property due to Brookside development), review of title work (to be provided to us), update of legal description and reflection of exceptions (per title work), and preparation of an easement exhibit, our costs are estimated not to exceed \$4,000.00. Timing wise, we can commence upon notice to proceed from the City and prepare an updated survey and easement exhibit in approximately 20 to 30 days (subject to receipt of title work). As a side note we would need more info the easement, and anticipate the details being coordinated with Paul's office.

Please let me know if anything further is needed.

Thank You,

**Brett J. Buchholz, PE**  
Principal

**Nowak & Fraus Engineers**  
46777 Woodward Avenue  
Pontiac, Michigan 48342

T: 248.332.7931



**Check out our new website!** [www.nowakfraus.com](http://www.nowakfraus.com)

Electronic Data Notice – The information contained in this electronic communication is considered part of Nowak & Fraus Engineers' (NFE) instrument of service and shall not be used on other projects. Since data stored on electronic media can be altered, translated or modified; NFE will not be liable for the accuracy, completeness, or readability of the electronic data. The electronic data should be checked against the hard copy. Hard copies of all NFE data are on file and available upon request if needed for comparison.

**From:** Currier, Tim <TCurrier@bhlaw.us.com>  
**Sent:** Thursday, August 16, 2018 4:05 PM  
**To:** Brett Buchholz <bbuchholz@nfe-engr.com>  
**Subject:** FW: FW: Survey for

fyi

**From:** Paul O'Meara [mailto:pomeara@bhamgov.org]  
**Sent:** Thursday, August 16, 2018 1:28 PM  
**To:** Joe Valentine <jvalentine@bhamgov.org>

**Cc:** Currier, Tim <[TCurrier@bhlaw.us.com](mailto:TCurrier@bhlaw.us.com)>; Tiffany Gunter <[tgunter@bhamgov.org](mailto:tgunter@bhamgov.org)>; Austin Fletcher <[afletcher@bhamgov.org](mailto:afletcher@bhamgov.org)>  
**Subject:** Re: FW: Survey for

It is my understanding that the contractor building 369 N. Old Woodward would likely try to finish surface improvements around the building this October before it gets too cold to do so. That would be concrete sidewalks, driveway, trees, etc. Once that is done, and the construction fence is gone, it would be very helpful to update the survey in this area given the recent changes. The rest of the project area should be as it was in 2015.

On Thu, Aug 16, 2018 at 11:40 AM, Joe Valentine <[jvalentine@bhamgov.org](mailto:jvalentine@bhamgov.org)> wrote:  
Is there value in an update? Would anything new be added since 2015?

On Thu, Aug 16, 2018 at 11:26 AM, Currier, Tim <[TCurrier@bhlaw.us.com](mailto:TCurrier@bhlaw.us.com)> wrote:  
fyi

**From:** Brett Buchholz [<mailto:bbuchholz@nfe-engr.com>]  
**Sent:** Thursday, August 16, 2018 10:21 AM  
**To:** Currier, Tim <[TCurrier@bhlaw.us.com](mailto:TCurrier@bhlaw.us.com)>  
**Subject:** Survey for

Hi Tim,

Very good to hear from you. I left you a follow voice mail this morning, but I believe the parcel you've described we had already surveyed for the City, back in 2015. I've attached a copy of that survey for your review and for further discussion.

Please call me back at your opportunity to discuss any further need of services, like an update to the survey, or converting to an ALTA, etc.

Thank You,

**Brett J. Buchholz, PE**

Principal

**Nowak & Fraus Engineers**

46777 Woodward Avenue



**Currier, Tim**

---

**From:** Currier, Tim  
**Sent:** Thursday, August 16, 2018 9:55 AM  
**To:** jvalentine@bhamgov.org  
**Subject:** FW: Appraisal of Parking Garage - Old Woodward, Birmingham

fyi

**From:** mellis2449@aol.com [mailto:mellis2449@aol.com]  
**Sent:** Thursday, August 16, 2018 9:19 AM  
**To:** Currier, Tim <TCurrier@bhlaw.us.com>  
**Cc:** mellis2449@aol.com  
**Subject:** Appraisal of Parking Garage - Old Woodward, Birmingham

*Hi Tim,*

*In follow up to our conversation from yesterday afternoon, we can do an appraisal of the property we discussed for \$10,000. If that amount is agreeable to the City of Birmingham, I will provide you with a letter of engagement for our appraisal services outlining our doing the appraisal.*

*Mike Ellis, MAI  
Value Trends, Inc.  
445 S. Livernois, Suite 104  
Rochester Hills, MI 48307  
(248) 413-5821 - office  
(248) 840-8378 - cell*